

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1999**

SUIT NO:776 of 1996

BETWEEN:

KENNETH LOUISION

PLAINTIFF

and

ANN MARIE DANIEL ET AL

DEFENDANTS

Appearances:

Mr. Kenneth Foster, Q.C. for the Plaintiff
Mr. P. J. Husbands, Q.C. for the Defendants

1998: December 16th & 18th
1999: January 22nd

JUDGMENT

d'AUVERGNE, J.

On the 5th September, 1996 the Plaintiff Kenneth Louision sued five
defendants:-

- (1) Ann Marie Daniel
- (2) Ann Joseph
- (3) Sydney Rosembert
- (4) Ferdilia Docton Rosembert and
- (5) Parry Husbands, asking for the following relief:-

- (1) That the Defendants be ordered to pay the Vendor's Tax due on said sale as well as all penalties owing thereon.
- (2) That this Court doth order the said sale to be registered.
- (3) Specific performance of the said lands originally consisting of the portion of land registered in Land Registry 1452B., Parcel 22 amounting to 10 hectares or 24.71 acres for a total price of ONE HUNDRED AND TWENTY-FIVE THOUSAND \$225,000.00.
- (4) An injunction restraining the Defendants whether by themselves, their agents, servants and/or agents from mutating surveying, or in any way dealing with the land except as a transfer of said lands to the Plaintiff as contained in Deed of 5th December, 1994.
- (5) General damages.
- (6) The costs hereof.

On October 2nd, 1996 appearance was entered on behalf of all the Defendants. To date they have not entered any defence.

On February 5th, 1997 a Default Judgment was entered in the following terms "*No defence having been entered by the Defendant herein it is this day adjudged that Judgement by ~~Defendant~~ ^{Plaintiff} be entered against the Defendant for possession, and registered title to the lands described in the Writ of Summons as well as damages to be assessed with Legal Costs.*"

On February 3rd, 1998, the Plaintiff took out a Summons for assessment of damages. This Summons was supported by an affidavit of the Plaintiff filed on the same day.

The response of the Defendants to this Summons for assessment was a Summons said to be taken under Order 34 Rule 1 of the Rules of the

Supreme Court and filed on February 13th, 1998 to deem the matter abandoned and incapable of being revived. The Summons was supported by an Affidavit of Parry J. Husbands filed on the same day.

Archibald J. dealt with the Summons which was obviously meant to be a Summons under Order 34 Rule 11 (1)(a). In doing so he had to deal with the default judgment. In a written judgment DELIVERED ON March 13th 1998. The Learned Judge held that he was unable to accept the contention on behalf of the Plaintiff that the default judgment was regular and valid and he gave several reasons for so holding. But he held nevertheless that it was “a “proceeding” or “document” within the meaning of Order 34 Rule 11(1)(a) thereby preventing the passing of an uneventful year for entry of appearance dated October 2nd 1996 or the affidavit of service dated 15th October 1996, and avoiding the draconian consequences of abandonment.”

He therefore dismissed the Defendants' Summons with Costs to the Plaintiff in the sum of \$500.00.

On the 24th day of March 1998 ~~the~~^{the} fifth Defendant took out a summon for leave to appeal to the Court of Appeal of the Eastern Caribbean Supreme Court for the judgment of Archibald J. dated March 13th 1998. This Summons was supported by an affidavit of Parry Husbands filed on the same date.

On April 3rd 1998 d'Auvergne J granted leave to the fifth Defendant, Parry J. Husbands to file an appeal against the decision of Archibald J., delivered on March 13th, 1998.

The records show up to date of the hearing that no appeal has yet been filed and Learned Counsel for the Plaintiff Mr. Kenneth Foster, Q.C., has stated that he has not been served with any notice of Appeal . Learned Counsel for the Defendants has advocated that even this can be corrected as he can simply ask for an extension of time.

I regret that this is not my understanding of the interpretation of the Rules. Order 64 Rule 5 of the Rules of the Supreme Court prescribes time limits for appealing and there is much jurisprudence on extension of time. It is not at all automatic. See Harold Simon and Carol Henry Civil Appeal No. 1 of 1995, Antigua. B.V.I. Civil Appeal No. 6 of 1997, Ramsgate Resources N.L. et al and P. H. Nominees Ltd.

It seems to me that I should treat this matter before me presently as not being an appeal. If and when there is a proper appeal it follows that I will have to refrain from any further action.

As stated earlier the effect of the judgment of Archibald J. was that the judgment in default was not valid so it was not surprising when on September 17th, 1998 the Plaintiff filed a Summons with supporting affidavit for judgment against Defendants one, two, three and four.

On 30th September, 1998, thirteen (13) days later the Plaintiff again filed another Summons for judgment against all five defendants again with supporting affidavit and on that same day viz, 30th September, 1998 filed a discontinuance of the Summons to enter judgment against Defendants one, two, three and four.

At this juncture it is to be noted that the fifth defendant has obtained leave to appeal for the 3rd day of April, 1998 but no appeal has been served on the Plaintiff. On the 9th day of October, Mitchell J. considered the two Summonses for judgment in default and the discontinuance mentioned above. He held that the discontinuance was ineffective since it contravened Order 21 Rule 6 of the Rules of the Supreme Court and he dismissed the two Summonses for judgment in default because the affidavits in support did not comply with either Order 32 Rule 9 or Order 41 Rule 9(2) of the Rules of the Supreme Court.

At the end of his decision given in chambers, Learned Counsel for the Plaintiff was granted leave to appeal.

On the 19th day of November, 1998 the Plaintiff once more filed a Summons, supported by affidavit against all five Defendants.

It seems to me that the Plaintiff is entitled to come again if he passes Judge Mitchell's rules test.

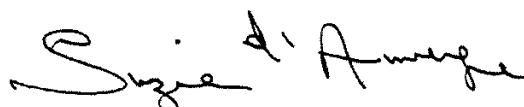
I have perused the Summons and affidavit filed on the 19th day of November, 1998 and found them to be in accordance with the Rules of the Supreme Court.

This being so I thereby grant leave to the Plaintiff to file Judgment by Default on the Defendants.

My order is as follows:-

- (1) Leave be and is hereby granted to the Plaintiff to file Judgment by Default on the Defendants.**

- (2) That the Defendants do pay the costs of this Application to the Plaintiff in the sum of \$500.00.**



JUSTICE SUZIE d'AUVERGNE
HIGH COURT JUDGE