

**GRENADA**

**IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE  
(CIVIL)**

**CLAIM NO. GDAHCV2002/0490**

**BETWEEN:**

**NANCY JALEEL  
(by her Attorney Kayam Jaleel)**

Applicant

and

**MICHAEL JOHN**

Respondent

**CLAIM NO. GDAHCV2003/0213**

**BETWEEN:**

**NANCY JALEEL  
(by her Attorney-in-fact Muhammad Kayam Jaleel)**

Applicant

and

**NEVILLE ELCOCK  
ADONA ELCOCK  
YVETTE ELCOCK  
JUSTIN ELCOCK  
CHERYL MITCHELL  
CELINA JOHN  
THOMPSON EDWARDS  
MICHAEL JOHN  
YOLANDE MITCHELL**

Respondents

**Appearances:**

Mr. Reynold Benjamin for the Claimant in both actions  
Mr. Michael Andrew for the defendant in Claim 0490/2002  
Ms. Kim George for defendants 1 through 6 and 8 & 9  
Ms. Rosalyn Wilkinson for the 7<sup>th</sup> Defendant

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2011: January 14  
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- [1] **HENRY, J.:** In Claim No. 0490/2002, the claimant seeks (1) a Declaration that the defendant is not entitled to enter or remain on any part of the claimant's property; (2) An injunction restraining the defendant by himself, his servants and/or agents or otherwise from trespassing on the claimant's property; (3) Damages for trespass; and (4) costs.

In Claim No. 0213/2003, the claimant seeks:

1. A declaration that the claimant is the owner in fee simple in possession of a portion of land known as Marlmount Estate situate in the parish of Saint David, in the State of Grenada, and comprising by admeasurement 176 acres 3 roods and 21 poles, which lands are more particularly described in a copy of a Deed of Indenture annexed to the Statement of Claim.
2. A further declaration that the defendants whether by themselves their servants and/or agents or otherwise howsoever described are not entitled to trespass on the lands of the claimant.
3. An order for an interim injunction prohibiting the defendants from trespassing on the Claimant's lands felling trees growing thereon and carrying away the wood or generally exercising acts of ownership or making threats of unlawful harm to the claimant, her lawful Attorney, her servants and/or agents.
4. Damages for trespass to claimant's land.
5. Damages for pain and suffering as a result of threats made to the claimant, her lawful Attorney, servants and/or agents in relation to claimant's land and deprivation of use and quiet enjoyment of her land.
6. Exemplary or punitive damages.
7. Special damages.

8. Costs.

**The Pleadings**

The Claims

- [2] The claimant alleges in both actions that she is the owner in fee simple of the property known as Marlmount Estate situate in St. David comprising approximately 176 acres 3 Roods and 21 poles by virtue of an indenture of conveyance dated 17<sup>th</sup> December, 1984 between Sonia Renwick, Stella Beaubrun, Cosmo Allan St. Bernard (the personal representatives of John Byron Renwick, deceased), as Vendors and the Claimant as Purchaser. A copy of the Indenture is annexed to the pleadings.
- [3] In Claim No. 0490/2002, claimant alleges that defendant, Michael John and his servants and/or agents without the permission or consent of the claimant have entered unto the claimant's property and are cultivating a portion thereon; that the defendant has been repeatedly warned by the claimant's watchmen that the defendant should not trespass or allow his servants or agents to trespass on claimant's property; that by reason of the alleged trespass, the claimant has been deprived of the use and enjoyment of the said property and has suffered loss and damage.
- [4] In Claim No. 0213/2003, the claimant alleges that in March 2003, the defendants, their servants and agents trespassed on the claimant's lands and exercised acts of ownership thereto by felling valuable trees growing thereon, including fruit trees; that the claimant requested the defendants to cease and desist; the 7<sup>th</sup> named defendant claimed a right to enter and to carry away the felled trees and that he, his servants and agents took the trees away.
- [5] Further, that on Sunday 6<sup>th</sup> April, 2003 the claimant, her husband and her Attorney went to the said lands at Marlmount; that while claimant and her Attorney were on the land, the defendants Neville Elcock, Michael John and Adona Elcock were unlawfully trespassing on the claimant's lands; that the defendants verbally abused the claimant's Attorney and threatened him with unlawful harm; that the defendant Neville Elcock picked up a stone and threatened to do damage to the claimant's Attorney; that the defendant Michael John made menacing gestures and threatened to shoot the claimant's Attorney; that the defendant Adona Elcock then started a fire on the

Claimant's lands; that as a result of these acts by the defendants, the claimant and her Attorney were forced to flee from the claimant's land for fear of their lives.

- [6] Furthermore, that on 23<sup>rd</sup> April, 2003, the claimant's Attorney went to the claimant's lands where he observed the 7<sup>th</sup> defendant on the claimant's lands; that the said Thompson Edwards was directing other men, who had cutlasses, and one of whom had a chainsaw, to cut down trees growing on the lands; that the other named defendants were also trespassing on the claimant's lands; that defendants Neville Elcock, Adona Elcock, Yvette Elcock, Justin Elcock, Cheryl Mitchell and Celina John all made threats of harm to the claimant's Attorney.
- [7] Further, that on 28<sup>th</sup> April, 2003, the claimant's Attorney accompanied by the claimant's Solicitor went to the said lands at Marlmount; the defendants Adona Elcock and Neville Elcock verbally abused the claimant's Attorney and the claimant's Solicitor and the defendant Celina John threw stones at them.
- [8] Finally, on May 2<sup>nd</sup> 2003 and on May 10<sup>th</sup> 2003 the defendants Yolande Mitchell and Neville Elcock felled valuable trees growing on the claimant's land; that on 12<sup>th</sup> May defendant Thompson Edwards together with his servants and/or agents carried away some 42 logs of wood from the land, both mahogany and cedar, valued at \$62,000.00.

#### The Defence

- [9] In both actions the defence asserted title by long possession and reliance on sections 4 and 27 of the Limitation of Actions Act Cap. 173.
- [10] Defendant in Claim No. 0490, Michael John, denies the alleged trespass and asserts that he is the owner in possession of the lot of land; that he has been in possession since 1964. Further, that in 1989, he recorded a Statutory Declaration at the Supreme Court Registry. He therefore asserts that he has a possessory title having been in possession uninterrupted for about 40 years.
- [11] In Claim No. 0213/2003, the defendants, except the 7<sup>th</sup> defendant, dispute the allegations in the claim and rely on section 4 and 27 of the Limitations of Actions Act Cap. 173. The 1<sup>st</sup> defendant Neville Elcock asserts that he has been in continuous, undisturbed and rent free occupation of the portion of land for approximately 40 years. He puts forward a Statutory Declaration dated 11<sup>th</sup> February, 2003. He states that the

2<sup>nd</sup> defendant, Adona Elcock, is his wife, the 3<sup>rd</sup> to 6<sup>th</sup> named defendants are his children while the 8<sup>th</sup> named defendant is his stepson and the last named defendant is his lawful son-in-law. Further, that he gave the 2<sup>nd</sup> through 6<sup>th</sup> and 8<sup>th</sup> defendants permission to use the land as they pleased. With regard to the alleged felling of trees, Neville Elcock asserts that in March 2003, he gave instructions to cut some of the mahogany and cedar trees that were on the land, some of which he had planted and that he sold the felled mahogany and cedar trees to the 7<sup>th</sup> defendant and gave him permission to remove same from the said lot of land.

[12] The 7<sup>th</sup> defendant Thompson Edwards denies that in March 2003 he trespassed on claimant's land. However, he admits that in March 2003, he entered upon lands which Neville Elcock told him was owned by him and after payment to him of the sum of \$1,000.00 for specific trees, felled and carried them away. He further admits that on or about 23<sup>rd</sup> April 2003, Mr. Jaleel met him and his employees on the land in dispute cutting trees; that when he was requested by Mr. Jaleel to cease cutting trees that he did cease; that he told Mr. Jaleel that he was not a thief, but that he had purchased the trees from Mr. Neville Elcock. He admits that he cut with chain saws approximately 40 logs. He admits he carried away 15 of the 40 logs, but denies that the logs were worth \$62,000.00.

[13] The 7<sup>th</sup> defendant, in an ancillary claim, claims against the 1<sup>st</sup> defendant Neville Elcock contribution and indemnity of any amounts found due and owing to the claimant for which the 7<sup>th</sup> defendant is liable.

#### The issue

[14] The issue in both actions is whether the claimant was the owner in possession of the disputed lands at the time of the alleged trespass or whether, in each case, the claimant had been dispossessed by the respective defendants.

#### The Law

[15] Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. Halsbury's Laws of England, 4<sup>th</sup> Ed. Vol. 45, Para. 1384. A person trespasses upon land if he wrongfully

sets foot on it, or takes possession of it or pulls down or destroys anything fixed to it. See cases at notes 1 to 8 to Para. 1384.

[16] Any person who was, or who is deemed to have been in possession at the time of the alleged trespass may maintain the action for trespass. The occupation of land by an employee or agent in that capacity vests the possession in the employer or principal. While the employee or agent cannot sue in trespass, the employer can. Halsbury's Laws of England 4<sup>th</sup> Ed. Para. 1397.

[17] A defendant in an action for trespass may, however, plead and prove that he had a right to the possession of the land at the time of the alleged trespass.

[18] Sections 4 & 27 of the Limitations of Actions Act, upon which the defendants rely, provide:

"4. No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he claims, or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it.

27. At the determination of the period limited by this Act to any person for making an entry of distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished."

[19] As to when time begins to run, Alleyne, J in **Gordon Charles v. Clarie Holas** Civil Suit No. 151 of 1996, citing *Halsbury's Laws of England 4<sup>th</sup> Edition*, stated:

"Time begins to run against an owner entitled in possession only when he/she has been dispossessed or has discontinued possession and adverse possession of the land has been taken by someone else. A person is dispossessed when he or she has been driven out of possession by another. Discontinuance occurs when the owner has abandoned possession."

## The Evidence

- [20] The actions were consolidated for trial. At the start of the trial Counsel for the 7<sup>th</sup> defendant made application for judgment on the ancillary claim. No defence to that claim having been filed on behalf of Neville Elcock, the application was granted.
- [21] In addition to the claimant, 4 persons gave evidence in support of the claimant's case.
- [22] The claimant Nancy Jaleel in her witness statement asserts her ownership of 176 acres, 3 roods and 21 poles of land situate at Marlmount in the Saint David. She relies on a deed dated 17<sup>th</sup> December, 1984 and recorded in the Deeds and Land Registry. The land she states is mostly forest reserve with coconuts, cedar, teak and mahogany trees, which she states were there when she purchased. She further states that she has employed watchpersons namely: Joan Calliste, Augustine Calliste, Julius Thomas and Tyrrel Bullen who look after the land. Additionally, one Irvin Bishop looked after the land from 1984 to 1987, when he migrated to England. She states that she has given a few persons permission to have little gardens on portions of the land. These persons are: Adona Elcock, Joan Calliste, Augustine Calliste and Julius Thomas.
- [23] Her evidence is that when she purchased the land she and her husband were shown the boundaries. She therefore states that she is well acquainted with the boundaries of the property along the Marlmount Estate Road. With regard to the land claimed by defendant Michael John in his Statutory Declaration dated 12<sup>th</sup> April, 1989, she states that this land was never occupied by Michael John as owner from 1964 as alleged in the Statutory Declaration. She states that she often accompanies her husband to the land and knows that Michael John cultivated about 3000 sq. ft. along the Marlmount Estate road in boundary with Merle Fraser's land. This she states was done with her permission through Irvin Bishop after 1984. However, according to her evidence Michael stopped planting on that portion of land around 1986.
- [24] The claimant's further evidence is that she was present when Michael's mother Adona Elcock asked permission from her husband to use the portion of land where Micheal had used for gardening. Her husband refused. According to her, her husband later allowed Adona to use about an acre of land, but told her he did not want Michael John on her land. Her evidence is that she assisted in drafting a written agreement with

Adona which she signed on 12<sup>th</sup> May, 1987 (the agreement is listed on the claimant's list of documents). In 1997, Adona was given written notice to vacate.

- [25] On cross-examination the claimant was adamant that when she purchased the land, Michael John was not in possession; and that thereafter he did ask them for permission to do gardening on the land.
- [26] On further cross examination, it was put to the claimant that she wouldn't know if the boundaries of the land were changed between 1968 and when she purchased in 1984. She stated that the boundaries did not change because when she purchased, she had the 1968 plan and was shown the boundaries according to that plan. It was put to her that the Government had acquired part of Marlmount Estate for use as model farms. Her response was that she does not know about model farms. She knows about her land and that she purchased same and that the disputed property is on her land. She admitted that she never lived on the land, but that she has employed watchpersons to see that no one takes her land.
- [27] With regard to the Elcocks, the claimant's evidence is that when she purchased, they were living where they now live. The land on which they live is not, however, the disputed land.
- [28] The evidence of Denis Thomas, Surveyor is that about 1993, he was engaged by Kayam Jaleel Attorney for Nancy Jaleel to re-establish the boundary along the Marlmount Estate Road of lands belonging to Nancy Jaleel and lands on which Neville Elcock has his home. According to Mr. Thomas, Kayam Jaleel was present and Neville Elcock and one Julius Thomas assisted him in re-establishing that boundary. He states that neither Neville Elcock nor Kayam Jaleel had any objection to that survey. Further, on 10<sup>th</sup> April, 2002 he again visited Nancy Jaleel's property along the Marlmount Estate Road to verify what Guy Alexander had surveyed on the very same day as a parcel of land purportedly belonging to Neville Elcock. He states that he knows for a fact that that land is a piece of Nancy Jaleel's land according to Nancy Jaleel's deed dated 17<sup>th</sup> December, 1984, and the plan surveyed for Mr. Charles Grainger from 22<sup>nd</sup> April to 30<sup>th</sup> May, 1968 comprising 176 acres 3 roods 21 poles.
- [29] The evidence of Julius Thomas is that he knows Marlmount Estate; that he has been traversing the estate since he was 21 years old, he is now in his late 70's. He

states that since 1987 he has been employed by Mr. Jaleel as a watchman and that he lives on the land. In all these years, his evidence is that he never saw Neville working on Mr. Jaleel's land; that he never saw either Neville or his stepson Michael John claiming any part of Mr. Kayam Jaleel's land. His evidence is that it is only recently, after Neville allowed Thompson Edwards to cut down mahogany, teak and cedar trees, that Neville burn the land and plant corn, peas and potato.

[30] In the past, according to him, Michael with Irvin Bishop's permission had used a small portion of land to plant tomatoes, but that he had stopped working that piece of land before Joan Calliste went to live on the land. With regard to the statutory declaration filed on behalf of Michael John, he states that the contents are a lie because he, Julius Thomas, has used that land; he has cut down bush for grass to grow as pasture to tie his cow and Michael didn't stopped him. Furthermore, he states that Neville would come and sit and talk to him while he cut the grass and at no time did he ever say that the land was Michael's.

[31] With regard to the land claimed by Neville Elcock, Mr. Thomas states that he knows definitely that this land is Mr. Jaleel's land.

[32] The evidence of Joan Calliste is that she and her husband were engaged as watchmen by Mr. Jaleel; that in 1987 Mr. Jaleel gave them permission and they built a house on part of the land; that since 1987 she and her husband used to pass along the piece of land that Michael is now claiming. She states that there was no garden on the piece of land that Michael is claiming; that it was in high woods. With regard to this parcel of land that Neville Elcock is claiming, she states that from her house on the hill she can see directly down on all that parcel of land and that she has never seen Neville planting any crops or trees there; that the land was covered in bush and that she used to pass through that land to tie her animals.

[33] Mr. Errol Fraser gave evidence. He states that he knows Marlmount Estate well; that he worked there for about 30 years. He was in charge of the workmen on J.B. Renwick's land at Marlmount before it was sold to Mr. Grainger and then to Mr. Jaleel. According to him, even before he worked there he knew the land because he "mind" animals there. With regard to the parcel of land that Neville is claiming, Mr. Fraser's evidence is that he knows this piece of land was always covered with bush and trees;

that since 1968, J. B. Renwick made everyone leave his land so that he could sell it. So that it is not true that Neville Elcock was in possession since 1964. He states that he, Julius Thomas and Joan Calliste used to pass through that land to tie their animals; that up to about 2000, he tied his cow there. His evidence is that he knows the land very well and that he never saw Neville working that land or doing anything with that land as an owner. About the year 2003 he says that Neville cut down trees on Mr. Jaleel's land; that it was only after he sold trees around 2003 that he started to plant on a part of it; that it was only recently that he heard Neville saying that Mr. Jaleel is a foreigner and that the land is Government land.

- [34] Michael John did not appear at trial nor was anyone called to give evidence on his behalf.
- [35] Neville Elcock and Ivan Purcell were the only witnesses for the defence in Claim 0213/2003. In his witness statement Neville Elcock states that he was born on a lot on land at Cotton Valley which is in boundary with Marlmount Estate and has lived on this lot all his life. This lot, he states, measures approximately 4 acres. In addition to this lot, he claims that his father and mother also occupied and cultivated another lot of land which was in boundary with the Cotton Valley Lands and with Marlmount Estate. They planted crops and reared animals on the land. The owners of Marlmount Estate at the time, Mary Coomansingh then J.B. Renwick, never troubled his parents or himself in their occupation of the said lots; that they never paid rent in respect of the land, nor did they account to anyone for being there. He further states that he has always cut trees on the lands in order to burn them as coals and was often helped by his children Celina John, Cheryl Mitchell, Yvette Elcock, Densil Mitchell, Elsa Elcock, Justin Elcock, Stephen Peter and his wife Adona Elcock. According to him they were never challenged.
- [36] With regard to the allegation that he and his servants and/or agents trespassed on the claimant's lands and felled valuable trees growing there and took them away, Neville admits to cutting trees on the land although he says that he cannot recall whether he did so in March 2003. He admits that he knows Thompson Edwards and that he gave him permission to come on the land and to remove mahogany and cedar trees which he had cut with his permission. Neville claims that he had planted those trees with his own hands.

- [37] Neville denies ever verbally or physically abusing Mr. Jaleel or anyone in his company. He asserts that he and Mr. Jaleel were good friends before 2003. He admits that he assisted Mr. Jaleel in identifying the boundaries of Marlmount Estate. He ends his statement by asserting that at no time has he ever gone to the claimant's business place and asked permission to occupy his land.
- [38] On cross-examination, Neville was asked about the statutory declaration and the plan annexed to it. He stated that the land his father purchased and on which he still lives is about 1 ½ acres; it is shown on the plan as "other lands of Neville Elcock". That boundary line is what separates his land from the original Marlmount Estate. This land where he lives, he states, is not the parcel of land in dispute. The land in dispute he describes as in boundary with the land on which he lives and is almost 4 acres in size (shown on the survey as 3.8 acres). He states his case in regard this 3.8 acres as land he has been occupying for a lot of years.
- [39] With regard to the carrying out of the survey of the disputed land he states: "This is the piece I got Guy Alexander to survey. I showed him where to survey and he made the plan... When Guy Alexander surveyed, I didn't give him the plan for the 1 ½ acres my grandfather bought, but I would have shown him the boundary for the piece I am living on. I went around with Guy and showed him where to mark out."
- [40] With regard to the purchase of Marlmount Estate by the claimant, he says, "I wouldn't say she bought the 3.85 acre portion because I have my statutory declaration." According to Neville when he went unto the land it was his understanding that the land belonged to government. It is his evidence that he is claiming "statute of limitation" against the Government of Grenada.
- [41] The only other witness called on behalf of the defendants was Ivan Purcell. In his witness statement he states that he is familiar with the land in dispute; that he has always known Mr. Elcock to have been in possession of this lot of land and to have worked it without disturbance from anyone. He recalls that the land was previously owned by J.B. Renwick who cultivated the estate with various crops and employed a number of labourers there; that in all the time he was familiar with the estate, he never knew anyone to disturb Mr. Elcock in his occupation of the property; that his portion of land was always treated as separate and apart from Marlmount Estate. However, on

cross examination Mr. Purcell stated that he left school at age 19 years and took up fishing; that thereafter he took up travelling and travelled all over the world. His evidence is that he first travelled at age 20 or 21 years. According to him, he travelled for 44 years while employed by shell, Alco and Sagenay lines. He says he sailed until age 65 and during those years he was based in Trinidad. He did however say that he returned to Grenada each year on vacation. His evidence remains that he does not know, up to now, how much land Mr. Elcock has.

#### The Claimant's Title

[42] The claimant relies on the deed of conveyance to her dated 17<sup>th</sup> December, 1984 together with the plan registered in the Deeds and Lands Registry. The defendants admit that Marlmount Estate was previously owned by J. B. Renwick and Charles Granger. Although the subject of the Government's acquisition of portions of Marlmount Estate was raised in cross-examination, absolutely no documentary evidence was submitted of such acquisition – not even a notice in the gazette. The claimant therefore has established, prima facie, that she has proper title to Marlmount Estate as contained in the plan annexed to her deed. See Deeds and Land Registry Act Cap 79, section 24. She has also established prima facie possession through the watchmen she has placed on the land to care and protect it.

[43] The Court can only ascribe possession to a person who does not have proper title if that person has factual possession, that is, a degree of physical control of the land which amounts to possession in fact and *animus possidendi*, the requisite intention to possess the land. **J. A. Pye (Oxford) Ltd. and Another v Graham and Another** [2000- UKHL 30; **Hector Ceasar Luke as Personal Representative of Philip Luke v Bernard Alexander** DOMHVU2001/0161.

#### Claim No. 0490/2002 against Michael John

[44] The plan annexed to the claimant's conveyance dates back to 1968. She says she is familiar with the boundaries and that she saw Michael John on her land. Her witnesses have also given evidence that the portion of land claimed by Michael John is a part of the lands of the claimant.

[45] The Statutory Declaration put forward by the defendant “does not have the legal effect of vesting title in land”. As stated in **Gordon Charles v Clarie Holas** Civil Suit No. 151/1996:

“A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value, but it is not an alternative method of conveying title to land.”

[46] The evidence by claimant’s witnesses is that Michael John has not been in possession of the land since 1964 as alleged in the statutory declaration. I accept this evidence. Furthermore, one of the two signatories to the statutory declaration has recanted the statements made in the statutory declaration.

[47] The claimant has established proper title. The defendant having failed to appear, he has failed to establish by credible evidence factual possession by him for the statutory period which would amount to dispossession of the claimant by him.

[48] Counsel for claimant has requested judgment for injunction and declaration only and cost. There is evidence of the defendant’s repeated entry onto the disputed land and of confrontation with the watchmen. Both the declaration and injunction are warranted and will be granted.

Claim No. 0213/2003

[49] At this stage, the claim in this action is essentially one for possession of land and for damages for trespass. Although the claim as pleaded included prayers for damages for assault and exemplary and punitive damages, at the close of the case, Counsel for the claimant withdrew the claim for damages for assault and exemplary and punitive damages. Paragraph 3 requested a temporary injunction which is no longer relevant.

[50] There was no denial of the defendants’ entry onto the disputed land as alleged. Instead, defendants pleaded and sought to prove that the 1<sup>st</sup> defendant, Neville Elcock, has acquired title by long possession of the disputed land and therefore had a right to possession at the time of the alleged trespass. He sought to rely on the statutory declaration as well as evidence of the alleged long possession.

[51] As noted, a statutory declaration does not have the legal effect of vesting title in land. The declarants Jeffrey Edwards and Cuthbert John were not called as witnesses.

[52] The 1<sup>st</sup> defendant's evidence is that he has been in possession of the disputed land continuously since 1964. In his witness statement he asserts that it was in the possession of his parents before him who used to work the land. However the Court notes that on 23<sup>rd</sup> May, 2002 the claimant, through her Solicitor, wrote to Neville Elcock. She asserted her ownership of Marlmount Estate, accused him of trespassing on her land and called on him to desist forthwith. Mr. Elcock instructed counsel to respond to the letter. In his Counsel's response dated 20<sup>th</sup> June, 2002, he asserts that the portion of land he had surveyed "was not the property of anyone in recent times." He never asserted in that letter that he, Neville Elcock, had been in possession as owner since 1964 or that his parents also had worked the land. So his realization that he has been in possession of that portion of land since 1964 seems to be of recent vintage. It was after this response, in February 2003 that the statutory declaration was prepared and thereafter filed in the Deeds and Land Registry.

[53] I therefore make the following findings of fact:

1. I find that the disputed land is a part of the claimant's land purchased by her as evidenced by her deed and plan annexed thereto. I accept the evidence of the claimant that she knows her boundaries and that the disputed land is her land. I also accept the evidence of Mr. Denis Thomas, Surveyor, with regard to the two survey conducted by him. I accept his evidence that on 10<sup>th</sup> April, 2002, he went to the land to verify what Guy Alexander had surveyed as land claimed by Neville Elcock and that he knows for a fact that that land is a part of claimant's land according to her deed and the plan annexed thereto.
2. I find that the defendant has not been in possession of the disputed land continuously since 1964 as asserted by him. I do not accept his evidence of such possession. Besides the fact that this assertion is of recent vintage, I accept the evidence that before Mr. J.B. Renwick sold in 1968 he caused all the persons who were occupying or cultivating land within Marlmount Estate to be removed from the said lands. Having found that the dispute land is a part of Marlmount Estate conveyed to the claimant by the Estate of Mr. Renwick in 1968, even if Neville Elcock occupied the land in 1964, (and I make no such finding), he would have been removed

in 1968. I accept the evidence of the watchmen that the disputed land was not cultivated by Neville Elcock until sometime after 2002.

3. Furthermore, I do not find the evidence of Ivan Purcell of much probative value. Although in his witness statement he states that he has always known Neville Elcock to be in possession of a lot of land measuring approximately 4 acres in boundary with the Elcock's Cotton Valley lands and Marlmount Estate, on cross examination he was asked, Do you know how much land Elcock has? His answer was, "Until now I do not know the acerage of the land." Neville himself seemed confused. In his witness statement he claimed the land on which he was born and on which he lived with his mother was approximately 4 acres. However, in cross-examination he admitted it was about 1 ½ acres. I am not convinced that Mr. Purcell knows the difference between the disputed land and the lands on which Neville and his family live. Furthermore, Mr. Purcell has resided out of Grenada for his entire adult life, except for visits. I do not find his evidence on this issue persuasive.
4. With regard to Neville's assertion that the land was owned by Government before his occupation, absolutely no evidence to support this was submitted. Much time was spent in cross examination on the assertion that parts of Marlmount Estate had been acquired by the Government for use as Model Farms. Counsel for the defendants points to the evidence on cross-examination of Errol Fraser. Even if an inference can be drawn that parts of Marlmount Estate was used by the Government as Model Farms, I find that no evidence has been proffered by the defendants to show that the disputed land was part of one of the model farms or that Neville Elcock was placed on one of these model farms by the Government. As noted, no documents were submitted evidencing acquisition by the Government.
5. I find that there was entry unto the claimant's land by all the defendants without claimant's permission or consent.

6. I find that the 7<sup>th</sup> defendant had notice that the claimant was asserting ownership of the disputed land before he entered and cut down trees and carried away the logs. A search of the land registry would have revealed the claimant's deed.
7. I find that damage was done to the claimants land by Neville Elcock and his agent the 7<sup>th</sup> defendant, when trees were cut and the logs taken away. I find that damage was done to the land when Celina planted potatoes on the land. Damage was also done to the land when Neville planted crops on the land.

### Conclusion

- [54] The defendants' entry on to the claimant's land was unlawful and the action for trespass is proved even where no actual damage is done. Here I find that damage was done to the claimant's land by the 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 9<sup>th</sup> defendants, and the claimant is entitled to damages.
- [55] With regard to the claim for special damages in respect of the logs, No evidence was submitted by the claimant to prove the logs are valued at \$62,000.00. The Court will accept the value as assessed by the Forestry Officer of \$3,592.29. That sum was paid into court by the 7<sup>th</sup> defendant in accordance with the order of Baptiste, J.
- [56] Accordingly, judgment is granted in Claim 0490/2002 for the claimant against defendant Michael John as follows:
1. A declaration that the defendant is not entitled to enter on any part of the claimant's freehold property known as Marlmount Estate in the parish of Saint David containing by admeasurement 176 acres 3 roods and 21 poles as set out and delineated in the Plan prepared by Clive Belizier and which is annexed to an Indenture of Conveyance dated 17<sup>th</sup> December, 1984.
  2. An injunction restraining the defendant by himself, his servants and/or agents from trespassing on the claimant's land.
  3. Costs in the sum of \$2,500.00 as agreed.

[57] Judgment is granted in Claim 0213/2003 for the claimant against all the defendants as follows:

1. A declaration that the claimant is the owner in fee simple in possession of the disputed land being a part of Marlmont Estate situate in Saint David and comprising by admeasurement 176 acres 3 roods and 21 poles as described in the deed of conveyance and Plan.
2. A further declaration that defendants whether by themselves, their servants and/or agents are not entitled to enter or remain on the lands of the claimant.
3. General damages for trespass of \$5,000.00.
4. Special damages against defendants 1 and 7 jointly and severally in the sum of \$3,592.29.
5. Costs in the sum of \$5,000.00 against all defendants except the 7<sup>th</sup> defendant.

[58] Judgment is also granted in favour of the 7<sup>th</sup> defendant against the 1<sup>st</sup> defendant for indemnity and contribution.

  
Clare Henry  
**HIGH COURT JUDGE**