

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Claimant Number: 2024/CLE/qui/00648**

**IN THE MATTER OF ALL THAT** Piece Parcel or Lot Of Land containing by admeasurement Four Hundred And Forty-Seven Hundredths (0.447) Acres being a portion of Malcolm Avenue and situate at the Southern end of Malcolm Avenue and 578.17 feet south of Oak Hill Road in the Western District of the Island of New Providence in The Commonwealth of The Bahamas and the boundaries of which begins at a point situate on the Eastern boundary of Lot No.21 Skyline Villas and 573.71 feet South Of Oak Hill Road; Thence N96°47'28" Distance 38.80 feet to a point; Thence N195°40'46" Distance 49.08 feet to a point; Thence N136°39'09" Distance 48.14 feet to a point; Thence 130°35'27" Distance 23.74 feet to a point; Thence N113°24'42" Distance 12.64 feet to a point; Thence N186°47'28" Distance 153.21 feet to the High Water Mark of Lake Cunningham; Then Northwestwards along the High Water Mark of Lake Cunningham for a distance of 108.10 feet To A Point; Thence N06°47'28" Distance 222.66 feet to the point of beginning and which said piece parcel or lot of land has such position boundaries shape marks and dimensions as are shown on a plan filed herein and thereon coloured pink.

**AND IN THE MATTER OF** the Quieting Titles Act 1959.

**AND IN THE MATTER OF** the Petition of Ian Lester McPherson Brown.

Before: Hon. Chief Justice Sir Ian R. Winder  
Appearances: Michela Barnett Ellis for the Petitioner  
Mario McCartney for the Adverse Claimant Anthony Louis Cunningham  
Kenria Smith, Perry McHardy and Rayshon Deleveaux for the Crown

Hearing Date(s) 16 and 17 September 2025, 16 April 2026

**JUDGMENT**

## **WINDER, CJ**

This quieting action relates to a tract of land measuring Four Hundred And Forty-Seven Hundredths (0.447) Acres (the Property) described as being a portion of Malcolm Avenue and situated at the Southern end of Malcolm Avenue in the Western District of the Island of New Providence. The Petitioner (Brown) prays that his 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 him. The Crown and Anthony Louis Cunningham (Cunningham) oppose Brown's Petition.

### **Brown's evidence**

[1.] The Petition was filed on 24 July 2024. Brown swore an affidavit in support of the Petition asserting that he is entitled to a possessory title to the Property. Brown's case was also supported by the evidence of Mary Brown and Thomas Goodwin. In advance of the trial Brown also filed a witness statement.

[2.] Brown filed an Abstract of title distilling his interest in the Properties from 1986 and his family's interest in the property from 1962.

[3.] In his evidence Brown gave his address as #3 Oak Hill Road in Skyline Drive. He was born in 1956 and having lived on the Property his entire life, he confirms that in the 1960s his father erected a substantial rock wall across Malcolm Avenue, physically closing off the road reservation and placing the disputed land under the family's sole control. That act, he says, was public, permanent, inconsistent with any right of the Crown and marked the beginning of exclusive possession of the land to the south of the wall. For the next five decades, the Browns alone maintained, used, and managed this land: they cleared it, fenced portions of it, paved and repaired the adjoining roadway at their own expense, controlled access to the dead end with a gate, kept dogs on the property, and allowed only family members to occupy the structures that extend into the disputed area.

[4.] In cross-examination, Mr. Brown said that the property which is the subject of the petition is located in Skyline Villas and that he became owner of a portion of Lot 21 of Skyline Villas by deed of gift from his parents in 1986. He said that portion of Lot 21 lies immediately to the west of the Property and agreed that Lot 22 was owned by the Oaks family. As to the physical features of the land, Mr. Brown said that a rock wall had been built when he was young, although he could not give the exact year. He said that his family moved into the house in 1962 and that the wall was built shortly thereafter. When it was suggested to him that there had been no wall in the 1960s, he firmly rejected that suggestion and said that the wall had definitely existed by the time of his sister's wedding in 1969 and, in his view, had been built no later than 1964 or 1965.

[5.] Brown's evidence was that there had never been any structures on the subject property itself. He said there had been no improvements to the wall, apart from replacing a wooden gate which had rotted out with a small fence and replacing the posts that had held the gate. He also said that a chain link fence along the western boundary between the subject property and the Oaks property had already been there when his family first moved to the area and was older than the rock wall in front of the disputed land.

[6.] On the issue of the character of the land, Brown accepted that the property now sought to be quieted had originally been a road reservation, namely Malcolm Avenue. He also accepted that Malcolm Avenue was intended as a public road and that it was shown as being 100 feet wide, but he maintained that, in practice, the road as he knew it was not 100 feet wide and that from Bay Street to the subject property it was nowhere 100 feet wide to his knowledge. Brown said that, beyond the triangle by Skyline Drive, nobody used that road save on occasional access by persons going to the Oaks property and the garbage truck. He further said that even the neighbours hardly used it and that the gate had remained closed for some fifteen years without anyone coming through it.

[7.] Brown also gave evidence of long use and occupation by his family. He said that he first entered Lots 20 and 21 in 1962 as a child and that his family had used the land for growing fruit and vegetables, including pear, mango, tamarind, okra and tomatoes. He said that he and his father had paid real property tax for years. He also said that he and his father had planted coconut and almond trees on the subject property in later years when he lived in the cottage immediately next to it, and he described the area as being used as a nursery.

[8.] As to Anthony Cunningham, Brown's evidence was that he had never encountered him during his earlier years and first encountered him only in 2024. He said that he had never seen Cunningham farming on his property and was unaware of any farming activity by him there. He said that no one had ever challenged his family's ownership of the property before 2024.

[9.] Brown further testified that he had never had any trouble from anyone in respect of the land behind the rock wall until Cunningham appeared in 2024. He said that he had never seen Cunningham before 2024 and that, to the best of his knowledge, nobody had ever come into the "pink area".

[10.] In re-examination, he said that, with the rock wall to the north and the chain link fence to the west, it would not really be possible for someone to access that pink area without his knowing.

[11.] Mary Brown, the Petitioner's mother, now 98 years old, confirms that she and her late husband first acquired and occupied the Property in 1962, long before any question of title to the strip of land behind the rock wall arose. From the outset, the Browns treated the entire area, including the land now in dispute, as part of their homestead, living on it, improving it, building structures on it, and incorporating it into the daily life of three generations of the family without interruption or objection from any person or from the Crown.

### **The Crown's evidence**

[12.] An (Amended) Adverse Claim was filed by the Minister responsible for the Acquisition & Disposition of Land (the Crown). The Crown's Adverse Claim asserts it is the beneficial owner to the Property as they are part of a road reservation "Malcom Avenue" and is Crown land. The Crown relied on the evidence of the Brian Bynoe.

[13.] An Abstract of Title was filed on behalf of the Crown extracting the following documents:

- (1) A Notice of Possession dated 25 November, 1977 pursuant to The Acquisition of Land Act Ch 196 in respect of "Malcolm Avenue;
- (2) A Declaration of Vesting dated 30 December, 1977 pursuant to The Acquisition of Land Act Ch 196 in respect of "Malcolm Avenue.

[14.] Bynoe, the Surveyor General of the Commonwealth of The Bahamas, testified that he had prepared both a witness statement and a supplemental statement in relation to the matter. He explained that historical subdivision plans dating from 1925 and 1938 depicted intended layouts of Skyline Villas and Skyline Heights but did not show actual structures on the ground. He emphasized that such design plans reflected proposals rather than realities.

[15.] He referred to a 1987 survey plan which recorded Malcolm Avenue as a 100-foot road reservation and marked the presence of a plastered stone wall. Mr. Bynoe confirmed that this wall corresponded with the structure observed during the site visit. He noted that later surveys, including one from 2010, also depicted the wall. He clarified that while the 1987 plan did not show the tarmac road, its absence on the plan did not mean the road was not present, as filed plans demonstrated both the reservation and the narrower tarmac road within it.

[16.] Turning to aerial photographs, Bynoe stated that images from 1961 and 1999 showed vegetation covering the area, making it impossible to determine whether Malcolm Avenue extended fully to Lake Cunningham. In one 1999 photograph, he pointed out where the wall interrupted the vegetation, but he acknowledged that the road's full connection to the lake could not be confirmed. He added that Google Earth images included in his supplemental statement were third party satellite photographs and did not form part of the official survey records.

[17.] Finally, Bynoe confirmed that the Crown had no interest in land west of Malcolm Avenue. His evidence therefore established the historical survey record of Malcolm Avenue, confirmed the existence of the stone wall, and clarified that vegetation and design plans made it difficult to determine whether the road extended to the lake.

### **Cunningham's evidence**

[18.] An Adverse Claim was also filed by Cunningham who claims to have a possessory title. Cunningham contends that the Property belongs to the Estate of the late Clifton Augustus Cunningham of which he is the lawful son and heir-at-law. Cunningham gave evidence in support of his adverse claim and called his daughter Aliyah Lexis Cunningham as a witness.

[19.] Cunningham gave evidence that he is a retired hotelier residing at Lake Cunningham. He testified that he had sworn an affidavit in January 2025 and filed an adverse claim in relation to the petition. He explained that his father, Clifton Cunningham, had been a government boat captain in the 1960s and had first brought him onto the subject property in 1969 when he was about eight years old. From that time, he claimed a familial and historical connection to the land.

[20.] Cunningham stated that he continued to exercise control over the property, noting that he had placed a sign on the land bearing his telephone number and a warning against trespass. He described his claim as extending to a larger tract of land, approximately 465 acres, of which the petitioned parcel formed part. He asserted that he had provided both legal and physical control and possession of the tract, and that his claim derived from probate documents exhibited in his affidavit.

[21.] Aliyah Cunningham gave evidence in support of the adverse claim advanced by her family. She is the daughter of Cunningham and explained that she was related to Anthony Cunningham and that her family's connection to the subject property derived from long-standing occupation and inheritance. She confirmed that she was aware of the affidavit sworn by Cunningham and the probate documents exhibited therein, which formed the basis of the family's claim to a larger tract of land that included the parcel in dispute.

[22.] Aliyah Cunningham testified that she had known the Property from childhood and had observed her family exercising control over it. She recalled that her father and relatives had taken her onto the land and had treated it as part of their inheritance. She stated that signs had been placed on the property warning against trespass and bearing family contact information, which she regarded as evidence of possession and control. She emphasized that her family's claim was not limited to the small parcel adjoining Lake Cunningham but extended to a larger tract of land historically associated with the Cunningham family.

[23.] Collins Delancy gave short evidence in support of Mr. Cunningham. He stated that he lived in Chippingham, worked as a cab driver, and had known Cunningham since they were young boys in the late 1960s or early 1970s.

[24.] In cross-examination, Mr. Delancy denied having drafted other witness statements for Cunningham and denied that he had been promised anything in exchange for giving evidence. He said that he had seen Cunningham planting coconut trees and banana trees in the Lake Cunningham area and that, because he drove taxi, he would occasionally observe him there. He described the planting as taking place in several spots around the area rather than in one single location. As to the specific parcel in dispute, Mr. Delancy said he was familiar with the area only “in a sense” and not exactly with all parts of it. He then described a route past the Sir Lynden Pindling estate, continuing to a rock wall, and said that the planting was done on the left side there. When it was put to him that his evidence was really directed to a different part of Lake Cunningham and not to the parcel which is the subject of this quieting action, his answer made clear that his understanding of the land being claimed derived from what Cunningham had shown him and told him, including by reference to a map, rather than from any independent inquiry of his own.

### **The Plan**

[25.] The Property is described in a Plan attached hereto as Annex I.

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

### **Law, Analysis and Disposition**

[27.] 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.

[28.] 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."

[29.] 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.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.

[30.] 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.

[31.] 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'.

**Brown's case**

[32.] Brown sets out his case in his written submissions as follows:

*The land the subject of this action was reserved as a road reservation named "Malcolm Avenue" by the developers of Skyline Villas, W.E. Brown Land Company Limited. The Crown acquired the land via Notice of Intention dated 13 September 1977. The Petitioner's evidence is that his family has been in possession of the land subject of this action since 1962.*

*The land the subject of this action, 0.447-acre parcel at the southern end of the road, is located between the land purchased by the Brown family and the land owned by the neighbours. The comprises a part of their backyard and has done so for more than half a century. The Limitation Act section 16, provides that the Crown had 30 years to assert its claim. It did not. The Crown is now barred from asserting their title to the land.*

*The Browns have and continue to have actual, open, exclusive and continuous possession of the property without the permission of the developer or the Crown.*

*The other adverse claimant in this action is Mr. Anthony Louis Cunningham. Mr. Cunningham asserts an adverse claim to the subject property on the basis that the land forms part of the historic Cunningham Crown Grant. Mr. Cunningham and his witnesses (his friend and his daughter) assert that the land has been in his family's ownership and possession for well over a century. He states that he became the beneficial owner after receiving a renunciation of interest from his eldest brother, the heir-at-law and personal representative of their late father, Clifton Augustus Cunningham, pursuant to the Real Estate Devolution Act. He traces title through a long line of Cunningham ancestors dating*

*back to the 1800s, beginning with John Cunningham, then Jacob Cunningham, Joseph Cunningham Sr., Joseph Cunningham Jr., Charles Cunningham, and finally to his father, Clifton Cunningham, who, he says, inherited the land as heir-at-law.*

*Notwithstanding his extensive list of the ancestors, Mr Cunningham has not produced a document capable of forming a root of title to the land claimed by Mr. Cunningham being the 465 acres originally granted to Brigadier General Robert Cunningham.*

*Mr. Cunningham has asserted that he is the owner in possession of the property the subject of this action because he farmed "on the property". However, it became apparent during Mr. Cunningham's cross examination and during the cross examination of his witnesses that Mr. Cunningham was not farming on the land the subject of this action.*

### **The Cunningham's case**

[33.] Cunningham sets out his case in his submissions as follows:

*The court has before it two Abstracts of Title, each tendered for the purpose of explaining the legal origin, character, and status of the land which is the subject of this Petition under the Quieting Titles Act. The Abstract filed by the Petitioner, Ian Lester McPherson Brown, relies primarily upon the mid-twentieth-century development-era conveyances associated with subdivision activity in the western district of New Providence, together with statutory instruments affecting Malcolm Ave. The Abstract filed by the Adverse Claimant, Anthony Louis Cunningham, traces the parents lands from the eighteenth-century Crown Grant through statutory commutation, conveyance, and probate transmission to the present day. The court's task is not to assess the volume of instruments contained in either Abstract, but to determine their legal effect in establishing whether the land claimed is capable of being quieted.*

*The Cunningham Abstract of Title commences with a recognized Crown Grant issued in or about 1785 -1786 to Robert Cunningham, conveying a substantial tract of land in the western district of New Providence. That grant provides a clear and orthodox root of title. The subsequent commutation proceedings of the mid -nineteenth century confirmed the Crown's recognition of the Cunningham estate as private land, subject only to lawful reservations. Thereafter, the Abstract records an orderly and in uninterrupted succession of conveyances and probate transmissions, each consistent with the continued existence of apparent estate from which portions are developed, subdivided, or reserved over time.*

### **The Crown's case**

[34.] The Crown's Case is that the Property is a part of the road reservation. The Crown says that it acquired the road reservation in 1977 and that the acquisition was notice to everyone including Brown. The Crown says that the time for the purposes of any claim of adverse possession against the Crown could only begin to run from 1977 when the Crown acquired and became vested

with the title to the Property. A period of 60 years must lapse before any possessory title may arise against the Crown. They assert therefore that Brown's application is premature and ought to be dismissed.

[35.] Having examined the abstract of title advanced by Cunningham and the documents provided by him, I am not satisfied that he has demonstrated a documentary link to the Property or that any title to the Property, which a Robert Cunningham may have been granted, currently vests in him. As to a possessory title, I have no hesitation in finding that Cunningham has never been in possession of the Property.

[36.] I am satisfied that Brown and his predecessor in title had been in possession of the Property since around 1964. This would obviously have ousted any interest which Cunningham would have, had I found that there was a documentary interest vested in him. The Crown has also never been in possession of the Property and therefore the only real issue for determination is whether the Crown's interest in the Property has been ousted by the provisions of the Limitation Act.

[37.] Although Brown has accepted that the Crown compulsorily acquired the Property in 1977, a chronology of the relevant timeline in Brown's title, and that of the Crown, as set out in the respective abstracts of title, provides a useful outline of the dispute:

1962 David Lester Brown and Mary Brown purchased Lot 21 of Skyline Villas which abuts the Property.

1964/5 Browns erected a substantial rock wall across Malcolm Avenue, physically closing off the road reservation and placing the disputed land under the family's sole control. Browns alone maintained, used, and managed this land: they cleared it, fenced portions of it, paved and repaired the adjoining roadway at their own expense, controlled access to the dead end with a gate, kept dogs on the property, and allowed only family members to occupy the structures on it.

1977 A Notice of Possession dated 25 November, 1977 pursuant to The Acquisition of Land Act Ch 196 in respect of "Malcolm Avenue. The Notice stated as follows:

Whereas by Notice dated the 13<sup>th</sup> day of September 1977 and published in the Official Gazette dated the 22<sup>nd</sup> day of September 1977 the Minister of Development declared that it was his intention to acquire the hereditaments described in the schedule hereto.

And Whereas the Minister of Development is of the opinion that the possession of the said hereditaments should be obtained before payment is made

to the rightful claimants to the said hereditaments described in the Schedule hereto

Now Therefore it is hereby declared that the said lands have been appropriated by the Minister of Development for the purposes mentioned in the said Notice with effect from the date of this present Notice of Possession.

A Declaration of Vesting dated 30 December, 1977 pursuant to The Acquisition of Land Act Ch 196 in respect of "Malcolm Avenue. The Declaration stated as follows:

Whereas it was notified by notice dated the 25th day of November, 1997, and published in the Official Gazette dated the 8th day of December, 1997, the lands and hereditaments described in the Schedule hereto has been duly appropriated by the Minister of Development under the Acquisition of Land Act.

Now Therefore in pursuance of sections 36 and 18 of the said Act I do hereby declare that the lands and hereditaments described in the Schedule hereto how vested in the Treasurer in trust for Her Majesty in right of Her Government of the Commonwealth of The Bahamas

1986 Brown acquired a portion of Lot 21 of Skyline Villas by Deed of Gift on 17 December 1986 from his parents. That portion of Lot 21 lies immediately to the west of the Property.

2024 Petition filed by Brown

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

[39.] The effective date of this investigation is the period leading to the date of the filing of the Petition in this claim, namely 24 July 2024. 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, speaks to this issue. 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]

[40.] It is also important to determine the period under which the investigation ought to be pursued. Brown asserts the appropriate period for him to prove title is 30 years. The Crown asserts that the relevant period is 60 years. In the case of **F.A.R Ltd. v The Attorney General** SCCivApp. No. 105 of 2024. In **F.A.R Ltd. v The Attorney General**, the Court of Appeal confirmed that relevant period to accrue against the Crown is 60 years. According to *Turner JA*:

17. Properly considered, the Learned Trial Judge’s decision does not reach the conclusion that the appropriate limitation period is 60 years based on the land being foreshore land. In paragraph 20 of the Learned Trial Judge’s decision (supra) the court had cited an extract from *Petition of Mortgage Holdings*:

“[23.] Mortgage asserts that it entered into possession in 1983, prior to 31 August 1995 (the coming into force of the Limitation Act 1995) the relevant period for consideration would be the period which pertained under the limitation act in place at that time. The Real Property Limitation (Crown) Act 1873 had been in effect up to 31 August 1995. The Real Property Limitation (Crown) Act 1873 provided at section 2:

2. The Queen shall not at any time hereafter sue, impeach, question or implead any person or persons for or in any wise concerning any lands, tenements, rents or hereditaments whatsoever, or for or in any wise concerning the revenues, issues or profits thereof, or make any title, claim, challenge or demand of; in or to the same, or any of them, by reason of any right or title which hath not first accrued and grown, or which shall not hereafter first accrue and grow, within the space of sixty years next before the filing, issuing or commencing of every such action or other suit or proceeding, as shall, at any time or times hereafter be filed, issued or commenced for recovering the same or in respect thereof,

The limitation period which was in place prior to 1995 was therefore 60 years in accordance with the Real Property Limitation (Crown) Act 1873.

[24.] The cause of action of the Crown, to challenge Mortgage's occupation of the property would have accrued in 1983 (when the occupation is alleged to have initially taken place) and would therefore expire in 2043 (being 60 years from 1983)..."

The Learned Trial Judge then stated:

"[21.] I am not satisfied that FAR or its predecessors in title has demonstrated possession of the land for the 60 year period required."

18. Nowhere in the decision does the Learned Trial Judge find that because the land was foreshore land, that therefore the 60 year period was applicable pursuant to section 16(2) of the Limitation Act 1995. Instead this finding was predicated on the other findings of the court, and the pleaded case of the Petitioner, that their predecessors in title had entered onto the property since well before 1995 (the year of the passage of the Limitation Act 1995), therefore the relevant limitation period would have been the 60 year limitation period established by the Real Property Limitation (Crown) Act 1873, the law in force at the time of the asserted entry onto the land, which would have accrued the Crown's right to challenge that occupation.

19. For these reasons, I find that the Learned Trial Judge's determination that the relevant limitation period is 60 years is legally correct.

[41.] The relevant limitation period, in my view, is therefore 60 years.

[42.] The Crown is the documentary title holder as a result of the acquisition of the Property under the provisions of the Acquisitions of Land Act, a fact accepted by Brown. Whatever title Brown held at the time of the Notice of Possession and ultimately the Declaration of Vesting, was brought to an end by virtue of the compulsory acquisition by the Crown. Having not challenged the acquisition, Brown (or his parents) was limited merely to an entitlement to be compensated, if the same could be sustained.

[43.] Assuming Brown reentered immediately after the notice became effective in December of 1977, he would become an adverse possessor of the Property which was owned by the Crown. Having entered before 1995, Brown, as an adverse possessor of the property of the Crown, must show 60 years. This he cannot do.

[44.] In the circumstances therefore, while I am satisfied that there was sufficient possession by Brown for the grant of a Certificates of Title, I am not satisfied that such possession has been maintained for the relevant statutory period of 60 years. I therefore dismiss that Petition and the Adverse Claim of Cunningham in respect to the Property.

[45.] I will hear the parties as to the appropriate Order for costs by written submission within 21 days.

Dated the 26<sup>th</sup> day of May 2026



Sir Tan Winder  
Chief Justice

