

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE V HARRIS JA

PARISH COURT CIVIL APPEAL NO COA2024PCCV00018

BETWEEN	ANGELLA WONG SANG	APPELLANT
AND	RICARDO CAMPBELL	RESPONDENT

Garth McBean KC instructed by McDonald, Jordan & Company for the appellant

Lemar Neale, Ms Danielle Gordon and Nathaniel Webb instructed by Nea | Lex for the respondent

28 April and 1 May 2026

Appeal — Parish Court — Jurisdiction — Judicature (Parish Courts) Act — Recovery of possession — Section 96 — Dispute as to title — Annual value — Meaning, proof and sufficiency — Whether annual value must be pleaded — Whether jurisdiction may be grounded by evidence notwithstanding omission from pleadings — Parish Court Rules — Order VI rule 4 — Refusal to strike out — Removal/transfer to Supreme Court — Section 130 — Possessory title — Adverse possession — Limitation of Actions Act — Sections 3 and 30 — Factual possession and intention to possess — Tenancy/licence and adverse possession — Rent/use and occupation — Credibility — Inconsistencies — Appellate restraint — Findings of fact — Whether judge was plainly wrong

ORAL JUDGMENT

P WILLIAMS JA

[1] I agree with the reasoning and conclusion of D Fraser JA.

D FRASER JA

[2] This is an appeal against the judgment and orders of the Senior Judge of the Parish Court for the parish of Portland ('the learned Judge of the Parish Court') (as she then was), made on 11 January 2023, in proceedings brought by the respondent for recovery of possession and ancillary relief in respect of lands at Pleasant Hill, in the parish of Portland.

[3] The orders of the learned Judge of the Parish Court, in substance, were that:

- a. The appellant should deliver up possession of the approximately 1½ square chains of land occupied by her by 31 December 2023;
- b. The appellant should pay the respondent \$143,000.00 for use and occupation of the land (including \$3,000.00 for 2016 and \$20,000.00 per year for 2017–2023 as assessed);
- c. The appellant, her servants and agents were restrained by an injunction from building or continuing to build on the land; and
- d. Costs were awarded to the respondent to be agreed or taxed.

[4] The case for the respondent was that the approximately 1½ square chains of land occupied by the appellant ('the disputed land'), formed part of a larger plot of land of approximately 6½ acres owned by him and which was originally owned by his uncle Basil Phillips ('Mr Phillips') and not Lucy Androdan ('Ms Androdan') as the appellant claimed.

[5] He outlined that the appellant's mother, Joyce Thelfer ('Ms Thelfer'), resided on the disputed land with his older brother, Jasper Campbell, the step-father of the appellant and their children, in a house owned by Ms Androdan. Ms Androdan lived in a house owned by her son, Mr Phillips.

[6] After Ms Androdan's death, Mr Phillips returned to Jamaica from England in 1995 and appointed the respondent as his agent for the Pleasant Hill property. On his uncle's

behalf, the respondent collected rent from four tenants, including Ms Thelfer, until Mr Phillips' death in 1997. After his death, the respondent continued collecting rent, which he used to pay property taxes and maintain the land.

[7] In December 1999, the respondent gave Ms Thelfer notice when she began adding a concrete structure to her house. After receiving the notice, Ms Thelfer ceased construction. Ms Thelfer continued paying rent to the respondent until her death in 2012. Following her death, the respondent and the appellant agreed to rent payments of \$3,000.00 per month, which the appellant began paying in 2013.

[8] Due to the appellant expanding her occupation onto lands that he did not give to her and to her unauthorised building on the structure that was there, in January 2017, the respondent caused a letter to be written to the appellant instructing her to desist from any further construction. Despite receiving notice, the appellant continued building, but ceased construction once the respondent commenced his claim. The respondent indicated that the tax receipts have Basil Phillips as owner paid by Ricardo Campbell and that he paid taxes from 1995 to 2020. He planted trees throughout the rest of the land.

[9] The appellant disputed the respondent's claim. She asserted that she had lived on the land from childhood and that the land belonged to Ms Androdan, the respondent's and Mr Jasper Campbell's grandmother. She additionally claimed that the respondent did not have a greater interest in the property than her father, Mr Jasper Campbell. She, however, admitted in evidence that Mr Campbell was not her father, but her step-father.

[10] The appellant contended that, in 1988, she and her brother rebuilt a concrete room and verandah on the land after the nog and board house was destroyed. She asserted that she contributed most of the funds and that these additions were made without permission or objection.

[11] The appellant denied ever paying rent to the respondent or entering into any rental agreement with him and maintained that he never resided on the property or planted anything on it. She also maintained that any monies paid to the respondent were property

tax contributions, not rent. She denied a landlord-tenant relationship and asserted either a beneficial interest in the property or, alternatively, possessory rights in relation to the portion of land she occupied.

[12] Documentary evidence before the Parish Court included: (i) the 1995 agency letter (Exhibit 1); (ii) a notice to Joyce Telfer dated December 1999 (Exhibit 2); (iii) the letter to the appellant dated January 2017 (Exhibit 3); (iv) property tax receipts in the name of Basil Phillips paid by the respondent spanning 1995 - 2019 (Exhibits 4A/4B); (v) property tax receipts in the name of Basil Phillips paid by the appellant spanning 2015 - 2018 (Exhibit 5A -D; and (vi) defence correspondence dated March 2017 (Exhibit 6).

[13] The grounds of appeal filed by the appellant are as follows:

- "i) The Learned Parish Court Judge erred in law when she refused to strike out the Plaintiff's/Respondent's claim or in the alternative transfer the proceedings to the Supreme Court where proper jurisdiction lies.
- ii) The Learned Parish Court Judge erred when she assumed jurisdiction of a matter pursuant to Section 96 of the Parish Court Act, and made an order for possession against the Defendant despite the fact that the Plaintiff failed to ground the jurisdiction of the Parish Court in his pleadings."

[14] The supplemental grounds of appeal filed by the appellant are:

- "i) The Learned Parish Court Judge erred in finding as she did that the Appellant paid rent to the Plaintiff/Respondent. The Learned Judge so erred and her finding is unreasonable and not supported by the evidence for the following reasons:-
 - (a) Evidence was given by the Defendant/Appellant that she paid money to the Plaintiff/Respondent to assist with the payment of property taxes.
 - (b) Evidence was given by the Plaintiff/Respondent that he got a rent book from the later Basil Phillips and started collecting rent but failed to produce that rent book and have it admitted into evidence.

- (c) The Plaintiff/Respondent had an obligation under section 29(1) of the Rent Restriction Act to keep a rent book but failed to produce a rent book to have it admitted into evidence
 - (d) The evidence of the Plaintiff/Respondent that the Defendant/Appellant paid him rent was not supported by any documentary evidence and the Plaintiff/Respondent admitted that he did not give receipts for the alleged payments for rent.
- ii) The Learned Parish Court Judge erred in finding that the Plaintiff/Respondent acquired an interest in the subject property. The Learned Parish Court Judge so erred for the following reasons:-
- (a) The evidence was that Basil Phillips died in 1997 and pre-deceased his wife and therefore the agency with the Plaintiff/Respondent was terminated, a new agency could only be effected through the wife of the late Basil Phillips.
 - (b) The Plaintiff/Respondent does not fall within the list of persons who could claim upon the death of Basil Phillips intestate.”

[15] The grounds of appeal concern the jurisdiction of the Parish Court, while the supplemental grounds of appeal seek to assail the findings of fact of the learned Judge of the Parish Court.

[16] Learned King’s Counsel, Mr McBean, was brief as he acknowledged that jurisdiction had been properly established. Further, he recognised that as the supplemental grounds challenged findings of fact that was a difficult hurdle to overcome. He focused on the short point whether the learned Judge of the Parish Court was wrong in rejecting the documentary evidence of the appellant in support of her assertion that she paid property taxes not rent in favour of the oral evidence of the respondent that she paid him rent.

[17] Mr Neale submitted that there was no issue concerning jurisdiction and that the learned Judge of the Parish Court was entitled to make the findings of fact she did. Hence there was no merit in the appeal.

[18] Notwithstanding the posture of counsel, in deference to the submissions they have prepared and the detailed reasons and findings of the learned Judge of the Parish Court, I will briefly address each ground of appeal.

Re ground i) Refusal to strike out or transfer the case to the Supreme Court

[19] As pointed out in the written submissions of counsel for the respondent, pursuant to section 185 of the Judicature (Parish Court) Act ('the Act'), a matter can only be struck out when the plaintiff fails to appear. When this occurs, the matter is to be placed at the foot of the list, and when the matter is again reached, if the plaintiff still does not appear, the matter shall be struck out. That clearly was not the situation here.

[20] Also, as outlined in the submissions of counsel for the respondent, pursuant to section 181 of the Act, the court additionally has the power to nonsuit a plaintiff, where there is no satisfactory proof entitling the plaintiff or the defendant to the judgment of the court. The learned judge would have to receive evidence to determine whether there was a basis to nonsuit the plaintiff (see Order XVI of the Judicature (Parish Court) Rules ('the Rules') and its interpretation in the case of **Gary Morgan v Natalie Williamson-Morgan** [2016] JMCA Civ 53, as cited in **Merrick Nichols v Keisha Foster** [2024] JMCA Civ 2). Based on the ultimate decision of the learned Judge of the Parish Court, there was no basis to invoke such a power.

[21] The power to transfer a matter to the Supreme Court is governed by section 130 of the Act. It is a discretionary power triggered by a request of either party. There is no evidence that there was such a request made in this case. Further, the discussion on ground ii) will show that the learned Judge of the Parish Court had jurisdiction, and hence there was no basis for the matter to be transferred. There is no merit in this ground.

Re ground ii) Assumption of jurisdiction under section 96 of the Act, which was not grounded by the pleadings

[22] Under section 96 of the Act, where there is a claim for recovery of possession, and there is a dispute as to title, there has to be (i) a statement or evidence of the annual

value of the property and (ii) a description of the property. The annual value cannot exceed \$500,000.00; otherwise, the Parish Court will not have jurisdiction to hear the matter. King's Counsel, with commendable candour, conceded that the learned Judge of the Parish Court appreciated that, where it has not been pleaded, evidence of the annual value may be led to satisfy section 96 of the Act. At para. 13 of her reasons and findings, the learned Judge of the Parish Court cited the cases of **Shawn Smith v Winston Pinnock** [2016] JMCA Civ 37; **Melvin Clarke v Lenive Mullings-Clarke** [2016] JMCA Civ 60; and **Christopher Robinson v Rodney Garvey** [2020] JMCA Civ 58, which treat with those principles.

[23] The respondent gave unchallenged evidence that the annual value of 1 ½ squares would be \$30,000.00, which was accepted by the learned Judge of the Parish Court. That, coupled with the description of the property contained in the particulars of claim, as required by Order VI rule 4 of the Rules, vested jurisdiction in the Parish Court pursuant to section 96. Accordingly, there is no merit in this ground.

Re supplemental grounds

[24] The supplemental grounds both involve challenges to the findings of fact of the learned judge of the Parish Court. As pointed out by counsel for the respondent, this court is usually reluctant to interfere with findings of fact made by a trial judge as well as any inferences the trial judge may draw from those facts. This court will not substitute its own view unless the trial judge was plainly wrong or reached a conclusion no reasonable judge could have reached (see **Rainford Wade v Norman McBean** [2024] JMCA Civ 3 and the cases it discusses).

Re Supplemental Ground i) – The Learned Parish Court Judge erred in finding as she did that the Appellant paid rent to the Plaintiff/Respondent

[25] The learned Judge of the Parish Court accepted that the appellant paid rent because the respondent's evidence showed an arrangement after the death of the appellant's mother in 2012, under which the appellant made periodic payments (including the "peppercorn" sums identified for 2013–2015). This evidence was supported by the

respondent's demonstrated course of management and control of the property (including rent collection from occupiers generally, written notices objecting to unauthorised building, and longstanding payment of property taxes), all of which the learned judge of the Parish Court treated as consistent with a landlord/occupier relationship rather than a tax-sharing arrangement.

[26] In contrast, the learned judge of the Parish Court rejected the appellant's denial of paying rent because (i) the appellant's oral evidence was inconsistent with the letter written on her behalf by her attorney at law (exhibit 6); (ii) the learned judge of the Parish Court found it inconceivable that the respondent would ask her for tax contributions given his posture in relation to the land; (iii) the appellant only started paying taxes after she started building on the land, which supported the view that she started building without permission and paid taxes to assert ownership of the property; and (iv) the amount the appellant said she paid for property taxes conveniently coincided closely with the amount the respondent said he asked for rent.

[27] The learned Judge of the Parish Court was entitled to make these findings even in the absence of the production of a rent book. In any event, even if the learned Judge of the Parish Court was wrong on the issue of rent, which she was not, that did not affect the central issue of whether the respondent had, by the time the action was filed, acquired title by adverse possession. This ground fails.

Re Supplemental Ground ii) – The Learned Parish Court Judge erred in finding that the Plaintiff/Respondent acquired an interest in the subject property.

[28] The learned Judge of the Parish Court concluded that, after the respondent's agency from Mr Phillips ended on Mr Phillips' death in 1997, the evidence revealed that the respondent established the two essential elements of adverse possession — factual possession and intention to possess (*animus possidendi*). This was done by his demonstrating a sustained course of acts "dealing with the land as an occupying owner" from 1998 onward. These included continued rent collection and management of occupiers, consistent payment of property taxes over many years, maintenance and

control of the land, and the assertion of exclusive control by objecting to and restraining unauthorised building through notices and interventions. In applying the legal test for possession, the learned Judge of the Parish Court relied on sections 3 and 30 of the Limitations of Actions Act as well as the authorities of **JA Pye (Oxford) Ltd v Graham** [2003] 1 AC 419 (factual possession plus intention to possess), **Powell v McFarlane** (1977) 38 P & CR 452 (the quality of exclusive physical control required; acts must be consistent with ownership having regard to the nature of the land), and **Farrington v Bush** (1974) 12 JLR 1492 (possession must be actual and accompanied by the requisite intention, not mere user). The learned Judge of the Parish Court determined that the respondent's conduct satisfied those requirements.

[29] The learned Judge of the Parish Court further relied on authorities emphasising that adverse possession must be inconsistent with, and not referable to, another's permission (see **Wills v Wills** [2003] UKPC 84, **Ramnarace v Lutchman** [2001] 1 WLR 1651, and **Glen Cobourne v Marlene Cobourne** [2021] JMCA Civ 24). On that basis, the learned Judge of the Parish Court rejected the appellant's competing claim to adverse possession as her occupation was referable to her mother's tenancy/licence and, in any event, did not demonstrate the necessary period and quality of exclusive adverse possession. Having found the respondent's possession to be open, continuous, and undisturbed for 19 years (1998 – 2017), well beyond the 12-year limitation period, the learned Judge of the Parish Court concluded that the respondent's possessory title was established.

[30] As pointed out by counsel for the respondent, the approach of the learned Judge of the Parish Court was in keeping with this court's decision in **International Hotels (Jamaica) Limited v Proprietors Strata Plan No 461** [2013] JMCA Civ 45. The learned Judge of the Parish Court also found that the appellant was not entitled to compensation as the elements of proprietary estoppel had not been made out (see **Crabb v Arun District Council** [1975] 3 All ER 865 at 871). We agree with the view of counsel

for the respondent that the learned Judge of the Parish Court's findings of fact are unimpeachable. There is no merit in this ground.

[31] Having outlined the decision in this matter, dismissing the appeal and affirming the judgment and orders of the learned judge of the Parish Court, the court heard submissions from counsel on the issue of costs and decided to award costs to the respondent in the sum of \$50,000.00.

[32] Before ending, the learned Judge of the Parish Court must be commended for her detailed, comprehensive and scholarly handling of this matter.

V HARRIS JA

[33] I, too, agree with the reasoning and conclusion of D Fraser JA.

P WILLIAMS JA

ORDER

1. The appeal is dismissed.
2. The judgment and orders of Her Honour Mrs Tracey-Ann Johnson, Senior Judge of the Parish Court for the parish of Portland, made on 11 January 2023 are affirmed.
3. Costs to the respondent in the sum of \$50,000.00.