

**IN THE CARIBBEAN COURT OF JUSTICE  
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS**

CCJ Appeal No. BBCV2016/007  
BB Magisterial Appeal No. 1 of 2014

**BETWEEN**

**EUGENE LEACOCK**

**APPELLANT**

**AND**

**LORNA GRIFFITH**

**RESPONDENT**

**Before The Right Honourable  
and the Honourables**

**Sir Dennis Byron, President  
Mr Justice Wit  
Mr Justice Hayton  
Mr Justice Anderson  
Mme Justice Rajnauth-Lee**

**Appearances**

Mr Benjamin Drakes for the Appellant  
Mr Emerson Graham for the Respondent

**REASONS FOR THE DECISION**

**of**

**The Right Honourable Sir Dennis Byron, President, and the Honourable Justices  
Wit, Hayton, Anderson and Rajnauth-Lee**

**Delivered by  
The Right Honourable Sir Dennis Byron  
on the 25<sup>th</sup> day of January, 2017**

## **Introduction**

[1] On 31<sup>st</sup> October, 2016, the Appellant filed an application for special leave to appeal, as a poor person against a judgment of the Court of Appeal of Barbados.

## **Preliminary Orders**

[2] The affidavit filed in support of the application provided evidence of compliance with the criteria to appeal as a poor person<sup>1</sup>, and the Respondent had no objection to an order being made. We hereby order that the Appellant be given leave to appeal as a poor person.

[3] This matter has been in the system for too long and we have decided to manage the case to facilitate a quick resolution. The order appealed against was made by the Magistrate in August 2013. The issues to be determined are simple. It is in the interests of justice, that the matter be brought to finality with expedition, and at one hearing. We obtained the consent of the parties to order that this application be treated as though it were the substantive hearing, and we so ordered.

## **Procedural History**

[4] On 19<sup>th</sup> June, 2013, the Respondent filed a complaint, for ejectment of the “chattel house” of the Appellant in Magisterial District “E”. The matter came on for hearing on 28<sup>th</sup> August, 2013. The Respondent was represented by counsel, Mr Graham, and the Appellant was unrepresented. The Magistrate, Her Worship Mrs. Cooke-Alleyne, issued the order for possession to be delivered on the 28<sup>th</sup> October, 2013. On 20<sup>th</sup> November, 2013, the Magistrate issued a warrant of ejectment. The Marshal reported to the Magistrate that the warrant was not enforceable because the house was attached to the land so as to be incapable of being removed without destroying the house. The Magistrate re-summoned the parties to appear, and appearances occurred on 14<sup>th</sup> January, 2014, 14<sup>th</sup> February, 2014 and 14<sup>th</sup> March, 2014. The Magistrate advised the Appellant to seek

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<sup>1</sup> See: Rule 10.17 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules, 2015

counsel. On 14<sup>th</sup> May, 2014, the Appellant appeared with counsel, Mr Drakes, who informed the Magistrate that he had obtained leave to appeal. The learned Magistrate ordered a stay of execution of her order.

[5] On 6<sup>th</sup> May, 2014, the Court of Appeal granted the Appellant leave to appeal. The court gave directions. Eventually, an amended Notice of Appeal was filed on 5<sup>th</sup> March, 2015. The matter was scheduled for hearing on 26<sup>th</sup> March, 2015 and the appeal was argued on that date. The judgment of the court was delivered, 18 months later, on 14<sup>th</sup> September, 2016, dismissing the appeal.

[6] On 31<sup>st</sup> October, 2016, the Notice for Special Leave to appeal was filed at the CCJ. On 14<sup>th</sup> December, 2016, after the case management process, the Court gave directions and set the matter for hearing on 23<sup>rd</sup> January, 2017.

[7] The matter was heard by telephone conferencing, dispensing the need for the parties to travel to the seat of the Court.

### **The Factual Background**

[8] The factual background is not in dispute and can be briefly summarised from the judgment of the Court of Appeal. The Appellant, Eugene Leacock, is the granddaughter of Gladys Archer, deceased. The Respondent, Lorna Griffith, Leacock's aunt, is the daughter of Gladys Archer, and is the executor of her "second will" dated 31<sup>st</sup> December, 2008. Under that will, the Appellant was bequeathed a "chattel house" on a plot of land at Broomfield in the parish of St. Lucy and the Respondent was bequeathed the plot of land on which the house stands. The will was probated on 28<sup>th</sup> June, 2012. Mr Graham, as attorney for the Respondent, by letter dated 26<sup>th</sup> July, 2012, requested that the Appellant vacate the land. The Appellant through her attorney, Mr Orville Durant, wrote to Mr Graham asserting her claim to ownership of the land based on the contents of the deceased's "first will". Mr Durant wrote Mr Graham informing him that the Appellant had occupied the dwelling house for over 30 years, had personally developed it and "it was not now a chattel house". On 31<sup>st</sup> October, 2012, the Respondent issued a notice to

quit and deliver up possession by 30<sup>th</sup> April, 2013. The Appellant did not vacate the premises.

[9] At the hearing before the Magistrate, no evidence was taken. Mr Graham submitted that the Respondent was “Seeking an order of ejectment in respect of a house spot. Ms. Griffith let the house spot to Eugene Leacock”. On enquiry from the Magistrate, the Appellant indicated that “she needed time”. In her reasons for decision, the Magistrate said that neither Mr Graham nor the Appellant gave any history of the dispute nor was she told of a will bestowing the house to the “tenant” and that her order was “in effect” a consent order. It was only after the Marshals visited the premises and reported to her that the house was not a chattel house, but rather consisted mainly of wall and she summoned the parties to re-appear, that the full particulars regarding the house were disclosed. After unsuccessfully recommending that the parties consider a compromise, the learned Magistrate advised that the Appellant appeal.

[10] The judgment of the Court of Appeal was delivered by Mason JA. The court examined in detail the rules governing the introduction of fresh evidence. This discussion arose because the Appellant sought to introduce evidence, additional to evidence in the court below, to support his submission that the Magistrate lacked jurisdiction to hear the case. The court after very lengthy discussion, concluded that the rules did not permit the introduction of fresh evidence. The court then went on to discuss the law relating to notices to quit. After another lengthy discussion, the court rejected all the Appellant’s submissions on this issue. Although the court in paragraphs [45]-[47] of its judgment recognized that there was a proscription with respect to the jurisdiction of the Magistrates’ Court preventing it from dealing with the recovery of land and rights of title to land, it concluded at paragraph [79] that it could find no reason to set aside the order of the Magistrate. It explained that “this determination does not, however, preclude the Appellant from seeking elsewhere consideration of her suggested rights to equitable title in the land”. The appeal was dismissed and the order of the Magistrate affirmed.

## **The Issues**

[11] In the appeal before this Court, the grounds of appeal, which are not necessary to set out in detail, were analysed in the submissions of counsel for the Appellant to raise eight issues; some of which it was contended, raised points of importance to the practice and procedure in the courts below. The starting point to our discussion must be to recall that the overriding objective, set out in Part 1.3 of our Rules, is “to ensure that the Court is accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged”. The interests of accessibility, fairness and efficiency would be best satisfied by bringing this dispute to a timely conclusion. We have actively managed the proceedings for a fair resolution in a timely manner.

[12] Part 11.3(4) of the Rules of Court provides, that the Court in deciding the appeal, shall not be confined to the grounds set forth by the Appellant once the party affected has had sufficient opportunity to respond to any ground on which the decision is based. This implies that the Court is not obliged to address every point raised by the parties to the appeal.

[13] We have concluded that this case would be determined by consideration of the main issues, making it unnecessary to embark on an assessment of any other issues. In this regard, the main issues are:

- a. the Jurisdiction of the Magistrate;
- b. the legal effect of any findings on that issue; and
- c. the effect of an unenforceable order for ejection.

## **Jurisdiction of the Magistrate**

[14] The lack of jurisdiction by a court over a matter is not a mere technicality. It is a substantive consideration that goes to the core of the case. If a court lacks jurisdiction, its judgment and orders are of no legal consequence. The jurisdiction of the Magistrate in this case is prescribed by section 147(2) of the Magistrate’s Court Act, Cap 116A. Jurisdiction cannot be conferred on a court by consent of the parties, and any waiver by

the parties cannot make up for the lack of jurisdiction<sup>2</sup>.

[15] Section 147(2) of the Magistrate's Court Act prescribes the following limitations:

- “(2) A Magistrate's Court shall not, except as in this Act provided, have jurisdiction to hear and determine any action -
- (a) For the recovery of land; or
  - (b) In which the title to any hereditament or to any franchise is in question; or
  - (c) ...
  - (d) ...; or
  - (e) In which the validity of any device, bequest or limitation under any will or settlement may be disputed.<sup>3</sup>”

[16] This is clear and unambiguous. The Magistrate does not have jurisdiction to hear and determine any action for the recovery of land. Translated to this case, since the house was substantially attached to the land the Magistrate had no jurisdiction to hear and determine the action which in effect was for the recovery of land. Additionally, there was a dispute as to the title of the property, as Mr Durant's letter contended that the Appellant had acquired an equitable interest in the land by her occupation for 30 years and her personal development of it to the state that it was no longer a chattel house. The Magistrate had no jurisdiction to hear and determine the action which required adjudication of the question of title. Further, since the Appellant was claiming under the first will, and the Respondent, under the second will, the Magistrate had no jurisdiction to determine the validity of the devises and bequests made under the wills of the deceased.

[17] Consideration of the rules of admitting fresh evidence is an unnecessary complication in this case. The Court of Appeal in describing the background to the case disclosed its finding that all three of the above exclusionary situations existed. The record of the Magistrate's Court revealed that this information was presented by the Marshals of the court, and counsel from the Bar table. Even the original order of the Magistrate was based solely on statements that the court accepted without the formality of taking evidence.

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<sup>2</sup> See: *R v Mackle* [2014] AC 678 at paragraph 50 in the judgment of Lord Kerr of Tonaghmore JSC; *Assanard & Sons (U) Ltd vs East African Records Ltd* (1959) EA 360

<sup>3</sup> Relevant sub-sections included.

[18] The court was entitled to act on this information. It is trite law that a court is entitled to take judicial notice of facts from accepted sources of authority without the formality of taking evidence. This entitlement, forms the crux of the concept of judicial notice, which Lord Sumner observed in *Commonwealth Shipping Representative v P and O Branch Service*: “Judicial notice refers to facts which a judge can be called upon to receive and to act upon either from his general knowledge of them, or from inquiries to be made by himself for his own information from sources to which it is proper for him to refer.”<sup>4</sup> It is instructive that in its judgment, the Court of Appeal addressed this issue in terms which were quite conclusive and we quote paragraphs 46 and 47 of the judgment.

“[46] The record of proceedings reveals that it was only when the warrant of ejectment could not be executed because of the structural composition of the house and the parties had returned to court, that the Magistrate became aware that certain considerations affecting the property might come into play. In addition, according to the affidavit evidence, the Appellant is claiming to have an entitlement by dint of proprietary estoppel and therefore to have an equitable interest and title in the property.

[47] It is our considered opinion that had the Magistrate been apprised of these circumstances at the initial hearing, she would have been judicious in the handling of the matter being alert to the proscription wrought by the Magistrates' Court Act with respect to the jurisdiction of that court.”

[19] In this context, one needs also take note of the conclusion in paragraph [79] of the judgment: “In sum, this Court finds no reason to set aside the order of the Magistrate made on 28 August 2013. This determination does not, however, preclude the Appellant from seeking elsewhere consideration of her suggested rights to equitable title in the land”. We think that the conclusion that the Magistrate did not have jurisdiction to hear and determine the matter, so that her order should be set aside, is entirely consistent with the premises in paragraphs [46]- [47] and the final sentence of paragraph [79].

### **Rules relating to appeal for lack of jurisdiction**

[20] The Court of Appeal acted on the basis that it had power to adjudicate on this issue and so did both counsel. We think, however, that it is necessary to consider the implications of two provisions in the Magistrate’s Court Act. It may be that in the

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<sup>4</sup> [1923] AC 191, p 212.

current context, these provisions may need to be re-examined because of their potential to deny justice, albeit that they were probably enacted with the laudable objective of creating finality in litigation. The importance of considering the provisions can be highlighted by asking the questions what if a Magistrate beyond her jurisdiction made an order for the recovery of 100 acres of land, or on the criminal side sentenced someone to life imprisonment etc.? The answer could be, that there may be, constitutional or other avenues of relief. Counsel were not prepared to make submissions on these provisions and in the absence of careful argument we consider it inappropriate to engage in full discussion of the implications of these provisions, particularly, as it is not necessary for the resolution of these proceedings. We nonetheless think it important to describe the legal provisions as they are.

[21] Section 213 of The Magistrate's Court Act prescribes that a litigant is bound by an order of a Magistrate made without jurisdiction, unless an objection to the lack of jurisdiction was taken during the hearing:

“213. No person may impeach in any proceedings, or in any other manner whatever any conviction by a magistrate on the trial of an information or any order made by a magistrate on the hearing of a complaint or any judgment or order given or made in the exercise of his civil jurisdiction, on the ground that the magistrate had no jurisdiction to convict or make the order or give judgment, unless the objection to jurisdiction was taken at the trial or the information or on the hearing of the complaint or civil claim.”

[22] One would have thought that law would have allowed the Court of Appeal to rectify such a fundamental problem. But section 243(a) confirms that a litigant cannot raise this issue on appeal if the point had not been taken before the order was made. This point escaped the Court of Appeal and there has been no discussion on it, nor were counsel able to make any submissions when we raised it.

“243 (a): A notice of grounds of appeal may set forth all or any of the following grounds, and no others: (a) that the magistrate had no jurisdiction in the case: but the Court of Appeal shall not entertain such grounds of appeal unless objection had been formally taken at some time during the progress of the case and before the pronouncing of the dismissal, conviction, order, refusal, judgment or decision as aforesaid;”



### **Other grounds of appeal**

[23] Section 243, allows other grounds of appeal, and we need only refer, for the purpose of this decision, to 243 (h): “(h) that some other specific error, not hereinbefore mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case;”

[24] This provision must have been intended to mitigate the restrictions of the section. The Court must give it a generous interpretation. The section does not limit this to errors of the Magistrate, and the only restriction on the nature of the error is that it must substantially affect the merits of the case, and it must occur during the proceedings of the case. The phrase “the proceedings of the case” may also allow for generous interpretation.

[25] Mr Graham, ignoring the fact that he had misled the court had submitted, and the Court of Appeal agreed with him, that the Appellant, who was not represented by counsel, was at fault for not disclosing the information relating to jurisdiction to the Magistrate. Regrettably, the court did not advert to the paramount duty of counsel to the high calling of justice and honour. He repeated this before us and contended that he was merely giving effect to the instructions he had received from his client.

[26] We must emphasise that an attorney’s duty to the court is dominant to his duty to a client. We would have thought that principle had become axiomatic. It is the foundation of the Civil Procedure Rules of Barbados where the overriding objective of the court clearly declares that litigation must seek just results, and that the parties and counsel are to assist the courts in realising this objective. Although, reference was made to our rules of procedure, this is nothing new. The words of Lord Denning in the case of *Rondel v. Worsley*<sup>5</sup> are instructive:

“[The advocate] has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state [sic] the facts. He must not knowingly conceal the truth... He must produce all the relevant authorities, even those that are against him. He must see that his client

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<sup>5</sup> [1966] 3 W.L.R. 950 (Eng. C.A.) at 962-63.

discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.”

[27] The record of proceedings, including the reasons for the decision of the Magistrate makes it pellucid that she relied on Mr Graham’s word as she was entitled to. Mr Graham misstated the facts, and made the Magistrate believe that she was making an order in a straightforward case simply concerning a chattel house let by his client to the defendant, where there was no dispute about title or the validity of a devise or bequest in a will. In its decision, the Court of Appeal recognised that if the information, which counsel was obliged by his code of honour to provide, had been disclosed at the initial hearing the learned Magistrate would not have made the order that was made. There is no doubt that Mr Graham was wrong to withhold this information from the court, and that this error affected the merits of the case.

[28] Another specific error, is that the learned Magistrate made an order which is unenforceable. That is a simple fact established by the report of the Marshal, and confirmed by counsel before us. Even if the order is blessed by this Court, the parties are still faced with the fact that they have an order which cannot be enforced. This is an absurd situation. The Magistrate’s conduct when the relevant information was given to her in re-summoning the parties and attempting social re-engineering demonstrates her realisation that an error was made. This too reveals a specific error affecting the merits of the case.

[29] We are satisfied that these are specific errors affecting the merits of the case which occurred during the proceedings each of which would justify overturning the order of the court.

[30] The interests of justice required that we take this action. During the hearing before us, it became apparent that we were dealing with litigants who did not have deep pockets. Mr Graham conceded that this case should be filed in the High Court, with the probability of great expense and also significant lapse of time before final resolution could be achieved. We recommended that the parties consider some appropriate form of dispute resolution,

mediation for example. We even rose for 45 minutes to allow counsel an opportunity to discuss with their clients the possibility of reaching a final agreement on the outcome of this dispute. Unfortunately, they were unable to reach any agreement in the time allotted.

### **Disposition**

[31] We made the following orders:

- a. The Appellant is given leave to appeal as a poor person.
- b. The hearing of the application for special leave to appeal is being treated as the substantive hearing of the appeal.
- c. The appeal is allowed.
- d. The orders of the Court of Appeal and the Magistrates court are set aside.
- e. The Respondent to pay the costs of the Appellant, which were agreed between the parties as Bds\$8,000.00 in relation to the entire proceedings in this Court and the courts below.

/s/ CMD Byron

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**The Rt Hon Sir Dennis Byron (President)**

/s/ J Wit

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**The Hon Mr Justice J. Wit**

/s/ D Hayton

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**The Hon Mr Justice D. Hayton**

/s/ W Anderson

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**The Hon Mr Justice W. Anderson**

/s/ M Rajnauth-Lee

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**The Hon Mme Justice M. Rajnauth-Lee**