**[2022] JMCA Civ 13**

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MISS JUSTICE STRAW JA**
**THE HON MR JUSTICE D FRASER JA**
**THE HON MRS JUSTICE G FRASER JA (AG)**

**PARISH COURT CIVIL APPEAL NO 14/2019**

| | | |
|---|---|---|
| **BETWEEN** | **BRENDALEE HALL** | **APPELLANT** |
| **AND** | **LEROY HALL** | **1ST RESPONDENT** |
| **AND** | **MARCIA HALL** | **2ND RESPONDENT** |

**Leonard Green instructed by Chen, Green & Company for the appellant**

**Lambert Johnson instructed by Johnson & Company for the 1st and 2nd respondents**

**31 January, 1 February and 8 April 2022**

**STRAW JA**

[1] I have read, in draft, the judgment of my sister G Fraser JA (Ag) and I agree with her reasoning and conclusion. There is nothing that I wish to add.

**D FRASER JA**

[2] I too have read, in draft, the judgment of my sister G Fraser JA (Ag) and I agree with her reasoning and conclusion.

**G FRASER JA (AG)**

**Background**

[3] This is an appeal against the decision of His Honour Mr John Tyme, judge of the Parish Court for the parish of Saint Elizabeth exercising jurisdiction in the parish of

Westmoreland ('the learned Parish Court Judge'). By his decision, made on 29 March 2017, the learned Parish Court Judge granted judgment and costs to the plaintiffs, who are now the respondents herein.

[4] The trial of the plaint commenced on 27 May 2015 and was completed on 29 March 2017 when the foregoing orders were made in favour of the respondents.

[5] The respondents had sued the appellant for recovery of possession of property located in the parish of Westmoreland ('the disputed property'). Both parties had erstwhile leased individual portions of land from Mr Austin Gazada ('the landlord'). The respondents had allegedly purchased land from the landlord in 2010. That purchase included the appellant's leased portion. In their claim for recovery of possession, the respondents had asserted that they were owners of the disputed property and, as such, they were entitled to possession of it. The particulars of claim annexed to Plaint Note No 601/12, dated 14 August 2012, averred that:

> "[The respondents] claims [sic] against [the appellant] for an Order that [the appellant] quit and deliver up possession of land situated at Wharf Road Smithfield, Paradise P.A., in the parish of Westmoreland, own [sic] by [the respondents] and occupy [sic] by [the appellant] as a Tenant. That [the appellant] was served with a Notice which expired on 2nd August 2012 and [the appellant] remains in occupation of the said land."

[6] At the trial before the learned Parish Court Judge, the appellant, who had been served with a notice to quit, refused to give up possession of the disputed property. She averred that she had been a tenant of Mr Gazada for over 30 years, she had constructed two buildings on the disputed property and was residing there at all material times. She stated her defence in the following terms:

> "[The appellant] is not a Tenant of [the respondents]. She has continuously been in possession of the parcel of land for a period of time which entitles her to a beneficial interest. [The respondents] are precluded from ejecting [the appellant] by virtue of the Limitation Act. The house constructed on the land

> is a fixture on the land. It was constructed with the consent/approval of the legal owner of the land."

## The appeal

Ground of appeal

[7] Disgruntled with the orders of the learned Parish Court Judge, the appellant sought to challenge those orders, and on 4 April 2017, she filed a notice and ground of appeal. The ground relied on by the appellant is:

> "[t]hat the [learned Parish Court Judge] erred when he wrongly concluded that he had jurisdiction to hear the matter for recovery of possession and wrongly made an order for [the appellant] to Quit and deliver up possession of the house affixed to the land."

[8] Before this court, the appellant is essentially contending that the order made by the learned Parish Court Judge, for recovery of possession, was made pursuant to section 89 of the Judicature (Parish Court) Act ('the Act'), formerly the Judicature (Resident Magistrates Act). She further contended that he had no jurisdiction to do so because at the trial of the plaint, she had raised a dispute as to the respondents' title, therefore, the correct section for the determination of the plaint would have been section 96 of the Act. The appellant complained that, during the hearing of the plaint, no evidence was elicited by the respondents in relation to the gross annual value of the disputed property or the annual rent. Therefore, in making the order that he did, the learned Parish Court Judge had erred.

[9] The appellant is further challenging the finding of the learned Parish Court Judge as to the status of the respondents, that they were persons entitled to file the claim for recovery of possession.

[10] On 31 January 2022 and 1 February 2022, we heard the appeal and reserved our decision. We had promised that we would give our decision and reasons as soon as possible. In fulfilment of our promise, we now do so.

**Submissions**

Appellant's submissions

[11] In arguing the single ground of appeal, counsel for the appellant advanced several bases for challenging the decision of the learned Parish Court Judge. What is of materiality, for our purposes, are the submissions on the jurisdictional point. In that regard, the key aspects of the contention of the appellant were:

> "i. The appellant had been in possession of her portion of the property for around 30 years and had been paying rent thereon and constructing her home and using the property to farm from which she earns her living.
>
> ii. It was the intention of the appellant to purchase the property from Mr Austin Gazada and she had discussed purchasing the property with him and received a purchase price from him. She, therefore, disputed the title that the respondents had to the property and their right to possession.
>
> iii. In the Parish Court, His Honour Mr John Tyme, cited a passage from Halsbury's Laws of England, third edition volume 34, page 298, para. 297, and found that '… This court is of the view that the proper interpretation of this section in conjunction with the Vendor's letter above gives the purchaser the right to not only collect rent but also the right of recovery of possession once it does not violate [the appellant's] tenancy.
>
> iv. [The learned Parish Court Judge] based his judgment on the fact that the respondents were the holders of a sales agreement that put them into possession of the property at the same time while the appellant was in possession."

[12] It is the appellant's contention that the circumstances of the case gave rise to the following issues to be determined on appeal:

> a. Whether the respondents have title to the property where they are purchasers in possession enabling them to recover possession from the appellant; and

b. Whether the learned Parish Court Judge had come to the correct conclusion or any conclusion on whether he had jurisdiction to hear the claim where the respondents have not proven the annual value or rents on the property.

[13] Counsel, Mr Leonard Green, on behalf of the appellant, submitted that section 89 of the Act was not the applicable section, since that section was reserved for matters dealing with squatters. The appellant, he said was a lawful tenant and had always disavowed the respondents as legal owners of the disputed property. The appellant had staunchly maintained that Mr Gazada was the owner of the disputed property and her landlord. Counsel further submitted that "it was not true that the property was owned by [the respondents]"; both the appellant and the respondents were of a similar status as both were renting from Mr Gazada. The learned Parish Court Judge failed in his analysis to take account of that particular status, when this was critical in determining the issue of jurisdiction.

[14] Counsel also submitted that the respondents were to be regarded as tenants at will or no more than licensees. According to counsel, the disavowal of the respondents as legal owners of the disputed property was sufficient to put the learned Parish Court Judge on notice that an issue regarding dispute to the title was live and he ought to have dealt with the matter pursuant to section 96 of the Act. Counsel said that the learned Parish Court judge did not deal with the jurisdictional issue any at all, and this was the fundamental basis for the court to make an order.

[15] Counsel further submitted that the application for an order for recovery of possession was never made under the Rent Restriction Act ('RRA'), but, in any event, given the status of the respondents who are not owners of the land, they cannot be landlords under the RRA.

[16] Additionally, counsel submitted that the learned Parish Court Judge fell into error when he assumed jurisdiction of the matter and that he ought to have given consideration to section 96 of the Act to determine the jurisdiction of the court. In support of this

submission, he relied extensively on the dictum of Morrison JA (as he then was) in **Danny McNamee v Shields Enterprises Ltd** [2010] JMCA Civ 37.

Respondents' submissions

[17] The respondents have taken a diametrically opposed view of the relevant issues. Counsel Mr Lambert Johnson, in his oral submissions highlighted that the trial before the learned Parish Court Judge had proceeded on the basis of adverse possession, among other things. He outlined that no issue was taken regarding the court's jurisdiction and whether section 89 or section 96 should apply. There was no evidence-in-chief he said, nor cross-examination of the parties which sought to address that issue. He further contended that, in the circumstances of the case, the action for recovery of possession fell to be determined under the provision of section 89 of the Act. He sought to buttress his submissions by relying upon the authority of **Courtney Brissett v Carlton Dixon** [2018] JMCA Civ 20.

[18] Counsel further submitted that the action for recovery of possession, in this case, did not fall under section 96. For section 96 to apply, there must be a genuine dispute to title, and that did not obtain in this case. The respondents, he said, had presented weighty evidence that they were owners and entitled to do all things *qua* owners, including taking the appellant to court for recovery of possession.

[19] On the respondents' behalf, written submissions were also filed (by counsel previously appearing), which counsel, Mr Lambert Johnson, said he was advancing. These are as follows:

> "i The Appellant and the Respondents were both tenants of a Mr. Austin Gazada in respect of a parcel of land situated at Spikehall, Smithfield in the parish of Westmoreland.
>
> ii. Mr. Gazada on the 30th day of June, 2010 sold the land, the subject-matter in dispute to the Respondents, placed the Respondents in possession of the said land and told the Appellant to pay the 2nd respondent Marcia Hall the rent.

iii. On June 25th, 2012, the Appellant through her Attorney-at-Law paid the rent that was outstanding for the year [sic] 2009 – 2010 and 2010 – 2011 to the 2nd Respondent.

iv. On the 2nd of July, 2012 a notice to quit was served on the Appellant. The Appellant however, refused to quit and deliver up possession of the property.

v. On the 14th of August 2012 an action was filed in the Parish Court of Westmoreland for recovery of possession by the Respondents against the Appellant, and on the 14th of April 2016, [the learned Parish Court Judge] made an order that the Appellant quit and deliver up possession of the property on or before the 29th of [March] 2017. The Appellant is still in possession of the property."

[20] The real issue to be determined, according to the respondents, is whether the appellant acquired an equitable interest in the disputed property. They have conceded that if she did acquire an equitable interest, then a dispute as to title would arise and this would bring section 96 of the Act into contention. They have further contended that if, however, the appellant did not acquire any such interest, then section 96 of the Act would not be relevant to these proceedings.

[21] In the written submissions advanced on their behalf, the respondents have contended that the appellant was their tenant. This is not a fresh issue when one examines the contents of the plaint on which the trial proceeded. The submission as to a landlord and tenant relationship was premised on the fact of the executed sale agreement between Mr Austin Gazada and the respondents. It was further contended that the definition of "landlord" in section 2 of the RRA was of importance. The effect of the section, it was submitted, is that, the respondents had "derived title under the original landlord". Therefore, "the Appellant who is a tenant and has always been a tenant would become the tenant of the Respondents they having been put in possessions [sic]".

[22] In the respondents' written submissions it was contended that the case "**Danny McNamee v Shields Enterprises Ltd** is not relevant to and is distinguishable from the case herein under consideration". That case dealt with the issue of fraud, issues of title

and mortgage, *inter alia*, which would have clearly given rise to a dispute as to title. In the instant case, the respondents were not only purchasers that were put into possession of the disputed property, they had also acquired the status of landlords. It was further submitted that the relationship of landlord and tenant that existed in this case brings the matter within section 89 of the Act, and, therefore, within the jurisdiction of the learned Parish Court Judge.

**Analysis and discussion**

[23] It is a settled principle of law that this court does not lightly disturb a trial judge's findings of fact. In considering this matter, I am mindful of the guidance given in the Privy Council decision of **Paymaster (Jamaica) Limited and another v Grace Kennedy Remittance Services Limited** [2017] UKPC 40, a case emanating from this court. Lord Hodge, giving the judgment on the Board's behalf, reiterated that an appellate court should be cautious in reviewing the findings of fact of a judge at first instance, who unlike a judge at the appellate court, had seen and heard the witnesses. At paragraph 19, he said:

> "… In *Thomas v Thomas* [1947] AC 484 the House of Lords and more recently in *McGraddie v McGraddie* [2013] 1 WLR 2477 and *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600; 2014 SC (UKSC) 203 the United Kingdom Supreme Court have given guidance on the circumstances in which an appellate court may interfere with the findings of fact by a trial judge. In *Thomas v Thomas*, 487-488 Lord Thankerton stated:
>
> > '[T]he principle…may be stated thus: I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial

> judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakeably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then be at large for the appellate court.'

In *Henderson* (para 67) Lord Reed stated:

> 'in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.'"

[24] The crux of the contention between the parties appears to be, whether the learned Parish Court Judge ought to have determined the issues arising in this case under the provisions of section 89 or section 96 of the Act. It would be prudent at this point to highlight the relevant provisions of both sections and accordingly, these are reproduced below:

> "89. When any person shall be in possession of any lands or tenements without any title thereto from the Crown, or from any reputed owner, or any right of possession, prescriptive or otherwise, the person legally or equitably entitled to the said lands or tenements may lodge a plaint in the Court for the recovery of the same and thereupon a summons shall issue to such first mentioned person; and if the defendant shall not,

> at the time named in the summons, show good cause to the contrary, then on proof of his still neglecting or refusing to deliver up possession of the premises, and on proof of the title of the plaintiff, and of the service of the summons, if the defendant shall not appear thereto, the Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the Magistrate shall think fit to name; and if such land be not given up, the Clerk of the Courts, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorizing and requiring the Bailiff of the Court to give possession of such premises to the plaintiff.
>
> …
>
> 96. Whenever a dispute shall arise respecting the title to land or tenements, possessory or otherwise, the annual value whereof does not exceed seventy-five thousand dollars [now five hundred thousand dollars], any person claiming to be legally or equitably entitled to the possession thereof may lodge a plaint in the Court, setting forth the nature and extent of his claim; ... and if the defendant or the defendants, or either of them, shall not, on a day to be named in such summons, show cause to the contrary, then, on proof of the plaintiff's title and of the service of the summons on the defendant or the defendants, as the case may be, the Magistrate may order that possession of the lands or tenements mentioned in the said plaint be given to the plaintiff…"

[25] As to which of the two sections, if either, was relevant to the learned Parish Court Judge's determination will depend on the status of the litigants relative to their alleged interest in the disputed property, and whether either or both the appellant and the respondents had an interest in the title. This will be addressed anon.

[26] For ease of reference, the analysis will be dealt with under the rubric of three issues as adapted and formulated from the submissions of the litigants. These are as follows:

I. Whether the respondents were legally or equitably entitled to seek against the appellant, an order for the recovery of possession of the disputed property?

II. Whether the appellant had acquired an equitable interest or any interest in the property?

III. Whether there was a *bona fide* dispute as to title, thereby activating the provisions of section 96 of the Act, and did the learned Parish Court Judge have jurisdiction to hear the claim?

[27] These issues will now be explored in turn, however as a matter of convenience issues I and II will be dealt with together.

**Issue I - Whether the respondents were legally or equitably entitled to seek against the appellant, an order for the recovery of possession of the disputed property?**

**Issue II - Whether the appellant had acquired an equitable interest or any interest in the property?**

The respondents' status

[28] Although the thrust of the appellant's arguments was concerned with the jurisdictional point, the written submissions on which counsel, Mr Green, relied had challenged the status of the respondents and had argued that they were "at best Tenants at Will and at worse [sic] Licensees". This is a direct challenge to the respondents' status and whether they were persons legally or equitably entitled to the disputed property, and had legal standing to lodge the plaint demanding recovery of possession.

[29] I have carefully reviewed the record of proceedings and find that there can be little doubt that amongst the issues determined by the learned Parish Court Judge were; (i) whether the respondents were the owners of the disputed property, and (ii) whether they had acquired any title in the disputed property, then occupied by the appellant. In so doing, the learned Parish Court Judge had also determined the status of the respondents and whether they had a right to bring the action they did. In coming to his conclusions,

he gave consideration to several documents that were in evidence before him, which included the following:

1. Executed agreement for sale dated 30 June 2010, between Marcia Hall and Leroy Hall (purchasers) and Austin Gazada and Virginia Gazada (vendors). (Exhibit 1)

2. Certificate of title with attached diagram, describing land situated at Spikehall, Smithfield in the parish of Westmoreland being land comprised in certificate of title registered at volume 1088 folio 826 transferred on 18 July 1986 by transfer number 449906 to Austin and Virginia Gazada as joint tenants. (Exhibit 3)

3. Letter of possession signed by the attorney-at-law with carriage of the sale, on the vendors' behalf. Certifying that the purchasers (respondents) "are now the Owners…" of the said disputed land and "[t]hey therefore have the authority to exercise all acts of ownership thereon from and since June 30, 2010". (Exhibit 4)

4. Plaint No 495/11 between Marcia Hall and Brendalee Hall for two years rent in the amount of $20,000.00 in respect of the said disputed land. (Exhibit 6)

5. Letter dated 25 June 2012 from the appellant's attorneys-at-law, addressed to the respondents' attorneys-at-law, with an enclosed cheque for the amount of $20,000.00, being payment for the above outstanding rent owed by the appellant. (Exhibit 5)

6. Notice to quit dated 2 July 2012, addressed to the appellant. (Exhibit 2)

[30] After examination of the respondents' testimony and the documentary evidence tendered during the trial, the learned Parish Court Judge made a finding of fact that the respondents had been put into possession of the land since June 2010. He then went on to quote a passage from Halsbury's Laws of England, third edition volume 34, page 298, para. 297, indicating that:

> "If the purchaser is let into possession before the proper time of completion, he is, unless the contract otherwise provides entitled to the rents and profits from the time of taking possession and he is entitled to all acts ordinarily incident to an estate in possession…"

He further said:

> "This court is of the view that the proper interpretation of this section [in reference to Halsbury's Laws of England] in conjunction with the Vendor's letter above gives the purchaser the right to not only collect rent but also to the right of recovery of possession once it does not violate the defendants [sic] tenancy. No issue was taken at trial that the defendants [sic] tenancy was violated but instead what was advanced was that the defendant had a beneficial interest in the property and that the claim could not be sustained by the plaintiff's [sic] because they were not owners of the property. This court therefore hold [sic] that the Plaintiff's [sic] are well within their right to ask for recovery of possession of the property that they have been placed in possession of."

[31] Based on the above utterances, the learned Parish Court Judge had, inferentially, determined that the respondents had, at the very least, an equitable interest in the disputed property and had been put into possession. He also determined that there was, in existence, a tenancy in favour of the appellant. He highlighted that the appellant during the course of the trial had not averred that her tenancy had been violated, she had instead advanced defences of beneficial interest and adverse possession. The appellant's defences having failed, he thereupon made the finding that the respondents were "well

within their right to ask for recovery of possession of the property that they had been placed in possession of".

[32] To appreciate the fulcrum of the findings of the learned Parish Court Judge, one must examine the nature and content of the plaint that he was determining and also the defence filed. The amalgam averments in the contents of the particulars of claim that are annexed to the Plaint Note No 601/12, (previously reproduced in paragraph [5]) and the defences (previously reproduced in paragraph [6]) gave rise to issues of ownership, succession in title, interests in title, and landlord and tenant relationship.

[33] The first order of business was for the learned Parish Court Judge to resolve whether the respondents' allegation of ownership was proven. The learned Parish Court Judge heard the testimony of the respondents' purchase of the disputed property. In arriving at his decision, he had examined the relevant evidence presented by them as also the exhibits (listed above at para. [29]). Being satisfied as to the veracity of their oral testimony and the legal effect of the documents presented, he determined that they were persons equitably or legally entitled to the disputed property and, therefore, were eligible to lodge a plaint for the purposes of recovery of possession.

[34] The question for this court is whether or not the evidence available to the learned Parish Court Judge was capable of supporting his findings as to the respondents' status, as persons entitled to lodge the plaint. In determining this issue, we find support in the enunciations of F Williams JA in **Courtney Brissett v Carlton Dixon** where he indicated that:

> "[28] If we begin with section 89 and the case of **Danny McNamee v Shields Enterprises Ltd**, then it is necessary to first examine the question of whether the respondent had claimed to be 'the person legally or equitably entitled to the said lands...', thus entitling him to lodge a plaint. To my mind the evidence accepted by the judge indicates that the clear answer to this question must be 'yes'. On the evidence as accepted by the judge, the respondent entered into an agreement for the purchase of lot 7 and paid the purchase

price in full and more. The receipts in support of this were tendered and admitted into evidence. All that remained for the transaction to have been completed was for lot 7 formally to have been transferred to the respondent by having his name registered on the certificate of title. He would therefore have acquired a beneficial or equitable interest in lot 7.

[29] If the support of authority be needed for this position it is, for example, to be found in the discussion headed: 'Effect of agreement for sale' at paragraph 484 of Halsbury's Laws of England, 3rd edition, volume 34 at page 290 as follows:

> '**484. Effect of agreement for sale**. An agreement for the sale of land, of which specific performance can be ordered, operates as an alienation by the vendor of his beneficial proprietary interest in the property. As from the date of the contract, his beneficial interest is transferred from the land to the purchase-money, and, if his interest was of the nature of real estate, it is, from that date, converted into personalty. As regards the land, he becomes, as between himself and the purchaser, constructively a trustee for the purchaser, with the right as trustee to be indemnified by the purchaser against the liabilities of the trust property; and the purchaser becomes beneficial owner, with the right to dispose of the property by sale, mortgage, or otherwise, and to devise it by will...'" (Emphasis as in the original)

[35] In the case of **Courtney Brissett v Carlton Dixon**, the respondent had entered into an oral agreement for the purchase of land and had paid the purchase price, evinced by four receipts. He had also entered into possession of the said property and started constructing a house. The appellant had averred his right to possession by way of a power of attorney granted by a beneficiary under the will of the vendor and had also filed a "formal defence resisting the claim on the basis that: (i) it was only part of the lot (and not the entire lot) that was the subject of the sale agreement; and that (ii) the claim was barred by the provisions of the Limitation of Actions Act". This court, in that appeal, found

in favour of the respondent's averments and upheld the Parish Court Judge's decision that the respondent had an equitable interest in the disputed property.

[36] In my view, the respondents in the case at bar are standing on surer footing than Mr Dixon, in respect of their claim to title. They had, in hand, an executed agreement for sale of the disputed property that named them as purchasers. This agreement cited Mr Gazada as vendor and owner of the disputed property and indicated that a portion of the purchase price had been paid by the purchasers and the balance was to be paid on exchange of registered title in the names of the purchasers. The respondents' evidence of title was further buttressed by a letter from Mr Gazada's attorneys-at-law, granting them possession of the disputed property and entitling them to exercise all acts of ownership. What the respondents were obliged to do was to establish some interest known to law and by their evidence (as gleaned from the notes of evidence) they had overcome that hurdle.

[37] I, therefore, find that the learned Parish Court Judge had not erred in rejecting the appellant's assertions that the respondents were tenants at will or licensees. In **Narine v Natram and others** (2016) 89 WIR 368, a case cited by the appellant, the Guyanese Court of Appeal, after reviewing a number of authorities at page 374-g, declined "… to follow the older authorities which treated a purchaser in possession pending completion of the contract of sale as a tenant at will". It is clear, based on the authorities, that anyone who enters into possession in pursuance of an agreement of sale, the right to legal possession as distinguished from possession in fact (control) passes to him.

[38] Although the learned Parish Court Judge did not explicitly make the finding that the respondents were owners of the disputed property, by indicating that they were within their right to seek recovery of possession, in my view, such a finding was inferentially made based on the evidence he accepted. He had indicated his reliance on an excerpt from Halsbury's Laws of England, that the respondents were entitled to all

rights ordinarily incident to an estate in possession, which would have included an entitlement to rent and profits.

The appellant's status

[39] The appellant testified that some 28 years prior to the trial, she had entered into an agreement with Mr Austin Gazada to lease the land she was occupying. She had constructed a two-apartment house and a second structure consisting of three bedrooms on the disputed property. She denied being a tenant of the respondents and was adamant that she always paid rent to Mr Gazada, her landlord.

[40] Secondly, she claimed to have made "an arrangement with Mr. Gazada" to purchase the land on which she was residing. She said this agreement was by "mouth" (oral agreement), and based on that arrangement, she was referred to the surveyor, who carried out a survey of the disputed property. She did not give any evidence of whether the survey was conducted on her behalf or at her behest. She admitted that she "did not get to buy the land", but was not aware if it was sold to anyone else.

[41] Thirdly, she testified that the house she had on the land "… cannot be moved. The bathroom is up in concrete. The floor is board and concrete. The concrete portion has been built on the land for 22 years". I understand the appellant to be averring that the house is a fixture on the land. There was not sufficient clarity in her evidence as to whether only one or both of the houses were fixtures and whether both were in existence for the 22 years' duration.

[42] In cross-examination, the appellant admitted that Mr Gazada had taken her to Marcia Hall, the 2nd respondent, but said neither party had informed her that the respondents had purchased the land, she "only heard". She did not indicate the reason why Mr Gazada would have taken her to Marcia Hall. The appellant agreed that she had rent outstanding for the period 2009 - 2011 and "Mr Gazada during that time said I must pay Ms. Marcia Hall rent". She admitted that the rent was paid to Marcia Hall. Although she initially denied knowledge of the sales agreement between the respondents and Mr

Gazada, the appellant eventually agreed that the sales agreement (exhibit 1) was, in fact, tendered at a previous trial for the rental arrears for the two years, 2010 and 2011. She also agreed that the suit for arears of rent was initiated by Ms Marcia Hall.

[43] In answer to the learned Parish Court Judge's questions regarding her houses, the appellant responded that she had two structures on the land, one was on sills (piles) and the other had a partial concrete foundation about three feet in height; on top of the concrete is board and both buildings were mainly wooden structures. When asked if the house was "movable", she responded, "[t]o move, it has to be paid for".

[44] Although at the outset of the trial, the appellant had raised the defence of the respondents being "precluded from ejecting [her] by virtue of the Limitations Act", she led no evidence in support of this claim and, therefore, this defence was unsubstantiated.

[45] On the trial of the plaint before the learned Parish Court Judge, the appellant raised several issues in her defence, namely:

1. beneficial interest in the property in her favour;
2. her house which is partially concrete was constructed with the knowledge and consent of the owner of the property – (house was a fixture);
3. acquisition of the land by adverse possession; and
4. the respondents are not the legal owners of the property (as they were like tenants as herself).

[46] In considering whether the appellant had established on a balance of probabilities that she had an interest in the disputed property or had acquired it by adverse possession, the learned Parish Court Judge determined whether she had been in possession of the premises for the requisite time, as stipulated by the Limitation of Actions Act, and also whether the nature of the possession was of a particular character.

[47] The learned Parish Court Judge determined that none of the appellant's averments in her defence had been established by her or supported by the evidence presented. He made the finding that the appellant did not have any beneficial interest in the disputed property, as her allegations of an oral agreement to purchase, without more, was not evidence that supported the acquisition of any interest in title. He also determined that the appellant was not entitled to the disputed property by adverse possession, as her occupation of the said property was pursuant to consent and permission granted by Mr Gazada as landlord/lessor and her status, admittedly, was that of tenant/lessee. He also determined that her houses were not fixtures on the disputed property. On the foregoing bases, all of the appellant's defences were rejected by the learned Parish Court Judge.

[48] Counsel for the appellant vehemently insisted that the appellant was not a squatter and, therefore, section 89 could not apply to her. I have noted that section 89 deals with persons without title or right of possession. Since the appellant would have a right of possession by virtue of her tenancy, and this is regarded as an estate in real property, I, therefore, agree that section 89 does not apply to the appellant. She had sought to set up spurious defences that were inconsistent with her status as a tenant. On the other hand, the appellant had consistently asserted that at all material times, she was a tenant and was in possession of the disputed property, albeit her acceptance of a tenancy was referenced to Mr Gazada as landlord.

[49] The respondents have not sought to challenge these assertions and have admitted that the appellant was, indeed, a tenant. In fact, the respondents' claim in the court below was never based on an allegation that the appellant was a squatter entitling them to recover possession of the disputed property on that basis. They had averred that they were owners by purchase from the original landlord and had, therefore, acquired title. On the other hand, the appellant they averred, was a tenant in possession but had no interest in the title and should, therefore, yield possession to them. The respondents had duly served a notice to quit on the appellant, as is required in a tenancy, and they had initiated the plaint only after the notice expired and the appellant refused to yield

possession of the disputed property. Therefore, the submissions advanced on behalf of the respondents that the plaint was to be determined under section 89 of the Act were conflicted and misguided. Having accepted that the appellant was a tenant in possession, she therefore had rights that were protected by law, including those stipulated in section 25 of the RRA. For the appellants to contend that section 89 of the Act was applicable was illogical, because the relationship of landlord and tenant to which the common law or statute attaches various incidents, and the operations of section 89, which deals with "squatters", are mutually exclusive.

[50] The law in this jurisdiction entitles a tenant to the quiet enjoyment of leased premises. Concomitant with that right, a tenant is usually given exclusive possession of the leased premises. This is an entitlement at common law as also by statute (see section 27 of the RRA). However, being a person rightfully in exclusive possession of land does not automatically give rise to any title thereto.

Was the appellant a tenant of the respondents?

[51] Contrary to the misguided contention of the respondents, it is pellucid that the instant case does not fall under section 89, of the Act since the position of the appellant has been determined as that of a tenant. Further, the treatment and findings of the learned Parish Court Judge of the bases upon which that dispute was premised, clearly demonstrated that he not only considered the pleadings but had prudently elected to hear the evidence, before determining that he had jurisdiction to try the issue and make the orders he did.

Relevance of section 85 of the Judicature (Parish Court) Act

[52] Although neither counsel referred to nor relied on section 85 of the Act it is of relevance in relation to the jurisdiction of the learned Parish Court Judge. That section provides that:

> "When the term and interest of the tenant of any lands or hereditaments shall have expired, or shall have been determined, either by the landlord or the tenant, by a notice

> to quit, and such tenant, or any person holding or claiming by, through or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may lodge a plaint, at his option, either against such tenant, or against such person so neglecting or refusing, in the Court within whose jurisdiction the premises are situated, for the recovery of the same; and thereupon a summons shall issue to such tenant, or such person so neglecting or refusing returnable in eight days, or such greater number of days as may be prescribed by rules now or hereafter to be in force: and if the defendant shall not at the time named in the summons show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and on proof of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons, if the defendant shall not appear thereto, the Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the Magistrate shall think fit to name; and if such order be not obeyed, the Clerk, on proof to him of service of such order, shall, at the instance of the plaintiff, issue a warrant requiring the Bailiff of the Court to give possession of such premises to the plaintiff."

[53] I will now examine the evidence before the learned Parish Court Judge and to determine whether the criteria relevant to section 85 of the Act were satisfied. A plaintiff (landlord) such as the respondents in this case, wishing to recover possession of property under the foregoing provision must first serve a notice to quit. At its expiration, if the tenant refuses to yield possession, the landlord lodges a plaint for recovery of possession. The Plaint is lodged within the court's geographical jurisdiction and a summons will be issued to the tenant. On the date and time appointed in the summons, the tenant must attend court in answer to the same, if the tenant does not attend court, judgment in default of appearance can obtain. The Parish Court Judge must have proof of; (i) the holding, the existence or identification of the property, (ii) the plaintiff's title, "if such title has accrued since the letting of the premises", (iii) the expiration of the notice, and (iv) service of the summons if the defendant does not appear. During the course of the trial

in the instant matter, all these requirements were satisfactorily evinced by documentary evidence and the oral testimony from the respondents and the appellant herself.

[54] Section 85 of the Act provides further that the court must be satisfied that the defendant is still in possession of the relevant property and neglects or refuses to yield possession thereof. The learned Parish Court Judge had done just that and had rejected the appellant's claim of beneficial interest and adverse possession. The only other plinth that the appellant could have realistically relied upon was her defence that the respondents were not owners and only the true owner, Mr Gazada, could properly evict her. This averment was also rejected. The appellant did not see fit to challenge the integrity of the notice itself nor, indeed, did she complain that it was defective in any particular. The learned Parish Court Judge would have determined, therefore, that the appellant had no good cause why she was still in possession of the disputed property and issued his order for recovery of possession in favour of the respondents. The evidence which the learned Parish Court Judge heard fulfilled all the criteria of section 85 and, therefore, justified the order that he made for recovery of possession.

Relevance of the Rent Restriction Act

[55] In the respondents' written submissions, it was reiterated that the respondents were the appellant's landlord, and accordingly, section 2 of the Rent Restriction Act was applicable. That provision defines the term "landlord" as follows:

> "includes any person deriving title under the original landlord and any person who is, or would but for the provisions of this Act be, entitled to the possession of the premises, and shall, for the purpose of the enforcement of any provisions of this Act whereby any liability is imposed on a landlord, be construed also to include any agent having charge, control or management of the premises on behalf of the landlord."

[56] The relevance of this section, it was submitted, is that Mr Austin Gazada, being the "undisputed and agreed original landlord by virtue of selling the said parcel of land to the Respondents would have made them the landlord they having 'derived title under the original landlord'" (emphasis added). Reference was made to excerpts of the record

of proceedings as supporting this proposition. Reference was made to: (i) the appellant's evidence that Mr Gazada had instructed her to pay rent to Marcia Hall; (ii) Marcia Hall's successful suit in 2012 against the appellant for two years outstanding rent; (iii) the letter of possession from the vendor's attorneys-at-law granting the respondents authority to "exercise all acts of ownership" and the fact that the appellant was aware that the disputed property had been sold to the respondents. Arguments were further advanced that, "it is an established principle that a tenant is estopped from repudiating the title of his/her landlord". The case of **Lucius White v Carlos Cotterell** (1971) 12 JLR 387 was cited in support of this submission.

[57] I have already carefully considered the submission advanced before this court that the respondents were the appellant's landlord, and, although the learned Parish Court Judge did not expressly say that such a relationship existed between the parties, it is my view that he inferentially and properly made such a finding when he articulated that the executed contract together with the letter of possession gave the "…purchaser the right to not only collect rent but also to the right of recovery of possession once it does not violate the defendants [sic] tenancy..."

[58] The above reference to the executed agreement and letter of possession was demonstrative of his appreciation that the respondents had become successors in title of the disputed property. He then mentioned the appellant's tenancy and the need to avoid its violation. He in the circumstances was keenly aware as to what the issue were that he had to determine. This is buttressed by his further finding that the appellant had not taken any issue at the trial that her tenancy was violated but had instead relied on unsubstantiated defences.

[59] I note that the learned Parish Court Judge, having assessed the evidence, had determined that the respondents were owners and the appellant had no interest in title, but he explicitly accepted that appellant was a tenant. I agree with his findings, as to the status of both parties. Based on the evidence the

learned Parish Court Judge accepted, the appellant would be a tenant of the respondents under the RRA. I make this finding based on the following facts:

i. The respondents had successfully established that they had purchased the disputed property from Mr Gazada, they had therefore derived title under the original landlord.

ii. The appellant had been in occupation of the property prior to its acquisition by the respondents so that their ownership was subject to the appellant's pre-existing tenancy.

iii. The respondents recognized their obligation to the appellant and her right to exclusive possession of the disputed property and that any severance to that right had to be executed within the ambit of the law (see section 27 of the RRA). They could not summarily eject her and that is why they served her a notice to quit as is required by law. The notice gave reasons as is required under section 25 (e) of the RRA, to wit; "Owners and Landlord require premises for their own use and occupation".

iv. The appellant had failed in her attempt at trial to mount the defences of adverse possession or that she had any beneficial interest in title.

v. The appellant in her defence as filed had admitted that she was, at all material times, a tenant on the disputed property, albeit, she insisted Mr Gazada was her landlord.

vi. The appellant admitted in her testimony that Mr Gazada whom she insisted was her landlord had taken her to "Marcia" the 2nd respondent and told her to pay the rent to her. In light of Mr

Gazada's action and instruction to her, the irresistible inference to be drawn is that Mr Gazada was making her aware that he had relinquished his status as owner and landlord, and that status had been transferred to the respondents. Notwithstanding that instruction, the appellant obdurately persisted in denying the respondents' status as the new owners and her landlords. Furthermore, at a minimum, Mr Gazada's actions demonstrated that the acknowledged landlord had authorised the 2nd respondent to collect the rent. Thus, even if they were not purchasers, the appellant would have been bound to pay rent to 2nd respondent as the landlord's designated agent.

vii. The respondents had successfully sued the appellant (in plaint 295/11) for outstanding rent. The correspondence from the appellant's attorneys-at-law dated 25 June 2012, indicated that the sum of $20,000.00 paid, was in relation to the said suit and plaint lodged by the 2nd respondent for arrears of rent. The tenant's covenant to pay rent is a covenant that was said in **Hill v Booth** [1930] 1 KB 381 to "touch and concern" the land; therefore, the rent is paid for use of the land. The contract of tenancy confers on the tenant a legal estate in the land and such legal estate gives rise to rights and obligations as there is between the landlord and the tenant, privity of estate.

viii. Not only did the appellant obey the order of the court on the payment of the rental arrears to the respondents, significantly she did not seek to appeal the court's decision on such order. This is critical to the issue and clearly shows the appellant's acceptance of her standing. To my mind, the payment of rental arrears was an acknowledgement of the respondents'

> entitlement to rents and profits derived from the disputed property, and by extension, an acknowledgement that they were landlords of the disputed property.

[60] The evidence that the learned Parish Court Judge accepted, indubitably, supports the view that the respondents were the appellant's landlord and, therefore, they were entitled to recovery of possession of the disputed property in the absence of any assertion that the tenancy was violated as the learned Parish Court Judge reasoned. The only factor which would disqualify the operation of the RRA, was if the disputed property was not regulated by that statute.

[61] Section 3(1) of the RRA, sets out the types of premises which fall under its regulation. It provides that:

> "This Act shall apply, subject to the provisions of section 8 to all land which is building land … and to all dwelling-houses and public or commercial buildings whether in existence or let at the commencement of this Act or erected or let thereafter and whether let furnished or unfurnished."

Further subsection (2) defines "building land" as:

> "land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes, or for any combination of such purposes, or land on which the tenant has lawfully erected such a building, but does not include any such land when let with agricultural land."

[62] The disputed property was leased to the appellant as building land and on which she constructed two dwelling houses. The usage of the disputed property, therefore, clearly fell under the regulation of section 3 of the RRA. Section 8 of the RRA, empowers the relevant Minister to make orders declaring "any class of premises specified in such order to be exempted premises". This provision is not relevant to the disputed property.

[63] All the evidence in this case ostensibly points to the relationship of landlord and tenant and the appellant in the circumstances falls to be treated as a tenant of the respondents. Once the relationship of landlord and tenant existed between the parties, then the plaint fell to be determined under section 85 of the Act and the RRA. It is my view, that as between a landlord and tenant, the better title resides in the person from whom the property was rented or the person claiming through him. Therefore, the landlord or his successor in title would have a better right of possession than the tenant where a tenancy is being lawfully brought to an end and in the absence of any established claim of adverse possession under the statute of limitations.

**Issue III - Whether there was a *bona fide* dispute as to title, thereby activating the provisions of section 96 of the Act, and did the learned Parish Court Judge come to the correct conclusion concerning whether he had jurisdiction to hear the claim.**

The jurisdictional authority of section 96 of the Act

[64] The foregoing views that I have expressed in relation to the approach taken by the learned Parish Court Judge and my affirmative finding that he had the jurisdiction to embark upon and to make the decisions that he did are really determinative of this appeal. However, the singular ground of appeal lodged by the appellant was in relation to section 96 of the Act and, therefore, it would be remiss of me if I did not address this matter.

[65] The appellant is contending that the trial on the recovery of possession ought to have been dealt with pursuant to section 96 of the Act, which required the learned Parish Court Judge to have solicited or heard evidence of the gross annual value of the property being $500,000.00 or less. The appellant further contended that having not done so, the learned Parish Court Judge had not established that he had jurisdiction to try the case and had, therefore, erred in law.

[66] I have observed and regarded as significant, the fact that the appellant did not seek to raise, as a ground of appeal, the findings of the learned Parish Court Judge, concerning her status relative to the disputed property. She has not sought to challenge

his findings that (a) she had no beneficial interest in the property, (b) she was not entitled to rely on the doctrine of adverse possession, and (c) her houses were not fixtures on the disputed property. She has not argued that he erred in law or that he misconstrued the evidence and made erroneous findings of fact. Instead, the appellant has sought to set up a technical ground of appeal relative to the jurisdiction of the learned Parish Court Judge, pursuant to section 96 of the Act.

[67] Further, I note that the issue of jurisdiction was never raised by the appellant during the trial of the plaint, and counsel for the parties seem not to have had any regard to the duty of assisting the court so that it did not fall into error on this point, as is now being alleged. In fact, no one at the trial thought title was being put in issue based on the nature of the challenge/defence that was mounted to the plaint.

[68] This court in the decision of **Donald Cunningham and others v Howard Berry and others** [2012] JMCA Civ 34 had enunciated that "[t]he oral statement of a defendant that there is a *bona fide* dispute as to title does not deprive the court of jurisdiction to hear matters under section 89 or 96" (see para. [15]). It was, therefore, the prerogative of the learned Parish Court Judge to have inquired into the matter and decide whether a *bona fide* dispute as to title, as alleged, existed. If having made such inquiry, he was of the view that his jurisdiction did not fall under the aegis of section 96, then he was entitled to hear the plaint. However, if in his opinion, his jurisdiction fell within section 96, he may nonetheless, hear and determine the matter under that section. The caveat here is that he must ensure that the prerequisites of that section were satisfied evidentially.

[69] The appellant, in advancing her position, extensively relied upon the authority of **Danny McNamee v Shields Enterprises Ltd** and has contended that it bolsters her submissions that the learned Parish Court Judge fell into error when he proceeded to determine the plaint for recovery of possession without the benefit of evidence as to the annual value of the property in dispute.

[70] In **Danny McNamee v Shields Enterprises Ltd**, the respondent averred that the appellant was a mere licensee and as such, her claim for recovery of possession would properly fall under section 89 of the Act. The appellant, on the other hand, alleged that he had acquired the same property by purchase and that he had an interest in the land, at the very least, an equitable interest.

[71] The seminal issue raised by the appellant in that case, was whether the learned Resident Magistrate (now Parish Court Judge) had jurisdiction to make the order for the recovery of possession without a trial being held in light of the defence raised. Further, whether the learned Resident Magistrate erred in striking out the appellant's defence on the basis that it failed to state a cause of action within the court's jurisdiction. The learned Resident Magistrate was found to have erred.

[72] A unique set of facts arose in the case at bar, because the evidence, from all indications, did not call into question the title of both parties to the suit. In fact, the appellant is not now claiming title to the property. So, was there a *bona fide* dispute to title to have been resolved pursuant to section 96 of the Act? In **Danny McNamee v Shields Enterprises Ltd,** Morrison JA wrestled with this same question and enunciated that:

> "[38] The question of what is required for a defendant to raise a dispute as to title within the meaning of section 96 has not been without controversy. In **Arnold Brown v The Attorney General** it was held by the majority (following the earlier decision of this court in **Francis v Allen** (1956- 60) 7 JLR 100) that the defendant was required only to show a *bona fide* intention to dispute the plaintiff's title in order to bring the matter within the ambit of section 96. However, Shelley JA in a powerful dissenting judgment, considered that it could not be enough for a defendant to remove an action from the sphere of section 89 into the sphere of section 96 merely by stating as his defence 'Plaintiff is not entitled to possession and defendant puts plaintiff to proof of his title' (see page 41).
>
> [39] Shelley JA's position was fully vindicated by the subsequent decision of the court in **Ivan Brown v Bailey**

> (1974) 12 JLR 1338 (though, curiously, without any reference to **Arnold Brown v The Attorney General**). In that case (later followed in **Williams v Sinclair** (1976) 14 JLR 172), it was held that in order to bring the section into play, the *bona fides* of the defendant's intention is irrelevant in the absence of evidence of such a nature as to call into question the title of the plaintiff…"

[73] The pivotal question for this court is whether section 96 was relevant to the learned Parish Court Judge's consideration relative to the evidence that was before him. Expressed in another way, the determinative question is whether a dispute as to title had arisen between the parties on the respondents' claim for recovery of possession. The formula for making that determination has been answered in a decision of this court in the case of **Ivan Brown v Perris Bailey** (1974) 21 WIR 394. Graham-Perkins JA in delivering the judgment of the court enunciated at page 399:

> "All the authorities show with unmistakable clarity that the true test is not merely a matter of a *bona fide* intention, but rather whether the evidence before the court, or the state of the pleadings, is of such a nature as to call in question the title, valid and recognizable in law or in equity, of someone to the subject matter in dispute. **If there is no such evidence the *bona fides* of a defendant's intention is quite irrelevant.**" (Emphasis supplied)

[74] Graham-Perkins JA, also at pages 399 – 400, continued to say:

> "[T]here can be, in my view, not the least doubt that in the circumstances of this case a question of title would have arisen if, but only if, there had been adduced before the magistrate a credible narrative of events *probably* pointing to the existence in the appellant's favour of an equitable interest, albeit not registered. In that situation, and assuming further that the annual value of the land was in excess of $200 (now $500,000), it is clear that the magistrate would have been obliged to acknowledge the absence of jurisdiction."

[75] Section 96 can only be relevant where there is an issue of competing titles. To activate the operations of section 96, the appellant would have had to present cogent evidence of her interest in title. It would then be the duty of the learned Parish Court

Judge to enquire into the matter and to decide whether a *bona fide* dispute to title as alleged existed. The learned Parish Court Judge, in the instant case, had explored the circumstances by which the appellant came to be in possession of the disputed property and the right, if any, pursuant to which she sought to challenge the respondents' title.

[76] The learned Parish Court Judge did not make any direct pronouncements as to which section of the Act, if any, was relevant. He, however, made findings as to the status of both parties relative to the disputed property. Having accepted evidence that brought the plaint within the remit of the RRA, the learned Parish Court Judge would not have had to indicate that the plaint fell within section 89 or 96 as the case may be, as neither section would have been relevant, once it was accepted that the appellant occupied the property as a tenant. As stated previously, section 89 does not apply to tenants and section 96 does not apply either, because in my view, there was not before the learned Parish Court Judge, a "*bona fide* dispute" as to title.

[77] The appellant had also contended that there was no evidence led as to the annual rents payable for the disputed property. Having determined the inapplicability of sections 89 and 96 of the Act, this issue is now redundant.

Whether the respondents' failure to provide a full description of the disputed property was fatal?

[78] A secondary issue raised by the appellant was that there was no proper or fulsome description of the disputed property. Counsel Mr Green referred to Order VI, rule 4 of the Parish Court Rules (formerly The Resident Magistrates Court Rules), which provides for the inclusion of the description of the land and its annual value in the particulars of claim. It reads that:

> "In all actions for the recovery of land the particulars shall contain a full description of the property sought to be recovered and of the annual value thereof and of the rent if there be any, fixed or paid in respect thereof."

[79] I make the observation that the appellant did not raise this point as an issue in any grounds of appeal or in written submissions filed on her behalf, nonetheless, since it was raised by counsel, Mr Green in his oral submissions I have given some thought to it and will make some brief comments on the issue. Since the parties are designated landlord and tenant and, therefore, subject to the provisions of the RRA and section 85 of the Act, the relevance of either section 89 or section 96 is now a moot point.

[80] In any event, and in light of the particular circumstances of this case, there would have been no misunderstanding as to which property was in dispute, because the particulars of claim gave a description of the location of the property, sufficient for it to be identified. Additionally, during the course of the trial, the appellant testified that she had built two houses on the disputed property and was in occupation of one of those houses. Further, the appellant did not at the trial indicate that there was an issue as to what the disputed property constituted. On the contrary, it is pellucid that both parties were contending in relation to the property occupied by the appellant as a tenant and the trial had proceeded on that premise.

[81] The description of the property that was in evidence before the learned Parish Court Judge cannot be said to have been insufficient for the purposes of the plaint he was trying. On the contrary, cogent evidence had been provided by the respondents concerning the proper identification of the disputed property. In light of that evidence, I find no merit in this complaint.

**Conclusion**

[82] In the premises, the basis on which the learned Parish Court Judge could exercise his jurisdiction in making an order for recovery of possession was established. It is the finding of this court that the learned Parish Court Judge had adopted the correct procedure and correctly applied the relevant principles of law in determining the plaint for recovery of possession. He made his orders employing the proper procedural regime. It is without a doubt that he was clothed with jurisdiction to hear and determine the respondent's claim brought by way of lodging a plaint for recovery of possession.

Therefore, he did not err in law as contended by the appellant. The grounds of appeal are, therefore, without merit.

[83] Based on the foregoing, I would propose that the appeal be dismissed and the decision of the learned Parish Court Judge made on 29 March 2017 be affirmed and that costs be awarded to the respondents in the sum of $85,000.00.

**STRAW JA**

**ORDER**

1. The appeal is dismissed.
2. The decision of His Honour Mr John Tyme made on 29 March 2017 is affirmed.
3. Costs to the respondents in the sum of $85,000.00.