**[2025] JMCA Civ 23**

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA**
**THE HON MRS JUSTICE DUNBAR-GREEN JA**
**THE HON MRS JUSTICE G FRASER JA (AG)**

**PARISH COURT CIVIL APPEAL NO COA2023PCCV00007**

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| **BETWEEN** | **LLOYD ROBINSON** | **APPELLANT** |
| **AND** | **TADEAN MILLER** | **RESPONDENT** |

**Miss Ann Marie Stewart instructed by Donovan E Collins and Company for the appellant**

**Albert Morgan instructed by Albert S Morgan & Company for the respondent**

**10, 13 December 2024 and 25 July 2025**

**Civil Procedure – Trespass to land – *Bona fide* dispute as to title – Whether a bare allegation of being a purchaser sufficiently gave rise to a dispute as to title – Jurisdiction of judge of the Parish Court – Whether the learned judge committed jurisdictional error – The Judicature (Parish Court) Act, section 96 – Acquisition by adverse possession – The Limitation of Actions Act, sections 3, 12 and 30 – Registration of Titles Act, sections 68, 70, 71, 85, 86, and 87**

**P WILLIAMS JA**

[1] I have read, in draft, the reasons for judgment of G Fraser JA (Ag), and they substantially accord with my reasons for concurring with the order made by this court as outlined in para. [3].

**DUNBAR-GREEN JA**

[2] I, too, have read the draft reasons for judgment of G Fraser JA (Ag) and agree.

**G FRASER JA (AG)**

## Introduction

[3] On 13 December 2024, after a systematic review of this appeal brought by Mr Lloyd Robinson ('the appellant') against the decision of Her Honour Mrs Diahann Bernard, judge of the Parish Court for the parish of Saint James ('the learned judge'), this court made the following orders:

> "1. The appeal is dismissed.
>
> 2. The orders of Her Honour Mrs Diahann Bernard, the judge of the Parish Court for the parish of Saint James, made on 20 December 2022 in plaint note no. SJ2020CV01027 are affirmed, and additional orders are made as follows:
>
> a. Judgment is entered in favour of Tadean Miller.
>
> b. Costs of the trial to Tadean Miller to be taxed if not agreed.
>
> 3. A mandatory injunction is directed to Lloyd Robinson, whether by himself, his servants or howsoever otherwise, to pull down, demolish and remove the building he constructed upon Lot 1085 Porto Bello Heights in the parish of Saint James, comprised in Certificate of Title registered at Volume 1514 Folio 28 of the Registered Book of Titles by or before the 31st day of January 2025.
>
> 4. The stay of execution of the judgment, granted on 20 December 2022, is forthwith discharged.
>
> 5. The costs of the appeal to the respondent are agreed in the sum of $100,000.00."

At that time, we committed to providing written reasons, and this is a fulfilment of that commitment.

## Background

[4] The trial emanated from a claim filed by Ms Tadean Miller ('the respondent') in plaint note no SJ2020CV01027, wherein she sued the appellant in trespass concerning

property located at Lot 1085 Porto Bello Heights, Section C in the parish of Saint James, comprised in Certificate of Title registered at Volume 1414 Folio 28 ('the disputed property'). The trial commenced on 17 March 2022 and concluded on 20 December 2022.

[5] In her reasons for judgment, the learned judge detailed the procedure followed at the outset of the trial. She noted that, on 4 November 2021, the respondent had initially applied for an injunction to restrain the appellant from committing further acts of trespass on the disputed property. However, by mutual agreement, the hearing of the injunction application was consolidated with the trial of the substantive trespass claim. Both counsel appearing on the appeal acknowledged that it was, by consent, that the injunction hearing effectively morphed into the trial of the action. This consent arrangement was reached after the respondent had given her evidence in chief but prior to her being cross-examined by counsel for the appellant.

[6] In her particulars of claim, dated 9 November 2020, the respondent averred that she is the registered proprietor of the disputed property. As such, the appellant had "unlawfully entered those lands and deposited construction material thereon… and commenced the construction of a permanent building on the said lands…". Despite the respondent's notice to the appellant and demand that he cease construction, he continued his activities and had "not demonstrated any intention to cease doing so". In the particulars of claim, she sought the following orders:

> "1. Damages for Trespass in the sum of $1,000,000.00
>
> 2. An order restraining the [appellant] whether by himself, his servants and/or agents from committing any further acts of trespass upon the said lands and requiring him to return the land, as far as possible, to the state it was in prior to his acts of trespass.
>
> 3. Costs, Attorney-at-law costs and interest under the Judicature (Parish Courts) Act and/or The Law Reform (Miscellaneous Provision) Act."

The trial

[7] At the trial of the plaint, the respondent asserted her entitlement to the disputed property on the basis that she was the legally registered proprietor. Conversely, the appellant asserted that he had a sale agreement and had fully paid the purchase price for the disputed property. In her written reasons, at paras. [5] and [6], the learned judge noted that:

> "[5] On 17 March 2022, the defence to the injunction application was stated as:
>
> '[d]efendant has sale agreement. Paid the purchase price in full'.
>
> [6] No other statement of defence was taken by the court at the continuation of the hearing as an action for trespass."

*The respondent's evidence*

[8] The respondent, in support of her claim for trespass, gave sworn evidence. She testified that she was the registered proprietor of the disputed property; her evidence was corroborated by Exhibit 1, a true certified copy of the title registered at Volume 1414, Folio 28 of the Register Book of Titles. The title in the name Tadean Antonette Miller evinces the respondent's mortgage number 2103229, registered on 17 January 2018, in favour of the National Housing Trust ('the NHT').

[9] In her testimony, the respondent related that in 2017, she became aware of the disputed property via an advertisement on Facebook "for land for sale". She made contact and spoke to a Mrs Campbell, utilising the telephone number provided and scheduled an appointment for a site visit. Subsequently, in October 2017, the respondent visited Porto Bello, Saint James, and viewed the advertised lots, including Lot No 1085, the disputed property.

[10] The respondent described the appearance of the disputed property thus: "[t]here was no structure and building but there was a lot of trees and shrub and grass. It was not fenced. After I viewed the lot, I sought the assistance of a lawyer to purchase the

lot". The respondent subsequently purchased the disputed property with a mortgage loan from the NHT. The quoted price of the disputed property was $3,200,000.00. In accessing the NHT mortgage, the respondent was required to furnish a surveyor's report and a valuation report. The conveyancing process was completed in February 2018, and the NHT issued a copy of the title to the respondent.

[11] According to the respondent's evidence, in or around late 2018, into early 2019, she was alerted that building material had been deposited on the disputed property. Upon learning this, she initiated contact with the appellant by telephone. During the conversation, the appellant informed her that he had purchased the disputed property in 1995 from a third party but did not possess a registered title. The respondent stated that she advised the appellant not to proceed with any construction, as she held the registered title and intended to consult her attorney-at-law.

[12] The respondent was cross-examined, with the primary focus on the extent of her knowledge regarding the condition and occupation of the disputed property prior to 2016. When asked whether she was able to inform the court of any activity occurring on the land before that time, she responded in the negative. She further stated that she did not know the appellant prior to becoming aware of the disputed property. In response to whether she had taken any steps to determine if anyone was in possession of the property before completing the purchase, the respondent indicated that she had commissioned a surveyor's report, which did not disclose the presence of the appellant or any other person on the disputed property. To reinforce her claim of having had no knowledge of any prior occupation, the respondent relied on Exhibit 3, a surveyor's report dated 2 October 2017, prepared by Commissioned Land Surveyor Mr Michael D Isaacs ('Mr Isaacs'). In that report, Mr Isaacs, reported as follows:

> "I have checked the above mentioned property and certify that:-
>
> (I) The property now known as **LOT 1085 – PORTO BELLO HEIGHTS** in the Parish of **SAINT JAMES** is the land referred to in part of Volume **1414** Folio **28**

(Parent Title) (Survey Department Examination No. 254086).

(II) The boundaries are in general agreement with the **PLAN at SURVEY DEPARTMENT EXAMINATION NO. 254086** (See Sketch Plan on Page 2, Plan distances and Unfenced Boundaries in Red.)

(III) The physical boundaries are unfenced.

(IV) There is **NO** evidence on earth of easements affecting the property.

(V) There are **NO** buildings on the property.

Remarks:

1. The property is still registered under the parent title which is Vol. 1414 Fol. 28.

2. Pre-checked Diagram Ex. No. 254086 which consists of Lot 1085 and the approved conditions for the lot has been checked and has been complied with." (Emphasis as in the original)

[13] From all indications, it appeared that Mr Isaacs had physically visited the premises and made his observations, because he further noted that "[t]he information from which the report is prepared was obtained on the date of the report from external observation only".

*The appellant's evidence*

[14] The appellant also gave sworn evidence before the learned judge. He claimed that he purchased the disputed property in 1995, paid the full price of $450,000.00, and received a receipt and sale agreement from one Mr Daley. Notably, no receipt(s) or sale agreement was tendered into evidence corroborating such payment or purchase. He averred that he had run a wire fence around the property, and "the next person beside me break [sic] down the wire fence and put wall". The appellant further stated that he had planted ackee and mango trees and "was cleaning up the property", but not too often, but he visited frequently. He also testified that he wrote a "no trespass sign" on

"solitex" [Celotex], which he affixed to a big tree. He claimed to have "lined out a one bedroom on the property and dropped some material".

[15] The appellant also testified that, during the period 1995 to 2019, he would sometimes be overseas in the United States of America. It was not until 2019, that he initiated a flurry of activities on the disputed property. He stated that he built a three-bedroom house with a veranda thereon.

[16] During his cross-examination, the appellant categorically denied having any conversations with the respondent concerning the disputed property. He testified that the respondent had never informed him of her alleged ownership, nor had she instructed him to refrain from commencing construction pending resolution of the ownership issue. Although he admitted to being served with a summons, he denied receiving any correspondence from the respondent's attorney-at-law. He also stated that he had neither been shown nor had sight of any certificate of title reflecting the respondent as the registered proprietor. The appellant maintained that he held a *bona fide* belief that the disputed property belonged to him and, on that basis, he considered himself under no obligation to cease construction activities.

*The ruling by the judge of the Parish Court*

[17] Having heard the evidence, the learned judge made findings of fact and gave her decision in favour of the respondent in the following terms:

> "1. By Trial, Judgment is entered for the plaintiff, Tadean Miller;
>
> 2. A mandatory injunction is directed to the defendant, Lloyd Robinson, whether by himself, his servants or howsoever otherwise to pull down, demolish and remove the building he constructed upon lot 1085 Porto Bello Heights in the parish of St. James, comprised in certificate of title registered at volume 1514 Folio 2 of the Registered Book of Titles by or before the 31st day of January 2023.
>
> 3. Costs to the plaintiff to be taxed if not agreed.

4. The execution of this judgment is stayed pending appeal.

5. The plaintiff's Attorney-at-Law is to prepare, file and serve the orders made herein."

**The appeal**

[18] The appellant, aggrieved by the learned judge's decision, filed a notice and grounds of appeal on 3 January 2023, challenging the learned judge's findings of fact, "[t]hat the Respondent is entitled to the property and that the Appellant is restrained from dealing with the property". On a subsequent application made to this court, on 24 July 2024, the appellant was permitted to abandon those grounds of appeal and instead argue the grounds of appeal contained in the submissions filed on 27 May 2024. The grounds were as follows:

"1. The learned Parish court judge erred in law and misdirected herself when she found that the plaintiff was a bona fide purchaser for value without notice and further that having found that, that it was a natural corollary that the defendant was not in possession of the lot.

2. The learned Parish court judge erred in law and misdirected herself when she found that given her findings that the plaintiff was a bona fide purchaser for value without notice it was unnecessary to explore the merits of the defence of adverse possession.

3. The learned Parish court judge erred in fact and law when she found that the defendant was not in possession given that the unchallenged evidence of the defendant is that he had been in continuous possession of the vacant lot from 1995 to the time of the matter being brought before the court and particularly where the plaintiffs evidence is that she cannot speak to what happen with the property from 1995 to before she went to the property in 2017.

4. The learned parish judge fell into error in embarking upon a trial that involved a bona fide dispute of Title between the parties within the meaning of Section 96 of the Judicature (Resident Magistrates) Act [now Judicature (Parish Court) Act] without evidence from the Respondent that the annual value of the property put the matter within the Court's jurisdiction.

> The issue of the statutory value limiting the Court's jurisdiction was not addressed.
>
> 5. The learned parish court judge erred in law when she determined that the burden of proof that the plaintiff needed to discharge was to prove that she was a bona fide purchaser for value without notice when the plaintiff needed to prove the strength of her title and that it had not been extinguished by the Statute of Limitation.
>
> 6. The learned parish court judge erred in law when she failed to consider the character and nature of the land as well as the circumstances in determining Mr. Robinson's factual possession, particularly given the unchallenged evidence of his occupation and possession from 1995-2017 and the fact that the land is vacant.
>
> 7. The learned parish court judge erred when she found the Defendant's evidence as unreliable and if it were it to be accepted it would tip the scale in favour of the Plaintiff to indicate that the property was unoccupied at the time of the land was purchased by the Plaintiff. Further the time of occupation and possession to have been considered was also the time prior to the plaintiff's purchase of the property."

[19] These submissions contained expanded legal and factual arguments challenging the learned judge's decision. Through counsel, Miss Ann Marie Stewart ('Miss Stewart'), the appellant these seven grounds of appeal raised, challenged the learned judge's findings in both law and fact. Grounds 1-3 and 5-7 were collectively argued as they related to the central issue of trespass and the parties' respective rights to the disputed property. Ground 4 raised issues that were not advanced at the trial relating to the learned judge's jurisdiction.

**Issues on appeal**

[20] For ease of reference, the analysis will be organised under the rubric of two main issues adapted and formulated from the parties' submissions. These are as follows:

I. Was there a *bona fide* dispute regarding title, thereby invoking the provisions of section 96 of the Judicature Parish Court Act ('JPCA') (formerly

the Judicature (Resident Magistrates) Act), and did the learned judge commit jurisdictional error?

II. Was the respondent legally entitled to bring an action against the appellant for trespass?

**The jurisdiction of the appellate court**

[21] It is a well-established principle of law that an appellate court does not readily overturn a trial judge's findings of fact. In reviewing this matter, I was guided by the Privy Council's decision in **Paymaster (Jamaica) Limited and another v Grace Kennedy Remittance Services Limited** [2017] UKPC 40, a case originating from this court. In delivering the judgment on behalf of the Board, Lord Hodge reaffirmed that an appellate court must exercise caution when reassessing a trial judge's factual findings, as the trial judge, unlike the appellate court, had the advantage of seeing and hearing the witnesses firsthand.

[22] Emphasising the deference that should be given to a trial judge's assessment of evidence and credibility, at para. 29, Lord Hodge referenced multiple cases and specifically highlighted Lord Reed's observations in **Henderson v Foxworth Investments Ltd** [2014] UKSC 41, that:

> "...
> 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.' "

[23] In other words, scrutiny of any kind of the learned judge's findings of fact must be considered in keeping with the above guidance provided by the Judicial Committee of the Privy Council, which in essence, is that any interference by the appellate court should

only be on the footing that the trial court is shown to be "plainly wrong" (**Beacon Insurance Co Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21).

[24] Therefore, it was this court's task to resolve the disagreement between the parties regarding whether the learned judge was correct in her finding that the respondent had proven her case as the *bona fide* purchaser for value without notice of any purported interest of the appellant.

**Issue I. Was there a *bona fide* dispute regarding title, thereby invoking the provisions of section 96 of the Judicature Parish Court Act ('JPCA') (formerly the Judicature (Resident Magistrates) Act), and did the learned judge commit jurisdictional error?**

The appellant's submission

[25] On behalf of the appellant, Miss Stewart contended that the learned judge erred in law by failing to characterise the matter as a genuine dispute concerning title to land, as contemplated by section 96 of the JPCA. She submitted that the issue of ownership was squarely in dispute, and that the matter, therefore, exceeded the Parish Court's jurisdiction to entertain it solely as a claim in trespass. Additionally, counsel submitted that any claim concerning ownership or possession must be evaluated in light of the statute of limitations, which governs claims based on adverse possession and trespass.

[26] Miss Stewart submitted that the appellant's contention as the legal or equitable owner of the disputed property had been sufficient to put the learned judge on notice that an issue regarding the dispute of title was extant. The learned judge should have therefore dealt with the matter pursuant to section 96 of the JCPA and receive evidence of the gross annual value. Miss Stewart contended that the respondent was obliged to lead evidence to show that the "annual value of the land does not exceed the statutory limit to establish the parish judge's jurisdiction". Accordingly, she said, this further compounded the jurisdictional error. In support of this submission, Miss Stewart relied extensively on the dictum of Morrison JA (as he then was) in **Danny McNamee v Shields Enterprises Ltd** [2010] JMCA Civ 37 ('**Danny McNamee**').

[27] In furtherance of this issue, Miss Stewart also submitted that sections 3 and 30 of the Limitation of Actions Act ('LAA') were applicable in the circumstances since the appellant had been in occupation and possession of the disputed property from 1995 to 2017 and that he had an enforceable entitlement to the disputed property. Furthermore, the vendor's title to the disputed property had long been extinguished pursuant to section 30 of the LAA. Therefore, there remained no title for the vendor to pass and none for the respondent to have received in 2018.

The respondent's submissions

[28] Counsel Mr Albert Morgan ('Mr Morgan'), on behalf of the respondent, submitted that no such dispute of title existed, as there was no claim of adverse possession before the learned judge and the appellant had not met the evidentiary threshold required to support such a claim in adverse possession. Mr Morgan maintained that the claim was adjudicated correctly as a trespass action, on the basis that the respondent was the registered proprietor of the disputed property pursuant to the Registration of Titles Act ('RTA'), and that such title was indefeasible except in cases of fraud. Counsel further contended that the appellant had failed to establish any credible competing claim of ownership and had offered no documentary or other evidence to support his bare assertion of a purchase. The mere allegation of purchase of land without written proof was insufficient, he said, to challenge the registered title of a *bona fide* purchaser for value without notice.

[29] Mr Morgan submitted that the action for trespass did not fall under section 96 of the JPCA. For section 96 to apply, there must have been a genuine dispute over the title, which was not the situation in this case. The respondent, he said, had presented weighty evidence that she was the owner of the disputed property and was entitled to do all things as an owner, including taking the appellant to court for acts of trespass. Mr Morgan further highlighted that the issues of a title dispute and the learned judge's jurisdiction were never raised during the trial process in the lower court; it was only canvassed in the appellant's closing submission. Therefore, the appellant did not put evidence before the

learned judge to support that position. Nevertheless, counsel acknowledged that, although this was not a claim for recovery of possession but rather an action for trespass, the section 96 issue could still be relevant in a proper case. Mr Morgan referred to the case of **Harold Francis Jnr and Anor v Dorrett Graham** [2017] JMCA Civ 39 ('**Harold Francis Jnr**'), where Edwards JA (Ag) (as she then was), extensively explained the effect of section 96 of the JPCA and enunciated that in such situations, the question to be determined by the learned judge was whether the case involved a genuine dispute as to title. Mr Morgan maintained that the case at bar was not one such.

Discussion

[30] The evidence before the learned judge made it abundantly clear that both parties were asserting ownership of the disputed property. In those circumstances, it fell to the learned judge to determine whether the matter gave rise to a *bona fide* dispute of title, thereby potentially invoking the jurisdictional requirements of section 96 of the JPCA.

[31] Upon review of the learned judge's decision, I observed no indication that she expressly considered section 96 of the JPCA. Whether section 96 applied depended on the nature of the parties' asserted interests in the property, and specifically, whether the appellant claimed a proprietary interest sufficient to give rise to a *bona fide* title dispute.

[32] The threshold issue for the learned judge, therefore, was whether the appellant had acquired a legal or equitable interest in the disputed property. If such an interest were established, whether through prior purchase or by virtue of adverse possession, the dispute would properly have been one concerning title, and the requirements of section 96 would have been engaged. If no such interest was established, then the claim would properly have proceeded as one in trespass within the Parish Court's jurisdiction.

[33] The appellant's position was that he was entitled to the disputed property based on (i) a prior purchase, and (ii) alternatively, longstanding and uninterrupted possession dating from 1995, which he claimed had matured into title through adverse possession.

Given those assertions, the starting point for the court's analysis was section 96 of the JPCA, which provides as follows:

> "96. Whenever a dispute shall arise respecting the title to land or tenements, possessory or otherwise, the annual value whereof does not exceed [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..."

[34] It is evident from the wording of the provision that, before proceeding to adjudicate a property dispute under section 96, a judge of the Parish Court must first determine (i) whether the claim involves a dispute as to title, and (ii) whether the annual value of the property in question falls within the court's monetary jurisdiction.

[35] Disputes involving land frequently arise where competing claims to ownership, possession, or proprietary interest are made. The test for determining whether section 96 is applicable is whether a *bona fide* dispute of title exists, that is, whether there is a genuine, credible conflict regarding legal entitlement to the property, which transcends questions of mere occupation. For a dispute to qualify as *bona fide* in this context, a party must assert a substantive proprietary claim, supported by evidence such as a deed, will, or a well-grounded assertion of adverse possession. Mere speculative or unsubstantiated assertions will not suffice. The dispute must raise a genuine and substantial legal issue that requires adjudication. Only when those criteria are met does section 96 become operative.

[36] The appellant's pivotal contention was that the learned judge lacked jurisdiction to make the orders she did, given that his claim raised a substantive issue as to title. As the jurisdictional question turned on the nature and quality of the interests claimed by the parties, I considered it necessary to evaluate the appellant's claim under two distinct heads: (i) whether he had acquired title by adverse possession, and (ii) whether he had an enforceable claim arising from an alleged prior purchase.

*Acquisition by adverse possession*

[37] In this appeal, one significant basis on which the appellant grounded his claim to title was adverse possession. He contended that he had occupied the disputed land continuously, openly, and without interruption since 1995, and that this longstanding possession extinguished the title of the registered proprietor.

[38] The doctrine of adverse possession has given rise to considerable jurisprudential commentary, with many learned treatises examining the extent to which the law ought to sanction the acquisition of property through prolonged possession without title. Some view it as a necessary legal mechanism for promoting certainty and finality in land ownership, while others criticise it as a doctrine that undermines the sanctity of registered title. Sampson Owusu, at page 267 of the text Commonwealth Caribbean Land Law, commented that:

> "Title to land can be acquired by appropriating a piece of land of another person and remaining in undisturbed possession of it for a period prescribed by statute without acknowledging the title of the true owner. If the true owner fails within the prescribed period to assert his title to his land which is wrongfully possessed by the stranger, his title to the land will be extinguished by operation of the statute. The stranger's possession ripens into a valid title to the land if his possession is adverse to the rights of the true owner.
>
> With respect to land, the common law lays much more emphasis on possession than ownership…"
>
> …The function of the doctrine of adverse possession is therefore to remove the possibility of the prosecution of such stale claims against an intruder whose possession has been open, continuous, notorious and exclusive."

[39] The author further clarified that the concept of adverse possession is facilitated by legislation and affords the means of acquiring property without incurring the cost of ownership. One of the reasons for this "indulgence" is to prevent "the disturbance of long established *de facto* enjoyment. In the interest of peace the law should provide a system which facilitates the quieting of possession".

[40] In the text Commonwealth Caribbean Property Law, 2nd edition, Gilbert Kodilinye defined and explained the policy behind the concept of adverse possession. On page 257, he stated that:

> "The concept of adverse possession is rooted in the theory that the basis of title to land in English law is possession. The fact of possession gives a title to the land, which is good against all persons except one who has a better right to possession. All titles to land are relative in the sense that a person's title, including a documentary (or 'paper') title, is only good in so far as there is no other person who can show a better title. The effect of adverse possession is that a person who is in possession as a mere trespasser or 'squatter' can obtain a good title if the true 'owner' fails to assert his superior title within the requisite limitation period in the particular jurisdiction.
>
> Limitation actions in this context expresses the idea that, whilst it may seem unjust that a wrongdoer should, after the expiry of the limitation period, be allowed to retain the land as against the true owner, it would be detrimental to the public interest if persons were to be allowed to bring 'stale' claims...."

[41] Weighing in on the subject matter of adverse possession, Lord Bingham in **JA Pye (Oxford) Ltd v Graham** [2002] UKHL 30; [2003] 1 AC 419 ('**JA Pye (Oxford) Ltd**'), observed that the law of adverse possession reflects a policy choice to balance the protection of ownership rights against the reality of settled, long-term possession. The House of Lords in that case reaffirmed the public interest in ensuring that land is not left idle or neglected, and that legal disputes over title are not permitted to linger indefinitely. In **Recreational Holdings 1 (Jamaica) Ltd v Lazarus** ('**Recreational Holdings v Lazarus**') [2016] UKPC 22, at para 35, Lord Wilson, writing on behalf of the Board, opined that:

> "In passing the Act in 1888 Parliament was deciding how best to allocate risk in circumstances where an innocent purchaser buys land subject to unregistered rights of adverse possession. It decided that the risk of failing to secure title should be allocated not to the adverse possessor, but instead

> to the innocent purchaser who should be confined to his right to damages against his vendor for breach of contract."

[42] While the concept of adverse possession may, for some, not be a welcome part of our jurisprudence, it has certainly attained a settled legal status. The applicable legal framework for adverse possession in Jamaica is found in sections 3 and 30 of the LAA. Section 3 provides as follows:

> "3. No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same."

[43] Section 30, in so far as it is a closely related provision, follows in these terms:

> "30. At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished."

[44] Under the LAA, if a person occupies land continuously and without permission for the statutory period, the original owner's title can be extinguished, even if that owner is the registered proprietor. Thus, where the paper title holder fails to assert their rights within twelve years of being dispossessed, their title is extinguished, and the adverse possessor acquires a superior claim to the land.

[45] The principles for the application of sections 3 and 30 of the LAA are well settled as formulated and set out by Slade J in **Powell v McFarlane** [1977] 38 P & CR 452, at page 469 as follows:

> "Possession of land, however, is a concept which has long been familiar and of importance to English lawyers, because

(inter alia) it entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession. In the absence of authority, therefore, I would for my own part have regarded the word 'possession' in the 1939 Act as bearing the traditional sense of that degree of occupation or physical control, coupled with the requisite intention commonly referred to as animus possidendi, that would entitle a person to maintain an action of trespass in relation to the relevant land; likewise I would have regarded the word 'dispossession' in the Act as denoting simply the taking of possession in such sense from another without the other's license or consent; likewise I would have regarded a person who has 'dispossessed' another in the sense just stated as being in 'adverse possession' for the purposes of the Act…

(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (‘animus possidendi’).

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. …. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

[46] The foregoing principle was approved by the House of Lords in **JA Pye (Oxford) Ltd**, and applied in this jurisdiction through the Privy Council decision in **Wills v Wills** (2003) 64 WIR 176 and in latter decisions from this court, including, **International Hotels (Jamaica) Limited v Proprietors Strata Plan No 461** [2013] JMCA Civ 45 and **Harold Francis Jnr**.

[47] Miss Stewart, in furtherance of the appellant's claim by adverse possession, adopted the enunciation of Lord Jenkins, writing on behalf of the Board in **James Clinton Chisholm v James Hall** (1959) 1 WIR 413 ('**Chisholm v Hall**'). Miss Stewart submitted that, as was held in **Chisholm v Hall**, "in the present case the vendor's title had been 'extinguished' under section 30 of the Limitation Act, there remains no title for the vendor to pass… and none for the purchaser to receive…".

[48] It is now well established that the RTA, while conferring indefeasibility of title upon registration, does not render such title immune from all forms of unregistered interest. One such exception arises under the doctrine of adverse possession, which, if perfected by the expiration of the statutory limitation period, may extinguish the rights of the registered proprietor, even where the register reflects no such encumbrance.

[49] In that regard, **Chisholm v Hall** remains a leading authority. On its face, the decision stands for the proposition that rights acquired by limitation in respect of registered land are to be treated with the same legal effect as if they were encumbrances noted on the certificate of title. Consequently, a purchaser who takes a transfer of registered land, such as the respondent in this case, does so subject to any rights that have already accrued under the law of limitation. This approach preserves the underlying policy of the LAA, which seeks to promote certainty in landholding by rewarding long-term, unchallenged possession.

[50] Furthermore, **Chisholm v Hall** confirms that the combined operation of sections 68 and 70 of the RTA imposes a duty on purchasers of registered land to exercise diligence. Specifically, where a transaction is contemplated at or after the expiry of the

limitation period since first registration, the purchaser is under an obligation to look beyond the register and to consider whether any adverse possessory rights may have accrued in favour of a third party. This imposes a practical burden on purchasers not to rely exclusively on the face of the register in circumstances where long-term occupation by another is evident or discoverable upon reasonable inquiry.

[51] The relevance of this principle to the present case is self-evident. If the appellant had, by evidence, successfully demonstrated that his possession of the disputed property satisfied the requirements of adverse possession, then his rights, though not registered, would have bound the respondent as purchaser. However, in the absence of cogent evidence to establish adverse possession in the appellant's favour, the doctrine could not operate to displace the respondent's registered interest.

[52] The factual possession that is required for adverse possession must have specific characteristics. It must be open (*nec clam*), peaceful (*nec vi*) and adverse (*nec precario*). There is also the requirement that the act of factual possession must be accompanied by an intention to possess (*animus possidendi*) to the exclusion of all, including the paper owner.

[53] In the case of **JA Pye (Oxford) Ltd**, Lord Browne-Wilkinson made it clear that while adverse possession is a legitimate means of claiming property, two elements need to be satisfied. These elements are: (1) a sufficient degree of physical custody and control ('factual possession') and (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ('intention to possess' or '*animus possidendi*'). In **Buckinghamshire County Council v Moran** [1989] 2 All ER 225, Slade LJ explored those elements further and referred to his earlier pronouncements in **Powell v McFarlane**.

[54] Amongst the judicial statements on this point, I also adopted Lord Walker's characterisation in **Wills v Wills** at para. [17], of the kind of possession which can support a claim for adverse possession as "…possession which is not by licence and is not

referable to some other title or right". This principle is buttressed by the provision of section 12 of the LAA, which states that "[n]o person shall be deemed to have been in possession of any land merely by reason of having made an entry thereon". In **Farrington v Bush** (1974) 12 JLR 1492, Graham-Perkins JA pointed out that a mere entry was insufficient.

[55] The case of **Harold Francis Jnr** affirmed that to establish adverse possession, the person claiming it, must establish factual possession and an intention to possess the land exclusively for the statutory period. So, even if one were to agree that the appellant had made an entry on the disputed property in 1995, that was not sufficient. He needed to establish, by evidence, his factual possession and acts demonstrating his intention to operate as the owner of the disputed property, excluding all others, including the respondent's predecessor in title.

[56] The evidence Miss Stewart pointed to as satisfying acts of possession was that the appellant had planted trees, put a wire fence on one side of the disputed property, affixed a no trespass sign onto a tree, and occasionally bushed and cleaned the grounds of the disputed property. Mr Morgan, on the other hand, submitted that such actions as alleged by the appellant were "equivocal" and referred to the case of **Farrington v Bush**, which counsel said was factually similar to the case at bar.

[57] This court agreed with Mr Morgan's characterisation of the appellant's actions as "equivocal", and his reliance on the authority of **Farrington v Bush** was apposite. In that case, the respondent filed an action seeking, among other remedies, damages for trespass by the appellant on his land and a declaration affirming his ownership of the property. He had possessed the land with the owner's consent since 1925 and was appointed attorney by the heir-at-law in 1958. For the decade before the 1970 proceedings, he either lived on or regularly visited the land. He also sought ownership through a 1952 conveyance, which was recorded in 1956, and attempted to register it in 1959. However, he later admitted its invalidity and argued for title by adverse possession, asserting continuous use for 12 years. The appellant relied on the following acts to

support his adverse possession claim: (a) making monthly visits to the land, (b) arranging for its clearing, (c) registering it in 1959 under the invalid conveyance, (d) posting a notice prohibiting trespassers, and (e) placing boundary markers in 1968. The court found that the foregoing activities were "intrinsically equivocal" and amounted to no more than acts of trespass. The factual similarity between the two cases is apparent, and the principle should therefore equally apply.

[58] A claim to title by adverse possession requires the claimant to demonstrate factual possession and the requisite *animus possidendi*, that is, the intention to possess the land as owner to the exclusion of all others. The factual possession and intention must be manifest and continuous for the statutory period. Miss Stewart, while conceding that the learned judge was correct when, in coming to her decision, she had found "… that what the [respondent] needed to prove was that she was a bona fide purchaser for value without notice", nevertheless, she further submitted "that the evidential and legal burden that the Respondent needed to discharge was whether her title had been extinguished by statute". Miss Stewart relied on the authority of **Winnifred Fullwood v Paulette Curchar** [2015] JMCA Civ 37 ('**Fullwood v Curchar**').

[59] While I agreed with Miss Stewart that the legal burden to disprove adverse possession fell to the respondent to discharge in her claim for trespass, counsel's reliance on the **Fullwood v Curchar** case is somewhat misconceived. In that case, Mr and Mrs Curchar acquired a property as joint tenants in 1973. After their separation and Mrs Curchar's migration in the mid-1980s, Mr Curchar invited Ms Fullwood to reside with him on the property in 1985. Following Mr Curchar's death in 2009, Ms Fullwood continued to occupy the property alone. Her occupation remained undisturbed and exclusive for decades. Her possession was residential, continuous, and supported by the evidence. In 2013, Mrs Curchar sought recovery of possession, which led to a legal dispute.

[60] The significant issue in **Fullwood v Curchar** was locus standi as indicated in para. [37] of that judgment, where McDonald-Bishop JA (Ag) (as she then was) elucidated the relevant issue as follows:

> "[37] Based on the submissions of Miss Shaw, counsel for Mrs Curchar, an important question that arises as a proper starting point is this: on whom did the burden lie to establish the validity of Mrs Curchar's title on her claim for recovery of possession? Miss Shaw's argument in this court and in the court below was that the burden was on Miss Fullwood to establish her locus standi to rely on the statute of limitations as a defence. According to her, the locus standi of Mrs Curchar to bring the claim was irrelevant. Miss Fullwood was not a spouse or personal representative of Mr Curchar, she argued, and so she could not rely on the statute of limitations in her own right as she had no locus standi to do so. Learned counsel's contention was that Miss Fullwood was not a person who could avail herself of the protection afforded by the Act as that was only open to Mr Curchar's estate for which she was not the administrator.

Further on her judgment, the learned judge of appeal, at para. [42] ultimately determined that:

> "[42] … authorities have forcefully brought home the point that a claimant in a case for recovery of possession must state the basis of his claim which is his title to the property and once that is laid on the table (so to speak) then the statute of limitations will come into play and may operate to bar a stale claim regardless of whether or not the statute is expressly pleaded by a defendant in possession. So, the statute automatically arises for consideration once the title to the land is being relied on to ground the claim and its operation is not dependent on whether the defendant choses to avail himself of it. A defendant may simply exploit the advantage afforded by the statute without any express reliance on it. This is understandably so because as the authorities have established, the statute goes to the root of the claim or to the right to bring the claim and not to the remedy. It is thus a hurdle that is set up by law in the path of the claimant that can affect his claim rather than one to be set up by a defendant to defeat the claim.
>
> [44] This means, therefore, that Mrs Curchar's right to possession of the property was subject to the statute of limitations and so it was incumbent on her, in discharging both the evidential and legal burdens placed on her as claimant, not to only state at trial the title on which she was relying but to prove on the evidence that it was a subsisting one by virtue of the fact that she had been in possession

> within the period of limitation, or in other words, that her title was not extinguished by operation of law."

[61] Thus, the strength of Miss Fullwood's defence to the claim was not the trial judge's central focus, but rather the strength of Mrs Curchar's title to the property and her right to possession of it. Since Mrs Curchar's locus standi to bring the claim was the relevant and material issue in that case, the burden of proof was, therefore, on Mrs Curchar to establish her claim for recovery of possession, and not on Miss Fullwood as the defendant.

[62] While the respondent herein, like Mrs Curchar, was obliged to establish her locus standi to bring a claim in trespass on the strength of her proclaimed registered title, the instant case is distinguishable. In the instant case, the claim for trespass was brought in the Parish Court. By law, since the defendant was relying on a special defence of adverse possession, under the Statute of Limitations, he was obliged to give notice of that defence as provided in section 150 of the JPCA. Furthermore, he was required to state his defence prior to the commencement of the trial. I cannot, therefore, accept counsel's contention that the appellant had no responsibility to raise the issue of adverse possession at all, nor to substantiate his averment with a credible narrative of continuous possession and intention to possess.

[63] Throughout his testimony, the appellant maintained that he held ownership of the disputed property by virtue of purchase and that his possession was grounded in that transaction. It was, therefore, unexpected, indeed, surprising, that the issue of adverse possession was raised for the first time during closing submissions, advanced on his behalf by counsel, Mr Donovan Collins. Notably, the appellant had failed to comply with the procedural requirement to give prior notice of this statutory defence, as required by section 150 of the Judicature (Parish Courts) Act and Order X, Rule 8 of the Parish Court Rules. Despite this procedural default, counsel sought to argue that the appellant's rights were protected under section 68 of the RTA, relying on **Chisholm v Hall** in support.

[64] The respondent's counsel, Mr Morgan, persuasively submitted that the introduction of adverse possession as a secondary defence was procedurally improper and logically

incompatible with the appellant's pleaded case. As Mr Morgan noted in written submissions, "the second limb of the defence was curious and unexpected as it is defeated by the first limb of the stated defence".

[65] This court found that submission to be both cogent and correct. In this court's view, the appellant's belated attempt to invoke adverse possession, unsupported by any credible evidence, appears both opportunistic and inconsistent with his primary claim of ownership by purchase.

[66] Thus, the distinction between the present case and **Fullwood v Curchar** is significant. The appellant in this case asserted ownership by purchase and only introduced adverse possession at the eleventh hour. He failed to present evidence of uninterrupted and exclusive possession for the statutory 12 years. The alleged acts of occupation were minimal, lacked supporting dates, and were deemed equivocal by the learned judge. Therefore, unlike in **Fullwood v Curchar,** where the factual and legal foundation for adverse possession was clearly laid, the present appellant's claim was both procedurally and evidentially deficient.

[67] It was my view that the cited authorities did not support the appellant's contention that the evidential burden rested upon the respondent, relative to the appellant's claim of adverse possession. While the respondent's duty was to establish that her title had not been extinguished by statute, or more precisely, refute as contended by the appellant that she had obtained no title because her predecessor in title had none to give, it was the appellant's responsibility to provide evidence of his assertion of adverse possession or greater right to possession, he was obliged to prove the factual basis of his claim, which he failed to do. The record was devoid of credible documentary or testimonial evidence to support his alleged continuous occupation since 1995.

[68] If, as the appellant claimed, he had in fact been in adverse possession of the disputed property for the requisite statutory period, he would have acquired a possessory title sufficient to bring an action in ejectment or trespass against others, pursuant to

sections 3 and 30 of the LAA. It is well accepted that a person in undisturbed, exclusive, and open possession for the statutory period may either assert that interest defensively or affirmatively, whether through judicial proceedings or by application to the National Land Agency or Registrar of Titles in the case of registered land.

[69] At para. [27] of her judgment, the learned judge correctly noted that the appellant had not instituted any proceedings in trespass against the respondent in relation to her dealings with the property. In my view, this omission was inconsistent with the conduct ordinarily expected of a person asserting possession and ownership. The learned judge ultimately rejected the appellant's account as lacking credibility, a finding that this court could not fault.

[70] As the learned judge noted, the appellant's original defence rested on the assertion that he had purchased the disputed land. At no point in his examination-in-chief or during cross-examination did he claim to have been in continuous and undisturbed possession of it since 1995, nor did he raise a defence of adverse possession at the outset. Though the learned judge considered this issue when it was belatedly introduced, she found that the appellant had failed to establish the essential elements of that doctrine, including the necessary factual and exclusive possession. The learned judge rejected the appellant's argument, and rightly so. The evidence he relied upon to establish acts of possession was both sparse and unpersuasive. These actions, taken at their highest, were minimal, sporadic, and lacking in the kind of exclusivity, continuity, and control required to establish factual possession under the doctrine.

[71] At para. [29] of her judgment, the learned judge observed that no period of time had elapsed since 2017 that could sustain a claim for adverse possession. This comment suggests that the learned judge had in contemplation a claim directed specifically against the respondent, who acquired registered title in 2017, and thus confined her analysis to the period between 2017 and 2019. In that context, her finding that the statutory 12-year limitation period had not been satisfied was undoubtedly correct. However, that analysis did not engage with the broader period now relied upon by the appellant, namely,

his alleged occupation from 1995 to 2017. While the appellant sought to rely on the longer period, the learned judge found, and I agree, that there was no credible or substantiated evidence to support "that the [appellant] was in possession of the lot". Although her analysis focused on the post-2017 timeframe, her conclusion that the appellant had failed to establish the essential elements of factual possession was firmly supported by the record. That conclusion was not only available to her on the evidence but was also correct in law.

[72] Upon reviewing the record, I found no basis to disturb those conclusions. The appellant failed to provide any cogent evidence of continuous, undisturbed possession since 1995, when he claimed to have purchased the disputed property. While he claimed to have placed a "no trespassing" sign on the property, he did not indicate when this occurred, to what it was affixed, or whether it remained intact. His testimony that he visited the disputed property frequently was lacking in any detail. His evidence was notably vague regarding the timing of those visits, an essential consideration in assessing his alleged continuous possession of the disputed property. Some specificity of the visits was even more critical given his testimony that he sometimes resided overseas and was not in physical occupation of the disputed property. The timeline of such alleged actions on his part would also have been relevant in assessing whether he had continuous and undisturbed possession of the disputed property. No dates were given for when he last cleared the land. He spoke of fencing that was allegedly removed, but provided no timeline of when any fencing was erected. Notably, the respondent testified that when she visited the property in 2017 and again in 2018, there was no fencing and no indication of occupation. Indeed, the physical survey evidence contradicted the appellant's claims, reporting that "the physical boundaries are unfenced" and that "there is no evidence on earth of easements affecting the property". There were, in fact, no observable signs of occupation, a factor the learned judge noted.

[73] Woefully, the building materials that he claimed to have deposited on the disputed property were stolen. He, therefore, conceded that he never commenced construction during the alleged period of possession. The appellant's own evidence thus undermined

his case.. The respondent testified that the only construction activity on the property occurred in 2019, well after she had acquired registered title to the disputed property. The learned judge accepted this evidence and found that the surveyor's report corroborated the respondent's account, confirming the absence of any visible signs of occupation on the disputed property.

[74] The appellant argued that the respondent had not acquired a valid title upon her purchase of the disputed property in 2018, contending that his possession since 1995 would have extinguished the appellant's predecessor's interest in title and, accordingly, his claim of adverse possession should prevail. However, the evidentiary record revealed no credible or discernible evidence of adverse possession by the appellant for the requisite 12-year period necessary to defeat the predecessor's title. Consistent with the principles established in **Chisholm v Hall** and other authorities previously discussed, the respondent's registered title remained conclusive in the absence of a proven and perfected possessory title predating her registration. The learned judge's finding that the respondent was a *bona fide* purchaser for value without notice is, in the circumstances, unassailable.

[75] While the appellant asserted possession dating from 1995, the record before the court was bereft of cogent documentary or testimonial evidence to substantiate that the appellant was in factual possession, or that any such possession was continuous, exclusive, and adverse in the legal sense. There was no supporting affidavit or corroborative evidence from neighbours, nor were there any acts of ownership, such as fencing, construction, utility payments, or payment of property taxes, produced in support of his claim. The absence of such evidence rendered the claim speculative rather than substantive. It is trite law that the mere assertion of long possession, without more, is insufficient to displace a registered title.

[76] Ultimately, the appellant's assertions of possession dating from 1995 were unsupported by any reliable or cogent evidence. The learned judge's rejection of that assertion was inevitable and unassailable.

*The appellant qua purchaser*

[77] The appellant alleged that he was a purchaser of the disputed property, long before the respondent's purchase in 2018. He had not, however, demonstrated in either fact or law any circumstances of a real estate contract between himself and any vendor for the purchase and sale, exchange, or other conveyance of the disputed property. The appellant did not produce one iota of evidence which complied with any of the expected requirements in a real estate sale. Although he claimed to have receipts and a sale agreement, no such documents were put in evidence before the learned judge. The appellant woefully failed to provide any written contract of purchase, any documentary proof of a sale transaction as required by the Statute of Frauds. Despite what he described as repeated and unanswered attempts to obtain the title, he made no effort to assert his alleged rights through any of the recognised legal avenues or provide any evidence that he attempted to secure a formal title. Without such crucial evidence, his claim of ownership by way of a purchase lacked not only credibility but also legal standing.

[78] The appellant's assertion that he purchased the disputed property from a third party, thereby obtaining a proprietary interest, is untenable in law and unsupported by the evidence. The evidence showed that, despite knowing Mr Daley's whereabouts, the individual who allegedly sold the disputed property to him, the appellant, made no effort to obtain a title or pursue legal action for specific performance against Mr Daley. It was highly implausible that, after paying the princely sum of $450,000.00 for the disputed property, the appellant's last enquiry about a title was in 1997. For approximately 24 years, he took no steps to secure a registered title. Nor did he take any meaningful or legally recognised steps to obtain title or regularise his claim against the previous title holders to secure his interest in the disputed property. His conduct in such circumstances required keen assessment as to whether he could be believed, especially since his assertions were unsubstantiated. Therefore, in the circumstances, the learned judge could not be faulted for disbelieving the appellant's assertions.

[79] Moreover, it is not in the appellant's favour that the law unequivocally establishes that title to land passes only upon registration. This principle, enshrined in sections 85 to

87 of the RTA, provides that upon registration, the transferee becomes the legal proprietor of the estate or interest conveyed. Section 86 makes it clear that no estate or interest in land passes at law until the relevant instrument is registered. Until such registration occurs, section 87 affirms that the legal estate remains vested in the transferor, who retains all ownership rights. This statutory regime was affirmed in **Wills v Wills**, where the Court of Appeal held that even a duly executed instrument of transfer conveys no legal title unless registered. Similarly, in **Chisholm v Hall**, the Privy Council underscored that registration is not a mere procedural step but the constitutive act that confers legal title under the Torrens system.

[80] In this context, the respondent's predecessors in title, as the registered proprietors, were still the legal title holders at the time of the respondent's purchase. Since the learned judge did not find that the appellant had acquired the disputed property by adverse possession, it stands to reason that the interest was legally passed to the respondent as a *bona fide* purchaser for value without notice in 2018. The appellant's inability to demonstrate either a registered title or a perfected possessory title meant that his claim could not displace the respondent's registered ownership. The learned judge's conclusion on this point was wholly consistent with both statute and established case law.

[81] Accordingly, in the absence of registration, the appellant held no legal interest in the land and cannot assert ownership against the respondent. This principle reinforces the integrity of the register and the conclusiveness of the registered title under the RTA.

[82] That said, I remain cognisant that sections 85 to 87 RTA do not contain any language suggesting that a claimant's failure to pursue the administrative process under section 85 extinguishes the right to assert a claim based on adverse possession. Rather, that section merely provides an optional mechanism or administrative avenue for recognition of a possessory title, operating alongside the option of seeking a judicial declaration. Its availability does not bar a claimant from pursuing relief through the courts. Nevertheless, the learned judge was entitled, in evaluating the appellant's

credibility, to consider his apparent lack of interest in formalising a claim to the property he alleged to have acquired through personal investment and longstanding possession.

[83] I further considered whether the appellant could successfully raise an oral contract in such circumstances, because, in equity, an oral agreement for the sale of land can be enforced explicitly despite the absence of a written memorandum, but only where the party seeking enforcement had sufficiently demonstrated acts of part performance. The most common act of part performance, in circumstances as the present case, is the alleged purchaser taking possession. The appellant argued that he had indeed taken possession, and it was in light of that averment that I also considered the provisions of the RTA relative to Miss Stewart's argument that the appellant had been in possession since 1995 and would have obtained title against the paper owner due to adverse possession. I had also underscored the learned judge's observation that the appellant had not brought any action in trespass against the respondent, as noted and discussed above, I would add that neither did the appellant bring any action against the previous paper owner.

[84] A fee simple interest held by a proprietor under the RTA represents the highest form of legal ownership in land, with indefeasibility of title as its cornerstone. Pursuant to section 70, a registered proprietor holds title free from all unregistered interests, save for limited statutory exceptions such as fraud or overriding interests. No equitable or beneficial interest in favour of the appellant was ever endorsed on the certificate of title. Moreover, section 71, read together with section 70, reinforces the principle that a purchaser for value without notice is not required to inquire into the circumstances surrounding prior registrations. Accordingly, the respondent's registered title must be treated as conclusive, absent evidence falling within the recognised exceptions.

[85] Section 163 underscores that conclusion. It reads:

> "Nothing in this Act contained shall be so interpreted as to leave subject to an action for the recovery of the land, or to an action for recovery of damages as aforesaid, or for

> deprivation of the estate or interest in respect to which he is registered as proprietor, any purchaser bona fide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he claims may have been registered as through fraud or error, and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever."

[86] There was no evidence that the prior registered title holder had acquired the disputed property by fraud. On the contrary, as noted on the respondent's title, the disputed property appeared to be a lot from a subdivision of a greater parcel of land "…formerly comprised in Certificate of Title registered at Volume 1414 Folio 28" and was publicly listed for sale, including on the Facebook medium. The evidence did not support that the appellant was in occupation or factual physical possession of the disputed property when the respondent viewed, contracted for and purchased the disputed property. By his admission, the appellant had no chattels or fixtures on the disputed property up to 2017. There were no discernible signs of occupation and certainly nothing capable of alerting a reasonable and prudent enquirer that anyone was in possession or adverse possession thereof. Notably, the learned judge had commented that:

> "No allegation of fraud has been raised by the [appellant] in respect of the [respondent's] acquisition of a registered title. In the circumstances of this case therefore, the [respondent] must prove, on a balance of probabilities that she is a bona fide purchaser for value without notice of any equitable interest the [appellant] may have."

[87] The learned judge had, therefore, appropriately placed the burden of proof on the respondent but found her evidence to be cogent and preferable to that of the appellant, and ultimately found in favour of the respondent.

[88] As far as I was concerned, the learned judge's conduct of the trial, her assessment of the evidence, and her application of the law were above reproach and served as an affirmation of the balance that courts strive to maintain between the sanctity of registered titles and the equitable considerations for individuals asserting unregistered interests.

Thus, she utilised the approach precedented in decisions from this court. A case in point is this court's decision of **First Union Financial Company Limited v Sharca Brown** [2024] JMCA Civ 41. In that case, Ms Brown claimed ownership of land through adverse possession, while First Union Financial held registered title. The court examined whether Ms Brown's possession met the statutory requirements for adverse possession and whether such possession could override the registered title. The court concluded that Ms Brown failed to provide sufficient evidence of continuous and exclusive possession for the requisite period. Consequently, her claim did not displace the registered title held by First Union Financial. That decision is a contemporary affirmation of the principle that registered titles are not easily overridden and that claimants who allege adverse possession must meet stringent evidentiary standards. The case also reinforced the integrity of the land registration system while acknowledging the complexities involved in claims of adverse possession.

[89] Apart from the fact that there were no actual signs of possession that could have alerted a prospective buyer or triggered further inquiry by the respondent, there were no endorsements or caveats lodged against the title that the respondent's predecessor held during the 24 years in question. The appellant had not sought to lodge any caveat or taken any other action to demonstrate his alleged possession of the disputed property. How then was the world at large, or the respondent, to have known of his interest? Even assuming the appellant had an equitable interest arising from his alleged purchase, the learned judge had no credible evidence to support his claim of purchase; the absence of written proof precluded any conclusion that he had either a legal or even beneficial interest in the disputed property dating back to 1995. Furthermore, no exceptional circumstances justified a ruling in his favour. In those circumstances, the learned judge had no basis to conclude that the appellant had acquired any equitable interest, nor that any such equitable interest as alleged predated the respondent's acquisition.

[90] Indeed, the respondent was obliged to establish that her registered title was indefeasible, and by her evidence, she had overcome that hurdle. She had made reasonable efforts to ascertain that no one was in factual possession of the disputed

property, as she had gone and physically inspected it and also paid for the disputed property to be surveyed. There was nothing on the disputed property that would have alerted the reasonable observer that any other person was in factual possession of the disputed property. Furthermore, the lack of credibility in the appellant's case did not foster any confidence in the learned judge to make a finding in his favour. It was my view, therefore, that the learned judge did not err in rejecting the appellant's assertions of prior purchase giving rise to an equitable interest in the disputed property. Moreover, he failed to establish by any credible evidence, continuous and undisturbed possession for the required 12-year period or an intention to possess to the exclusion of the paper owner. The appellant led no evidence to support his claim, either by purchase or by adverse possession.

*The jurisdictional issue*

[91] After outlining and reviewing the appellant's claim of entitlement to the disputed property under the foregoing subheadings of acquisition by purchase and or adverse possession, I will now evaluate whether, based on her findings, the learned judge had committed a jurisdictional error, as asserted by the appellant.

[92] As previously noted, section 96 of the JPCA confers jurisdiction on the Parish Court to hear disputes involving title to land or tenements, provided that the annual value of the subject property does not exceed the statutory threshold. That monetary valuation operates as a jurisdictional gatekeeper. Where the value of the property exceeds the threshold, the judge of the Parish Court is precluded from adjudicating title issues, and the matter must be brought into the Supreme Court.

[93] It is incumbent upon a party invoking section 96 of the JPCA to provide some material evidence of the annual value of the land in dispute, particularly where title is contested. This may be done by way of a current valuation report or relevant land tax assessments. In the instant case, there was no evidence placed before the court to establish the value of the disputed property.

[94] The learned judge made no finding on the value of the land, nor was there any indication that she considered the implications of section 96 in relation to the court's jurisdiction. Where a dispute of title arises, and the value of the land is uncertain or potentially exceeds the jurisdictional cap, the judge is duty-bound to satisfy herself on the question of value before proceeding to determine the merits. The absence of such an inquiry may render the jurisdictional foundation of the judgment questionable.

[95] There was no reference in the learned judge's reasons suggesting that she recognised the dispute as one involving title, nor any analysis directed at determining whether section 96 of the PPCA was triggered, including its monetary limitation. There could be little doubt however, that among the issues resolved by her were (i) whether the appellant had acquired title by adverse possession; (ii) whether the appellant had acquired any title in the disputed property based on his assertions that he purchased it, and (iii) the status of the respondent and whether she had a right to bring the action for trespass. After examination of the testimony given by both parties and the documentary evidence tendered during the trial, the learned judge made a finding of fact that since the appellant raised no allegation of fraud in respect of the respondent's acquisition of her registered title and since the respondent had proven her case as being the "…bona fide purchaser for value without notice of any equitable interest of the [appellant]" she was entitled to damages for trespass and other remedies sought. Accordingly, the learned judge made the orders as outlined above in para. [6].

[96] In making her determination, the learned judge found the respondent's evidence cogent as it concerned her acquisition of the land. On the other hand, she found that the appellant had not exhibited any acts of occupation or possession of the disputed property capable of signalling possession. Further, the learned judge rejected the appellant's evidence as lacking in cogency and "…unreliable as I do not find him to be a credible witness". Moreover, she found that the appellant "…has brought no action for trespass against the [respondent] for her dealings with the lot". This, I agreed, would have been a reasonable expectation in circumstances where the appellant alleged lawful ownership and or exclusive possession of the disputed property. The appellant's defences having

failed, the learned judge thereupon made the finding in paras. [29] and [30] of her reasons for judgment that the respondent was:

> "[29] …a bona fide purchaser for value without notice of any equitable interest of the [appellant], a natural corollary to this finding is the finding that the defendant was not in possession of the lot. The court therefore finds unnecessary to explore, to any greater depth, the merits of the defence of adverse possession, but to say that the [respondent] having acquired title in 2018, the 12 year period of adverse possession of the lot would not have been met by the defendant in that he was summoned in this plaint approximately two years later.
>
> [30] The court finds that the [respondent] is therefore the person in possession of the lot by virtue of her registered title."

[97] In reaching her conclusion, the learned judge relied on the authority of **George Mobray v Andrew Joel Williams** [2012] JMCA Civ 26, which affirms the principle that registered title, by virtue of its indefeasibility, is not subject to challenge except in cases where fraud is specifically alleged. The learned judge correctly noted that, in proceedings for recovery of possession, a defendant may resist the claim only by asserting either an unregistered equitable interest or a possessory title acquired through adverse possession. Where a defendant raises a dispute as to title, it is incumbent upon him to do more than simply allege its existence; he must present credible and sufficient evidence to substantiate the claim.

[98] By her determination that the appellant had not acquired either an equitable or legal title, the learned judge was inferentially resolving that there was no *bona fide* dispute as to the title, which necessitated her consideration of the applicability of section 96 of the JPCA.

[99] Having concurred with the learned judge's factual findings, namely, that the respondent was a *bona fide* purchaser without notice of any equitable interest asserted by the appellant, and further, that the appellant failed to establish any valid claim of

adverse possession, it follows logically that the evidence did not support the existence of a *bona fide* title dispute.

[100] It was only if cogent evidence of competing claims was presented to the court that the learned judge would be tasked to enquire into the matter and to decide whether a *bona fide* dispute to title existed. In the absence of any such cogent evidence, the learned judge could not have concluded that her jurisdiction was ousted where there was no real and substantial dispute as to title raised by the appellant or on the totality of the evidence that she heard. Without sufficient evidence to question the respondent's title, the issue before the learned judge was simply one of trespass, where neither a section 96 procedure nor a gross annual value was relevant. The case of **Harold Francis Jnr** clarified the proposition that mere possession disputes do not equate to title disputes unless a credible competing claim of ownership exists. The appellant's unsubstantiated claim of adverse possession and or purchase did not meet this threshold.

[101] In the case of **Danny McNamee**, Morrison JA (as he then was) established that a mere denial of title does not automatically create a title dispute. The defendant must present a legally recognised competing claim, such as an alternative registered title or an adverse possession claim. Therefore, the mere denial of the respondent's title, as was raised by the appellant herein, was insufficient to raise a section 96 issue. A denial of the respondent's title raised an issue of fact, which put an onus on the appellant to establish his allegation by evidence. To satisfy the learned judge of a *bona fide* dispute to title, the appellant must have presented cogent evidence of his interest and adduced a credible narrative pointing to such a claim. He needed to present positive evidence challenging ownership. He must have, therefore, shown by his evidence that he was in actual possession with the intention to possess. A task he woefully failed at.

**Issue II. Was the respondent legally entitled to bring an action against the appellant for trespass?**

[102] Trespass to land is a tort of strict liability, primarily governed by common law principles, and complemented by relevant statutory provisions in this jurisdiction. The tort

is committed when a person, without lawful authority, enters upon land in the possession of another, remains there after being requested to leave, or places or leaves objects upon it without consent. In the case at bar, the appellant entered the disputed land and undertook substantial construction thereon. Despite formal written demands from the respondent, issued through her attorney-at-law, the appellant failed or refused to desist. At all material times, the respondent was the registered proprietor in fee simple, holding an indefeasible title under the RTA. As such, she was legally entitled to the exclusive possession of the land and, consequently, to institute proceedings in trespass against the appellant.

[103] While I accepted Miss Stewart's submission that the respondent bore the burden of proving an indefeasible title in support of her claim in trespass, I did not agree that the respondent failed to discharge that burden. The documentary evidence tendered, coupled with the absence of any substantiated claim by the appellant, provided a sound basis for the learned judge's finding. The respondent, in my view, met the requisite legal standard to succeed on her claim.

[104] The findings of the learned judge in favour of the respondent cannot be impugned. The appellant failed to produce credible evidence establishing that he acquired title to the disputed property by purchase in 1995, nor was there any persuasive indication that he had exercised possession of the land prior to 2018, in a manner consistent with the requirements of adverse possession. The learned judge was entitled to treat the respondent as a *bona fide* purchaser for value without notice of any competing equitable interest. That conclusion, by necessary implication, established the respondent as the true paper owner, free of any overriding interest asserted by the appellant. On the evidence presented, the learned judge was well within her remit to find that the appellant's presence on the land amounted to an unlawful interference with the respondent's proprietary rights, and to grant an injunction and award damages for trespass accordingly.

**Conclusion**

[105] Whereas the legal burden was on the respondent, as the paper title owner, to establish that her title was not extinguished by virtue of the Statute of Limitations and was still good against the appellant, it was nonetheless for the appellant, claiming title by adverse possession, to establish, by evidence a credible narrative as to the fact of possession and the requisite intention to oust the respondent's predecessor in title. The appellant was clearly not in factual possession and failed to demonstrate by any evidence that he had the necessary *animus possessendi* to acquire the disputed property by adverse possession, and thereby had a title greater than that of the respondent. The learned judge, in my view, correctly concluded that the respondent, as paper owner, had the right to possession and was deemed to be in possession. Accordingly, the learned judge's ruling was upheld.

[106] Having given due consideration to this matter, I found that the grounds of appeal advanced by the appellant were unmeritorious, and the learned judge's ruling as to ownership and possession could not be successfully challenged. Accordingly, there was no merit in this appeal.

[107] It was based on the foregoing reasons that the orders detailed in para. [3] above were made.