

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Side**

**2021/CLE/qui/00791**

**IN THE MATTER OF** the Quieting Titles Act, 1959

**AND**

**IN THE MATTER OF** the Petition of Pearline Delores Rolle

**AND**

**IN THE MATTER OF ALL THAT** Parcel of Land Containing 3003.81 Square Feet Being A Portion of Allotment No. 132 Situate Immediately West of Long Lane and William Street Located In The Township of Rock Sound, Eleuthera One of The Islands of The Commonwealth of The Bahamas.

**Before:** The Honourable Chief Justice Sir Ian R. Winder

**Appearances:** Shardach Morris Jr. for the Petitioner  
Mario Gray for the Adverse Claimants Eulila May Sands and Robert Bobby Sands

**Hearing date(s):** 23 and 24 October 2023, 15 May 2024 and 1 August 2025

**JUDGMENT**

## WINDER, CJ

This quieting action relates to a small tract of land (“the Property”) measuring 3003.81 square feet situated off Long Lane and William Street in the Township of Rock Sound on the Island of Eleuthera. The Petitioner Pearline Deloris Rolle (Rolle) prays that her title to the Property be investigated under the Quieting Titles Act, (the QTA) and a Certificate of Title with respect to the Property be granted to her. Eulila May Sands (Eulila) and Robert Bobby Sands (Robert) oppose the Petition.

[1.] The Petition was filed on 15 July 2021. Rolle swore affidavits in support of the Petition asserting that she has a possessory title to the Property. Rolle’s case was also supported by the affidavits of Sidney Rolle, Charles Hall and Emerson Horton.

[2.] Rolle filed an Amended Abstract of title showing that her interest in the Property commenced with a Deed of Gift dated 7 October, 1997, from Advilda Elizabeth Bowleg and which was recorded on 3 March, 2000. The Abstract records that sometime in the mid-1950s, Kenneth Bowleg and his wife Advilda Elizabeth Bowleg entered the property and took possession thereon maintaining and farming the land.

[3.] Adverse Claims were filed by Eulila and her brother Robert on 20 January 2022 and 18 October 2022 respectively. They both independently claim to have a possessory title to the entirety of the Property. In her Abstract Eulila contends that she purchased the property in 1992 from Albert Sands by conveyance dated 7 July, 1992 and that she entered into possession of the property in 1993.

[4.] Eulila says that she made a lawn onto the property, had it fenced in and had not been disturbed until receiving the letter from Rolle in late 2021.

[5.] Notice of the Petition was duly advertised pursuant to the Directions Order filed in the Court.

### Law, Analysis and Disposition

[6.] Section 3 of the QTA provides that:

3. 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.

An investigation must therefore be conducted into the competing claims. This *investigation* is being conducted by the Court pursuant to the QTA. By section 8 of the QTA, it is provided that:

8. (1) The court in investigating the title may receive and act upon any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.

(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.

(3) The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court.

[7.] The appropriate starting point in considering competing claims remains the Privy Council decision in **Ocean Estates Ltd. v. Pinder** [1969] 2 AC 19. In that decision, *Lord Diplock* opined at page 25 as follows:

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. 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. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.

[8.] The law therefore is that in order to succeed in his claim, a party must demonstrate a documentary title or that, he or his predecessor went onto the land as trespasser and by virtue of such possession, beyond the limitation period, had extinguished the documentary title of his opponent or its predecessors in title. In considering the meaning of possession, *Slade J.* in **Powell v. McFarlane** (1977) 38 P & CR p452 at 470 held that:

(1) In 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 the requisite intention to possess ("animus possidendi").

(3) 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. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question of 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 is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and use must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v. S. Don Manis Appu* the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the *Red House Farms* case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.JJ. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College* (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

[9.] The principles enunciated in **Powell v. Mcfarlane** have been approved in the Privy Council decision of **Armbrister et al. v. Lightbourn et al.** [2012] UKPC 40.

[10.] The Property is described in a Plan filed by Rolle and is shown below:

CRANSTON F. PATRAM & ASSOC.  
SURVEYORS

PHONE (242) 335-7724  
331-0573  
P.O. BOX FL-26014 JINGING BAY ROAD  
ELEUTHERA, THE BAHAMAS

1116 EL

DLS Job #20 No 166/20

N9024 000 FT

N9023 900 FT

RECORDED IN THE DEPARTMENT OF LANDS AND SURVEYS  
IN ACCORDANCE WITH SECTION 3 OF THE LAND SURVEYORS ACT  
1975 AS PLAN NO. 1116 EL THIS 16th DAY OF SEPTEMBER 2020.

*Michael Patram*

SURVEYOR GENERAL

N9023 800 FT

CHECKED BY: *CEM Knowles*

APPROVED BY: *Michael Patram*

NOTES:

- DENOTES A SURVEY MONUMENT SET.
- DENOTES A SURVEY MONUMENT FOUND.

REFERENCE:

WAS MADE TO PLAN NO. 782 ELEV.

N9023 700 FT

SURVEY PLAN

SHOWING

A PARCEL OF LAND CONTAINING 3003.81 Sq.Ft.  
BEING PORTION OF ALLOTMENT NO. 132

SITUATE

IMMEDIATELY WEST OF LONG LANE AND WILLIAMS STREET

LOCATED IN THE TOWNSHIP OF ROCK SOUND

ELEUTHERA - BAHAMAS

N9023 800 FT

Surveyed at the instance of the MR. SIDNEY ROLLE

FT. 40 20 0 40 80 120 160 200 240 FT.

SCALE: 1 inch = 40 feet

DATE: JUNE, 2019

Department of Land & Surveys

This is to certify that this is a true and correct copy of the original plan.

plan no. 1116 EL / grant no.

Date: 7/13/21 Signature: *William*

Asst. Director for

N9023 700 FT

N9023 800 FT

N9023 800 FT

Rolle's case

[11.] At trial, Rolle called the following witnesses in support of her case:

- (1) Rolle
- (2) Sidney Rolle (Sidney)
- (3) Charles Hall (Hall)
- (4) Emmerson Valeroy Horton (Horton)

[12.] Rolle evidence was that:

- (1) She is the niece of the late Advilda Elizabeth Bowleg who died on 27 May 1999. She says that before her death, her aunt was very sick and bedridden for many years. On 7 October 1997 Bowleg gave her a Deed of Gift to the Property. It was later discovered that Bowleg did not have a title to the Property.
- (2) Advilda Bowleg's late husband, Kenneth Bowleg, had been maintaining and farming on the Property for a long time. He is said to have resided just down the road from the Property. Notwithstanding the fact that she discovered that the deceased did not own the property, Rolle and her husband Sidney continued to maintain the Property.
- (3) In 1997 Eulila, who owns a restaurant and bar next to the Property, asked her if she could use the Property as a parking area for her customers and she gave her permission to use the Property rent free. However, in October 2015, Eulila erected a chain link fence around the Property without her permission. In October 2015 Eulila commenced an action in the Magistrate Court in Rock Sound Eleuthera requesting that Rolle and her family stay away from the Property. Rolle then requested Eulila to move the illegal fencing and vacate the property. The court dismissed Eulila's claim.

[13.] When cross examined Rolle stated that:

- (1) She asserts an oral and documentary gift from her aunt, Elizabeth Alvilda Bowleg (also called "Aunt Iffie"), in 1997. She says that her aunt gave her two documents (Deeds of Gift), but one was lost/stolen before it could be recorded. She accepted that the deed to the Property was lost before it could be recorded and that the Deed of Gift produced in court relates to a different parcel of land. She conceded that she did not mention in her affidavit that the Deed to the Property was missing.
- (2) She and her husband maintained the property from 1997 onward by: planting trees (poinsettia, coconut, palm); cleaning and cutting grass; and visiting the property regularly. She also stated that her husband and sons were later prevented from accessing the land due to disputes with Eulila Sands.
- (3) Eulila offered to buy the property once she (Rolle) "got it straight.
- (4) Robert told her and her family in 2020–2021 (after the Magistrate Court case) that the property was not his sister Eulila's. He had no direct involvement in the dispute until filing an adverse claim in October 2022 and was even present when the property was being surveyed.

[14.] When re-examined Rolle confirmed that she and her husband maintained the Property by keeping it clean and cutting shrubs and that her aunt and uncle lived near the property and used it for farming and grazing animals.

[15.] Sidney's evidence was that:

- (1) He is the husband of Rolle and sometime in 1996 Alvilda Bowleg, became very ill and at that time she had no family in Eleuthera. Bowleg asked if they could take care of her and they did so until she died on 27 May 1999. Bowleg told Rolle that she owned the Property and that she was giving the same to her because she took good care of her during her illness.
- (2) On 7 October 1997, by a Deed of Gift, Bowleg gave the Property to Rolle. When they tried to get the conveyance for the Property, they were advised that there were no records in the Registry showing that Bowleg had title to the Property. He recalls Mr. and Mrs. Bowleg farming and maintaining the Property for a very long time.
- (3) Since the Property was given to his wife, they have been continuously maintaining the Property. In 1997 Eulila, who owns a restaurant and bar next to the Property, asked Rolle if she could allow her to use the Property as a parking area for her business. He was present when Rolle gave Eulila a verbal approval to use the said property rent free. Sometime later Eulila erected a chain link fence around the Property without permission.
- (4) Sometime in October 2015 Eulila and her family placed an action in the Magistrate Court in Eleuthera stating that the Property belongs to her and her family. However, at the trial Eulila could not produce any title to the Property and their matter was dismissed.

[16.] When cross-examined, Sidney said that he assisted Rolle in maintaining the Property from 1997 onward. He asserts that he regularly cleaned the land, cut grass/cleared bush, planted coconut and palm trees and built a small structure (a shed or hut) for shelter and tools. Sidney asserted that he and Rolle had uninterrupted access and control over the property from 1997–2015. He says that from 2015 onward a dispute arose when Eulila fenced part of the Property, and he was summoned to the Magistrate's Court for trespassing. He admitted that no formal title document was ever recorded in his or Rolle's name. He denied that Bobby Sands operated a mechanic business on the Property.

[17.] Hall's evidence was that he was aware of Rolle's acquisition of the Property which he says she acquired from the late Alvilda Bowleg. Hall also says that Rolle has been in continuous possession and control of the Property for well over 20 years, that she kept the Property maintained and planted trees along the roadside during this time. According to Hall, he is unaware of anyone or any person disturbing Rolle's occupation and possession of the Property until 2016 when Eulila cleared a portion of the Property and placed the fence around that portion.

[18.] Hall evidence is that he is aware that Eulila lives next to the Property, but he has never known her to have title to the Property or have challenged the Bowleg's ownership of the Property.

[19.] When cross-examined, Hall maintained he was aware of Rolle's possession and maintenance of the Property for over 20 years and recalled coconut and palm trees planted along the roadside. He

admitted that he did not personally witness Rolle maintaining the Property and could not confirm who planted the trees. While he acknowledged that Bobby Sands operated a business nearby, his evidence was that it was not on the disputed Property.

[20.] Horton's evidence in chief was identical to Hall's. He was aware of Rolle's acquisition of the Property which he says she acquired from the late Alvilda Bowleg. He says that Rolle has been in continuous possession and control of the Property for well over 20 years, she kept the Property maintained and planted trees along the roadside during this time. He is unaware of anyone or any person disturbing Rolle's occupation and possession of the Property until 2016 when Eulila cleared a portion of the Property and placed the fence around that portion.

[21.] When cross-examined Horton stated that he was the first cousin of Rolle and asserted that he was told by Alvilda Bowleg that all her property was to go to Rolle. Horton maintained that Rolle planted trees and maintained the Property.

#### Eulila and Robert's case

[22.] Eulila and Robert have filed separate but identical adverse claims. They both filed Affidavits with Eulila also making an affidavit supporting the claim of Robert. Affidavit evidence was also provided by Jacqueline Symonette and Matthew Darville. Eulila was the only witness to give evidence in the case.

[23.] While I did have regard to the affidavits, filed by persons who did not give evidence, I did not place much weight on this evidence in the absence of testing by cross-examination.

[24.] Eulila evidence was that:

- (1) She is 65 years old and has lived in Rock Sound all her life. She and her brother Robert have been occupying and cleaning the property for over 25 years. They have been told that Rolle is seeking to claim the property but the description of the land she was given is on another street. The Property is occupied by her and her brother. Rolle, she says, is confused as she has never set one foot on the Property to do anything on it.
- (2) Eulila says that the Property has always remained in the occupation of her family. Her grandfather allowed a gentleman to put up a tent and use it for church street meetings which ended in the early 60s which allowed him to clear the Property while he was using it. After this, her brother Bobby took over the Property using it for a fish fry and placing a shipping container on it which he used to store tools he used for his mechanic shop. He has remained there until this day undisturbed by Rolle or her predecessor in title as she claims.

[25.] When cross-examined, Eulila stated that she was born in 1953 and grew up on Long Lane, near the disputed property. Initially she claimed ownership of allotment No. 132 (Vita's Place), based on a conveyance from Albert Sands. She later acknowledged that the disputed property may be Lot 136, historically associated with her grandfather Isaac Brown. She admitted that her



conveyance does not specify a lot number, and she relied on a town plan showing Lot 132 adjacent to Lot 136 to support her claim.

[26.] Eulila admitted placing a chain link fence on the disputed property in early 2015, just before Easter. She claimed her daughter planted palm trees on the property after the fence was erected. She asserted that she and her family maintained the land, including lawn care. She claimed that her son-in-law operated a business (Vita's Place) nearby; Robert, she says ran a fish fry on adjacent land. Eulila denied ever seeing Rolle or her family maintain or occupy the property. She claimed Kenneth Bowleg only held street church services there with permission from her grandfather. She rejected claims of coconut or palm trees planted by Rolle. She admitted that her knowledge of her grandfather granting permission was from information received from others.

#### Conclusion

[27.] Ultimately the resolution of this dispute revolves around which version of the evidence I accept. Having heard the witnesses and observed them as they gave their evidence and while neither side presented evidence which was unblemished, I prefer the accounts advanced by Rolle and her witnesses.

[28.] Having reviewed the testimony of Eulila, the Court finds her evidence to be inconsistent, unsupported, and insufficient to establish a valid adverse claim. She asserted ownership of the disputed parcel based on a conveyance from Albert Sands and a community plan, yet she conceded that the conveyance did not specify a lot number and relied on an unregistered survey plan. Her testimony vacillated between identifying the subject land as Lot 132 and Lot 136, and she failed to produce any registered surveyor or credible witness to clarify the boundaries or substantiate her claim. In supporting Roberts' case, in which he claims the whole of the same property, Eulila damages her own claim to the Property.

[29.] I did not find that Robert engaged in any activity on the Property and that his business was conducted outside of the small plot claimed by Rolle.

[30.] The Court notes that Eulila admitted placing a fence on the property in 2015, well after the Rolle's alleged possession, and acknowledged that her understanding of ownership was based on assumption and hearsay. Her claim was further undermined by the absence of supporting witnesses and the contradictory nature of her affidavits. In contrast, Rolle presented consistent evidence, supported by third-party witnesses and survey documentation. Accordingly, the Court is not satisfied that Eulila has demonstrated the requisite elements of adverse possession or ownership, and her claim.

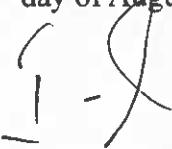
[31.] Under the Quieting Titles Act, a petitioner must demonstrate possession that is open, peaceful, and adverse to the interests of others continuously for the requisite statutory period. I

am satisfied that Rolle has satisfied this burden through credible witness testimony (whom I accept), and physical acts of possession, since 1997.

[32.] For the reasons stated above, the Court finds in favour of Rolle as follows:

- (1) The petition of Rolle is hereby granted.
- (2) Rolle shall be issued a certificate of title to the Property comprising 3,003.81 square feet, being a portion of allotment number 132, Rock Sound, Eleuthera.
- (3) The adverse claims of Eulila Sands and Robert Sands are dismissed.
- (4) Costs are awarded to the Petitioner, to be fixed if not agreed.

Dated this 15<sup>th</sup> day of August 2025



Sir Ian. Winder  
Chief Justice