

IN THE COURT OF APPEAL
VIRGIN ISLANDS

Civil Appeal No. 9 of 1973

Between:

CONRAD POTTER Claimant/Appellant

and

MARY LOUISA FRETT Claimant/Respondent

Before: The Honourable the Acting Chief Justice
 The Honourable Mr. Justice St. Bernard
 The Honourable Mr. Justice Louisy

Mr. J.S. Archibald for Claimant/Appellant

Mr. M. Riegels for Plaintiff/Respondent

1973, June 26

JUDGMENT

CECIL LEWIS, Ag. C.J.

This is an appeal from a decision of the Adjudication Officer dated April 11, 1972 in which he purported to give to the respondent a portion of land on which the appellant has been living for some time.

It appears from page 5 of the record that the respondent is claiming that the land on which the appellant's house is situate is her property.

From the nature of the order which it is proposed to make in these proceedings it will be undesirable to say anything more about the facts.

There is a form at page 10 of the record which bears the caption "Dispute Form" and also the words "To be completed by the Demarcation Officer". This form is unsigned and it does not state the nature of the dispute between the parties. Nevertheless Counsel agreed that it would be safe to assume that the dispute had in fact been referred to the Adjudication Officer under section 15 of the Ordinance which reads as follows -

"15. (1) If in any case -

(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or re-adjusted by him, which the Demarcation Officer is unable to resolve; or

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to affect agreement between them, the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer.

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign a brief record of the proceedings".

The appellant was dissatisfied with the Adjudication Officer's decision and has appealed to this Court. The appeal is brought pursuant to section 23 of the Land Adjudication Ordinance, No. 5 of 1970 (hereinafter referred to as the Ordinance) which gives a right of appeal to any person aggrieved by any act, decision or omission of the Adjudication Officer. The Adjudication Officer's decision may be questioned on two grounds, either -

(a) that it is erroneous in point of law; or

(b) that he has failed to comply with any procedural requirement of the Ordinance.

If on an appeal the Court of Appeal is satisfied that the decision in question is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of the Ordinance it may "make such order or substitute for the act, decision or omission of the Adjudication Officer such decision as it may consider fit".

The objects of the Ordinance as stated in its Long Title are "to provide for the adjudication of rights and interests in land and for purposes connected therewith and incidental thereto". The scheme of the Ordinance shortly stated is as follows:- By section 3 the Administrator is empowered by order to declare that it is intended to effect the adjudication and registration of rights and interests in land within such area (hereinafter referred to in this judgment as an "adjudication area") as is defined in the said order and the order shall be published for three successive weeks in the Gazette.

By subsection (1) of section 4 the Administrator is authorised after publication of the order to appoint an Adjudication Officer for the adjudication area and the latter may in turn appoint such Demarcation, Recording and Survey officers as may be necessary for performing the duties imposed upon them by the Ordinance.

Subsection (2) of section 4 places the Adjudication Officer in general charge of the adjudication and he is empowered to issue such general or special directions to the officers whom he has appointed as he may consider necessary, and he may himself perform any of the duties imposed upon these officers by the Ordinance.

Subsection (3) of section 4 is a rather important subsection. It provides that the Adjudication Officer "shall be competent to administer oaths and take affidavits in any enquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or production of such documents as he may consider necessary for carrying out the adjudication."

Section 5 authorises the Adjudication Officer to divide the adjudication area into two or more adjudication sections, and by section 6 he is required to prepare a notice in respect of each such adjudication section which shall comply with the requirements of the said section 6. The notice shall contain a declaration that all interests in the land in the adjudication section will be ascertained and recorded. It shall require all persons who claim any interest in land in the adjudication section to make a claim thereto either in person or by agent, within the period, to the person at the place and in the manner specified in the notice. This notice shall also require claimants within the adjudication section to mark or indicate the boundaries of the land claimed in such manner as may be required by the Demarcation Officer who is authorised by subsection (4) of section 4 to enter upon land within an adjudication area for the purpose of demarcating any land therein; and he may also summon any person to give information regarding such land and to point out the boundaries thereof. It will be observed that every person who claims to have an interest in land within an adjudication area is required to submit a claim in relation thereto and section 8(2) provides that he shall attend in person or by agent at the time and place specified in the notice given under section 6 if his presence is required by the Adjudication Officer, the Demarcation Officer or the Recording Officer. The demarcation, recording or other proceeding may continue in such person's absence if he fails to attend either personally or by agent as

provided in subsection (3) of section 8.

By section 10 not less than seven clear days notice is to be given before the demarcation of any land is to commence and the time and place of the demarcation must be stated in the notice, which shall require every claimant to indicate the boundaries of the land affected by his claim. Section 11 requires the Demarcation Officer to see that the boundaries of every piece of land which is the subject matter of a claim are indicated or demarcated in accordance with the requirements of the notice issued under section 10. Section 12 also deals with the powers of the Demarcation Officer. He is authorised by subsection (1)(b), ~~thereof~~ /"with the consent of the owners concerned to adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation thereof or to effect a more suitable sub-division thereof".

Section 13 is concerned with the duties of the Survey Officer. He is required to prepare a demarcation map of the adjudication section which shall show every separate parcel of land in the said adjudication section.

Section 14 requires the Recording Officer to consider all claims **to** any interest in land and after such investigation as may be necessary to prepare in accordance with section 18 a record in respect of every parcel of land shown on the demarcation map.

Section 16 requires the Recording Officer to prepare an adjudication record and in so doing he must follow the principles of adjudication laid down in this section and also in section 17.

Section 18 prescribes the contents of the adjudication record. It provides that it shall consist of a form in respect of each parcel of land and shall contain the matters and things specified in this section. When this form is completed it must be signed by the Recording Officer and in the case of privately owned land, shall, where possible, include an acknowledgement

signed not only by the owner of the parcel of land in question but also by any person recorded as having a right in such land registrable under the Registered Land Ordinance, 1970, that such owner or person as the case may be accepts the adjudication record. After the adjudication record for an adjudication area is completed the Adjudication Officer shall sign and date a certificate to this effect and give notice of the completion thereof and of the place or places where the record and the demarcation map may be inspected.

I have earlier in my judgment quoted section 15 of the Ordinance and I will now deal with it more fully and at the same time consider section 20 as both of these sections empower the Adjudication Officer to make decisions on matters which may be referred to him under the said sections.

Section 15 relates to disputes. It provides that if there is a dispute as to a boundary whether indicated to the Demarcation Officer or demarcated or re-adjusted by him, which he is unable to resolve, or if there are two or more claimants to any interest in land (as in this case) and the Recording Officer is unable to effect an agreement between them he shall refer the matter to the Adjudication Officer. Subsection 2 provides that the Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), "having due regard to any law which may be applicable, and shall make and sign a brief record of the proceedings",

Now, since a right of appeal is given by section 23 against a decision of the Adjudication Officer it is undoubtedly the intention of the Legislature to give the right to question his decision in all cases under the Ordinance where he is authorised to determine any issue and this will include the case where a dispute is referred to him under section 15(1) for determination and also the case where a petition comes before him for decision under section 20. This latter section provides that if any person

named in, or affected by the adjudication record or demarcation map considers that record or map to be incorrect or incomplete, or is aggrieved by any act, decision or omission of the Demarcation Officer, such person may petition the Adjudication Officer who shall hear and determine the petition.

Under section 21 the Adjudication Officer may at any time before the adjudication record becomes final, correct any error therein which does not materially affect the interest of any person and he may make a material alteration in the record which he considers necessary after giving to any person whose interest may be affected an opportunity of being heard. The fact that subsection (3) of section 4 provides that the Adjudication Officer "shall be competent to administer oaths and take affidavits in any enquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or production of such documents as he may consider necessary for carrying out the adjudication", that by section 15(2) he is required to adjudicate upon and determine any dispute referred to him under subsection (1) "having due regard to any law which may be applicable", and, bearing in mind the importance of the subject matter of any enquiry which may be made by him, viz., the determination of interests in land and titles thereto and the registration thereof, it appears to me that the Ordinance contemplates that any enquiry undertaken by the Adjudication Officer should be of a judicial nature. I am accordingly of the opinion that when the Adjudication Officer exercises the power conferred on him by subsection (2) of section 15 to adjudicate upon a dispute referred to him under subsection (1) of section 15 or to hear and determine a petition under section 20, the evidence of the parties concerned in the proceedings and their witnesses, if any, must be given on oath and taken down in writing and an opportunity afforded to the parties to cross examine each other and their respective witnesses. Any documents produced by or on behalf of a party in support of his case shall be received in evidence and included in the record

of the proceedings which the Adjudication Officer is required to make and sign under subsection (2) of section 15 of the Ordinance.

In this case it has been conceded that there is nothing on the appeal record to show that any evidence was taken by the Adjudication Officer. What apparently happened was that the Adjudication Officer attended at the disputed land with the parties and with the solicitor for one of the parties, looked at the land and after discussion came to a decision on the matter. This is wholly unsatisfactory and is not what is contemplated by the Legislature.

There is no evidence on this appeal record by which this Court is enabled to examine the Adjudication Officer's decision in order to ascertain whether or not it can be supported by whatever material may have been produced to him when he arrived at his decision.

The failure to record the evidence and to take it on oath, in my opinion, constitutes a failure to comply with the procedural requirements of the Ordinance resulting in substantial prejudice to the interests of the appellant. This failure also renders the Adjudication Officer's decision a nullity.

I would therefore allow the appeal, set aside the decision and remit the matter to the Adjudication Officer with directions to hold an enquiry and to record the evidence of the parties and their witnesses on oath and afford them an opportunity to cross examine each other.

In order to settle the practice as to the contents of appeal records in any future appeals which may come before the Court, I ought to say that apart from the evidence taken by the Adjudication Officer in any proceedings before him under sections 15 and 20 which must of course form part of the appeal record the following other documents should also be included in the appeal record -

- (a) copies of claims made by claimants to land or any interest therein within an adjudication section;
- (b) where a dispute is referred to the Adjudication Officer under section 15(1), a copy of the letter or other document from the Demarcation Officer or the Recording Officer, as the case may be, referring the dispute to the Adjudication Officer;
- (c) a copy of the adjudication record in respect of each parcel of land in dispute; and
- (d) a copy of the petition referred to the Adjudication Officer for determination under section 20, where the appeal is from his decision under that section.

In cases where a petition is made to the Adjudication Officer under section 20 of the Ordinance it is not enough for a solicitor merely to write to the Adjudication Officer and ask him to hear the testimony of his client and his witnesses as his client "is unable to accept the decision so far reached", and to end his letter with the words "I therefore hereby petition you" as was done in one of the appeals at present before this Court. This is wholly unsatisfactory. A petition, if prepared by a solicitor, should follow the usual form, and in any event whether prepared by a solicitor or not it should contain the points of substance in the dispute on which the Adjudication Officer's decision is required. Section 20 clearly sets out the grounds on which a petition may be based and the particulars of these grounds should in all cases be given.

One further point remains to be mentioned and it is this. The Adjudication Officer might care to consider whether it would not be of assistance to him in arriving at his decisions if he allowed parties to be represented by their solicitors at enquiries

conducted by him.

By consent there will be no order as to costs.

[Handwritten Signature]
Acting Chief Justice

St. Bernard, J.A., I agree

[Handwritten Signature]
Justice of Appeal

Louisy, J.A. (Ag.) I also agree

[Handwritten Signature]
~~Justice of Appeal (Ag.)~~