IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF
THE EASTERN CARIBBEAN SUPREME COURT (SAINT LUCIA)

CCJ Civil Appeal No LCCV2024/001
LC Civil Appeal No SLUHCVAP2022/0003

BETWEEN

DAVID PHILLIP **APPELLANT**

AND

JOSEPH PHILLIP **RESPONDENT**

Before: **Mr Justice Anderson**
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Burgess
Mr Justice Jamadar

Date of Reasons: **26 November 2024**

Appearances

Mr Horace Renison Fraser for the Appellant

Mr George Charlemagne for the Respondent

Land — Prescription – Registered land — Effect of registration — Indefeasibility of title — Provisional title — Overriding interest — Title by prescription — Bad faith — Whether defence of prescription is incompatible with a claim of an overriding interest in land — Civil Code — Land Adjudication Act, Cap 5:01 — Land Registration Act, Cap 5:06.

Cases referred to:

Adrural v Geead (LC CA, 20 October 2002); *Artemiou v Procopiou* [1966] 1 QB 878; *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104; *A-G v Prince Ernest Augustus of*

Hanover [1957] AC 436; *Belize International Services Ltd v A-G of Belize* [2020] CCJ 9 (AJ) BZ, (2020) 100 WIR 109; *Castang v Joseph* (LC HC, Suit No 680 of 1993)*; Chitolie v Saint Lucia National Housing Corp* LC 2022 CA 003 (CARILAW), (13 January 2022); *Chitolie v Saint Lucia National Housing Corp* [2023] UKPC 43 (LC); *Colquhoun v Brooks* [1886-90] All ER Rep 1063; *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents Designs and Trade Marks* [1898] AC 571; *Fields v The State* [2023] CCJ 13 (AJ) BB, [2024] 2 LRC 176; *Francois v Joseph* (LC CA, 15 August 2011); *George v Guye* [2019] CCJ 19 (AJ) (DM), (2019) 97 WIR 180; *Holme v Guy* (1877) 5 Ch D 901; *Joseph v Francois* LC 2015 CA 8 (CARILAW), (21 August 2015); *Louisien v Jacob* [2009] UKPC 3 (LC); *Phillip v Phillip* (LC CA, 27 July 2023); *R v Loxdale* (1758) 1 Burr 445, 97 ER 394; *Scantlebury v R* (2005) 68 WIR 88 (BB CA); *Sersland v St Matthews University School of Medicine Ltd* [2022] CCJ 16 (AJ) BZ, (2022) 103 WIR 118; *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70; *Strand Securities Ltd v Caswell* [1965] Ch 958; *Walcott v Serieux* LC 1975 CA 3 (CARILAW), (20 October 1975).

Legislation referred to:

Dominica – Real Property Limitation Act, Chap 54:07, Title by Registration Act, Chap 56:50; **Saint Lucia** – Civil Code, Cap 4.01, Land Adjudication Act, Cap 5:06, Land Registration Act, Cap 5:01.

Other Sources referred to:

Anthony K D, 'The Identification and Classification of Mixed Systems of Law' in Kodilinye G and Menon P K (eds), *Commonwealth Caribbean Legal Studies* (Butterworth and Co Ltd 1992); Driedger E A, *Construction of Statutes* (2nd edn, Butterworths 1983).

REASONS FOR DECISION

Reasons:

BARROW J:

[1] By Order made on 13 August 2024 the Court dismissed this appeal. These Reasons for Decision, promised in that order, should mark the end of the repeated challenges regarding prescription and the first registration of title to land that have engaged the Eastern Caribbean Supreme Court ('ECSC') over the past almost 40 years.

The Legal Principle in Issue

[2] The dispute that was decided is familiar to the courts. It involved the operation of the Land Adjudication Act[1] ('LAA') and the Land Registration Act[2] ('LRA'), both legislated in 1984. Mr David Phillip, the appellant, contended that he had negatively prescribed under art 2103A of the Civil Code ('the Code') against the registered title holder, Mr Joseph Phillip. The appellant contended that by virtue of his presence on the land for over 30 years, he had prescribed and was protected against removal notwithstanding the 'absolute and indefeasible' title conferred on the respondent by the LRA. Article 2103A of the Code provides 'Title to immovable property … may be acquired by sole and undisturbed possession for 30 years …'

[3] The Court of Appeal upheld the submissions of the respondent, which had succeeded at trial, that in this case 30 years for prescribing under the Code could only have begun to run, by operation of the LRA, from 1986 when the land first became registered land, and when the respondent became the registered proprietor. Therefore, it held, the claim in the High Court by the respondent against the appellant for possession of the land, having been made on 2 March 2012, was made before 30 years had passed and thereby interrupted prescription.

[4] The proposition that time for prescription ran only from the date of first registration was the fundamental divide in this case. The appellant's case was that his predecessors had been in possession for 72 years prior to the date of first

[1] Land Adjudication Act, Cap 5:06 ('LAA') which commenced on 8 August 1984.
[2] Land Registration Act, Cap 5:01 ('LRA') which commenced on 15 July 1985.

registration so that when first registration came about, prescription had been completed and he succeeded to their prescriptive rights.

[5] In rejecting that contention, the Court of Appeal relied on its previous decisions to conclude[3] that the particular regime that was crafted by Saint Lucia in introducing title by registration, in contrast to the regime in other countries, operated to defeat the present claim of prescription. It was fundamental that the appellant's alleged predecessors had not applied to register their alleged prescriptive right to the land, as the LAA required to be done by a person claiming any interest in land within an area that was being brought under the new system.[4] The combined effect of the LAA and LRA served to defeat all claims to interests in land which were not advanced and brought onto the register when title by registration was being introduced. These claims were wiped out; *Joseph v Francois*,[5] *Chitolie v Saint Lucia National Housing Corp*[6]. As Ward JA stated, '… upon [first] registration the clock is reset and time for the purpose of prescription commences from some time after the date of interruption …'.[7]

[6] This was the principle upon which the Court of Appeal decided the appellant could not count the possession of his predecessors. As indicated, the appellant had been on the land for only 26 years when the claim to remove him was filed, so he could not make the 30 years for prescription. The instant decision, upholding the Court of Appeal, now lays to rest Mr Fraser's bold submission that the line of judicial decisions on the failure to register was wrong. This Court now also clarifies that its decision in *George v Guye,*[8] that there was no extinguishment of prescription that was not brought on to the Register, does not conflict with the decision of the Privy Council in *Chitolie*[9], which upheld the principle of extinguishment of such prescription.

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[3] *Phillip v Phillip* (LC CA, 27 July 2023) at [41] – [43].
[4] LAA (n 1) s 6.
[5] LC 2015 CA 8 (CARILAW), (21 August 2015).
[6] LC 2022 CA 003 (CARILAW), (13 January 2022).
[7] *Phillip* (n 3) at [41].
[8] [2019] CCJ 19 (AJ) (DM), (2019) 97 WIR 180.
[9] [2023] UKPC 43 (LC).

The Resolution Provided by *Chitolie*

[7] When the Court of Appeal gave its decision in this matter on 27 July 2023, the final appeal to the Privy Council in *Chitolie*[10] had not yet been heard. In that case, the trespassers claimed title by prescription which gave rise to an overriding interest as persons in occupation of the land, pursuant to s 28(f) of the LRA. This is substantially the same claim made by the appellant in the instant case. And the reason for decision of the Court of Appeal in *Chitolie* was substantially the same as its decision in the instant case. In the instant case the court cited[11] the ratio of its previous decision in *Chitolie*.

[8] The essence of the contribution that the Privy Council made in its upholding of the Court of Appeal in *Chitolie* was its unstinting vindication of the previous decisions of the Eastern Caribbean Supreme Court ('ECSC'). That approach makes it fitting for this Court to rest its determination in the instant case on the decision of the Privy Council in *Chitolie*. Therefore, this Court hardly needs to do more than follow in the footsteps of the Privy Council which followed the jurisprudence of the ECSC.

[9] A substantial part of the judgment of the Privy Council in *Chitolie* consisted of the reproduction of material sections of the LAA and the LRA. These provisions served as the foundation for the Privy Council's determination that the judgment of the Court of Appeal in *Chitolie* and earlier cases was based on a 'legislative scheme [that was] clear, coherent and comprehensive and expressly covered rights in the course or process of being acquired by prescription'.[12] Before it examined the legislation to show how it led to dismissal of the appeal, the Privy Council summarised the decisions of the High Court and the Court of Appeal and quoted a passage from the appellate decision which deserves repetition because it

[10] ibid.
[11] *Phillip* (n 3) at [41].
[12] *Chitolie* (n 9) at [20].

encapsulates the essence of the legal principle that governs this matter. Farara JA stated:[13]

> … in my judgment, the law is clear, the first registration of [the disputed land] in the name of NDC as proprietor extinguished any claim which the appellants or any of them had acquired or may have been in the process of acquiring based upon the actual occupation of the said land or receipt of the income from it. Any claim which the appellants make based upon occupation of and receipt of income from the disputed land Parcel 227 prior to 1987, [was] and has been extinguished by the conjoint operation and legislative effect of the LAA and LRA. Accordingly, the learned judge was correct to so conclude, and to also conclude that the appellants' claim would have to be reckoned from 1987, whether such claim is based upon long possession, adverse possession or prescription.

Upholding ECSC Jurisprudence

[10] That passage was the departure point for the Privy Council's review, headed 'The Board's reasons for upholding the lower courts.' It will be seen that the Privy Council began its review by stating its conclusion: that the decisions of the lower courts were correct. That review went straight to a discussion of ss 6(1)(c) and 8(1) of the LAA which provided that a person claiming an interest in land was *required* to make a claim to have that interest registered. It was clear, the court said, that it was a mandatory requirement to make a claim in order to protect an interest in land.[14] Section 2 of the LAA defined 'an interest in land' as including 'any right or other interest in or over land which is capable of being recorded under the provisions of the Act.'

[11] The Privy Council indicated it was the clear understanding of counsel in that case that the requirement to register was comprehensive and, therefore, applied to a right to land that was held by title deed. It stated:[15]

> [23] It is not in dispute that a person who had an accrued interest in land by documentary title (ie title by deed) or because that person had been in possession of land for 30 years (ie title by prescription), was required to

[13] *Chitolie* (n 6) at [19].
[14] *Chitolie* (n 9) at [23].
[15] ibid.

> make a claim. Subject to the discretionary safety net … [to record the title of someone who had failed to claim], if they made no such claim their title would be extinguished if someone else made a claim to the land and was registered as having title.

This is a point of great importance that is reprised in these reasons.

[12] The Privy Council also accepted that registered title is subject to any effect s 28 of the LRA might have, which was the issue on the appeal before it. Section 28 provides that all registered land shall be subject to overriding interests, without their being noted on the register, including '… (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription; …' But, the Privy Council said, s 28 did not remove the obligation, pursuant to ss 6 and 8 of the LAA, on a person claiming to have an interest in land to make such a claim during the titling project.[16] This was regarded as unsurprising because the purpose of the introduction of the new system of land holding (called the Torrens system) in Saint Lucia was to allow title to land to be established by entries on the face of the register. That purpose would be undermined if owners could sit by during the elaborate titling process and later seek to assert their title on the basis of materials not brought onto the register.

[13] The Privy Council gave the example, at [25], of a person who, at the time the new system was taking effect, had been in continuous possession of land but for less than 30 years. Such a person was 'in course of acquiring a title under … any law relating to prescription' under s 16(1)(a)(ii) of the LAA. The Privy Council agreed with the submission of counsel that applying s 16 of the LAA, the recording officer could record that person as having a provisional title to the property and record the date on which the possession of that person was considered to have begun. The legislation provided that registration of provisional title on the basis of such an interest had significant effect: it qualified as first registration under s 11 of the LRA

[16] The 'titling project' was the name given to the project and process for which the LAA provided for bringing all land in Saint Lucia on to the Register and establish the operation of the system of title by registration, as distinct from the registration of title. In the former, the entry upon the register of a person as the proprietor of land gave him absolute title to the land and amounted to a state guarantee of their ownership. In the latter the registration of title was public notice that a person was the proprietor of the land but did not give him title and did not guarantee title.

and had the further effect specified in ss 24 and 29 of that Act of being, subject to adverse rights, the same as absolute title. Since an interest of that kind could be recorded in that way, it followed that such a person had an 'interest in land' under the definition in s 2 of the LAA ('any right or other interest in or over land which is capable of being recorded under the provisions of the Act'). That person, therefore, was required to make a claim under ss 6 and 8 of the LAA. Again, this was thought to be unsurprising given the purpose of the legislation.

[14] The Privy Council discussed the hypothetical situation of a person who was in the course of prescribing, having been on the land for 10 years, when first registration was introduced. That person had to make a claim to be registered and might be recorded with provisional title. He would be recoded as having already been on the land for 10 years and time for him to prescribe would continue to run with 10 years credit. Time would not start to run afresh on first registration. His prescription would not be wiped out, because his interest in the land would have been registered. So that after a further 20 years he could be recorded with absolute and no longer provisional title. On the other hand, if that person failed to claim to be registered and someone else was registered, the 10-year possession would not count. It would be wiped out.[17]

[15] That was the upshot of the Privy Council's discussion in support of the ECSC jurisprudence. Prescriptive rights being acquired or already acquired could be brought on to the register. If so brought, they had full effect. But, if not brought on to the register at the time of first registration, they were wiped out. This was the fate also of a person with full, formal title by deed at the time of first registration who did not register their title.[18]

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[17] *Chitolie* (n 9) at [26].
[18] See [11] above, and *Chitolie* (n 9) at [38].

The Grounds of Appeal

[16] With that recounting of the legal principle governing the registering of title, including title by prescription, it is straightforward to address the five grounds of appeal.

Opportunity to be Heard

[17] The ground that the Court of Appeal decided the case against the appellant by relying on the decision in *Joseph*[19] without giving the appellant the opportunity to address it was barren. The court's reference to that decision was mainly by way of discussing the well canvassed jurisprudence on this issue, which that case simply followed. Further, counsel complaining in this case of the lack of opportunity was also counsel for the appellant in that case so it is not as if he were unaware of the decision. But, beyond that, both the Privy Council, in *Chitolie,* and now the Caribbean Court of Justice ('CCJ'), in the instant appeal, have approved the decision in *Joseph* so whatever counsel thinks he could have said about that decision is moot.

Random Findings of Fact

[18] The ground of appeal that the court embarked on findings of fact on randomly selected parts of the evidence points to a multiplicity of factual issues such as the alleged finding of abandonment of a defence, duration of occupation, lineage, and finding of bad faith. This compound ground is rendered moot by the decision that failure by the alleged predecessors of the appellant to register the alleged prescription that occurred before first registration resulted in that prescription being extinguished. The issue of bad faith is specifically dealt with below.

Overriding Interest

[19] The ground of appeal claiming the Court of Appeal failed to appreciate the compatibility of a claim to an overriding interest with the defence of prescription

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[19] *Joseph* (n 5).

did not withstand examination. The claim to an overriding interest that the appellant argued in the court below was a claim of prescription. This was expressly recognised at [64], where Ward JA stated, 'The right being asserted by the appellant in this case is occupation of the land for over 30 years or the right of prescription.' The judge went on to recognise an overriding interest as consisting of having some right to the land coupled with actual occupation. In this case, the judge repeated, the appellant did not have the right of prescription or any prescriptive right over the land because he or his predecessors had not registered the alleged prescription, and it was extinguished. The appellant had no right that he could couple with his occupation.

[20] It needs to be repeated that the court accepted that prescription may amount to an overriding interest, because the appellant seems to have understood the court as deciding the case on the basis that 'a defence of prescription is incompatible with a claim of an overriding interest in land'. This was what the appellant asserted in his grounds of appeal and said was 'deeply flawed and clashes with established and binding authorities on the issue.' The appellant may have been led to that understanding by the observation of the Court of Appeal at [67] that 'an assertion of an overriding interest does not sit easily with the defence of prescription.' That observation was derived from the earlier Court of Appeal decision in *Joseph*[20] where, as Ward JA stated in the instant appeal, the court spoke to '… the incompatibility of asserting an overriding interest at the same time a defence of prescription was being run.' In that case, as the judge observed, the Chief Justice explained[21] the conceptual difficulty this way: 'Furthermore, it would involve an acknowledgement of the rightful entitlement of Jacob Fanus as registered proprietor and run completely counter to the defence of prescription raised with the object of defeating in its entirety Jacob Fanus' claim.'

[20] ibid.
[21] ibid at [15].

[21] The observation of the Chief Justice should not be taken out of context but should be appreciated as intended simply to dispose of a pleading point. Counsel for the appellant in that case had failed to plead the issue of an overriding interest but sought to argue it on appeal. In refusing to consider the issue, the Chief Justice had in mind and mentioned s 28(g) of the LRA which 'protects the rights enjoyed by persons such as lessees and licensees.' Pereira CJ then observed that the appellants had rejected any notion of being in occupation of the disputed land as tenants. Significantly, the claim against them had commenced on the basis that they were tenants at sufferance, and they had denied the validity of the notice to quit (although the defence later changed). The Chief Justice then went on to make the statement quoted above intending to say, as it seems, that a claim of an overriding interest *by way of being tenants* in occupation of the land would amount to acknowledging the proprietorship of Mr Fanus. As a matter of logic, for there to be a tenancy there had to be a landowner. What the Chief Justice was observing, therefore, was that it would be incompatible with the appellants' claim that they, themselves, were proprietors of the land by prescription for them to claim an overriding interest in the land as lessees or licensees.[22] It is in that sense only that the observation was made that a claim to an overriding interest (as a tenant) was incompatible with a claim or defence of prescription.

Positive and Negative Prescription

[22] In arguing the ground of appeal relating to overriding interest, the appellant argued that the court failed to distinguish between positive and negative prescription. There is no merit to that argument because the court specifically decided that either type of prescription was extinguished for failure to claim the right to prescription and have it brought on to the register at the time of first registration.[23] It does not rescue from extinguishment the prescription that was not registered at the time of first registration to urge that it was an overriding interest and overriding interests need

[22] The reference by Pereira CJ to s 28(g) of the LRA is instructive. That provision protects the rights of a person in actual occupation of land, such as a licensee or lessee, as the court stated. In contrast, s 28(f) protects the rights of a person acquired or being acquired by limitation of actions or by prescription.
[23] *Phillip* (n 3) at [41] – [43].

not be noted on the register, as found by Lord Denning in *Strand Securities Ltd v Caswell*.[24] That proposition is undoubtedly correct: it is in the nature of an overriding interest that it overrides the absolute title.

[23] But it makes every difference to that proposition that, in Saint Lucia, the foundation of the introduction of the Torrens system of title by registration was that all rights had to be registered when first registration was introduced, as has already been stated; see [15], above. Therefore, the exception to the indefeasibility of title that s 28(f) of the LRA provides is itself subject to the exception – now spent – that if that overriding interest was not brought on to the register (at the time of first registration) it was lost.[25] This is the whole point of the present decision, which is no more than confirmation of the established jurisprudence. There is no conflict with the proposition that an overriding interest that came into being after the now long past first registration period (or that was registered at the time) does, indeed, operate as stated in *Strand Securities* and numerous decisions of the ECSC.

The Decision in *George v Guye*

[24] The appellant relied on the decision of this Court in *George v Guye*[26] that adverse possession defeated the indefeasible title of the holder of a certificate of title. He urged that it conflicted with the decision of the Privy Council in *Chitolie* but this view is misconceived. It was fundamental to that appeal from the Commonwealth of Dominica that it was based on the discrete provisions of the relevant legislation in that country, which materially differs from the legislative regime in Saint Lucia. Under s 2 of the Real Property Limitation Act[27] ('the RPLA') no person shall bring an action to recover land after 12 years from the time when the right to bring the action first accrued.[28] Further, after a squatter had been in possession of the land

[24] [1965] Ch 958 at 979.
[25] The exception is now spent because it operated and could have done so only at the time of first registration, back in 1986. The extinguishment of interests in or rights over land not brought on to the register at the time of first registration, when the register was being created, can no longer occur. The creation of the register is complete. All or virtually all land is now brought on to the register.
[26] *George* (n 8).
[27] Chap 54:07 (DM).
[28] *George* (n 8) at [6].

for 12 years, the right and title to the land are extinguished and the squatter obtained a title that superseded that of the registered proprietor.[29]

[25] About 10 years after the passage of the RPLA there was enacted in Dominica the Title by Registration Act[30] ('the TRA') designed to establish the Torrens system of registered land ownership. As the Court stated[31], nothing in the TRA stated it intended to amend the RPLA. The TRA provided for the indefeasibility of title of a registered proprietor, but it also provided for two exceptions. The material one in that case was where the title of the registered proprietor has been superseded by a title acquired under the RPLA. The Court decided that case on the basis that the squatter who had been on the land for in excess of the specified 12 years had acquired ownership of the land and did not need to proceed to obtain a certificate of title, which the TRA provided he could do. The dissenting judgments took the view that until the squatter obtained such a certificate of title, the indefeasibility of the title of the registered proprietor prevailed. On either view, that decision does not assist the squatter in the instant case, where the claim of prescription is based on the (erroneous) premise that it was not extinguished by first registration. This Court's decision in *Guye* did not consider legislation similar to the Saint Lucia legislation that required a claim to any interest over land – including prescriptive rights – to be brought on to the register or be extinguished.

Civil Law Principles

[26] Contrary to the submissions for the appellant, there was no conflict between the French legal principles of negative prescription, interruption of prescription and judicial demand and the law introduced by the LAA and LRA. In *Joseph*[32], as counsel noted in his written submissions, Pereira CJ observed that there was no conflict between the Code and the property legislation. At [27], she rejected reliance on arts 1978, 2084 and 2085 of the Code, which provided for the effects of

[29] ibid.
[30] Chap 56:50 (DM).
[31] *George* (n 8) at [9].
[32] *Joseph* (n 5) at [27].

prescription, as prevailing over the requirements of the LAA to register a claim to a right or an interest in land. She then observed that while the LAA may have become spent, '… the LRA is very much a part of Saint Lucia's legal landscape and it co-exists alongside the Civil Code.'

[27] Notwithstanding that, counsel treated the divergence between the two sources of law on the matter of title to land as a conflict and one that must be resolved by preferring the provisions of the Code over the LRA.[33] The appellant maintained that the general law must be interpreted and applied conformably with the many provisions of the Code he cited. Counsel cited a plethora of legislative and judicial material relating to the interruption of prescription and the difference between positive and negative prescription, but it is sufficient to address the principles that were invoked without rehearsing the material cited.

Interruption of Prescription

[28] It was a familiar thesis of Mr Fraser's that the process of first registration of title did not interrupt prescription because, under the Code, such interruption could only have been done by judicial demand and there was none under the LAA. This submission flies in the face of the judicial nature of the process stated in the short title to that Act which was 'An Act to provide for the adjudication of rights and interests in land and for connected purposes.' It also is directly contrary to the decision in *Joseph*, which the Chief Justice upheld on appeal. At first instance,[34] the trial judge held that the process under the LAA was a judicial process and cited as authority an earlier decision of the High Court in *Castang v Joseph*.[35] It may be forensic serendipity that counsel in that earlier case was Mr Horace Fraser, and the judge was Barrow J. In *Joseph* at [23] – [24], the Court of Appeal firmly dismissed the argument of counsel that first registration was not a judicial interruption, citing in support the Privy Council decision in *Louisien v Jacob*.[36] The present decision

[33] At the same time, the appellant submitted that 'the provisions of the LRA and the CC [the Code] sit comfortably with each other regarding land' and cited *Adrural v Geead* (LC CA, 20 October 2002).
[34] *Francois v Joseph* (LC CA, 15 August 2011).
[35] (LC HC, Suit No 680 of 1993)
[36] [2009] UKPC 3 (LC).

surely should mark the surcease of counsel's campaign to deny the process under the LAA of its character as a judicial interruption.

[29] It may be that what the appellant was really arguing was that when prescription has occurred it cannot be extinguished. This may be inferred as the reason for citing *Walcott v Serieux*[37] which concerned a motor vehicle accident. In that case the claim had been made in the name of the wrong defendant and an amendment was sought to claim against the right person. The Court of Appeal considered art 2129 which provides '… the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired…' The court decided that unlike common law limitation, where the defence had to be pleaded and was a matter of procedure, under the Code prescription was a substantive right. When a cause of action has been prescribed a judge has no power to extend the time for making a claim (and against a fresh defendant) because the right has been extinguished. There is no need to plead the defence of limitation.

[30] That case would seem to support counsel's stance that by the time of first registration the appellant's predecessors had already prescribed and once it had occurred it could not be reversed – the right of the claimant had been extinguished. There is no denying that effect of prescription. Where the reliance on the effect of prescription falls short is in its refusal to accept the effect of the language and scheme of the LAA and LRA. To repeat[38], title or ownership by prescription was treated by the law in the same way as title by deed: if it was not registered it was defeated by the registration of someone else as the title holder.

Negative and Positive Prescription

[31] It is unnecessary to discuss the argument that negative and positive prescription were wrongly treated in the same way by the courts and the slew of material counsel cited in demonstrating the differences between the two. Counsel addressed proof of

[37] LC 1975 CA 3 (CARILAW), (20 October 1975).
[38] See [11] above.

occupation, satisfaction of preconditions, proof of title and bad faith and ended with the argument that it was a failure by the Privy Council to discuss negative prescription in *Chitolie*. With respect, this is all immaterial because negative prescription no less than positive prescription must be brought on to the register, as the Court of Appeal decided at [42] – [43].

Bad Faith

[32] The appellant's final ground of appeal concerned the order consequential upon the respondent's success, which was that the appellant must deliver up possession and vacate the land and that the respondent was at liberty to destroy and discard any and all buildings on the land. The appellant submitted that the trial judge never dealt with the several issues that she was required to consider before making such an order which can only be made if the occupier was guilty of bad faith. That failure is now immaterial because the Court of Appeal recognised the judge had not addressed her mind to the issue specifically, but the court decided that the finding of bad faith would have been ineluctable had she done so.[39]

[33] Before this Court, counsel failed to provide any basis for averring the Court of Appeal was wrong. The paragraphs in the witness statement of the appellant and the witness summary of Phillip Jules on which the appellant relied to show error, speak only to the facts of the occupation of the appellant and his predecessors. They do nothing to advance the appellant's argument that it was wrong for the court to conclude that a finding of bad faith was ineluctable. The passages relied on do not weigh against a finding of bad faith.

[34] The conclusion of bad faith by the Court of Appeal was strengthened in the concurring judgment of Michel JA, who acknowledged the failure of the trial judge to address arts 372 to 374 of the Code and art 2066, which latter deals with the presumption of good faith and the proof of bad faith. He stated:

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[39] *Phillip* (n 3) at [83].

> [95] … But I believe that if she had addressed them, the trial judge would inevitably have come to the conclusion that the appellant was a possessor in bad faith and that the respondent could not reasonably be expected to compensate, indeed reward, him for his unlawful and persistent trespass on the property of the respondent, despite all of the requests and demands made to him, the lawyers' letters sent to him, and the notice to quit given to him to vacate the land.

[35] The concurring judgment supported the conclusion about bad faith by stating:

> [96] The respondent's pleadings and evidence in the court below reveal that the appellant broke down a wooden dwelling house which he found on the land and constructed both a wooden house, which he rented out and a wooden and concrete structure from which he operated a restaurant and bar, in the face of the requests, the demands, the letters and the notice for him to vacate the respondent's land. This must, at the very least, constitute bad faith on the part of the appellant or, worse, total contempt on the part of a trespasser towards the registered owner of the land, for which he must find no comfort under the provisions of the Code designed to give protection to a possessor in good faith acting in ignorance of any illegality or impropriety in his actions or of the unimpeachable title of his adversary.

Conclusion

[36] The dismissal of this appeal lays to rest the challenges to the interruption of prescription that came about with the first registration of title in Saint Lucia. The operation of the then new LAA and RLA required that all land in Saint Lucia should be entered on the register of lands and title to land should be conferred by such registration. It was the function of the recording officer to enter each parcel of land on the register with the name of the proprietor, whether a person or the State. The requirement was mandatory that a person claiming an interest or right should apply to register their parcel and their name as proprietor.

[37] The many cases from Saint Lucia arising from the effects of failure to register a right or claim to land have now ended because, it is deduced, they must have all been determined by the courts. There can be no new cases because the registration process largely ended in 1987. The present decision, therefore, marks the end of an

era. Happily, as recounted, the jurisprudence that arose from the challenges of that era has long been settled.

BURGESS J:

[38] The basic rules of prescription in Saint Lucia are laid down in arts 2047 - 2132 of the Saint Lucia Civil Code. Two interlinked statutes, the LAA, which came into force on 8 August 1984, and the LRA, which came into force on 15 July 1985, were passed into law in Saint Lucia with the express purpose of introducing into that country a new system of title to land by registration. These Acts formed critical planks in the project which laid the foundation for first registration in the new system known as the Land Registration Titling Project ('LRTP').

[39] This appeal raises as its central issue the vexed question of the legal effect of rights to land that was in the course of being acquired by prescription under the Civil Code at the time the new land registration system was introduced into Saint Lucia in 1984. It is jurisprudentially important in that it is the first appeal to this Court which raises a question of the interplay between the Civil Code and subsequent ordinary legislation.

The Statutory Framework

[40] It is apparent from the foregoing that the Civil Code, the LAA and the LRA constitute essential background to the appeal before us. In this regard, it is agreed on all sides that the key provisions for purposes of this appeal are of the Civil Code are arts 2103, 2103A and 2057; of the LAA ss 6, 8 and 16 and of the LRA ss 9, 23, 24, 28 and 29. Accordingly, I consider it advantageous to begin by setting out these provisions in extenso.

Civil Code of Saint Lucia

[41] The Civil Code provides for rights and interests to land by prescription after 30 years by virtue of art 2103 and provides for the Court to declare those rights per art 2103A:

2103. All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith.

2103A. Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for 30 years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court.

2057. For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor.

The Land Adjudication Act 1984

[42] The LAA provided for a systematic survey of parcels and the adjudication of titles, a precondition to registration of titles and their guarantee by the State. To this end, the Minister having responsibility for agriculture was given power under s 4 of the LAA to make orders designating adjudication areas, and to appoint an adjudication officer for each adjudication area. The adjudication officer was to appoint demarcation officers, recording officers and survey officers to act under his direction. Demarcation officers and survey officers were given statutory rights of entry and of requiring information as to the boundaries of land. The Minister was also to appoint a Land Adjudication Tribunal with a legally qualified chairperson to hear appeals from the adjudication officer.

[43] Very importantly, s 6(1) of the LAA mandates as follows:

6. Notice by Adjudications Officer

(1) The adjudication officer shall prepare a separate notice in respect of each adjudication section and in each such notice shall —

(a) specify as nearly as possible the situation and limits of the adjudication section;

(b) declare that all interests in land will be ascertained and recorded in accordance with the provisions of this Act;

(c) require any person who claims any interest in land within the adjudication section to make a claim either in writing or in person or by his or her agent duly authorised according to law, within the period and at the place and in the manner specified in the notice; and

(d) require all claimants to land within the adjudication section to mark or indicate the boundaries of the land claimed in such manner and before such date as shall be required by the demarcation officer.

[44] Equally important, s 8(1) expressly requires as follows:

8. Claims and Attendances

(1) Every person including the Crown claiming any land or interest in land within an adjudication section shall make his or her claim in the manner and within the period fixed by the notice given under section 6.

[45] The LAA then outlines a clear process with how the adjudication officer and recording officer may decide on the claimants' interests in the land. In this regard, s16(1)(d) is particularly to be noted. It provides:

16. Principles of adjudication etc

(1) In preparing the adjudication record —

... (d) if the recording officer is satisfied that a person is in possession of or has a right to a parcel but is not satisfied that such person is entitled to be recorded under paragraph (a) of this subsection as the owner of the parcel with absolute title, the recording officer may nevertheless record that person as the owner of the parcel and declare his or her title to be provisional ...

The Land Registration Act 1984

[46] The LRA replaced the laws governing the deed registration system. Under the old legislation, reasonable assurance that a proposed seller had good title to convey

could only be obtained through a laborious and exceedingly costly title search by a legal practitioner. Under the new registration system, the state examines each title to be registered and, having determined its validity, registers the land and guarantees the title.

[47] As noted above, ss 9(1), 23, 24, and 29 are particularly relevant to the interpretation of s 28(f). These read as follows:

> **9. The Land Register and the Land Adjudication Act**
>
> (1) The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Act and a register in respect of each lease required by this Act to be registered.
> ...
>
> **23. Effect of registration with absolute title**
>
> Subject to the provisions of sections 27 and 28 … the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject—
> ...
>
> (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register.
> ...
>
> **24. Effect of registration with provisional title**
>
> Subject to the provisions of section 27, the registration of any person as the proprietor with a provisional title of a parcel shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of that proprietor arising before such date or under such instrument or in such other manner as is specified in the register of that parcel; but save as aforesaid, such registration shall have the same effect as to registration of a person with absolute title.
> ...

28. Overriding interests

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—

…

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription

...

29. Conversion of provisional into absolute title

(1) Any proprietor registered with a provisional title or any interested person may at any time apply to the Registrar to be registered or to have the proprietor registered, as the case may be, with an absolute title.

(2) If the applicant satisfies the Registrar that the qualification to which the provisional title is subject has ceased to be of effect, the Registrar shall make an order for the registration of the proprietor with absolute title after such advertisement as the Registrar may think fit.

(3) On the making of any such order or on the application of any interested party after the expiration of 12 years from the date of first registration with a provisional title, the Registrar shall substitute in the register the words "absolute title" for the words "provisional title" and the title of the proprietor shall thereupon become absolute.

Factual and Procedural Background

[48] The dispute in this case concerned land registered as Block 1256C Parcel 67 in the land register and located at the corner of Marie Therese and Church Streets in Gros Islet, Saint Lucia. Celina Phillip was the registered owner of the disputed land under the old registration system. On 20 October 1986 the land was registered under the LRA in the name of the 'Heirs of Celina Phillip'. Subsequently, on 28 August 1989, Mr Willie Volney was registered as the proprietor of the property as the executor of the estate of Celina Phillip and on 2 February 2007, Joseph Phillip, the respondent, was recorded as the proprietor as the administrator of the Estate of Celina Phillip.

[49] The respondent brought a claim in the High Court to recover possession of the disputed land and to have the buildings constructed on it by the appellant, David Phillip, removed. The respondent's case was that Celina Phillip was the registered owner of the property and that, during her lifetime she had permitted Mr Harold Longville, to reside on the property and that during his lifetime he had acknowledged the title of Ms Phillip and had neither challenged nor contested it.

[50] In his defence and counterclaim, the appellant asserted that he had acquired prescriptive title to the property by virtue of his father, Mr Longville, and grandmother's long, open, and continuous occupation of the property for 72 years prior to the implementation of the LRTP and for a further 20 years after its implementation. On this basis, he contended that art 2057 of the Civil Code availed him and entitled him to continued possession. The appellant claimed that, accordingly, he had an overriding interest in the disputed property under s 28(g) of the LRA that prevented the respondent from obtaining an order for him to be removed from the property. The essence of the appellant's case, therefore, was that he acquired good title to the disputed property by prescription pursuant to art 2103A of the Civil Code.

[51] The trial judge struck out the defence, awarded judgment to the respondent and ordered the appellant to deliver up possession and vacate the property. The appellant appealed the judge's ruling to the ECSC Court of Appeal (Saint Lucia) ('the Court of Appeal'). That Court (Michel, Price-Findley and Ward JJA), in a unanimous decision delivered by Ward JA, dismissed the appeal. The Court of Appeal dealt with several issues which, given the central issue raised by the appellant in his grounds of appeal before this Court, are not relevant. The Court of Appeal's reasoning on the appellant's main argument to us is to be found at [30] to [68] of its judgment.

[52] The Court of Appeal held, applying its earlier decision in *Joseph*[40], that the conjoint effect of the LAA and the LRA in Saint Lucia is that first registration of land

[40] *Joseph* (n 5).

interrupts any prescriptive rights which have or were being acquired prior to first registration. Accordingly, a period of occupation prior to first registration is not to be counted or reckoned when making a defence or claim based on prescription.

[53] The Court of Appeal held further that to rely on the defence of prescription, the appellant was required to not only plead it, but also to lead evidence to satisfy art 2057 of the Civil Code. On the facts, for the purposes of prescription operating as a defence to the respondent's claim, the relevant period was from after the date the respondent became the registered proprietor in 1986. Consequently, the appellant's possession from first registration of the title until 2 March 2012 when the claim was filed, did not satisfy the 30 year prescription period. This was an indispensable requirement if negative prescription was to succeed as a bar to the respondent's claim.

[54] The Court of Appeal emphasised that the same elements required to prove positive prescription apply equally to setting up negative prescription as a bar. This is so because art 2057 speaks generally to the elements required for the establishment of prescription whether positive or negative and for any person's title to be defeated by prescription, art 2057 must be satisfied. So that, whether or not the appellant's defence and counterclaim was treated as a claim of negative prescription, it would still fail since the evidence adduced by the appellant was incapable of establishing that the appellant had prescribed against the respondent.

[55] Finally, the Court of Appeal held that s 28(g) of the LRA provides an exception to s 23 of the same Act insofar as it allows for interests and rights not noted in the register to impeach the absolute title of anyone claiming ownership in the register. One such overriding interest is where the person is in actual occupation of the property at the time. To satisfy this requirement, however, the appellant must show that there is a right coupled with actual occupation. The appellant's claimed right was that of prescription, and, that the Court having concluded that at its highest, the time of occupation could only be reckoned from the date the title was registered on

26 October 1986, prescription was not made out. There was, therefore, no overriding interest under s 28(g) to be protected and that, furthermore, a claim of overriding interest to occupy the property runs counter to the defence of prescription.

Issue in the Appeal to this Court

[56] It will be noticed that neither in his defence and counterclaim in the High Court nor in his grounds of appeal before the Court of Appeal did the appellant raise any claim that he had an overriding interest in the disputed property pursuant to s 28(f) of the LRA. The appellant's claim to an overriding interest was pursuant to s 28(h) of the LRA. Before this Court, however, the appellant has predicated his claim to an overriding interest exclusively on s 28(f) of the LRA. In this regard, the appellant's argument is that relevant possession beginning both before and after first registration counts as an overriding interest under s 28(f) of the LRA.

[57] Two authorities appear to be determinative of the issue now raised in the appeal before us against the appellant's contention. These are the very recent Privy Council decision in *Chitolie*[41] and the Court of Appeal's decision in *Joseph*[42]. These cases lay down that rights in the process of being acquired by prescription after but not before first registration are overriding interests. Counsel for the appellant has argued that the Privy Council's decision in *Chitolie* is wrong as is the Court of Appeal's decision in *Joseph*. According to counsel these authorities misconstrued s 28(f) of the LRA, conflict with this Court's decision in *George*[43] do not take into sufficient account the provisions of the Civil Code and are not consistent with local precedents. Considering these deficiencies, Counsel has invited this Court to refuse to follow the Privy Council in *Chitolie* and to overrule the Court of Appeal in *Joseph*.

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[41] *Chitolie* (n 9).
[42] *Joseph* (n 5).
[43] *George* (n 8).

[58] Accordingly, the fundamental issue on which the appellant's appeal before us turns is whether this Court should refuse to follow the Privy Council in *Chitolie* and to overrule the Court of Appeal in *Joseph*.

Analysis and Conclusions

[59] I turn first to examining the two authorities of *Chitolie* and *Joseph*.

(i) ***Chitolie v Saint Lucia National Housing Corp***

[60] On 5 December 2023, the Privy Council, which at the time of the hearing was the final court of appeal in Saint Lucia, in the case of *Chitolie*, an appeal from the ECSC Court of Appeal (Saint Lucia) answered the central question with which this appeal to us is concerned. In this case, disputed land was first registered in the name of the National Development Corporation on 23 June 1987. The National Development Corporation remained the registered owner to the disputed land during LRTP. In July 2008, title to the disputed land was transferred to the Saint Lucia National Housing Corporation ('NHC') and registered by the Land Registry. Mr Francis Chitolie and Mr Vance Chitolie, the appellants, made no claim to the disputed land.

[61] NHC initiated proceedings on grounds that the disputed land had been transferred to them and that the Chitolies had been trespassers. The Chitolies alleged to have acquired the relevant land based on possession for over 30 years and had an overriding interest under s 28(f) of the LRA. The Chitolies had counterclaimed alleging that the NHC had been trespassing and that they were the lawful owners and entitled to be registered as owners by rectification of the register pursuant to art 2103A of the Civil Code and s 16(1)(a)(i) of the LAA. The High Court and Court of Appeal dismissed the Chitolies' claim and ruled in favour of NHC. These courts found that the period of possession prior to the first registration under the LRTP was not to be counted towards the 30 years required for prescription under the Civil Code. This meant that the appellant had fallen short of the required period of possession for prescriptive rights. On appeal to the Privy Council, three interrelated

questions were raised. These are (i) what is the legal effect of the appellant's failure to claim during the LRTP on his claim to an overriding interest under ss 23 and 28 of the LRA; (ii) is the period of possession before first registration required to be ignored for the purposes of identifying an overriding interest under s 28(f) of the LRA; and (iii) did the respondent acquire the disputed parcel subject to the appellant's right to defend a possession claim because the appellant had an overriding interest under s 28(f) because they had 'rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions or by prescription' at the date of first registration. The Privy Council effectively answered these questions by considering two scenarios.

[62] The first scenario is where a person who in 1987 was in the course of acquiring a title by prescription and who made a claim under ss 6 and 8 of the LAA to the recording officer to be recorded as having provisional title under s 16(1)(d) of the LAA with the date that possession began. Here, the Privy Council held that such possession would be counted, and time would not run afresh from 1987. The requirement to complete an additional period of possession before absolute title was acquired would be a qualification affecting the title, within the meaning of s 16(1)(d). Once completed, however, that qualification to which the provisional title was subject would cease to be of effect and the Registrar would be obliged to convert the provisional title into absolute title pursuant to s 29(2) of the LRA.

[63] The second situation considered by the Privy Council was where a person, who in 1987 was in the course of acquiring a title by prescription, did not make any claim under ss 6 and 8 of the LAA to the recording officer or was not deemed by the recording officer to have made a claim pursuant to the discretionary provision in s 9(1) of the LAA and the land was registered in someone else's name without any reference to that person. It was held that in such circumstances, having not made a claim as mandated by s 8 of the LAA, the person could no longer rely on his or her pre-1987 possession of the land. Time would run from the date of first registration.

(ii) ***Joseph v Francois***

[64] The same principle was espoused by the Court of Appeal of the Eastern Caribbean Supreme Court in the decision of *Joseph*, a case which predated *Chitolie*. In *Joseph*, during the LRTP, Jacob Fanus claimed title to the land in question by long possession. His claim was not disputed, and he was duly registered with a provisional title in 1987. This title was subsequently updated and became absolute in 2005.

[65] Earlier, in 2004, Jacob Fanus commenced a claim for trespass against the appellants. The appellants' defence was that they had lived on the land for more than 50 years and accordingly Fanus' claim was prescribed. It was held that this defence could not succeed in relation to possession prior to 1987. Pereira CJ (Baptiste and Michel JJA agreeing) explained at [27]:

> ... the relevant period for the purposes of prescription operating as a bar to Jacob Fanus' claim must be reckoned, not from some time prior to the LRTP, but as commencing from the time Jacob Fanus became registered proprietor in 1987. As such, the defence of prescription was bound to fail as this period fell far short of the thirty (30) year period by which the claim could be prescribed.

Privy Council's and Court of Appeal's Precedents in the CCJ

[66] A preliminary matter which must now be addressed is the authority of Privy Council's precedents in this Court and the exercise of this Court's power to overrule Court of Appeal precedents.

(i) **Privy Council Precedents in the CCJ**

[67] In *Attorney General v Joseph*[44], this Court laid down the basic rules which govern the authority of Privy Council precedents in this Court in a jurisdiction which has replaced the Privy Council as the final appellate court by this Court. In that case, de la Bastide P and Saunders J enunciated as follows:

[44] [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104.

> The main purpose in establishing this court is to promote the development of a Caribbean jurisprudence, a goal which Caribbean courts are best equipped to pursue. In the promotion of such a jurisprudence, we shall naturally consider very carefully and respectfully the opinions of the final courts of other Commonwealth countries and, particularly, the judgments of the JCPC which determine the law for those Caribbean States that accept the Judicial Committee as their final appellate court.[45]

[68] This principle was expanded in *Belize International Services Ltd v Attorney General of Belize*[46] where it was said:

> I would respectfully add to this that, in developing a Caribbean jurisprudence, this Court must do so while adopting a disciplined approach to the doctrine of judicial precedent as well as an approach which actively seeks to promote, as far as possible, coherence in the law developed by this Court and the law in those common law Caribbean Community states that have not as yet acceded to the jurisdiction of this Court.[47]

[69] Most recently, in *George v Guye*[48], Anderson J restated that the principle laid down in *Attorney General v Joseph*:

> … apply with equal or greater force in relation to the Court of Appeal of the Eastern Caribbean Supreme Court which continues to be bound by decisions of the Privy Council in respect of all its jurisdictions except Dominica. In order not to place that court in the unenviable position of serving two discordant masters, so to speak, judicial comity and judicial policy both dictate that this Court ought not to overrule decisions of the Privy Council binding upon the Court of Appeal of the Eastern Caribbean Supreme Court unless convinced that those decisions are plainly wrong or otherwise intolerably inconsistent with the development of indigenous Caribbean jurisprudence. It may also be necessary to give further consideration as to whether it would be wise, unless unavoidable for the reasons just given, to introduce idiosyncratic conveyancing rules into Dominica when compared with the other participants in the cohesive OECS Economic Union created by the Revised Treaty of Basseterre.[49]

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[45] ibid at [18].
[46] [2020] CCJ 9 (AJ) BZ, (2020) 100 WIR 109.
[47] ibid at [145].
[48] *George* (n 8).
[49] ibid at [73].

[70] This Court's jurisprudence therefore establishes beyond peradventure that this Court should be slow to overturn decisions of the Privy Council. It should only do so where a Privy Council decision is plainly wrong or there is such an egregious error in law as to render it inconsistent with Caribbean jurisprudence. This approach does not suggest in any way that this Court is bound by Privy Council decisions. Rather, this approach is based on judicial comity and jurisprudential expedience.

(ii) CCJ Power to Overrule of Court of Appeal Precedents

[71] On basic principles of *stare decisis*, this Court has undoubted power to overrule precedents of Courts of Appeal of which it is the apex court. In its recent decision in *Fields v The State*[50], this Court overruled the long-established Court of Appeal of Barbados precedent of *Scantlebury v R*[51]. In doing so, the Court pointed out that it would be slow to exercise its overrule power, but would do so where a precedent is clearly wrong.

Construing s 28(f) of the LRA

[72] Given the foregoing, the question now becomes whether the *Chitolie* and *Joseph* interpretation of s 28(f) was wrong.

[73] Section 28(f) of the LRA reads:

> Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—
> …
>
> (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription...

[74] Citing art 2048 of the Civil Code, counsel argues that, by this sub-section, 'rights acquired' under this sub-section in relation to prescription means that 'the requisite

[50] [2023] CCJ 13 (AJ) BB, [2024] 2 LRC 176.
[51] (2005) 68 WIR 88 (BB CA).

30 years period is achieved, negative prescription is crystalised and can only be reversed by the beneficiary'. His argument continues that 'rights...in the process of being acquired' under the sub-section embraces two situations. These are (i) an adverse possession that is less than 30 years, and (ii) an adverse possession for 30 years which qualifies for title to the land by positive prescription but where no steps have been taken to claim title.

[75] In the first situation, the possession does not qualify as a right. Rather, citing Lord Denning in *Strand Securities Ltd v Caswell*[52], counsel maintains that s 28 by constituting 'rights ... in the process of being acquired' as 'overriding interests' protects the time that has run by preventing a first registration under the LRA from interrupting prescription which has occurred before such registration. With respect to the second situation, counsel contends that the section preserves the 'right acquired' as an overriding interest.

[76] Counsel claims to find support for this interpretation of s 28(f) in this Court's recent decision in *George v Guye*[53]. I will return to discussing that decision later in this judgment, but before doing so, I turn to considering the main interpretational reasons why I do not agree with counsel's contention that the Privy Council's and the Court of Appeal's interpretation of s 28(f) is wrong.

Interpreting s 28(f) in the Context of the LRTP

[77] The abiding task in pursuing the interpretation of s 28(f) is to ascertain the intention of the Parliament of Saint Lucia in enacting that sub-section. This must be done by giving the language of that subsection a meaning and interpretation that reflect that intention. The traditional approach to doing this was to adopt a strict literal construction of the words in question which appears to be the approach utilised by counsel. However, there has been a radical shift away from the literal approach to what is called the contextual or purposive approach. Indeed, this Court in *Sersland*

[52] *Strand Securities Ltd* (n 24).
[53] *George* (n 8).

v St Matthews University School of Medicine Ltd[54], in giving its approval to the contextual approach, quoted the leading authority of Professor E A Driedger in *Construction of Statutes* (2nd edn, Butterworths 1983) where he writes:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[55]

[78] It seems from the authorities that the context to which a court may have regard in ascertaining the object of an Act includes the historical context of legislation. One such authority is the old case of *Holme v Guy*[56], where Sir George Jessel said:

> The Court is not to be oblivious ... of the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of the law and legislation tells the Court ... what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view to extending it to something that was not intended.

[79] In my view, the LRTP has an important historical context in attempting to understand the LRA, the LAA and, in particular, the meaning of s 28(f) of the LRA.

[80] To begin with, in 1979, the Government of Saint Lucia established a Land Reform Commission to study the issue of land tenure in Saint Lucia and to make recommendations regarding policy options. The Commission's study drew three main conclusions as follows:

(i) that sugarcane was the main product during the colonial era up until the 1950s; bananas became the main product substituting sugar in the 1960s and Saint Lucia's dependency on the export of bananas since the 1960s had contributed to the continuity of the plantation

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[54] [2022] CCJ 16 (AJ) BZ, (2022) 103 WIR 118.
[55] ibid at [42].
[56] (1877) 5 Ch D 901 at 905. See also *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents Designs and Trade Marks* [1898] AC 571 (Earl of Halsbury LC).

agricultural system. That system itself had produced a land tenure structure where the majority of landholders were on small parcels of poor quality and fragile land, while plantations underutilised their highly productive lands.

(ii) that much of land in Saint Lucia was held as 'family land' wherein an often-indeterminate number of heirs held shares in the land, but without a physical partition of the property. Family land had emerged in Saint Lucia following the end of slavery in the 1800s within the legal context of French Civil Law. However, family land was a Caribbean-wide phenomenon based on labour and economic factors and was not a local legal oddity resulting from the Civil Code's provisions on succession.

(iii) that the system of deeds registration was a relatively inefficient system of defining and protecting rights to land. The records, which were registered, were incomplete in that many deeds were vague as to the location of the land and exactly who held what rights to that land.

[81] The LRTP was developed to respond to these issues identified by the Commission. The bedrock of the LRTP was the land tenure theory that by increasing security of tenure by individualising and recording property rights, landowners would be encouraged to invest more money, time and effort in their land, secure in the knowledge that they possess exclusive rights to all returns on their investment. The theory also posits that access to the accurate, comprehensive and current tenure status of land reduces the information asymmetry that restricts the volume and frequency of land transactions.

[82] Building on this theory, the LRTP aimed to achieve an increase in the level of tenure security on the part of the occupiers of land (i) by identifying and recording existing property rights, and (ii) by creating an institutional and legislative environment that would facilitate the individualisation of family land property. The LRTP instituted a land titles registry to satisfy this requirement for adequate land tenure information.

[83] The entire project was underpinned legislatively by the LAA and the LRA. The aim of these two Acts is captured in *Louisien v Jacob*[57] where the Privy Council said:

> The LAA and the LRA were intended to operate as two interlocking elements of the process of first registration of title. The LAA was concerned, as its name indicates, with the adjudication of claims to land ownership. If there were competing claims the adjudication officer was to decide them in a quasi-judicial capacity, weighing up the evidence and applying principles of land law. Even if there was no contest between claims, the recording officer still had to subject the claim to scrutiny (section 14 refers to "such investigation as he or she considers necessary") before completing and signing the adjudication record for certification by the adjudication officer. Once it became final the certified record was to be passed to the Registrar (as provided in section 10 of the LRA) for first registration. If the confirmed adjudication record appeared to be in order there would be no reason for the Registrar to seek to go behind it.[58]

[84] Clearly, then, the purpose of these Acts was to introduce a system in Saint Lucia which allowed title to land to be established by entries on the face of a land register. In my judgment, that purpose would be significantly undermined if s 28(f) were interpreted as permitting persons with interests in land not to claim pursuant to ss 6(1)(d) and 8 of the LAA during the elaborate LRTP process and later to seek to assert their title based on materials outside the Register. Such an interpretation would be plainly antithetical to introduction of the title by registration system into Saint Lucia.

Interpreting s 28(f) in its Legislative Context

[85] Another contextual consideration that points away from counsel for the appellant's interpretation of s 28(f) is that the LAA and the LRA formed part of a legislative programme. These two Acts are intertwined and interlocking and are what may be called *in pari materia* statutes. This is important legislative context in approaching the interpretation of s 28(f).

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[57] *Louisien* (n 36).
[58] ibid at [39].

[86] In *Smith v Selby*[59], Byron P stated, '[T]he Court, when interpreting any part of a statute, should review other parts of the Act which throw light upon the intention of the legislature and may show how the provision ought to be construed...'.[60]

[87] In the English House of Lords case of *Colquhoun v Brooks*[61], Lord Herschell stated more emphatically:

> It is beyond dispute...that we are entitled, and indeed bound when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light on the intention of the legislature, and may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act.[62]

[88] A similar principle applies where two statutes clearly form part of a legislative scheme and are *in pari materia*. In such a case, words and clauses of one statute may be construed with reference to the context and other clauses of the other Act, so as, so far as possible, to ensure that object of the statutory scheme is promoted. As Lord Mansfield said in *R v Loxdale*[63]:

> *Where there are different statutes in pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other (emphasis added).[64]

[89] This principle was explained by Viscount in the English House of Lords decision of *Attorney General v Prince Ernest Augustus of Hanover*[65] as follows:

> [W]ords, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of the statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes *in pari materia*, and

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[59] [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70.
[60] ibid at [11].
[61] [1886-90] All ER Rep 1063.
[62] ibid at 1068.
[63] (1758) 1 Burr 445, 97 ER 394.
[64] ibid at 395.
[65] [1957] AC 436.

> the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy.[66]

[90] On principle, therefore, s 28(f) of the LRA must be read, not only with the other provisions of the LRA, but also together with the parts of the LAA which throw light upon the legislative intention in enacting that subsection. In this regard, it may be useful to remind that the linchpin of the system is the obligation in s 6 of the LAA on the adjudication officer to prepare a separate notice in respect of each adjudication section. In each such notice, the adjudication officer is mandated to declare, *inter alia*, that all interests in land will be ascertained and recorded in accordance with the provisions of the Act and to require any person claiming any interest in land within the adjudication section to make a claim. This is reinforced by the provision in s 8 of that Act which requires that every person claiming any land or interest in land within an adjudication section to make his claim in accordance with the notice given under s 6.

[91] In my judgment, ss 6(1)(c), 8 and 16(1)(d) of the LAA are crucially important in understanding s 28(f) of the LRA and so these provisions must be read together. Thus read, it becomes clear that s 28(f) does not purport to absolve a person who is claiming an 'overriding interest' in respect of 'rights ... in process of being acquired by virtue of any law relating to the limitation of actions or by prescription' from making a claim under ss 6(1)(c) and 8 of the LAA. The Act seeks to facilitate the compliance of such a person by making provision in s 16(1)(d) for such a person to have their title declared as provisional and, in s 16(1)(d)(i), have the date on which their possession is considered to have begun recorded. A logical extrapolation of s 16(1)(d)(i) is that, if no such claim is made, then subject to the 'safeguarding of rights' in s 9 of the LAA, the date at which a person's possession would be considered to have begun would be the date of first registration. Logically, such a person could not rely on their pre-first registration possession of land if someone else were registered as having title to the land.

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[66] ibid at 461.

[92] Counsel cites the Court of Appeal's decision in *Adrural v Geead*[67] as authority which contradicts the foregoing proposition. In my respectful view that case does not. I will explain why it does not.

[93] The background facts of the case were that the disputed parcel of land was occupied by the Desriviere family. Theresa Desriviere, a family member, was living there when she married Joseph Donaii in the early 1930s, and he lived with her on the disputed land. The family remained in exclusive occupation of the land. Theresa died in 1980, before the introduction of the LTRP.

[94] On the introduction of the LTRP around 1984, Marie Adrural, one of the children in the family, promised her siblings, who were the respondents in that matter, that she would register the disputed land in their father's name to eventually distribute it among them in the case of his demise. The land was registered in Joseph Donaii's name on 3 December 1986.

[95] On 17 October 1988, Joseph Donaii signed a deed of sale transferring the disputed land to Adrural for XCD10,000. Following this transaction, Adrural was registered as the proprietor of the land.

[96] The siblings petitioned the court for a Declaration of Title under art 2103A of the Civil Code. They argued that the land was rightfully owned by the heirs of their deceased mother, Theresa Donaii, based on the principle of prescription. The appellant argued that her claim to the land was legitimate, based on her purchase from Joseph Donaii, and denied any knowledge of other claims to the land by Theresa Donaii's heirs.

[97] The trial judge found against Adrural and ordered that the title be rectified to place ownership of the disputed lands in the heirs of Theresa Donaii and cancelled the

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[67] *Adrural* (n 33).

registrations in favour of Marie Adrural and Joseph Donaii. Marie Adrural appealed to the Court of Appeal.

[98] The decision of the Court of Appeal was delivered by Byron CJ. He found that the LRA establishes that registration of a person as the owner of land grants them absolute ownership of that parcel, as detailed in ss 23 and 24 of the Act. However, the Act acknowledges exceptions to this principle. Section 28 identifies these exceptions as 'overriding interests', which are certain rights or claims that take precedence over registered ownership. The LRA ensures that all registered land is subject to these overriding interests, despite the registered title.

[99] Joseph Donaii initially occupied the land with his wife's permission, which under art 2067 of the Civil Code, means he could not acquire the land by prescription. Article 2064 allows successors to combine their possession with that of their predecessors to complete their prescription. Given these provisions, Joseph Donaii's possession could not negate the prescriptive rights of Theresa Donaii's heirs. As he came onto the land with permission and could not claim it adversely to her, her heirs retained their rights. Accordingly, the appeal was dismissed, and the registration of the appellant and Joseph Donaii was cancelled, and the heirs of Theresa Donaii were declared to be absolute owners of the disputed land.

[100] In my respectful view, Byron CJ's application of s 28(f) is wholly consistent with the aim and purpose of the LRA. There is no doubt that Joseph Donaii made a claim under ss 6(1)(c) and 8 of the LAA during the LRTP on behalf of himself and the siblings, Theresa Donaii's heirs. There was, therefore, no question in this case of persons with a claim not making such claim during the LRTP. The only question was whether registration of title under the LRA could be used as a cloak to hide the fact that the person on the register held the parcel, not on his own behalf but on behalf of himself and the heirs of Theresa Donaii. This brought into play ss 23(b) and 28 of the LRA.

[101] Section 23(b) subjects the registration of a person as the proprietor with absolute title of a parcel to s 28 overriding interest. However, it is to be noted that s 23 expressly stipulates that such an overriding interest only avails where it 'affects' the registered title. Meanwhile, s 28 reinforces the requirement by providing that the overriding interest must 'subsist and affect' the registered title.

[102] In *Adrural*, there was no doubt that the registered title of Joseph Donaii and, consequently, Marie Andrural who claimed to derive title from him, was 'affected' by the overriding prescriptive rights of the heirs of Theresa Donaii. Joseph Donaii's registered title was based on his alleged prescriptive rights. But as he came onto the land with the permission of Theresa Donaii's he could not claim it adversely to her. Accordingly, he could not negate the prescriptive rights of Theresa Donaii's heirs who retained their rights. Joseph Donaii's registered title was demonstrably 'affected' by the overriding interest of the recognition of the overriding interests of Theresa Donaii and her heirs and was subject to it without it being noted on the register.

[103] It is clear from the foregoing that *Adrural* is not any authority on whether s 28 of the LRA absolves a person who is claiming an 'overriding interest' from making a claim under ss 6(1)(c) and 8 of the LAA or on the question of the time at which rights in the course or process of being acquired by prescription become overriding interests. *Adrural* is therefore no authority which supports counsel's submission.

Interpreting s 28(f) to Avoid an Absurdity

[104] Another reason why I do not agree with counsel's suggested interpretation is because such an interpretation of s 28(f) would lead to manifest absurdity. I will particularise.

[105] Section 16(1)(a) makes it clear that a person with absolute title in 1984, be it either a full documentary title or a title acquired by prescription was required to make

their claim under ss 6(1)(c) and 8 of the LAA. Failure to do so, would have the consequence of them losing their title to a person who so claimed and was duly registered. If s 28(f) were interpreted as exempting a person whose right was 'in process of being acquired by virtue of any law relating to the limitation of actions or by prescription' from making a claim and as entitling the pre-1984 period of possession to be counted towards prescription, such person would be in a more advantageous position than a person with absolute title in 1984. As noted by the Privy Council in *Chitolie*, such an interpretation which puts a person with no established title, and who is still in unlawful possession, in a better position than a person with absolute title would plainly defeat the obvious intention of Parliament and lead to an absurd and unreasonable result.

[106] It is a time-honoured common law principle of interpretation that: 'An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available'.[68] As I see it, this principle would be deployed in this case, if necessary, to avoid the unreasonable result threatened by Counsel's interpretation.

Section 28(f) and *George v Guye*

[107] As already noted, Counsel argued before us that the Privy Council decision in *Chitolie*, as does the Court of Appeal decision in *Joseph*, conflict with this Court's decision in *George*. In my judgment, and as observed by the Court of Appeal in this case, there is no conflict between these cases.

[108] *George* was an appeal from the Commonwealth of Dominica. The question at issue in it was whether registration under s 33 of the Title by Registration Act, Chap 56:60 ('TRA') was a pre-condition to invoking a defence of adverse possession pursuant to the Real Property Limitation Act, Chap 54:07 ('RPLA').

[68] *Artemiou v Procopiou* [1966] 1 QB 878 at 888 (Danckwerts LJ).

[109] The facts of that case were that the respondent was the registered proprietor of a portion of land, Lot S 748, under the TRA. The appellant was the successor in title of property of his father, Lot S 750, which was adjacent to Lot S 748. The appellant occupied a strip of land between Lot S 748 and Lot S 750 (the disputed strip of land). The disputed strip of land was part of the land comprised in the certificate of title of the respondent. The respondent instituted an action claiming that he was the registered proprietor in possession at all material times of the disputed strip of land. In his defence, the appellant pleaded that the respondent was barred from bringing the action by virtue of the operation of the RPLA, in that his predecessors had been in undisputed possession of the disputed strip of land for about 30 years. On appeal to this Court, it was held that registration under s 33 of the TRA was not necessary for the appellant to claim title by adverse possession.

[110] *George* was based entirely on the interpretation of s 33 of the TRA and the provisions of the RPLA. True, the enactment of the TRA in the Commonwealth of Dominica, like the enactment of the LAA and the LRA in Saint Lucia, was undoubtedly inspired by the Torrens system introduced into Australia in 1858. *George* is, therefore, admittedly concerned with interpreting a statute based on the Torrens system. The clear law is, however, that this fact alone does not render the *George* precedent relevant or useful in interpreting the Saint Lucia system. Its relevance would depend on whether the legislation and policy considerations in the Commonwealth of Dominica and Saint Lucia were similar.

[111] The statutory framework in Saint Lucia is very different from that in the Commonwealth of Dominica. Particularly, there are no provisions in the Dominican Act like ss 23, 24 and 28(f) of the LRA in Saint Lucia. Thus, there was no opportunity in *George* for this Court to opine or decide on the meaning of 'overriding interest' or 'rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription' which is what is at the bottom of this appeal.

[112] This Court in *George* did not purport to rest that decision on or to enunciate any general principles on the Torrens system in it. Thus, given the significant differences in the language of the statutes in Saint Lucia and the Commonwealth of Dominica, *George* is plainly distinguishable from *Chitolie* and *Joseph*.

Section 28(f) and the Civil Code

[113] One of counsel for the appellant's arguments before us is based on the fact that the rights of prescription in Saint Lucia are governed by the rules to be found in the Civil Code. One such rule found in art 1978 provides that registration does not interrupt prescription. Indeed, arts 2085 and 2086 stipulate that only judicial demand can interrupt prescription. Counsel argued that, as the process at the LRTP was not a judicial demand process, the Court cannot disregard any period of possession before 1984 in reckoning possession for prescriptive rights. In my judgment, this argument must be assessed against the backdrop of the unique character of the Saint Lucia legal system.

[114] Saint Lucia is a hybrid or mixed system of law. This means that the Civil Code is intermingled with the common law system. Dr Kenny Anthony is widely regarded as the leading scholar on the Saint Lucia legal system. Citing Ms Dorcas White, another academic authority on that system, he explains the identity of the Saint Lucia mixed legal system as follows:[69]

> For White, the Saint Lucian legal system is better described as "hybrid"... The legal system, she says, "is neither civilian nor common law although possessing characteristics of both." The legal system is not permanent but "in transition from one legal orientation and the hybrid character is an aspect that is gradual". The "hybrid character is reinforced [if] any existing duality or plurality in the legal culture" metamorphoses into a permanent feature. Three aspects of this formulation deserve recognition. First, the legal system is in formation, never static, but always evolving. Secondly, the system evolves a law and practice that reflects a crossbreeding of its inherited

[69] Kenny D Anthony, 'The Identification and Classification of Mixed Systems of Law' in Gilbert Kodilinye and P K Menon (eds), *Commonwealth Caribbean Legal Studies* (Butterworth and Co Ltd 1992) 179.

> traditions. Thirdly, if the legal system furthers "duality or plurality", the hybrid character is reinforced.[70]

[115] Dr Anthony's commentary asserts that the hybridisation of the Saint Lucian legal system is always evolving and allows for intersection of the civil law and common law traditions. In my view, this means that the Civil Code, the LAA and the LRA are to be interpreted within each other. Articles 2057, 2103 and 2103A of the Civil Code are clear and unambiguous as to what constitutes the acquisition of rights by prescription. The LAA and the LRA have introduced a system in Saint Lucia to have a land register where documentary and prescriptive title is definitively established. The LAA and the LRA are not intended to operate in contradiction to the Civil Code. They are meant to operate together.

[116] In *Joseph*, Pereira CJ made the same point as follows:

> … reliance on Articles 1978, 2084 and 2085 of the Civil Code does not assist the appellants…[T]hese Articles cannot be made to fit into the LAA and the LRA scheme which came into operation in the State of Saint Lucia notwithstanding the Civil Code. While the LAA may have become spent in terms of its operational life having regard to its objective the LRA is very much a part of Saint Lucia's legal landscape and it coexists alongside the Civil Code.[71]

[117] The interpretation that possession for purposes of s 28(f) of the LRA takes effect from the date of first registration is simply to give effect to the purpose of the LAA and the LRA to have a register which from the start was reliable and conclusive. The circumstance covered by s 28(f) was not, and could not have been, contemplated by any of the Articles in the Civil Code aimed, as they were, at merely codifying the principles of prescription. I would also add that this approach to interpreting s 28(f) of the LRA furthers 'duality or plurality' in the Saint Lucia legal system as advocated by Anthony and reinforces that system's unique hybrid character.

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[70] ibid198-199.
[71] *Joseph* (n) [27].

Saint Lucian Domestic Jurisprudence on the Civil Code

[118] In his written and oral submissions to us, counsel cited a number Saint Lucian domestic cases on how the provisions of the Civil Code on prescription should be interpreted. In view of my conclusion that this appeal concerns the interpretation of the LRA and not the Civil Code, these domestic decisions are, respectfully, otiose.

Conclusion

[119] This Court by Order of 13 August 2024 dismissed this appeal and indicated in that Order that reasons for its decision would follow. The foregoing are my reasons for supporting that Order of the Court.

Disposition

[120] This Court orders that the appeal be dismissed and the appellant to pay the costs of the respondent.

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ A Burgess

Mr Justice Burgess

/s/ P Jamadar

Mr Justice Jamadar