

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2024/CLE/gen/872

B E T W E E N

FADORA McKENZIE-MUNROE

AND

LONDA McKENZIE TAYLOR

(As attorneys by Deed of Power of Attorney for Dorothy Lucinder McKenzie)

Claimants

AND

MARCO MOSS

Defendant

Before: The Honourable Madam Justice Cheryl Bazard KC

**Appearances: Ms. Travette Pyfrom for the Claimants
Mr. J. Michael Saunders for the Defendant**

Hearing Date: 16 January, 2026

Civil Practice and Procedure – Strike Out application – Part 26.3(1) of The Supreme Court Civil Procedure Rules, 2022 (as amended) – Abuse of the Court’s Process – Whether Statement of Case discloses no reasonable grounds for bringing the claim – Frivolous, vexatious and scandalous – Summary Judgment – Limitation Act s. 16(3)

The Claimants allege that the Defendant is encroaching on property at Lot 8, Tropical Gardens owned by Dorothy Lucinder McKenzie. The Defendant denies the claim and avers that he has been on the property for more than 12 years. The Defendant made an application pursuant to Section 16(3) of the Limitation Act 1995 and Part 26 rule 3 (a), (b) and (c) and Part 15.2(a) of the Civil Procedure Rules 2022. The Application was supported by Affidavit which sought to rebut ownership of the property or in the alternative rely on the time period that he has occupied the property.

HELD: The Defendant’s application is dismissed on both grounds.

RULING

Bazard, J:

INTRODUCTION

[1.] This action stems from a competing claim of ownership of property between Dorothy Lucinder McKenzie (“**DLM**”) of the one part, who is represented by the Claimants and the Defendant.

[2.] The Claimants have asserted that DLM acquired the property through a conveyance dated 29th March, 2005 and recorded in Book 9237 at pages 18 to 22 and as such, the Defendant is trespassing on the said property.

[3.] The Defendant claims that he owns the property as he has been in possession of the same for more than 12 years.

[4.] The Defendant filed a Notice of Application to strike out the claim owing to the failure of the Claimants to adhere to procedure as outlined in The Supreme Court Civil Procedure Rules, 2022 (as amended) “**CPR**”). In addition, he claims that the action is barred by statute and relies on section 16(3) of the Limitation Act.

[5.] For the reasons that follow, that application is dismissed.

ESSENTIAL BACKGROUND

[6.] On the 30th September, 2024, the Claimants filed a Claim form seeking *inter alia*,

- (a) Possession of Lot 8, Tropical Gardens,
- (b) Mesne profits of \$400 per month until possession is delivered up,
- (c) An Order that the Defendant do within 7 days pull down and remove the shed, building and fence illegally constructed on Lot 8,
- (d) Alternatively damages and Interest on those damages at the rate of 6.75% pursuant to the Civil Procedure (Award of Interest Act Chapter 80),
- (e) Costs.
- (f) Such further and/or other relief as the Court deems just.

The Claimant’s case

[9.] The Claimant states that Dorothy Lucinder McKenzie (“**DLM**”) is and was at all material times the owner and entitled to possession of a lot of land known as Lot #8, Tropical Gardens. The Claimants allege against the Defendant that in or about August, 2023, he, his servants or agents wrongfully erected a 20 square feet shed and a 54.84 square feet two story (sic) building and enclosed the property with a chain link fence on the eastern boundary thereby depriving DLM of her property and the use and enjoyment of her property and she has therefore suffered damage.

[10.] By letter dated 19th July, 2024, the Claimants’ Attorneys wrote requesting that the structures be removed. The Defendant has failed and/or refused to do so.

[11.] The Claim form was served on 15 October, 2024 and acknowledged on 16 October, 2024. The Statement of Claim was filed on 14 February, 2025.

[12.] The Claimants filed a Notice of Application on 25th March, 2025 pursuant to **CPR Part 12 Rule 12.9(1)(b) and 12.9(4) and (5)** for Judgment in Default of Defence.

[13.] The Defendant resisted the application and by Order of Assistant Registrar Jonathan Deal dated 19 May, 2025, it was ordered:

1. **The Claimants' application for Judgment in Default is dismissed.**
2. **The Statement of Claim filed herein on the 14th day of February, 2025 do stand as the Statement of Claim in these proceedings, notwithstanding that it was not served in accordance with Part 5 of the CPR.**
3. **Leave is granted to the Defendant to file and serve a Defence on or before the 5th day of June, A.D., 2025.**
4. **No order as to costs.**

[14.] The Defendant filed a Defence on the 30th May, 2025.

[15.] On the 18 July, 2025, the Defendant filed an application to strike out the claim form and Statement of Claim or alternatively, an Order for summary judgment to be entered on the Defence pursuant to the **Limitation Act** and in particular **s. 16(3), CPR Part 26 r. 3(a)(b)(c) and CPR Part 15 rule 2(a)**.

The grounds relied on are *inter alia*:-

- "2(c). The Claim does not disclose any reasonable grounds for bringing the claim;**
- (d) The Statement of Claim as pleaded is likely to obstruct the just disposal of the proceedings and it is further, frivolous, vexatious, scandalous and abuse of the process of the Court;**
- (e) The Claimants have no real prospect of succeeding on the claim or the issues at paragraphs 1,2,4,5,6,7,8 and 9.**

[16.] In making his application, the Defendant relied on his affidavit filed on the 18th July, 2025. The relevant portions of the said affidavit are as follows:-

- "19. My property is secured by a fence and is locked under my control.**
- 20. I can confirm that I have not previously been challenged since I acquired possessory rights in 2005.**
- 22. I have exclusively occupied my property for the last 20 years, and have never been approached by anyone claiming encroachment, trespassing or otherwise until September 30th of 2024, when I received documents from the Plaintiffs alleging that I was encroaching on their client's (sic) property, and requesting that I remove my fence and shed.**
- 24. I assert my rights under Section 16(3) of the Limitation Act, 1995 in so far as relevant, provides: "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...” as I am advised and verily believe that this Claim is barred by statute (sic) and should be struck out.”

[17.] The Claimants filed an Affidavit in response on 21 January, 2026 and the relevant portions of the Affidavit are as follows:-

“3. The Defendant is the neighbor of DL McKenzie and he also shares the eastern boundary of the DL McKenzie’s property.

8. We are not at all concerned about the Defendant’s possession of the land purchased by him.

9. Our action arises out of the recent addition to the structure which in 2010 (according to the Defendant’s appraisal) had been completed.

10. When the Defendant began construction in 2023 of the addition, he apparently attempted to get approval from Building Control to continue with the structure....

11. The Defendant called us (we were both in Exuma at the time) and attempted to get approval from us to purchase the piece of the land and or our consent to continue with the building. He was told in no uncertain terms to desist as we would not sell him the land.

12. Despite of (sic) our refusal to sellthe Defendant continued to build the extension which led us to commence these proceedings.

14. The photographs at Exhibit A were taken in 2023 and 2025 which show that the building addition is new and at the relevant time was under construction. The Defendant was told to cease his trespass from the outset. He failed to do so. He has not, contrary to what he has claimed in his Affidavit filed on the 18th July, been in possession of the land encroached upon for 12 years. Furthermore, he was told to discontinue building when he commenced building and destroyed DL McKenzie’s property to facilitate his building.

[18.] The Affidavit in response exhibits letters of complaint written to the Ministry of Works on 24 August, 2023 and 9 May, 2024 along with photographs of the property with an addition in an unfinished state, a survey plan and an overhead photo of the property.

[19.] The summaries of the parties’ submissions on the issues, as set out below, are taken from the submission and supplemental submissions of the Claimant filed on the 15th January, 2026 and the 23rd January, 2026 respectively and the Defendant’s submission dated the 16th January, 2026. The parties agreed to have the submissions heard on the papers.

Issues

[19] The issues before the court are:-

- 1. Whether the Claimants’ Statement of Claim should be struck out on the following considerations:-**
 - a. Whether the present action is an abuse of process?**

- b. Whether the Claimant's claim discloses no reasonable grounds for bringing the claim or no reasonable cause of action?
- c. Whether the Court should exercise its discretion and strike out the present action?
- d. Whether the action is statute-barred.

Abuse of Process

[20.] The Defendant's submission is that the abuse of process lies in procedural non-compliance. He relies on 2 prongs:

- 1. "The Claimants failed to commence by fixed date claim form ...as required by the CPR 2022 Part 8.1 supported by their evidence." and;
- 2. The non-compliance with Part 5 of the said Rules.

[21.] As Assistant Registrar Deal has ruled on the 2nd prong, I make no further commentary on this point.

[22.] As to the start of proceedings, Part 8 Rule 8.1(6), it states:

**"A fixed date claim form must be used –
(c) in proceedings for possession of land..."**

[23.] The Defendant lumped his authorities supporting strike-out and limitation under F of his submissions at page 5.

Law and Analysis

[24.] In this jurisdiction, the **Supreme Court Civil Procedure Rules, 2022 (SCCPR) r. 26.3(1)** empowers the Court to strike out a claim. It provides:

- (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 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 of the part to be struck out is frivolous, vexatious, scandalous, an abuse of process of the Court or is likely to obstruct the just disposal of the proceedings; or

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."

[25.] It is well established that the Court's jurisdiction to strike out is a summary power to be exercised with caution. In **Drummond-Jackson v British Medical Association [1970] 1 All ER 1094**, Lord Pearson made observations that are frequently relied on in relation to strike out applications. At page 1101, he states:

“It has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases and the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed.”

[26.] The striking out principle was echoed by Dennis Byron CJ (Ag.), as he then was, in the case of **Baldwin Spencer v The Attorney General of Antigua and Barbuda (Civil Appeal No. 20A of 1997)** when he said:

“This summary procedure should only be used in clear obvious cases, when it can be seen on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court....Striking out has been described as “the nuclear power” in the court’s arsenal and should not be the first and primary response of the court”.

[27.] Further, Charles J, as she then was, reminded that striking out should be used only in exceptional circumstances in **B.E. Holdings Limited v Piao Lianji 2014/CLE/gen/10472** at paragraph 7 she stated:

“7. As a general rule, the court has the power to strike out a party’s case either on the application of a party or on its own initiative. Striking out is often described as a draconian step, as it usually means that either the whole or part of that party’s case is at an end. Therefore, it should be taken only in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this discretion deprives a party of his right to a trial and his ability to fortify his case through the process of disclosure and other procedures such as requests for further and better particulars.”

[28.] The starting point, as the Court of Appeal affirmed in **Bahamas Ferries Limited v. Charlene Rahming SCCivApp. No. 122 of 2018**, must always be the pleadings. Sir Michael Barnett, JA (as he then was), at paragraph 39 stated:

“39. The starting point must always be the pleadings. In Loveridge and Loveridge v Healey [2004] EWCA Civ. 173 Lord Phillips MR said at paragraph 23:

‘In Mcphilemy v Times Newspapers Ltd. [1999] 3 ALL ER 775 Lord Woolf MR observed at 792 – 793:

‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’

[29.] In **Farley v Paymaster Ltd (1836) EWHC 282 (KB)** at [86], it was noted that:

“A striking out application requires analysis of the statement of case, without reference to evidence. Unless demonstrably and patently hopeless, the Court proceeds

on the assumption that the relevant factual averments will be established by evidence at trial.”

[30.] The Court is not called upon to engage in a mini-trial but simply to assess whether the Claim discloses a triable issue.

[31.] The filed Statement of Claim alleges that the Claimants own Lot 8 by virtue of Conveyance and alleges trespass by the Defendant. Whether the Defendant is on his land or the Claimants' land is a matter for investigation and trial.

[32.] The Defendant, on the other hand, relies on the proposition in his affidavit that there are appraisals establishing ownership of the property. The mentioned appraisals have not been subject to investigation or interrogation.

[33.] As such, the Court, if it were to accede to the Defendant's application, it would have to embark on a fact-finding mission. The Court does not investigate at this stage whether allegations are true or not.

[34.] In **Dr. Christina E. Darville v. Lois East 2023/CLE/gen/00137**, Card-Stubbs J noted:
“It is not appropriate to strike out a statement of case if the application to strike calls for substantive fact-finding. Nor is it appropriate to strike out a statement of case if it raises a serious live issue of fact. In consideration of the matters averred in the affidavits relied upon by the Defendant, it appears to me that there is a serious live issue of fact.”

[35.] The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of case does not disclose a course of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court. Where the defect lies in the fact that some material averment has been omitted, the Court while striking out the pleading, will not dismiss the action but give the Claimant leave to amend unless the Court is satisfied that no amendment will cure the defect.

Issues Nos. 2, 3 and 4: Is the present action frivolous, vexatious and scandalous and an abuse of the process as it discloses no reasonable ground for bringing the action, and should the court exercise its discretion and strike out the action.

[36.] The central issue in this application whether the Claimant's Statement of Claim discloses a reasonable ground for bringing the action, or whether it is so defective as to amount to an abuse of process of the Court and should therefore be struck out. In essence the core issues to be distilled are narrowed to three issues:

- (i) Possessory title to land at Lot 8, Tropical Gardens;
- (ii) Trespass to land; and

(iii) Damages.

[37.] These are civil causes of action capable of being determined at trial. As observed in **Farley v Paymaster (Supra)**, unless a claim is “demonstrably and patently hopeless”, the Court proceeds on the assumption that the factual allegations can be proved at trial.

[38.] The Court's discretion to strike out is to be exercised sparingly. In the circumstances, I think it would be draconian to strike out the Claimant's case. As noted by Lord Pearson in *Drummond-Jackson* “...*reasonable cause of action means a cause of action with some chance of success... when only the allegations in the pleadings are considered.*”

[39.] In **Dr. Christina Darville supra**, Card-Stubbs J made reference at paragraph 47 to **John W. Russell (in his capacity as Administrator of the Estate of William Russell) v. Bahamas Agricultural and Industrial Corporation 2019/CLE/gen/00093** and the dicta of Hanna-Adderley J who considered the nature of the words “scandalous”, “frivolous” and “vexatious”.

“23. Allegations in a pleading are scandalous if they impute dishonesty, bad faith or other misconduct against another party or anyone else and they are immaterial or irrelevant. Whether a pleading is frivolous or vexatious depends “on all the circumstances of the case; the categories are not closed and the considerations of public policy and the interest of justice may be very material.” See *Ashmore v. British Coal Corp* [1990] 2 QB. 338. Having carefully considered the Statement of Claim I have concluded that there is nothing contained in it which supports the Defendant's contention that the Statement of Claim is scandalous, frivolous or vexatious.

24. The Defendant contends in its Summons that this action by the Plaintiff is an abuse of the process of the Court. This ground confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appears to be an abuse of the process of the Court. This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (Commentary at 18/19/18 on page 352 of the Supreme Court Practice 1, 1999 *Castro v. Murray* (1875) 10 Ex 213. Having determined that the Statement of Claim discloses a reasonable cause of action, that it is not scandalous, frivolous or vexatious I have concluded that the action is not an abuse of the process of the Court.”

Issue No. 5: Whether the Court should enter Summary Judgment based on the Limitation Act?

[40.] In **Fairness Limited v. Steven Bain et. Al. BS 2017 CA 116**, Allen, P. stated:-

“Indeed, a trespasser is one who has unlawfully entered the land in the possession of another without a defence to such entry; and so long as that person remains on the property, he remains a trespasser no matter how long he is in possession..... Indeed adverse possession gives no interest or title unless or until it is declared by the Supreme Court on the conclusion

of an investigation under the Quieting Titles Act. This is an action in trespass not a Quieting Titles action or one of adverse possession.”

[41.] Sir Michael Barnett, in *Orlean Clarke et al v. Kathreen Barry* SCCivApp No. 99 of 2019 states:

“...this issue was not canvassed by the judge in her consideration of the strike out application and in itself ought to have warranted a demand for further investigation and militated against striking the out peremptorily.”

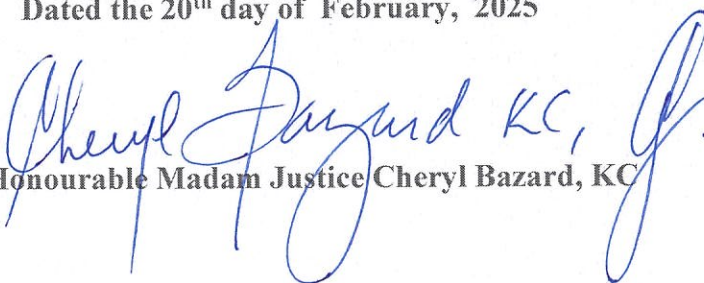
CONCLUSION AND DISPOSITION

[42.] As I have indicated earlier, upon review of the statement of case, I do not find that the statement of case does not disclose a reasonable ground. The claim raises issues that require fact-finding, and this is not an appropriate case to strike out, as the issues can be resolved at trial. As such, based on judicial precedent and authorities, the Defendant's application for striking out is dismissed.

[49.] In the circumstances and for the reasons outlined above, the Court orders as follows:

1. The Defendant's application to Strike Out is dismissed;
2. Costs is reserved;
3. The matter is to be transferred to a Judge in the civil division for case management conference.

Dated the 20th day of February, 2025


The Honourable Madam Justice Cheryl Bazard, KC