



JMS 2013 Civ201

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2012 HCV 00824**

**BETWEEN DELRITA WILLIAMS CLAIMANT
(Executrix in the Estate of
Lucille Nolan, deceased)**

**AND DOREEN EVADNEY NOLAN DEFENDANT
(Administratrix of the estate
of Clifford Nolan)**

CONSOLIDATED WITH:

CLAIM NO. 2012 HCV 04172

**BETWEEN DOREEN EVADNEY NOLAN CLAIMANT
(Administratrix of the estate
of Clifford Nolan)**

AND DELRITA WILLIAMS 1ST DEFENDANT

AND WINSOME KING 2ND DEFENDANT

Mr. Keith Brooks instructed by HS Dale; Attorneys-at-Law: for the Claimant/ 1st Defendant, Ms. Delrita Williams and 2nd Defendant Ms. Winsome King

Mr Miguel Williams and Mrs. Roxanne Kidd-D'Aguilar instructed by Livingston, Alexander & Levy; Attorneys-at-Law: for the Defendant/Claimant Mrs. Doreen Evadney Nolan.

CORAM: G. FRASER, J (Ag.)

(In Chambers NO. 10)

29th November & 16th December 2013

Husband and wife deceased no efforts made by wife to establish joint ownership during her lifetime – Whether joint ownership can now be established by Executrix of Wife's Estate – Can a Life Tenant claim Adverse Possession - Executrix of Estate claiming adverse possession in her own right – Sections 3, 4 & 30 Of Limitation Of Actions Act - Estate Contract and the Statute of Frauds – Laches.

THE APPLICATIONS

[1] The application in the lead Claim No. 2012 HCV 00824 is brought by Ms. Delrita Williams in her capacity as Executrix of the Estate of Lucille Nolan – deceased. She is asking the Court to make the following orders in her favour:

1. That Lucille Nolan is the sole legal and beneficial owner of property situated at Lot 49 Buff Bay in the parish of Portland registered at Volume 1307 Folio 983 of the Register Book of Titles (herein after the disputed property), and that the title now in the name of Commissioner of Lands should be transferred to her estate.
2. That in the alternative Delrita Williams is entitled to the legal and beneficial interests in the property situated at Lot 49 Buff Bay in the parish of Portland registered at Volume 1307 Folio 983 of the Register Book of Titles, and that the title now in the name of Commissioner of Lands should be transferred to her.

[2] The Defendant Mrs. Doreen Evadney Nolan who is the Claimant in the consolidated matter in Claim No. 2012 HCV 04172; is seeking similar orders in respect of the said property. Mrs Nolan is named as the Administratrix of the Estate of Clifford Nolan now deceased. She seeks the following orders:

- a. Declaration that Doreen Nolan, Pauline Nolan, Paulette Nolan and Isolyn Nolan are beneficially entitled to the said disputed property

- b. An order for Recovery of Possession against Delrita Williams and Winsome King
- c. Damages for trespass and/or use and occupation
- d. Costs

CRONOLOGY OF EVENTS

[3] The both Claimants had initially pursued separate claims before the Supreme Court in Claims Numbers **2012 HCV 00824 and 2012 HCV 04172** respectively. On the 3rd October 2013 an Order there be a consolidation of the both claims and that they be heard together. The basis of the order included considerations that the parties in both claims were the same; the issues in both claims were substantially the same and involving the ownership of the same disputed property and it was economical and convenient that both matters be dealt with in one hearing. The following is a synopsis of the chain of events that led to the both claims being brought before the court.

- I. Lucille and Clifford Nolan were allegedly married but no one has exhibited proof of this; none the less it is not being disputed by either side that the both deceased were husband and wife.
- II. Clifford Nolan as the evidence suggests entered into a written agreement dated 14th July 1965 with the Ministry of Housing to purchase premises located at Lot 49, Oliver Park Housing scheme. This is in Buff bay, Portland and is land that is comprised in Certificate of Title registered at Volume 1307 Folio 983 of the Register Book of Titles. This document titled "*Memorandum of Agreement*" is exhibited as "DW2" to the Supplemental affidavit of Delrita Williams sworn to on 7th November 2012.
- III. The Ministry of Housing is registered as proprietor on the said Title; however the same has acknowledged in writing on 31st March 2011; that Clifford Obadiah Nolan is the beneficial owner thereof and is at liberty to have the title registered in his name. The title and letter are exhibited as "DN2" and "DN3" respectively to the Affidavit of Doreen Nolan sworn on 29th June 2012.

- IV. Clifford Nolan died on the 14th day of October, 1971 and a copy of the death certificate is exhibited to the Supplemental Affidavit of Delrita Williams as "DW3"; sworn to on 7th November 2012.
- V. Letter dated 25th May 1990 from the Ministry of Construction; addressed to Clifford Nolan advising of an outstanding balance of \$871.98 on the payments/account as at 31st May 1990 for lot 49 Buff Bay, notice is exhibited as "DW5" to the Supplemental affidavit of Delrita Williams sworn on 7th November 2012. (**NB** at this point Clifford Nolan had been deceased for some nineteen (19) years)
- VI. Exhibited as "DW6" to the Supplemental Affidavit of Delrita Williams, sworn on the 7th November 2012 is a letter dated 30th October 1990. The letter is addressed to Mrs. Lucille Nolan "Re: lot 49 Buff Bay – A/C 32-2318- Clifford Nolan (Deceased)", and is acknowledging receipt of payment in the sum of \$337.77.
- VII. As an exhibit in this case; is the last Will and Testament of Clifford Nolan dated 23rd of July 1971. This will named Lucille Nolan as his Executor but no grant of Probate was applied for or obtained by Lucille Nolan during her life time.
- VIII. The Defendant/Claimant, Mrs Doreen Nolan has subsequently applied for Grant of Letters of Administration with Will annexed and was named as Administratrix of the Estate of Clifford Obadiah Nolan. The Grant of Letters of Administration with Will annexed dated the 24th March 2011; is evidenced as "DN1" to the Affidavit of Doreen Nolan sworn on 29th June 2012
- IX. Under the will of Clifford Nolan; Lucille Nolan had been accorded a life interest in the disputed property. The remaindermen were named in the will to be Pauline Nolan, Paulette Nolan, Isolyn Nolan and Doreen Nolan.

- X. Lucille Nolan died on the 13th April 1999 a copy of her death certificate is exhibited as "DW8" to the Supplemental Affidavit of Doreen Williams sworn to on 7th November 2012.
- XI. Mrs. Lucille Nolan executed her last will and Testament on the 19th January 1994, the same is exhibited as "DW7" to the Supplemental Affidavit of Delrita Williams sworn to on the 7th November 2012.
- XII. Miss Williams applied for probate of Lucille Nolan's Will in solemn form and said was granted on 26th July 2010, the document is exhibited as "DW1" to the Supplemental Affidavit of Doreen Williams sworn to on the 7th November 2012.
- XIII. Delrita Williams and winsome King have been in possession of the disputed property since the death of Lucille Nolan on the 13th April 1999.
- XIV. Suit filed by Mrs Doreen Nolan in the Port Antonio Resident Magistrates' Court against Delrita Williams on 8th April 2011. Plaintiff #103/2011; Suit filed by Mrs Doreen Nolan in the Port Antonio Resident Magistrates' Court against Winsome King on 1st April 2011. Plaintiff #107/2011 are exhibited as "DN6" to the Affidavit of Doreen Nolan sworn on 2nd June 2012.

THE EVIDENCE

[4] In support of their claims the parties filed and sought to rely on affidavits as follows:

- I. Supplemental Affidavit of Delrita Williams in support of Fixed Date Claim Form (CLAIM NO.HCV 2012/00824), sworn to on 7th November 2012 and filed 9th November 2012
- II. Supplemental Affidavit of Delrita Williams in support of Fixed Date Claim Form (CLAIM NO.HCV 2012/00824), sworn to, on 26th March 2013 and filed on 2nd April 2013; together with exhibited documents "DW1" – "DW8" inclusive.

- III. Affidavit of Doreen Nolan in support of Fixed Date Claim Form (CLAIM NO.HCV 2012/04172), sworn on the 29th June 2012 and filed 24th July 2012
- IV. Affidavit of Doreen Nolan in reply (CLAIM NO.HCV 2012/00824), sworn on the 29th June 2012 and filed 23rd July 2012; together with exhibited documents "DN1" – "DN7" inclusive.

[5] The above four (4) affidavits were made to stand as the witnesses' evidence in chief and although all the parties were present¹ and available for cross examination none was educed on either side. Counsel on both sides very helpfully provided written submissions of their arguments and in respect to Counsel for Mrs. Nolan some relevant case law in support of same. As it transpired the issues identified by the parties for adjudication are all issues in law. For convenience I will address the various claims separately and in the following order:

- A. On behalf of Miss Delrita Williams (as Executrix)
- B. On behalf of Miss Delrita Williams in her own right – adverse possession
- C. On Behalf of Miss Delrita Williams in her own right – As purchaser
- D. On behalf of Mrs. Doreen Evadney Nolan as administratrix.

A. CLAIM ON BEHALF OF MISS DELRITA WILLIAMS (as Executrix)
JOINT OWNER ISSUE (deceased wife and husband)

[6] The argument is advanced that the late Lucille Nolan who was the sister of Miss Delrita Williams was the lawful spouse of the late Clifford Nolan. That the disputed property was purchased by both deceased and which they occupied together as the matrimonial dwelling; however only the name of Clifford Nolan appears on the purchase documents. The Court is being asked to declare that in those circumstances the purchase was a joint enterprise for the benefit of both deceased persons; that the property became matrimonial property giving rise to a presumption of equal interests in it as joint owners. I observe and must point out that not one iota of evidence has been presented to the Court in support of this bold assertion and not one precedent or other

¹ Mrs. Doreen Nolan was present via Video Link which she had sought and obtained permission so to do by Orders granted on the 28th November 2013 by Morrison, J.

authority has been proffered to ground this application. The issues as I have identified them to be are

- I. Was Lucille Nolan a joint owner?; and
- II. Could she assert any such claim for joint ownership after the death of Clifford Nolan?
- III. Can her Executrix assert any such claim on her behalf?

[7] The Defendant to this suit contends that Clifford Nolan was in open, continuous and undisturbed possession of the disputed premises until the time of his death on 14th October, 1971. This would have been some six (6) years after he entered into agreement for the purchase of the disputed property and Mrs. Lucille Nolan not once during this time sought to assert her purported claim during his lifetime. There is further no evidence that Mrs. Lucille Nolan made any contributions to the purchase of the disputed property whether financially or otherwise. In these circumstances the defendant urges the Court to say in relation to the disputed property; no equitable interest arises in favour of Lucille Nolan and that she is not a joint-owner.

[8] To my mind the above argument advanced by counsel Mr. Brooks; sounds suspiciously like the provisions arising under ***The Property (Rights of Spouses) Act 2006 (PROSA)***. Under this Statute there is a presumption of a fifty percent (50%) share of the matrimonial dwelling house for each spouse²; even where only one of the spouses financed the purchase. That presumption also obtains where one spouse is deceased. There is however one notable exception to this presumption, pursuant to Section 6 (2); that is in circumstances where the spouses hold property as joint tenants. I however do not think that in these circumstances such an argument could prevail since the law under the PROSA legislation cannot apply for reasons that:

- I. The legislation came into effect on 1st April 2006, at which time both parties were deceased for some thirty-five (35) years in the case of Clifford Nolan; and seven (7) years in the case of Lucille Nolan.

² Section 6(1) of PROSA

- II. Even were the parties alive PROSA could only apply if the stipulations in section 6 were fulfilled as regards matrimonial dwelling; that is to say; the parties were divorced; marriage was decreed a nullity or the parties had separated and the claim was brought within one (1) year of any of the foregoing eventualities. Or leave of the court was otherwise sought to bring such a claim outside of the stipulated time period, the relevant date would be 1971 when Clifford Nolan died.
- III. There is no retrospective operation in relation to legislation unless so specifically stipulated by the Statute itself.

[9] In circumstances where a claim relative to matrimonial property cannot properly be brought under the auspices of PROSA; the claim could proceed on the normal basis as contained in the Law of Equity and the Law of Trusts. The applicable law of Trusts maintain that where property is registered in the name of only one party, the other party claiming a share will first need to establish that he or she was intended to have a beneficial interest in the property and thereafter establish the proportion of said interest.

[10] Property that is subject to an equitable claim, such as that under a constructive trust passes according to the finding of claim. The leading case is presently the decision of the House of Lords in **Stack v Dowden** [2007] 2 A.C. 432. **Stack** was a case concerned with joint legal ownership and no express declaration of trust in relation to the beneficial ownership of the property in question. The observations of the Law Lords do, however, extend the importance of that case well beyond its facts. The principles distilled are as follows:

- I. First, the burden of proof in all cases rests with the party who is not the legal owner:

“...the starting point where there is sole legal ownership is sole beneficial ownership; the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is

*different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest*³

- II. The observations in relation to sole legal ownership have since been followed in ***Tackaberry v Hollis*** ([2007] EWHC 2633 (Ch)) where Evans-Lombe J held that where land is acquired in the sole name of an acquiring party, the burden of proof rests on a non-acquiring party to show that there was some agreement between the parties (whether express or inferred), that the beneficial ownership of the property was to be shared between them
- III. Where property is purchased in the sole name of one of the cohabitants and there is no express declaration of trust a Claimant must necessarily adduce convincing evidence to establish that they have some beneficial interest in the property; and such claims are for the most part under the aegis of a constructive trust.
- IV. In grounding that property is held on a constructive trust, a Claimant must establish certain key constituents and these are broadly threefold:
 - A common intention (or bargain);
 - Detrimental reliance; and
 - Un-conscionable denial of rights.
- V. The primary or threshold question is whether Lucille Nolan can establish that there was a common intention that she should have a beneficial interest in the property as was adumbrated in ***Oxley v Hiscock*** [2004] 3 WLR 715. Common intention may be explicit or alternatively, it is open to the court to infer the

³ ***Stack v Dowden*** [2007] 2 A.C. 432; at para. 56

existence of a common intention for some kind of shared beneficial ownership if such intention is plainly evidenced by the conduct of the parties.

VI. According to Nourse LJ in **Stokes v Anderson** [1991] 1 FLR 391 at 398A In order to establish an express bargain constructive trust, a Claimant must adduce clear evidence that she and the legal owner “orally” declared themselves in such a way as to make plain their common intention that the claimant should have a beneficial interest in the property. To do so she would need to establish that there was “*some agreement, arrangement or understanding reached between them that the property was to be shared beneficially*”⁴ albeit that it is not necessary that there should have been express agreement as to the size of the share⁵.

VII. To understand the state of the present law it is necessary to consider three House of Lords’ decisions. Namely, **Gissing v Gissing** ([1971] AC 886), **Lloyds Bank v Rosset** ([1991] 1 AC 107) and **Stack v Dowden**. In the much cited seminal passage from Lord Bridge’s judgment in *Rosset* the law was summarised in the following terms:

“In sharp contrast with this situation [i.e. express agreement constructive trusts] is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an agreement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner,

⁴ **Lloyds Bank v Rosset** [1991] AC 107 at 132E

⁵ **Oxley v Hiscock** [2004] 3 WLR 715

whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do."

[11] On the state of the present authorities, therefore, the position is arguably that in the absence of an express agreement, direct contributions to the acquisition of the property will readily justify the inference of a common intention constructive trust in favour of the non-legal owner. In the absence of either an express agreement or a direct contribution to the purchase price, the whole course of the parties' conduct in relation to the property must justify the inference of a constructive trust. The most obvious instance, in which such an inference may be drawn, is where contributions by one partner effectively free up the resources of the other partner in order to facilitate payment of the mortgage etc. Other factors to be considered are:

- The purpose for which the home was acquired; family dwelling or investment
- The nature of the parties' relationship; such as whether they had children for whom they both had responsibility to provide a home;
- How the purchase was financed, both initially and subsequently;
- How the parties arranged their finances, whether separately or together or a bit of both;
- How they discharged the outgoings on the property and their other household expenses.
- The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay.

[12] On the facts of this case the claim by Miss Williams against the estate of Clifford Nolan has not been established because the relevant burden in proving same has not been surmounted. What admissible evidence there is does not enable the court to abandon that search in favour of the result which the Court itself might consider to be fair. In any event; Mrs Lucille Nolan who would be expected to attempt this mammoth

task is long dead and gone and there is no evidence of her that speaks from the grave in this regard. Whatever narrative had passed between her and her sister, Miss Williams is of course inadmissible hearsay and so I totally disregard it.

ADVERSE POSSESSION ISSUE (deceased wife)

[13] By adverse possession, title to another persons' property can be acquired without compensation, by holding the property in a manner that conflicts with the true owner's rights for a specified period⁶, *squatter's rights* for example are a specific form of adverse possession. This Court is being asked to say that on the basis of Lucille Nolan's long, undisturbed possession and occupation of the disputed property she would have acquired same by adverse possession; and would be entitled to obtain a registered title in her own right. I am to further infer or by logical extension of this argument find that Mrs. Lucille Nolan as such could also rightfully devolve the property to a named beneficiary under her Last Will and Testament. In support of this argument counsel Mr. Brooks At paragraphs 3 – 7 of the written submissions on behalf of Miss Williams; urged the Court to take the following events into consideration:

- I. Lucille Nolan had after the death of her husband Clifford Nolan; had remained in exclusive possession of the disputed property for over 28 years until her death
- II. Lucille Nolan had maintained the property and paid mortgage instalments and save the property from repossession by the Ministry of Housing.
- III. She had invited her sister to come and live with her on the property and assist her to meet the mortgage payments, had given consent for the sister's name to be put on the title and subsequently she had devised and bequeath the disputed property to her sister Delrita Williams by her Last Will and Testament.
- IV. The property was accepted by the Tax Administration as belonging to Lucille Nolan as death duties were assessed and paid on the property; this government department must have been satisfied that the property belonged to Lucille Nolan.

⁶ Twelve (12) years by virtue of section 3 of the *Limitation of Actions Act*

[14] Having regard to all the above this Court is asked to make a declaration that Lucille Nolan at the time of her death was the sole legal and beneficial owner of the disputed property “and further that the Claimant Delrita Williams in the position of Executrix of the estate of Lucille Nolan is entitled to have the title to the said land placed in her name”⁷ .

[15] The above submission by Counsel Mr. Brooks must be examined against the background of certain known facts as presented by the Defendant in this claim. Mrs. Doreen Nolan has presented evidence of a Grant of Letters of Administration with Will annexed wherein she was named as Administratrix of the Estate of Clifford Obadiah Nolan. The Grant of Letters of Administration with Will annexed dated the 24th March 2011; is evidenced as “DN1” to the Affidavit of Doreen Nolan sworn on 29th June 2012. In this will the testator in relation to the disputed premises had devised and bequeath a life interest to his wife Lucille Nolan and the remaindermen were named as Doreen Nolan, Pauline Nolan, Paulette Nolan and Isolyn Nolan.

[16] Mr. Williams who is counsel on behalf of Mrs. Doreen Nolan very succinctly pose the issue in this way “whether a person with a life interest can claim adverse possession?” Mr Williams posited that the evidence of the life interest and remaindermen interest is clear and remains unchallenged by Miss Delrita Williams; that on the issue of the Letter of representation by the Supreme Court this is a declaration of the validity of the Will of Clifford Nolan and further there being no challenge made to same this is fatal to the claim made by Delrita Williams in this regard.

[17] Mr. Williams continued and submitted that an occupant with a life interest cannot claim adverse possession. Lucille Nolan’s occupation of the disputed property he said; was pursuant to a grant by the true owner Clifford Nolan and that it is trite law that such a person cannot claim adverse possession. Counsel referred to the text **Adverse**

⁷ Paragraph 8 of Mr. Brooks written submissions on behalf of Miss Williams

Possession by Jourdan and Radley-Gardner⁸; wherein the learned authors expounded that “possession generally not adverse if lawful”. Also cited in that text is the case of **Moses v Lovegrave**⁹, in Romer, LJ in making a distinction between adverse possession and permissive possession (possession as of right said:

*“...if one looks to the position of the occupier and finds that his right to occupation is derived from the owner in the form of permission or agreement or grant, it is not adverse, but, if it is not so derived, it is adverse, even if the owner is by legislation , prevented from bringing ejectment proceedings”*¹⁰

In the case of **Ramnarace v Lutchman**; Lord Millett, in delivering the decision of the Privy Council expressed the law in the following words:

*“Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner”*¹¹

In **Clarke v Swaby**; a Privy Council decision emanating from this jurisdiction, Lord Walker adumbrated that:

*“... under the law of Jamaica, as under the law of England, a person who is in occupation of land as a licensee cannot begin to obtain a title by adverse possession so long as his licence has not been revoked. Unless and until it is revoked, his occupation of the land is to be ascribed to his licence and not to an adverse claim”*¹²

Counsel further submits that even if the grantee is ignorant of the interests bestowed upon her, this does not in any way affect its operation under the law. The case of **Doe v**

⁸ 2nd edition at pages 92-94; published by Bloomsbury Professional.

⁹ [1952] 2 QB 533

¹⁰ Ibid at 544

¹¹ [2001] 1 WLR1651 at 1654

¹² [2007] 2 P & CR 2 at para.11

Brightwen¹³ is cited to buttress this contention. I hold that the above statements in the forgoing cases represent the law presently in Jamaica and that I am bound by them.

[18] Counsel, Mr. Williams continued his submissions and posited that a life interest estate comes to an end when the grantee dies and in this case when Lucille Nolan died on 13th April 1999, there is therefore no right of inheritance. He relies on a passage from **Commonwealth Caribbean Land Law**; by Samson Owusu, According to the learned author at page 105:

“The estate given for life has a reversion on it. The fee simple is not exhausted by the grant. The grantor can retain the reversion or give it to a third person by way of a remainder. This remainder or reversion vests in possession at the death of the cestui que vie, or the propositus, i.e., the person by whose life the duration of the estate is measured”.

[19] Only property that forms part of the deceased’s estate will be distributed under the terms of the will or under the scheme of intestate succession. Property that is subject to the terms of a will is said to “pass” by the will and generally will include all assets over which the deceased has complete dominion, control, and beneficial interest. Such assets might include:

- (a) The deceased’s tangible personal effects (for example, furniture, artwork, jewellery and automobiles);
- (b) Intangibles (for example, stocks, bonds, investment certificates, bank accounts, choses in action); and
- (c) real estate interests (for example, fee simple or leasehold).
- (d) Property subject to division under PROSA or some other matrimonial property regime may pass to the surviving spouse directly.
- (g) Property that is subject to an equitable claim, such as that under a constructive trust passes according to the finding of claim.

¹³ 10 East 897

[20] Property that does not “pass” by a will, or is not subject to the scheme of intestate distribution, is property that the deceased may own, but which is nevertheless; distributed by operation of law upon death. Such assets do not form part of the deceased’s estate upon death and are distributed in accordance with the applicable overriding legal rule. In this case it is my view and taking into account the law as cited in the foregoing paragraphs; that the Will of Clifford Nolan is valid and that Lucille Nolan’s interest in the disputed property was as a Life Tenant which interest was extinguished on her death and the heir or heirs of Lucille Nolan do not have a claim to succeed to the disputed property.

**B. CLAIM ON BEHALF OF MISS DELRITA WILLIAMS IN HER OWN RIGHT –
(adverse possession)**

[21] In the instant case Miss Williams is making a claim on her own behalf on the basis that the interest of Mrs Doreen Nolan in the disputed property has been extinguished by operation of law. The time period of the statutory limitation that must expire before title can be acquired in this jurisdiction by adverse possession is 12 years; at which time the paper owner is barred from making a claim for possession¹⁴. Section 3 of ***The Limitation Of Actions Act*** Provides that

“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”

[22] The statutory bar will not be operational until the adverse claimant actually possesses the property in question and until that time, the landowner is entitled to bring

¹⁴ ***The Limitation of Actions Act***, section 30

a lawsuit against the possessor to recover the property. Where an action for recovery, possession or trespass is initiated; the statutory limitation period will be then suspended and that amount of time for determination of the suit will not be counted towards the time necessary for the acquisition of title.

[23] The principles for the application of section 3 and 4 of the above Statute are well settled. They were formulated and set out by Slade J in *Powell v McFarlane* [1977] 38 P & CR 452, approved by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, and adopted by the Court of Appeal in *International Hotels (Jamaica) Limited Appellant V Proprietors Strata Plan No 461*; [2013] JMCA Civ. 45 delivered 4th December 2013. The question for the court in *JA Pye*; pursuant to paragraph 1 of Schedule 1 to the Act(UK) was whether, at any time between 31 August 1984 and 30 April 1998, the claimant had been dispossessed of the land. At first instance, it was held that the farmer had obtained title to the land under the provisions of the Act, but this decision was overturned by the Court of Appeal, which held that the farmer had lacked the intention of possessing the land to the exclusion of the claimant. The appeal by the farmer's personal representatives to the House of Lords succeeded, on the ground that, it having been established that the farmer had been in factual possession of the land for the relevant period. Of particular relevance to dispossession is the following passage in Lord Browne-Wilkinson's judgement where he said:

*"The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner"*¹⁵ (emphasis added at par).

[24] The statutory period does not run against any individual until the individual has a legal cause of action to oust the possessor; for example, an adverse possessor could acquire title against a life tenant but not against the remainderman, who has no right to possession until the prior life estate is terminated. In this case the period wherein Miss Delrita Williams could have commence the statutory period of adverse possession

¹⁵ At paragraph 36