

cc

SAINT LUCIA

IN THE COURT OF APPEAL

LAND REGISTRATION APPEAL: NO: 6 of 1988

BETWEEN: MARY AMBROSE
 FLAVIUS DARIUS - Appellants
 and
 RODNEY BAY LIMITED
 CARLOS DU SOUZAY - Respondents

Before: The Honourable Sir Lascelles Robotham
 The Honourable Mr. Justice Bishop
 The Honourable Mr. Justice Moe

Appearances: K. Foster for Appellants
 T. Cozier for Respondent Rodney Bay Limited
 No appearance by Respondent Carlos Du Souza

1988: Oct. 26
 1989: Jan. 23

JUDGMENT

BISHOP J.A.

This is an appeal against the decision of the Land Adjudication Tribunal, also called the Tribunal.

The only ground of appeal that was argued was set out in a Notice of Appeal dated 13th April 1988. It read:-

"The Tribunal erred by its failure to appreciate that time does not run where the matter is a nullity, as was submitted by the appellant in the instant case, and therefore the issue before the Tribunal was not for extension of time as in a regular hearing."

When the appeal came on for hearing learned counsel for the appellants asked for a reversal of the order of the Land Adjudication Tribunal and that the case be remitted for trial.

Before the matter reached the Tribunal there were two separate hearings by the Land Adjudication Officer - the Dispute No. 4A 4D on the 18th March 1986 and the Petition 4A 4D/P which ended on the 17th November 1986. At the latter hearing, the Adjudication Officer heard additional evidence but found no cause to alter his earlier decision.

At the hearing by the Tribunal, the preliminary point was taken that the Tribunal could not entertain the appeal because it was not filed within the period fixed by statute for doing so. Consideration was given to the following questions: (i) if the appeal was filed out of time, then did the Land Adjudication Tribunal have the power to extend the time within which to appeal? (ii) Did the hearing before the Adjudication Officer amount to a nullity? and (iii) if so, would
 /time.....

time run against the appellant?

Before the Tribunal, learned Counsel for Rodney Bay Limited (hereinafter also called the Company) relied upon the provisions of section 6(4) of the Land Adjudication Amendment Act No. 8 of 1986, and upon the fact that it was conceded that the appeal to the Tribunal was not lodged until the 17th February 1987 or just over 3 months of the decision by the Adjudication Officer.

The Tribunal concluded that the appeal was filed outside of the statutory period, that they were not vested with power to enlarge the time for appealing, and consequently it could not entertain the appeal.

I share the views that the appeal was filed out of time, that the time could not be extended by the Tribunal and therefore it had no jurisdiction to entertain the appeal.

On question (ii), after hearing learned Counsel for Mary Ambrose and Flavius Darius and learned Counsel for Rodney Bay Limited, the Tribunal concluded that the conduct of the hearing of the Petition did not amount to a nullity.

Question (iii) no longer required an answer.

Before this Court, learned Counsel for the appellants, Mr. Foster, who was not present at either of the hearings by the Adjudication Officer submitted that "where a matter is a nullity it is void ab initio ex debitaie justitiae; therefore the question to be decided was whether the matter before the Adjudicator was a nullity". The matter referred to by Counsel was Petition 4A 4D/P. Counsel contended that it was a nullity since "neither Carlos Du Souza, to whom land was awarded, nor Rodney Bay Limited to whom land was awarded, was called to give evidence on oath; and this resulted in depriving the appellants of the right to cross-examine both of them".

Learned Counsel for the Company submitted that there was no justification for holding that the hearing of the Petition was a nullity. He pointed out (a) that he was present, on behalf of the Company, at each of the hearings by the Adjudication Officer (b) Carlos Du Souza was present at each of the said hearings (c) that Mary Ambrose and Flavius Darius were represented by learned Counsel at the hearing of the Petition, and (d) that the Notice of Appeal filed on 17th February 1987 showed that the appellants did not claim that the hearing was a nullity, but on the 13th April 1988, the only ground of appeal in the second Notice of Appeal filed, introduced the issue of nullity.

Mr. Cozier referred to the Record in which it was clearly indicated that at the Petition hearing, Counsel for the appellants introduced fresh evidence for the analysis of the Adjudication Officer. Flavius Darius and Evariesta Ambrose were called and were cross-examined by Carlos

/Du Souza.....

Du Souza. Counsel for Rodney Bay Limited informed us that he was afforded the opportunity to cross-examine them, and I accept that. After the cross-examination by Du Souza learned Counsel for the appellants withdrew the case against the Company, and it would seem from the Record that as there was no objection thereto, the Company was permitted to withdraw.

Throughout the hearing of this appeal no reason was advanced to justify a finding other than that, at the hearing of Petition 4A 4D/P, Mr. Gordon conducted the case for the appellants as he deemed to be in the best interest of his clients, and in accordance with their instructions. He was not hindered by the Adjudication Officer; and of particular significance is the fact that Mr. Gordon has not complained or supported in any way the contention of Mr. Foster (who was not present) that the conduct of the hearing was such that the appellants were deprived of or denied the right or the opportunity to cross-examine anyone whom they - through their counsel - sought to cross-examine. Further, the appellants did not file an affidavit setting out the facts in support of the allegations made through counsel. In my view, an application on their behalf to call any witness before the Adjudicator, in order to cross-examine that witness, could have been made if it was felt to be necessary. No such application was made and so it could not be considered.

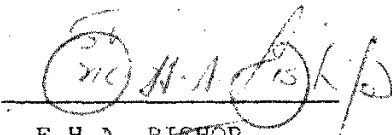
There was no prerequisite that, at the hearing, a witness should first be examined before being cross-examined.

In their decision the Tribunal stated;-

".....the record shows that the matter went through two stages before the Adjudicator, first the Dispute Stage and next the Petition Stage. Evidence was taken on both occasions. At the second or Petition Stage the appellants were represented by experienced counsel. Additional evidence was taken and it would appear that the matter was given a full hearing. At no stage it is recorded that the appellants were refused an opportunity to cross-examine anyone or that any such request was ever made. In the views of the Tribunal it cannot be said to have been a nullity."

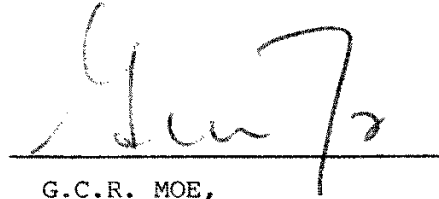
I am not convinced that I ought to differ from this finding of the Tribunal.

For the above reasons therefore, I would refuse the relief which counsel sought from this court. I would dismiss the appeal, with costs of the Company here and below to be taxed and paid by the appellants.


E.H.A. BISHOP,
Justice of Appeal.



L.L. ROBOTHAM,
Chief Justice



G.C.R. MOE,
Justice of appeal.