

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law & Equity Division
2018/CLE/gen/001148

IN THE MATTER of ALL THAT piece parcel or lot of land comprising 8,636 square feet and situate at Peter Street off East Street in the Eastern District of the Island of New Providence, one of the Islands of the Commonwealth of the Bahamas which said piece parcel or lot of land is bounded on the North by a reservation known as Peter Street and running thereon 66.65 feet, on the west by a property now or formerly the property of the estate of Brenhilda Johnson and running thereon 81.85 feet, on the East by a Road Reservation known as East Street and running thereon 55.57 feet and South by a property said to be property of the Church of God of Prophecy and running thereon 104.97 feet.

AND

IN THE MATTER of the QUIETING TITLES ACT, 1959

AND

IN THE MATTER of the Petition of WILFRED BUTLER, JR.,
KIPLING BUTLER, DON BUTLER, and PEREZ BUTLER

Before: The Hon. Madam Justice G. Diane Stewart
Appearances: Mrs. Bridget Francis-Butler for the Petitioners
Mrs. Tanya Wright for the Adverse Claimant
Judgment Date: 9th November 2022

JUDGMENT

1. By a Petition filed 5th October 2018, the Petitioners, Wilfred Butler Jr., Kipling Butler, Don Butler and Perez Butler (**the “Petitioners”**) prayed that their title to their family property on East Street be investigated pursuant to the Quieting Titles Act, 1959 (**the “Act”**) and that a Certificate of Title with respect to the property be granted to them. The property is described as:-

“ALL THAT piece parcel or lot of land situate in the vicinity of Peter Street off East Street in the Eastern District of the island of New Providence, one of the Islands of the Commonwealth of the Bahamas, bounded on the North by a road reservation known as Peter Street and running thereon 66.65 feet, on the West by a property now or formerly owned by Branhilda Johnson and running thereon 81.85 feet East by a road reservation known as East Street and running thereon 55.57 feet and South by a property said to be the property of the Church of God of Prophecy and running thereon 104.97 feet” (the “Property”)

2. The Petition was supported by the Affidavits of Wilfred Butler, Dorothy Godet and Inell Williams all filed on 5th October 2018.
3. The Petitioners filed an Abstract of Title on 5th October 2018 which stated:-

No.	Document
1.	21 st July 2016 – Birth Certificate – Herman Butler and Salmonia Bethel aka Selvenia (Sally Graves) gave birth to Wilfred Leroy Butler (deceased)
2.	7 th February 1935 – Conveyance between Thaddeus Augustus Toote and Selvenia (Sally) Graves who became seised of ALL THAT piece parcel or lot of land situate Peter Street and East Street (the subject property)
3.	1945 – Sometime in the said year the said Wilfred Butler constructed a wooden house on the subject property and resided therein along with a building to the eastern portion of the subject property for the operation of a tailor shop. Selvenia (Sally) Graves operated a convenience store selling fruits, vegetables, homemade breads and pastries
4.	2 nd July 1947 – Wilfred Leroy Butler Sr. married Alfreda Butler nee Woolridge producing four children:- <ol style="list-style-type: none"> 1. Wilfred Leroy Jr. – Born 10th April 1948 2. Kipling Butler – Born 1st August 1952 3. Don Butler – Born 17th October 4. Perez Butler – Born 12th July 1968
5.	11 th June 1977 – Wilfred Leroy Butler Sr. died survived by his wife, Alfreda Butler and four sons who remained in undisturbed possession and occupation of the Property. They repaired and maintained the house situate thereon, planted various flowering plants throughout the property and operated a welding business thereon
6.	13 th February 1979 – Last Will and Testament of Selvenia (Sally) Greaves of Flint Street off East St.
7.	15 th June 1980 – Selvenia (Sally) Graves died
8.	17 th December 1980 – Probate granted to Cynthia Louise Ferguson in the Estate of Selvenia (Sally) Graves Alfreda Butler and two sons namely Don Butler and Perez Butler continued to reside in the wooden house built by the late Wilfred Leroy Butler Sr. and continued to maintain and repair it.
9.	17 th June 2018 – Alfreda Butler nee Woolridge died possessed of the Property survived by the Petitioners who continue to occupy and maintain the land in undisturbed possession.

4. Notice of the Petition was advertised and served on the relevant parties in conformity with the Order of this Court made 20th November 2018 and filed 3rd December 2018. This was confirmed by the Affidavit of Compliance filed 1st March 2019.
5. An adverse claim was filed by Michelle Hall on 5th March 2019 (**the “Adverse Claimant”**) and the Affidavit of Michelle Hall and Cynthia Louise Ferguson were filed on even date in support of her claim.

The Petitioners’ Case

6. Wilfred Leroy Butler Jr., the eldest child of the late Wilfred Butler Sr. (**“Wilfred Sr.”**) and Alfreda Butler (**“Alfreda”**), born on 10th April 1948 (**“Wilfred Jr.”**) stated that his parents had remained in exclusive possession and occupation of the Property in excess of seventy years. At the time he gave his evidence he was seventy years of age and he claimed that he and the other Petitioners continued to occupy the Property along with his three brothers Kipling, Don and Perez after the death of Wilfred Sr. in 1977 and Alfreda in 2018. While they had remarried and physically moved off of the Property, they would still maintain the home and yard and would pay the utility bills.
7. Wilfred Sr. was the only child born to the late Salvenia (Sally) Graves (**“Sally”**) on 21st July 1916. Sally was a disciplinarian and often took in many children whom she assisted including Cynthia Ferguson (**“Cynthia”**). When Cynthia married Huria Ferguson, his parents had hosted their wedding reception at the Property. Sometime between 1945 and 1946 Wilfred Sr., with the agreement of Sally, constructed a small wooden house on the Property where he resided. He also operated a tailor shop on the southeastern portion of the Property whilst Sally operated a petty shop therein. Sally never lived in the house on the Property as she lived at her home on Flint Street off of East Street.
8. His brother Kipling operated a welding business from the Property for over thirty-five years until his accident in May 2018. His brother Don operated a dog business on the Property in excess of thirty years without interruption. Cynthia never mentioned the purported Last Will and Testament of Sally (**“Sally’s Last Will and Testament”**) to them.
9. On or about 1st April 2008, the Adverse Claimant telephoned him to query whether she could have the Property appraised on the basis that “mama” had left the Property to her. He informed her that he was not aware of that and she denied having the conversation with him and he never heard further from her or Cynthia. On 19th June 2018, two days after their mother’s death, Cynthia advised Kipling’s wife Cora by telephone that the Property belonged to the Adverse Claimant.
10. On or about 7th November 2018, the Adverse Claimant called him to set up a meeting with her and a third party. When he asked her who the third party was and where the meeting would be located, the Adverse Claimant stated that she did not know and he did not engage in any further communication with her.

11. On 14th November 2018, the Adverse Claimant served him with a letter which gave him notice to remove his valuables from the Property and not to re-enter. She did not serve the remaining Petitioners with letters but wrongfully entered the Property sometime around the 6th December 2018 and attempted to change the locks and a week later, attempted to disconnect the electricity supply.
12. During cross-examination Wilfred testified that the wooden home remained on the Property. He stopped living on the Property in 1980 when he got married. Kipling stopped residing there before 1980 and Don moved off of the Property in the 1990's. Cynthia lived with Sally until she got married and they considered her to be a part of their family. He could not say if Sally conveyed the Property to his father during his lifetime but there was no conveyance evidencing this.
13. Since 1980 he would always spend the Christmas holidays at his home on Soldier Road and his brothers would also attend. He celebrated his birthdays at his home or at his mother's home. The last celebration they had at the Property was a week prior to the hearing in January of 2020. Prior to that they would meet there from time to time. From 1990 onwards the electricity bill for the home on the Property was in his name as he provided identification to have it connected as such, which was all they required from him.
14. While Kipling operated his welding business on the Property both his father and mother were still alive. He saw Sally's Last Will and Testament and thought that it was strange that he was not made a beneficiary. He disagreed that since he was not a beneficiary thereunder that there was no obligation on anyone to inform him of its contents. In 2008 he had questioned Kipling on whether he knew of Sally's Last Will and Testament and the devise to him. Kipling did not participate in the proceedings because he had a medical condition which resulted after his accident. It was correct to say that other than Kipling, the remaining Petitioners were excluded from Sally's Last Will and Testament.
15. During re-examination, Wilfred Jr. stated that despite his not physically residing on the Property he would attend it on a daily basis. He and his brothers took care of the Property as he would open the house, mop it, take care of landscaping and paid the utilities collectively. He referred to an electricity bill dated 19th August 1993 which was the date he took over payment. The last payment he made was a cash payment in 2019.
16. While Christmas dinners were held at his home on Soldier Road they would gather at the home on the Property for New Years after junkanoo. His brother did not get permission to operate his welding business on the Property because they were family. His brother operated the dog business daily and also kept the dogs in kennels on the Property; he never got permission to operate thereon nor was there any objection. He disagreed that he should not have been made aware of Sally's Last Will and Testament because she was around ninety or ninety one years old when it was executed and her mental condition was not good.
17. In 2008 during a conversation with the Adverse Claimant which she told him that Sally had left the Property to her, he told her that he knew nothing about that or about her

mother being the executrix of Sally's estate as her mother had never said anything about it to him. He heard nothing from the Adverse Claimant after that conversation and only heard from her again in 2018 some ten years later. He went on to say that Kipling had no objection to the contents in his statement before the Court.

18. Inell Williams, who was born on 4th December 1943 ("**Inell**") averred that she was well aware of the Property which was owned by Sally who had one son Wilfred Sr. who had gotten married to Alfreda in 1947 and birthed the Petitioners. Her family lived in the adjacent property on the northern side of Peter Street and they continued to maintain a close relationship. It was always understood that sometime in 1945, Wilfred Sr. constructed a small wooden home on the Property in which he resided and he also operated a tailor shop on the eastern side of the Property. Sally also operated a convenience store and bakery on the Property.
19. After Wilfred Sr.'s death his wife and the Petitioners remained in undisturbed possession of the Property. The Petitioners eventually married and had their families but Alfreda remained on the Property until her death on 17th June 2018. The Petitioners continue to maintain the Property and gather for family socials which she has attended on numerous occasions.
20. During cross examination Inell averred that she had moved to Sunshine Park between 1966 and 1968 but as a child she lived on Peter Street.
21. Dorothy Godet, who was born on 7th September 1936 ("**Dorothy**") stated that she was well aware of the Property which was owned by Sally, the mother of Wilfred Sr., who was her paternal brother. In 1947 Wilfred Sr. married Alfreda and produced the Petitioners. She vividly recalled the wedding reception which was held on the Property as she was ten at the time. Sometime in 1945 Wilfred constructed a small wooden home on the Property and resided therein. He also operated a tailor shop on the eastern side of the Property and Sally operated a convenience store from where she sold fruits, vegetables, bread and pastries.
22. Her brother Eugene Butler, an electrician and her cousin Wenzell Nicholls, a plumber along with Wilfred Sr.'s friend Deacon Peter Rahming assisted him with the construction of the wooden home. Sally never lived in the home as she resided in a home on Flint Street off of East Street.
23. After Wilfred Sr.'s death in 1977, Alfreda and the Petitioners remained in undisturbed possession of the Property. The Petitioners got married and had their families but Alfreda remained on the Property until her death on 17th June 2018. She was not aware of any other person occupying the Property or claiming an interest therein. She was however aware that Sally took care of a number of children who resided at her residence.
24. During cross-examination Dorothy testified that while Wilfred Sr. was her paternal brother she never lived with him on the Property.

25. Don Butler, another of the Petitioners, recalled that as a child, his father would tell him how he and his friends Deacon Peter Rahming and Donald Archer (both deceased) along with Doc Rahming gathering stones and materials to construct the home on the Property. His father would always remind him that nothing came without hard work and that he had built the home for the Petitioners benefit and that they ought to take care of it.
26. They were not allowed to leave the Property until the house was clean and the yard raked. That was the only home that they knew. Their father was a tailor by profession and worked tirelessly in the shop to the east of their home until late at night. His father always ensured that they walked Sally to her home on Flint Street once she retired for the evening. Don went on to say that when he was a teenage he worked in the petty shop with Sally where he would earn his lunch money.
27. When Sally would leave for Exuma he was responsible for ensuring that all of her bread, pastries, fruits and vegetables were sold. He recalled Sally purchasing a vehicle for him to assist her with her grocery shopping and store supplies. Because Sally could not read or write their father took care of her business affairs until his death in 1977 and thereafter they were responsible for her affairs.
28. Sally had diabetes and was an amputee and he was required to sleep at her Flint Street home with her. After a fire caused great damage to her home she then lived with his brother Kipling and his family in Ridgeland Park. During that time his father passed away as he recalled going there to inform her of his passing.
29. Sally had never interfered with their occupancy of the home on the Property. The Petitioners with their parents had been in undisturbed occupancy of the Property in excess of thirty years, prior to the death of their father in 1977 and an additional forty years subsequent to his death. The Adverse Claimant never entered into possession of the Property prior to her first attempt in November 2018 after the filing of the subject petition.
30. He was aware that sometime in 2008 the Adverse Claimant sought the permission of Wilfred Jr. to enter the Property to have an appraisal conducted however, the appraisal was never conducted as it was understood that their father had built and owned the Property. He nor Wilfred Jr. never heard from her again until 2018. Since his father's death they maintained the Property by cleaning, landscaping, repairing, painting and ensuring that all utility bills were paid. Kipling's welding business was in operation for more than thirty years and his dog business was in operation for more than twenty five years. His kennels remained on the Property.
31. They closed in the Property after the shop which was operated by his father and Sally on the eastern portion of the Property was destroyed when a bus ran into it. Cynthia and her husband visited his mother on Sundays after church however they had not done so in almost twenty years. They had never made them aware of Sally's Last Will and Testament or that any gift had been devised to the Adverse Claimant.

32. When his mother died on 17th June 2018 at the age of ninety-six she had been in undisturbed possession of the Property and with the Petitioners help had maintain the house on the Property. Despite the Petitioners having their respective families they regularly met at the Property.
33. During cross examination he stated that Sally had stayed with his brother Kipling for more than a month while they rebuilt her home on Flint Street. The Adverse Claimant's attempt to enter the home in 2018 was the first attempt by her that he was aware of. Most Sundays around 2:00 p.m. he would attend the Property to clean up after his dogs and thus, he would be in the presence of his mother on Sundays for a twenty year period.
34. During re-examination he testified that Cynthia and her husband specifically visited his mother at 2:00 p.m. on Sundays but he did not see them any other time. He explained that when he worked with Sally at her petty shop, Sally also worked for rich New Yorkers who had purchased cays in the Exuma chain. During the summer and sometimes the Christmas holiday she would leave the keys to the petty shop with him to go to the Exuma Cays as their housekeeper.
35. After Sally had her legs amputated around 1978 he would spend every night with her in the Flint Street home. He knew that his grandmother could not read or write because he would have to count money for her or sign anything in the shop. When she purchased the vehicle she would tell him that he needed to quickly learn how to drive so that he could carry her to the market as some mornings the gentleman who would usually carry her would arrive late.

The Adverse Claimant's Case

36. The Adverse Claimant stated that she was the registered fee simple owner of the Property which was gifted to her by Sally in her Last Will and Testament. Her mother Cynthia, as executrix of Sally's estate had transferred the Property to her by a Deed of Assent after receiving a Grant of Probate on 17th December 1980. Her mother had informed her that Sally was the aunt of her grandmother Constance Bethell (nee Miller) and that her mother had lived with Sally much of her life as she raised her and referred to her as her daughter.
37. Her mother had also told her that the Petitioners' father was Sally's son and that he resided on the Property with his wife Alfreda "Aunt Freda" and the Petitioners. After Sally's death in 1980, her parents read Sally's Last Will and Testament to Aunt Freda. They gave Aunt Freda permission to remain on the Property so she and her sons living accommodation would not be disturbed.
38. Her mother advised her that Aunt Freda accepted that she was living on the Property with her mother's permission and that she was grateful for the kindness and generosity her parents showed towards her and her sons, despite no rent being paid. Her mother also advised her that sometime around 1990 Aunt Freda contacted her to obtain

permission to rent the store space and petty shop which was connected to the Property; the store was not rented however and the shop was eventually demolished.

39. At the time of Aunt Freda's death the Petitioners were not in occupation of the Property as they had gotten married and moved into their own homes Her mother also told her that she and her father would often visit with Aunt Freda particularly after they attended the Church of God of Prophecy East on Sundays which was across the street from the Property.
40. Aunt Freda died in June 2018 and prior to her death she was taken care of by a care giver during the night time and her sons would visit throughout the day. During Alfreda Butler's lifetime none of the Petitioners claimed any ownership of the Property. One of the Petitioners had given her mother keys to the back door in order for her mother to freely access the house on the Property; keys which she was still in possession of to date.
41. Around 2008 Aunt Freda had asked her about her plans for the Property but she assured her that no one would trouble her while she was there. Around 2015 she had a conversation with Wilfred Jr. during which she reminded him that the Property was gifted to her by Sally. He had insisted that the Property was his father's. On the advice of her mother she desisted from further conversation with him as she did not want to disrupt Aunt Freda's comfort or living accommodations in any way. She promised that she would not.
42. After Aunt Freda's death in 2018 she had the utilities connected to the Property turned over from Wilfred Butler's name to hers and reminded Wilfred of her entitlement to the Property. She asked him to meet with her and attorney to prove the same and scheduled a meeting for 8th November 2018 however, he declined to attend as he was not interested but maintained his position that the Property belonged to his father. She contacted Perez, another one of the Petitioners whom she thought would be more rational however, he informed her that he also supported Wilfred's position.
43. By letter dated 29th November 2018 her attorney wrote to the Petitioners restating her ownership of the Property. On or about 3rd December 2018 she went to the Property with a police officer and discovered that a lady was in occupation of the Property. She informed the lady that she was the owner. The lady contacted another of the Petitioners' Perez, who is also a police officer. Perez told the officer accompanying her to stay out of the matter as it was before the court.
44. They were all asked to attend the police station including Wilfred. The lady did not show up. She then instructed Bahamas Power and Light to disconnect the electricity supply in her name however, she was advised that the Petitioners were somehow able to get the supply reconnected without her authorization, knowledge or consent. She was advised that the individual presently occupying the Property took care of Aunt Freda when she was alive.

45. The Petitioners continue to occupy the Property without her consent and on the basis that the Property belongs to them as a result of their residing thereon. The Petitioners are all aware that the Property was gifted to her by Sally's Last Will and Testament. She has been approached by individuals wishing to purchase the Property however, due to the interference and trespass by the Petitioners she was unable to do so.
46. During cross examination the Adverse Claimant stated she never worked in Sally's shop on the Property but would visit it nor did she ever live in the home on the Property. She thought Sally resided in the home on the Property. She vaguely remembered visiting her at the Flint Street Property. She would visit Alfreda a couple of times a year. She believed her to be quite sound mentally as she was not aware of any issues with her mental state, between the years 2013 to 2015.
47. She did not give her mother a Power of Attorney to act on her behalf in relation to the Property as it was her mother and she was the executor of Sally's Last Will and Testament. Her Aunt Freda would not have been able to contact her to ask permission to rent the petty shop because she was away at college which was the reason she had asked her mother Cynthia to look after the matter.
48. Wilfred Jr. was served with the 2018 letter from her attorney but she could not say if the remaining Petitioners were. When she went to change the locks on the home of the Property she went with police officers because she knew it was going to be contentious. When she arrived at the Property there was a lady living in the home whom she had never seen in her life who called either Wilfred Jr. or Perez.
49. When Perez arrived he informed the officer that the matter was before the courts and advised everyone to attend the Quakoo Street Police Station where he showed the officer documents on his phone. She disconnected the electricity to the home thereafter as she was not willing to pay for electricity for another person. She thought that the place was empty.
50. The Adverse Claimant then admitted that she did not read Sally's Last Will and Testament to Kipling nor did she give it to him. However, when she questioned whether he was aware of it he never said he was not. She was aware of Kipling's welding business on the Property along with Don's business; both of whom did not need permission to operate as they were family. With respect to Don's business she stated that it was non-existent for more than ten years. She stated that Wilfred and Kipling would take care of the Property.
51. Cynthia Ferguson, the Executrix of Sally's Last Will and Testament and mother of the Adverse Claimant ("**Cynthia**") averred that Sally devised the Home on Peter and East Street to the Adverse Claimant. She was issued a Deed of Assent for the property. Sally was her mother Constance Bethell's aunt and raised her and her mother as she lived with her for much of her life. Sally referred to her as her daughter and relied on her to retain and preserve most if not all of her personal records including the original deeds for the Property.

52. While Sally had another home where she lived she would spend most of her time at the Property where she operated a kitchen and petty shop. She acknowledged that the Petitioners and their father, Sally's son resided on the Property. After Sally's death, Ms. Ferguson read Sally's Last Will and Testament to Alfreda Butler, the Petitioners' mother. They gave her permission to remain on the Property so as not to disturb her sons living accommodations. Alfreda Butler accepted that she was living there with permission and appeared grateful for the kindness and generosity showed towards her and her sons.
53. Sally did not charge Alfreda Butler any rent. Sometime around 1990 Alfreda Butler contacted her to get permission to rent the store space and petty shop connected to the Property however, the rental agreement never materialized and the shop was eventually demolished. The Petitioners grew up, married and moved into their own homes. When their mother died the Petitioners were not in occupation of the Property.
54. She and her husband would often visit Alfreda Butler, particularly on Sundays after they attended the Church of God of Prophecy East which was across from the Property. During Alfreda Butler's lifetime none of the Petitioners made any claim of ownership over the Property. Prior to her death, one of the Petitioners gave her a key to the home in order for her to freely visit with Alfreda. She recalled her daughter having a conversation with Wilfred Jr. in 2015 reminding him that the Property was gifted to her by Sally but he insisted it was his father's property.
55. To keep the peace she asked the Adverse Claimant to withdraw from any further conversation with him because she did not want to disrupt Alfreda's comfort. After Alfreda's death in 2018 the Adverse Claimant converted the utility supplies to her name from Wilfred Butler's and contacted Wilfred Jr. to remind him of her entitlement to the Property who maintained his position that his father owned the Property.
56. During cross examination she stated that based on her instructions to her attorney Sally's estate was never advertised thus anyone with an interest in the estate would not have known about it through the newspaper. She did not think there was anyone who would have an interest in Sally's estate. She had read Sally's Last Will and Testament to Alfreda Butler shortly after Sally's death and she was certain that Wilfred Jr. and Kipling were there.
57. Cynthia stated that she would sometimes sleep at the home on the Property on Saturday night when she was growing up. During the week she would sleep by Sally at her Flint Street home but her main residence was the home on the Property as it was where her clothing was and where she slept as a little girl before the Petitioners came along. After she wed at the age of nineteen she never returned there.
58. She knew that the home had been constructed on the Property but could not say that it was Wilfred who was responsible for the construction. As far as she knew Sally could have spearheaded its construction because of the type of woman she was but she did not know who paid for it. She recalled that Alfreda was a no-nonsense person and there was no displeasure or uproar about what was read to her from Sally's Last Will and

Testament. She and the Petitioners were never made to pay any rent while on the Property. Cynthia never made any improvements to the home on the Property.

59. She could not recall how many copies of the Deed of Assent she received from her lawyer or if she gave Alfreda or Kipling a copy of it. However, the beneficiaries were aware of what was due to them as she read the Will to them. Kipling was made aware of the Will long before 2012. Sally's property in Ridgeland Park was gifted to Kipling from Cynthia's son who had been gifted the property in the Will. Kipling wanted to get his affairs in order and was given this property.
60. Cynthia explained that the home on the Property had two bedrooms, a family room, a dining room, a kitchen and a bathroom. When she resided there she also lived with Wilfred Sr. and his wife, Wilfred Jr. and Kipling. Sally did not live in the home. She occupied the house during the week and slept there on Saturday nights in the back bedroom. As far as she could recall the children all slept in the back bedroom with Sally. She left to go to school from this home as she would shower and put on her school uniform from there.
61. The delivery of the keys to her by Kipling was to allow her access the home as Freda was not doing well which left her unable to get to the door. She did not go to the home if there was no one there and when she did she did not use the keys. The last time she went to see Freda and to the home was a few weeks prior to her death in 2018.
62. During re-examination Cynthia stated that when she attended Kipling's home for New Years celebrations, for a number of years they were held at The Ridgeland Park Property and then at his new home in Carmichael. The remaining Petitioners would not be there, only Kipling and his family and her family. When Kipling contacted her about putting his affairs in order he did not express any concern that Sally's Last Will and Testament was invalid. Sally could not write and she went to the lawyer's office with her when she went to draft and execute her Will. Prior to Sally's death it was kept in her husband's safety deposit box. She guessed that she understood her obligations as an executrix and explained that she was responsible for the distribution to the persons named in the will to receive what was given to them.
63. She was not sure if the original Deed of Assent was given to her lawyers. Kipling was given the title deed and everything pertaining .to the Flint Street Property by her lawyer, this should have included the Deed of Assent. As far as she was aware, she took the original documents to the law firm.

SUBMISSIONS

Petitioners' Submissions

64. The Petitioners claim possessory title to the Property by virtue of their open, continued, exclusive and undisturbed possession for over seventy years. They further claim the defence of proprietary estoppel on the ground that their father built the wooden home on the Property with the permission of his father and/or acquiescence of his mother Sally.

65. Their claim is made pursuant to Section 3 of the Quieting Titles Act (the "Act") which states:-

"Any person who claims to have any estate or interest in land may apply to the Court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted by the court in accordance with the provisions of this Act."

66. Section 16 of the Act states:-

"Without limiting the generality of the provisions of Section 3 of the Act, the Court shall have power to declare by a certificate of title in the form prescribed by Section 18 of this Act that the Petitioner is the legal and beneficial owner in fee simple of the land mentioned in the Petition in any of the following circumstances:-

- i. Where the Petitioner has proved a good title in the fee simple to a share in land and has proved such possession as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- ii. Where the Petitioner has proved such possession of land as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- iii. Where the Petitioner has proved that he is the equitable owner in fee simple of land and is entitled at the date of the petition to have the legal estate conveyed to him."

67. Section 16 (3) of the Limitation Act states:-

No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person:

Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires."

68. In **Mount Camel Investments Ltd v Peter Thurlow Ltd**. [1988] 1 WLR 1078, 1085-1086; 3 ALL ER 129, Nicholls LJ stated:-

"no one, either lawyer or non-lawyer, would think that a householder ceases to be in possession of his house simply by reason of receiving a demand that he should quit...On [the owner's] argument time starts to run afresh by making a demand for possession of another's land. Unless the squatter vacates or gives a written acknowledgement to the owner, the owner has to issue his writ within the prescribed time limit. Otherwise, he is barred, because by section 15(1) [English Limitation Act] [1980] he is barred from bringing any action to recover the land after the expiration of the 12 year period."

69. As it pertains to documentary title, the Petitioners relied on **Megarry & Wade in the Law of Real Property, Eighth Edition** which states:-

Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants."

70. In **Ocean Estates Ltd v Pinder** [1969] 2 AC t 24, 25, Lord Diplock gave the following example in his explanation of the concept of relativity,

“If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land.”

71. It is an established principle of law that a person’s title to land, including the person who has documentary title, is only good in so far as there is no other person who could show a better title. Thus, a person who is in possession, whether as a trespasser or a co-tenant, with the permission of the paper owner or the other co-tenant could obtain a good title if the paper owner failed to assert his superior title within the requisite limitation period.
72. After the expiration of the limitation period, the paper owner, who slept on his rights, would be barred from asserting against the persons in adverse possession and his rights would be extinguished. In **Grand Bahama Port Authority v Smith**, it was held:-
“Before a trespasser can establish a squatter’s title he must prove that he or his predecessors took such active control over every portion of the land he now claims, that it was quite inconsistent with the right of the true owner and precluded the true owner from enjoying the land as he intended or was entitled to do.”
73. Despite the Adverse Claimant’s claim as legal and beneficial owner of the Property by virtue of a 1981 Deed of Assent, the Petitioners and their predecessors in time were in undisturbed possession in excess of forty years since the execution of this Deed of Assent. The Adverse Claimant never sought to gain access to the Property until November 2018, after the filing of the subject petition.
74. The Petitioners submit that in order to oust the documentary title of the Adverse Claimant they must show an actual possession. In **Powell v McFarlane (1977) 38 P & CR p452 at 470**, Slade J stated:-
...on the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner...

(2) if the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and requisite intention to possess (“animus possidendi”). He further states the factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly....what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular, the nature of the land and the manner in which land of that nature used and enjoyed.”
75. The Petitioners submit that with their father, they occupied the Property for all of their lives. Despite residing in their own homes they collectively continued to maintain the Property, paid utilities, paid real property tax, repaired the premises and maintained the landscape. Kipling’s welding business was in operation on the Property for over thirty-five years and Don’s dog business was in operation on the Property for over twenty-five years.
76. The Adverse Claimant never went into possession of the Property and indicated that she was not prepared to pay anyone else’s light bill, never paid real property tax nor

conducted any maintenance or repairs to the Property. There was no evidence to support the verbal claim that there was an arrangement made with their mother, Alfreda to occupy the Property.

77. In **J A PYE (Oxford) Ltd. and Others v Graham and Another [2002] UKHL 30**, Lord Brown-Wilkinson provided:-

there are two elements necessary for legal possession:

1. A sufficient degree of physical custody control (factual possession);
2. An intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess)".

78. In **Paradise Beach and Transportation Co. Ltd. v Price-Robinson (1968) AC 1072**, the Privy Council stated:-

"when any one or more several persons entitled to any land or rents as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person entitled to the other share or shares of the same land and rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons or any of them."

79. The Petitioners assert that they, through their predecessors had been in undisturbed possession of the Property for over seventy years.

80. They further rely on the doctrine of proprietary estoppel and particularly on Lord Denning M.R.'s findings in **Crabb v Arun District Council 1975 1 Ch. 179** where he stated:-

"it is the first principle upon which all courts of equity proceed, "that it will prevent a person from insisting of his strict legal rights – whether arising under a contract, or on his title deeds, or by statute when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties....If he makes a binding contract that he will not insist on the strict legal position, a court of equity will hold him to his contract. Short of a contract, if he makes a promise may be unenforceable in point of law for want of consideration or want of writing....then, if he makes the promise knowing or intending that the other will act upon it, and he does act upon it, then again a court of equity will not allow him to go back on that promise....Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights, knowing or intending that the other will act on that behalf, and he does so act, that again will raise an equity in favour of the other and it is for the court of equity to say in what way the equity may be satisfied."

81. An equitable obligation arose between Wilfred Sr. and Sally his mother which required the Court to impose a constructive trust on the Property. He constructed a wooden home with her consent and expended money and hard work to do so. Therefore, it was reasonable to assume that an equitable interest in the Property had arose. It would be unjust and inequitable for the paper owner to be allowed to devise the Property under her last Will and Testament to anyone else.

The Adverse Claimant's Submissions

82. The Adverse Claimant submits that the Property was owned by Sally, the Petitioners' grandmother who permitted her son and his family to live there. Sally lived with Cynthia who cared for her and raised her as her daughter and who was appointed as the Executrix of her estate. Sally only left one of the Petitioners, Kipling Butler a gift of real property from her estate and all of the other Petitioners were excluded.
83. The Adverse Claimant submits that there was nothing to support the Petitioners claim that they were entitled to a grant of Certificate of Title. Their parents' occupation of the Property was never as a title holder and they occupied it with the consent of Sally.
84. Section 17 of the Act gave the Court the discretion to make certain decisions under when a petition was submitted;-
17. (1) **After the court has completed the hearing of an application made under section 3 of this Act it may —**
- (a) **dismiss the application;**
- (b) **dismiss the application and grant a certificate of title in the form prescribed by section 18 of this Act to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act;**
- (c) **grant a certificate of title in the form prescribed by section 18 of this Act to the petitioner;**
- (d) **grant separate certificates of title in the form prescribed by section 18 of this Act to the petitioner and to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act in respect of the whole or separate parts of the land described in the petition.**
- (2) **The court may give one certificate of title comprising all the land described in the petition, or may give separate certificates of title as to separate parts of the land."**
85. The Adverse Claimant also relied on **Ocean Estates Ltd v Pinder (supra)** where Lord Diplock said:-
- "At common law as applied in The Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an "absolute" title. Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants."**
86. There was no evidence by the Petitioners that their father and mother went into possession of the Property, or that he built the dwelling home thereon as they were not present when it was constructed. Despite the Petitioners claims that their mother was a strong minded person, there was never any suggestion that she tried to convey the Property to her or her husband in his lifetime or to the Petitioners.
87. Sally was an astute woman who took pride in her investments in real estate as evidenced by the meticulous care she took in preserving her title deeds therefore the Petitioners father did not seek to transfer the Property or Sally refused to do so. If it was Sally's intention to vest the Property to the Petitioners, their father or mother, she would have given them the deeds to the Property.
88. It was well established that to succeed in a claim for adverse possession a squatter had to prove both factual possession of the land and the requisite intention to possess. The Petitioners best case scenario was that they took possession of the land after their mother's death in 2018. However, in **Mather v The Grand Bahama Port Authority Ltd. (No. 7/1966) [1965-70] 1 LRB 103** it was held that time, for the purpose of the Limitation

Act and adverse possession, stops running once a Quieting Petition has been filed and on that note, the period was less than what was required under the Limitation Act to oust the title of the documentary title holder.

89. There was no error of fact contained in the Deed of Assent therefore by Section 3(3) of the Conveyancing and Law of Property Act the Court was permitted to deem the thirty-seven year old deed as sufficient evidence of the fact that the Property was devised to her. Section 3(3) states:-

“Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of truth of such facts, matters and descriptions.”

90. In *In the Matter of the Quieting Titles Act, 1959; In the Matter of the Petition of Shameka L. Morley [2010] 3 BHS J No. 84*, the Adverse Claimant Shirley Spriggs claimed to be the owner of the Lot by virtue of a conveyance dated 5th December 1979 from Budget Properties Limited and the Royal Bank of Canada to her and her husband, Herbert Spriggs. Mr. Spriggs has since died. A copy of a draft of the conveyance has been adduced. It is alleged that the original conveyance has been lost. The conveyance was never recorded in the Registry of Records. It was held that Mrs. Spriggs had a better title and she was granted a Certificate of Title.

91. The documentary title to the Property was vested in the estate of Sally Graves which the Petitioners' own abstract confirms. The Adverse Claimant derives her title from this estate, which holds interest in trust for her. Additionally, after the death of the Petitioners mother, the Adverse Claimant had always asserted her rights over the Property and made both oral and written demands for them to cease and desist their trespass over the Property. Accordingly, she was entitled to be granted a Certificate of Title.

92. The Adverse Claimant also sought costs pursuant to Order 59 rule 3 of the Rules of the Supreme Court which states:-

“Entitlement to Costs – “Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceeding except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

DECISION

93. The Petitioners seek a Certificate of Title with respect to the Property as they maintained that they had gained a possessory title as a result of being in possession of the Property in excess of seventy years or at the minimum forty years. Their claim was made by virtue of the Quieting Titles Act, 1959 which provides by Section 3 for a petitioner to apply to the Court for a Certificate of Title over land after an investigation into title is conducted. Similarly, the Adverse Claimants can enter an opposing claim for a Certificate of Title under the same section.

94. The locus classicus **Bannerman Town, Millars and John Millars Eleuthera Association (Appellant) v Eleuthera Properties Ltd (Respondent) (Bahamas) [2018] UKPC 27** provides an in depth and lucid interpretation of this Act along with the legal principles governing possession which I find helpful to set out herein as it addresses the issues which this court must consider in order to determine whether to grant a Certificate of Title to either of the parties or at all. Lord Briggs stated:-

“The Quieting Titles Jurisdiction

33. The jurisdiction under the Quieting Titles Act in the Bahamas is, (as elsewhere, for example in parts of Canada), a statutory graft upon a body of law about the ownership of unregistered land, the main purpose of which is to remedy perceived defects in that law (compared for example with systems of land registration) which harm the public interest by adversely affecting the marketability, and therefore beneficial use and development, of land. The Act necessarily takes for granted and adopts parts of the procedure for the deduction and proof of title under that system of law, which is itself partly common law and partly statutory. For present purposes the relevant statutory elements are to be found in the Conveyancing and Law of Property Act 1909 (Bahamas) as amended, and the Limitation Act 1995 (Bahamas) replacing earlier statutes of limitation and reducing the relevant limitation period for present purposes from 20 to 12 years.....

...

38.....the statutory process for obtaining a certificate of title under the Act has both constraints and opportunities which set it apart from the deduction and proof of title as between vendor and purchaser. The main constraint is that, whereas the vendor and purchaser process affects no one other than themselves, even if a dispute is resolved by the court on a vendor and purchaser summons (for which see section 4 of Page 13 the Conveyancing Act), the process of quieting titles is designed to lead to a certificate which, save in cases of fraud, is good against the whole world, in favour of the person or persons (petitioner or adverse claimants) who succeed in proving their title: see sections 19 and 27 of the Quieting Titles Act. Thus, although title to unregistered land is normally thought of in purely relative terms, the issue in any proceedings being who has the better title, a certificate of title confers something more like absolute title, of the quality conferred by registered title under a system of land registration. For this reason, the court needs to be cautious before certifying title under the Act, as the Board warned in the *Armbrister* case.

95. Despite the Court’s jurisdiction to investigate the title of a petitioner or adverse claimant it is not mandated to issue a certificate of title.

41. But none of this means that the court has the duty, or even the power, to create title by use of the machinery conferred by the Act, where in truth no title at all is proved. Section 17 of the Act gives the court a discretion whether to dismiss the application entirely, to dismiss it and grant a certificate of title to an adverse claimant, to grant a Page 14 certificate of title to the petitioner, or to grant separate certificates of title to different parts of the land to the petitioner and to one or more adverse claimants. In *Nova Scotia (Attorney General) v Brill* [2010] NSCA 69, para 37, Fichaud J said this, speaking of the Quieting Titles Act 1989 in the Nova Scotia Court of Appeal:

“The QTA does not enable a court to create title. Rather it authorises a court to grant a certificate that reflects the title, including possessory title, to which the party is entitled by the legal principles that exist outside the QTA.”

The Board considers that the same principles apply to the Bahamian Act.

96. The Board agreed with the Bahamian courts' reliance of what was considered to be a good root of title.

43.The judge relied upon the following definition of a good root of title in Megarry and Wade's Law of Real Property (4th ed) at p 580:

"A document which describes the land sufficiently to identify it, which shows the disposition of the whole legal and equitable interest contracted to be sold, and which contains nothing to throw any doubt on the title ..."

To substantially the same effect is the definition in Williams on Vendor and Purchaser (4th ed, 1936) at p 124. It is a time-honoured and practical definition, which is not challenged in these proceedings.

97. As for the principle of possession, the Board stated:-

50. While occupation or use of land is a familiar non-technical concept, possession of land is a legal term of art. Possession, for however short a time, may be sufficient to found a cause of action in trespass against someone thereafter coming upon the land. But possession sufficient to bar a prior title (whether itself documentary or possessory) must be proved for the whole of the time prescribed by the relevant Limitation Act: see *Perry v Clissold* [1907] AC 73, per Lord Macnaghten at p 79:

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."

51. Possession of land is generally described as having two elements, factual possession and the intention to possess: see *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419. In the present case there is no difficulty about a general intention to possess by the various Descendants who gave evidence, since they believed that they were co-owners of the land pursuant to Ann Millar's will. Such a belief, even if mistaken, is sufficient for the purposes of intention to possess: see *Roberts v Swangrove Estates Ltd* [2008] Ch 439. All that is common ground.

52. Possession of land may be exercised jointly, and vicariously. Where a number of persons are proved to have occupation and use of land together, and the question arises whether they had joint possession of the whole of the land, this will usually turn upon the agreement, arrangement or shared common intention (if any) between them: see eg *Bigden v London Borough of Lambeth* (2001) 33 HLR 43; *Brown v Faulkner* [2003] NICA 5(2); *Churcher v Martin* (1889) 42 ChD 312 and (in Canada) *Afton Band of Indians v Attorney General of Nova Scotia* (1978) 85 DLR (3d) 454.

53. There is an element of uncertainty in those authorities whether the requisite mutual meeting of minds must amount to an agreement or to an arrangement, or to a common intention shared between them. It is not necessary that there should be a formal contract. But the mere aggregate of the separate intention of each occupier, which is neither communicated to nor shared with any of the others, will be insufficient. The requirement is for a shared common understanding, sufficient to render multiple occupants of land joint possessors of it. It is quite separate from the general requirement of an intention to possess. Rather, it forms part of the analysis of possession in fact.

54. Possession may be vicarious in the sense that A may occupy land on behalf of B, such that B rather than A is in possession of it: see eg *Bligh v Martin* [1968] 1

WLR 804. Vicarious possession may arise where, for example, A is the licensee, agent or agricultural contractor of B. Again, this will depend upon the existence of some agreement or arrangement between them.

98. The Board also considered different acts (non-exhaustive) which would possibly amount to possession.

71. The Board's view is however that EPL's conduct in relation to the Property in and after 1988 falls well short of qualifying as possession of the Property, or of any part of it. Leaving aside the required intention to possess, factual possession requires some occupation, use or other dealing with the land as an occupying owner might have been expected to undertake. It will be a fact-specific question in the sense that the characteristics of the land in question will be of primary relevance. In the present case, the Property was unsuitable between 1988 and 2010 for much more than the intermittent activities of subsistence farming, crabbing and so forth already described, although it may have had long-term development value. Although a buyer of development land with documentary title may be deemed to be in possession of it unless the contrary is proved, a person without documentary title who neither occupies nor uses the land, because he has only a wish to use it for development at some time in the future, must nonetheless do something sufficient to constitute the taking of possession of it if he is to acquire title.

72. Taking the various aspects of EPL's conduct in relation to the Property in turn, the 1988 survey can hardly qualify, since it was undertaken prior to the execution of the 1988 Conveyance. The subsequent clearing of boundary lines by Mr Patram between 1994 and 2004 does not in the Board's view qualify as taking possession. The two long boundaries to the Property on its east and west sides were, respectively, the high tide line abutting the Atlantic Ocean and the line of the government's public highway. Both were entirely accessible to the world at large and the clearing of undergrowth (if that is what clearing the boundary lines means) did nothing to enclose the Property nor inhibit its use by others in any way. The evidence as to what constituted, on the ground, the northern and southern boundaries is less clear, but again, merely removing undergrowth obstructing the boundary lines does not amount to the taking of possession.

73. Nor does the occasional placing and replacement of signs saying Private Property. In *Simpson v Fergus* (1999) 79 P & CR 398, the question was whether the plaintiffs had established sufficient possession (to support an action in trespass) over a private service road at the rear of their property to which they had no documentary title, but which they had marked out with parking spaces together with a notice saying "Private Land No Unauthorised Parking". The English Court of Appeal held that this amounted not to possession, but merely to a declaration of intent to possess, insufficient to support an action in trespass against neighbours parking their vehicles on the private road. Having acknowledged that what may amount to possession will depend upon the characteristics of the land in question, Robert Walker LJ said this, at pp 402-403:

"Possession is a legal concept which depends on the performance of overt acts, and not on intention (although intention is no doubt a necessary ingredient in the concept of adverse possession). It may or may not be sufficient in international law to annex an uninhabited and uninhabitable rock by planting a flag on it. ... but to establish exclusive possession under English law requires much more than a declaration of intention, however plain that declaration is. Actual occupation and enclosure by fencing is the clearest, and perhaps the most classic, way of establishing exclusive possession (though even enclosure is not invariably enough): ... it may well not have been feasible for Mrs Simpson (or for Mr Humphries before her) to have fenced off the parking spaces, although conceivably it might have been possible to do so with some form of moveable barrier, moveable

posts, chain or whatever. Had either Mr Humphries or Mrs Simpson attempted to do that, matters might have come to a head much sooner. But to my mind, it is not correct, and would indeed be a serious heresy, to say that because it is difficult or even impossible actually to take physical possession of part of a reasonably busy service road, that simply for that reason some lower test should be imposed in deciding the issue of exclusive possession.”

99. Based on the Privy Council’s reasoning in **Bannerman** as set out herein, there are several issues which must be considered. These include whether the Petitioners successfully occupied the Property in undisturbed possession for twelve years as against the Adverse Claimant who claims to be the documentary title holder of the Property. Alternately, whether the Petitioners vicariously held the Property in possession for the Adverse Claimant who claims to have informed their mother and later Wilfred Jr. of her ownership of the Property while the Petitioners were in possession.
100. There is no mutual intention between the Petitioners and the Adverse Claimant as they do not share a common intention to own the Property as one but separately.
101. I accept that the Petitioners’ father freely built and resided in the wooden home on the Property in 1945 and that he lived there with his wife Alfreda and the Petitioners in undisturbed possession until his death in 1977. Thereafter, Alfreda and the Petitioners remained in undisturbed possession of the Property until 2018, Alfreda lived there until her death in 2018 and the Petitioners continued to maintain the Property and run their respective businesses thereon.
102. While the Adverse Claimant was given a Deed of Assent to the Property in April of 1981, I am not satisfied that she made the Petitioners aware of its existence, or contents and what it meant in relation to the Property. Her mother was not acting as her attorney by virtue of a power of attorney. Further there is no evidence other than her mother’s say so, to support her claim that her mother informed the Petitioners’ mother of her ownership of the Property after Sally’s death. Much of the Adverse Claimant’s evidence was hearsay, and her mother’s oral evidence was not supported by any documentary evidence and the persons to whom she claimed to have spoken are now deceased.
103. I accept that the Adverse Claimant spoke to Wilfred Jr. in 2008 and 2015 about her ownership in the Property however, a mere conversation is not sufficient to dispossess a person in possession of property as the Petitioners have been; despite her having documentary title. The Petitioners not only had the requisite ‘animus possidendi’ but the actual possession of the Property in various ways. Even after her approaching Wilfred, he refused to accede to her right to possession and refused to meet with her lawyer.
104. There is no evidence disputing that Kipling did not operate his welding business on the Property for over thirty five years or that Don operated his dog business and that there were kennels on the Property. This possession exceeded the twelve year period needed to dispossess the documentary title holder. Despite the Petitioners relocating to other properties after their respective marriages, their intention to possess the Property

and their actions of maintaining the Property and paying the utilities support their contention that they considered themselves the owners of the Property.

105. Accordingly, in consideration of all of the facts and evidence by both the Petitioners and the Adverse Claimant I find that the Adverse Claimant's documentary title has been disentitled by the Petitioners who have been in exclusive and undisturbed possession of the Property for more than twelve years.
106. The Petitioners have a better title. In the circumstances, pursuant to Section seventeen of the Quieting Titles Act, 1959, I grant them jointly a Certificate of Title to the Property in the form prescribed and declare that they are the legal and beneficial owners of the Property.
107. The Adverse Claimant shall pay to the Petitioners the costs of this action such costs to be taxed if not agreed.

Dated this 9th day of November 2022



Hon. Madam Justice G. Diane Stewart