

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 234 OF 1990

BETWEEN:

DENISON THEOPHILIUS

Plaintiff

And

- (1) **LINDEN BROWN**
LINDA SHIRLEY BROWN by her attorney
ERIC BRANFORD
Administrators of the estate and Succession of
the late **AUBREY BROWN**
- (2) **LORETTA COOPER**
- (3) **CALLISTA MC LAWRENCE**

Defendants

Appearances:

Mr. Winston Cenac Q.C. with Miss I.O Shillingford and Mr. L.
Theophilus for Plaintiff
Mr. Hilford Deterville for Second named Defendant
Mrs. Petra Jeffery-Nelson for First named Defendant's estate
Mr. Evans Calderon for Third-named Defendant

1999: July 14
1999: October 29

JUDGMENT

[1] **d'Auvergne, J.:** By Summons filed on the 19th of March 1997 the
Second-named Defendant sought an order of the following:

- (1) Confirming Loretta Cooper to be the sole absolute owner of the
portion of land registered as Parcel 1854B4.

- (2) Directing the Registrar of lands to demarcate Parcel 1854 B4 on the Registry map in accordance with the Plan of Survey by Orman Monplaisir dated 5th day of May 1995 and lodged at the surveys office on the 24th day of May 1995 as Drawing Number DN810 (hereinafter referred to as **THE PLAN**)
- (3) Ordering the boundaries of parcel 1854 B4 to be fixed in accordance with **THE PLAN**.
- (4) That the Second named Defendant be awarded her costs of and occasioned by this application and of this cause.
- 5) That the Second named Defendant be granted such further or other relief as to the court may seem just.

[2] This Summons was supported by an affidavit of Loretta Cooper filed on the 1st of April 1997 the essence of which is that she bought an undivided 3 carres of land, part of a larger portion of 20 carres at Pointe Olivier which was later registered as 1854B4.

[3] She said that as the sole registered owner with absolute title of the said land she applied to the High Court and was granted leave to cause a Survey to be made of the land which was surveyed and lodged as Plan DN810 but that upon application to the Registrar of Lands for the said land 1854B4 to be demarcated the Registrar ordered that the issue be determined by the Court.

[4] On the 27th day of February 1998 the Plaintiff through his attorney and the third named Defendant filed affidavits.

AFFIDAVIT IN REPLY

I, CALLISTA MC LAWRENCE of Bois d'Orange in the Quarter of Gros Islet do solemnly and sincerely affirm as follows:-

- (1) I am Defendant No. 3 of Suit 1990 No. 234.
 - (2) I was joined by Order of the High Court dated 16th December 1992. In this Partition Action because of my interest in twenty acres of undivided land which I agreed to buy from Defendant No. 1.
 - (3) I was never informed of or given any notice of survey by any Surveyor who purported to survey for Defendant No. 2, Loretta Cooper.
 - (4) I am aware that the whole of about 39 carres is undivided land and that Defendant No. 2 could not and should not have unilaterally surveyed any portion of the said land whereby she had only an interest in the whole.
 - (5) Further, I do not agree to the survey which gave Defendant No. 2 who owns only 3 carres of land, the best portion of the land with two beaches leaving no beach for the owners of 36 carres.
 - (6) I am aware that this Honourable Court ordered that the Plan of Survey and Surveyor's recommendation should be revised after I was joined in the Suit.
 - (7) The Schedule to the Deed of Sale to Defendant No. 2 did not identify any particular portion of the said land sold to her, therefore, her unilateral survey is wrong and unacceptable.
- [5] I, pray that any Partition should deal with all parties to this Partition Action and the Application of Loretta Cooper the Defendant No. 2 be dismissed with costs.
- [6] I verily believe that the facts affirmed are true and correct to the best of my knowledge and belief.

SECOND AFFIDAVIT

I, GEORGE THEOPHILUS of Bonne Terre in the quarter of Gros Islet, Economist and Financial Consultant, do hereby make oath and say as follows:-

- (1) That the Plaintiff is my brother and that I am the duly constituted attorney of the Plaintiff as appears by Power of Attorney by the Plaintiff to me executed before Fleur Odlum, Notary Royal, on 22nd January, 1973 and registered on the same day in Vol. 126A No. 100820, a true copy of which is exhibited hereto and marked "A".
- (2) That I am duly authorised to make this Affidavit which I make from facts coming to my knowledge as such attorney and from my personal knowledge.
- (3) I have read the Affidavit of LORETTA COOPER filed herein on 1st April 1997 and in reply thereto I say as follows:

- (a) The questions raised in the above mentioned Affidavit mainly involve the interpretation of the decision of Mr. J.M.F. White the Land Adjudicator in the Dispute No. 1B BD dated 22nd September 1986. The relevant passage of the decision is as follows:-

"For the above reasons I award the 33 carres of land, less the three carres of LORETTA COOPER'S to AUBREY INNOCENT BROWNE and DENISON THEOPHILUS with absolute title. I am lead to believe that there is no objection to the position of Mrs. Cooper's three carres on the headland where

the wooden hut is situated. The small plot is unsurveyed and thus both plots will have an undemarcated boundary and areas will not be calculated until such time as the boundary is surveyed”.

(b) I state that this passage means, having regard to the evidence before the Adjudicator, that LORETTA COOPER’S land originates from the headland where the hut was situated. The passage does not state or indicate that LORETTA COOPER’S 3 carres of land should comprise the whole of the headland nor that it should be wholly contained within the headland.

© I recall that when the Adjudicator JOSEPH CHARMONT, the late AUBREY BROWN, the late Mr. VERNON COOPER and myself visited the site we showed the Adjudicator the hut. Mr. Cooper stated that his wife’s land (though undivided) should originate from the hut. No one present objected. I still agree that Mrs. LORETTA COOPER’S land may originate from the area where the hut was located despite the fact that she did not purchase by her Deed any particular portion of the 33 carres of land. This position is amply supported by the language used by the Adjudicator himself in his Decision (cited above);

(d) in the light of the above, I state that it would be fair and equitable to all parties that the headland (excluding the Queen’s chain) should be subdivided among the co-partitioners in proportion to their respective shares with the share or Mrs.

LORETTA COOPER being taken in part from the area where the hut was located.

- (e) further I would respectfully request that this Honourable Court should order a partition of the headland by another surveyor appointed specially by the Court for this purpose and that the costs of this subdivision should be borne by the co-partitioners in proportion to their respective shares

[7] On the 2nd of November 1998 the first named Defendant filed the following:

AFFIDAVIT

I **LYDIA SHIRLEY BROWNE**, acting herein and represented by **ERIC BRANFORD** of La Pansee as appears by Power of Attorney registered as Instrument Number 621/97, make oath and say as follows:-

- (1) That I have been substituted as one of the Defendants, in place of **AUBREY BROWN** (Deceased).
- (2) That there is an application filed by the Second-Named Defendant **LORETTA COOPER**, pursuant to an Order of the High Court of Justice (Saint Lucia) made on the 6th day of October, 1994, confirming her to be made absolute owner, demarcation of her lands in accordance with the Plan of survey by **ORNAN MONPLAISIR** Lodged with the Survey's Office on the 24th day of May, 1995 as Drawing Number DN 810.
- (3) That I never had knowledge of the aforementioned survey plan and therefore I never had an opportunity to object to the said survey plan and or the manner in which the boundaries of Block 1854 B parcel 4 should be fixed in accordance with the plan.

- (4) That had I seen the plan, I would have reason to object because the deed of Sale by which the Second-Named Defendant acquired her lands did not adequately describe the portion of land which she acquired.
- (5) That I say so for the following reasons:-
- (a) That the Second-Named Defendant acquired the land from **MELFORD ALEXANDER** by Deed of sale registered in Vol 100 Number 72523 dated 18th August, 1961, marked as Exhibit "A".
 - (b) That **MELFORD ALEXANDER** purported to acquire the lands from **LUCIENNA CHARMONT** of an undivided three (3) carres of lands dismembered from twenty (20) carres of lands of the Pointe Olivier Estate by deed of Sale Marked "B".
 - © That portion of land did not belong to **LUCIENNA CHARMONT**, but to her husband **FELICIEN CHARMONT**, who acquired that land on the 1st day of April, 1878 jointly with **ADOLPHE CONFIDENT** before he was married to **LUCIENNA CARMONT**.
 - (d) That **LUCIENNA CLARMONT** was married to **FELICIEN CHARMONT** on the 8th day of December, 1901 as shown by marriage certificate marked "C".
 - (e) That **LUCIENNA CHARMONT** could not have acquired the property she sold to **HILFORD ALEXANDER** by way of community of property. She had no declaration of succession, or succession documents and so had no title to sell the said land.
 - (f) That by Deed of Sale dated the 18th day of August, 1961 **HILFORD ALEXANDER** purported to sell to **LORETTA COOPER** an undivided ½ share of three (3)

carres to be dismembered from twenty (20) carres of Pointe Olivier Estate, together with a wooden house situate thereon covered with galvanized iron and all other appurtenances and dependencies thereof, which said lands belong to **FELICIEN CHARMON**, as he purchased that portion of land prior to his marriage with **LUCIANNA CHARMONT**.

- (6) Consequently, this Honourable Court ought not to make the Order as prayed as the Court was not appraised of the true position and thereby make the appropriate Order.

[8] On the 13th day of November 1998 the Second-named Defendant, the applicant in the present Summons filed a supplementary affidavit

SUPPLEMENTARY AFFIDAVIT OF SECOND DEFENDANT

I LORETTA COOPER of Vigie in the Quarter of Castries in Saint Lucia, make oath and say as follows:-

- (1) I am the second defendant in this matter.
- (2) Pursuant to the Adjudication Record submitted by the Adjudication Officer in accordance with the Land Adjudication Act, to the registrar of Lands, I was on the 11th day of December 1986 registered as the sole proprietor with absolute title of the portion of land registered as Land Register Number 1854B 4 (hereinafter referred to as the "Parcel"). A copy of the Land Register relating to the Land is exhibited to this affidavit and marked "LC 1"
- (3) There was also entered in the register relating to the Parcel a restriction to the effect that there were to be no dealings with respect to the Land pending a decision of the Land Adjudication Tribunal.

- (4) I was adjudged the sole absolute owner of the Parcel consequent on a claim to ownership thereof made on my behalf. A copy of the claim is exhibited to this affidavit and marked "LC 2"
- (5) My claim was based on the purchase by me of the lands comprised in the Parcel under a Deed of sale to me by HILFORD ALEXANDER which said Deed was executed before DESMOND Mc NAMARA Notary Royal on the 18th day of August 1961 and registered in the Registry of Deeds and Mortgages on the 19th day of August 1961 in volume 100b Number 72523. A copy of the Deed is exhibited to this affidavit and marked "LC 3".
- (6) My predecessor in title had acquired the identical lands by a Deed of Sale to him which said Deed was executed before JOSEPH Le GRAND Notary Royal on the 10th day of Marcy 1936 and registered in the Registry of Deeds and Mortgages on the 26th day of March 1936 in volume 83 Number 49051. The location of the Parcel was then given with reference to the wooden house which was situate thereon.
- (7) There is therefore documentary evidence of unbroken possession of the lands comprised in the Parcel from 1936 to the present day.
- (8) My claim was the subject of a dispute as there were competing claimants to the lands of which the parcel formed a part. This dispute was adjudicated upon and a decision was delivered by the Adjudicator on the 22nd day of September 1986. A copy of the decision is exhibited to this affidavit and marked "LC 4".
- (9) The relevant part of the Adjudicator's decision is as follows:- "For the above reasons I award the 33 carres of land, less the three carres of Loretta Cooper's to Aubrey Innocent Browne and Denison Theophilus with absolute title. I am led to believe that there is no objection to the position of Mrs. Cooper's Three carres on the headland where the wooden house is situated, the small plot is unsurveyed and thus both plots will have an undemarcated

boundary and areas will not be calculated until such time as the boundary is surveyed”.

- (10) There was an appeal against the decision of the Adjudicator. That appeal was heard and determined by the land Adjudication Tribunal on the 9th day of March 1989. The Tribunal dismissed the appeal and confirmed the decision of the adjudicator. A copy of the decision of the Tribunal is exhibited to his affidavit and marked “LC 5”.
- (11) Consequent on the decision of the Tribunal, the Registrar of Lands by order made on the 2nd day of May 1989 and registered in the Land Registry on the 3rd day of March 1989 as Instrument Number 1702/89 caused the restriction to be deleted from the Register relating to the Parcel. A copy of the order of the Registrar of lands is exhibited to this affidavit and marked “LC 6”.
- (12) My application herein is with respect to the location of my three carres.
- (13) This action was started as a dispute between the plaintiff and the first defendant and involved an agreement which was executed before WINSTON CENAC Notary Royal on the 19th day of June 1973 and registered on the 3rd day of November 1976 in Volume 129a Number 114296. A copy of the agreement is exhibited to this affidavit and marked “LC7 7”.
- (14) Although not a party to the dispute, an order was made on the 11th day of March 1992, which provided, inter alia,

- (a) That the Plan of Survey by Mc Donald Pierre, Licensed land Surveyor dated the 19th day of December 1977 and registered in the Office of the Commissioner of Crown lands on the 23rd day of September 1977 as Record No. 325/77 of the

portions of land referred to in paragraph 1 of the Statement of Claim be approved and confirmed.

- (b) That Loretta Cooper should be and is hereby added as a defendant to the action herein.
- (c) That the said portions of land be partitioned among the Plaintiff and the said Loretta Cooper in accordance with the agreement between the Plaintiff and the first named Defendant dated 19th June 1973 and registered in the Registry of Deeds and Mortgages on 3rd November 1976 in Volume 129a Number 114296.
- (d) That Mr. Dydace Marhurin a Licensed land Surveyor should be and is hereby appointed to view the said portions of land and to form the shares thereof in accordance with the said plan and with the said agreement and to report to the Court on or before 29th May 1992.

[9] A copy of the said Order is exhibited to this my affidavit and marked "LC 8".

- (15) I state that the order referred to in paragraph 14 hereof could not or ought not to affect me or my rights title or interests in the Parcel. I was not then a party to the suit. I was not then nor have I ever been a party to the agreement referred to in the said order. The agreement in the sixth schedule provided inter alia, that "In dividing the Estate – (a) each of the parties shall be allotted so much of the available beach land as is in proportion to his share of the Estate". The portion of land of which I am the proprietor has no restriction in relation to the other parties to the agreement as to the amount of beach land to which I am entitled.

- (16) I state that I was never in undivided ownership of any lands with the other parties to this suit. The portion of land to which I was adjudged to be the sole proprietor with absolute ownership was separately owned by me although it had not been surveyed. I always was the owner of a specific parcel of land although that parcel of land had not been dismembered.
- (17) If, which is denied, there was ever any state of indivision with respect to my said lands, that state of indivision was terminated by the order of the Adjudicator awarding me ownership of the Parcel, which is a specific portion of land.
- (18) No dispute as to the location of the Parcel was referred to the Adjudication Officer under section 15 of the Land Adjudication Act. In fact the Adjudication record reveals that there was no dispute as to the location of my land. There was no appeal to the Adjudication Officer under section 20 of the Land Adjudication Act in respect of the location of the Parcel on the demarcation map. There has in fact been no appeal against any award made to me in respect of the Parcel. There is no suggestion that the final decision of the Adjudicating Officer was incorrectly recorded on the demarcation map. A copy of the registry Map relating to my parcel of land is now shown to me and marked "LC 9".
- (19) The location of the Parcel has at all material times been set out on the Registry Map compiled from the demarcation map. By order of the Court herein made on the 6th day of October 1994 I was granted leave to cause a survey to be made of my said lands. A copy of the said order is now shown to me and marked "LC 10".
- (20) A survey of the Parcel was done at my instance by ORNAN MONPLAISIR Licensed Land Surveyor which said survey is recorded on Plan of Survey dated the 5th day of May 1995 and lodged at the Surveys Office on the 24th day of May 1995 as

Drawing Number DN 810 and recorded as 228/95. A copy of the said survey is exhibited to the affidavit and marked "LC 11".

- (21) I desire to file this survey plan in order to augment the information available from the Registry Map, and I desire that the filing of the said plan be noted in the Register, and provided for by section 14 (4) of the Land Registration Act.
- (22) The Attorney for the first defendant objected to the survey on the ground that there was a disproportionate distribution of land and that I had too much beach frontage. I state that at no time was there any issue of a partition of land between me and the plaintiff.
- (23) I requested the Surveys Department to plot the details of the survey of the lands shown on Survey Plan DN 810 on the Registry Map. The results of the plotting are exhibited to this affidavit and marked "LC 12". The plotting reveals that save that save for the adjustment that had to be made to include the amount of land to which I am entitled, the location of the land as shown on the Registry Map is the same as that shown on Plan DN 810.
- (24) I state that I am the owner of the land shown on Plan DN 810 and request that the Court make an order directing the Registrar of Lands to fix the boundaries of Parcel 1854 B 4 in accordance with Plan DN 810.
- (25) I further ask that I be awarded the costs of and occasioned by this application.

[10] On the 1st of December 1998 the Plaintiff through his attorney filed a second affidavit wherein he deposed *inter alia* that while he agreed and still maintains his agreement to the Second Defendant's sole ownership with absolute title of parcel 1854 B4 it is to be noted that the land was undemarcated; that the second Defendant had not been in continuous Possession of any particular parcel of land, that there had not been any

occupiable house or hut on the Headland but a few pillars of a house which was previously occupied by Luciana Charmont that the Plaintiff through his overseer Wilton Julian was the only person who had been and was still on the lands.

- [11] Plaintiff further deposed that he did not dispute the Second Defendant's claim to 3 carres of undivided land out of the thirty three carres since he did not understand the Adjudicator to mean that the entire three carres would have to be taken from the headland, for to do so would give her an unfair proportion of the valuable lands forming part of the thirty three carres. He however objected to the Plan of Survey DN810 by Licensed Land Surveyor Ornan Monplaisir for he said it was carried out wrongfully and requested another partition by an Independent Surveyor.
- [12] On the 18th of March 1999 Ornan Monplaisir Licensed Land Surveyor filed an affidavit wherein he deposed *inter alia* that he was assisted in his survey by the Decision of the Land Adjudicator dated 22nd September 1986 Dispute 1B8D which stated at page 7 "For the above reasons I awarded the 33 carres of land, less the three carres of Loretta Cooper's, to Aubrey Innocent Browne and Denison Theophilus with absolute Title. I am led to believe that there is no objection to the position of Mrs. Cooper's three carres on the headland where the wooden hut is situated, the small plot is unsurveyed and thus both plots will have an undemarcated boundary and areas will not be calculated until such time as the boundary is surveyed".
- [13] He deposed that a perusal of map sheet 1854 B shows (4) four portions of land and I quote from his affidavit.

- (6) Portions 1 and 3 form part of the Queen's Chain. They are separated by an undemarcated boundary, the location of which was indicated by the adjudicator.
- (7) Portions 3 and 4 are contiguous to each other. Portion 3 is immediately north of portion 4.
- (8) A perusal of the Land Register confirms that Loretta Cooper has been declared the proprietor with absolute title of Portion 4. There are no encumbrances or restrictions on her title and it is now suggested that this is undivided land which she holds together with anyone.
- (9) The Register with respect to Parcel 1854B 4 discloses that this portion of land is subject to a Private Vehicular Right of Way as indicated on the Registry Map.
- (10) On examination of the Registry Map (1854B) a vehicular right of way is discovered on the south western tip of Parcel 1854B 3 close to the north western tip of Parcel 1854B 4. This vehicular right of way is a permanent fixture on the ground and the adjudicator set the western boundary of both Parcel 1854B 3 and Parcel 1854B 4 in relation to the right of way. In conducting my survey, I took account of this feature of the ground and reproduced in my survey.
- (11) I am a special not of the adjudicator's reference to the fact that Mrs Cooper's three carres were "on the headland where the wooden hut is situate". I made specific inquires and was shown the location of the wooden hut. My calculations showed that the wooden hut was located at the same distance between the eastern and western boundaries of Parcel 1854B 4 as shown on the registry Map. I took this into account in conducting my survey.
- (12) Having determined where the eastern and western boundaries had to be located, I surveyed a portion of land of the area determined by the Adjudicator namely, three carres of 9.6 acres or 3.89 Hectares. The result was Plan DN 810.

- (13) As will be seen from my Memorandum on the Plan I disregarded the objection of George Theophilus to my method of surveying. His suggestion that I was to give Loretta Cooper a proportionate amount of beach frontage did not arise, in my view, as this was not a portion survey but a survey of a portion of land that has been specifically awarded to Mrs. Cooper as a separate portion of land.

ARGUMENTS

- [14] The arguments were mainly repetition of the affidavits already noted. At the trial however it was made abundantly clear that the plan of Survey by Ornan Monplaisir dated 5th day of May 1995 and lodged with the Survey's office on the 24th day of May 1995 as Drawing Number DN810 referred to as the Plan was the main bone of contention. Counsel for the Plaintiff and the first and third Defendants vehemently argued that the said plan did not conform with the requirements as set out by the **Land Surveyors' Act No 13 of 1984**

- [15] Section 16 (2) of the said Act provides.

“The Surveyor shall give at least eight days notice in writing to the owner or Occupier of the land of his intention to enter thereon. Where the owner or occupier cannot be found the notice shall be placed in a conspicuous place on the land.”

- [16] As a consequence of the above **via voce** evidence was taken from Ornan Monplaisir the Surveyor who drew up **The Plan**, Alban Leonce, a trainee cook who was employed as a messenger with Ornan Monplaisir during the period 1994 to 1995, George Theophilus attorney for the Plaintiff and Joseph Forche Modeste acting Chief Surveyor.

[17] Ornan Monplaisir said that since he knew who the adjoining owners were he sent out notices to them stating the date and time of the survey. He testified that he sent two written notices to George Theophilus, and posted one to Andre' Arthur the solicitor for the third Defendant but that on becoming aware that George Theophilus said that he had not been served, he caused a second notice to be sent to him, that the latter attended the third and last part of the Survey on the 2nd of May 1995 and objected to the survey which he Monplaisir noted. The objection is as follows.

[18] "An objection to the survey was made by George Theophilus on the grounds that a proportionate distribution of land in my dismemberment of the Point Olivier Estate for Loretta Cooper allowed her to gain too much beach frontage and also too much flat land. He suggested that my east and west boundaries should be moved some 150 feet westerly so as to avoid the portion of beach on the east side to be part of the Queen's chain on the Loretta Cooper location."

[19] He noted on **The Plan** and also told the Court that he disregarded Theophilus' objection since he was carrying out a dismemberment survey and not a partition survey. He said that he had completed two thirds of the survey and "showed pegs already in place to Mr Theophilus"

[20] He further said that "I think Aubrey Browne's Notice went out about the 11th day of December 1994..... I would not know for a fact that the letter was mailed on that day." This witness concluded in stating that there "was remnants of only one hut.....the hut was a crucial part the bluff, was the integral part of the survey. (bluff is a progression of land into the sea).....there was no survey plan to indicate to me where Loretta Cooper's land was On that map sheet (the map sheet as provided for by the Land Registration Titling project) the lines are broken which means it is indeterminable. I was guided by the indeterminate lines but not

obliged to follow it. Despite the fact that the lines were indeterminate it was not possible that I could have cut Loretta Cooper's land from the angle that I did."

- [21] Alban Leonce assured the Court that he served both notices on George Theophilus through a receptionist at his office but said that only the second delivery was recorded for it was afterwards that "a book" was given to him for recording the delivery.
- [22] George Theophilus' reiterated the facts in his two affidavits but emphasised his objection to the confirmation of the plan. He said "I agree an order was made for survey of Loretta Cooper's land. I did not object to that survey because we understood that survey would be done in accordance with the decision of the adjudicator. I have read the decision of the adjudicator, that part of the decision which specifies point of origin of Loretta Cooper's land."
- [23] Joseph Forche Modeste narrated the actual processing of the regulations as stated in **The Surveyors' Act** noted earlier. He said "under the Land Registration Act No. 12 of 1984 the boundaries shown on the Land Registration map sheet are general boundaries. They are fixed only when they are surveyed. The significance of dotted lines is as follows. During the time of the Land Registration Titling Project exercise, although a claim was made the lines were not open, lines were not cut, the dotted lines were presumed to be the boundaries".
- [24] He perused The Plan and pointed out four sections, numbers (1) one and three (3) were the Queen's chain. He insisted that there should not have been any partitioning of the land without consultation with the parties, in particular since that was a survey ordered by the Court.

[25] He pointed out that there was no requirement by law to send any notice by post and that if two thirds of a survey was completed when an adjoining owner came and objected then he would be aware that two thirds of the survey would be rejected; he would however state his objection on the plan and let the matter be determined by the Court. He qualified this statement by stating that was if that adjoining owner had prior notice of the survey.

CONCLUSION

[26] An analysis of the evidence shows that the notices to the adjoining owners were not in conformity with **Section 16 (2) of the Land Surveyors' Act No 13 of 1984**. By the latter, a Surveyor is mandated "to give at least eight days notice in writing to the owner or occupier of the land of his intention to enter thereon."

[27] Ornan Monplaisir commenced his survey on the 19th of December 1994 and he told the Court that he posted a notice to Andre' Arthur the solicitor on record for the third Defendant. As Joseph Forche Modeste Acting Chief Surveyor said and a perusal of the sections of the said Act shows there is no mention of delivery of notices by post.

[28] The survey under consideration was one granted by leave of the Court, which made it compulsory that the adjoining owners be properly served. Since that survey was based on the decision of the Land Adjudicator dated 22nd day of September 1986 and made in dispute 1B8D. At page 7 it reads "For the above reasons I award the 33 carres of land, less the three carres of Loretta Cooper's to Aubrey Innocent Browne and Denison Theophilus with absolute title. I am led to believe that there is no objection to the position of Mrs Cooper's three carres on the headland where the wooden

hut is situated, the small plot is unsurveyed and thus both plots will have an undemarcated boundary and areas will not be calculated until such time as the boundary is surveyed.”

[29] As I see it Loretta Cooper was granted absolute title of three carres of land out of the thirty three carres which the Co. owners all agreed to, and was thereafter registered as 1854 B4. The dispute and objection arise from the presumption of the Adjudicator “I am led to believe that there is no objection to the position of Mrs. Cooper’s three carres on the headland where the wooden house is situated.”

[30] Mr Monplaisir in his own words said “When I commenced my survey the Coopers were there, no one else, I vaguely became aware that Mr Theophilus had written to the Chief Surveyor saying that he had not received a notice.”

[31] In my judgement it was therefore incumbent on Mr Monplaisir not to proceed with the Survey until Mr Theophilus was present. He admitted that two thirds of the survey was completed before Theophilus was served the second time.

[32] Again, in my judgment he should have rejected the two days survey of the 19th and 22nd of December 1994 and start a new Survey on or after the 2nd May 1995 the day on which at least one adjoining owner was present.

[33] Having considered the evidence I am not satisfied on a balance of probabilities that George Theophilus had been served a first time. There was no record of that first service as was evidenced of the second service I therefore arrive at the conclusion that there was no service of that alleged first notice on George Theophilus.

- [34] As I have stated earlier the Act does not refer to any service of notice by post. Once more I find that there was no service on the third Defendant.
- [35] I agree with Mr Monplaisir that “only the Coopers were present” when he commenced his survey.
- [36] There were many other issues raised during the course of this trial but I have adhered to the application and the issues involved.
- [37] My order is as follows.
- [38] The summons dated 18th March 1997 and filed on the 19th march 1997 is dismissed.
- [42] Costs to the Plaintiff the first and third Defendants to the agreed or otherwise taxed.



Suzie d'Auvergne
High Court Judge