

IN THE COURT OF APPEAL

BRITISH VIRGIN ISLANDS

CIVIL APPEAL NO.20 of 1973

BETWEEN ATTORNEY GENERAL OF THE VIRGIN ISLANDS Objector/Appellant

AND

RECTOR, WARDEN AND VESTRY OF ST. GEORGES CHURCH Petitioner/Respondent

Before: The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

E. Hewlett, Attorney-General (Ag.) for appellant,  
M. Riegels for respondent.

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1975, April 16 & 17

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J U D G M E N T

ST. BERNARD J.A.

In this appeal, the appellant complains against the decision of the Land Adjudication Officer on the following three grounds -

- "(1) The Adjudication Officer erred in failing to observe the procedure for adjudicating matters under the Land Adjudication Ordinance, 1970 (No.5 of 1970) (as amended) in accordance with the procedure as laid down in Virgin Islands Civil Appeal No.9 of 1973 between Conrad Potter, Claimant/Appellant and Mary Louise Frett, Claimant/Respondent.
- (2) The Adjudication Officer erred in failing to give an opportunity to the Crown to be heard on an adjournment, when an application by the Crown for an adjourned hearing was made in order to allow the Crown an opportunity to be heard by Counsel in its behalf, which said Counsel was at the time presenting a case for the Crown, in another matter before a judge of the High Court.

(3) That there was no petition before the Adjudication Officer upon which the Adjudication Officer could properly adjudicate."

As to ground (1), counsel for the appellant drew the Court attention to the following passage at page 9 of the record -

"Mr. Tittley questioned in the presence of Mr. Riegel and Father Hennesy but he was unable to contribute any information likely to be of assistance to the tribunal.

Sgd.P.G. Owen."

He submitted that the Adjudication Officer had questioned the witness named above without recording his evidence on oath or at all but had commented thereon.

Counsel for the respondent in answer to this submission sought to explain what he alleged had taken place. Unfortunately there is nothing on the record in support of his explanation and he rightly conceded that, as there was no affidavit filed in support, the Court could not take it into consideration.

On ground (2) it is my view that, although the Adjudication Officer was not legally obliged to grant the adjournment sought, yet the circumstances in this case were such that his refusal was unreasonable and that the interest of justice would better have been served by granting an adjournment.

As to ground (3) the Court is given to understand that the form used was the one prescribed by the Land Adjudication Office. Accordingly no useful purpose would be served by commenting on the adequacy or otherwise of the petition itself.

For these reasons I would allow the appeal and remit the matter for a new trial.

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E.L. ST. BERNARD  
JUSTICE OF APPEAL

DAVIS C.J.

I agree.

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MAURICE DAVIS  
CHIEF JUSTICE

PETERKIN J.A. (AG.)

I also agree.

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N.A. PETERKIN  
JUSTICE OF APPEAL (AG.)