SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 741 OF 1999

BETWEEN:

IN THE MATTER OF THE LAND SURVEYORS ACT,
NO 13 OF 1984

HEIRS LUCIENNE ZEPHERIN MATHIEU
Represented by:

a) SUZANNA ISIDORE (nee Louis) Qua Administratrix of the succession of ROSABELLA LOUIS, DECEASED; and

b) ATTORNEY for MARIE THOMAS and MARIA VILINA WILLIAMS (nee THOMAS)

Applicant

and

THE CHIEF SURVEYOR

1st Respondent

and

THE ATTORNEY-GENERAL

2nd Respondent

and

CHRISTOPHER GEORGE 3rd Respondent

Appearances:

Dr. W.E.Waldron-Ramsay for the Applicant.
Ms. Cheryl Mathurin for the 1st and 2ndnamed Respondents.
Mr. K enneth M onplaisir, Q.C., w ith him M r. D eale Le e f or t he 3 rd named Respondent

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1999: December 15
2000: January 27

JUDGMENT

[1] HARIPRASHAD-CHARLES J. [Ag.]: By ex-parte Originating Summons, the Applicant applied under the Land Surveyor's Act, No 13 of 1984 for the following Orders:

(a) That the Chief Surveyor pursuant to Section 3 (1) (c); Section 13 (3) and Section 31 (1) of the Land Surveyors' Act, No 13 of 1984 doth *INVESTIGATE* the Plan of Survey GI - 572, No 31/72 dated 3rd February 1972, approved by the Survey Office on 25th February 1972, and purporting to identify Block 1253B, Parcels 128 and 129; on the ground that the said Plan of Survey GI - 572 is found to be inaccurate by reason of errors and omission and therefore mis-leading;

(b) And that the Chief Surveyor pursuant to Section 3 (1) (e); Section 24 (1) (2) (3) (4); Section 25 (1) (2) (3); Section 26 (1) and (2) and Section 31 (1) of The Land Surveyors' Act No 13 of 1984 doth *CANCEL* the authentication of the said Plan of Survey GI - 572 No 31/72 on the ground that it is inaccurate by reason of errors, namely inter alia:

(i) That the said Plan of Survey GI - 572 No 31/72 is recorded at the Survey Office as conforming to certain boundaries cited in the Declaration of Succession and Ownership, dated 31 October 1967 and registered on 20th November 1967 in Vol. 120 A No: 86553 at the Office of Deeds and Mortgages Castries; and which said Record of Survey, either intentionally or negligently does not conform with the ownership of surrounding lands on the ground as manifested on the Land Registry Map Extract, exhibited with the Affidavit herewith.

[2] Prior to the hearing of this Summons, the Court had to consider a Summons filed on 23rd day of November 1999 on behalf of Christopher George. The application prayed for an order to amend the Originating Summons in this action by adding the name of the said Christopher George as a Respondent. Learned Counsel for the Applicant, Dr. Waldron-Ramsay consented to the application and as a

consequence, Christopher George was added as the Third-named Respondent. The matter then proceeded inter partes.

[3] In this matter, there are three [3] principal issues to be determined: -

(i) Whether the Summons of the First and Second-named Respondents should be dismissed?

(ii) Whether the Originating Summons of the Applicant is an abuse of the process of the Court?

(iii) Whether the Applicant should be declared a vexatious litigant?

(i) SUMMONS OF FIRST AND SECOND-NAMED RESPONDENTS

{4] Learned Counsel for the Applicant vehemently challenged the Summons filed on behalf of the First and Second-named Respondents on the ground that it was not supported by a proper affidavit. According to him, it is trite law of practice and procedure that every Summons must be supported by an affidavit. He argued that the Court should disregard the affidavit sworn to by Allison Dupre as she has no locus standi before the Court. Learned Counsel urged the Court to dismiss the Summons.

[5] I do agree with Dr. Waldron-Ramsay that the Summons by the First and Second-named Respondent is not supported by a proper affidavit. But does this mere procedural irregularity invalidate the proceedings?

[6] Order 2 Rules 1 and 2 of the Rules of the Supreme Court is instrumental in this regard. The purpose and application of this rule were given consideration by our Court of Appeal in the cases of Roopnarine Roopal v Clarice Hull et al [Civil Appeal No.9 of 1991] Saint Christopher & Nevis [unreported] and Camerhogne Investments Limited v The Demerara Mutual Life Assurance Society. In the former case, Sir Vincent Floissac, Chief Justice, having referred to the decisions of the English Court of Appeal and having considered the

Judgment of Lord Templeman in the Privy Council decision of Austin v Hart (1983) 2 All E.R. 341 said at page 5 of his judgment:

> "The basic principle which the Privy Council sought to enunciate and apply is that a mere procedural irregularity does not nullify or invalidate legal proceedings unless the procedural irregularity causes substantial injustice. This basic principle (which was established after 1964) was expressed in these crucial words:-
>
> > 'The modern approach is to treat an irregularity as a nullifying factor only if it causes substantial injustice. See: Marsh v Marsh (1945) 2 A.C. 271 at 284.' "

At page 16 Byron J.A. [as he then was] gave this opinion:

> "Order 2 Rule 1 is designed to give relief to parties to proceedings who fail to comply with the requirements of the Rules of Court ….This Rule does not allow an appellate Court to validate a judicial error."

[7] In Camerhogne Investments Limited v The Demerara Mutual Life Assurance Society, [supra] Singh, J.A. delivering the Judgment of the Court at page 4 had this to say:

> "Giving Order 2 its purposive interpretation, I would say that its primary purpose was curative of procedural irregularities and that it should not have the guillotine effect where such irregularities could cause substantial injustice."

[8] Accordingly, I refuse the application sought by Dr. Waldron-Ramsay to dismiss the Summons of the First and Second-named Respondents.

(ii) ABUSE OF THE PROCESS OF THE COURT

[9] Learned Crown Counsel, Ms. Cheryl Mathurin representing the First and Second-named Respondents submitted in limine that the Originating Summons of the Applicant should be struck out as an abuse of the process of the Court. She based her submission on the following grounds:

(i) That on the 28th day of May 1990 in Civil Appeal No.20 of 1989, the Court of Appeal dismissed an application by the Applicants in the present Summons for leave to appeal to the Privy Council on the grounds which include errors and/or negligence in documents including Plan GI 572.

(ii) That on 19th day of May 1994 in Petition No. 360 of 1992, Justice d'Auvergne dismissed an application for the Applicant in the present Summons to cancel and declare null and void the Plan of Survey in dispute GI 572.

(iii) That on 17th day of October 1997 in Suit No. 209 of 1972 the Applicant herein filed a cross summons as Respondent to proceedings for possession of land defined in Plan GI 572 was fraudulent. Justice Farara (Acting) ruled that the matter was res judicata.

[10] She also argued that this application sought to raise an issue which the Court, including the Court of Appeal had resolved on several previous occasions. She further stated that the Applicant is litigating the same issue which concerns the same parties and which was determined five times prior to this application in court.

[11] Her submissions were endorsed and fortified by Learned Queen's Counsel, Mr. Kenneth Monplaisir, Counsel for the Third-named Respondent, Christopher George. En passant, I observe that Learned Queen's Counsel has been representing the Third-named Respondent ever since the multiplicity of suits and applications were instituted.

[12] Mr. Monplaisir quoted extensively from the judgment of Farara J. [ag.] in Christopher George v Bernard Isidore [No. 209 of 1972] [unreported] (Exhibit AD 5) and in particular, pages 6 - 10 which summarized the pertinent aspects of the chronology of the land dispute between the parties. He also referred the Court to the Judgment of Moe J.A. in Suzanna Isidore v Christopher George [Civil

Appeal No. 20 of 1989] [unreported] (exhibit A D 1). According to Learned Queen's Counsel, several applications before the High Court as well as the Court of Appeal were declared res judicata.

[13] Learned Queen's Counsel also submitted that the Survey Plan GI - 572 which the Applicant is seeking to have cancelled relates to lands to which the Third-named Respondent was already declared owner by the Judgment of Matthew J. in Suit No. 209 of 1972, delivered on 10th day of December 1986.

[14] Mr. Monplaisir declared that the Applicant has come before the Court in every form and fashion to litigate the same issues affecting the same parties and which both the High Court and the Court of Appeal have fully and conclusively adjudicated upon.

[15] Learned Counsel for the Applicant, Dr. Waldron-Ramsay argued that the issue raised in the Originating Summons was never challenged in any of the matters litigated previously and in accordance with Section 13 (1) (a) of the Act, it is mandatory that the Chief Surveyor *investigate the matter once a party is aggrieved.*

[16] He emphasized that the Survey Plan GI - 572 must be cancelled as it has two [2] major errors namely:

(1) The Plan shows Sexius Aimable or his heirs owned lands that were contiguous to Parcels 128 and 129. A letter from the Chief Surveyor to Messrs. Foster, Foster & Foster dated 28th day of January 1997 stated otherwise.

(2) That Fulgence Zepherin died on 30th day of August 1920 and as a consequence, could not have been present at the survey on 3rd day of February 1972 as asserted on the record of Survey Plan GI - 572 by Ornan Monplaisir.

[17] Dr. Waldron-Ramsay iterated that the said Survey Plan GI - 572 is inaccurate by reason of error in the survey in violation of Section 26(1)(a) of the Land Surveyor's Act. Learned Counsel further contended that a complaint dated 19th day of November 1998 was lodged with the Chief Surveyor but this complaint was not entertained by the said Chief Surveyor on the grounds stated in his reply on 18th day of January 1999 to Learned Counsel.

[18] In the present matter, the parties to the Originating Summons are arguably the same as the parties to Suit No. 209 of 1972; Civil Appeal No. 20 of 1989; Civil Appeal No.1 of 1991; Civil Appeal No. 3 of 1991; Petition No. 360 of 1992 and Civil Appeal No. 9 of 1994. The cause of action in all of these matters are basically the same and concerns the validity or otherwise of Survey Plan GI - 572. I would have thought that not only did the Applicant have every opportunity to raise the question of the validity of the said Survey Plan GI - 572 in the earlier proceedings but that she did in fact raise this issue at every conceivable opportunity.

[19] In my opinion, the institution of this matter is an abuse of the process of the Court and involves the principle of res judicata. This principle is appropriate when a right or cause of action or an issue had arisen or could or should have been raised in previous civil proceedings and that right or cause of action or issue was determined on its merits by a final and conclusive judgment of a court of competent jurisdiction. In such a case, the parties to the previous civil proceedings and their privies are inter se estopped per rem judicatum from relitigating that same adjudicated cause of action or issue in subsequent civil proceedings unless there are special circumstances entitling one of the parties or privies to reopen that adjudicated right or cause of action or issue in the interest of justice..

[20] The principle of res judicata was authoritatively stated in Henderson v Henderson (1843-1860) All ER 378. At pages 381 - 382, Vice Chancellor Wigram stated:

> " I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward only because they have, from negligence, inadvertence, or by accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

[21] This principle has been affirmed by the Judicial Committee in the cases of Hoystead v Commissioner of Taxation (1926) A.C.155; Kok Hoong v Leong Cheong Kweng Mines Ltd. (1964) A.C. 933; Yat Tung Investment Co. Ltd. v Dao Heng Bank Ltd. (1975) A.C. 581; and Brisbane City Council v Attorney-General for Queensland (1979) A.C. 411.

[22] In Hoystead v Commissioner of Taxation [supra], Lord Shaw (delivering the Judgment of the Privy Council) expressed the doctrine thus:

> "Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents ot the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted."

[23] The principle of res judicata has been applied in a number of cases emanating from our jurisdiction. See:

(1) Amos Richardson v Benjamin Richardson [Civil Appeal No. 4 of 1992] [Anguilla] [unreported].

(2) Donald Halstead v The Attorney-General et al [Civil Appeal No. 10 of 1993] [Antigua & Barbuda] [unreported].

(3) Frederick Ballantyne v Cash and Carry Limited [Civil Appeal No. 4 of 1993] [Saint Vincent & The Grenadines] [unreported].

(4) Etoile Commerciale SA v Owens Bank Ltd. [1992] 42 WIR 128.

[24] Applying this principle to the facts of the instant matter, there was nothing to have prevented the Applicant from litigating in one action all the rights of action and remedies which she claimed against the Respondents. Having listened attentively to Counsel for the Applicant as well as Counsel for the Respondents, it is my considered opinion that the Applicant has already litigated the same issue in several actions and she has had more than her day in Court. What seems clear is that the Applicant is bent on not accepting or respecting the decisions of the High Court or the Court of Appeal which have fully and conclusively disposed of this matter. The multiplicity of suits and applications are nothing short of an abuse of the process of the Court. And I so hold.

[iii] WHETHER THE APPLICANT SHOULD BE DECLARED A VEXATIOUS LITIGANT?

[25] Learned Queen's Counsel for the Third-named Respondent, Mr. Kenneth Monplaisir, endorsed the application of the First and Second-named Respondents that the Applicant be declared a vexatious litigant. Learned Queen's Counsel referred to the cases of Lord Kinnaird v Field [1905] 2 Ch. 306 and Grepe v Loam [1887] 37 Ch.D.168 in support of his application. In the former case, the Defendant had made some twenty-nine applications with reference to pleadings, discovery and the like; he had moved to strike out the statement of claim on the grounds (1) that the words " Delivered the-------day of-------" appeared at the end instead of the beginning; (2) That the claim was printed with the margin of an inch and a half instead of two inches; and (30 the number of folios was printed at the

top instead at the side. The Plaintiffs applied to put an end to what they alleged was a gross abuse of the process of the Court. Warrington J. stated:

> "What I propose to do is to make an order that the Defendant is not to be allowed without leave of the judge in chambers until further order to make any application in this action under the summons for directions, or to serve any notice of motion to discharge any order in chambers made on any such application as aforesaid without such leave; and in case he shall without such leave serve notice of ant such application as aforesaid on the plaintiffs they are not to be required to attend."

[26] It appears to me from the authorities quoted that there is jurisdiction to make such an order as has been made by Warrington J. There is similar precedent in our jurisdiction: See: Phillip Doxilly v Attorney-General of Saint Lucia [No. 4 of 1987] [unreported]. This is really an example of the mode in which the Court interferes to prevent abuse of its process.

[27] I cannot agree more that there has to be an end to litigation relative to this land dispute, in respect of which the Applicant and her family have been wholly unsuccessful. The importance of finality in litigation is one of the cornerstones of the due administration of justice.

[28] In the result, I order the following:

(1) That the Originating Summons of the Applicant is struck out as an abuse of the process of the Court.

(2) That the Applicant is declared a vexatious litigant and is prohibited from instituting any further legal proceedings without leave of the Court.

(3) That the Applicant pays Costs to the Third-named Respondent. Given the procedural irregularity [supra], I make no award as to Costs to the First and Second-named Respondents.

Indra Hariprashad-Charles

High Court Judge [ag.]