

IN THE COURT OF APPEAL
VIRGIN ISLANDS

CIVIL APPEAL NO. 5 OF 1976

BETWEEN:

SAMUEL FORBES
CHARLES FORBES
CROMWELL FORBES
VITALIA FORBES (now TURNBULL)
ROBERT FORBES
NATHANIEL CILLS
APPELLANTS

and

PAUL FORBES
RUBINA FORBES
MABEL NIBBS nee FORBES
RESPONDENTS

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

Appearances: McW. Todman for Appellants
Respondent Paul Forbes in person
Respondents Rubina Forbes and Mabel Nibbs nee Forbes
were called but did not appear

1977, February 16, 18

ST. BERNARD, J.A.:

Five actions relating to land disputes between the appellants and the respondents were pending in the High Court when the area in which the land was situate was declared an adjudication section under the Land Adjudication Ordinance, 1970, as amended. By section 7 of that Ordinance all such disputes were stayed until the Adjudication Officer had determined the title to the land.

Section 7 of this Ordinance reads -

- 7. (1) Except with the consent in writing of the Adjudication Officer, no action concerning land or rights to land in an adjudication section shall be begun in any civil court until proceedings under this Ordinance have been completed.
- (2) The hearing of any such action which was begun before the publication of the notice mentioned in section 6 shall, where practicable be determined before the adjudication of the land affected by the action is commenced.
- (3) Any such hearing which has not been completed before such adjudication is commenced shall, unless the Adjudication Officer otherwise directs, be stayed.

By virtue of subsection 3 of section 7 of the above Ordinance these actions were stayed and the respective claims were heard and determined by the Adjudication Officer. The respondents then moved the court for an order which prayed that -

- (a) the cases be restored to the list for hearing;
- (b) the adjudication proceedings in respect of them be set aside and/or nullified; and
- (c) an injunction restraining the appellants from molesting the respondents.

In support of the motion affidavits were filed and a document entitled "Particulars of Nullity" which reads -

"PARTICULARS OF NULLITY

THAT the Land Adjudication Ordinance Virgin Islands (No. 5 of 1970) is Ultra Vires and therefore void in that

- (i) The said Ordinance is repugnant to, inconsistent with imperial legislation applicable to this Island, viz:
 - (a) The West Indies Act 1967
 - (b) The West Indies Associated States Supreme Court Order 1967 No. 223
 - (c) Virgin Islands (Constitution) Order, 1967, No. 471
 - (d) Virgin Islands (Appeals to Privy Council) Order 1967, No. 234.
- (ii) The said Ordinance is contrary to the Principles of Natural Justice, in the appointment of the Adjudication Officer, a Layman and therefore unqualified to practice and/or to adjudicate as regards Rights, Title and Interest in land, the Rules of Evidence, Civil Procedure and English Legal Jurisprudence.
- (iii) The said Ordinance, in its direction and application, involves a usurpation and infringement by the Legislature of Judicial Powers (unduly vested in a Layman) inconsistent with and repugnant to Imperial Legislation applicable to this Island",

was also filed with the motion.

The trial judge upheld the contention of the respondents, pronounced that the stay of proceedings under section 7 of the above Ordinance was a perpetual stay and that sections 7 and 23 of the Land Adjudication Ordinance constituted "a usurpation of the judicial powers of the judicature" and were null and void. He therefore ordered the adjudication proceedings in respect of these matters to be set aside and the cases to be restored to the lists.

Counsel for the appellant submitted that the stay imposed by section 7 of the Land Adjudication Ordinance was not a perpetual one and cited the case of *Cooper v. Williams* (1963) 2 All E.R. 282 at p. 286 in support. He also contended that the judge was in error when he found sections 7 and 23 of the said Ordinance to be null and void.

The trial judge in his judgment referred to the West Indies Act, 1967; the West Indies Associated States Supreme Court Order, 1967, the Virgin Islands (Courts) Order, 1967, the Virgin Islands (Constitution) Order, 1967, and the Virgin Islands (Appeals to Privy Council) Order, 1967, as the pieces of imperial

legislation applicable to the British Virgin Islands. He also referred to the local Ordinance the West Indies Associated States Supreme Court (Virgin Islands) Ordinance, 1968.

I will first deal with these pieces of legislation and at a later stage deal with the question of a perpetual stay under section 7 of the Land Adjudication Ordinance.

The West Indies Act 1967 applies to the Associated States of Antigua, Dominica, Saint-Christopher, Nevis and Anguilla, St. Lucia, St. Vincent and the independent state of Grenada. There is only one provision in the Act which relates to Montserrat and the Virgin Islands and there is no provision in any local law which, in my view, is repugnant to this provision. This provision is set out in sub-section (2) of section 6 as follows:-

"6(2) An Order in Council under this section may include provisions whereby, in relation to Montserrat or the Virgin Islands, any court established under the Order (Courts Order) shall have such jurisdiction and powers, and there shall be imposed or conferred on judges and officers of any such court such duties and powers, as may be specified in or determined in accordance with, the Order."

Similarly, the Courts Order, 1967, applies to the aforesaid States and there is only one provision in that Order which gives authority to the Courts established under that Order to exercise in Montserrat or the Virgin Islands such jurisdiction as may be conferred upon them by or under any law in force in Montserrat or the Virgin Islands as the case may be. (Vide section 10.) Therefore a judge sitting in the High Court in Montserrat or the Virgin Islands must look for its jurisdiction in the laws in force in these territories. In the case of the Virgin Islands this jurisdiction is to be found in the West Indies Associated States Supreme Court (Virgin Islands) Ordinance, 1968, and in the Virgin Islands (Constitution) Order 1967. The only jurisdiction I am able to find vested in the High Court under the provisions of the Constitution Order is a jurisdiction to hear and determine any question relating to election petitions. It follows that the ordinary jurisdiction of the High Court in the Virgin Islands is to be found in the Supreme Court Ordinance mentioned above. Under the provisions of that Ordinance the High Court has no jurisdiction to pronounce upon the constitutionality of any statute passed by the local legislature. If, however, in applying the jurisdiction conferred upon the Court, the Court is of the view that any local statute is repugnant to any imperial legislation relating to the territory, the court must follow the imperial provisions. In respect of the Virgin Islands (Courts) Order (1967), I can find no provision in that order

which affects this case in any manner.

The West Indies Associated States Supreme Court (Virgin Islands) Ordinance 1968, and the Land Adjudication Ordinance 1970, as amended were passed by the same legislative authority and there could be no question as to one ordinance being repugnant to the other so that section 2 of the Colonial Laws Validity Act, 1865, may apply.

Section 23 of the Land Adjudication Ordinance as amended provides that the decision of the Court of Appeal shall be final and conclusive and this provision appears to be repugnant to section 3 of the Virgin Islands (Appeals to Privy Council) Order, 1967, which makes provision for appeals to the Privy Council as of right where the matter in dispute is of the value of £300 sterling or upwards. This repugnancy, in my view, is not a matter for the High Court and the question does not arise in these proceedings.

In my opinion, the stay of proceedings imposed by section 7 of the Land Adjudication Ordinance 1970 is not a perpetual stay as found by the trial judge. The section appears to contemplate that as soon as the adjudication proceedings are final, application may be made to the court for the causes to be listed for hearing. The party or parties in whose favour an absolute title to the land in dispute is granted may produce his or their title to the court thus raising the issue of res judicata.

I would allow the appeal, set aside the judge's order in so far as it relates to the constitutionality of the Land Adjudication Ordinance and also the order setting aside the adjudication proceedings as also the order for costs. Costs to appellant to be taxed.

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(E.L. St. Bernard)
JUSTICE OF APPEAL

I agree.

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(N.A. Peterkin)
JUSTICE OF APPEAL

I also agree.

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(Maurice Davis)
CHIEF JUSTICE