BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No. 03233 of 2011

BETWEEN

PAULINE KING **CLAIMANT**

AND

ANTHONY WILTSHIRE
(Administrator of the Estate
of ANTHONY LEROY DANIEL,
Deceased) **DEFENDANT**

Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High Court.

2016: February 01
2018: July

Mr. Edmund King Q.C., in association with Ms. Nailah Robinson, Attorneys-at-Law for the Claimant.
Mr. John C. Collymore, Attorney-at-Law for the Defendant.

DECISION

Introduction

[1] This action began as a claim to recover possession of land. It was met

by the Defendant with his own claim to be entitled to purchase the land under the Tenantries Freehold Purchase Act ("Cap.239B"). Very late in the day the Defendant argued an additional ground, namely, that this Court has no jurisdiction to hear the matter.

Background

[2] The Claimant is the fee simple owner of land at Lodge Road, in the parish of Christ Church, by virtue of a conveyance dated the 15th day of August 1995. She rented a house-spot to Anthony Leroy Daniel ("the Deceased"), who had purchased the house on the house-spot from a previous tenant.

[3] The Deceased occupied the house-spot until he died intestate on 11 June 2008. The Defendant is the son of the Deceased. Sometime in 2013, the Defendant was granted letters of administration for the estate of the Deceased.

[4] The Defendant was in occupation of the house-spot and the house after his father's death. There is a dispute as to whether he occupied the property prior to his father's death. (See para. [10] infra).

[5] By a letter dated 30 October 2008, the Claimant made a formal demand for possession of the house-spot. The letter states as follows:

"TO: The Occupier of

Lot 7 Durants Development
Lodge Road
CHRIST CHURCH

DEMAND FOR POSSESSION

I, PAULINE KING, being entitled to the premises you now occupy without my licence or consent hereby require you forthwith to quit and deliver up possession of the premises.

On your failure to do so, I will initiate proceedings in the High Court to have you evicted.

Dated the 30th day of October 2008".

[6] The Defendant refused to move the house, or to leave the house-spot. The Claimant instituted these proceedings for recovery of possession on 25 February 2011. She acknowledge that the Deceased had been her tenant, but alleged that the Defendant's occupation was without her "knowledge, license or consent".

[7] The Claimant also filed an affidavit in support of her claim on the same day as the claim. She contended that the tenancy expired in June 2008 when the Deceased died. She further alleged that the sister of the Defendant requested time to bury the Deceased and remove the house. The Claimant says that some four months after she discovered that the house was still on the land, and that the Defendant was occupying the

house-spot without her license or consent.

[8] The Defendant responded with a Defence filed on 08 December 2011. In the Defence he pleaded that he lived with the Deceased for twenty years before his death. He continued to live at the house with the knowledge of the Claimant. He denied that there was any agreement to move the house. To the contrary, his sister made an offer to purchase the house which was constructed of wood and wall, and would result in substantial loss if moved.

[9] The Defence asserts a lawful right to occupy the house spot. And more fundamentally, he alleges that he served the Claimant with a notice to purchase the house spot under Cap.239B.

[10] In an Affidavit filed on 15 February 2012, the Claimant stated that the Defendant did not live with the Deceased prior to his death. She identified the Defendant's landlord and his place of residence. The Claimant also raised the question whether the Deceased's house was constructed of wood and wall, or all wood. She annexed photographs showing the outside of the house, and disagreed that the removal of the house would cause a significant diminution in its value.

[11] The Defendant and his sister filed respective witness statements on 02 May 2014. The Defendant deposed in his witness statement that:

"1. I am the son of Anthony Leroy Daniel, deceased who died in June 2008. I am also the Administrator and Personal Representative of my father's estate. I received the Letters of Administration sometime in 2013.

2. Jennifer Wiltshire is my sister by mother; but throughout the years she and my father got along very well. She used to accompany me when I visited him; people in the community thought she was his daughter. After my mother died in 1984, I lived between my father and his mother at Silver Hill, Christ Church.

3. In 1991, my father bought a two bed-room wood and wall house with toilet and bath at 7 Lodge Road, Christ Church from Victor Holder and me and my (sic) his mother to live with him (sic). The house spot is owned by [the Claimant]. She does not live in the area but would visit to collect the rent. There are about 10 houses on the land.

4. When my father was alive he told me that [he] had arranged with [the Claimant] to buy the spot. I do not know how far he had reached in buying it. After my father died in June 2008, my sister and I went to see [the Claimant] to find out how we could continue paying the rent.

5. Sometime in October 2008 my sister and I went back to [the Claimant]

> about paying the rent. She told us that we would have to build wall and she would sell us the spot.
>
> 6. I believe that during the 17 years with my father living on the spot he had acquired certain rights to stay on the land and those rights have been passed on to me. I do not think she should be allowed to refuse to sell me the house spot.
>
> 7. I thought that [the Claimant] would have allowed me to pay rent but she did not. I believe that [the Claimant] waited until the rent was used up and then told us about buying the spot. She later offered to sell the said house spot to my sister and I thought that she was serious.
>
> 8. Sometime after that my sister gave me a piece of paper which [the Claimant's] son gave to her stating that the land was for sale and it would cost in the region of $90,000.00 dollars.
>
> 9. A few days later I saw some documents in the house telling me to move the house from the house spot. I am really disappointed about hearing that I would have to move the house from the spot especially when it was there for so long".

[12] Jennifer Wiltshire's affidavit supports that of the Defendant in some respects. The only additional relevant information contained therein is

the allegation that the Deceased had paid his rent in advance up to the end of September 2008 (para.4).

The Court's Jurisdiction

[13] Before embarking on any analysis of the central facts and issues before the Court, it is incumbent upon this Court to treat with the jurisdictional point raised by counsel for the Defendant. Neither the Defence, nor the Affidavit filed by the Defendant, challenged the jurisdiction of this Court to entertain the claim.

[14] The question of jurisdiction was first raised by counsel in submissions filed on 30 December 2015. It was submitted that the Claimant should have utilized one of two avenues. The first avenue was an action in the Magistrate's Court to recover possession of a tenement under Section 35 of the Landlord a Tenant Act, ("Cap.230"). The other avenue was a referral to the Small Holdings Committee as required by Section 29(1) of Cap. 239B.

[15] On behalf of the Claimant, senior counsel contended that the Defence as drafted requires the Court to decide whether the Defendant "has an inheritable right in the Claimant's property by virtue of him being the Personal Representative of the deceased tenant who died intestate". (See para.8 of Submissions filed on 06 January 2016). According to

senior counsel, the issue raised the question of title to a hereditament. Therefore, a Magistrate had no jurisdiction in this matter, as that court's jurisdiction was excluded by Section 147 (2) of the Magistrate's Courts Act, Cap.116A.

[16] Neither side referred to the provisions of the Civil Procedure Rules, 2008 ("the CPR"). Rules 9.6 and 9.7 are instructive, and provide as follows:

> "9.6 A defendant who files an acknowledgement of service does not by doing so lose any right that he may have to dispute the court's jurisdiction, but he may lose any such right under rule 9.7 (5), subject to the court's powers on any subsequent application he may make.
>
> 9.7 (1) A defendant who wishes
>
> (a) to dispute the court's jurisdiction to try the claim; or
>
> (b) to argue that the court should not exercise its jurisdiction,
>
> may apply to the court for an order declaring that the court has no such jurisdiction or should not exercise any jurisdiction which it may have.
>
> (2) A defendant who wishes to make such an application must first file an acknowledgement of service.

> (3) An application under this rule must be made within the period for filing a defence.
>
> (4) An application under this rule must be supported by evidence on affidavit.
>
> (5) If the defendant
>
> (a) files an acknowledgment of service; and
>
> (b) does not make such an application within the period for filing a defence,
>
> he is treated as having accepted that the court has jurisdiction to try the claim".

[17] The Defendant filed his acknowledgment of service on 23 March 2011. The Defence was filed on 08 December 2011. There was no formal application or affidavit filed in support as required by the CPR. Indeed, the objection to jurisdiction was raised in submissions filed on behalf of the Defendant on 30 December, 2015. This was almost four years after the filing of the Defence. Furthermore, the Defendant never applied to extend the time for filing his defence, or to be permitted to file his objection to jurisdiction out of time. Therefore, this Court is constrained to treat the Defendant as having accepted the jurisdiction of the High Court to adjudicate this claim.

[18] Before leaving this matter of jurisdiction, the Court wishes to make a few observations. With respect to the recovery of possession under Section 35 of Cap.230, the Court noted earlier that the Defendant failed to file an affidavit in support of an application to contest jurisdiction. Such an affidavit would have placed before the Court evidence that the Claimant satisfied the conditions in Section 35(1).

[19] Section 35(1) provides that:

> "Where and as soon as
>
> (a) the term of interest of the tenant of any house, land, premises or any corporeal hereditament held by him at will or for any term not exceeding 7 years, either without being liable to the payment of any rent or at a rent not exceeding the rate of $10,000 a year, is ended or duly determined by a legal notice to quit or otherwise; and
>
> (b) the tenant or (if he does not actually occupy the premises or only part thereof) any person by whom the same or any part thereof is then actually occupied neglects or refuses to quit and deliver up possession of the premises, or such part thereof respectively,
>
> it shall be lawful for the landlord of the premises, or his agent, to cause the person so neglecting or refusing to quit and deliver up possession to be served (in the manner hereinafter mentioned) with a written notice in the form or to the effect set forth

> for that purpose in Form No.1 in the *Schedule*, signed by the landlord, or by his agent, of his intention to proceed to recover possession of the same under the authority of and according to the mode prescribed in this Act".

[20] There was no pleading or evidence that the Defendant was a tenant at will; that the term of the lease did not exceed 7 years; that the rent payment did not exceed $10,000 a year; and that the tenancy was determined by a legal notice to quit or otherwise. Quite frankly, there was nothing to persuade this Court that the Claimant could or should have utilized Section 35.

[21] With respect to the jurisdiction of a Magistrate's Court under Cap.239B, Section 29(1) of that Act states that:

> "(1) Any dispute relating to
>
> (a) the interest of a tenant or sub-tenant in, or right of a tenant or sub-tenant over, a lot;
>
> (b) the amount of compensation payable to a tenant; or
>
> (c) any matter arising under this Act
>
> shall be referred to an arbitrator who is the Small Holdings Committee established under [Cap.237] for the magisterial district in which the tenantry is situated".

[22] In addition, Section 19(3) of Cap.237 confirms that:

> "A [Small Claims] Committee shall have all such powers as are necessary to perform any functions assigned to the Committees pursuant to [Cap.239B], or any other enactment".

[23] There is no evidence that the Claimant was aware of any dispute relating to the interests or rights of a tenant or a sub-tenant. She never conceded in her pleadings that either the Deceased or the Defendant had purported to exercise an option to purchase under Cap.239B. Also, there was no documentary or other evidence to prove this alleged action on the part of the Defendant or the Deceased. Therefore, this matter only crystallized into a dispute when the Defence was filed.

[24] Although the Defendant asserted that he had given notice to purchase the house-spot, he offered no particulars of the basis on which he acquired the right to purchase. These particulars were encased in the submissions filed by counsel on his behalf.

[25] Had the Defendant followed the requirements of Rules 9.6 and 9.7 of the CPR, the Court would have treated squarely with the jurisdiction point. Interestingly, Section 31(a)(i) of Cap.239B vests the Supreme Court with jurisdiction to hear appeals from the Small Claims Committee. Therefore, it would have been possible for this matter to reach the High Court via the appeal route. Any potential additional

costs are saved at this stage if the High Court exercises jurisdiction in the matter.

[26] The Court also found a case, raising similar issues, that was entertained by the High Court. In **Harewood v. Brathwaite (1993) 47 WIR 67,** Waterman J considered an application for possession of land where the Defendant asserted a right to purchase the freehold under Cap.239B. The action was filed by the Plaintiff in 1991, approximately two years after Section 29(1) was repealed and replaced by the Tenantries Freehold Purchase (Amendment) Act, No.14 of 1989. (S.14 of the Amendment Act). However, no question of jurisdiction was raised by the Defendant in the **Harewood** case.

[27] Senior counsel for the Claimant responded to the jurisdictional challenge by invoking Section 147(2) of the Magistrate's Courts Act, Cap.116A. That section enacts that:

> "A magistrate's court shall not, except as in this Act provided, have jurisdiction to hear and determine any action….
>
> (b) in which the title to any heredita-ment….is in question;".

[28] While it is true that the Magistrate's Court Act prohibits magistrates from exercising jurisdiction in certain matters, Section 147 recognizes

that other provisions in the Act may override that prohibition. Section 151 of the said Act is also instructive. It says that:

> "A magistrate's court shall have jurisdiction to hear and determine any matter where any enactment expressly provides that a magistrate's court shall have jurisdiction".

[29] It follows that the excluded areas of jurisdiction may be conferred on magistrates by other provisions of that Act, or by express provision in other legislation.

The Legal Consequences of the Tenant's Death

[30] Counsel for the parties voluntarily proceeded on the basis that the affidavits and witness statements filed would constitute the evidence before the Court. There was no requirement by either side for the tender or cross-examination of witnesses. Any disputes of fact are to be resolved by the Court, insofar as they are relevant to the resolution of the matter or to the credibility of a deponent.

[31] The parties are agreed that an oral contract of tenancy existed between the Claimant and the Deceased at the time of his death. They also agree that the contract was regulated by Cap.237. The purpose of Cap.237 is to provide reasonable security of tenure for the tenants of small holdings. (See the Long Title to the Act). Certain terms of

tenure are implied into the contract, including the payment of rent (S.3 and Part II of First Schedule).

[32] There is no evidence as to when the Deceased paid rent or how much rent he paid. Submissions by counsel for a party are not evidence unless agreed or conceded by the other side. But rent was paid by the Deceased until he died. There is no claim for arrears of rent from estate of the Deceased. No rent was ever paid on behalf of the estate, and there is no claim against the Defendant for mesne profits.

[33] A tenancy regulated under Cap.237 may be terminated by notice from the landlord. The period of notice is usually six months (S.11(i)), but it may be reduced to three months (S.12(b)). No notice is required under certain circumstances, including:

> "….where the tenant parts with possession of, mortgages, assigns, sub-lets or otherwise alienates the …house-spot (except by will in favour of some member of his family) without the consent of the landlord previously obtained in writing". (S.12(a)(ii)).

[34] Counsel for the Defendant contends that the tenancy terminated at the death of the Deceased because there was no alienation of the house-spot by will in favour of a member of his family. In the absence of a will, the written consent of the landlord was an essential prerequisite to

the alienation of the house-spot. There was no written consent from the landlord for the Defendant to take possession of the house-spot.

[35] The Court is unable to agree with this reasoning, because it overlooks a number of factors. There is no evidence that the Deceased alienated the house-spot by a voluntary act of his own during his lifetime. When he died, the benefit of the lease vested in his personal representative by operation of law. The vesting is a conclusion of law and not an assignment within a clause in the lease restraining assignment. (See Halsbury's Laws of England, 4th ed. Vol. 17 at para. 1097).

[36] One of the implied terms in the tenancy was that the Deceased could only alienate the house-spot by will to a member of his family, or with the consent of the landlord. (S.3 and Part II 1(d) of the First Schedule). Alienation by operation of law does not constitute an assignment under this implied term.

[37] The Defendant did not become the administrator and personal representative of the estate of the Deceased until 2013, about five years after his father's death. However, the estate of the Deceased was never without a personal representative. Section 6 of the Succession Act, Cap. 249, mandates that:

> "Where a person dies intestate….his real and personal estate, until administration is granted in respect thereof, shall vest in the Public Trustee".

[38] From the date of his death to the appointment of the Defendant as administrator, the real and personal estate of the Deceased vested in the Public Trustee. Thereafter, it was vested in the Defendant. The Public Trustee became the Claimant's tenant when the Deceased passed away.

[39] At common law, a deceased tenant's personal representative takes the leasehold property as assignee. (See Halsbury's Laws of England, 4th ed. Reissue, Vol.27(1) at para.494). This principle is captured by the definition of "tenant" in Cap. 237 as:

> "…the holder of land under a contract of tenancy and includes the executors, administrators, assigns or other persons deriving title from a tenant".

[40] The tenancy did not cease with the passing of the Deceased. The leasehold interest in the house-spot devolved and vested in the Public Trustee. The essential question for the Court is whether the Claimant was entitled to terminate the tenancy with or without notice. In order to resolve this issue, the Court has to determine whether the Defendant is entitled to purchase the house-spot from the Claimant.

Were Rights Acquired Under Cap.239 B?

[41] A glaring feature of the Defendant's pleadings is the absence of specificity and exactitude. In other words, he did not condescend to particulars that stated clearly the basis of his response to the claim. That notwithstanding, senior counsel for the Claimant accepted that one of the issues is whether the Defendant has a legal claim to the house-spot as the personal representative of the Deceased. (See para. [15] supra).

[42] Paragraphs 5 and 9 of the Defence are instructive. There the Defendant pleaded that:

> "5. The Defendant denies that he occupied the house without the Claimant's knowledge, licence or consent. Alternatively, the Defendant states that he was living with his father for about twenty years before the death of his father and continued to do so afterwards and believes that this was within the knowledge of the Claimant.
> ….
>
> 9. The Defendant denies [that he remained and now remains on the premises as a trespasser] and states that he has a lawful right to occupy the premises. The Defendant states further that he has served the Claimant with a Form 1 under the Third Schedule of [Cap.239B] indicating his intention to

> purchase the freehold of the house-spot".

[43] These paragraphs allege occupation by virtue of the Claimant's knowledge, licence and consent; that the Defendant is not trespasser; that he has a lawful right to occupy the premises; and inferentially that the Defendant has a right under Cap.239B to purchase the freehold from the Claimant.

[44] There is no allegation in the Defence that the Deceased exercised any right to purchase the freehold. Indeed, the Defendant admits that he did not know how far the Deceased had reached in his efforts to buy the house-spot. (Para. 4 of Affidavit). And the affidavit of the Defendant's sister makes no mention of the Deceased having given the Claimant notice of his intention to purchase the house-spot.

[45] There is nothing that establishes an agreement for a private sale between the Claimant and the Deceased. And so the Court finds that there is no credible evidence before it on which to conclude that the Deceased purported to exercise a right to purchase the house-spot in accordance with Cap.239B.

[46] Senior counsel for the Claimant conceded that the Deceased:

> "…by virtue of…residing on the lot for 5 consecutive years immediately before his

> death would have been "a qualified tenant" within the meaning of [Cap.239B] had he not died…". (Para.16 of Submissions filed on 23 November 2015).

However, in earlier written submissions, junior counsel argued strenuously that the Deceased never became a qualified tenant. (Submissions filed 07 March 2014 at paras.13-22). And the oral submissions by junior counsel for the Claimant proceeded on the basis that the Deceased was not a qualified tenant.

[47] There are three issues for this Court to determine in relation to Cap.239B:

1. Was the Deceased a qualified tenant?
2. If the Deceased was a qualified tenant, did his right to purchase become a part of his estate?
3. Is the Defendant a qualified tenant in his own right?

Was the Deceased a Qualified Tenant?

[48] According to the Claimant, the Deceased took possession of the house-spot sometime in 1986. On the other hand, both the Defendant and his sister deposed in their affidavits that the Deceased moved on to the house-spot in 1991. (See para.[11] supra at clause 3). This 1991 date was never changed by supplemental affidavit. And the Claimant

offered no documentary evidence, such as a rent book, to support her statement that the tenancy commenced in 1986.

[49] Assuming that the Deceased became the tenant of the Claimant in 1986, at that time Cap.239B would have been in force from 01 November 1980 (Act 1980-53). The original legislation applied to any area of land that was subdivided into lots for letting as sites for chattel dwelling houses. (S.2 definition of "tenantry" in Act 1980-53). Land subdivided into a minimum of two lots for this purpose constituted a tenantry, but did not include land adjoining the foreshore.

[50] As a tenant on land with more than two lots, a condition of the tenancy was that the Deceased had a right, at his option, to purchase the freehold of his house-spot once be became a qualified tenant (S.4(1)). Again, assuming a tenancy that began in 1986, the Deceased would have become a qualified tenant in 1991 after living on the house-spot for five consecutive years (S.4(2) (b)(i)).

[51] In 1989, Cap.239B was amended to impose additional conditions on the ability of individuals to become qualified tenants. (Tenantries Freehold Purchase (Amendment) Act, 1989-14). The purpose and effect of the 1989 amendments was "to modify the right of qualified tenants residing on non-plantation tenantries of 5 lots or less to

purchase the lots of which they are tenants…". (S.2(1) of 1989-14). The Defendant deposed that there were about ten houses on the Claimant's land. (Para.3 of Affidavit filed on 15 Feb. 2012). The Claimant did not refute this assertion, therefore the Court finds that the Deceased's house-spot was part of a tenantry under the original act and also under the 1989 amending legislation.

[52] Notwithstanding the fact that the Deceased's house-spot remained a part of a tenantry, the Deceased was not yet a qualified tenant in 1989. He had lived on the house-spot for less than five consecutive years. The amending act does not appear to have affected individuals living on tenantries with more than five houses. Therefore, the Deceased became a qualified tenant sometime in 1991, again assuming a tenancy commencing in 1986. Had he moved on to the land in 1991, as contended by the Defendant and his sister, the Deceased would have become a qualified tenant in 1996.

[53] It is of little relevance whether the Deceased became a qualified tenant in 1989 of 1996. The Court has already found that there is insufficient evidence on which to conclude that the Deceased exercised his right to purchase the house-spot, or that he entered into a private treaty with the Claimant for the sale and purchase of the house-spot. (See para.

[45] supra). The question therefore becomes whether the right to purchase was transmitted to the estate of the Deceased.

Transmission of the Right to Purchase

[54] Section 4(1) of Cap.239B enacts that:

> "Notwithstanding any other law or any term or condition of a lease, contract or licence relating to a tenancy, it is a term or condition of every tenancy within a plantation tenantry or other tenantry that the tenant, as of right and at his option may, if he is a qualified tenant, purchase the freehold of the lot of which he is a tenant at a price to be determined…."

[55] This section created an implied term or condition in the contract of tenancy between the Deceased and the Claimant. The right of the Deceased to exercise an option to purchase the freehold of the house-spot, when he became a qualified tenant, was an implied term in the tenancy agreement.

[56] At common law, an option to purchase land gives the option holder the right to call upon the landowner to transfer the land to him, provided that the option holder complies with the option agreement. (See Martin Dray et al in "Barnsley's Land Options", 4th ed., at para.2-001). Such an option creates an immediate equitable interest in land, even before the option holder exercises it. (Woodfall: Landlord And

Tenant, 2011 Vol.1 at para.18:032, and text to fn.4). An option to purchase is also a choose in action.

[57] According to Barnsley, an option to purchase that is not personal to the grantee:

> "…can, as a piece of property, devolve upon the death of the option holder. It can thus be left by will or pass under the law relating to intestacy.
>
> If left by will, in the first place the option vests, directly upon death, in the deceased's executors… In the case of an intestacy, the option vests in the Public Trustee until the grant of administration. Thereafter, it is held by the personal representatives in trust". (Para.3-035; and Woodfall supra at para.18.037).

[58] On the other hand, an option that is personal to a grantee is not exercisable by his personal representatives. The grantee of a personal option to purchase cannot transfer the benefit to a third party. Whether or not an option to purchase is personal to the grantee is contingent upon the construction of the document that created the option. (Barnsley supra at paras.3-009 to 3-011).

[59] The option in this case was created by statute. Therefore, this Court must construe Cap.239B so as to determine whether the option to purchase, conferred by the statute, was intended to be restricted to the

qualified tenant, or whether the option was transmissible to the estate of a deceased qualified tenant.

[60] Cap. 239B does not speak directly to the question whether personal representatives or beneficiaries of a decreased qualified tenant may exercise an option to purchase that was vested in the qualified tenant prior to his death. Section 3 of Cap.239B is instructive. This section enacts that:

> "(1) The purpose of this Act is to establish by law a right for tenants of lots in tenantries who satisfy the requirements of this Act to purchase the freehold at a purchase price governed by considerations of public policy and the requirements of the *Constitution.*
>
> (2) This Act shall receive such fair, large and liberal construction and interpret-tation as will best ensure the attainment of its purposes".

[61] This Court is unable to apply a "large and liberal construction and interpretation" so as to discover a process of transmission of the option to purchase, if no such transmission was contemplated or expressed by Parliament. A perusal of the relevant debates in both Houses of Parliament reveals that this issue was never addressed. (See House of Assembly Debates for Tuesday 23 September 1980 at pages 4282-

4311, and Senate Debates for Wednesday 01 October 1980 at pages 1320-1354).

[61] The definition of "tenant" in Section 2 of Cap.239B does not expressly include executors, administrators, assigns or other persons deriving title from the tenant. It was open to Parliament to enact a definition similar to that in Cap.237. (See para. [39] supra). The definition utilized in Cap. 239B states that:-

> "tenant" means an individual who occupies a lot comprised in a tenantry pursuant to a tenancy, whether that tenancy exists by virtue of a lease, contract or licence and either at law or in equity".

[62] Even if it may be argued that the Defendant is a tenant by virtue of a tenancy that exists at law, Cap.237 does not provide for the Defendant to automatically become a qualified tenant because his predecessor in title was a qualified tenant. There is nothing in Cap.237 that permits the Defendant to exercise the option to purchase on the basis that the right to exercise the option had accrued to the Deceased. Therefore, this court cannot surmise that Parliament intended the option to purchase to devolve to the estate of a qualified tenant.

[63] The only individual recognized by Cap.239B, other than a tenant, is a sub-tenant. A sub-tenant of a tenant may become a qualified tenant in

his own right. (See S.4(3)). But, as with the tenant, the sub-tenant must satisfy the residency requirements before he is recognized as a qualified tenant.

[64] The statutory option created by Cap.239B is supported by other provisions relating to the preconditions for the exercise of the option, the time frame for completion of purchase by a qualified tenant, and the methodology for determining the price to be paid for the lot. Section 26 treats with certain legal implications of the statutory option to purchase. It is an "overriding interest within the meaning of section 31 of the *Land Registration Act"*. And there is no requirement for the option to be registered under the *Property Act*.

[65] In the absence of any definitive guidance from the legislation, this Court concludes that Parliament intended the option to purchase to be personal to the tenant. It follows that the right and option to purchase the freehold is not transmissible to the estate of a qualified tenant.

[66] The Court looked at the Leasehold Reform Act 1967 of England. This legislation provides that the personal representatives or members of the family of a deceased tenant may exercise the right to purchase. (See Halsbury's Laws of England, 4th ed., 2006 Reissue, Vol.27(3) at paras.1417-1418). The right must be exercised within a specific time.

This suggests to the Court that statutory options to purchase require additional statutory support for the transmission of the option to the estate of a deceased qualifying tenant.

[67] During the House of Assembly debates pertaining to Cap.239B, several legislators addressed the statutory antecedents to this revolutionary piece of legislation; from the emancipation proclamation in 1834; the repeal of the iniquitous Located Labourers legislation in the 1950's; and the evolving statutes to protect tenants, inclusive of Cap.237. Cap.239B was a further step to enfranchise tenants of small holdings across the island. It is for Parliament, and not the Court to give legislative expression to any policy decision to permit the right of a deceased qualified tenant to devolve to his estate.