THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

Claim Number: SLUHCV2025/0451

BETWEEN:

[1] AGATHA SERVAIS
[2] BERTRAND SERVAIS

Claimants

-and-

[1] MAGDALEN CARMEN PHILLIP née FAUCHER
[2] HEIRS OF PAUL MATHURIN
[3] HEIRS OF BEATRICE EMMANUEL
[4] HEIRS OF PAULINE DANIEL

Defendants

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mrs. Lydia B. Faisal for the Claimants
Mr. Ramón R. Raveneau for the First and Third Defendants

2026: June 10- Hearing
July 14 – Decision

JUDGMENT
Application to Strike Out

THE APPLICATION:

[1] **PARIAGSINGH, J: -** Before the Court is an application brought by the First and Third Defendants (the Defendants) to strike out the Claimants' Statement of Claim[1]. The grounds of the application are:

1) That the Claim form and Statement of Claim filed herein is wrongly filed before this Honourable Court. The High Court has no jurisdiction to grant title based on prescription or to grant declarations of Title thereon.

[1] Filed on 9 February 2026

2) A Deed may not be improbated unless the Notary who made it is named as a party to the litigation. In so far as the Statements of case ask that the Declaration of Succession registered as instrument No. 4825/2017 be set aside, they are improperly filed having not attached the Executing Notary to the Claim.
3) The Claimants have failed to adhere to the requirements of Practice Direction No. 2 of 2023 with respect to Pre-Action correspondence which may have obviated the need for the filing of these proceedings.
4) That the matter as filed before this Honourable Court is an abuse of the Court's process.

[2] The Claimants oppose the application. They say the Defendants have mischaracterised the claim. Their position is that they are not asking the Court to grant title by prescription but to recognise existing occupation-based overriding interests and to deal with related claims for injunction, trespass, damages and rectification.

THE ISSUES:

[3] The application raises three main issues:

1) whether the claim is really a claim for prescriptive title dressed up as a claim for a declaration of overriding interests.
2) whether the Claimants can maintain a challenge to the Declaration of Succession without joining the notary.
3) whether the Claimants' failure to comply with pre-action protocol justifies striking out the claim.

APPLICABLE LAW:

[4] CPR 26.3(1) provides the legal test for striking out a party's statement of case. It is stated as follows:

"(1)In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

(a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10."

[5] An application to strike out a party's statement of case pursuant to CPR 26.3(1) is determined solely on the pleadings. No evidence is admissible, and for the purposes of the application the court assumes that the facts pleaded are true.[2]

[6] Because an order striking out deprives a party of the opportunity to have its claim or defence determined on the merits, the jurisdiction is a draconian one and must be exercised with considerable caution.[3] The authorities have consistently emphasised that the power to strike out should be exercised only in clear and obvious cases and only where lesser case management measures would be inappropriate.

ANALYSIS:

Jurisdiction

[7] The first point taken by the Defendants is that this Court has no jurisdiction to entertain the claim. The Defendants submit that the Claimants have merely dressed a claim for prescriptive title in different language by describing it as a claim for recognition of overriding interests. If that submission is correct, the claim cannot proceed in this Court, because following the enactment of the Land Registration Act[4], the acquisition of title by prescription falls within the statutory jurisdiction of the Registrar of Lands rather than the High Court.

[8] In my view there is force in that submission. The Court cannot ignore the line of authorities beginning with **Ferdinand James v Planviron (Caribbean Practice) Ltd**

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2 Didier et al v Royal Caribbean Cruises Ltd; Royal Caribbean Cruises Ltd v Medical Associates Ltd et al [2016] ECSCJ No. 105 relying on Citco Global Custody NV v Y2K Finance Inc. [2009] ECSCJ No. 165.

3 See Barbados Rediffusion Services Ltd v Mirchandani [2005] CCJ 1 (AJ)

4 Chapter 5.01 of the Revised Laws of Saint Lucia (LRA)

and Rodney Bay Marina Ltd[5] and continuing through **Chitolie v Saint Lucia National Housing Corporation**[6] and **David Phillip v Joseph Phillip**[7]. Those cases make clear that the LRA introduced a comprehensive statutory regime governing registered land, including claims based on prescription. They also make clear that one consequence of that regime is that the High Court is no longer the forum through which title is to be obtained by prescription.

[9] The rationale underlying **Planviron** is readily apparent. If the Court were to determine, in the exercise of its original jurisdiction, whether title had been acquired by prescription, it would effectively be deciding the very question entrusted by the Act to the Registrar. To do so would undermine the statutory scheme by circumventing the registration process and create the undesirable possibility that the Court might subsequently be asked to review a decision which had, in substance, already been determined by it.

[10] The later authorities reinforce the same point. In **Chitolie** and later in **Phillip** the apex courts emphasised the importance of the first registration process and the need for persons claiming interests in land to bring those interests forward under the statutory scheme. Those decisions caution against treating section 28 LRA[8] as a means of

[5] SLUHCAP2017/0050

[6] [2023] UKPC 43

[7] [2024] CCJ 21 (AJ) LC

[8] **28. Overriding interests**

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

(a) servitudes subsisting at the time of first registration under this Act;

(b) servitudes which arise from the situation of the property or which have been established by law;

(c) rights of compulsory acquisition, user or limitation of user conferred by any other law;

(d) leases or agreements for leases for a term not exceeding 2 years;

(e) any unpaid money which, without reference to registration under this Act, are expressly declared by any law to be a charge upon land;

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

(g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed;

(h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, wires and dams erected, constructed or laid under any power conferred by any law;

(i) community property as described in article 1188 et seq. of the Civil Code;

However, the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he or she thinks fit.

circumventing the statutory scheme governing claims based on prescription following the first registration.

[11] That, however, does not conclude the matter. The question is not how the parties have characterised the claim but what, on a proper reading of the Statement of Claim, the Claimant pleads and the relief sought. The Defendants contend that the proceedings are, in substance, a claim for prescriptive title. The Claimants reject that characterisation. They maintain that they do not seek a declaration vesting title in them by prescription or an order directing the Registrar to register them as proprietors. Rather, they contend that their long occupation, cultivation and use of the land have given rise to existing rights or interests which bind the Defendants' registered title as overriding interests under section 28(f) and/or section 28(g) of the LRA.

[12] The distinction is a significant one. A claim to title is not the same as a claim for recognition of an existing overriding interest. A claim to title seeks an adjudication of ownership which, if successful, leads to registration. By contrast, a claim founded on an overriding interest proceeds on the basis that the registered proprietor's title is subject to an interest recognised by law, notwithstanding the absence of any entry on the register.

[13] Section 28 LRA itself shows that registered title is not always absolute in the practical sense. The section recognises that registered land may be subject to certain overriding interests. Those include rights acquired, or in the course of being acquired, by limitation or prescription and the rights of persons in actual occupation. The Claimants must plead and eventually prove the facts and the legal basis for the interest they say exists. Whether the interests relied upon are capable in law of surviving first registration is a question which cannot properly be determined on the present application. In my view, the existence of section 28 LRA means that the Court should be slow to say at this stage that there is no possible jurisdiction to consider the matter at all.

[14] The Claimants also rely on section 115 of the LRA[9]. That section is important because it preserves the Court's jurisdiction in civil proceedings relating to ownership and interests in land. It would therefore be wrong in my view to read **Planviron** as saying that the Court can never decide a dispute about rights or interests in registered land where prescription or occupation forms part of the factual background. The real question is whether the Court is being asked to confer title by prescription, or to determine some other legally recognised interest affecting registered land.

[15] **Spiricor of Saint Lucia Ltd v Attorney General and Hess Oil (Saint Lucia) Ltd**[10] is important because it draws the necessary distinction between occupation as a fact and occupation as a source of legal consequence. Actual occupation alone does not create an overriding interest. It must be accompanied by some subsisting legal or equitable right affecting the land. Put simply, it is the occupation of a person possessing an existing legal or equitable interest which attracts protection.

[16] That is consistent with the way the Claimants put their case. They do not rely on mere occupation. They rely on occupation said to be accompanied by long, continuous and exclusive possession, cultivation, residence and improvement. They say those matters have given rise to rights capable of protection under section 28(f) and (g) of the LRA.

[17] The Defendants say that this is simply prescription by another name and that the Court should not entertain it because the statutory route for prescriptive title lies before the Registrar. I do not accept that submission in its entirety. The Court is not being asked on the Claimants' formulation to order registration of title. The narrower question is whether the pleaded facts are capable of supporting an existing right or interest which may bind the registered title. That is a question which can only sensibly be addressed once the claim is put in a clear and confined form.

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[9] **115. Jurisdiction of Courts**
Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or hypothec, registered under this Act or to any interest in any such land, lease or hypothec, being an interest which is registered or registerable under this Act, or being an interest which is referred to in section 28, shall be tried by the Court, or where the value of the subject matter in dispute does not exceed $2,000 by a district court.

[10] Civil Appeal No. 3 of 1996

[18] The authorities relied on by the Claimants of **Williams & Glyn's Bank v Boland**[11], **Chhokar v Chhokar**[12] and **Link Lending Ltd v Bustard**[13] are of assistance only to the limited extent that they illustrate the principle that occupation derives legal significance when coupled with an existing proprietary or equitable interest. I am cautious about applying these cases however as Saint Lucia has a statutory regime of its own. They cannot displace the statutory scheme established by the LRA or the principles articulated in **Planviron, Chitolie**, and **Phillip**. They simply support the proposition that occupation, when joined to a sufficient legal or equitable interest, may have consequences for registered title.

[19] The difficulty here is that the present Statement of Claim does not consistently maintain the distinction upon which the Claimants now rely. Some parts of it support the Claimants' present explanation that they seek recognition of an existing occupation-based overriding interest but other parts go considerably further. In particular, the prayer seeking dismemberment of Block 0429B parcel 68 and separate registration of the occupied portion in the Claimants' names appears to move the claim into the territory of prescriptive title and registration. That is where the jurisdictional objection has some merit.

[20] The Claimants have indicated that they no longer intend to pursue relief seeking dismemberment and registration of the occupied portion in their names, However, that concession has not yet been translated into an amended pleading. It is therefore understandable that the Defendants have characterised the pleadings as an attempt to obtain prescriptive title through the High Court. Although submissions do not amend pleadings, the concession is relevant in determining whether any pleading defect is capable of being cured by amendment rather than requiring the proceedings to be struck out.

11 [1981] AC 487
12 [1984] FLR 313 (CA)
13 [2010] EWCA Civ 424

[21] In the circumstances, I do not consider that striking out the Statement of Claim is the just or proportionate response. It is not that the Court has no jurisdiction over anything pleaded. The defect lies in the manner in which the claim has been pleaded, i.e., the pleading does not clearly mark the boundary between a permissible claim for recognition of an existing interest and an impermissible attempt to obtain title by prescription through the Court.

[22] The more proportionate course is to require the Claimants to amend their Statement of Claim so that it accurately reflects the relief now sought. The amendment should make clear that the Claimants are not seeking an order vesting title in them, directing registration, or requiring dismemberment of Block 0429B Parcel 68. If they maintain a claim under section 28 LRA, they must plead the precise interest relied upon, the facts said to support it, the portion of land affected, and the way in which that interest is said to bind the Defendants' registered title. They must also separate that claim from their claims for injunction, trespass, damages and any challenge to the Declaration of Succession.

[23] This approach accords with the guidance of the Privy Council in **Real Time Systems Ltd v Renraw Investments Ltd**[14] and the Caribbean Court of Justice in **Harry Panday v Malcolm Panday & Anor**[15] that striking out is a discretionary remedy not an automatic consequence of a defective pleading. The Court must consider whether a less drastic order will do justice. Lord Mance described strike-out as the "nuclear option" and recognised that in a proper case the Court may instead order a party to provide further details or file an amended statement of case. In my view, this is such a case.

[24] Accordingly, on the first issue, I would not hold that the entire claim is outside the jurisdiction of the Court. I would hold that the present pleading is too broad. The Claimants would therefore be required to amend their Statement of Claim so that the case is confined to relief which the Court may properly grant.

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[14] [2014] UKPC 6
[15] [2026] CCJ 4 (AJ) Y

Whether the Notary Must Be Joined before the Declaration of Succession Can Be set aside

[25] The second issue concerns the Claimants' challenge to the Declaration of Succession registered as Instrument No. 4825/2017. The Defendants submit that, insofar as the Claimants seek to have that instrument declared invalid or set aside, the claim is procedurally defective because the notary who prepared or executed the instrument has not been joined as a party. They rely on **Article 1142 of the Civil Code**[16], **Article 148 of the Code of Civil Procedure**[17], and the decision of the Court of Appeal in **Marguerite Desir v Sabina James Alcide**[18].

[26] **Article 1142** provides that an authentic writing may be impugned and set aside as false, in whole or in part, only by improbation and in the manner provided by the Code of Civil Procedure. **Article 148** complements that provision by requiring that all parties to the deed must be before the Court where its nullity is alleged. The reason for the rule is not technical. It is grounded in the special evidential status of notarial instruments in Saint Lucia. A notarial deed is not treated in the same way as an ordinary private document. It carries a presumption of authenticity and the notary whose act is being attacked has a direct professional and official interest in defending the instrument.

[27] That is the importance of **Desir**. In that case, the Court of Appeal held that a deed may not be improbated unless the notaries who made it are named as parties to the litigation. The Court rejected the argument that the requirement applies only where a party brings a formal standalone action in improbation. It also accepted the principle that the notaries' appearance as witnesses is not enough. If the deed itself is being attacked the notaries must be parties so that they have proper notice and an opportunity to defend the authenticity of their act.

[16] 1142. An authentic writing may be impugned and set aside as false in whole or in part, upon an improbation in the manner provided in the Code of Civil Procedure and in no other manner.
[17] 148. The nullity of a deed may be invoked by any pleading. All the parties thereto having been put in the case, judgment may be given without its being necessary to bring a direct action.
[18] HCVAP2011/0030

[28] On that basis if the Claimants are asking this Court to set aside the Declaration of Succession itself, the Defendants' objection would be a strong one because the relief as presently worded does appear to go that far. The Statement of Claim seeks a declaration that the Declaration of Succession is irregular and should be set aside for irregularity or alternatively for fraud or mistake. Relief framed in those terms closely resembles a direct challenge to the validity of the authentic act itself.

[29] The Claimants, however, contend that this is not an improbation action. They say the Declaration of Succession is important because it is the foundation of the Defendants' registration. Their complaint is not directed to the authentic act as an end in itself but to the legal consequences said to have flowed from it. They therefore maintain that the Declaration may be examined as part of a wider claim alleging fraud, mistake and seeking rectification of the register under **section 98 of the LRA**[19].

[30] That argument is not without merit. There is a material difference between impeaching a notarial instrument for its own sake and examining the instrument because it forms part of the factual history leading to an entry on the land register. In the former case, the validity of the authentic act is itself in issue. In the latter, the Court is concerned primarily with the legal consequences said to have flowed from the instrument rather than with obtaining a declaration impeaching the instrument itself.

[31] It is in that context that the authorities relied on by the Claimants assume significance. **Sylvina Louisien v Joachim Rodney Jacob**[20] recognises that errors or irregularities arising in the adjudication and registration process may carry through into the register and may constitute a mistake for the purpose of rectification. Likewise, **Brelsford v**

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[19] **98. Rectification by Court**
(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.
[20] [2009] UKPC 3

Providence Estate Ltd[21] demonstrates that registration founded on a defective or void transaction may, be susceptible to rectification. Neither authority diminishes the procedural requirements governing improbation. Rather, each recognises that the Court may, in a proper case, look behind an entry on the register and examine the factual circumstances which gave rise to registration.

[32] That is not to say that the procedural requirements identified in **Desir** may be avoided by the simple expedient of re-labelling an improbation claim as one for rectification. If, in substance, the relief sought requires the Court to declare the Declaration of Succession invalid or to set it aside as an authentic act, the reasoning in **Desir** would plainly be engaged. Equally, however, where the authentic act is relied upon merely as part of the factual matrix supporting allegations of fraud or mistake affecting the register, the necessity for improbation will depend upon whether the Court is in truth being asked to pronounce upon the validity of the act itself.

[33] Examined against that distinction, the present pleading is not internally consistent. On the one hand the Claimants contend that the Declaration of Succession forms part only of the factual matrix underpinning their rectification and competing-rights claim. On the other hand, the relief claimed expressly seeks an order setting aside the Declaration of Succession. Once the relief is framed in those terms, it is no longer concerned merely with the effect of the Declaration upon the register but invites the Court to pronounce upon the validity of the authentic act itself. In those circumstances, the procedural requirement in **Desir** is, prima facie, engaged.

[34] The Defendants further submit that the Claimants lack standing to challenge the Declaration because they are neither heirs and nor do they claim a competing paper title. On their case even if the Declaration of Succession were set aside that would not advance the Claimants' alleged occupation-based interest. It would simply affect who holds the paper title.

[21] [2022] UKPC 46

[35] In my view this is not a proper basis for striking out the entire claim. Even if aspects of the challenge to the Declaration of Succession are procedurally defective, the claim contains other causes of action[22] which are conceptually independent of improbation. Further, the authorities on rectification show that the Court may, in an appropriate case, consider whether the register was affected by mistake or fraud. That issue should not be shut out merely because the pleading has been drafted too broadly.

[36] Applying the principles governing strike-out, I am not persuaded that this aspect of the claim is so clearly unsustainable that it should be removed without amendment.

[37] At the same time, the Defendants are right that the present prayer cannot simply be left as it is – the pleading must be clarified. If the Claimants maintain a direct claim to set aside or impugn the Declaration of Succession as a notarial instrument, **Desir** requires the notary and all necessary parties to be before the Court. If the Claimants' case is instead that the Declaration is part of the factual basis for a rectification or overriding-interest claim, then the pleading should reflect that more limited case.

[38] In my view the appropriate response to the pleading issue is to require the Claimants to clarify the nature of the challenge to the Declaration of Succession. That course is consistent with the Court's obligation to consider whether a defect in pleading can be cured before resorting to the exceptional remedy of strike out. It also respects the principle in **Desir**, while also preserving any properly arguable claim for rectification, occupation-based relief, injunction or damages.

Non-Compliance with Pre-Action Protocols

[39] The Defendants also seek to strike out the claim on the ground that the Claimants failed to comply with Practice Direction No. 2 of 2023 on pre-action correspondence. In the Notice of Application it is asserted that pre-action correspondence might have obviated the need for these proceedings.

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[22] Alleged overriding interests, interference with possession, injunctive relief and damages.

[40] I accept that pre-action protocols are important. They are not optional formalities. Their purpose is to encourage the early exchange of information, to give parties a fair opportunity to understand the dispute before proceedings are filed, and, where possible, to avoid litigation altogether. That was made clear by the Privy Council in **Singh v Public Service Commission**[23], where Lord Briggs explained that compliance with pre-action protocols plays a significant role in avoiding unnecessary proceedings by requiring parties to identify key aspects of their cases in advance.

[41] **Singh** is also important for what it does not say. It does not say that every failure to comply with a pre-action protocol leads to strike-out. The Privy Council treated non-compliance primarily as a matter relevant to the Court's discretion, especially in relation to costs. The Court is required to consider whether there was non-compliance, whether that non-compliance caused proceedings to be commenced unnecessarily or caused unnecessary costs to be incurred and whether a costs order is needed to place the innocent party in the position it would have been in if the protocol had been followed.

[42] In the present case, the Defendants say that compliance with pre-action correspondence may have avoided the proceedings. That submission is relevant, but it has to be tested against the factual background. The Claimants' submit that the proceedings were brought in circumstances of urgency. They allege continuing and escalating acts of interference with their occupation of the land, including the burning of the First Claimant's house, destruction of crops, forced displacement of the Second Claimant, repeated interference with their occupation and livelihood, and police reports. They say that injunctive relief was necessary to preserve the status quo and prevent further harm.

[43] Those allegations, if accepted, explain why the Claimants considered it necessary to seek urgent injunctive relief and make it difficult to treat the alleged non-compliance as a proper basis for striking out the claim. Whether those allegations are ultimately established is not presently the issue. The question is whether the alleged failure to

[23] [2019] UKPC 18

engage in pre-action correspondence is such as to justify terminating the proceedings at this interlocutory stage. In my view it is not.

[44] Pre-action protocols are meant to avoid unnecessary litigation. Where a party asserts that immediate protective relief is required to prevent continuing harm, the absence of full pre-action engagement will not ordinarily justify the striking out of an otherwise arguable claim. The more appropriate response, if non-compliance is ultimately established, lies in the Court's case management powers and its discretion as to costs.

[45] They are not meant to prevent a party from coming to Court where urgent protective relief is said to be required. If there was non-compliance, the more appropriate response is to consider whether any party has been prejudiced, whether unnecessary costs were incurred and whether that should be reflected in costs or case-management directions.

[46] That is also how the Claimants put the matter in their submissions. They accept that pre-action protocols serve a useful purpose but say they are not an inflexible precondition to proceedings, particularly where urgent relief is required to prevent continuing harm. They submit that even if additional pre-action steps ought to have been taken the consequence would at most sound in costs or case-management directions not the draconian remedy of strike-out.

[47] I would therefore not treat the alleged breach of pre-action protocol as a basis for striking out the Statement of Claim and decline to strike out the Statement of Claim on this ground. The issue remains relevant but primarily to costs. If, following further case management or at trial, it is established that the Claimants failed to comply with the Practice Direction without adequate justification and that such failure occasioned unnecessary costs or prejudice, those matters may be reflected in an appropriate costs order or other case management direction. They do not, in the circumstances of this case, warrant the draconian remedy of strike-out.

[48] Drawing these matters together, I am not satisfied that the present Statement of Claim is so fundamentally defective that it should be struck out. While aspects of the pleading require clarification and certain forms of relief cannot be maintained in their present form,

the deficiencies identified are capable of being addressed by amendment. Applying the principles governing the exercise of the strike-out jurisdiction, this is not one of those plain and obvious cases in which the drastic remedy of strike-out is warranted.

ORDERS:

[49] For these reasons, I make the following orders:

1) The First and Third Defendants' Application to strike out the Claimants' Statement of Claim is refused.

2) The Claimants shall file and serve an Amended Statement of Claim within 21 days of the date of this Order to clarify the issues identified in the judgment.

3) The Defendants shall file and serve their Defence to the Amended Statement of Claim within 28 days after service of the Amended Statement of Claim.

4) The Claimants shall file and serve any Reply within 14 days after service of the Defence.

5) The costs of the Application shall be costs in the case.

Alvin Shiva Pariagsingh
High Court Judge

By the Court,

Deputy Registrar of the High Court