

**Grenada Possessory Title Applications – A review of Claim No. GDAHCV 2023/0167 Irva Frank Roberts and Claim No. GDAHCV 2023/0251 Marsha Berrottee**

By Dia C Forrester<sup>1</sup>

In a decision delivered by the Grenada High Court on 21<sup>st</sup> August 2024 in **Claim No. GDAHCV 2023/0167 Irva Frank Roberts** and **Claim No. GDAHCV 2023/0251 Marsha Berrottee**<sup>2</sup>, the Court examined the purpose of the Possessory Titles Act No 22 of the 2016 Laws of Grenada within the context of applications being made by applicants who have paper title seeking possessory title declarations. One applicant had a registered deed issued in 2001 and the other in 2006. Notwithstanding being the holder of a registered deed, on searching the title for either property, neither had a good root of title so both properties were treated as being possessory. Both parties respectively found themselves in the situation that financial institutions and purchasers, as the court noted, were “*reluctant to accept the titles which are possessory in nature unless the court grants a declaration of title under the Possessory Titles Act*”<sup>3</sup>. In ruling on these applications for possessory title, which applications were refused, the Court noted that the purpose of the Possessory Titles Act was to facilitate the obtaining of possessory title to land by people claiming through adverse possession. In particular, the Court found that the Act was

*“enacted to cure the defects in attempts to procure titles through statutory declarations. The legislative purpose of the Act is to provide secure and indefeasible titles to squatters who have been in adverse possession of lands belonging to another and performing acts of ownership in their own right in excess of twelve years...”*<sup>4</sup>.

Moreover, that

*“registered paper title holders cannot claim adverse possession against their titles... [T]he policies of lending institutions cannot be a reason to give a wider interpretation to the Possessory Titles Act. The applicants cannot use the financial institutions requirements to rewrite the law for a purpose not contemplated by the Act... Further Section 28 of the Possessory Titles Act provides that a person who obtains a declaration*

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<sup>2</sup> At the time of writing, this decision was not the subject of an appeal.

<sup>3</sup> Paragraph 4 Claim No. GDAHCV 2023/0167 Irva Frank Roberts and Claim No. GDAHCV 2023/0251 Marsha Berrottee

<sup>4</sup> Ibid Paragraph 4

*of possessory title under the Act shall be deemed to have a fee simple interest in the land. This provision further highlights that to grant a possessory title to the applicants who already have their registered paper titles would be contrary to the purpose of the Possessory Titles Act, which proceeds on the basis that declaratory titles should be granted to persons without paper title.”<sup>5</sup>*

This ruling of the Court created and continues to create much alarm within the legal fraternity of Grenada as it is no secret that lending institutions in Grenada have been requesting that individuals with paper title to property apply to the Court for possessory title on the premise that the searches conducted on their property have no good root of title where defects in paper title have been identified. In Grenada, property is recorded following an unregistered system of conveyancing and a good root of title is evidenced by a conveyance for sale or a mortgage that goes back at least 30 years.<sup>6</sup> Once a title search has not discovered a root of title of sufficient vintage to establish documentary title, such titles are viewed as being possessory. In ruling, Justice Actie made the point that the examination of title must be done alongside the Limitation of Actions Act Chapter 173 of the Continuous Revised Laws of Grenada 2010.<sup>7</sup> It useful to compare the Possessory Titles Act and the Limitation of Actions Act as it must be noted that the Possessory Titles Act does not perform the same role as the Limitation of Actions Act as legislation imposing limitations have been used to declare that the title of a true owner of property was extinguished though it does not declare that the adverse possessor is the owner of property as done in the Possessory Titles Act. Section 4 of the Limitation of Action Act provides that

*“[n]o 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 or she claims, or, if the right has not accrued to any person through whom he or she 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.”*

As such, when examining title, if one is the holder of a paper title beyond the 12 year limitation period within which one with a better title was obligated to assert their right to property, and the latter fails to take that step, insofar as that right can no longer be asserted having been barred by the act of another,

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<sup>5</sup> Ibid Paragraph 16

<sup>6</sup> See: Conveyancing and Law of Property Act (Amendment) Act 2018;

<sup>7</sup> See paragraph 17 Claim No. GDAHCV 2023/0167 Irva Frank Roberts and Claim No. GDAHCV 2023/0251 Marsha Berrottee

one need not seek to have a declaration made for possessory title. This may be supported by Section 27 of the Limitation of Action Act which provides that

*"[a]t the determination of the period limited by this Act to any person for making an entry or 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."*

Put simply, if one's paper title can no longer be defeated, there is no need to move the Court for a declaration of possessory title given the extinguishment of any other right based on the Limitation of Actions Act. The above position of the Court was considered alongside the provisions of the Deeds and Land Registry Act<sup>8</sup> which deals with paper title.

A review of the concept of 'paper title' must be put into context particularly in comparison to statutory declarations. Statutory declarations do not create paper title though people with no paper title may have statutory declarations prepared to demonstrate and record their interest in property. In **Gordon Charles v Claire Holas**<sup>9</sup>, Justice Alleyne stated "*a statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in the form of law. It may have certain limited evidential value, but it is not an alternative method of conveying land.*" In the instance cases, statutory declarations were not referenced as being part of the root of title but instead, title arose from registered deeds recorded at the Deeds and Land Registry. The Court highlighted that Section 5 of the Deeds and Land Registry Act provides that "*every instrument, affecting land in Grenada, duly registered in accordance with the provisions of the Act, shall be good and effectual in law and equity according to priority of registering*". Essentially, the Court has taken the position that if you are the holder of a registered deed or such form of paper title and the limitation period to extinguish the rights of another has passed, you are not eligible to seek to use the Possessory Titles Act to rectify any defects in your paper title as you already have a registered deed deemed good and effective in law. The status of evidence of ownership of property starting from a recorded statutory declaration and its impact on subsequent registered deeds insofar as it presents within a title search of a specific property was not a matter expounded upon by the Court when ruling. As such, this ruling of the Court does not affect the legal status of a statutory declaration and its use insofar as it relates to being evidentiary but not paper title. However, this ruling may properly be interpreted to state that even in circumstances where a statutory declaration is found on a title search, once

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<sup>8</sup> See: Deeds and Land Registry Act Chapter 79 of the Continuous Revised Laws of Grenada 2010

<sup>9</sup> Grenada Civil Suit No. 151 of 1996 (unreported)

there are subsequent duly registered deeds exceeding the limitation period provided for in the Limitation of Actions Act, the rights of the holder of that registered deed to the property cannot be displaced by one asserting a better paper title outside the limitation period which, is not a matter to be addressed using the Possessory Titles Act.

In view of these findings of the Court, the present state of the law is that declarations for possessory titles are meant for people who do not have paper title but have occupied land in a manner adverse to the true owner of the same for the prescribed statutory period. Declarations for possessory title cannot be sought to fix defects in paper title. A declaration of possessory title passes the fee simple interest in land and gives an indefeasible title as provided for in Section 29 of the Possessory Titles Act which, a registered deed, if existing, should have already done. One notes that many of the issues that present as defects in paper titles in the unregistered system of conveyancing were critical in what led jurisdictions to adopt a torrens system of land registration of titles<sup>10</sup> where actual title to land is registered and guaranteed by the State. The movement to a registered system of land registration or other more modern systems of recording title to property in Grenada is by far a better method for dealing with the recording of interest in real property moving forward and this indirect nudge given by the Court should hopefully spur the jurisdiction to a new era.

24<sup>th</sup> September 2024  
Dia C Forrester

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<sup>10</sup> At the time of writing, it is noteworthy that there has been a movement away from the torrens system of land registration particularly in several States within the United States of America.