

IN THE COURT OF APPEAL
VIRGIN ISLANDS

CIVIL APPEAL NO. 22 OF 1973

BETWEEN:

CATHERINE EVANGELINE CHRISTOPHER Claimant/Appellant

and

THE ATTORNEY GENERAL OF THE Respondent
VIRGIN ISLANDS

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

J.S. Archibald for Appellant

H. Matadial, Legal Assistant, for Respondent

1975, December 3, 5

DAVIS, C.J.:

The appeal record in this appeal shows that on the 5th day of April 1973 the Adjudication Officer purported to adjudicate on a claim made by Owen Christopher to certain lands known as Albion situate at Fort Charlotte in the island of Tortola and containing by admeasurement 4.4350 acres and his decision was communicated to the said Owen Christopher in a letter dated 5th April 1973 which reads as follows:

" 5th April, 1973

Mr. Owen Christopher
Harrigans,
Tortola.

Claims 83/2194B, 83/2194C, 83/2194A, 66/1771

I have what I believe to be reliable information that the lands to which you claim title at Fort Charlotte are Crown lands leased by you over a number of years.

2. I have therefore recorded them as Crown lands.
3. If my information is incorrect and you feel you are able to establish your right to title as proprietor of the parcels in question, you should petition me under Section 20 of the Land Adjudication Ordinance 1970 (No. 5 of 1970).
4. You may wish to seek legal advice in this matter.

(Sgd.) P.G. Owen
P.G. OWEN
Adjudication Officer"

On the 5th day of June 1973 Mr. J.S. Archibald acting as Solicitor for the Appellant wrote to the Adjudication Officer in the following terms:

"

5th June, 1973

Mr. P.G. Owen, C.M.G., Q.P.M.,
Adjudication Officer,
Road Town,
Tortola.

Dear Mr. Owen,

Re: Claims 83/2194B, 83/2194C,
83/2194A, 66/1771

I am instructed by Mrs. Evangeline Christopher of McNamara, Tortola to refer to your letter dated 5th April, 1973 addressed to her son Mr. Owen Christopher on the above subject. In that letter you stated that you have recorded the lands at Fort Charlotte as Crown Lands.

I am instructed to notify you that the lands belong to Mrs. Evengeline Christopher above-named, and that she is prepared to establish her right to absolute title as proprietor of the parcels in question. She will produce documentary evidence and will call witnesses before you.

I therefore hereby petition you under Section 20 of the Land Adjudication Ordinance 1970 (No. 5 of 1970).

Yours sincerely,

(Sgd.) J.S. Archibald
J.S. ARCHIBALD."

The Adjudication Officer treated this letter as a petition and on 20th August 1973 heard evidence in the matter without giving the Appellant any notice of the hearing and in her absence confirmed his earlier decision and awarded the lands to the Crown as absolute owner. It should be noted that the decision of 5th April 1973 was reached in the absence of both Owen Christopher and the Appellant. Indeed, it seems doubtful whether there was any proper adjudication of the matter.

Upon the hearing of this appeal Counsel for the Appellant submitted that under the provisions of Section 5 of the Land Adjudication (Amendment) Ordinance 1971 the Adjudication Officer could only entertain a petition in respect of any complaint against any act, decision or omission of the Demarcation Officer, Survey Officer or Recording Officer and therefore the hearing of this Petition was a nullity in that he was in effect reviewing his own decision. Counsel for the Respondent agreed with this submission

and I think this is the legal position.

Counsel for the Appellant then submitted that as the decision of 5th April 1973 was arrived at without the Appellant being heard or being given an opportunity to be heard there was no proper adjudication and that the matter should be remitted to the Adjudication Officer for a re-hearing. Counsel for the Respondent contended that as the Appellant was never a claimant to the lands she was not affected by the decision and therefore had no right of appeal. From the state of the Record there seemed to be no answer to this submission and Counsel for the Appellant conceded the point. Accordingly, the Court dismissed the Appeal with no order as to costs.

Upon the resumption of the Court after the luncheon adjournment both Counsel produced a document to the Court showing that the claimant to the said land was indeed the Appellant and that Owen Christopher was named "as representative". They then asked the Court to re-open the matter since the decision of the Court was based on the unfortunate error of the Adjudication Officer in regarding Owen Christopher as the Claimant. The Court after hearing arguments refused this application as not wishing to establish a precedent of this nature but undertook to recommend that Government be asked to carry out such an investigation as may be deemed necessary so that the Appellant may have an opportunity of putting forward her claim as she sees fit. The Court also recommends that she be allowed legal representation so that justice may be seen to be done.

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MAURICE DAVIS
CHIEF JUSTICE

I agree.

.....
E.L. ST. BERNARD
JUSTICE OF APPEAL

I agree.

.....
N.A. PETERKIN
JUSTICE OF APPEAL