



**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT**

**CICA (Civil) Appeal 19 of 2021
(Formerly GC 202 of 2019)**

BETWEEN:

**DEBRA ANN BODDEN
(Administrative of the Estate of ANTOINETTE IRENE BUSH deceased P39 of 1989)(1)**

**DEBRA ANN BODDEN
(Administratrix of the Estate of Myrtle Vernice Bodden deceased P 34 of 2018) (2)**

**DEBRA ANN BODDEN and ANTOINETTE AMANDA POWERY
(Administratrices or the Estate of Ramona Louise Bush deceased P 131 or 2009) (3)
APPELLANTS**

AND:

**(1) ALFRED EARL DALE BODDEN
(2) SHEILA VENICA CHRISTIAN**

RESPONDENTS

**Before: The Hon John Martin KC, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal**

**Appearances: Mr James Chapman of Chapmans for Appellants
Mr James Kennedy of KSG for Respondents**

Date of hearing: 28 November 2022

Draft Judgment Circulated: 16 December 2022

Judgment Delivered: 12 January 2023

JUDGMENT

Moses, JA

1. This is an appeal from a judgment on a preliminary issue of the Hon. Justice Richard Williams, on 23 June 2021. By that judgment he concluded that the Plaintiffs' action was statute-barred since the writ and statement of claim by which it was launched were filed on 29 November 2019, outside the 12-year limitation period under the Limitation Act (1997 Revision).

2. The action concerned land formerly owned by Antoinette Irene Bush in the South Sound area of Grand Cayman. It was there that land was found on which the Bush family settled; it was “*high and dry*” and far enough from the sea to survive in storms. Wooden structures were built in which Antoinette and other members of the Bush family lived after she was born in 1899.
3. In the mid-1970s there was a cadastral survey; that is a survey for the purposes of establishing land parcel boundaries. This was pursuant to the Regional Cadastral Survey and Registration Project for the Caribbean promoted by the British Overseas Development Administration. It led to a new land administration system in a number of what had been colonies including, in 1972, the Cayman Islands.
4. A number of Laws, the Land Adjudication Law, the Land Surveyors’ Law and the Registered Land Law received the Governor’s assent on 17 December 1971. They provided the legal framework for the survey, adjudication and registration of title on these islands.
5. The appellant Debra Bodden says that before then nobody heard of “owning land” or “parcels of land”. But the Land Adjudication Law led to land, but not all of it, being divided into adjudication areas, to claims being made to land, and to demarcation and survey of boundaries.
6. An adjudication record was made following any disputed claim and that record was then transcribed onto the Land Register opened for the relevant parcel in accordance with the Registered Land Law (Law 21 of 1971, now Registered Land Act (2018 Revision) (see section 10)).

Facts alleged and Records of Registration

7. For reasons which become relevant to the future conduct of the action, if the appeal is allowed, it is necessary to outline some of the complexities relating to registration of the land which became part of Antoinette Bodden’s residuary estate. They illustrate the difficulties of linking what appears to have happened in relation to the family’s occupation of houses on the site and the registered parcels which from time to time were divided and renumbered. I should emphasise that, save for the references in the Land Registry, and previous court orders, the facts remain allegations and assertions, untested and unevaluated in any trial.
8. Antoinette Bush was the first registered owner of the land in issue in the instant appeal, then described as parcels 22 and 23. Amongst her six children were two daughters, Myrtle Bodden and Ramona Bodden and the eldest son, Leon. Debra Bodden, Antoinette Powery, the

appellants acting as administratrix and administratrices, and the first-named respondent, Dale Bodden are three of the seven children of Myrtle and grandchildren of Antoinette Bush.

9. Parcels 154, 155 and 156 were created out of the former parcel 22 and Antoinette was registered as owner of those parcels. According to Debra Bodden's witness statement she and her parents left the land, when she was about four or five years old, but her aunt Ramona and her eldest brother Dale remained on parcel 156 with Ramona's younger brother Jimmy Bodden.
10. It may be of significance later to record that, according to Debra and her brother Burnes, two parcels were transferred by Antoinette while she was alive, one parcel, 155, to her daughter Ramona, in August 1982, which was not registered by Ramona until 1995 and, one parcel, 154, in the same month to her son Leon.
11. Antoinette Bush died intestate on 19 February 1984. Her residuary estate, by then parcels 23 and 156, therefore fell to be held on the statutory trusts for her six children in accordance with section 29(1)(c) of the Succession Act (2021 Revision).
12. Pursuant to section 26 of the Succession Act (2021 Revision), Antoinette Bodden's estate vested in a Grand Court Judge until administration in respect of that estate was granted.
13. On 18 August 1989 Letters of Administration in and for that estate were granted to her son Leon Bush. Accordingly, Antoinette Bodden's residuary estate vested in him pursuant to section 25(1) of the Succession Act. Leon had applied for special leave under section 4 of the Succession Act in February 1989. It may become of relevance that the inventory and affidavit in support of the application referred only to parcel 23. He makes no reference to parcel 156 which was at that time, according to the evidence, occupied by his sister Ramona, his brother Jimmy and his nephew Dale.
14. Leon appears to have taken no steps at all as personal representative in relation to the parcels until 14 February 2007.
15. But one of Antoinette Bodden's six children did. In October 2000 Ramona Bush, Leon's sister (Debra's aunt) applied for special leave to apply out of time for Letters of Administration.
16. In Ramona Bush's affidavit sworn on 11 October 2000 she said she had only recently been advised that she should have obtained a grant of Letters of Administration within six months of the death of her mother and sought special leave pursuant to section 4 of the Succession Act.

She said her mother had died on 19 February 1994. She exhibited to her affidavit a death certificate, dated 18 February 1994 showing Antoinette Bush's date of death as 19 February 1084 (sic). In support of her application, in the inventory of the deceased's estate Ramona declared on oath that the only estate coming into her possession or knowledge was parcel 156.

17. The judge described these events in [22]-[24] of his judgment, although he seems to have taken the view that the incorrect record of the date of the deceased was merely "unfortunate".
18. Williams J understandably gave this somewhat neutral description of Ramona Bush's conduct since he had heard no evidence. However the appellants take a far less charitable view of Ramona's conduct. They allege that Ramona used false documents, which mis-described the date of death of Antoinette so that the Probate Division failed to notice that Letters of Administration in respect of the same estate had been granted to Leon over eleven years earlier. This appears from the proceedings they launched the day after the hearing before Williams J.
19. By writ and statement of claim dated 28th May 2022, Debra Bodden as administratrix of her grandmother and mother's estates brought proceedings against herself and Antoinette Powery as Administratrices of the estate of Ramona Bush. The plaintiffs sought to revoke the grant of Letters of Administration to Ramona Bush, pursuant to sections 8 and 15 of the Succession Act and Probate and Administration Rules (2008 Revision). On 17 August, 2022 the Hon Walters J revoked those Letters of Administration. His Order recorded that the grant to Ramona of Letters of Administration sealed 29 December 2000 was "despite" the grant to Leon Bush and appointment of him as personal representative on 18 August 1989. The Clerk of the Court is now in the process, prescribed by section 18 of the Succession Act, of cancelling the entry in favour of Ramona.
20. I return to my chronological account culled from the statements. At the time of Ramona's application for special leave the earlier grant of Letters of Administration to Leon in respect of the whole of his mother's estate was never discovered.
21. By the time the judge made his order granting Letters of Administration to Ramona, the correct date of Antoinette Bush's death was known and the judge ordered that a supplemental affidavit be sworn. Nonetheless the discrepancies as to the date of death and the realisation that the correct date was some ten years earlier than had been sworn to by Ramona, did not lead the Clerk of the Court to discover the earlier Grant in 1989 to Leon.

22. Accordingly, on 29th December 2000 Letters of Administration in respect of Antoinette's estate, were granted by the Court to Ramona.
23. Having, so it is alleged, dishonestly obtained the grant, Ramona applied for and, on 17 January 2001, was granted registration as legal proprietor of parcel 156 by transmission pursuant to section 116 of the Registered Land Act. Section 116 (1) entitles a personal representative on production of the grant to be registered by transmission in the place of the deceased, with the addition after the appointee's name of the words "*as administrator of the estate of..., deceased*". At that date the Land Register did include those words, with a reference to the estate of Antoinette Bush, after Ramona Bush's name.
24. However, on 26 May, 2001, Ramona, as personal representative transferred parcel 156 to herself, as being entitled on the intestacy to that parcel of land. Ramona was not entitled, so it is alleged, to that parcel of land and accordingly she acted in breach of her obligation as personal representative to hold the residuary estate on the statutory trusts identified in section 29(1)(c). As personal representative, she had an obligation to reclaim parcel 156 for the benefit of the estate (see *Hinds v Hinds* (q.v.infra)).
25. Further, on the same date Ramona signed a transfer of land form in respect of parcel 156 "*in consideration of the natural love and affection*" she bore to her nephew, Dale Bodden. Both she and Dale Bodden were registered as joint proprietors of parcel 156 on 8 June 2001. Again, the transmission and registration effected by Ramona were in breach of her obligation to hold the estate on the specified statutory trusts, and, again she had an obligation, in her capacity as personal representative, to reclaim parcel 156.
26. Leon Bush, it will be recalled, had been granted Letters of Administration, back in 1989 and had, in the inventory to which he had sworn referred only to parcel 23. On 14 February, 2007 he transmitted that parcel 23, to himself. As in the case of Ramona, the transmission was in breach of his obligation as personal representative.
27. Leon Bush died on 19 June 2008 and his sister Ramona died just over a year later on 11 October 2009. On 10 November 2009, Dale Bodden applied pursuant to section 115 of the Registered Land Act to have Ramona's name deleted from the Register and on 8 March 2010 his name was entered as proprietor of parcel 156. A year later, on 4 February 2011 he added his wife, Clitey Christian and step-daughter, Sheila Christian as joint proprietors of parcel 156.

28. On 11 March 2013, Letters of Administration de Bonis Non were granted to Debra Bodden; the Letters recorded incorrectly that Leon was the brother of the deceased Antoinette but correctly that he had intermeddled in the estate, leaving part of it unadministered.
29. In proceedings brought pursuant to section 140 (1) of the Registered Land Act, the sole surviving daughter of Antoinette, Helen Connolly, having assigned her rights to Debra Bodden, Debra sought an order to restore parcel 23 to the estate, to remove the name of Leon Bush as proprietor and register parcel 23 in the name of the estate of Antoinette Bush. On 1 October 2013, that order was made by the Court.
30. The sequence of events may be of significance. It may be of importance in support of her contention that she was unaware that parcel 156 was part of the residuary estate, that Debra did not seek an order of rectification in respect of parcel 156.
31. She claims that she did not do so because she did not learn that plot 156 was part of her grandmother's estate until 2019. The circumstances in which she says she came to learn that parcel 156 was part of that estate and of Ramona's dealings with it are described in a witness statement dated 11 May 2021. That parcel 156 was part of the estate and not, as she asserts, the property of her aunt Ramona came to light during a dispute between Burnes Bodden, Debra's brother and Dale's wife Clitey; the dispute was lengthy and culminated in Burnes obtaining an injunction. Thereafter, according to Burnes, he and his brother Dale lived peacefully in what he calls "*Uncle Jimmy's*" house. Uncle Jimmy was one of Antoinette's sons. The possible significance of this evidence is that "*Uncle Jimmy's house*" was built on parcel 156. Burnes records, correctly, that in 1982 Antoinette Bodden had transmitted parcel 155 to Ramona and parcel 154 to Leon but had not transmitted parcel 156 to her son Jimmy. (IV (iv) of Burnes' statement). As Burnes puts it:
- "we only thought of houses and building where it was dry and we did not know of boundaries and parcels until now"* (statement 4(iv)).
32. Dale Bodden, in his statement, describes what he knows of parcel 156. It was the parcel on which the house he has lived in for 60 years was built; that for the last 18 years he has been "*on the title*" and treated it as his own with his wife and step-daughter. He says he was never made aware that Ramona may not have had the right to pass the property to him.
33. The complication inherent in translating what in appearance were houses built on the land to parcels registered in the Land Registry is amply illustrated in Burnes' statement. He describes

six houses built on different parcels. Parcel 23 in respect of which the Land Registry was rectified was on old swamp land, Dale's house was on two parcels 23 and 156. Burnes Bodden says part of parcel 23 and parcel 156 became parcel 343 (statement, (para 2 (ii)). That parcel is the subject of these proceedings. In the amended defence (para 1.2) it is averred that this was to facilitate the sale of two parcels, one of which was part of parcel 23, in February 2018. The proceeds of sale were properly distributed to each of those entitled to that portion of the residuary estate under section 29(1)(c) of the Succession Act.

The Proceedings

34. These proceedings were launched, following an Order made by McMillan J on 30 August 2019 to the effect that summonses in the action brought by Burnes Bodden against his brother and wife be adjourned so that the administratrix of the Antoinette Bush estate could bring administration proceedings.

35. In these proceedings the Plaintiffs, by way of amended writ and statement of claim re-issued 27 April 2021, seek a declaration that parcel 343 is property belonging to the estate of Antoinette Bush or a declaration as to the proportion thereof which remains property of the Estate and relief and directions:

“to secure for the Plaintiffs and the benefit of their beneficiaries, including the First Defendant, the legal title to assets that remain, in law and/or equity, assets of the defendant's estate including rectification of the proprietorship details on the Land Register for Parcel 343” ...

36. The amended statement of claim, having set out part of the history pleads (at para 10):

“that parcel 343 is property belonging to the unadministered estate of Antoinette Bush and title has never left the deceased's estate under the hand of a lawful Administrator, and the Estate remains unadministered with debts and the amount of the residue for the Second and Third Plaintiffs remains to be ascertained”.

37. The amended Defence pleads that the statement of claim discloses no cause of action and is liable to be struck out summarily and that any cause of action that could be pleaded is statute-barred *“having been time barred 12 years after February 2001 with such proceedings being a matter as between Leon Bush and Ramona Bush”.*

Williams J and this Appeal

38. Williams J sets out the history of the events and orders which led to his hearing the limitation issue as a preliminary hearing. Part of Mr Chapman’s appeal, on behalf of the appellants, was based on the submission that it was wrong to do so.

39. This was a hopeless submission on which I do not propose to dwell. The decision to have a preliminary hearing was a case management decision against which there can be no appeal. In any event either Mr Chapman is correct in his submission that the judge erred in concluding that the action is statute-barred, in which case the matter will have to be tried or he is wrong and the dismissal of the action at a preliminary hearing was the product of an appropriate procedure.

40. Williams J concluded, that the action was an action for recovery of land and in reliance in part on the decision of this court in *Hinds v Hinds* (CICA No 5 of 2015), that it first accrued when the legal title in parcel 156 was transferred into the names of Ramona Bush and Dale Bodden on 8 June 2001 (Judgment [54]). It was accordingly statute barred by virtue of section 19(1) of the Limitation Act and the title of the plaintiffs as administratrices was extinguished by virtue of section 23.

41. Section 19(1) provides:

“An action shall not be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

42. If section 19 applies then the appellants’ title is extinguished by the operation of section 23 of the Limitation Act:

“Subject to –

(a) section 24; and

(b) section 135 of the Registered Land Law (1995 Revision),

at the expiration of the period prescribed by this Law for any person to bring an action to recover land, including a redemption action, the title of that person to the land shall be extinguished.”

43. Mr Chapman’s first submission was to contend that the action brought by the appellants is not an action brought to recover land within the meaning of section 19 of the Limitation Act so no question of limitation arises. Parcel 156 never ceased to be vested in the lawful administrators of the estate, namely Leon. Accordingly, the second grant of Letters of Administration to Ramona was ‘in error’ and of no effect. Nothing vested in Ramona as personal representative and she had nothing to transmit to herself or to her nephew Dale. By that submission the appellants seek to finesse the conclusion of the judge and the submission of the respondents that the action was brought by the plaintiffs to recover land. Therefore, the appellants’ action did not fall within section 19.

44. There are a number of objections to this submission. First, the wrongful or even fraudulent grant of Letters of Administration to Ramona and her wrongful or fraudulent status as personal representative does not vitiate registration. Her registration, first as proprietor as administrator of parcel 156 and later as joint proprietor of that parcel in her own right with Dale Bodden happened by operation of the key provision, section 23 of the Registered Land Act (2018 Revision); the earlier law relevant in 2000 and 2001 had no material difference).

45. Section 23 provides:

“Subject to section 27, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever....”

46. Even though the joint proprietors, Ramona and Dale may fall within section 27, that does not advance the appellants’ argument. Section 27 provides:

“Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it and subject also to the Bankruptcy Law (1997 Revision) and to the winding-up provisions of the Companies Law (2018 Revision), but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.”

47. Second, Mr Chapman sought to argue that whilst legal title may have been registered, Leon and the other beneficiaries by virtue of section 29(1)(c) of the Succession Act retained the equity in parcel 156. For this submission Mr Chapman advanced no authority. He is wrong. It is sufficient to cite *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (2018, 21st Edition):

“A representative has vested in him the entire ownership of the deceased’s estate which he holds “in auter droit” (he may sue or be sued in another’s right) for the purposes of administration. He holds such property without any differentiation between the legal and beneficial interests; the beneficiaries merely have the right to ensure that he duly administers that estate.” (p.956)

48. Third, her status as personal representative was not void but could be extinguished by an application under section 8 which provides:

“The Court may, on the petition of any beneficially interested person, remove any personal representative found responsible for neglect or misconduct in the management or administration of the estate and may appoint another suitable person in that person’s place.”

49. The court’s powers to revoke Letters of Administration are contained in section 15 of the Succession Act:

“On judgment being given by the Court in any contentious case for the grant or revocation of probate or letters of administration the Court shall thereupon grant probate or letters of administration to the party or parties in whose favour such judgment has been given, in accordance with such judgment, or as the case may require, and thereupon any probate or letters of administration theretofore granted shall be revoked or varied according to the effect of such judgment.”

50. But the revocation of the Letters of Administration will not by itself affect the registration of the land in question. That can only be achieved under the Registered Land Act. Section 140 provides:

“(1) Subject to the Land Adjudication Law (1997 Revision) and to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”

51. The operation of the provisions in relation to revocation of Letters of Administration under the Succession Act and revocation of registration under the Registered Land Act can be seen in the proceedings Debra herself launched earlier in 2013. She obtained rectification in respect of the registration of parcel 23 under section 140 of the Registered Land Act. It is of note that the Order of Hall J dated 1st October 2013 denied Debra appointment as Administrator (sic) of the residuary estate. That was only achieved by the recent proceedings Debra brought invoking section 8 and 15 of the Succession Act.
52. The provisions of the Registered Land Act to which I have referred demonstrate the fundamental purpose underlying registration of land, namely to establish the indefeasibility of title conferred by the vesting section, section 23. It facilitates proof of title. The appellants’ submissions are inconsistent with and undermine that principle.
53. Fourth and conclusively, however Mr Chapman seeks to dress up his submission and the assertions in the amended Statement of Claim, he cannot escape the fact that the action is brought to recover parcel 156. It falls squarely within the terms of section 19.
54. Once the action is recognised as being an action to recover land then section 19 applies and the only question remaining under that section is the date on which the right of action first accrued to some person through whom Debra claims.
55. It was at that point Williams J rightly deployed *Hinds v Hinds* (2015 (2) CILR 239). In that case a mother, Esther was personal representative of the deceased, her second husband, who had died intestate. She had, in breach of her obligations as personal representative, transferred

a parcel of land to her three sons from a previous marriage, who were not entitled to any interest in that estate. Martin JA said [34]:

“Parcel 63 was transferred by Esther to the three brothers on February 26th, 1999. It was an asset of John Samuel’s estate, and the three brothers were not entitled to any interest in that estate. The transfer to them was accordingly a breach of trust by Esther. Immediately after the transfer, Esther had, in her capacity as personal representative of John Samuel, a right (and an obligation) to reclaim it for the benefit of his estate. That right accordingly accrued immediately after the transfer. Any claim by her to enforce the right would have been a claim to recover land, and s.19 of the Limitation Law (1996 Revision) would have applied to it. It would also have been a claim to recover trust property, but s.27(3) expressly applies only where no other period of limitation is prescribed. Section 19(1) provides as follows: “An action shall not be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.” Accordingly, Esther had 12 years from the transfer in which to bring the claim. She died before that period expired, without having brought a claim in her lifetime. No substitute personal representative of John Samuel was appointed before the 12-year period expired on February 25th, 2011 without a claim having been brought. The prima facie consequence was that the estate’s title to the land was extinguished on that date by virtue of s.23, which so far as relevant provides that, subject to s.24, “at the expiration of the period prescribed by this Law for any person to bring an action to recover land . . . the title of that person to the land shall be extinguished.” It is irrelevant that, as Mr. Ham asserted, the respondents had failed to plead a limitation defence despite being given leave to do so: on the expiry of the time allowed for a claim to recover land the title is extinguished by virtue of s.23 whether limitation is pleaded or not. On the face of it, therefore, the estate’s title to Parcel 63 has been extinguished, and the three brothers have an unassailable right to it.”

56. The argument advanced by the appellants that since Ramona had obtained her Letters of Administration by fraud she was not in the same position as Esther does not meet the point. Whether or not the grant to Ramona was liable to be set aside, having obtained it she could not deny that she owed the duties of personal representative in relation to the estate. Ramona as personal representative was not entitled to transfer parcel 156 to herself and to Dale as joint

proprietors and when she did, both she and, for that matter Leon had the obligation to recover parcel 156 for the benefit of Antoinette Bush's estate. Accordingly, the obligation to reclaim the land arose at the latest on 8 June 2001 some 19 years before the date of the Writ and Statement of Claim.

57. But that is not the end of the matter. By section 37 of the Limitation Act:

“(1) Subject to subsection (3), where in the case of any action for which a period of limitation is prescribed by this Law, either
(a) the action is based upon the fraud of the defendant;
(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
(c) the action is for relief from the consequences of a mistake,
the period of limitation does not begin to run until the plaintiff has discovered, or could with reasonable diligence have discovered, the fraud, concealment or mistake. References in this subsection to the defendant include references to the defendant's agent, and to any person through whom the defendant claims, and his agent.
(2) For the purposes of subsection (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.”

58. There is plainly, on the basis of Debra and her brother Burnes' statements an issue as to whether any fact relevant to the appellants' right of action has been deliberately concealed from them by a person through whom the 1st respondent claims, namely Ramona. (see the full-out words beneath section 37 (1) (c))

59. Nor should one overlook section 37 (2). Ramona was arguably, to put it at its lowest, guilty of a deliberate commission of her breach of duty as a personal representative to deal properly with the assets of her mother's estate.

60. Mr Kennedy for the Respondents contended that there was little dispute about the facts and that they established, without need for any evidence, that any reliance on section 37 was bound to fail.

61. I do not agree. A number of factual issues arise. They include the question whether Ramona acted deliberately. For example, she appears to have used an obviously erroneous date, 1084

and the date on the death certificate she exhibited was the date before the date she stated in her affidavit. Questions remain as to whether and when the plaintiffs could have discovered the allegedly deliberate concealment with reasonable diligence at an earlier date and whether, for the purposes of 37(2) the circumstances of any if any concealment by Ramona were unlikely to be discovered for some time.

62. The tortuous account of the course of dealings with the estate, as yet not the subject of any determination or evaluation at trial, establishes at least that there may be strong arguments either way. The circumstances of registration and the difficulty of linking the reality on the ground to the history of the registration of parcels of land, particularly so soon after the birth of registration on these islands are all relevant questions as to the deliberateness of Ramona's actions, reasonable diligence and the likelihood of discovery.
63. There remains a puzzling feature of the judgment of Williams J. He made no reference to section 37 in his judgment. He did refer to what he called section 27 and said that the Plaintiffs did not rely upon it [54]. That must be a reference to section 37 since he referred correctly to section 27 at [46] of his judgment and said, rightly, that it did not apply.
64. The written argument on behalf of the plaintiffs did not make any reference to section 37 for reasons I cannot understand. But Mr Chapman assured us that he had relied upon it in oral argument. Mr Kennedy says he could not remember.
65. This is an unsatisfactory position. It is odd if it was properly relied upon that the judge makes no reference to it at all or to the arguments. If it was relied upon it can only have been in passing.
66. Whatever the true position, section 37 has now been raised, the respondents have had a fair opportunity to deal with it and in justice to the appellants it seems to me that this court must deal with it.
67. The upshot is that it is not possible at a preliminary hearing without evidence to say whether the ordinary time limit of 12 years should be extended or not. Without evidence it would be wrong to draw any certain inference either way for the reasons which are apparent from my account of the as yet untried and untested evidence.
68. In those circumstances, in my view, the proper course would be to allow this appeal and to remit the case for trial. All the evidence and history of the family's occupation of what is now

parcel 343 may be relevant to the section 37 limitation issues. I therefore suggest it may be neither possible nor a practical deployment of time and money to carve out an issue of limitation as to whether section 37 may apply. But that will need consideration when directions are considered for the future conduct of this action.

69. I cannot however leave this case without an urgent plea for some speedier alternative resolution of the disputes within the family, by mediation or otherwise. It seems to me nothing short of disastrous if there is further litigation in relation to the grandmother's estate.

70. In support of that view, it is only necessary to look at the statement of Burnes Bodden and Debra herself. She says:

“we all lived/had lived on my Grandmother's land and then no-one knew the land was in “parcels” and how a name on a piece of paper could replace reality: in that sense if the Registered land system is a “necessary evil” like the lawyers say then I do feel it can work evil in wrong hands—like this case. If truth be told and honourable people step forward the system ought to work justice the lawyers tell me. But the costs are terrible: to family and in terms of money and stress. Those are just my opinions” (para 14).

71. If there are to be further hearings, then they need careful case management. There are a large number of relevant documents which are as yet to be properly and chronologically produced, identified and indexed. The maps and photographs do not assist; they are illegible and confusing.

72. The time has surely come to call a halt to the series of expensive proceedings. Antoinette Bush may have died intestate but surely she would not have wished to leave such a legacy of uncertainty and confusion. But I would allow the appeal and order the action to be remitted to the Grand Court for trial.

The Hon Sir Richard Field, Justice of Appeal

73. I agree.

The Hon John Martin KC, Justice of Appeal

74. I also agree.