

SAINT LUCIA:
IN THE HIGH COURT OF JUSTICE
(Civil)

No: 607 of 1998

Between:

ETHELINA CHARLES



- Plaintiff

vs

WILFRED NURSE

- Defendant

Appearances:

Mr. P. Straughn for Plaintiff

Mr. W. Hinkson for Defendants

1999: May 7th
June 2nd

JUDGMENT

d'Auvergne J. (In Chambers)

By a writ of summons endorsed with a statement of claim filed on the 2nd of July, 1998 the Plaintiff claimed inter alia for "possession of the land occupied by the Defendant."

An affidavit of service on file indicates that there was personal service of the Defendant on the 20th day of August, 1998.

On the 11th day of February, 1999 the Plaintiff's solicitor in pursuant to and by notice of Order 19 Rule 5(1) of the Rules of the Supreme Court filed a Certificate of Solicitor in which he certified that the Plaintiff was not claiming for relief of the nature specified in Order 58 Rule 1(2) of the Rules of the Supreme Court and on that same day filed for Judgment in default of defence and for costs.

An amended summons was later filed pursuant to the order of the court dated 12th day of March, 1999 the amended summons was to amend the word defence to appearance.

On the 14th day of April, 1999 the Defendant filed **Affidavit in opposition to application for Judgment in Default of appearance which is reproduced.** A defence was filed on that same date.

I, WINFIELD NURSE of La Pansee in the Quarter of Castries in the State of Saint Lucia make oath and say as follows:

1. *That I oppose the application of Plaintiff for a judgment to secure title to property which does not belong to her.*
2. *I had been renting the land upon which my house is built from the Phillips family from the sixties. I erected my house in 1967 and bought from Lucille Phillips in 1979.*
3. *I am the only person to whom land was sold who is without Deed of Sale. This is because when I was able to pay the Solicitor for my Deed he said he could no longer find my papers.*

The Court will notice that the Deed of Sale to Simon Louis and Classie Louis acknowledges that I own the land which bounds these purchasers on the South and this is acknowledged by nine (9) co-proprietors of the land including James Nathaniel Phillips predecessor-in-title of Ehelina Charles but she now claims that she owns the entire portion of land when she well knows that 10,540 square feet belong to me from Block 0848D Parcel 768.

I therefore oppose the granting of title to her and ask that the property be partitioned so that she be granted only that portion which belongs to her.

On the 19th day of April, 1999 the Plaintiff filed a summons seeking that the Defence and Affidavit noted above be struck out.

That summons was supported by an Affidavit of the Plaintiff. Affidavit is also reproduced:

I, ETHELINA CHARLES of La Pansee in the City of Castries in Saint Lucia make oath and say as follows:-

1. *I am the Plaintiff in this matter.*
2. *On Wednesday the 14th day of April, 1999 I was present in Chambers when the Judge adjourned my matter to Friday 7th May, 1999 in the absence of my solicitor Patrick Malcolm Augustine. Straughn upon the application of Mr. Winston Hinkson who purported to appear as Solicitor for the Defendant.*
3. *That whilst I sat in Chambers I did not hear the Judge make any Order granting leave to the Defendant to file and serve any documents.*
4. *That on the said 14th day of April, 1999 my Solicitor informed me by telephone that Mr. Winston Hinkson purporting to act as Solicitor for the Defendant filed and served on him a Defence and an Affidavit in Opposition to my Application for Judgement in Default of Appearance.*
5. *I am advised by my Solicitor and I verily believe that Mr. Winston Hinkson has acted improperly since Mr. Winston Hinkson did not first obtain my consent or the consent of my Solicitor acting on my behalf and in his own deliberate judgement; nor did he obtain the leave of the Court since this Writ has been served on the Defendant on the 20th day of August, 1998.*

6. *I am further advised by my Solicitor and I verily believe that the Affidavit in Opposition to my Application for Judgement in Default of Appearance is irregular in the sense that the Defendant has not moved the Court properly.*
7. *In the circumstances I humbly pray to this Honourable Court for an Order to set strike out the said Defence and Affidavit filed and served on the 14th day of April, 1999 since the action of Mr. Winston Hinkson is an abuse of the process of the Court.*
8. *I verily believe the Statements made in paragraphs 1 to 7 to be true.*

The summons was heard in Chambers on the 7th of May.

Arguments

Learned Counsel for the Plaintiff contended that the filing of the defence and affidavit in opposition were improper since the Defendant had not adhered to Order 12 Rule 5(1) and (2).

He argued that Counsel could not oppose the “judgment” by the mere filing of an affidavit, that he had to apply by summons verified by an affidavit. Counsel urged the Court to strike out the defence and affidavit since all the evidence stated therein were of no avail to the Court.

He quoted No. 11 of 1984 Land Adjudication Act as amended by Section 6 of No. 8 Land Adjudication (Amendment) Act 1986 and stressed that the Court should not entertain the Defendant’s application at this time.

He quoted the Land Registration Act No. 12 of 1984 and said that the Court could only rectify the land register “where it is satisfied that registration including a first registration has been obtained, made or omitted

He concluded by reminding the Court that delay defeats equity and that equity aids the vigilant and not the dormant.

Learned Counsel for the Defendant argued that persons who own property have a right to safeguard their property. He argued that the Defendant had an overriding interest in the land.

CONCLUSION:

Order 12 Rule 5 provides:

1. *"A defendant may not enter an appearance in an action after judgment has been entered therein except with leave of the Court."*
2. *"Except as provided by paragraph (1), nothing in these Rules or an writ or order thereunder shall be construed as precluding a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time."*

Order 48 Rule 5 notes the Court vacations and provides under (c): "The long vacation which shall begin on 1st August and end on the 15th of September."

The writ was filed on the 2nd of July, 1998 therefore in accordance with Order 12 Rule 4(a) an appearance should have been entered "eight days after service of the writ which would have been long before the 1st of August when the long vacation would have commenced."

Order 12 rule 5 noted earlier is explicit.

This defendant has not entered an appearance but enters a defence on the 14th of April, eight months later.

I have perused the file and have not seen any order of the Court granting him leave to do so. Moreover, Counsel for the Defendant did not produce any such order at the hearing.

I therefore have no alternative but to find as a fact that no such order was granted and I do so find.

The Affidavit filed on the 14th day of April, 1999 is highly improper and cannot be considered.

The rules of the Supreme Court must be observed hence the reason for their being. If any person cares to breach them then he will pay the penalty.

The references to the various cases on the Land Registration and Land Adjudication Acts are premature since the application before me is a summons under Order 18 Rule 19(d) pleadings and endorsements are an abuse of the process of the Court.

My order is as follows:

1. That the Defence and Affidavit of the Defendant filed on the 14th day of April, 1999 be struck out.
2. That the Defendant do pay the sum of \$300 to the Plaintiff (costs of this application).



Suzie d'Auvergne
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SUZIE d'AUVERGNE
High Court Judge