

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**Case No. 2022/CLE/qui/01783**

**IN THE MATTER of the Quieting Titles Act, 1959 Chapter 393 Statute Law of the Commonwealth of The Bahamas**

**AND IN THE MATTER of a tract of land comprising Thirteen and Three hundred and Sixty-nine thousandths (13.369) acres situate approximately 0.85 miles Northwest of Haynes Avenue in the settlement of Governors Harbour in the island of Eleuthera one of the Islands of the Commonwealth of The Bahamas.**

**AND IN THE MATTER of the Petition of Jenifer Doon McKinney**

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: Tara Archer Glasgow (previously Vann Gaitor) with Trevor Lightbourne for the Petitioner

Camille Cleare with Lakiesha Hanna for the Adverse Claimant John Gornal Jones.

18 December 2024, 24 March 2025, 25 March 2025, 8 September 2025,  
24 October 2025 and 14 November 2025

**JUDGMENT**

## WINDER, CJ

This quieting action relates to a parcel of land (the Property), situate in the settlement of Governors Harbour on the island of Eleuthera. The Petitioner (McKinney) prays that her title to the tract of land be investigated under the Quieting Titles Act, 1959 and a Certificate of Title with respect to that land be granted to it.

[1.] The Petition was filed on 22 December 2022 along with affidavits to support the claim to a possessory title to the property. McKinney filed a survey plan and an abstract of title in accordance with the provisions of the Quieting Titles Act.

[2.] McKinney, Casuarina McKinney-Lambert, Edgar Seligman, Bishop Clifford Nemiah Petty, Nicholas Pennerman, Marcus Homer Mitchell and Wayne Masterman filed Affidavits in support of the Petition.

[3.] McKinney claims to be the owner in possession of the Property which forms the northern half of a 37-acre tract of land (the Basis McKinney Tract) originally owned by her uncle the late Basil McKinney. She is documentary title owner of the southern half of the Basil McKinney Tract. Surveys carried out in 1979 and 2022 depict the Basil McKinney Tract as 34.781 acres and 34.674 acres respectively.

[4.] McKinney says that she has *“lived openly, continuously and have been in undisturbed possession of the [Property], with short periods away from the property since January 1975”*.

[5.] The Abstract of Title of McKinney sets out the documentary title to the Basil McKinney Tract as follows:

- 1) Basil McKinney acquired, what was described as a 37 acre tract of land, the Basil McKinney Tract, from Joan Rosita McGrath in 1941.
- 2) In 1942 Basil McKinney conveyed the “northern moiety” or “half part” of the Basil McKinney Tract to Darrell Hughes Hamric and Eleanor Sheedy Hamric.
- 3) In 1961, Basil McKinney conveyed his remaining interest in the Basis McKinney Tract, the southern moiety, to B. H. Investments Limited.
- 4) Upon Basil McKinney’s death in 1976 his executors conveyed the “southern moiety” or “half part” from B. H. Investments to Hambros (Channel Islands) Trust Corporation Limited (“Hambros”). In March 1991, Hambros conveyed the southern moiety to the four nieces of Basil Herbert McKinney, namely McKinney and her three sisters.
- 5) In October 2016, McKinney acquired the legal title to the southern moiety from her three sisters for the sum of \$230,000.

[6.] The Plan, filed on 21 February 2024, is attached to this judgment as Appendix A.

[7.] McKinney named the Adverse Claimant, John Gornal Jones (Jones), in the Petition as a person who “*claims to be seised of approximately 18 acres of the said tract of land by virtue of a conveyance to him dated 20<sup>th</sup> February, 1991 and a confirmatory conveyance dated 10<sup>th</sup> December, 1992*”.

[8.] Jones filed a Notice of Adverse Claim on 3 June 2024 seeking a Certificate of Title to confirm him as the documentary title owner of four (4) parcels of land running from sea to sea on Eleuthera, including the “Middle Tract,” which comprises 13.369 acres being the subject of the Petition.

[9.] Jones and Jonathan Morris filed affidavits in support of the Adverse Claim.

[10.] Jones details his acquisition of the northern moiety from Darryl Hughes Hamric in two conveyances, as follows:

- 1) The first conveyance dated 20 February 1991, transferred title to the Atlantic/Beach tract, described as two parcels (the area between the high-water mark and the Banks Road and the area after the Banks Road going west before the drop into the swamp) totaling 1.676 acres.
- 2) The second conveyance, a Confirmatory Conveyance dated 10 December 1992, transferred title to the remaining 15.714 acres of the northern moiety, which is described as two parcels (the Middle Tract and Caribbean Tract). This second conveyance is described as confirmatory “in so far as it is supplemental to the earlier Conveyance made between the same parties and by the same agreement to sell, so as to effect the sale of all the property for the same price and it recites the earlier description of the Atlantic/Beach Tract, which thereby totals 17.39 acres in the transfer of title from Darryl Hughes Hamric.

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

- (a) McKinney
- (b) Casuarina McKinney-Lambert (her daughter)
- (c) Edgar Seligman and
- (d) Wayne Masterman

Bishop Clifford Nemiah Petty and Marcus Homer Mitchell swore Affidavits, which were filed, but they did not give evidence at the trial.

[12.] McKinney summarized her case in paragraphs 2.1-2.7 of her submissions, where she says:

- 2.1 The Petitioner's residential lot shares a common boundary with the Subject Land for which she seeks a Certificate of Title (collectively referred to as "Sinky Bay")  
... The Petitioner has used and possessed the entire Sinky Bay property for over fifty years.
- 2.2 Sinky Bay was initially owned by the Petitioner's uncle, Basil McKinney.
- 2.3 On or about 7<sup>th</sup> January 1975, the Petitioner moved to Sinky Bay, cleared through the thick, dense bush and made her first homesite between the two huge casurina trees on the Subject Land until she finished her residence south of the Subject Land.
- 2.4 In 1979, the Petitioner was made aware that a man named Mr. Darrell Hamric claimed to own the Subject Land and took significant steps toward acquiring the property to settle any claim to the property.
- 2.5 However, Mr. Hamric ultimately sold the Subject Land to the Adverse Claimant on or about July 1991 by way of a Conveyance from Mr. Hamric to Mr. Jones dated 20 February, 1991 (the "1991 Conveyance") and a Confirmatory Conveyance from Mr. Hamric to the Adverse Claimant dated 10<sup>th</sup> December, 1992 (the "1992 Confirmatory Conveyance") for the balance of the Subject Land, namely an additional 15.71 acres for no extra cost.
- 2.6 Nearly 35 years have passed since the execution of the 1992 Conveyance, and the Adverse Claimant has not laid one single block on the Subject Land.
- 2.7 Despite this, since 1975 and the 50 years that followed, the Petitioner has openly and peacefully used the Subject Land in various manners without permission or protest from the Adverse Claimant. The Petitioner has (i) structurally developed the Subject Land; (ii) supplied, maintained and paid for utilities on the Subject Land; (iii) fished and farmed on the Subject Land for pleasure and economic benefit; (iv) leased the Subject Land to third parties; and (v) protected the Subject Land with natural boundaries and police action.

...

- 6.7 By virtue of his Affidavit, the Adverse Claimant admits that he has only visited the Subject Land for approximately 57 days in almost four decades, and only came for three short visits (2006, 2010 & 2023) since he got the confirmatory conveyance.

...

- 6.30 Further, the Petitioner erected and replaced "no trespassing" signs and chased away intruders who were trespassing on the Subject Land ... The Petitioner explained that a man named Donnie Rolle trespassed on the Subject Land on multiple occasions, behaving indecently. She reported this matter to police and the local magistrate as she did not want anyone on the Subject Land without her permission.

[13.] At trial, Jones gave evidence and called Jonathan Morris as a witness in support of his case. His case, in essence, is that he is the title holder of the property and that he has not been dispossessed.

### Law, Analysis and Disposition

[14.] Section 3 of the Quieting Titles Act (the QTA) provides:

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.

We must therefore investigate the competing claims. This *investigation* is being conducted by the Court pursuant to the QTA. By section 8 of that Act 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.

[15.] The appropriate starting point in this case is the Privy Council decision in *Ocean Estates Ltd. v. Pinder* [1969] 2 AC 19. In that decision Lord Diplock opined at page 25 paragraph A, 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."

[18.] 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 the defendant 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 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 user 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.J.J. 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.

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

[20.] On the issue of factual possession, the learned authors of *Caribbean Property Law* state at page 246 as follows:

#### **Possession by adverse possessor**

The factual possession required must have characteristics similar to those required for a claim to an easement by prescription, viz, the possession must be open (nec clam), peaceful (nec vi) and adverse (nec precario). Furthermore, factual possession must be accompanied by an *animus possidendi*, that is, an intention to enjoy possession to the exclusion of the paper owner.

The requirement of openness means that the possession of the claimant must be 'notorious and unconcealed', for otherwise the paper owner would not be made aware of the need to challenge the adverse possessor before expiry of the limitation period. On the other hand, it is not necessary that the paper owner should have been aware that he had a good title, nor that the adverse possessor should have had knowledge of the true ownership of the property. It is sufficient that he performed acts which were 'inconsistent with [the paper owner's] enjoyment of the soil for the purposes which he intended to use it'.

[21.] It is important that I indicate, at the outset, what the effective date of this investigation is.

[22.] Jones argued, in paragraphs 18 and 19 of his written submissions, that:

17. The court is required by section 7(1) of the QTA to notify by appropriate means any persons, known or unknown, who may have an adverse claim in respect of the whole or any part of the land mentioned in the petition. Lord Briggs further expounded at paragraph 66 of his judgment in **BANNERMAN TOWN** *supra* that time must be taken to

have stopped running when the present Petition was “*presented*.” In this case, that was May 2024.

18. Consequently, we submit that the Petitioner must, at the very least, satisfy the Court that she was in legally defined possession, of the whole of the 17.341 acres during the entire period of 12 years from May 2012 until her Petition was advertised in May 2024, if she is to successfully bar the Adverse Claimant’s right of action to recover his land.

[23.] I did not accept this submission. The presentation of the Petition is its filing, not its advertisement. The effective date of this investigation is the 12-year period leading to the date of the filing of the Petition in this claim, namely 22 December 2022. This is the period between 22 December 2010 and the filing of the Petition. It is not the period dating back from the service of the Petition (March 2024) as alleged by Jones. The dicta of Evans P., in the recent case of **Big Cat Equipment Limited Marsh Harbour Yards Limited at al v Anthony Key** SCCivApp Nos. 26 and 27 of 2023, makes this point. At paragraphs 54-55 of **Big Cat Equipment**, Evans P. states:

[54.] Mr. Eneas cited dicta from **Bannerman Town, Millars and John Millars Eleuthera Association [2018] UKPC 27**. In that case property in Eleuthera had been the subject of two Quieting Petitions which were never pursued to a conclusion. Subsequent to that, the action with which the Board was concerned was filed in March 2010 seeking a certificate of title pursuant to the Act. On the question of the running of time the Board had these observations:

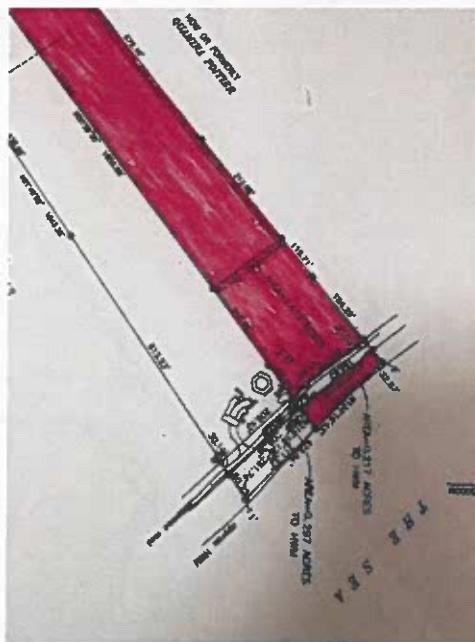
“66. As to the second point, although of course time stops running in favour of a claimant relying upon adverse possession upon the presentation of a petition under the Quieting Titles Act, the Board is not persuaded that time ceases to run upon the presentation of some earlier petition which is then not pursued to a conclusion, merely because there are some common parties to both petitions. To the extent that the running of time matters at all, a point to which the Board returns later in this opinion, it must be taken to have stopped running when the present Petition was presented, in March 2010.” [Emphasis added]

[55.] From this, it is clear that, once a petition is filed, time ceases to run for the purpose of adverse possession. An adverse claimant cannot rely on possession accruing after the filing of the petition. In the present case, therefore, the adverse claimants have no accrued rights that were extinguished by the filing of the petition, and the amendment relating back to 1964 did not operate to their disadvantage.

[Emphasis added]

## The Atlantic/Beach Tract

[24.] This is the eastern parcel nearest to the Atlantic Ocean. It is described in Jones' conveyance as the area between the high watermark and the Banks Rd. and the area after the Banks Rd. going West before the drop into the swamp. The property borders the area where McKinney's home and rental units are situated. The Atlantic/Bench tract measures 1.63 acres as shown below.



[25.] McKinney's claim to the Atlantic/Beach Tract is possessory, while Jones' claim is documentary. There is no dispute that he is the paper title holder. McKinney claims to have dispossessed him by her long usage. Her case of possession is set out in paragraph 6.63 of her submissions which is summarized in the following paragraphs:

[26.] Over the course of several decades, McKinney has undertaken a series of construction projects and improvements on the Atlantic side of the Subject Land, each of which demonstrates her factual possession and continuous use of the property. As early as 1975, she built a camping platform and an outdoor kitchen, establishing functional facilities for habitation and recreation. In November 2010, a yoga deck was constructed on the same site, which was later converted into a prayer room or pavilion. This single-story structure, situated adjacent to McKinney's home, bears a "No Trespassing" sign and was observed during the locus visit. Similarly, in 1975 McKinney constructed an outhouse on the Atlantic Beach tract, which was rebuilt in 1978 and remains visible today.

[27.] McKinney described a beachside deck, which she says serves as a replacement for two earlier cabanas that had been washed away. McKinney gave evidence that in 1981 she

commissioned the construction of a shower house and storage building measuring 8'5" by 8'5" by 8' high. This wooden structure, erected on a solid concrete base, was re-roofed in 2000 following damage from Hurricane Floyd. She says that it has been consistently depicted on surveys since 1989 and remains in use, complete with a functioning sink and water faucet, and prominently marked with a "No Trespassing" sign. Additionally, a bird-watching deck was built over the mangrove swamp, serving as a wildlife viewing platform. While construction and habitation in this area are not viable due to environmental protections and soil instability, she has maintained the platform for over forty-two years, using it to conduct tours for guests.

[28.] Further evidence of possession McKinney says, includes the solar heating structure built in 1980 on the beachfront tract, which was confirmed during cross-examination to predate Jones' purchase and has appeared on surveys since 1989. Around 1981, she constructed a beachside cabana on the narrow strip between the sea and the beach road. She says that although twice washed out to sea, the footings of the second rebuild remain visible at low tide, and she ultimately replaced the cabanas with a beach deck elevated above the shoreline. A garbage enclosure constructed with a wooden frame on a cement base exists, further underscoring, McKinney says, her long-term and exclusive use of the land.

[29.] Jones's case against McKinney's possession of the Property, is that her consistent acknowledgement of his legal documentary title and that of his predecessor in title, Darryl Hughes Hamric, in writing negates any intention to possess. He says that she never had a belief (mistaken or otherwise) that she was the owner of the northern moiety. They argue that McKinney made numerous offers to purchase the subject land and that never once did she let on in the correspondence that she was in actual possession of any part of the land, let alone the whole. At paragraph 34 of his submission, Jones outlines his case against McKinney's possession of the Atlantic/Beach Tract:

34. In 2010, just four years after his last visit, the Adverse Claimant returned again to camp in a tent on his land for three weeks. During this time, he did extensive chopping of boundaries, clearing and burning debris and planted re-bar stakes in the ground along the north boundary as well as the south boundary shared with the Petitioner (and her sisters in title). One stake between the northern and southern moieties was still clearly observable on the *locus* visit. His photographic evidence, contained in the flash drive folder named 2010 Feb 1-22, shows his laundry lines, tarps and tent in plain view of the Banks Road. His evidence was that on one occasion the Petitioner invited them round for cocktails and, on another occasion, when she observed he and his wife burning plant cuttings on the beach, she warned them against the fire getting out of control. He found this ironic as on a third occasion, she started a fire that he had to assist in getting under control. Significantly, however, the Petitioner never told the Adverse Claimant that she was the owner of the subject property, nor did she try to stop them from camping on it.

[30.] I am not satisfied that the making of offers by McKinney to acquire the Property, or parts thereof, is inconsistent with her claim to possession or her intent to possess. The statement of principle by Lord Browne-Wilkinson in the celebrated case of **JA Pye (Oxford) Ltd. and another v Graham and another** [2002] 3 All ER 865, 879, is instructive. He stated:

Once it is accepted that the necessary intent to possess not to own, and an intention to exclude the paper owner only so far as is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession. An admission of title by the squatter being in possession in the meantime.

[31.] Having seen and heard the witnesses and observed their demeanor as they gave evidence, I prefer the evidence of McKinney and her witnesses as to her possession of the Atlantic/Beach tract. I am satisfied that she possessed the necessary *animus possidendi* and factual possession, in the 12-year period under investigation, to have dispossessed Jones, the title holder of the Atlantic/Beach tract. Her many acts of possession on this 1.63-acre piece of the Property, when taken altogether reflects actual use of this Property as her own to the exclusion of all others, including the paper owner. In fact, Jones' last visit to the Property prior to the filing of the Petition was February 2010. He has not been on the property in the 12-year period dating back from December 2022.

[32.] By way of vegetation on the Atlantic/Beach tract, McKinney asserts that during the locus visit to the Atlantic Side, a row of mature coconut trees was observed, forming a prominent feature of the property. She says that the cleared areas and trails throughout the tract demonstrated active access and use of the land by McKinney and guests.

[33.] Additional features included a plant potting area situated near the prayer room or pavilion, as well as a raised garden bed. The property also displayed a variety of ornamental plants, among them a frangipani, bromeliads, hibiscus, and hedges planted with silver buttonwood and snow-on-the-mountain.

[34.] Albeit we could not determine the period of existence, there was evidence of maintenance and landscaping as seen in the felled casuarina trees and the contiguous sea grape hedges, which extended across both her property and the Atlantic/Beach tract. A beehive swarm trap was observed near the road.

[35.] The 2-inch PVC city water line was observed supplying water to McKinney's residence, including both the main house and The Round House situated on McKinney's land. This water line extended beyond the residential structures to service the vegetation located on the Atlantic side of the Property. Also observed during the locus visit was the grey BEC/BPL electrical

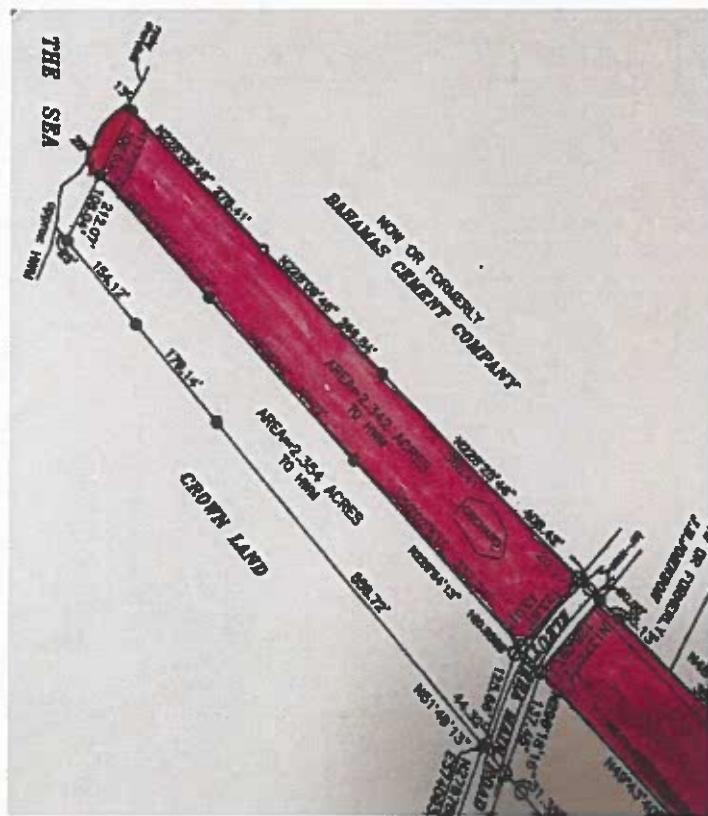
transformer box positioned along the side of the Old Banks Rd, where it is clearly visible from the road. The transformer and associated electricity powerlines were installed by McKinney in 1983 on the Atlantic side of the Subject Land, adjacent to the West Casuarina Bay guest apartment parking area and the Casuarina Bay sign, as referenced in evidence. In addition, BEC had installed a red warning post to alert people to the presence of underground power cables. BPL continues to service McKinney's houses to date from the transformer on the Atlantic/Beach tract.

[36.] McKinney submits, and I accept, that the creation and maintenance of vehicle parking spaces on the Subject Land form part of a broader pattern of use that demonstrates effective and exclusive control, thereby supporting her claim of adverse possession. Her evidence was that she established two parking spaces on the Atlantic/Beach tract for the use of her guests. These spaces, situated on either side of the Old Banks Road, were observed during the locus visit and are visible from the road. I accept that McKinney had constructed and maintained these parking areas for more than fifteen years, providing consistent utility to her rental guests and later for visitors to the prayer house or pavilion. One parking space is located on the eastern side of the road, where a sign bearing the website "www.casuarinabay.net" and a phone number is affixed to a mature coconut tree. The second space lies on the western side of the road, marked by a sign stating "APT Parking," which is prominently visible to all. The presence, signage, and long-term maintenance of these parking facilities underscore her assertion of continuous, open, and exclusive use of the land.

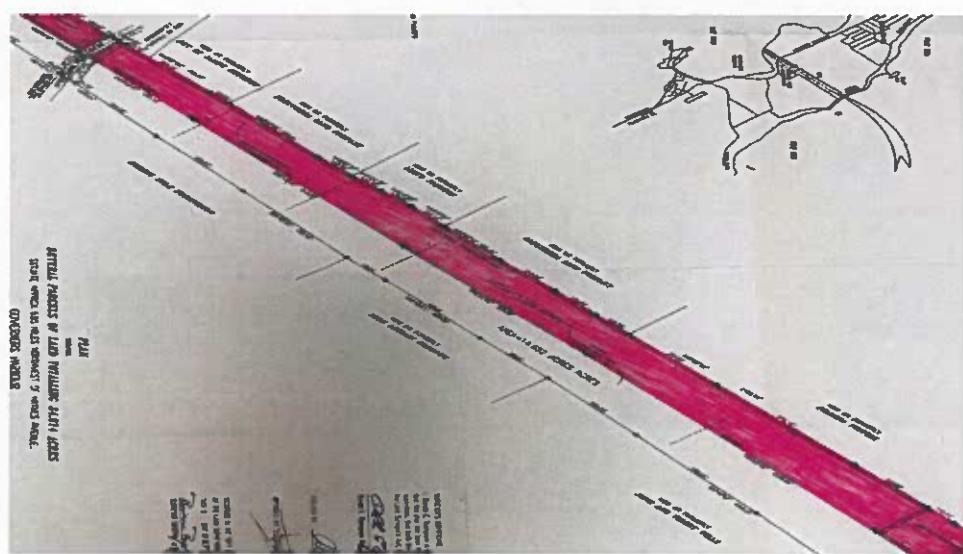
[37.] I am therefore prepared to find that McKinney had developed the Atlantic/Beach Tract over the years and even if it had been reclaimed by the title holder, Jones (which is doubtful), in February 2010, she reentered in November 2010 to build the yoga deck/prayer room. She erected no trespassing signs and took legal steps against all trespassers, such as Donnie Rolle. I am prepared to find that she has possessed the Atlantic/Beach tract since then to the exclusion of all others, including Jones up to the filing of the Petition.

#### The Middle tract & The Caribbean Tract

[38.] The Caribbean tract is that tract of land situated on the Property and located between the Caribbean Sea on the west and the Queen's Highway on the east. It is said to measure 2.342 acres.



[39.] The Middle tract is the tract of land situated between the Atlantic/Beach tract and the Queen's Highway. It borders the highway to the West and encompasses the swamp or mangrove to the east leading up to that part of the property at the Old Banks Rd. It is said to measure approximately 13.369 acres.



[40.] McKinney's claim to the Caribbean tract and the Middle tract is also entirely possessory, while Jones' claim is documentary. There is no dispute that he is the paper title holder. McKinney claims to have dispossessed him by her long usage. Her case to a possession of these areas, she says, includes the following:

#### Caribbean tract

- (1) During the locus visit, several features of cultivation and gardening were noted. Raised beds and a potting vegetable garden were situated near the faucet, and a variety of plants were observed, including spice tree, soursop, pineapples, lime, sour orange, banana, sugar cane, aloe, tomatoes, peppers, oregano, and mint. Additionally, marked banana holes indicated areas where mango and naval orange trees had previously grown, reflecting the history of agricultural use on the land.
- (2) The visit also revealed the presence of bee hives and a beekeeping station, underscoring the Petitioner's engagement in apiculture. Within the forest, the Bromeliad Nature Trail was identified, along with an old watering bucket, which highlighted the longstanding use of natural resources. Along the northern boundary road, two well-established trails were observed—the Lignum Vitae Trail and the Cross Trail—demonstrating the structured development of pathways across the property.
- (3) Attention was drawn to piles of harvested thatch palms from the Caribbean side of the Subject Land. These materials were used for roofing the beach cabana located on the Atlantic side of the Petitioner's Land. It was clarified, in reference to the affidavit of Casuarina McKinney Lambert, that cabanas exist on both the Petitioner's Land and the Subject Land, correcting the earlier wording.
- (4) Finally, the locus visit confirmed the existence of a fishing area and traps utilized by the Petitioner during the prescriptive period, as well as a fire pit that had been in use during the same timeframe. These observations collectively demonstrate continuous occupation, cultivation, and resource use, reinforcing the Petitioner's longstanding presence and activities on the land.

#### Middle tract

- (1) Fruit trees and orchards were identified in Donald E. Thompson's Survey Plan dated 9 September 2024. These were accessible through the swampy area of the Atlantic tract and also observed via the pathway adjacent to Mr. Leclain Burrows' house in the Boiling Hole Subdivision. This confirmed the agricultural use and accessibility of the land as documented in the survey.
- (2) Additionally, a cleared verge was noted on the east side of the Queen's Highway, consisting of a 25-foot clearing that extended across the full width of the property in the Middle Tract. This clearing demonstrated active maintenance and use of the land in that area.
- (3) During cross-examination, when questioned about the Middle Tract, the Petitioner maintained their position regarding its use and features. Importantly, both Wayne Masterman and Edgar

Seligman provided testimony corroborating the presence of the fruit trees and orchids as identified in Thompson's Survey Plan, thereby reinforcing the accuracy of the observations and the Petitioner's claims.

(4) Together, these findings highlight consistent evidence of cultivation, accessibility, and corroborated testimony supporting the Petitioner's account of the land's use and features.

[41.] In relation to the Middle tract and the Caribbean tract, Jones repeated his complaints concerning McKinney's consistent acknowledgement of his legal documentary title, her numerous offers to purchase the Property and that absence of any declaration that she was in actual possession of the Property. He also forcefully asserted that all her alleged occupation was done in secret as to being open and notorious. At paragraphs 35 and 36 of his submission Jones outlines his case against McKinney's possession of the Caribbean and Middle tracts:

35. During this visit, the Adverse Claimant and his wife took the Petitioner and her then partner on a tour to show them his work, and, in particular the path cut along the Caribbean tract as evidenced by images 9643 – 9652. The Petitioner once again failed to use this opportunity to disclose to him her "orchard" on the Caribbean tract, which should have been readily visible if it existed, or to indicate that she too was in continuous occupation of the land. Not only did she fail to show any degree of physical custody and control of the land; she kept her activities on the land a secret; the opposite of a notorious, visible or continuous intention to exercise custody and control of the land. There are many photos in this folder of the Adverse Claimant's under brushing of the Caribbean tract, with the help of his hired laborers, and not one photo shows the presence of a single fruit or citrus tree. (Even on the *locus* visit 15 years later in 2025, there were no mature citrus trees or fruit trees on this tract. The 'orchard' we were shown consisted of all new saplings and three or four small planter boxes that appeared to have been recently staged and watered.)

36. The Adverse Claimant described his valiant attempts to gain access into the Middle Tract on his 2010 visit to no avail from any direction. It was too rugged to enter from the swamp at the bottom of the Atlantic/Beach tract on the east, the Queen's Highway on the west, the Boiling Hole subdivision/the Petitioner's southern moiety from the south or the "Castle" to the north. A good aerial photo from Google Earth in the flash drive photos depicts the landmarks used by the Adverse Claimant to show the Court his attempts to enter the Middle Tract. The Court will note that its own attempts to enter the Middle tract on the *locus* visit were also futile.

[42.] I am satisfied that Jones' submission, in relation to the Caribbean and Middle tracts, is meritorious. The Middle tract was entirely inaccessible, making any claim to occupation by McKinney to an open and notorious factual possession difficult to accept. Similarly, the activity on the Caribbean tract was not visible from highway and was shielded by the thick forestry. In the Supreme Court case of **Dean v Ocean Point Estates Limited and another** [2022] 1 BHS J. No. 106, this Court stated:

27 Factual possession is a necessary if not the predominant element that must be proven in the determination of who possesses the better title to land as per *Ocean Estates v Pinder*. The factual possession required is qualified as ‘complete and exclusive physical control’ over the land, which must be ‘open, not secret; peaceful, not by force; and adverse, not by consent of the true owner’ (*Buckinghamshire CC v Moran [1990] Ch 623*, per Slade J and JA Pye (Oxford) Ltd v Graham [2003] 1 AC 419, per Lord Browne-Wilkinson). It has been considered and prescribed in *Lord Advocate v Lord Lovat (1880) 5 App Cas 273* as mandating that the possession be ‘open, notorious and unconcealed’. The acts of possession must be such that it would be noticed by the documentary owner, reasonably careful of his own interests (*Re Riley and the Real Property Act [1965] NSWR 994*).

I was not satisfied on the evidence, that McKinney possessed the Middle Tract or the Caribbean tract in an open, notorious and unconcealed way leading up to the filing of this Petition. I accept the submission of Jones that access to the property “was too rugged to enter from the swamp at the bottom of the Atlantic/Beach tract on the east, the Queen’s Highway on the west, the Boiling Hole subdivision/the Petitioner’s southern moiety from the south or the “Castle” to the north”.

[43.] As was stated in the Supreme Court case of *Re: Knowles* [2022] 1 BHS J NO 147, “*the adverse possessor must ‘unfurl his flag on the land, and keep it flying so that the owner may see, if he will, that an enemy has invaded his dominions and planted his standard of conquest’* (Per Shangraw CJ, in *Laird Properties New England Land Syndicate v Mad River Corp, 305 A2d 562 (1973)*.” McKinney did not do this. During the locus visit, the Court was unable to enter the Middle tract. No one, including the paper owner, could be made aware that any activity was taking place on this land.

[44.] McKinney’s own witness, Edgar Seligman, supports this position. Seligman’s evidence was that in driving down the Queen’s Highway, no orchards could be observed “*they were quite well, you know, they were quite deep in the bush, so they would not have been visible from the Queen’s Highway*”. From the Banks Road it was the same situation, according to Mr. Seligman “*you would not be able to see the mangoes from there. They were quite far up into the property, in the middle of the property. The distance alone, you wouldn’t be able to identify them from that distance.*”

[45.] McKinney’s claim to the Middle tract and the Caribbean tract is dismissed.

Conclusion:

[46.] For the avoidance of doubt, I make the following grants out of the Property:

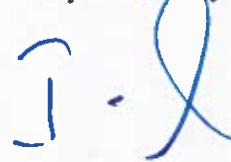
(1) McKinney to receive a Certificate of Title for the 1.63 acre Atlantic/Beach tract.

(2) Jones to receive a Certificate of Title for the balance of the Property being the Middle tract and the Caribbean tract.

I give the parties liberty to apply to work out any of the orders made herein.

[47.] I will hear the parties as to the appropriate order for costs, by way of written submissions in 21 days.

Dated this 27<sup>th</sup> day of January 2026

A handwritten signature in blue ink, appearing to read "I. Winder".

Sir Ian Winder

Chief Justice

## APPENDIX A

