

5/81

ON APPEAL

FROM THE COURT OF APPEAL OF THE WEST INDIES
ASSOCIATED STATES SUPREME COURT

BETWEEN:

No. 3 of 1979

ELLIS SKELTON

Appellant

- and -

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RICHARD HOGARTH MADURO (Junior)
CONRAD MADURO
OMAR HODGE
(Administrators of the Estate of
Richard Hogarth Maduro (Senior))

Respondents

AND BETWEEN :

No. 4 of 1979

ELLIS SKELTON

Appellant

- and -

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RICHARD HOGARTH MADURO (Junior)
CONRAD MADURO
OMAR HODGE
(Administrators of the Estate of
Richard Hogarth Maduro (Senior))
LENA HOPE
ANTONIO MADURO
LUCY ANN HODGE
SYDNEY MADURO
IRVIN MADURO
GEORGE EGBERT MADURO
BEULAH PICKERING
AMERIA MALONE
JOYCE BREWLEY
JULIAN MADURO
KENNETH MADURO

Respondents

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(CONSOLIDATED)

CASE FOR THE APPELLANT

Record

1. This is an appeal from the Judgment of the Court of Appeal of the West Indies Associated States Supreme Court, dated 14th February 1977, allowing in part an appeal by the Appellant from the decision of the Land Adjudication Officer given on the 5th day of April 1973 and also allowing in part an appeal by the Respondents from the said decision of the Land Adjudication Officer. Both appeals were heard together by consent.

pp. 31-32 2. This Appeal arises out of competing claims to the ownership of land described as being in the Fish Bay Farm or Fish Bay Estate in the Island of Tortola, British Virgin Islands in the West Indies. These claims were brought under the provisions of the Land Adjudication Ordinance 1970 of the British Virgin Islands and were adjudicated upon by the Land Adjudication Officer appointed under the said Ordinance. The decision of the Adjudication Officer was the subject of an appeal by the present Appellant and a cross-appeal by the present Respondents to the Court of Appeal of the West Indies Associated States Supreme Court. 10
pp. 37-38 20

p. 57 3. The situation boundaries and acreage of the lands in dispute are shown on a plan of the land prepared by the Demarcation Officer which forms part of the evidence in the case (Exhibit B).

4. The following claims were not disputed by the Appellant and were upheld by the Adjudication Officer :- 30

<u>Colour on Exhibit B</u>	<u>Acreage</u>	<u>Claimant</u>	
Purple	2	Augustus Pickering	
Orange	8	Emma Fahie (formerly Skelton)	
Green	5 $\frac{1}{4}$	Julian and Antonio Maduro	
Blue	7	Those claiming through Richard Hogarth Maduro (Senior)	40
	<u>Total</u>	<u>22$\frac{1}{4}$</u>	

5. The land in dispute consists of two parcels shown edged red on Exhibit B, viz: Parcel A, an

area of 55 acres on the landward side of the main public road, and Parcel B, an area of 12 acres lying between the public road and the sea. Both parcels were claimed by the Appellant as follows :-

- (i) a portion of 14 acres (comprising the whole of Parcel B together with a further two acres in Parcel A immediately to the landward side of the public road) in 1943 by direct gift from his Father Joseph Skelton;
- 10 (ii) further portions (comprising in total 25 acres in Parcel A) between 1949 and 1956 by express conveyance from the beneficial owners;
- (iii) a further portion (arithmetically calculated) in Parcel A by virtue of the conveyances referred to in (ii) above in consequence of an underestimation in the area of Fish Bay Farm in the documents of title;
- (iv) The remainder of Parcel A by adverse possession.

20 6. The Adjudication Officer upheld the Appellant's claim to the 14 acres acquired by gift from Joseph Skelton, but for reasons which were subsequently rejected as erroneous by the Court of Appeal rejected his claims to any further portion of Parcel A (save to the extent of $15\frac{3}{4}$ acres by reason of the underestimation in the area of Fish Bay Farm in the documents of title). The Court of Appeal confirmed the findings of the Adjudication Officer in relation to the 14 acres as aforesaid, and allowed the Appellant's appeal in relation to the 25 acres in Parcel A acquired by express
30 conveyance from the beneficial owners. The Court of Appeal appear to have rejected the Appellant's right to participate in the surplus land in Parcel A arising from the underestimation of the area of Fish Bay Farm in the documents of title. Moreover, although the ground on which the Adjudication Officer had ruled against the Appellant's claim to the remainder of Parcel A by virtue of adverse possession was rejected as erroneous, the Court of Appeal failed to deal with
40 that claim, and awarded the remainder of Parcel A to the Respondents. This is an appeal for that part of the Judgment of the Court of Appeal which failed to award to the Appellant any part of the surplus land arising on survey, or to deal with the Appellant's claim to be entitled by long adverse possession to any part of Parcel A to which he has no other title.

pp. 31-32

7. The history of the land is as follows :-

- (1) In 1905 the land known as Fish Bay Farm was erroneously thought to comprise some 56 acres. In fact it comprised $91\frac{1}{4}$ acres.
- p. 67 (2) By an Indenture in his favour dated the 20th May 1905 (Exhibit L), and recorded in the Registry of Deeds of the British Virgin Islands as No. 11 of 1905, Joseph Skelton acquired by purchase from the Provost-Marshal a plot of land at Fish Bay in the Island of Tortola which he held as absolute beneficial owner. The situation and extent of the land thereby conveyed were not described in the said Indenture, but both the Adjudication Officer and the Court of Appeal accepted the evidence of the Appellant that this land, together with other small portions of Fish Bay Farm which were sold off before the 4th September 1906 and subsequently bought in by Joseph Skelton, comprised 14 acres in all and covered an area of 12 acres lying between the public road and the sea (Parcel B) and a further two acres immediately to the north of the public road and extending to a feature known as The Cliff. This area was described in evidence as "the Baylot". 10 20
- pp. 18-19 (3) By an Indenture (hereinafter called "the Trust Deed") dated the 4th September 1906 (Exhibit A) and recorded in the Registry of Deeds as No. 35 of 1906 Joseph Skelton acquired the whole of the then remaining unsold portion of Fish Bay Farm described as comprising 43 acres (almost certainly an error for 42 acres) out of an original 56 acres. By the terms of the Trust Deed Joseph Skelton declared that he held the said land on trust for certain named children of one Roceita (or Rosita) Maduro "to whom the said lot of land doth from and after date hereof solely belong in proportion however hereby allotted and expressed - that is to say to John James Maduro four acres to Richard Maduro six acres to Ellen Eliza Maduro six acres to Ann Elizabeth Maduro four acres to Claudius Waldemar Skelton eight acres to Emma Clothilda Skelton seven acres and to Alice Lutecia Skelton seven acres amounting in all to the full and complete 30 40
- p. 55

number of 43 (sic) acres as aforesaid" with gifts over in favour of the survivors as to one half to the Maduros and as to the remaining one half to the Skeltons in the event of any of the said children dying unmarried or without issue.

10 (4) The three Skeltons named as beneficiaries in the Trust Deed were the illegitimate children of Joseph Skelton by Roceita Maduro. The four Maduros named as beneficiaries in the Trust Deed were the children of Roceita Maduro by another father. The Appellant is the illegitimate son of Joseph Skelton and Ellen Eliza Maduro.

20 (5) By a Deed of Gift dated the 5th July 1943 (Exhibit C) and recorded in the Registry of Deeds as No. 55 of 1943 Joseph Skelton conveyed to the Appellant by way of gift all his interest in "the remaining portion of 14 acres of land approximately in the Fish Bay Estate of a total of 56 acres as per Deed No. 35 of 1906". In his evidence before the Adjudication Officer the Appellant produced this Deed and described it as the document by which his Father "deeded" his "private land" or "his own land" to him. p. 58 p. 19

30 (6) At various dates now impossible to identify Joseph Skelton allocated defined portions of the Fish Bay Farm lying to the north of the public road to four of the children named as beneficiaries in the Trust Deed and let such children into possession of the land so allocated. Each such child fenced off the land allocated to him or her and thereafter remained in exclusive possession of the land fenced off. Details of these plots are as follows :- pp. 13, 18, 19

<u>Colour on Exhibit B</u>	<u>Acreege</u>	<u>Beneficiary to whom allotted</u>	<u>Acreege to which beneficiary entitled</u>	p. 59
Orange	8	Emma Fahie (formerly Skelton)	7	
Green	5 $\frac{1}{4}$	John James Maduro	4	
Blue	7	Richard Hogarth Maduro (Senior)	6	
-	8	Claudius Waldemar Skelton	8	
<u>Total</u>	<u>28$\frac{1}{4}$</u>		<u>25</u>	

Record

- p. 19 The situation of the land allocated to Claudius Waldemar Skelton was identified in evidence by the Appellant.
- p. 57 (7) In addition, a further two acres (coloured purple on Exhibit B) were occupied by Augustus (or Aaron) Pickering, the Stepson of John James Maduro
- p. 16 11.44-45
- p. 65 (8) The plot of land allocated to Richard Hogarth Maduro (Senior) was conveyed to him by Joseph Skelton by an Indenture dated the 15th September 1943 (Exhibit H) and recorded in the Registry of Deeds as No. 78 of 1943. The boundaries of the land conveyed were defined in the said Indenture, which described the extent of the land as "about six acres more or less". According to the evidence of the Appellant, the other children did not receive conveyances for their plots. 10
- p. 19
- p. 66 (9) By an Indenture of the same date (Exhibit J) and recorded in the Registry of Deeds as No. 79 of 1943 Joseph Skelton conveyed a further two acres to Richard Hogarth Maduro (Senior) by way of gift. The boundaries of the land conveyed were defined in the said Indenture. The land lies at the extreme south-eastern end of Fish Bay Farm and is coloured black on Exhibit B. By a Deed of Conveyance dated the 3rd March 1949 (Exhibit GG) and recorded in the Registry of Deeds as No. 9 of 1949 these two acres were conveyed on sale by Richard Hogarth Maduro (Senior) to one Walter Gordon Laidlaw, who was not related to the Maduros or the Skeltons. 20
- p. 57
- p. 87
- p. 86 (10) Joseph Skelton died intestate on the 17th March 1948 and Letters of Administration to his estate were on the 19th May 1950 granted to one James Alfred Skelton the lawful son of Joseph Skelton 30
- (11) Following the death of Joseph Skelton the Appellant acquired further portions of Parcel A as follows :- 40

10 (i) By an Indenture dated the 13th July 1949 (Exhibit D) and recorded in the Registry of Deeds as No. 53 of 1949 Ann Elizabeth Mercer (formerly Maduro) sold and conveyed to the Appellant her interest or allocation of land under the Trust Deed. This was described in the Indenture as being four acres, but in the recital the vendor was described as "desiring to dispose of her allocation of lands". pp. 59-60

(ii) By an Indenture dated the 13th August 1949 (Exhibit F) and recorded in the Registry of Deeds as No. 70 of 1949 Alice Lutecia Vanterpool (formerly Skelton) sold and conveyed to the Appellant all her interest in the land allocated to her under the Trust Deed and stated to comprise seven acres. pp. 61-62

20 (iii) By an Indenture dated the 20th December 1951 (Exhibit G) and recorded in the Registry of Deeds as No. 74 of 1951 Ellen Eliza Maduro conveyed by way of gift to the Appellant (her illegitimate son) the land to be allocated to her under the Trust Deed and which was described as comprising six acres more or less. pp. 63-64

30 (iv) By an Indenture dated the 3rd November 1956 (Exhibit O) and recorded in the Registry of Deeds as No. 11 of 1956 Claudius Waldemar Skelton sold and conveyed to the Appellant all his interest in the lands comprised in the Trust Deed stated to comprise eight acres. pp. 72-73

8. In these circumstances, the claimants to the lands were as follows :-

A. THE APPELLANT

40 (a) The Appellant claimed Parcel B and a two acre portion of Parcel A by virtue of the Indenture dated the 3rd July 1943 (Exhibit C)

(b) The Appellant claimed the remainder of Parcel A by virtue of the conveyances mentioned in paragraph 7(11) above or by long exclusive and adverse possession.

B. THE RESPONDENTS

p. 57

1. RICHARD HOGARTH MADURO (Junior) CONRAD MADURO and OMAR HODGE as Administrators of the Estate of Richard Hogarth Maduro (Senior) claimed in respect of the land coloured blue on Exhibit B (7 acres)

2. EMMA FAHIE (nee Skelton) claimed in respect of the land coloured orange on Exhibit B (8 acres) which she occupied. 10

3. AUGUSTUS PICKERING claimed in respect of the land coloured purple on Exhibit B (2 acres) which he occupied.

4. JULIAN and ANTONIO MADURO two of the children of John James Maduro claimed in respect of the land coloured green on Exhibit B ($5\frac{1}{4}$ acres).

5. LENA HOPE, LUCY ANN HODGE, SYDNEY MADURO, IRVIN MADURO, GEORGE EGBERT MADURO, BEULAH PICKERING, AMERIA MALONE, JOYCE BREWLEY and KENNETH MADURO made claims in respect of the land coloured blue on Exhibit B (7 acres) which had been sub-divided. 20

9. In addition, the Respondents claimed an interest in the lands claimed by the Appellant, alleging that all the said lands were part of the land held in trust by Joseph Skelton under the Trust Deed. They asserted that the Appellant had held the said lands as Trustee after the death of Joseph Skelton, and accordingly was unable to acquire title to the lands which he claimed whether by gift, purchase or adverse possession. In particular, it was contended :- 30

(i) that as a Trustee he could not properly acquire any portion of the trust property by purchase from the beneficiaries; and

(ii) that as a Trustee he could not acquire title by adverse possession to any portion of the trust property under the provisions of the Limitation Act, Cap. 44 40

of the Laws of the British Virgin Islands;

- (iii) that the Deed of Gift No. 74 of 1951 by the Appellant's mother Ellen Eliza Maduro was ineffective to transfer her interest as she was at that date still unmarried and had no lawful issue. It was contended that the word "issue" in the Trust Deed meant in law "legitimate issue". pp. 63-64
- 10 (iv) that the land conveyed to the Appellant by Deed No. 55 of 1943 was land subject to the trusts contained in the Trust Deed, so that the Appellant obtained no beneficial title thereby. p. 58
10. The Adjudication Officer found :- pp. 31-32
- (1) That the Appellant's claim to the 14 acres conveyed to him by Joseph Skelton by Deed No. 55 of 1943 succeeded. He found the Appellant an impressive witness, and accepted his testimony that the 14 acres consisted of the whole of Parcel B which contained 12 acres and a further two acres in Parcel A. because he stated that the land which the Appellant has to have as owner was to "include the Baylot". p. 58
- 20 (2) That after the death of Joseph Skelton the Appellant became Trustee of the Trust Deed, and accordingly was unable to acquire the lands which he had purchased from the beneficiaries, and that his Mother Ellen Eliza Maduro still held her portion of the Trust Lands.
- 30 (3) That the lands at Fish Bay which Joseph Skelton had actually owned either in his own right or as Trustee were found to comprise in fact on actual survey of the same $89\frac{1}{4}$ acres and not as described in the relevant documents of title (viz: Indenture No. 11 of 1905 (Exhibit L) and the Trust Deed (which both described it as 56 acres). In giving the figure of $89\frac{1}{4}$ acres the Adjudication Officer over-looked the fact that 2 acres of the Estate had been conveyed away from the family in 1949 (paragraph 7(9) above) and was not claimed by any one as a descendant of Joseph Skelton or Roceita Maduro. As is apparent from Exhibit B, if this portion of the Estate is taken into account, the original extent of the Estate was actually $91\frac{1}{4}$ acres. p. 67
p. 55
p. 57
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p. 58

11. The Adjudication Officer decided to award the Appellant a further 15.75 acres of land out of the Trust Land, in addition to the 14 acres of land which he had awarded to him by virtue of Deed No. 55 of 1943, by using what he described as "a multiplication factor" of "seventeen over eight", and multiplying the said 14 acres covered by the Deed No. 55 of 1943 by that multiplication factor. The multiplication factor was arrived at by relating $89\frac{1}{4}$ acres (the actual acreage of the entire Estate if the two acres sold out of the family's ownership are discounted) to 42 acres (the area expressly covered by the Trust Deed). This was erroneous, since the two figures are not comparable; if the first figure is taken to be $89\frac{1}{4}$, the second should be 54 (i. e. 56 acres less the two acres later sold out of the family). The Adjudication Officer decided that all persons entitled to land under the Trust Deed should have the portions allotted to them by that Deed increased by the multiplication factor. In error he applied this formula to the 14 acres awarded to the Appellant (which he had included in the total acreage of $89\frac{1}{4}$ but not in the 42) although as he had himself rightly found in the evidence adduced before him the said 14 acres had never formed part of the land comprised in the Trust Deed.

12. The Adjudication Officer upheld the claims of Augustus Pickering, Emma Fahie (formerly Skelton), Julian and Antonio Maduro, and those claiming under Richard Hogarth Maduro (Senior) to the enclosed lands claimed by them respectively totalling $22\frac{1}{4}$ acres. He awarded the remaining land, which he correctly described as comprising $37\frac{1}{4}$ acres, to "the heirs of Roceita Maduro", of whom he described the Appellant as one.

13. The Appellant, being dissatisfied with the Decision of the Adjudication Officer, appealed to the Court of Appeal against the said Decision insofar as it awarded any part of the lands claimed by him to any person other than himself. The grounds of his appeal to the Court of Appeal were as follows :-

pp. 37-38

(1) That the Adjudication Officer had mis-directed himself on the evidence in finding that the Appellant was a trustee of any lands at Fish Bay

(2) That the Adjudication Officer had

mis-directed himself on the evidence in finding that the Appellant had undertaken the task of trustee

(3) That the Adjudication Officer had mis-directed himself on the evidence in awarding to the heirs of Roceita Maduro part of the lands claimed by the Appellant, which lands have been in the full and undisturbed possession of the Appellant for approximately 24 years, as absolute owner, without acknowledging the title of any other person thereto

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14. Richard Hogarth Maduro (Junior), Conrad Maduro and Omar Hodge as Administrators of the Estate of Richard Maduro deceased also appealed against the Decision of the Adjudicating Officer insofar as it awarded any land to the Appellant.

15. The Court of Appeal duly heard these two appeals together by consent. It allowed the appeal of the present Appellant in part and found as follows in his favour :-

pp. 39-43

(1) The 14 acres conveyed to the Appellant by Deed No. 55 of 1943 were never part of the trust property subject to the Trust Deed. The Court of Appeal did not disturb the Adjudication Officer's finding that this 14 acres comprised or included the Baylot.

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p. 58

p. 42 11.19-25
p. 32 11.20-24

(2) The finding of the Adjudication Officer that the Appellant undertook to carry out the task of trustee of the trust property after the death of Joseph Skelton was unreasonable as there was insufficient evidence to support such a finding.

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p. 39 11.35-37

(3) (i) The Appellant had purchased the shares in the trust property of Ann Elizabeth Mercer (formerly Maduro) (four acres), Claudius Waldemar Skelton (eight acres) and Alice Lutecia Vanterpool (formerly Skelton) (seven acres) comprising in all 19 acres and the vendors were not disputing the transactions.

p. 40 11.11-17

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(ii) The Appellant had also acquired by way of gift the share in the trust property which his Mother Ellen Eliza Maduro claimed to own outright (six acres). Despite the terms of the trust no other

person claimed to be entitled to this land, although at the time of the conveyance she had only a limited interest. In this connection it should be placed on record that during the hearing of the appeals before the Court of Appeal, when the question arose whether the Appellant could lawfully acquire any interest in the trust property by virtue of the Deed which his Mother had assented in his favour, bearing in mind that he was not her lawful issue and that she was still unmarried, Mr. Joseph Archibald Q. C. , Counsel for the Appellants in Appeal No. 23 of 1979 and for the Respondents in Appeal No. 4 of 1974, in answer to a question put to him by the Court, stated that the parties whom he represented raised no objection to the Appellant being awarded absolute title to the six acres which his Mother had purported to convey to him.

(iii) Accordingly, the Court of Appeal awarded ownership to the Appellant of the 25 acres of land which he had acquired from Ann Elizabeth Mercer (formerly Maduro), Claudius Waldemar Skelton, Alice Lutecia Vanterpool (formerly Skelton) and Ellen Eliza Maduro.

p. 65 (4) The land conveyed to Richard Hogarth Maduro (Senior) by Joseph Skelton by Deed No. 78 of 1943 was trust property since Joseph Skelton had previously conveyed the whole of the 14 acres which he owned beneficially to the Appellant. The Court of Appeal confirmed the decision of the Adjudication Officer that the 7 acres in question should be retained by the current claimants.

(5) The Court of Appeal accordingly awarded to the Appellant a total of 39 acres.

16. The Court of Appeal also allowed in part Appeal No. 23 of 1973 and, apparently on the ground that the word "issue" in the Trust Deed meant "lawful issue", set aside that part of the decision of the Adjudication Officer which disposed of the surplus land (including that part which awarded 15.75 acres to the Appellant); and in lieu thereof directed that "the remaining $37\frac{1}{4}$ acres of undivided trust property be divided as follows :
 10 half equally to the persons lawfully entitled to and claiming under the Maduros mentioned in the [Trust Deed] and the other half equally to the persons lawfully entitled and claiming under the Skeltons mentioned in the [Trust Deed]. "

p. 43 11. 12-22

17. With regard to this part of the judgment of the Court of Appeal two points are respectfully made on behalf of the Appellant:

(1) The extent of the surplus land was wrongly stated as $37\frac{1}{4}$ acres, which was said to arise "because at the trial it was revealed that what the Trust Deed described as 42 acres of land was actually $89\frac{1}{4}$ acres" (a difference of $47\frac{1}{4}$). In fact the extent of the surplus land was 28 acres, as follows :-

p. 40 11. 25-28

Parcel A on Exhibit B	55 acres
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<u>Less:</u> awarded to the Appellant by the Adjudication Officer	2
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awarded to the Appellant by the Court of Appeal	<u>25</u> <u>27</u> acres
	<u>28</u> acres

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This may be reconciled with the surplus of $37\frac{1}{4}$ acres which arose under the decision of the Adjudication Officer as follows :-

p. 32

Discrepancy as per Adjudication Officer	$37\frac{1}{4}$ acres
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<u>Add</u> additional land awarded to Appellant	<u>$15\frac{3}{4}$</u> acres
	53

<u>Less</u> land awarded to Appellant by Court of Appeal	<u>25</u> <u>28</u> acres
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Record

The surplus in fact arose because the original Estate which Joseph Skelton had actually owned either in his own right or as Trustee had actually contained $91\frac{1}{4}$ acres (not $89\frac{1}{4}$ acres - see Paragraph 10(3) above) but was wrongly described in the Trust Deed as containing 56 acres (not 42 acres). This discrepancy of $35\frac{1}{4}$ acres may be reconciled with the above figure of 28 acres as follows :-

Original extent of surplus land		$35\frac{1}{4}$ acres	10
<u>Less</u> Land sold out of the family	2		
land occupied by Pickering	2		
surplus land enclosed (see Para 7(6) above)	$3\frac{1}{4}$	$7\frac{1}{4}$	
		<u>28 acres</u>	

p. 57

(2) The principle on which the Court of Appeal disposed of the surplus land is not expressly stated, but it appears to be on the basis of the gift over in the Trust Deed; so that, on the footing that the word "issue" in the Trust Deed meant "lawful issue", the Court of Appeal were intending to exclude the Appellant from participation in the surplus. It is respectfully submitted that the Court of Appeal were in error in treating the surplus land as disposed of by the gift over and not by the original gift; it is plain from the terms of the Trust Deed that the whole of the land thereby acquired by Joseph Skelton was intended to be disposed of by the original division into seven shares. It is submitted therefore that the approach of the Adjudication Officer was in principle correct, that the surplus land should be dealt with by a proportionate interest in the land included in each of the seven shares, and that the Appellant is entitled to participate in the division of the surplus land, not as "issue" of the original beneficiaries, but as express assignee of four of the shares. On this footing the Appellant would be entitled to $\frac{25}{42} \times 28 = 16\frac{2}{3}$ acres of the surplus land. 40

18. It is clear from the judgment of the Court of Appeal that no consideration was given to the Appellant's contention, which he had expressly raised as a ground of appeal against the Decision of the Adjudication Officer, that he had acquired all the remaining lands contained in Parcel A on Exhibit B, and which he had not acquired by gift or purchase, and which comprised 28 acres, by adverse possession. The Court of Appeal appear to have overlooked the fact that the only reason given by the Adjudication Officer for rejecting the Appellant's claim, viz: that as a Trustee he could not rely upon the relevant statutory provisions, had been expressly rejected by themselves.

p. 38 11.1-9

p. 57

19. The Adjudication Officer described the Appellant as an impressive witness. The evidence before the Adjudication Officer established that, after defined portions of Fish Bay Farm had been allocated to four of the beneficiaries by Joseph Skelton, those persons took possession of and fenced in their respective allotments, and thereafter remained in exclusive possession thereof; that neither Richard Hogarth Maduro (Senior) nor John James Maduro ever occupied any of the land allocated to them; that during Joseph Skelton's lifetime Claudius Waldemar Skelton was "in charge" of the rest of the estate and that after he "gave up work" in 1949 or thereabouts the Appellant "took over"; and that no one except Claudius Waldemar Skelton and the Appellant, and after the death of Joseph Skelton the Appellant, had ever been in occupation of Parcel A.

p. 18 11.16-18
28-29; p. 27
11. 9-10

p. 15 1.22;
p. 16 1.40;
p. 19 11.11-15;
p. 27 11.26-28

p. 24 11.37-39
p. 26 1.16

20. The evidence adduced before the Adjudication Officer showed that for more than 20 years before the Claims were made the Appellant exercised full rights of ownership on Parcel A, doing (inter alia) the following :-

40 (1) On or about 1950 the Appellant commenced quarrying operations on the western portion of Parcel A near the land allocated to Richard Hogarth Maduro (Senior), and started crushing stones quarried on the said land. These activities have continued from 1950 up to the present time.

Record

p. 26 11.12-15,
29-30.

(2) The Appellant pastured cattle on Parcel A.

p. 19 11.43-47

(3) In 1950 the Appellant obtained a Court Order against the son and nephew of James Skelton for trespassing on the "Harriette" pasture, a part of Parcel A.

pp. 83-84
p. 85

p. 57

(4) On the 25th September 1956 the Appellant executed a Mortgage in favour of The Government of the Virgin Islands of 50 acres of land at Fish Bay Farm to secure a loan of U.S. \$500. The lands mortgaged are delineated on a plan attached to the said Mortgage and are described as containing 50 acres more or less and being bounded on the west by lands of Richard Maduro. The Mortgage is Exhibit DD and the plan attached to the Mortgage is Exhibit EE. A comparison of this plan with Exhibit B will show that the land mortgaged by the Appellant are more or less identical with the land described in Exhibit B as Parcel A (and containing 55 acres).

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(5) Between the 28th February 1968 and the 28th December 1968 the Appellant gave permission for the erection of power lines across Parcel A. The wayleave officer who negotiated this was Conrad Maduro, one of the Respondents.

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pp. 75-76

p. 57

(6) On the 10th March 1969 the Appellant granted a Lease for five years to one Geoffrey A. Sharp of 15,625 square feet of land at Fish Bay described in the Lease as being bounded on the south by the public road and on the west by a ghaut and on the north and east by other lands of the Appellant. This Lease is Exhibit Y and is recorded in the Registry of Deeds as No. 145 of 1969. This is one of the lots shown on Exhibit B as "leased by Ellis Skelton".

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(7) On the 17th June 1970 the Appellant granted a Lease for 5 years to one Martin Jerome Vieira of 13,125 square feet of land at Fish Bay described in the Lease as

being bounded on the south by the public road and on the west, north and east by other lands of the Appellant. This Lease is Exhibit AA and is recorded in the Registry of Deeds as No. 526 of 1970. This is the other of the lots shown on Exhibit B as "leased by Ellis Skelton".

p. 79

p. 57

10 21. Having regard to the foregoing it is respectfully submitted that the whole of Parcel A, as well as Parcel B, should be recorded in the name of the Appellant as absolute owner.

22. The Appellant therefore respectfully submits that the decision of the Court of Appeal was erroneous insofar as it awarded $37\frac{1}{4}$ acres of Parcel A to any persons other than the Appellant, and that these Consolidated Appeals should be allowed with costs, for the following, among other

R E A S O N S

1. BECAUSE the area of surplus land in question was in fact 28 acres and not $37\frac{1}{4}$ acres.
- 20 2. BECAUSE the entire area of land subject to the Trust Deed was divided between the seven persons named as beneficiaries in the Trust Deed and any surplus land ought to have been attributed to those seven persons in the same proportions.
3. BECAUSE the Appellant as the express assignee of four of those seven persons became entitled to $\frac{25}{42} \times 28 = 16\frac{2}{3}$ acres of surplus land.
- 30 4. BECAUSE the evidence showed that the Appellant had been in open exclusive and undisturbed possession of the whole of Parcel A for over 20 years without acknowledging the claim of any other person.
5. BECAUSE under Section 6(3) of the Limitation Act (Cap. 44) of the Laws of The Virgin Islands, the claims of the Respondents are not maintainable in the light of the evidence of adverse possession on the part of the Appellant for upwards of 12 years.
- 40 6. BECAUSE under Section 16(1)(a)(i) of the Land Adjudication Ordinance 1970 (No. 5 of 1970) of the Laws of The Virgin Islands, after open and peaceful possession of land by a person without

Record

interruption for 20 years, the recording of such person as absolute owner of the said land is required.

P. J. MILLETT Q. C.

L. W. BARKER.

Nos. 3 and 4 of 1979

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF THE
WEST INDIES ASSOCIATED STATES
SUPREME COURT

BETWEEN :

No. 3 of 1979

ELLIS SKELTON

Appellant

- and -

RICHARD HOGARTH MADURO
(Junior) and 2 OTHERS
(Administrators of the Estate
of Richard Hogarth Maduro
(Senior))

Respondents

AND BETWEEN:

No. 4 of 1979

ELLIS SKELTON

Appellant

- and -

RICHARD HOGARTH MADURO
(Junior) and 2 OTHERS
(Administrators of the Estate
of Richard Hogarth Maduro
(Senior)) and OTHERS

Respondents

(CONSOLIDATED)

CASE FOR THE APPELLANT

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