Hilary Term
[2026] UKPC 6
Privy Council Appeal No 0054 of 2024

JUDGMENT

Prema Wheatley and 6 others (Respondents) *v* Vashti Ramlal and 2 others (Appellants) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Reed
Lord Briggs
Lord Hamblen
Lord Leggatt
Lady Rose

JUDGMENT GIVEN ON
23 February 2026

Heard on 9 December 2025

Appellant
Anand Ramlogan SC
Daniel Goldblatt
Jared Jagroo
(Instructed by Freedom Law Chambers)

Respondent
Anand Beharrylal KC
Kandace Bharath-Nahous
(Instructed by Kandace Bharath-Nahous and Co (Trinidad))

Intervener
Kate Temple-Mabe
(Instructed by Kent Samlal & Associates)

LORD BRIGGS:

Introduction

1. This unfortunate dispute between the twelve children of the late Raghoonanan Gookol ("the Deceased") over a 4.75 acre plot of mainly swampy undeveloped land in Trinidad ("the Land") comes to the Board by way of an appeal (as of right) from the order of the Court of Appeal of Trinidad and Tobago (Bereaux, Rajkumar and Wilson JJA) made on 8 December 2023. By a majority, the Court of Appeal allowed an appeal from the order of the trial judge Margaret Mohammed J ("the Judge"), who had dismissed a claim in trespass over the Land by nine of the Deceased's children against their sister Vashti Ramlal ("Vashti"), her husband Omar and their son Ravi, and declared on their counterclaim that Vashti was the owner of a part of the Land, generally known in the family as the "Land on the Hill". The Court of Appeal set aside that declaration and ordered that a new house, by then nearly completed on the Land on the Hill by Ravi ("the New House"), be demolished.

2. The Deceased had died in July 2006 and by his last will ("the Will") made in December 1995 had devised the Land in a single plot to all his twelve children in equal shares, subject to a life interest in favour of his wife Dora, who died in August 2013. The Deceased appointed his daughter Chandra as sole executrix but, although she obtained probate of the Will in January 2013, the Land remains, even now, vested at law in Chandra as part of the unadministered estate of the Deceased. The Judge declared that Vashti was the owner of the Land on the Hill (now known to be a little less than 1/12 in area of the Land as whole) mainly because she accepted the oral evidence from Vashti that the Deceased had given or promised it to her as her share of the Land at the time of her marriage in December 1982, and the oral evidence of Chandra that the Deceased had, at the time he made the Will, told her to ensure, as executrix, that Vashti received the Land on the Hill as her share of the Land. In so doing the Judge preferred the evidence of Vashti and Chandra to that of other witnesses, in a case in which, in her view, the few surviving documents were less than conclusive.

3. The ownership of the Land became a matter of family dispute because Vashti's siblings (other than Chandra) became concerned that Vashti and her own family were, by their use of the Land on the Hill, and in particular by Ravi starting to build the New House on it, arrogating to themselves more (in both area and value) than Vashti's fair 1/12 share of the Land as a whole, and because they did not believe that the Land on the Hill had ever been promised, still less given, to Vashti by the Deceased. Nine of the Deceased's children ("the Claimants") therefore issued a claim against Vashti, Omar and Ravi ("the Defendants") in November 2016, seeking damages for trespass, the demolition of the New House, and the removal of fencing around, and the Defendants' belongings on, the Land on the Hill. As already noted, the Defendants counterclaimed for a declaration that Vashti was the owner of the Land on the Hill, as her share of the Land.

4. Neither the Claimants nor the Defendants, nor the Judge, sought to join Chandra as a party to the proceedings, although she gave evidence broadly supportive of the Defendants' case, and stated that as executrix she had authorised the conduct of the Defendants upon the Land of which the Claimants complained. There was a lengthy legal debate at trial as to whether the Claimants, as mere beneficiaries in the unadministered estate of the Deceased, had locus standi to claim against the Defendants in trespass. The Judge resolved that dispute in the Claimants' favour, and this was not appealed. But the trespass claim was dismissed because the Judge found that Vashti was entitled to the Land on the Hill.

5. In the Court of Appeal the majority (Bereaux and Wilson JJA) held that the Judge's finding on the evidence that the Deceased had given or promised Vashti the Land on the Hill as her share in the Land, or encouraged her to think it was hers, could not stand. This was mainly because, in their view, the Judge had ignored the fact that the terms of the Will were flatly inconsistent with such a finding. Nonetheless they upheld the dismissal of the claim in trespass. Although the majority gave no reasons for this, the Board infers that they agreed with the view of Rajkumar JA (dissenting, but not on this point) that the conduct of the defendants complained of had been authorised initially by the Deceased and then by Chandra as executrix. They dismissed the Defendants' counterclaim for a declaration that Vashti was the owner of the Land on the Hill on the basis that, there having been no conveyance to her of the legal estate, she could only succeed in equity, by the successful assertion of a proprietary estoppel, but that such a claim failed because she had not been promised the Land on the Hill or encouraged to believe it was hers, nor in any event had she demonstrated the requisite detriment to give rise to an equity in her favour. After giving the parties time to make written submissions as to the terms of the order to be made, the Court of Appeal dismissed both the claim and the counterclaim, but ordered that the New House (which had then been almost completed) should be demolished.

6. Before the Board the Claimants (now as respondents to the appeal) sensibly made no attempt to resurrect their claim in trespass. They merely supported the dismissal of the counterclaim and the order for the demolition of the New House, the execution of which had been stayed pending this appeal to the Board. Chandra has now been joined as an intervener so that the legal owner of the Land is now before the court, as she should have been from the outset. She broadly supported the fulfilment of what she believed to have been her father's wish that the Land on the Hill should be Vashti's share of the Land. For their part the Defendants (now as appellants) say (i) that the Court of Appeal had no business disturbing the Judge's findings of fact, which included a finding the Land on the Hill had been promised to Vashti; (ii) that the facts pleaded and found disclosed a sufficient case of proprietary estoppel to justify a declaration that she was its beneficial owner in equity; and (iii) that in any event the order for the demolition of the New House should never have been made, not least since none of the parties before the Court of Appeal had even asked for it. Those are therefore the three issues for the Board to decide.

The role of the appellate court in relation to findings of fact by the trial judge

7. There is a wealth of reported authority, both in Trinidad & Tobago and in other common law jurisdictions, laying down the nature of, and constraints inherent in, an appellate court's jurisdiction to depart from the findings of fact made by the trial judge who has heard and reviewed the evidence. This appeal does not turn upon a fine examination of those principles, which were largely agreed by counsel before the Board. No useful purpose would be served by a yet further attempt to distil them. They are fully and fairly summarised by Bereaux JA, giving the judgment of the majority in the Court of Appeal, at paras 25 to 29 of his judgment. In bare outline:

> (i) The trial is the main fact-finding event, at which the judge has the twin advantages over the appellate court of having seen and heard the oral evidence and having been immersed in the whole of the facts and their context for a much longer time.
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> (ii) The appellate court should not reverse the trial judge on the facts merely because it disagrees, however strongly, with the judge's findings. There must be shown to have been some clear mistake in the judge's evaluation of the evidence which is sufficiently material to undermine his or her conclusions, or the conclusion must be shown to be one which no reasonable judge could have reached. This is what is meant by the condition that the judge must be shown to have been 'clearly wrong' before the appellate court can intervene.
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> (iii) The appellate court should be wary of treating the judge's judgment as a full and complete statement of every aspect of his or her reasoning, and should assume, unless the contrary is clearly shown, that the judge has taken the whole of the evidence into account, even if not every part of it is referred to in the judgment.

8. For a recent summary of those principles in an appeal from Trinidad & Tobago see *Christo Gift v Rowley* [2025] UKPC 37, at paras 1-3, citing from *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48 per Lewison LJ at para 2.

The Factual Background

9. The Land was acquired (rather than inherited) by the Deceased during his lifetime. It consisted of a 4.75 acre plot of undeveloped land without internal subdivision. Part of it was swampy, part consisted of a watercourse serving neighbouring land and part, including the Land on the Hill, was given over to agriculture, carried on by 1982 personally by the Deceased and his wife Dora. They did not at any time live there, but the Deceased had built a simple timber building on the Land on the Hill in which he and his

wife sheltered and rested during the day while working on the agricultural land and occasionally stayed overnight. This was known in the family as the Garden House, the House on the Hill or the Chattel House, so named because it was not affixed to the land, and was easily capable of being dismantled and moved elsewhere.

10. Vashti was the ninth of the Deceased and Dora's twelve children. By the time of her wedding in December 1982 four or five of her siblings had left Trinidad to pursue their fortunes overseas. By 1990 only she and her brother, the First Claimant known as Hollis, remained in Trinidad. It is common ground that upon her marriage she and her husband Omar were invited by the Deceased to, and did, take over the Chattel House to use it as their matrimonial home. It was at this time, just before the marriage, that Vashti said that her father had told her that he would give her the Land on the Hill (on which the Chattel House stood) as her share of the Land. Vashti and Omar brought up four children there, including their son Ravi, the third defendant.

11. The Deceased and Dora did not give up farming the Land, including the Land on the Hill, in 1982. Rather they continued their farming together until Dora became unwell in about 1995, leaving the Deceased still farming there on a smaller scale until he became too unwell to continue, in about 2000. During that time Vashti says that she assisted her parents with their farming and cooked some of their meals. Her parents continued to use the Chattel House during the day for rest and shelter, alongside Vashti and her family.

12. By 1990 Hollis had begun to construct his own house on the Land, adjacent to the Land on the Hill. There is an issue which neither the Judge nor the Board has to decide whether he did this with his father's express invitation or permission, but the position on the ground by 1995, when the Deceased made his Will, was that both Vashti and Hollis and their respective families were living in modest houses on different parts of the Land, while the remainder of his children had left Trinidad.

13. The Will is a very short document, but plainly professionally prepared. Dated 27 December 1995, it has three un-numbered clauses. By the first, the Deceased appointed Chandra (by then living in New York) as his sole executrix. By the second, he gave the Land (described by its registered title) to Dora for life and thereafter to his twelve children (naming each of them) "in equal shares absolutely". By the third he gave the residue of his estate (which included his home in Debe Main Road, Trinidad) to Dora and Chandra, again in equal shares absolutely.

14. It was at the time of the making of his Will that Chandra in her evidence describes the Deceased as instructing her (during a visit by her to Trinidad) to make sure as executrix that Vashti should get the Land on the Hill as her share of the Land, and giving a similar instruction in relation to Hollis getting as his share of the Land the ground on which he had built his house.

15. Vashti and her family, apart from Ravi, left the Chattel House to go and live with (and care for) her parents at their house in Debe Main Road in 2004, leaving Ravi in occupation of the Chattel House. The Deceased died on 30 July 2006 and Dora died in August 2013. By then Chandra had obtained probate of her father's estate on 4 January 2013, thereby becoming, as she has since remained, vested with legal title to the Land, including the Land on the Hill.

16. The Chattel House having in the meantime deteriorated, Ravi demolished it in February 2016 and began the construction of the New House on the same spot within the Land on the Hill. Chandra says that this was happening with her consent, but this appears to have been the *casus belli* leading to the subsequent litigation, as appears from this passage from an email in March 2016 from Vindra (who became the third claimant) to attorneys acting in connection with the administration of the estate:

> "It has come to our attention that a building is presently being erected in an area that includes the house formerly occupied by Vashti Ramlal. Vashti Ramlal is one of the beneficiaries of the Raghoonanan Gokool estate, and the building is being erected by Ravi Ramlal, son of Vashti Ramlal.
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> Our concern is that this building will infringe into areas that will become the property of other beneficiaries, and therefore we would like the surveying process to be completed before any building is erected on the property."

Should the Court of Appeal have reversed the Judge on the facts?

17. The Judge heard oral evidence from Vashti and Chandra, and also from Hollis, his brother Krishna and from Dora's elderly brother Gopaul Ramlatchan, all of whom were cross-examined. The principal evidential issue between them was, as the Judge explained, whether the Land on the Hill had been given or promised by the Deceased to Vashti as her share of the Land, as she and Chandra asserted, or whether the use of the Chattel House and the Land on the Hill immediately around it had just been afforded to Vashti and her family on a temporary licence, which terminated in 2004 when they left to live with and look after the Deceased and Dora in their declining years, at Debe Main Road.

18. There was some ambiguity in the pleadings and in the evidence of the Defendants and Chandra about whether Vashti was asserting that she had simply been given the Land on the Hill outright in 1982 upon her marriage, or whether her case was rather that it had been promised to her as her share of the Land after her parents died, and she had been allowed her to use it and the Chattel House in the meantime. Although this ambiguity was not dispelled by the Judge, who used the language of gift or 'gift as her share' throughout

her judgment, as Mr Beharrylal KC emphasised in his submissions to the Board, the better view is that the "gift" was prospective and was intended to result in the Land on the Hill passing to Vashti as her share in the Land when her parents died. In other words, it amounted to a promise. It is the better view because it better accords with the uncontentious facts, in particular that the Deceased and Dora continued to farm on the Land, including the Land on the Hill, until ill-health forced them to give it up in and after 1995, as described above. As will appear, it is the only way in which the Deceased could have thought he had the whole of the Land (including the Land on the Hill) to give away in his Will, made in 1995.

19. The only documents which had any significant bearing on the issue which the Judge had to decide were the Will and two emails written by or on behalf of the Claimants when the matter started to become contentious, the first in July 2014 and the second (quoted in part above) in March 2016. Both of these appeared to the Judge to acknowledge that Vashti had been given or promised a share of some part of the Land on the Hill as her share of the Land. The 2014 email referred to "Vashti Ramlal's property" and expressed concern that recent planting by Omar might extend her boundary line.

20. The judge preferred, with reasons given, the evidence of Vashti and Chandra to that of the other live witnesses, who she thought had in certain respects made significant admissions in cross examination. Nothing turns on the detail of her analysis of the oral evidence.

21. As for the Will, she said, at para 85:

> "Secondly, the Claimants' reliance on the Will of the Deceased does not assist them. In the Will the Deceased gave the subject property to all the 12 children including the First Defendant. In my opinion, the Will is a document, which was consistent with the First Defendant having the land on the hill as her share since it did not exclude her from getting a share of the subject property."

For clarity the Judge's expression "the subject property" is what the Board has labelled "the Land".

22. In the view of the majority in the Court of Appeal this observation of the Judge (that the Will was consistent with Vashti having the Land on the Hill as her share) was such an error that it wholly undermined her assessment of the evidence and indeed required the Court of Appeal to come to the contrary conclusion, namely that there had been no promise of the Land on the Hill to Vashti. It was described as being "patently inconsistent with the alleged representation" (para 31) and as "strong documentary

evidence that no promise was given, nor gift made, in respect of the land" (para 32). Further no cogent evidence was produced to overcome the effect of the Will (para 32). The Court of Appeal regarded both Vashti's and Chandra's evidence as "self-serving". The Judge was "wrong to find that a promise existed…" (para 36).

23. Rajkumar JA, dissenting, agreed with the Judge that the Will was not inconsistent with Vashti receiving a 1/12 share in the Land after her parents' death, or with the identity of that eventual share (the Land on the Hill) having previously been promised (but not conveyed) to her by the Deceased, nor with her having been allowed into occupation of it by the Deceased during his lifetime (para 128).

24. The Board's view is that, while there was an inconsistency in legal effect between the terms of the Will and a promise by the Deceased that Vashti would receive the Land on the Hill as her share of the Land after her parents' death, there was by no means such an inconsistency in fact as to require the Judge to reject the clear and (in her view reliable) evidence of Vashti and Chandra that such a promise had indeed been made.

25. A devise of land to a number of persons in equal shares gives each an undivided equal share in the whole. It does not confer sole ownership of any part of the land upon any one of the beneficiaries. Such an outcome would require either the agreement of all the beneficiaries or, in default, the implementation of a partition by the court, which would not of itself ensure that the part of the land promised to one beneficiary as her share by the testator would in fact be allocated to her upon such a partition. Nor for the same reason would the communication of such an instruction by the testator to his executrix, of itself, give effect to that promise.

26. But the fact that, according to the evidence of Chandra (wrongly described by the majority in the Court of Appeal as "self-serving"), on the very day he made the Will, the Deceased gave exactly that instruction to her as executrix, namely that Vashti should receive the Land on the Hill as her share, demonstrates that the Will is not so inconsistent with the deceased's original promise to Vashti as calling for the evidence of Vashti and Chandra to be rejected. In short, the Deceased appears to have assumed that the combined effect of the terms of the Will and his instruction to Chandra would be effective to fulfil his earlier promise to Vashti. The fact that his assumption was wrong does not mean that he did not make it. The Land on the Hill has turned out (from a survey provided after judgment in the Court of Appeal) to be a little less in area than 1/12 of the Land as a whole. Although the fact that it may well be worth more than 1/12 in value (even without the New House upon it) may be an additional obstacle to the fulfilment of the Deceased's promise, there is nothing fanciful in the Deceased thinking that it would amount to a fair share of the Land to be promised to Vashti.

27. The Court of Appeal made further criticisms of the Judge's analysis, for example in her evaluation of the two emails, and Mr Beharrylal made many more in his submissions to the Board. But none of them, singly or together, come near to showing that the Judge's assessment of the facts was clearly wrong. In the Board's view her conclusion that the Deceased promised Vashti the Land on the Hill as her share of the Land upon her parents' death is one with which the Court of Appeal ought not to have interfered.

Proprietary Estoppel

28. The Court of Appeal was plainly right to conclude that the combination of the Deceased's promise to Vashti, his instruction to Chandra and the terms of the Will was insufficient in law or in equity thereby to effect either an outright gift of the Land on the Hill to Vashti as sole beneficial owner at the time the promise was made, or a special bequest of that land to her under the Will. That much is not in dispute. It was a clear example of what equity lawyers call an imperfect gift. Equity does not, without more, perfect an imperfect gift. The Board also considers that the Court of Appeal was right to conclude that the only type of equity which might conceivably have come to Vashti's rescue was proprietary estoppel. The Judge had offered no legal explanation of how the facts which she had found led to the conclusion that Vashti was entitled to the Land on the Hill. But the Court of Appeal rather generously considered that the Judge might have had estoppel in mind, even though it had not been expressly pleaded, or mentioned in her judgment. So they went on to consider whether a proprietary estoppel might assist Vashti in her counterclaim.

29. The majority found (wrongly in the Board's view for the reasons already given) that no sufficient promise or assurance had been given by the Deceased. They further considered whether the requirements of detrimental reliance had been established on the facts, and concluded that they had not. They identified the conduct of Vashti which might amount to detrimental reliance as follows (quoting from para 39):

> (i) "Payment of utility bills for the garden house. This cannot be relied on as detrimental reliance since by her own evidence Vashti asserts that ownership of the house was transferred to her husband.
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> (ii) Contributed toward building taxes but no corroborating evidence provided.
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> (iii) Paid arrears of taxes for the period 2005-2005. However, this was in respect of the whole of the subject lands and by her own admission her sister, one of the appellants, paid for two of those 4 years.

(iv) Contributing financially towards building vehicular access to the lands.

(v) Providing meals and care to her parents.

(vi) Substantial repairs and maintenance of the garden house.

(vii) Assisted in cultivating lands".

The Court's conclusion was that this conduct did not amount to sufficient detriment, particularly bearing in mind that Vashti and her family were occupying the Land on the Hill and the Chattel House rent-free.

30. In his able submissions for the Defendant appellants, Mr Daniel Goldblatt (standing in for his leader Mr Ramlogan SC who was unfortunately indisposed) argued with succinct reference to authority that none of the Court of Appeal's reasons for declining to find detrimental reliance were individually sufficient to deprive Vashti of a good case in proprietary estoppel. In the Board's view there is a more fundamental problem with such a case, advanced actively for the first time on appeal. It is that no such case was ever pleaded or pursued at trial.

31. While it is true that, as held in *Letang v Cooper* [1965] 1 QB 232, at 242-243 a cause of action may be defined as "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person", so that a cause of action in proprietary estoppel may perhaps be pleaded without using "proprietary" or "estoppel" or even "equity" expressly, nonetheless the essential requirement of a pleading is that the other side should know the case they have to meet at trial.

32. To raise an equity by way of proprietary estoppel requires the claimant to show not merely a promise followed by detriment, but that the detriment was incurred by the claimant in reliance upon the promise. Reliance is an essential factual ingredient in what makes it inequitable for the promisor not to perform his promise. In some cases, such as *Guest v Guest* [2022] UKSC 27; [2024] AC 833 reliance may be inferred by the claimant complying with a condition for the promise imposed by the promisor (even though falling short of contract). For example, the promise by father to son may be "if you work with me on this farm, you will inherit part of it from me when I die". The son then spends a large part of his life working for his father on the farm. In other cases reliance may be established by pleading facts which show that, but for the promise, the claimant would have acted in a manner more beneficial to her than she did: see eg *O'Neill v Holland* [2020] EWCA Civ 1583; [2021] 2 FLR 1016, para 61. But in the present case it is not suggested that the Deceased imposed any such condition. Nor is it pleaded, found or

proved in evidence that Vashti and Omar did what they then did to support her parents, or any of the other conduct summarised by the Court of Appeal, because of the Deceased's promise that Vashti would receive the Land on the Hill as her share of the Land. Nor was it pleaded, found or proved that, but for the promise, Vashti would not have given up better alternative opportunities in life, even though she may have acquired something of a Cinderella-like status among her siblings.

33. In their written case to the Board (at para 83) the Claimant respondents identified a raft of matters which they would have wished to raise and prove at trial if they had understood that they faced a claim for equitable relief based upon proprietary estoppel. Most went to the absence of reliant detriment, some to an alleged absence of clean hands, and some simply to a lack of any sufficient inequity to give rise to an entitlement to relief. For present purposes it matters not whether all or any of those matters would then have been made good. What makes it unfair for proprietary estoppel to be advanced for the first time on appeal is the absence of any proper opportunity for the respondents to raise those matters at all.

34. Accordingly, albeit for slightly different reasons, the Board agrees with the Court of Appeal that the Defendants did not establish a case for equitable relief in the form of an interest in the Land on the Hill, or indeed any relief at all.

Demolition of the New House

35. The commencement of the construction of the New House by Ravi was, as already noted, the casus belli for this litigation. The Claimants included a claim in their prayer for relief seeking an order that it be pulled down and removed by the Defendants. At the outset of the proceedings an interim injunction restraining further construction work on the New House until further order was made by consent. In May 2018 the Judge discharged this order following trial because she found (wrongly) that the New House was being constructed on land (the Land on the Hill) belonging to Vashti. Although she granted the Claimants permission to appeal in June 2018, no further restraint upon the construction of the New House was imposed pending appeal.

36. The Board was informed that construction of the New House then continued, so that it was nearly finished by the time of the handing down of judgment on the appeal in June 2023. By para 43 the majority concluded:

> "With respect to the appellants' claim, we are limited with respect to the orders we can make since the property has not yet been vested in the beneficiaries by way of assent. We will order that the parties file written submissions on the reliefs sought within one week of this decision."

It will be borne in mind that Chandra had still not, at this time, been joined as a party.

37. The Claimants delivered written submissions to the Court of Appeal on 28 September 2023. At paras 7 to 9 they summarised the fruits of further legal learning they had undertaken, responsive to the Court of Appeal's concern that there had still been no assent to the beneficiaries in relation to the Land. After references to *Williams, Mortimer & Sunnucks on Executors, Administrators and Probate*, 19th ed (2008) they continued, at para 10:

> "Based on the above learning, it seems that the Respondents' continued possession with the consent of Chandra, as the executrix, their actions in constructing the house is not illegal and only if Chandra had objected would their construction have been illegal. Until the property is transferred to the beneficiaries by assent, which remains outstanding, the rights of the beneficiaries are subsidiary to the rights of the executrix and only after assent do the beneficiaries truly become 'beneficiaries'.
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> In any event it is important to note that, at this time, in the spirit of compromise, none of the Appellants wish for the house constructed by the Third Respondent to be 'pulled down/removed' and their respective, ameliorated positions are stated below. What is desired at this juncture by the Appellants is equality in substance of their respective entitlement under the will."

38. It emerges from further reading of those written submissions first, that the fourth claimant Bissoondath had died, and secondly, that the remaining Claimants were not entirely agreed about the relief that should be sought from the Court of Appeal. Counsel for all the surviving Claimants therefore put forward two slightly different alternative options for relief. For present purposes what matters is what those two options had in common, rather than their modest differences. They both proposed that the New House should remain in place until the completion of a survey by a licensed surveyor, to be appointed by the Court in lieu of agreement, at the cost of the Defendants (respondents in the Court of Appeal) to define the area of the Defendants' occupation of the Land on the Hill to ensure that this is no more than the 1/12 share based upon Vashti's entitlement under the Will, the boundaries of which were then to be clearly defined. In the event that the area of occupation of the Defendants exceeded Vashti's 1/12 share, then what the submission described as "the excess structures" (which appear to be those physically extending beyond the 1/12 share thus established) were to be removed by Vashti.

39. By paragraph 14 of their written submissions on relief the Claimants pointed out that to give the Defendants the Land on the Hill as their 1/12 in area share of the Land would be unfair to the Claimants, because the Land on the Hill was more valuable than the remainder of the Land. This point was made by way of criticism of the order which had been proposed by Rajkumar JA in his dissenting judgment, but which nonetheless appears to have been used as something of a template for the two options which the Claimants proposed.

40. The survey referred to in those submissions was then undertaken by L&S Surveying Services Ltd. They reported, by reference to a measured plan, that the area of the Land on the Hill then occupied by Vashti and her family (including the whole of the footprint of the New House) was less in area than 1/12 of the area of the Land. Accordingly it appears that the Claimants' condition for the removal of any structures placed by the Defendants upon the Land on the Hill in their alternative proposed options for relief had not been satisfied. The surveyors do not appear to have been instructed to opine on the value of different parts of the Land. Their survey appears to have been entirely focussed upon area.

41. The Court of Appeal made its order for relief on 8 December 2023. They ordered "the concrete structure at the state of construction which commenced in June 2020" to be pulled down. It is common ground that this was intended to be a description of the whole of the New House in its by then nearly completed state. The order makes no reference to the parties' written submissions on relief (including the express abandonment of the claim that the construction of the New House had been unlawful), nor to the survey. No reasons were given for the order for the demolition of the New House. Demolition was stayed (along with the rest of the order) for six weeks, by which time the Court of Appeal had granted conditional leave to appeal to the Board. The New House has remained in its nearly completed state since then.

42. Before the Board both the Defendants and Chandra, now joined as an intervener and still the legal owner of the Land, submitted that the demolition order should be set aside. In a rather surprising contrast with the Claimants' stated position in their submissions to the Court of Appeal, Mr Beharrylal stated that his instructions were that the Claimants did want the New House pulled down. The Board was told that the New House had thus far cost in excess of T&T$400,000 to build.

43. The Board finds it difficult to understand how the Court of Appeal came to make a demolition order for which none of the parties were still contending. It remains a completely unexplained and, on the face of it, irrational exercise of the equitable discretion to grant injunctive relief. The demolition order made by the Court of Appeal should therefore be set aside, and the question what is to be done about the New House considered afresh by the Board, having regard to matters as they now stand.

44. It seems to the Board as a practical matter that, sooner or later, the Land is going to have to be either partitioned or sold. The prospect that it can sensibly be used, exploited or enjoyed by these 12 beneficiaries (or their estates when they have died) as equal co-owners in undivided shares is, having regard to the history of this litigation, little short of fanciful, and counsel did not suggest otherwise. There may be an intermediate outcome in which Vashti and Hollis (the beneficiaries living in Trinidad) might receive partitioned shares, while the remainder is sold and the proceeds distributed to the non-resident beneficiaries who, it may be thought, have little use for small portions of the Land as their own. We were told that the court has power to partition co-owned land in Trinidad without the consent of the beneficiaries, and that the court also has a statutory power of sale as an alternative to partition. We were also told that the implementation of a partition (by physical division of the Land into separate plots) would require planning permission.

45. The Board also considers that any conversion of undivided equal shares in the Land into one or more separate shares would only be fair, just and equitable (so as to be a proper exercise of the court's power in default of agreement) if regard is had to shares of equal value rather than just equal area. And it may be that difficulties in a partition designed so as to give Vashti only 1/12 of value by receiving a plot on the Land on the Hill big enough to accommodate the New House may mean that she could only receive such a plot by paying equality money to her siblings, if the Land on the Hill really is much more valuable than the rest of the Land.

46. None of these possible outcomes seem to the Board to be likely to be furthered in any way by the demolition of the New House, at least as matters stand at present. A sale of the whole of the Land would probably (although not certainly) be enhanced by the presence of the almost completed New House on the Land on the Hill. If some way can be found of accommodating the New House within a plot assigned to Vashti on a partition, with or without payment of equality money, then again the new House would be an embellishment of it. The New House was erected with the consent of Chandra as legal owner of the Land, and she does not consider that the due administration of this part of the Deceased's estate would be furthered by its demolition. Accordingly the Board does not consider it appropriate to order that the New House be pulled down.

47. Counsel for Chandra submitted that any negotiated partition or other resolution of the difficulties of co-ownership of the Land was very likely to be significantly affected by a clear understanding of the Deceased's wishes in that regard. And it may be that the same understanding would assist the court in dealing with an application (yet to be made) for a partition. To that end Mr Goldblatt submitted that, if persuaded that the Judge's findings about the Deceased's promise to Vashti should be re-instated, then the Board should do so by a formal declaration to that effect.

48. The Board does not agree. The equitable remedy of a declaration is, generally, for the resolution of matters of legal right or obligation. All that the Board could declare is

that the Deceased did promise that Vashti would receive the Land on the Hill as her share of the Land upon her parents' death, and that the deceased made an ineffectual attempt to bring that about by his instruction to that effect to Chandra as executrix, when he made his Will, in circumstances giving rise to no equity in Vashti's favour. The Board has already made sufficiently clear in this judgment that the Judge's finding that the promise had been made to Vashti by the Deceased should be upheld. It is not the proper subject-matter of a declaration.

49. The appeal against the order of the Court of Appeal will therefore be allowed, to the limited extent of removing, under "IT IS ALSO ORDERED" its paragraphs 1 and 2 (the declaration that the New House was illegally constructed and the injunction requiring its demolition), but otherwise dismissed. The injunction prohibiting further construction is continued until further order (as ordered by paragraph 3), but paragraph 5 is discharged, since it confusingly overlaps with paragraph 3. Paragraph 4 remains in force. Any other matters concerning the parties' interests in, and wishes in respect of, the Land (including the Land on the Hill and the New House) are remitted to a judge of the High Court of Trinidad and Tobago. The Board does not see fit to disturb the costs orders made by the Court of Appeal, but will receive written submissions as to the costs of this appeal.

Conclusion

50. In summary, the Board concludes: (i) that the Court of Appeal should not have overturned the Judge's finding of fact to the effect that the Deceased promised Vashti the Land on the Hill as her share of the Land upon her parents' death; (ii) that it is not open to the appellants to advance on appeal a case of proprietary estoppel and that the facts pleaded and found do not establish such a case; and (iii) that the order for the demolition of the New House should not have been made and that the Court of Appeal's order should be varied as set out in para 49 above.

51. Finally the Board firmly endorses the wise advice given by Rajkumar JA in the Court of Appeal, at para 132, that this dispute cries out for mediation.