

IN THE CARIBBEAN COURT OF JUSTICE  
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF  
THE CO-OPERATIVE REPUBLIC OF GUYANA

CCJ Application No GYCV2025/002  
GY Civil Appeal Nos 69 of 2010 and 70 of 2010

BETWEEN

ESLENE VIGILANCE suing in her personal  
capacity and in the capacity as the executrix of the  
estate of her late husband Albert Vigilance, deceased

APPELLANT

AND

ROOPNARINE PERSAUD

RESPONDENT

Before:

Mr Justice Barrow  
Mr Justice Jamadar  
Mme Justice Ononaiwu  
Mr Justice Eboe-Osuji  
Mr Justice Bulkan

Date of Judgment: 20 February 2026

**Appearances**

Mr Teni Housty, Ms Shantel Scott-Lall and Ms Sydney Fraser for the Appellant

Mr C V Satram, Mr Mahendra Satram and Mr Ron Motilall for the Respondent

*Land — Prescriptive title — Adverse possession — Fraud — Irregularities — Application to amend statement of claim — Concurrent findings of lower courts — Indefeasibility of title — Whether trial judge erred in refusing application to amend statement of claim to include particulars of fraud and to adduce further evidence — Deeds Registry Act, Cap 5:01, s 22 — Title to Land (Prescription and Limitation) Act, Cap 60:02.*

## SUMMARY

This appeal concerns the attempt of the Vigilance estate, represented over decades by successive personal representatives and attorneys-at-law, to overturn the prescriptive title granted to George Estrick and the subsequent transport of the land to Roopnarine Persaud, the respondent. The estate alleged that Estrick obtained the land by fraud, but never pleaded or proved any fraud against Persaud, who merely purchased the land from Estrick.

The High Court dismissed the claim in 2010, finding no evidence of fraud and holding that alleged irregularities in the Land Court process did not amount to fraud capable of invalidating a registered title. On the day set for judgment delivery, new counsel in the matter made an oral application to amend the pleadings to advance a claim of fraud against Persaud and include particulars of fraud and to adduce further evidence. The trial judge refused the application as far too late and prejudicial. On appeal, the Court of Appeal affirmed the decision of the trial judge.

Before the Caribbean Court of Justice ('CCJ'), the appellant sought that the Court of Appeal's decision be set aside as well as costs in this Court and the courts below. The appellant contended that the refusal to allow amendments and admit further evidence amounted to a miscarriage of justice, and that the courts below erred in failing to properly assess the alleged fraudulent acquisition by Estrick and its impact on the subsequent sale to the respondents..

Before the CCJ, the appellant argued that the trial judge should have allowed the amendment and considered additional evidence. Barrow J (Jamadar, Ononaiwu, Eboe-Osuji and Bulkan JJ concurring) held that the appeal was bound to fail because the appellant's case rested entirely on allegations of fraud against Estrick which were dismissed and the claim against Estrick was not pursued on appeal. By the time new counsel sought to amend the pleadings, the trial judge had already determined that there was no evidence of fraud. Without proof of fraud by Estrick, there could be no basis for alleging fraud against the respondent, who had acquired a derivative title from Estrick. Therefore, the proposed amendment was both impermissibly late and legally futile.

Barrow J further emphasised the principle of indefeasibility of registered title under s 22 of the Deeds Registry Act. Even if there were irregularities in the prescriptive title proceedings, such defects cannot invalidate a registered title unless actual fraud is established. Further, in the context of this appeal which was brought solely against Persaud and not the Estricks, certain contentions as to an outdated plan, missing documents, or alleged non-service of notices were meaningless.

Bulkan J (Barrow, Jamadar, Ononaiwu and Eboe-Osuji JJ concurring) agreed with Barrow J that the appeal must be dismissed but went further in analysing the underlying defects in the prescriptive title proceedings. He observed that although the estate failed procedurally to pursue on appeal claims against Estrick, the evidence at trial revealed several troubling features of Estrick's claim. These matters, while incapable of assisting the appellant at this stage, raised legitimate concerns about the standards applied in the Land Court and the need for stronger safeguards in prescriptive title applications.

Bulkan J stressed that prescriptive title requires rigorous proof of actual, exclusive, and undisturbed possession, and that applicants must provide full, frank disclosure of all material facts. He compared Guyana's system with the more structured approach used in Trinidad and Tobago, which includes detailed guidelines, up-to-date surveys, and independent field investigations. In light of the prevalence of land fraud and procedural failures affecting litigants like the Vigilance estate, he called for more stringent judicial oversight and legislative reform.

The appeal was dismissed with costs to the respondent.

**Cases referred to:**

*Adams v London* [1964] LRBG 188; *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB, BB 2024 CCJ 1 (CARILAW); *Bisnauth v Shewprashad* [2009] CCJ 8 (AJ) (GY), (2009) 79 WIR 339; *Brandis v Craig* (1981) 30 WIR 136 (GY CA); *Dey v Ramdhanny* [2003-2004] GLR 37; *Dipcon Engineering Services Ltd v A-G of Trinidad and Tobago* (TT HC, 9 January 2026); *Glen v Sampson* (1972) 19 WIR 237 (GY CA); *Inc Trustees of the Diocese of Guiana v McLean* [1939] LRBG 182;

*Lachana v Arjune* [2008] CCJ 12 (AJ) (GY), GY 2008 CCJ 15 (CARILAW); *Li v Walker* (1968) 12 WIR 195; *Madhoo v Ramdass* [1954] LRBG 191; *Mathan v Kujal* (2014) 85 WIR 383 (GY CA); *Singh v Mossai* [2019] CCJ 1 (AJ) (GY), (2020) 95 WIR 450 (GY CA); *Tackorie v Port Mourant Ltd* [1954] LRBG 108; *Todd v Price* [2021] CCJ 2 (AJ) GY; *Toolsie Persaud Ltd v Andrew James Investments Ltd* [2008] CCJ 5 (AJ) (GY), (2008) 72 WIR 292; *Vigilance v Persaud* (GY HC, 2 July 2010); *Vigilance v Persaud* (GY CA, 20 March 2024).

**Legislation referred to:**

**Guyana** – Deeds Registry Act, Cap 5:01, Rules of the High Court (Declaration of Title), Cap 3:02, Title to Land (Prescription and Limitation) Act, Cap 60:02; **Trinidad and Tobago** – Real Property Act, Chap 56:02.

**JUDGMENT**

**Reasons for Judgment:**

Barrow J (Jamadar, Ononaiwu, Eboe-Osuji and Bulkan JJ concurring) [1] – [28]

Bulkan J (Barrow, Jamadar, Ononaiwu and Eboe-Osuji JJ concurring) [29] – [84]

**Disposition** [85]

**BARROW J:**

**Introduction**

[1] This appeal marks the final attempt by the estate of the original title holder to set aside the grant of prescriptive title and the subsequent transport of land at Coverden, East Bank, Demerara. The ground advanced for doing so was fraud.

**Title to the Land**

[2] The judgment dated 2 July 2010 of George J, in the consolidated trial of three claims concerning the land, brought in the years 1994 and 1999, upheld the grant of

prescriptive title. It determined that the relevant parcels of land, which had been owned by Mr Albert Vigilance, who died in 1979, had validly been granted to Mr George Estrick by the Land Court on 11 April 1994 on a petition for prescriptive title. The title of Vigilance was thereby extinguished. Upon the grant, a transport dated 3 May 1994 was issued by the Registrar of Lands to Estrick.

- [3] On 25 January 1996, Estrick transported the land to Mr Roopnarine Persaud. That title continued to be challenged up to the level of this Court.

### **Challenges to Title**

- [4] The Vigilance estate, represented over the decades by successive personal representatives and attorneys-at-law, claimed as early as 1994 to recover the land, as soon as the family learned of its loss. The estate brought joint claims against George Estrick<sup>1</sup> and Persaud to recover the land and set aside the title. In the High Court, the relevant Statement of Claim included only one cause of action, being that Estrick fraudulently obtained title to the land and fraudulently purported to sell the land to Persaud. No allegation of any action or conduct was made against Persaud but only a contention that Persaud had no right, title or interest in the land. Following upon that contention, alone, a declaration was sought that Persaud's title was null and void.

- [5] In a thoroughgoing judgment, George J reviewed the evidence for the parties. For the estate, Mrs Eslene Vigilance, the widow, now deceased, testified and so did a person who had worked on the land. These witnesses spoke to the occupation of the land in support of the estate's case that the land had not been abandoned by the Vigilance family at the time of the application for prescription. For Mr Persaud, there was his own evidence, that of his manager who had introduced him to the land, that of a person who lived in the area and helped clear the land for Persaud, and the evidence of the lawyer who presented the petition and obtained the title for

---

<sup>1</sup> The brother, Luke Estrick, who acted for George was also made a defendant.

Estrick and who later transferred title from Estrick to Persaud. There was also the testimony of the Registrar of Deeds who testified to her passing of transport from Estrick to Persaud and that the original transport had been passed in the Land Court. Two other witnesses testified to formal matters. Estrick took no part in the proceedings.

### *Irregularities*

- [6] In dismissing the claim, the trial judge considered allegations made by the estate of irregularities on the part of Estrick in the proceedings for obtaining prescriptive title, including that he did not present a recent plan of the land. The judge observed that the Commissioner of Title who granted the order must have been aware of this. The judge also noted that there was no provision cited that required a recent plan. Another alleged irregularity was that Estrick did not serve adjoining landowners, but this was dismissed as unsupported by the evidence. It was further contended that documents that should have been kept as a record in the deeds registry had been deliberately removed but the court gave no weight to this contention as an indication of fraud, no doubt assisted by evidence that there was a broader situation of missing records.

### *Fraud*

- [7] The judgment gave much consideration to the allegation of fraud, which was the basis of the claim to set aside the titles. It was observed that while the claimant sought to rely on fraud, the statements of claim did not include any particulars of fraud. George J noted that there were no allegations or particulars of fraud against Persaud. The irregularities mentioned above were recognised by the judge as relied upon by the claimant to argue that Persaud knew or ought to have known of the deception and fraud committed on the Land Court and the estate of Albert Vigilance. The judge ruled there was no evidence to support the submission.
- [8] After canvassing the allegations of fraud, the judge expressly rejected it, stating:

The plaintiff's claim has to be dismissed as not being proven. The particulars of fraud have not been proven. There was nothing preventing Persaud from accepting transport as claimed. There is no evidence that he was privy to any fraud or irregularity. There is no evidence that the defendant received transport other than through the Deeds Registry.<sup>2</sup>

### **Application to Amend**

[9] Before the judgment addressed the substance of the litigation, it recorded that there had been a change of counsel (which had taken place about four months earlier) and that on the date fixed for decision, counsel applied to amend the statement of claim to include grounds of fraud against Persaud and to lead further evidence. The court stated that given the inordinate delay – some 16 years after the filing of the relevant action and five years after the trial had commenced – it would be unfair to the defence to so permit. The application was refused.

### **The Appeals**

[10] The estate appealed to the Court of Appeal against the refusal of permission to amend to allege fraud against Persaud and provide further evidence. The appellant contended that the judge placed too much importance on technical rules of pleading and failed to appreciate the nature of the fraud pleaded, and that she erred in excluding further evidence as to payment of taxes and the survey of the land, and that the decision was against the weight of the evidence. The court dismissed all grounds. Critically, the appeal was against Persaud alone: there was no appeal against Estrick, who was not named as a party. This left undisturbed the judgment rejecting the claim of fraud against the Estrick title.

[11] The estate then appealed to this Court on eight grounds. Three grounds comprised the estate's wish to raise a new case of fraud against Persaud, separate from the

---

<sup>2</sup> *Vigilance v Persaud* (GY HC, 2 July 2010) at 13.

fraud alleged against Estrick. The other five grounds concerned the evidence. The grounds will be addressed under these subject headings.

### **A New Case of Fraud**

- [12] There was no denying that the statement of claim that was filed in the joint action, seeking to recover the land from both Estrick and Persaud, alleged fraud against Estrick only; no evidence was presented at the trial about anything done by Persaud. Apart from the rejected contention that Persaud knew or ought to have known of the previously mentioned irregularities, nothing was alleged against him. All that was stated in relation to him was that he took title from Estrick and, following only from that, a declaration was sought that his title should be declared null and void. The various actions had come before the High Court on numerous dates over the five years preceding the delivery of judgment in 2010 and no claim of fraud was ever made against Persaud.
- [13] In considering appealing to this Court against the refusal of the amendment, it should have been seen that an amendment would have been futile. Inescapably, on the day when the amendment was requested, the judge had already decided the case and was about to deliver that decision in a reserved, written judgment. The decision that was about to be delivered was the dismissal of the case of fraud against Estrick. As stated in the judgment, evidence of fraud simply did not exist.
- [14] At an elementary level, if there was no evidence of fraud by Estrick, how could there be fraud by Persaud, when all Persaud ever did was take title from Estrick? There was never alleged or even sought to be alleged on the desired amendment, that there had been any discrete action or conduct by Persaud, upon which to build a case of fraud.
- [15] The decision of this Court in *Singh v Mossai and Alves*<sup>3</sup> demonstrates the evidence that is necessary to challenge successfully a prescriptive title. In that case, while

---

<sup>3</sup> [2019] CCJ 1 (AJ) (GY), (2020) 95 WIR 450.

Singh was living on the land, Alves applied to the Land Court for prescriptive title. In his petition, he represented that the land was unoccupied when the contrary was known to both Alves and Mossai, to whom Alves sold after he obtained title. The trial judge found that Mossai's agent 'was integrally involved in the perpetration of the fraud from its inception with the requisite *malus animus*.'<sup>4</sup> This Court declared the title a nullity because it was obtained by fraud.

- [16] In contrast with the clear finding of fraud in that case, in the present appeal there was an express finding that there was no fraud. Similarly, while there was participation in the fraud by the derivative title holder in that case, in this case there was no participation by Persaud in the process of obtaining prescriptive title by Estrick. The conclusion is inescapable that the rejection of the claim of fraud against Estrick meant it would have been impossible to sustain a claim of fraud against Persaud. Such a claim would have been futile and, therefore, it could have made no sense to permit amending and receiving further evidence in support of that futility.

#### **Amendment, Further Evidence and Adjournment**

- [17] The application for the amendment did not deserve to be treated as credible because what was placed before the trial court was no regular application to amend but an afterthought of calling further evidence, tacked on to the end of closing submissions on the merits of the case. Those submissions opened with the expected treatment of the applicable rules of procedure, identified the main issue, examined the evidence presented on the petition to the land court, discussed the issue of abandonment and what various witnesses had to say, and presented arguments on the law relating to prescription. The submissions traced the alleged failure of Estrick to follow prescribed steps for obtaining title including his filing an old plan and deliberately failing to do a current survey, failing to serve adjoining landowners and the Vigilance estate, and misdescribing the land. The removal of the *grosse transport*

---

<sup>4</sup> *ibid* at [38].

from the Deeds Registry and the absence of the Registrar's report and an up-to-date survey plan were cited as material that would have been effectual to destroy the petition or transport. The peroration was that the above omissions and flaws would have rendered the petition a nullity and the trial court was asked to so find. It ended with the contention that Persaud knew or ought to have known of the deception and fraud committed on the land court and on the estate of Albert Vigilance.

- [18] On to those submissions were tacked two notifications. First, that the court would be asked to allow Vigilance the opportunity to produce documentary evidence of the parts of the land sold off by Albert Vigilance (transports and surveyor's plans) as annotated on the transport and of the payment of rates and taxes by Mrs Vigilance. Second, that a summons was about to be filed for the Commissioner of Internal Revenue to verify that no compliance was regularly issued by his department for the conveyance from Estrick to Persaud.
- [19] Those statements of what counsel was thinking of doing seem an inchoate application for an adjournment of the case, because it could be only upon an adjournment and a subsequent hearing that the evidence of the revenue official could be taken. It was an extraordinary endeavour.
- [20] The judge has been criticised because in the judgment she simply refused the application to amend for being made too late and it was submitted that she should have inquired for particulars of the desired amendment and of the proposed further evidence. The contention seems to be that the judge should have considered that fairness dictated the granting of permission to amend so that the claimant could have put its full case before the court; and that the judge should at least have stated that she had considered this requirement. Much argument and reference to procedural rules and case law were provided to show the late stages at which amendments may be granted and that the judge erred by failing to consider these.

[21] The submissions as to how the judge should have responded to the application and the view that she erred in failing to state her reasoning for refusing the amendment reveal inadequate regard for what was before the judge. The judge had already heard all the evidence about possible fraud in the case and had written a reserved judgment. At that stage, the parties had presented in court all the evidence concerning the factual and procedural bases upon which the Estrick prescriptive title had been granted. All the available and possible criticisms, challenges and objections to the grant of that title had long before been presented in court, including whatever allegations of fraud, impropriety or irregularity could possibly have been made on the evidence. The judge would have known that there existed no possible further evidence that was material to the case. The record of appeal confirms this because the written submissions show<sup>5</sup> what it was proposed to produce, as stated above at [6]. It would have been immediately apparent to the judge that this material was already before the court and that she had considered it in the written decision and that it could have no effect on the judgment.

[22] It is ironic that the judge is criticised for simply dismissing the application on the ground that it was too late, because that course spared the embarrassment of a treatment that would have distilled the nature of the proposed amendment and further evidence and dismissed them as wholly incapable of success – more bluntly, a waste of judicial time. The suggestion by the Court of Appeal that the judge should have laid bare her thought process<sup>6</sup> required too much, in the context of this case. The judicial thought process was laid bare in the judgment in the consideration it gave to the material presented in the case against Estrick’s prescriptive title. The proposed new material against Persaud was largely the same and of a kind with the material against Estrick.

[23] The tenuous nature of the proposed new claim was exposed when counsel was invited by this Court to state what were the particulars of the fraud the estate would

---

<sup>5</sup> Winston L Moore, ‘Submissions on behalf of Eslene Vigilance’, Submission in *Vigilance v Persaud*, GYCV2025/002, 1 July 2010, 287.

<sup>6</sup> Transcript of proceedings, *Vigilance v Persaud* (Court of Appeal of Guyana, Civil Appeal Nos 69&70/2010, 20 March 2024) 13.

have advanced. The particulars were a summary of the ‘further’ evidence proposed to be given in the High Court, discussed above. Virtually all of it related to the process in the Land Court on the petition for prescriptive title, including the age of the plan presented to the Land Court, that the report of the Registrar was defective, that the acreage of the land was not mentioned in the description on the transport, there was no reference to portions of the land that had been sold by Mr Vigilance, and the proximity of the dates of documents relating to the prescription and the subsequent sale of the land. These were largely the same matters stated in the written submissions and were meaningless, as the impending judgment had already decided.

[24] Further, even if these had amounted to irregularities they could not amount to fraud and, therefore, were incapable of providing a basis for a court to set aside the prescriptive title, as discussed immediately below. Further still, these were all matters that concerned only the prescriptive title granted to Estrick and had nothing to do with the derivative title obtained by Persaud, against whom the new claim of fraud was being proposed. As a matter of evidence and law, the proposed new claim really was an impossibility.

### **Indefeasibility of Title**

[25] The insufficiency of irregularities as a basis for setting aside a prescriptive title was considered by this Court in *Todd v Price*<sup>7</sup> when it upheld as indefeasible a title that had been transferred by a fraudster. In that case the land was sold to an innocent purchaser by the fraudster, who forged the true owner’s signature on relevant documents (and was imprisoned for the crime). The true owner maintained that although the innocent purchaser was not a party or a privy to the fraud, by her gross negligence in failing to discover certain matters in the transaction that would have alerted her to the fraud, she should be treated as a party to the fraud, and her title should be declared void. The Court reversed the decision of the Court of Appeal

---

<sup>7</sup> [2021] CCJ 2 (AJ) GY.

that had supported that conclusion and declared that gross negligence did not equate to fraud and was no basis for setting aside registered title.

[26] Section 22 of the Deeds Registry Act which establishes the indefeasibility of a registered title does not permit irregularity to operate as a basis for invalidating a registered title. There must be fraud. In this present appeal, the Court again acknowledges that there will be situations where a true owner must suffer a loss through no real fault of their own and it must accept that criticisms of that result are natural because of the hardship it causes. However, courts are bound by the clear policy behind the Deeds Registry Act that provides for this result since it is the constitutional purview of the legislature to determine, as it has done, that it is in the broader public interest that a title, once registered, should be indefeasible.

### **Conclusion**

[27] There is no need to consider the grounds of appeal relating to evidence as the appeal is wholly incapable of succeeding. These grounds would have been meaningless, in any event, because they related to the underlying proceedings in the Land Court by which Estrick obtained prescriptive title and the court has upheld that title as indefeasible. The matters in the evidential grounds of appeal could not support the proposed new case of fraud against Persaud.

[28] For the reasons stated, I would dismiss the appeal with costs to the respondent.

**BULKAN J:**

### **Introduction**

[29] I agree that this appeal cannot succeed. The proceedings below have followed a circuitous and often incoherent path, with the evidence and arguments not in alignment with the relief sought. While the appellant complains that the trial judge wrongly rejected the 11th hour application at trial for an amendment to provide

further particulars of fraud, there had been precious little, if any, evidence led of fraudulent conduct on the part of Roopnarine Persaud, now the sole respondent.

[30] Insofar as the appellant maintains that the respondent's predecessor (George Estrick) perpetrated fraud on the Land Court in obtaining a declaration of title in his favour, the Estricks were never a party to any appeal – not from the trial judge to the Court of Appeal nor from the Court of Appeal to this court. In other words, the finding by the trial judge that there was no fraud on the part of Estrick was not directly challenged, and thus an appeal against his successor Persaud (who was not involved in Estrick's application for prescriptive title) can hardly succeed.

[31] That said, counsel for the respondent submitted in writing that fraud was not on the record in this case. Further, as my brother Barrow J points out, the trial judge reviewed the evidence and found that no evidence of fraud existed, upholding the grant of prescriptive title in favour of George Estrick by the Commissioner of Title.

[32] It is true that the appellant failed to provide particulars of fraud in her pleadings, but in my respectful opinion it would be going too far to say that she never alleged fraud or that no evidence capable of proving fraud was led at trial. In fact, the appellant repeatedly questioned both the quality of the evidence bearing upon Estrick's petition and the process by which he obtained the declaration in his favour. Thus, although the trial judge's findings in relation to George Estrick cannot be disturbed given the procedural history of this matter, in my view it would not be right to pass over without comment any statements and findings that there was no evidence capable of proving fraud.

[33] It is worth repeating that the appellant's claim was always focused on the grant of prescriptive title to George Estrick. The original claim in Action #3904W/1994 expressly alleged fraud on the part of George Estrick, and while it was short on particulars, the evidence at trial canvassed a number of suspicious circumstances, such as the state of the land (belying claims of recent occupation and use), the use

of an outdated plan combined with the absence of a current survey, and what was described as a ‘trail’ of missing documents.

[34] In the Court of Appeal, the grounds expressly alleged that fraud had been perpetrated on the Land Court to obtain the declaration of title, buttressed by complaints regarding the trial judge’s treatment of the evidence. And before this Court, the appellant maintained the position that the proceedings in the Land Court were defective, emphasising the importance of a current plan and noting that the title awarded to George Estrick ignored previous alienations, rendering it materially inaccurate.

[35] Since no appeal was ever brought against George Estrick, this Court cannot interfere with the findings in relation to him. The various factors rehashed in the appeal were meaningless in relation to Persaud, as the lead judgment points out (at [23] and [24] above), for they concern the prescriptive title granted to Estrick against whom there was no appeal. To guard against dismissing these factors altogether, however, I propose to juxtapose the matters complained about against the criteria and standards related to an application for a declaration of title as laid down in the relevant legislation and fleshed out in the accompanying jurisprudence. All this with a view to making some observations that may be of assistance in the future.

[36] Before proceeding further, however, I wish to advert briefly to two relatively uncontroversial matters of jurisdiction: first, what is the appropriate approach of an apex court faced with concurrent findings of fact made by the courts below, and second, to what extent is a trial court bound by the relief claimed (or not claimed) by the parties to the action?

## **Analysis**

### **Concurrent Findings**

[37] The appropriate approach of this Court to findings of fact by lower courts has been extensively discussed and canvassed, so the position can be briefly stated. This

Court will always treat concurrent findings of fact with great deference, but that does not mean that they are set in stone and cannot be reviewed, and even overturned, where manifest errors are detected. Indeed, an apex court would be failing in its duty to dispense justice if it were to rigidly close off from review the assessment and findings of a lower court, particularly where the latter do not concern issues of credibility.

[38] Having said this, it must be acknowledged that there is some divergence as to what should precipitate this power of review. In *Lachana v Arjune*,<sup>8</sup> possibly the earliest case in which this issue was addressed, a five-member panel advocated what is now regarded as a flexible approach to concurrent findings of fact by lower courts. Writing for the Court, Wit J asserted:

Counsel for the Arjunes referred us to the well known case of *Devi v Roy* where the Privy Council “codified” their (utter) reluctance to review the evidence for the third time where there are concurrent findings of two courts on a pure question of fact. This decision was the culmination of a long line of cases in which the Privy Council developed a rather rigid practice of non-intervention with the facts of the case including those facts that were mere inferences from the primary facts. Even when there was a dissentient in the appellate court or where different reasons were given by the judges in arriving at the same findings of fact, the Privy Council was loath to interfere. It would do so in case of “some miscarriage of justice or violation of some principle of law or procedure.” Although the Privy Council stated in *Devi v Roy*, and has repeatedly said so in later cases, that this practice is not a “cast-iron one”, it would seem that its approach has been more rigid than the practice of other final courts in the Commonwealth. We would in this context expressly refer to recent statements in the High Court of Australia which clearly show a tendency toward more flexibility.

We do not think that it is proper for us to adopt wholesale the practice followed by the Privy Council if only because the position of our Court is quite different from that of the Privy Council. When their Lordships decided *Devi v Roy* they were at the judicial apex of an empire that spanned all five Continents. In a way they still are, although the empire has dwindled substantially. The point is that their Lordships are both geographically and culturally far removed from the countries that still retain the Privy Council as their final appellate court. They are, quite understandably, unfamiliar with local situations and customs, and therefore have to tread very carefully

---

<sup>8</sup> [2008] CCJ 12 (AJ) (GY), GY 2008 CCJ 15 (CARILAW).

and cautiously with the facts as they emerge from the findings of the local courts. The disadvantages of that situation have become clear with some regularity. To take a recent example, in *Panday v Gordon* their Lordships expressly opted to defer to the findings of the lower courts even though it meant depriving the appellant of a fresh look at the factual substratum of the case. The difference with our Court is obvious. We are a regional Court and thus much closer to home as it were. Our closeness to the region and our greater familiarity with its social and cultural dimensions make it easier for us to descend into the facts of the case, especially where the facts do not turn on the credibility of the witnesses or where they are the result of inferences from primary facts.<sup>9</sup>

[39] More recently, in *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd*,<sup>10</sup> a majority of this Court reaffirmed that it is entitled to review concurrent findings of fact made by lower courts, while seeming to put the brake somewhat on the flexibility espoused by Wit J, though his position was not altogether without support.<sup>11</sup> That revision came in the form of opinions that any review of findings of fact should only occur in ‘exceptional circumstances’.<sup>12</sup> Saunders P cautioned against an appellate court re-litigating factual disputes already contested and resolved in the courts below, though agreeing with Anderson J that in the case of primary facts found by a trial court and affirmed by the Court of Appeal (as distinct from inferences arising from such facts), this Court should review them only in exceptional circumstances.

[40] However the trigger for review is framed, its inherent subjectivity means that what counts as ‘exceptional’ may vary along a continuum depending on the individual assessment, and ultimately what remains important is that this Court has maintained its power to intervene in appropriate circumstances. As identified by the Court, examples of this include where no sufficient basis exists for a finding by the lower court, or where there has been a violation of some principle of law or procedure,<sup>13</sup> or where failure to review would result in a miscarriage of justice. As summarised by Jamadar J:

---

<sup>9</sup> *ibid* at [11]–[12] (footnotes omitted).

<sup>10</sup> [2024] CCJ 3 (AJ) BB, BB 2024 CCJ 1 (CARILAW).

<sup>11</sup> *ibid* at [321] (Jamadar J).

<sup>12</sup> *ibid* at [6] (Saunders P), [59]–[60] (Anderson J).

<sup>13</sup> *ibid* at [59] (Anderson J).

... if it can be demonstrated that a trial court in its assessment and determination of primary facts has made a clear, manifest, or obvious error in, and/or has reached conclusions that cannot be supported having regard to the totality of the evidence, and/or not provided clear, cogent, and reasonable justifications for making those findings, and/or there is otherwise no sufficient basis for its findings, an apex court can re-visit and review them even when there are concurrent findings (that is, the findings are affirmed by an intermediate appellate court). In the case of concurrent findings of primary facts, the deference afforded is achieved by applying the standard that any mistake must be demonstrated to be both significant and obvious. In relation to concurrent inferences no such equivalent deference is due as an intermediate appellate court is not in any more privileged position than an apex court.<sup>14</sup>

[41] In any event, since no appeal was brought against the Estricks this Court cannot interfere with findings of fact in relation to them, nor do I intend even to review the evaluation of the evidence as conducted by the respective courts so as to come to any definitive conclusions. I mention the Court's power to review concurrent findings of fact only to underscore that neither the evaluation by the Commissioner of Title nor that of the courts below in this action is in principle immune from review. Had the proper procedural steps been followed, then a more detailed and definitive analysis could have been undertaken (at every appellate level), including by this Court if the trigger for review had been met.

### **Remedies**

[42] The respondent noted that appellant did not seek to set aside George Estrick's transport, No 451 of 1994, nor did she seek to set aside the Order of the Land Court that extinguished Albert Vigilance's transport. Indeed, the appellant's case was focused on the current respondent who, at the end of the day, seemed to be nothing other than a bona fide purchaser for value without notice.

[43] This turned out to be a fatal tactical error, insofar as the Estricks fell off the radar and were never pursued as they should have been. Paradoxically, however, the

---

<sup>14</sup> *ibid* at [322].

appellant did plead fraud on the part of the Estricks in Action #3904W/1994 and sought by way of relief a declaration that the said land was the lawful property of the beneficiaries of the deceased's estate along with an order compelling the Registrar of Deeds to convey the said property to them. Thus, at the outset, the stage was set for a determination of the appropriate cause of action.

[44] However, as the respondent was at pains to point out, in none of the actions commenced by the appellant as executrix, did she properly litigate the issue of fraud by the Estricks. The other actions joined with this one focused on the conveyance from Estrick to Persaud and the alleged trespass by the latter. In none of these actions did she directly ask for the cancellation of the declaration of title in favour of George Estrick or for the transport to him to be set aside. But this oversight in the remedy claimed ought not to have been an insuperable obstacle had the appellant pursued and succeeded in making out a case of fraud on the part of the Estricks, as per her initial action in 1994.

[45] In *Singh*,<sup>15</sup> one of the arguments raised on appeal was that the trial judge had erred by setting aside the transports even though he found that they were fraudulently obtained, because (inter alia) this was not one of the reliefs claimed. Upholding the view of Cummings-Edwards C (Ag), this Court found that the judge was justified in acting as he did. While the better course of action would have been to invite further submissions from counsel on the nature of the relief to be awarded, his failure to do so was not fatal as Order 23, r 4 empowered him to set aside the fraudulent titles, even though there was no specific claim for cancellation in the pleadings.

[46] Ultimately, courts exist to do justice and even though the appellant's case was presented incoherently and inadequately, the failure to invoke the most conventional procedure or to expressly claim the obvious remedy should not have

---

<sup>15</sup> *Singh* (n 3).

been fatal. As definitively established by this and other courts, had she pursued the Estricks and succeeded in establishing fraud on their part in obtaining the declaration of title, the court would have been empowered to grant her the appropriate relief, including the cancellation of the transports so obtained. Indeed, as George J rightly observed in her judgment, if fraud had been established on the part of the respondents, the property would have reverted to the estate.

### **Adverse Possession: Legal and Evidential Standards**

[47] Much effort was expended by the appellant's various lawyers, at every stage of these proceedings, to contest the declaration of title obtained by George Estrick. The question as to whether that evidence was properly evaluated is now moot, but since the strength of that evidence has been doubted, I think it important to consider an alternative perspective, particularly one that is mindful of how the standards that have developed over time in Guyanese courts, in relation to prescriptive title, should be applied in practice. A useful starting point is therefore the legal and evidential criteria for a finding of adverse possession laid down in the Title to Land (Prescription and Limitation) Act, Cap 60:02 of the Laws of Guyana.

[48] The statutory provisions are themselves fairly straightforward. By s 3 of Cap 60:02 as aforesaid, title by prescription to private land may be acquired by 'sole and undisturbed possession, user or enjoyment for not less than 12 years', provided that such possession, user or enjoyment was not obtained by fraud, consent or agreement. Applications under the Act for a declaration of title may be heard by a Commissioner of Title, whose jurisdiction and powers are coordinate to those of a judge of the High Court, in proceedings conducted in what is known in Guyana as the 'Land Court'.<sup>16</sup>

---

<sup>16</sup> Title to Land (Prescription and Limitation) Act, Cap 60:02 s 4 (GY).

[49] As this Court has interpreted both the legislation and authorities, a claimant to land by adverse possession needs to show that for the requisite period, s/he (and any necessary predecessor) had:

- (i) a sufficient degree of physical custody and control of the claimed land in the light of the land's circumstances ('factual possession'), and
- (ii) an intention to exercise such custody and control on his own behalf and for his own benefit, independently of anyone else except someone engaged with him in a joint enterprise on the land ('intention to possess').<sup>17</sup>

[50] Complementing the substantive criteria laid down by statute are the practicalities of the process as outlined in Rules of Court, which require an application for prescriptive title to be made by petition, containing and supported by the following:

- (i) A statement of all the material facts on which it is based;
- (ii) A detailed description of the property in question;
- (iii) A statement of the property's boundaries, or its nature and extent, as the case may be;
- (iv) A plan of the property; and
- (v) An affidavit or affidavits verifying the facts stated in support of the petition.<sup>18</sup>

[51] Butressing these requirements are those of notice, which mandate publication of the petition both in the Official Gazette and a daily newspaper for three consecutive weeks along with service on each owner and occupier of lands adjacent to the property in question.<sup>19</sup>

---

<sup>17</sup> *Toolsie Persaud Ltd v Andrew James Investments Ltd* [2008] CCJ 5 (AJ) (GY), (2008) 72 WIR 292.

<sup>18</sup> Rules of the High Court (Declaration of Title), Cap 3:02 r 3.

<sup>19</sup> *ibid* rr 4, 5.

[52] These provisions do no more than sketch the bare minimum, and it has been left to the courts to flesh out some of the details and practicalities of what is required. An examination of the authorities reveals the starting (and, indeed, ending) point to be proof of ‘sole and undisturbed’ possession of the property claimed. As obvious as it may sound, obtaining ownership of property via this route is known as ‘adverse possession’, so both by definition and substance, it is actual *possession* which matters. Thus, a petitioner claiming prescriptive title must establish the fact of possession of the land claimed, or as this Court put it in *Toolsie Persaud Ltd v Andrew James Investments Ltd*, ‘a sufficient degree of physical custody and control of the claimed land in the light of the land’s circumstances’.<sup>20</sup>

[53] What is commonly regarded as a landmark case in the development of this area in Guyana is *Li v Walker*,<sup>21</sup> from which one can see how the nature and quality of the occupation is central to a claim for prescriptive title. In the Court of Appeal, Luckhoo C (Ag) said:

The acquisition of title by prescription primarily depends upon the quality of the occupation, and the circumstances in which it takes place. If the circumstances of the particular case satisfactorily yield the answer that the occupation, (i) was of a kind which showed sole and undisturbed possession, user and enjoyment deliberately, adversely and exclusively exercised, (ii) was for at least thirty years, (iii) was without fraud, and (iv) was not the result of some consent or agreement expressly made or given to allow of such occupation without adverse consequence then prescription could arise through occupation of this description, even in the case of one co-owner against another co-owner.<sup>22</sup>

[54] In *Brandis v Craig*,<sup>23</sup> another decision of the Guyana Court of Appeal, the importance of demonstrating factual occupation was reinforced. In this case the defendant in a trespass action claimed prescriptive rights to the adjoining property on which she had been occupying. She was unsuccessful both at first instance and

---

<sup>20</sup> *Toolsie Persaud Ltd* (n 18) at [28].

<sup>21</sup> (1968) 12 WIR 195 (GY CA).

<sup>22</sup> *ibid* at 206.

<sup>23</sup> (1981) 30 WIR 136 (GY CA).

on appeal because her possession, such as it was, was pursuant to a lawful title – she and the predecessor of the adjoining owner being siblings who had inherited the respective lots from their father. In the Court of Appeal, while noting that dispossession of another involves issues of both fact and law, Luckhoo JA clarified as follows:

One of the ways of justifying the act of possession of another's land is by and through the law of prescription. It has been said, and quite rightly, that lapse of time is recognised as creative and destructive of rights. This is so with the destruction of the ownership of land through dispossession for twelve years. The owner loses not only his right to recover possession of the land; he loses title to the land itself.<sup>24</sup>

[55] If these observations seem simplistic or obvious, I would counter that it is critical not to lose sight of this foundational element – namely, that entitlement to the property of another on this basis is rooted in the fact of possession by the claimant, which in turn hinges on actual physical custody and control.

[56] Next, it is not enough to simply show isolated acts of occupation or use, for factual possession must be established to and extend over the *entire* area claimed. In *Madhoo v Ramdass*,<sup>25</sup> the petitioner who owned piece of land abutting the public road claimed prescriptive rights to a large portion on the other side of the road. His application was opposed by several persons who held land in undivided ownership to the north and south of him and who also used that land across the public road for de-pasturing their cattle. In dismissing his petition, the court described the acts relied upon by the petitioner as proving possession to be ‘minor’. In order to establish possession, the petitioner was required to demonstrate some ‘unequivocal’ act, such as fencing off the land, to demonstrate that he was asserting a right to it in its entirety. In the absence of any such clear demonstration, the true owner or other trespassers could have no knowledge that the petitioner or anyone else was in sole possession.

---

<sup>24</sup> *ibid* at 143.

<sup>25</sup> [1954] LRBG 191.

[57] *Madhoo* and other cases<sup>26</sup> reinforce this idea that a claimant to prescriptive title must demonstrate actual physical possession and control to the whole of the property claimed. This of course is a direct interpretation of the legislation which requires possession to be ‘sole and undisturbed’, but what is important here is not only the fact of exclusivity, but also the degree of unequivocal usage to substantiate occupation and possession of the whole. In other words, both the nature and extent of the claimed occupation counts.

[58] This brings us to the procedural requirements involved in establishing a claim of this nature. The burden of proof to establish entitlement to prescriptive title is on the petitioner, that is, the person claiming to have been in adverse possession. Discharging this burden requires a standard of proof that may be described as rigorous proof, for as past authorities demonstrate, acts that are perceived as too minor or insignificant or equivocal will not qualify as sufficient to extinguish the rights of the legal owner. This is how Luckhoo JA put it in the Guyana Court of Appeal:

Dispossession involves issues of fact and of law, and the onus of proof lies on him who alleges dispossession. It is well to remember also that evidence may show mere user of the land by a trespasser which does not amount to dispossession of the owner of it, and that acts (even minor acts) done on the land by the legal owner constitute evidence to show that he has never discontinued possession (see *Leigh v Jack* [(1879) 5 Ex D 264, 49 LJQB 220, 42 LT 463, 44 JP 488, 28 WR 452]).<sup>27</sup>

[59] An interesting decision is that in *Glen v Sampson*,<sup>28</sup> where the appellant after being continuously in occupation of a parcel of land for 22 years went to live elsewhere for some four years. In the same year of his return, the respondent had entered upon the land and began planting crops. The appellant uprooted those crops and the respondent sued in trespass, claiming to be in occupation by virtue of a lease. Allowing his appeal, it was held that abandonment of possession was a question of

---

<sup>26</sup> See for example *Tackorie v Port Mourant Ltd* [1954] LRBG 108.

<sup>27</sup> *Brandis* (n 24) at 143.

<sup>28</sup> (1972) 19 WIR 237 (GY CA).

mixed law and fact, with the onus of proof of dispossession or discontinuance of occupation lying on the adverse possessor. The appellant's mere absence from the land during those four years was insufficient from which it could be presumed that he intended to abandon possession, particularly given how decisively the appellant acted once he learned of the respondent's presence on the land.

[60] In the Court of Appeal, Crane C had this to say:

The important thing to observe, I think, is that nobody was in possession after the appellant left and prior to the entry of the respondent, that is, between 1960 and 1964. In relation to the respondent, this fact would render the appellant's possession intact during that time just as if he had never physically left the lot. In this state of affairs I ask myself: How could a trial court rightly presume an intention on the appellant's part to abandon the lot, particularly when there was some evidence of fruit-tree cultivation on it? Certainly not from the mere fact of his absence.<sup>29</sup>

[61] The dicta from these authorities usefully remind us that in the instant case, it was not up to the heirs of Albert Vigilance to prove that they were in occupation and possession of the land (though considerable pains were taken at trial to lead evidence to this effect). As the legal owner of the land, the estate had nothing to prove, and any person claiming to have dispossessed the true owner was required to establish *their* physical possession by way of such acts – not of a trivial or equivocal nature – sufficient to substantiate use and occupation of the whole. Indeed, as Luckhoo C asserted, it is ‘the quality of the occupation, and the circumstances in which it takes place’<sup>30</sup> which matter in a claim for title by prescription.

[62] The courts have also strictly interpreted the rule requiring a ‘statement of all the material facts’ upon which the petition for a declaration of title is based, as necessitating full and frank disclosure.<sup>31</sup> In *Adams v London*,<sup>32</sup> where the plaintiff failed to disclose in her petition for a declaration of title that the defendant had been

---

<sup>29</sup> *ibid* at 248.

<sup>30</sup> *Li* (n 22) at 206.

<sup>31</sup> *Inc Trustees of the Diocese of Guiana v McLean* [1939] LRBG 182.

<sup>32</sup> [1964] LRBG 188.

in occupation of a portion of the claimed land for more than 12 years, her petition was dismissed on the ground of unilateral fraud. Luckhoo CJ expressed strong views of her non-disclosure, stating:

The inference is irresistible that there was a deliberate and fraudulent suppression of evidence on the part of the plaintiff in respect of the defendant's occupation of a portion of the land. The extent of the plaintiff's occupation has not been precisely given in these proceedings. The declaration in favour of the plaintiff made by the Commissioner of Title cannot be allowed to stand and must be set aside.<sup>33</sup>

- [63] This Court was similarly exacting in *Bisnauth v Shewprashad*,<sup>34</sup> displaying no tolerance for the failure to disclose material details. Pollard and Bernard JJ in their joint judgment noted unforgivingly that the petition 'lacked specificity on important and material details such as Lackram's relationship with the true owner or the circumstances of his occupation of the lands. ... As it stood and applying the reasoning of Langley J, the petition ought to have been dismissed either at the court of first instance or by the Court of Appeal.'<sup>35</sup>
- [64] The combination of the statutory requirements and their interpretation by various courts over the years leads unerringly to the conclusion that a claim for prescriptive title is not to be treated as a formulaic process. Rather, it demands an investigative exercise in which the history, nature, extent and quality of an applicant's alleged possession must be frankly disclosed, thoroughly described, and in turn carefully examined by the judicial authorities. The burden of proof is on the claimant, which can be discharged only by way of evidence that points to substantial and not minor acts of occupation.
- [65] Comparison with the jurisprudence on this subject as it has developed in Trinidad and Tobago is instructive, given the similarity with which the statutory standards have there been interpreted and applied in practical terms. In *Dipcon Engineering*

---

<sup>33</sup> *ibid* at 193.

<sup>34</sup> [2009] CCJ 8 (AJ) (GY), (2009) 79 WIR 339.

<sup>35</sup> *ibid* at [25].

*Services Ltd v Attorney General of Trinidad and Tobago*,<sup>36</sup> the claimant sought adverse possession to a parcel of land which was originally owned by the State and then conveyed to the second defendant under a 999 year lease. In the course of assessing the evidence of claimed possession and control, James J set out the legal framework. First establishing the standard criteria for proof of adverse possession as the twin elements of factual possession and an intention to possess, both of which must coexist throughout the statutory period, James J then proceeded to outline the evidential implications in strikingly similar terms to those that have developed in Guyana. Of particular relevance are the following statements:

Time for the purposes of adverse possession therefore begins to run when a claimant takes factual possession of land with the requisite intention to possess, to the exclusion of the paper title owner and the world at large. Once such possession is established, time continues to run unless and until it is interrupted by the dispossession of the claimant or the claimant's voluntary abandonment of possession.

...

Possession is a question of fact and degree, assessed having regard to the nature of the land and the manner in which land of that character is ordinarily used. The Court must take a practical approach while remaining mindful that a finding of adverse possession has the serious consequence of extinguishing the paper owner's title. In *Powell v. McFarlane* [1977] 38 P & CR 452 at pages 471-472 Slade J explained that factual possession requires the claimant to have dealt with the land as an occupying owner might reasonably be expected to do, and that no one else has done so.

...

The same cautionary but practical approach was endorsed by Kokaram JA in *Gormandy et al v Trinidad and Tobago Housing Development Corporation Civ App No. P-376 of 2018*, where he observed that adverse possession claims are highly fact-sensitive and must be subjected to critical analysis given their effect on legal title.<sup>37</sup>

[66] What emerges from the dicta of James J is not just the importance of proof, but equally the duty on the judicial officer in assessing the evidence. A claim of adverse possession therefore raises issues of fact and law, calling for a thorough, detailed

---

<sup>36</sup> (TT HC, 9 January 2026).

<sup>37</sup> *ibid* at [150], [152]-[153].

and transparent process in which the relevant judicial officer has a duty to satisfy himself or herself that the statutory criteria have been proved to the requisite standard. Ultimately, it is for the claimant to prove sole and undisturbed possession, use and enjoyment, adversely and exclusively exercised for the period specified by law. To do so, what is required are acts indicating occupation and possession that are open and substantial (not minor or equivocal), which indicate the intention to possess the property to the exclusion of all others.

### **The Instant Appeal**

[67] Given this legal and evidential context, it would be useful to have regard to some crucial, unadorned facts which emerged at the trial:

- (i) In his petition claiming prescriptive title to the land in question, which was dated November 29, 1993, George Estrick claimed that he had gone into possession on the land in 1970 and had been in continuous possession since.<sup>38</sup> By comparison, uncontroverted evidence was led at the trial before George J that the legal owner of said property – Albert Vigilance – obtained transport in 1969 and that until his death in 1979, he (Vigilance) occupied the land and cultivated it.
- (ii) In the said petition dated 29 November 1993, George Estrick claimed that he used the property, cultivating ground provisions and cash crops and owning a farmhouse thereon. By comparison, uncontroverted evidence was also led at the trial from the defence that a mere four months after Estrick’s petition, witnesses visited the very land and found it to be overgrown with thick bush and practically impenetrable. Defence witness Sayroo, for example, testified both in chief and under cross-examination that when he visited the land sometime in March 1994 along with the respondent Persaud, they could only walk five feet in before getting to a ‘forested area’. The respondent Persaud himself agreed with counsel under cross-examination that given the ‘massive bush’ on the land, it had to have been there for a long time – enough to raise questions about the veracity of Estrick’s claim in his petition just four months earlier that he cultivated the land.

---

<sup>38</sup> This petition was admitted in evidence at the trial before George J and marked ‘Exh. C1-22’.

- (iii) After obtaining the subject properties in 1969 and over the course of the following decade, Albert Vigilance conveyed several parcels of Lot 4 to third parties. Yet George Estrick’s petition claimed the entire property, including portions already alienated, resulting in a material mis-description of the boundaries of the property in the transport he obtained.
- (iv) In support of his petition of November 1993, George Estrick relied on a plan that had been prepared in 1962, more than three decades earlier. Indeed, it would appear from a perusal of all the proceedings that Estrick caused no survey to be carried out of this land, which he was supposedly in occupation of and cultivating crops, prior to presenting his petition for prescriptive title.
- (v) Several important documents could not be located at the time of trial – such as, the original transport of Albert Vigilance as well as the Order of Court supposedly discharging the injunction which prevented Estrick from conveying the property while the action was pending. As to the former, evidence was led under cross-examination of a systemic problem with storage of court documents, the suggestion being that this was related to the physical facilities. In this instance, however, the missing document was not an entire volume (in which transports are bound), but rather the evidence revealed that it was *only* the grosse transport to Albert Vigilance which had been ripped out of the bound volume.

[68] In light of the legal and evidential standards as described earlier, many troubling questions arise – or ought to arise – on this evidence. Evidence which could have excited the suspicion of the primary fact-finder in the Land Court and, indeed, any court reviewing the process. A not exhaustive list includes the following:

- (i) Can it be said that George Estrick was in ‘sole and undisturbed’ possession of the claimed land, at least between 1970 and 1979, when the legal owner was still alive and according to the uncontradicted evidence, using the property to farm?
- (ii) Can it be said that George Estrick was in ‘control’ of the said property from the claimed date of 1970, when the legal owner in the years following alienated several portions of it?

- (iii) How credible was George Estrick's claim of cultivating the land and growing ground provisions and other crops, when only a few months later witnesses for the defence found the land to be mostly forested and overgrown with bushes?
- (iv) How credible was George Estrick's claim of being in physical possession and control of this extensive property (close to 65 acres in size), when witnesses for the defence found it to be impenetrable after only a few hundred feet? In those circumstances, what was the evidence of use, occupation and control of the whole?
- (v) Was George Estrick frank and forthcoming in his application, given that he relied on a 30-year-old plan which did not accurately reflect the land's current boundaries?
- (vi) In light of the unwavering position of the courts that non-disclosure of material facts will be viewed as 'deliberate and fraudulent suppression of evidence and as a mediated and intentional contrivance to keep all interested parties and the Court in ignorance of the real facts of the case',<sup>39</sup> how should the failure to have the land surveyed immediately prior to filing the petition be assessed and interpreted?
- (vii) What is the impact of the misdescription of the property upon the declaration of title that was made in the Land Court?
- (viii) What implication is to be drawn from the fact that grosse transport in the name of Albert Vigilance was deliberately torn out of the official, bound volume? Should this excite suspicion that it was done once litigation commenced, so as to conceal the inaccuracy in the declaration obtained by Estrick?

---

<sup>39</sup> Quoted in *Mathan v Kujal* (2014) 85 WIR 383 (GY CA) at [7] (Roy JA); see also *Adams* (n 33) and *Bisnauth* (n 35).

- [69] Although these questions arise legitimately on the totality of evidence led below, they do not seem to have been analysed in any depth. In particular, the trial judge was not perturbed by the use of a 30-year-old plan in support of Estrick's petition since the Commissioner of Title had been aware of that fact and nonetheless granted the declaration in his favour, and moreover because no statutory provision was cited requiring a recent plan.
- [70] It is true, of course, that the governing Rules simply require that a petition be supported by a plan of the property claimed, imposing no restriction as to its age or connection to the possession of the applicant claiming adverse title, but it must be asked whether adherence to the bare minimum as set out was satisfactory in these circumstances, or at all. Should the use of an extremely dated plan raise any red flags about the truth of the claimed occupation? Where there are conflicts in the evidence as in this case, would requiring a current survey that speaks directly to the alleged acts of occupation help to resolve contradictory claims? In order to help answer these questions, it would be useful to refer to the practice that obtains in Trinidad and Tobago in similar proceedings.
- [71] Judges of the High Court of Trinidad and Tobago have developed guidelines to complement the statutory criteria governing applications for prescriptive title, largely based on the applicable legislation.<sup>40</sup> The comparable legislation in Trinidad and Tobago is far more comprehensive than what obtains in Guyana, and the guidelines are of added value insofar as they are routinely provided to every applicant and provide detailed guidance as to what information is relevant at every stage of the process. A cursory look at the contents of the guidelines reinforces the fact that an application of this nature is a consequential one, calling for a comprehensive investigation and requiring the appellant to provide substantial proof. For example, the statutory declaration<sup>41</sup> by an applicant must itemise all relevant information, starting with the date when possession began and covering a

---

<sup>40</sup> Real Property Act, Chap 56:02, s 7 (TT).

<sup>41</sup> *ibid* Form E: Affidavit or Statutory Declaration in Support of a Claim to Title by Possession.

description of its duration and nature, all acts indicative of adverse possession, and even all relevant births, deaths and marriages (with accompanying certificates).

- [72] Applicants are required to swear as to their knowledge of any documents affecting the said lands, mortgages or other encumbrances, provide details of occupants of all lands contiguous to that claimed, present a current valuation, as well as details of all improvements.
- [73] The guidelines envisage that prior to any application, an applicant will commission a survey of the land, to be done with full notice to the proprietors and occupiers of all neighbouring lands. Importantly, the applicant must be present at the survey, either personally or represented by an agent. The implication of the latter requirement must be that the applicant is obliged to aid the surveyor by pointing out boundaries and other incidences of occupation – in this way demonstrating his or her knowledge of the property along with the extent and nature of his or her use and occupation of it. This is a requirement that should, in principle, be implemented forthwith.
- [74] One very useful innovation in the Trinidad and Tobago practice is the requirement of an ‘on site investigator’s report’, to be prepared by a Field Investigator from the relevant state department, attesting to the findings as to the claims made by the applicant(s) and witnesses, and including conclusions based on the interviews with persons on site and on sites adjoining the subject land. If properly done, a report of this nature would therefore provide credible, reliable and independent information as to the nature of the claim (whether actual occupation matches that claimed by an applicant) and thus assist the judicial officer in determining it. It is also a requirement that should, again in principle, be implemented forthwith, subject only to the availability of human resources and support. The value of this qualitative verification cannot be overstated, given that what is at stake is the ownership of and right to occupy land.

[75] In this case, the use of an outdated plan – one so old that it was no longer accurate – was not seen as untoward. Before us, counsel for the respondent went so far as to dismiss the appellant’s complaint on this point as ‘idle’. I strongly disagree with that perspective. Given the evidence that unfolded, and in particular the anomalies and contradictions between what was claimed by George Estrick in his petition and what emerged at trial, reliance on the bare minimum as laid down in the applicable Rules is, in my view, far from satisfactory.

[76] I am not persuaded, however, that the bare minimum as stated in the Rules is what applies in Guyana. As Mr Housty submitted on behalf of the appellant, Kissoon JA explained in *Dey v Ramdhanny*, in terms perfectly aligning with the thrust of this opinion, that:

The purpose of filing a plan is to establish and define the true extent of the land the Petitioners did in fact occupy and for which a declaration of Prescriptive Title is applied. Since Prescriptive Title is dependent on actual and factual possession, a plan must be filed demarcating the actual possession of the Petitioner[s].<sup>42</sup>

[77] At a minimum, the Land Court’s suspicion should have been excited by reliance on such an old plan, and in the discharge of her duty the Commissioner of Title should have considered what further steps, or further evidence may have been needed. It would certainly appear that Estrick’s petition would have likely met a different outcome in Trinidad and Tobago, where the requirements of proof as described in the legislation and accompanying Guidelines are far more comprehensive and stringent.

[78] In light of the prevalence of fraud in land matters in Guyana, which often go unremedied because of the technicalities of pleading and the complications of its hybrid legal system, there is clearly a need for a less formulaic approach to proof and for judicial oversight to be more exacting. There is, to be sure, a need to insist on stringent proof of claimed occupation, constituted by detailed information

---

<sup>42</sup> [2003-2004] GLR 37 at 45.

concerning use and control. Also indispensable in all applications is comprehensive and frank disclosure, including the most current and up-to-date information, which would go a long way towards detecting and eliminating undeserving claims. If in some cases this means the use of a plan based on a recent survey, its absence should not be excused merely because of the silence of the Rules on whether a plan should be contemporaneously prepared. In this regard, Kisoona JA's explanation is instructive, and in the same vein the approach that obtains in Trinidad and Tobago, including the detailed Guidelines which applicants must follow, is an example of best practice in this area.

### **Conclusion**

[79] As I conclude, it is also important to acknowledge the experience faced by the Vigilance family in this matter – first the widow of the transported owner and then his heirs who continued after she died in the course of the trial. The evidence reveals that Albert Vigilance was the legal owner of the lands in question. When his widow discovered activity unauthorised by her occurring on the land, she immediately sued alleging fraud on the part of George Estrick – doing so within the one-year period laid down by statute. That was some 31 years ago.

[80] Over the past three decades, she was forced to change lawyers multiple times, and the record reveals that she was left unrepresented at trial on several key moments – in one deplorable instance, this older, legally untrained litigant was forced to conduct cross-examination herself. Most consequential of all, her case was bungled from the outset, with the central cause of action and the main parties not pursued. As the trial judge put it more delicately, ‘the plaintiff had many counsel, each proceeding differently and disjointedly. The initial proceedings were not well thought out and put together in relation to the pleadings filed’.

[81] Yet there appears to have been no consequences, disciplinary or otherwise, for such egregious under-representation. Even though an injunction was obtained to restrain

further conveyances of the subject property while the action was pending, this crucial safeguard collapsed as the injunction was apparently discharged – and I say apparently because up to now, no official record exists of the Court Order discharging that injunction. Ultimately, these proceedings have dragged on for more than 30 years, with the appellant responsible for none of that extensive delay yet now wholly unsuccessful, mostly because of the procedural missteps.

[82] This and other courts, not to mention the public, have repeatedly bemoaned the prevalence of fraud in land matters in Guyana. In *Mathan v Kujal*<sup>43</sup> Roy JA concluded his judgment with a sharp criticism of the prevailing context surrounding applications for prescriptive title, noting:

...[t]he rapacious conduct of the petitioner in this case lends credence to the growing international unease over unmerited cases of adverse possession. Among other tribunals, the Supreme Court of India ... in *Waghaji v Khengarbhai* AIR 2009 SC 103 described the law of adverse possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner “and a windfall for a dishonest person who had illegally taken possession of property”.<sup>44</sup>

[83] More recently, in *Todd v Price* – a case where the legal owner was defrauded of his property by the fraudster’s use of a false power of attorney, but who did not succeed in recovering it, again because of the technicalities of pleadings – this Court was insistent on the need for legislative reform. Indeed, Anderson J sketched the anomalies of the present framework and directly called upon ‘the Government of Guyana ... to consider reform of this area of the law with all appropriate dispatch’.<sup>45</sup>

[84] Despite these calls, yet another innocent landowner today suffers a loss – in this instance, because of a cascading litany of slippages and failures that attended her legal challenge. In the context of a system where official court records are deliberately removed, attorneys do not turn up at trial, litigants are forced to conduct

---

<sup>43</sup> (2014) 85 WIR 383 (GY CA).

<sup>44</sup> *ibid* at [26].

<sup>45</sup> *Todd* (n 8) at [47]–[49] (Anderson J), [186] (Jamadar J).

cross-examination on their own, and a case can take upwards of 31 years to be resolved, this Court at least must do more than bemoan legislative inertia, judicial backlogs, and incompetent legal representation. Requiring stringent standards in applications under the Title to Land (Prescription and Limitation) Act for a declaration of prescriptive title is squarely within the judiciary's control, and doing so would go a far way towards minimising fraud and the unlawful dispossession of legitimate and bona fide landowners.

**Disposition**

[85] The appeal is dismissed with costs to the Respondent.

*/s/ D Barrow*

---

**Mr Justice Barrow**

*/s/ P Jamadar*

---

**Mr Justice Jamadar**

*/s/ C Ononaiwu*

---

**Mme Justice Ononaiwu**

*/s/ C Eboe-Osuji*

---

**Mr Justice Eboe-Osuji**

*/s/ A Bulkan*

---

**Mr Justice Bulkan**