

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1997**

SUIT NO: 209 of 1972

Between:

CHRISTOPHER GEORGE of the Village of Gros-Islet in the State of Saint Lucia, Carpenter, acting herein Qua Administrator of the Succession of the late Moise George as appears by the High Court granting Letters of Administration dated 18th May, 1972 and registered in Vol: 125a No:98839

PLAINTIFF

AND

BARNARD ISIDORE also known as **MARIUS SONSON** of Vieux Sucrierie in the Quarter of Gros-Islet, Labourer

DEFENDANT

IN THE MATTER of the application for leave to file a Writ of possession for the enforcement of Judgement for possession of land **AND IN THE MATTER** Of Order 66 Rule 3 (1) (a) (2) (3) of the Rules of the High Court

Mr Kenneth Monplaisir, QC for the Plaintiff

Dr W E Waldron-Ramsey for the Defendant and Suzanna Isidore

Miss Beverly Downes for Elizabeth Tisson and Darius Isidore

1997: OCTOBER 10
AND 17

JUDGMENT

FARARA J (Ag) In Chambers

On 24th January, 1997 the Plaintiff applied by Summons for leave to issue a Writ of Possession to enforce the judgement of the High Court of Justice (Matthew J as he then was) dated 19th December, 1996 given after trial whereby the Defendant was ordered, inter alia, to give up possession of certain lands at Vieux Sucrierie in the Quarter of Gros-Islet (now registered as Block 1253B. 128 and 1253B. 129) not later than 31st December, 1986. The said lands are currently in the possession of Suzanna Isidore, Elizabeth Tisson and Darius Isidore. These said persons are descendants of the original Defendant in this action, Rosabelle Louis, who died on 5th October, 1977. By Order made 27th July, 1983 Bernard Isidore (also known as Marius Sonson) was made a party to this suit consequent upon the death of Rosabelle Louis. The Plaintiff's Summons is supported by his affidavit sworn on 7th and filed 24th January, 1997 with some ten exhibits.

On 2nd June 1997 a Cross Summons was filed on behalf of the Defendant, Bernard Isidore, supported by an affidavit of the Defendant sworn and filed 2nd June, 1997. Attached to and filed with the Defendant's affidavit are two documents/exhibits, namely, a certified copy of the death certificate of one "Philgence Zepherin" and a copy of survey plan No. GI572 dated

2nd February, 1972 prepared by Orman E. Monplaisir.

By his Cross Summons the Defendant made application for a stay of execution of the judgement of the High Court of Justice herein dated 19th December, 1986 and an order setting aside "the order made against (a) Suzanna Isidore (b) Elizabeth Tisson and (c) Darius Isidore," on the ground that the principal document relied upon by the Plaintiff to obtain the said judgement was fraudulent to wit, the plan of survey GI572, No. 31/72 made by Orman E. Monplaisir on 3rd February, 1972 for three reasons stated in the Cross Summons.

The Plaintiff's Summons and the Defendant's Cross Summons aforesaid came on for hearing on 10th October, 1997 and were, heard together.

On 6th June, 1997 three separate affidavits, one each sworn to by Suzanna Isidore, Elizabeth Tisson and Darius Isidore were filed herein by their Solicitor.

They each confirmed being served with a copy of the Plaintiff's Summons and denied being bound by the terms of the judgement dated 19th December, 1996 as non parties to the suit. In addition, Suzanna Isidore asserts in her affidavit, that the said judgement "was based on incorrect and misleading information which was tendered in evidence by the Plaintiff." It is to be noted that none of these three affidavits allege fraud

or in any way seek to particularize the allegation of incorrect and misleading information made by Suzanna Isidore in her affidavit.

The dispute between the parties regarding ownership and possession of the said two parcels of land has had a long and trying history with a multiplicity of suits, appeals and motions before the High Court of Justice and the Eastern Caribbean Court of Appeal respectively, which I will endeavour to summarize later in this decision.

The Plaintiff's Summons seeks leave pursuant to Order 66 Rule 3 (1)(a) and Rule 3 (3) of the Rules of the Supreme Court 1970, to issue a Writ of Possession consequent upon the judgement and orders of the High Court of Justice made 19th December, 1996 in favour of the Plaintiff after a trial.

It is to be noted, as verified by Learned Counsel for Elizabeth Tisson, that she is the sister of Suzanna Isidore and she is one of the persons to inherit from Rosabelle Louis the original Defendant in this Suit. And so, the three persons now in possession of the said lands are all persons who are to inherit from or are beneficiaries of the estate of Rosabelle Louis, having no separate or independent claim or right to ownership or possession of the said lands. Indeed, Learned Counsel for Elizabeth Tisson and Darius Isidore, in her brief address, submitted that their claim or entitlement to be in possession of

the said lands, will stand or fall with the submissions made by Learned Counsel, Dr Ramsey, for the Defendant and Suzanna Isidore, which submissions she adopted as her own.

However, during of the submissions by Learned Queen's Counsel for the Plaintiff, I drew to his attention and that of Counsel for the other parties, that on 16th July, 1992 the Plaintiff applied for leave to issue a Writ of Possession herein to enforce the judgement rendered 19th December, 1986 and on 29th July, 1992, Matthew J made an order granting leave to issue such Writ of Execution after an inter parties hearing at which the Defendant was present and then un-represented. In paragraph 5 of the Plaintiff's affidavit filed 16th July, 1992 in support of the said application, it was averred that the order of the High Court of Justice had not been obeyed and "Bernard Isidore, Suzanna Isidore and other members of her family are still on the land." The formal Order of the Court was filed on 31st August, 1992. The Order has not been appealed from or set aside and the six year period for the enforcement of any judgement or order by the issuance of a Writ of Execution (which includes a Writ of Possession) has not yet lapsed **(RSC ORDER 67 RULES 1 AND 2(1)(A))**.

As such, the Order made 29th July, 1992 granting the Plaintiff leave to issue a Writ of Possession is still "alive." A Writ of Possession may be issued by the Plaintiff against the Defendant (Bernard Isidore) and Suzanna Isidore and other family members

who were then (1992) and are still now in possession of the said lands.

These matters relating to the 1992 Summons and Order having been brought to light by the Court, Counsel for the Plaintiff, in his reply, conceded that the 1992 Order granting leave to issue a Writ of Possession being still in effect, this Court cannot or ought not to make a new Order, as to do so would be superfluous. With this I entirely agree.

The history of Court proceedings relative to the land dispute between the parties or persons claiming under or through the succession of Rosabelle Louis, is set out in detail in the Plaintiff's Affidavit in support of his Summons filed 24th January, 1997. The pertinent aspects of this chronology are:

- (1) On 19th December, 1986, after a trial, Matthew J, gave judgement for the Plaintiff and ordered the Defendant, inter alia, to give up possession of the said lands on or before 31st December, 1986. (**Exhibit C.G.2**).
- (2) On 11th March, 1988 Suzanna Isidore and others commenced, by Writ of Summons, a new action Suit 80 of 1988 against Christopher George (the successful Plaintiff in suit 209 of 1972) in relation to the said lands, the subject matter of the instant action.

- (3) On 26th May, 1989, Matthew J, in a written judgement decided, inter alia, that Suit 80 of 1988 was res judicata in that Suzanna Isidore, the wife of Bernard Isidore was bound by the judgement rendered in Suit 209 of 1972 and, accordingly, dismissed Suit 80 of 1988 with costs to the Defendant. (**Exhibit C.G.3**).
- (4) The appeal by Suzanna Isidore and others against the decision of res judicata in Suit 80 of 1988 was upheld by the Court of Appeal in Civil Appeal No. 20 of 1989 in a judgement of Moe, J A delivered 28th May, 1990. (**Exhibit C.G. 4**).
- (5) By Notice of Motion filed 14th May, 1991 Civil Appeal No. 1 of 1991, Suzanna Isidore applied for special leave to appeal against the decisions of the Court of Appeal and High Court of Justice given (1) 29th May, 1990 (actually 28th May, 1990 Civil Appeal 20 of 1989); (2) 26th March, 1989 (presumably 26th May, 1989 in Suit 80 of 1988) and 16th December, 1986 (Suit 209 of 1972) **See Exhibit C.G.5**.
- It is noteworthy that the grounds relied on in the motion included allegations that "errors and/or negligence exists in the documents used at the trials;" that the first Respondent (Christopher George) "deliberately concealed important facts relative to the disputed property" from the Court; and that should the said three judgements stand "a serious miscarriage of justice will be

perpetuated."

These grounds smack of the same or similar allegations which form the basis of the Defendant's Cross Summons filed 2nd June, 1997 save from them being more particularized and also being labelled as "fraudulent," a most serious allegation and one which ought not to be made lightly in pleadings or affidavits filed in an action. The motion in Civil Appeal No. 1 of 1991 was on 27th May, 1991, refused by the Court of Appeal. **(Exhibit C.G.5).**

- (6) By Notice of Motion filed 2nd October 1991, Civil Appeal No. 3 of 1991, Suzanna Isidore sought leave to appeal to Her Majesty in Council against the decision of the Court of Appeal given 27th May, 1991 (refusing special leave). The "errors" which Suzanna Isidore relied in support of her application for leave to appeal to Her Majesty's in Council, are set out at paragraph 3 (e)(1) to (5) of the Notice of Motion **(Exhibit C.G.6)**, and are identical with or incorporate all of the grounds relied on in the Defendant's Cross Summons herein. This application by Notice of Motion was withdrawn on 30th January, 1992 **(Exhibit C.G.6).**
- (7) The next "Salvo" by the descendants of Rosabelle Louis, was a Petition filed 27th July, 1992 by Suzanna Isidore as administratrix of the succession of Rosabelle Louis

deceased and others, against four Respondents, including the Land Surveyor Orman E Monplaisir (**Exhibit C.G.7**). That Petition raised various issue designed to challenge the accuracy and genuineness of the survey conducted and plan GI572 prepared by Orman E Monplaisir (the same plan sought to be impuned as fraudulent by the Defendant's Cross Summons). The Petitioners sought, inter alia, a declaration of the High Court of Justice that the said survey plan is "null and void and be hereby improbated" and an Order for its cancellation by the Chief Surveyor. (**See Reliefs 2 and 3 in the prayer to Petition**). The Petition also sought orders setting aside the judgments of Matthew J made 19th December, 1986 in Suit 209 of 1972 (**Relief No. 12**) and 26th May, 1989 in Suit 80 of 1988 (**Relief No. 13**).

- (8) On 19th May, 1994, Petition No. 360 of 1992 was dismissed by d'Auvergne J with costs. (**Exhibit C.G.7**).
- (9) That decision was appealed by Notice of Appeal filed 28th June, 1994, Civil Appeal No. 9 of 1994 (**Exhibit C.G.8**). However, the Appellant did not perfect the appeal and an application for extension of time to file the Record of Appeal made 16th March, 1995 was adjourned to 5th May, 1995 by Byron J A.

- (10) On 5th May, 1995, the application for extension of time to file the Record of Appeal was dismissed by Byron J A with costs. (**Exhibit C.G.9**).
- (11) A further Notice of Motion filed by Suzanna Isidore and others on 19th May, 1995 for an extension of time to file the Record of Appeal was on 13th July, 1995 struck out by Byron J A with costs to the Respondents. (**Exhibit C.G.10**).
- (12) As mentioned previously, the Plaintiff in this action was on 29th July, 1992 granted leave to issue a Writ of Possession and there has been no challenge to the said Order which still stands. No Writ of Possession having yet been issued the provisions of Order 67 Rule 8 relating to duration and renewal of Writs of Execution is of no application.

As also mentioned previously, Learned Counsel for the Plaintiff accepted that the 1992 Order granting leave to issue a Writ of Possession is still valid and effectual and the Court ought not to make a fresh order, as to do so would be superfluous.

Dr Ramsy, on behalf of the Defendant and Suzanna Isidore, submitted that -

- (a) this Court has jurisdiction pursuant to Order 113 Rule 8 of the Rules of the Supreme Court in England,

which he urged would apply in St. Lucia where our Rules of Court are silent on such matters, to set aside the judgement of Matthew J made 19th December, 1986 in an appropriate case. He cited in support of this proposition **The Supreme Court Practice 1995 Vol 1 para 113/1-8/9;**

- (b) the said judgement may be set aside by a Judge of the High Court of Justice who need not be the Judge that made the original order;
- (c) in considering the Defendant's application for stay of execution and/or to set aside the said judgement, if the Court should be of the view that there is some issue or question, for example fraud, to be tried or some other reason why there ought to be a trial, the Court may give directions for the further conduct of the proceedings or may order the proceedings to be conducted as though they were begun by Writ of Summons;
- (d) there are in fact fresh grounds or material for altering the decision of Matthew J dated 19th December, 1986 and, therefore, this Court has jurisdiction to entertain the Cross Summons;

- (e) the issue of fraud is not susceptible to the usual limitations as to time and may be raised at anytime;
- (f) even a final order for possession can be set aside by a Judge especially in cases of fraud;
- (g) the three matters raised by the Defendant in his Cross Summons to substantiate the assertion that the judgement was based on a fraudulent document to wit, the survey plan, are demonstrative of a state of affairs whereby there were obvious errors on the face of the plan, as is evident from in a letter dated January 28, 1991 from the Chief Surveyor, Mr Lester D Martyr to the Defendant's Solicitors, Foster, Foster and Foster (**Exhibit B.I. 1**) and the Death Certificate of Philgence Zepherin (**Exhibit A**) meant that the survey plan was either prepared fraudulently or, alternatively, the surveyor was so reckless as to whether these matters were correct as to amount to constructive fraud.

I am not satisfied that any of the matters complained of in the Cross Summons (which have been raised in previous proceedings) are fresh matters or fresh grounds or material which would justify setting aside the judgement or staying the execution thereof, even where the Court has the jurisdiction to

make the kind of order sought in the Cross Summons, which jurisdiction I am fully satisfied this Court does not have.

I am also not satisfied (though I do not so decide) that any of the matters relied on in the Cross Summons can, even if substantiated by evidence, amount to fraud actual or constructive.

Does Order 113 of the Rules of the Supreme Court of England apply in St. Lucia? The jurisdiction vested in the High Court in civil proceedings shall be exercised in accordance with the provisions of the West Indies Associated States Supreme Court (Saint Lucia) Act 1969, the Civil Code, the Civil Code of Procedure, any other law in force in the State and rules of court and, where no special provision is therein contained, such jurisdiction shall be exercised as nearly as may be administered for the time being in the High Court of Justice in England. **Section 11 West Indies Associated States Supreme Court (Saint Lucia) Act 1969.**

Dr Ramsey placed some reliance on Article 375 of the Civil Code of Procedure of the Laws of St Lucia captioned "**Petitions to Set Aside Judgement.**" However, Articles 364 to 380 of the Civil Code of Procedure of St. Lucia were expressly repealed by the Rules of the Supreme Court 1970 and replaced by Order 2 Rule 2, Order 13 Rule 8, Order 19 Rule 9 and Order 35 Rule 2, (Schedule 2 Page 267) all of which provide the specific circumstances in

which and the types of judgements or orders that may be set aside by a Judge of the High Court of Justice. The instant matter does not fall within any of those provisions.

It follows that our Rules of Court are not silent as regards the practice and procedure relating to the setting aside of judgements or orders of the High Court of Justice, including judgements for possession of land. In my view Order 113 of the English Rules of Court has not been imported into the Rules of Court applicable in this jurisdiction.

Even if Order 113 was part of the practice and procedure in St Lucia relating to such matters, that Order provides in Rule 1 a summary process for determining claims for possession of land and for such proceedings to be initiated by Originating Summons. This action was commenced by Writ of Summons (not Originating Summons) and Order 113 would, in any event, be of no relevance to the instant matter and the Defendant's Cross Summons in particular.

Order 113 Rule 8 (English Rules) empowers a Judge to set aside or vary "any Order made in proceedings under this Order." The instant action is clearly not proceedings brought under Order 113 (even if it was part of our procedure and practice) and, therefore, the judgment rendered by Matthew J on 19th December, 1996, which is a final judgement after trial and has

not been appealed, cannot be set aside by an application brought under Order 113 Rule 8.

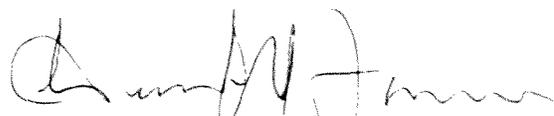
The Defendant, his wife Suzanna Isidore and others had several opportunities to challenge the first instance judgements in Suits 209 of 1972, 80 of 1988 and 360 of 1992. They either did not avail themselves of the appeal process or were unsuccessful in any appeal brought.

I cannot agree more that there has to be an end to litigation concerning this land dispute, in respect of which the Defendant and his family have been wholly unsuccessful. The multiplicity of suits and applications are nothing short of an abuse of the Courts process by litigants who seem bent on not accepting or respecting the decisions of the High Court and Court of Appeal which have fully and conclusively disposed of this matter. They have had more than their day in Court.

I hold that this Court has no jurisdiction to grant the reliefs sought by the Defendant in his Cross Summons filed 2nd June, 1997 and, it is accordingly dismissed with costs to the Plaintiff to be taxed unless otherwise agreed.

I make no order on the Plaintiff's Summons filed 24th January, 1997 as the relief sought was granted by the Court in its Order made 29th July, 1992 which Order is still effectual.

Alternatively, if that Order is not currently in force, I would grant the relief sought in the Plaintiff's Summons filed 24th January, 1997 with costs to the Plaintiff to be taxed unless otherwise agreed.

A handwritten signature in black ink, appearing to read "Gerard St. C. Farara". The signature is fluid and cursive, with a large initial "G" and "S".

GERARD ST. C. FARARA, QC

HIGH COURT JUDGE (ACTING)