

IN THE COURT OF APPEAL

THE VIRGIN ISLANDS

CIVIL APPEAL NO.10 of 1974

BETWEEN:	ATTORNEY GENERAL OF THE VIRGIN ISLANDS	Objector/Appellant
	AND	
	HENRY DE SILVA	1st Claimant/Respondent
	PAUL FORBES	2nd Claimant/Respondent

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

E. Hewlett for appellant.
McW. Todman for respondent.

1975, April 17 & 19

J U D G M E N T

PETERKIN, J.A.(Ag.)

This is an appeal against the decision of the Adjudication Officer given on 26th March 1974 in respect of a dispute referred to him by the Demarcation Officer under Section 15 of the Land Adjudication Ordinance, 1970. The appeal is brought pursuant to Section 23 of the Ordinance as amended by Ordinance No.13 of 1971.

The Crown's claim is based on the Crown's prerogative rights to the foreshore and is in respect of all that portion of land coloured yellow on the plan exhibited at page 26 of the record. The respondent's claim is in respect of the whole area shown on the plan and referred to in the evidence as Emmanuel Point, or Manuel for short, and is stated in the respondent's claim form to be based upon a documentary title, namely, deed no.356/1969. The Adjudication Officer in his decision at pages 19 and 20 of the record stated as follows -

"Thomas Senior and De Silva purchased in good faith. The latter's occupation through his predecessor in title goes back over 20 years and he has good documentary title also. The requirements of the Land Adjudication Ordinance have been met and my decision

is that De Silva is the Proprietor with absolute

Title to all that land he claimed under Claim 128/3398 and shown on Map Exhibit "B" as being "claimed by De Silva". "

The grounds of appeal are as follows -

- "(1) The Adjudication Officer erred in ordering the Crown to present its case first on the ground only that it is the practise of the Adjudication Officer to order that the Claimant who files his claim last do present his case first.
- (2) The Adjudication Officer erred in law in finding Henry De Silva to be in possession as owner of the land in dispute for that -
 - (a) the root of title upon which Henry de Silva relied to establish his ownership is defective; and
 - (b) the Deed No.9 of 1954 under which Henry de Silva claims described the land to be bound on one side by the public road and on all other sides by the sea.
- (3) The Adjudication Officer was wrong in law in coming to a decision that Henry de Silva was owner by long possession of the land in dispute in that Henry de Silva based his claim on his Deed No.356 of 1969.
- (4) The Adjudication Officer showed bias in arriving at his decision and did not follow the procedure as laid down by the Court of Appeal in Civil Appeal (Virgin Islands) No.9 of 1973 between Conrad Potter, Claimant/Appellant, and Mary Louise Frett, Claimant/Respondent. "

The facts and circumstances are in short compass and are contained in the evidence of two witnesses and in the letters exhibited. It is unnecessary to state them in detail as the grounds of appeal are grounds of law.

On grounds (1) and (3) counsel for the appellant argued that the appellant was put at a disadvantage by being called upon to begin in spite of his having protested thereto, and that the onus of proof was thereby put on the Crown to prove ownership, when it should have been left to the respondent to establish his title. He pointed out that it was only when the witness for the Crown was being cross-examined that it became manifest that

long possession was being made an issue in the dispute. Counsel for the respondent, while not denying that the onus was on the respondent, maintained that in view of the contents of the letters exhibited the Crown was not taken by surprise. He stated to the Court that it was a rule of thumb by the Adjudication Officer that he who filed his claim last should commence in these matters.

It is clear on a reading of the record that the question of long possession was not an issue in the dispute. It is equally clear that the Adjudication Officer not only made it an issue, but based his decision in part on the question of long possession. It is my view that the Land Adjudication Officer was wrong in law, and that by so doing he put the Crown at a disadvantage not only in having to commence, but also in being called upon to meet an issue which the Crown had not come prepared to answer.

The allegations in ground (4) are supported by the affidavit of Kenneth Anthony Pothan, Chief Surveyor in the Survey Department of Government. These allegations have not been controverted by affidavit or otherwise. Paragraphs (5) and (6) of Mr. Pothan's affidavit read as follows -

"I heard the Adjudication Officer say that when a representative appeared before him loaded with legal literature, he concluded immediately that the representative had poor arguments. There could be no doubt in the minds of everyone present that this remark was directed at the Crown's representative.

Further, during the hearing when the Crown representative was preparing to present his arguments, he was informed by the Adjudication Officer that there was a tight schedule of inquiries to be heard; that he, the Adjudication Officer, had already investigated the case and that he intended adjudicating in favour of de Silva. The Crown representative insisted upon presenting his arguments and he was heard with apparent impatience by the Adjudication Officer. Arguments were heard from de Silva's representative and following brief summaries from each representative, the Adjudication Officer quickly delivered his decision. "

Counsel for the respondent cited certain cases to the Court on the question of bias, but I regard them as being irrelevant in the

circumstances of the instant case. Time and again it has been laid down by the Courts that justice must not only be done, but must manifestly and undoubtedly appear to be done. In the light of these remarks made by the Adjudication Officer, it is a matter of little surprise to me that the appellant should feel aggrieved.

For the reasons stated I am of the opinion that this matter was not properly adjudicated and that consequently it is unnecessary to deal with the other grounds of appeal. I would allow the appeal and remit the matter for re-hearing as between the appellant and the first-named respondent. In the circumstances of this case it would be better that it be heard by someone else.

There will be no order as to costs.

PETERKIN, J.A.(Ag.)

DAVIS, C.J.

I agree.

DAVIS, C.J.

ST. BERNARD, J.A.

I also agree.

ST. BERNARD, J.A.