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NOTICE TO PARTIES OF THE COURT'S MEMORANDUM OF REASONS FOR DECISION

SUPREME COURT CIVIL APPEAL NO COA2022CV00012

BETWEEN	**VELETA GREEN**	**1ST APPELLANT**
AND	**MILTON STEWART**	**2ND APPELLANT**
AND	**WINSOME DOUGLAS-MURRAY**	**1ST RESPONDENT**
AND	**KEVIN HUGH BARRINGTON HUME**	**2ND RESPONDENT**

TAKE NOTICE that this matter was heard by the Hon Straw JA, Foster-Pusey JA and Harris JA on 24 and 30 January 2024, with Miss Judith Clarke instructed by Judith M Clarke & Co for the appellants and Ms Sasha Lee Hutchinson instructed by H S Dale & Co for the respondents.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by Foster-Pusey JA, is as follows:

[1] This is an appeal filed 1 February 2022 by the 1st appellant and 2nd appellant against the decision of Lawrence-Grainger J (Ag) (as she then was) ('the learned judge'), made on 20 December 2021. On 19 April 2022, the respondents filed a counter notice of appeal against the decision made by the learned judge in respect of the 2nd appellant, but withdrew it in the course of the hearing of the appeal.

[2] In the court below, both appellants relied on the principle of proprietary estoppel, *inter alia*, in claiming equitable interests in registered land formerly owned by Mrs Estella Eubanks, but which she transferred by deed of gift to the respondents before her death. The 1st appellant also sought an order for recovery

of possession. On appeal, the issues before this court solely revolved around the principle of proprietary estoppel.

[3] The learned judge refused the 1st appellant's claim by way of a fixed date claim form for recovery of possession of and a declaration that she had an equitable interest in a lot reflected on a proposed subdivision plan prepared by D K Cornwall, commissioned land surveyor, of "ALL THAT parcel of land part of WEST NORMAN LANE, BUFF BAY in the parish of PORTLAND and being part of the land comprised in Certificate of Title registered at Volume 1240 Folio 70" ('the said land').

[4] On the other hand, the learned judge declared that the 2nd appellant had an equitable interest in the Lot numbered 5 on the proposed subdivision of the said land, but limited the interest to the 2nd appellant being entitled to remain on the premises for his lifetime (see **Veleta Green and Milton Stewart v Winsome Murray and Kevin Hume** [2021] JMSC Civ 204).

[5] There is no dispute that the learned judge correctly identified the relevant principles of law applicable to proprietary estoppel at para. [69] of her reasons for judgment. There is general agreement, as reflected at para. 24 **Mohammed v Gomez and others** [2019] UKPC 46 that the elements of proprietary estoppel are: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance.

[6] The issues that arose in this appeal, therefore, related to the learned judge's findings of fact as well as the exercise of her discretion in light of those findings.

1st appellant

[7] The learned judge did not accept that the 1st appellant was ever in possession of the property to which she was laying claim or was ever given or promised any interest in land (para. [58] of the judgment]. The court did not find the 1st appellant's evidence that she assisted Mrs Estella Eubanks with constructing

the house credible (para. [50] of the judgment]. The respondents had put the 1st appellant to strict proof that she assisted in the construction of the house in question. Miss Clarke acknowledged that the 1st appellant failed to prove the expenditure that she asserted. This meant that the 1st appellant did not satisfy the learned judge that she was given an assurance, and also failed to demonstrate any detriment even if such an assurance had been given. On the evidence it has not been shown that the learned judge was plainly wrong. The 1st appellant's appeal cannot succeed.

The 2nd appellant

[8] The learned judge found that the 2nd appellant's equity was not exhausted as Mrs Eubanks stood by and did not object to him building a concrete structure (para. [79] of the judgment). He constructed a concrete house consisting of three bedrooms, a bathroom, kitchen, living and dining room and a verandah. The structure was completed sometime in 2003 before Mrs Eubanks died in 2012. The learned judge also found that the current title holders were aware of the structure that the 2nd appellant built and were aware of the permission that Mrs Eubanks gave to the 2nd appellant to put up a structure, albeit that they stated that the 2nd appellant received permission to put up a board structure and put up a concrete structure instead (para. [67] of the judgment). The learned judge ruled that to satisfy the equity, the 2nd appellant is entitled to remain on the property for the remainder of his life. The 2nd appellant is dissatisfied with and has appealed this decision.

[9] The evidence supports the 2nd appellant's assertion that he spent a considerable amount of money building the house in question. The 2nd appellant stated that he paid money towards the taxes for the piece of land that he was told was willed to him and represented on the draft subdivision plan. While the will and subdivision plan were not formalized documents, in conjunction with the evidence of the respondents, they could be regarded as supporting the 2nd appellant's evidence that he had been promised the land in question. In any event, as the

learned judge found, there was clear acquiescence on Mrs Eubanks' part when the 2nd appellant built the concrete structure. The 2nd appellant testified that he had been living on the land for over 20 years and the respondents did not dispute this. Ms Hutchinson, on behalf of the respondents, acknowledged that she would be hardpressed to challenge the learned judge's finding in this regard.

[10] There is no dispute that in each case the court must look at the circumstances to decide in what way 'the equity can be satisfied' (**Jennings v Rice** [2002] EWCA 159 citing **Crabb v Arun District Council** [1976] Ch 179). As Miss Clarke, on behalf of the 2nd appellant, submitted, relying on **Mohammed v Gomez and others** [2019] UKPC 46, "the decision of a court as to how to satisfy the minimum equity where a proprietary estoppel has been established, must be apparent, explainable and based on a reasoned distillation of the facts" (para 46 submissions). There is nothing in the learned judge's reasons to explain why, in the exercise of her discretion, the grant of a life interest was sufficient to satisfy the minimum equity that arose in the 2nd appellant's favour. Miss Clarke adopted and relied on the view expressed in **Dillwyn v Llewellyn** to which Downer JA referred at page 36 in **Iris Lungrin v Paul Monelal and Anor** (unreported) Court of Appeal, Jamaica, Resident Magistrate's Civil Appeal No 8/003, judgment delivered on 2 April 2004, that "No one builds a house for his own life only…". She submitted that the learned judge, in awarding the 2nd appellant a life interest only, did so without any reasoned approach. Further, she ought to have exercised her discretion in a "credible and judicious way". Counsel further submitted that the 2nd appellant ought to have been granted a fee simple interest in Lot 5 to satisfy his equity. Ms Hutchinson, on behalf of the respondents, acknowledged that while she was not agreeing with Miss Clarke's submissions as to what was required to satisfy the 2nd appellant's equity, she had no legal basis to challenge the proposed outcome.

[11] We agree that the learned judge erred as she did not follow a reasoned approach in arriving at her decision to award a life interest to the 2nd appellant. Furthermore, we agree with the submissions made on behalf of the 2nd appellant,

that the learned judge also erred in the exercise of her discretion when she awarded a life interest only to the 2nd appellant. The justice in this case, to satisfy the minimum equity in favour of the 2nd appellant, is for the 2nd appellant to be declared owner of an estate in fee simple in respect of Lot 5 of the draft subdivision plan of the property in question, on which he built the concrete structure.

Order

[12] The court, therefore, orders as follows:

1. The appeal of the 1st appellant is dismissed.

2. The appeal of the 2nd appellant is allowed.

3. It is hereby declared that the 2nd appellant has an equitable interest in all that parcel of land part of West Norman Lane, Buff Bay in the parish of Portland being the lot numbered 5 on the proposed subdivision plan prepared by D K Cornwall, Commissioned Land Surveyor (which said plan has been admitted into evidence in the court below as Exhibit 3) (hereinafter referred to as 'Lot 5') and being part of the land comprised in Certificate of Title registered at Volume 1240 Folio 70.

4. The 2nd appellant (Milton Stewart) and the respondents shall immediately take steps to obtain a splinter title for Lot 5. The respondents shall transfer title to Lot 5 into the name(s) of the 2nd appellant and/or his nominees.

5. The costs to obtain said splinter title and all costs applicable to the transfer of title for Lot 5 into the name(s) of the 2nd appellant and/or his nominees shall be borne by the 2nd appellant (50%) and/or his nominees and the respondents

(50%), that is, in equal shares. Each party to bear their own attorneys' costs in respect of these activities.

6. Should the respondents fail and/or refuse to sign any documents necessary to give effect to the orders herein, the Registrar of the Supreme Court shall be entitled to sign same.

7. That there be liberty to apply.

8. Two-thirds of the appellants' costs of the appeal to be paid by the respondents to be agreed or taxed.

9. No order as to costs in respect of the counter notice of appeal.