

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 718 OF 1997

BETWEEN:

HEIRS OF AVRIL AFRICAIN aka JEAN BAPTISTE JOSEPH
and Heirs of JN BAPTISTE JOSEPH aka BENOIT, represented
by L.P.R. BENEDICT JOSEPH and Heirs of JN BAPTISTE JOSEPH
aka ANTOINE, represented by L.P.R. (1) John Joseph and
(2) Stanislaus Joseph

Plaintiffs

and

- (1) Estate of the late ADRIENNE FELICIEN represented by Antonius Ralph Felicien, Executor
- (2) Estate of MEDAS FELICIEN aka JOSEPH FELICIEN, represented by Marie Felicien (nee Louise), Administratrix
- (3) Estate of the late EMMANUEL FELICIEN, represented by Thomas Walcott, Executor
- (4) The Heirs and Estate of the late EDWARD FELICIEN aka Sylvester Felicien
- (5) The Estate of the late MARY FELICIEN, represented by (1) Andrew Felicien, (2) John Baptiste Felicien, Administrators
- (6) ARNOLD FELICIEN, represented by Joseph Felicien and Jennifer Brutus, Administrators
- (7) The Estate of the late LAWRENCE FELICIEN, represented by S. Headley Felicien, Administrator
- (8) SAMUEL FELICIEN in Gros Islet
- (9) Estate of MARIE AMBROSE (nee Felicien), represented by Simon Ambrose, Administrator
- (10) Heirs ANNE MARIE MODESTE (nee Felicien)
- (11) BERNADETTE SYLVESTER, represented by Augustin Sylvester and Marie Pascal, Administrators
- (12) THE ATTORNEY GENERAL (Legal Representative of Registrar of Lands)

Defendants

Appearances:

Mr. Kenneth A.H. Foster, Q.C. for the Plaintiffs.
Mr. Dexter V.O. Theodore for the Nos. 1,4,5,6,10 and 11 Defendants.
Mr. Winston Hinkson for Nos. 7 and 8 Defendants.
Mr. Alvin St. Clair for Nos. 3 and 9 Defendants.
No. 12 Defendant not represented and absent.

2000: September 04 05, 06, 07, 08
December 15

LAND DISPUTE...ISSUE TO BE DETERMINED: WHETHER THERE WERE TWO AVRIL AFRICAINS...WHETHER JEAN BAPTISTE JOSEPH WAS KNOWN AS AVRIL AFRICAIN...ARTICLE 2112 OF THE CIVIL CODE

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** On 15th day of December 2000, I gave Judgment in favour of the Defendants and indicated that the reasons therefor would be reduced into a written judgment subsequently. I do so now.

[2] Although the evidence was voluminous and the exhibits were in excess of one hundred, the issue to be decided is relatively simple and is essentially whether Jean Baptiste Joseph is the Avril Africain who owned the land in dispute?

THE PLAINTIFFS' PLEADED CASE

[3] The Plaintiffs' pleaded case is that they are the heirs of the Estate of the late Joseph Avril Africain also commonly called Jean Baptiste Joseph of Tivoli, Quarter of Gros Islet which Estate was wrongfully registered and recorded at the instance of the Defendants either by mistake or fraud in the names of the first eleven Defendants.

[4] The No. 12 Defendant, the Attorney General is joined as a Defendant as the Statutory Legal Representative for legal process in matters on behalf of the Registrar of Lands.

[5] At paragraph 3 of the Statement of Claim, the Plaintiffs allege that they discovered the mistake or fraud on or about the month of March 1997 when their attention was drawn to an erroneous entry in the Land Register, which was wrongfully opened in the names of the Defendants.

[6] At paragraph 4(iii) of the said Statement of Claim, the Plaintiffs allege, inter alia that the Feliciens referred to in the Court Order are probably the children of the late Elizabeth Avril and the late Nemorin Felicien.

[7] The Plaintiffs further allege, at paragraph 4(v) that the Defendants falsely claimed to be the children of Nemorin Felicien and Labrune Felicien whereby the Plaintiffs, by this unlawful act were excluded as the lawful heirs of Avril Africain.

THE DEFENDANTS' PLEADED CASE

[8] In a nutshell, the Defendants' pleaded case is that the Plaintiffs [or any of their heirs] are not the lawful heirs of the late Avril Africain. The Defendants contend that they are the lawful heirs of Avril Africain who died on 9th day of October 1917.

[9] At paragraph 4 of the Defence filed on 5th day of August 1998, the Defendants admit that the Land Register was rectified on 21st day of March 1995 by Order of the Register of Lands pursuant to the Order of the High Court dated 12th day of May 1976 and registered in the Registry of Deeds and Mortgages on 24th day of May 1976 in Volume 129a No. 112 616 but they deny that the said entry was wrongfully obtained.

[10] At paragraph (4) (c) of the aforesaid Defence, the Defendants state that they are not aware of the existence of any person, known or called by the name of *JOSEPH AVRIL AFRICAIN*. In this regard, they allege that they are the lawful Descendants of the late *ELIZABETH AVRIL* also known as *LABRUNE FELICIEN* or *ELIZABETH FELICIEN* who married *RAPHAEL FELICIEN ALEXANDRE ST. MARTIN* also known as *NEMORIN FELICIEN* on 14th day of April 1896. The said *ELIZABETH AVRIL* was a legitimate daughter of *ANTOINE AFRICAIN* also known as *AVRIL AFRICAIN* and *JULIETTE RICHARD* also known as *JULIETTE RICHARD AFRICAIN* or *MADAME AVRIL AFRICAIN*.

THE PLAINTIFFS' CASE

[11] Learned Queen's Counsel for the Plaintiffs, Mr. Kenneth Foster commenced his arguments by posing the question: who is the real Avril Africain? He submitted that there were two Avril Africains and that their Avril Africain is the real Avril Africain and the true owner of the land in dispute.

[12] I pause to remark that this submission was totally in violation of the rules of pleading in the High Court since it was not specifically pleaded. Be that as it may, the Plaintiffs continued their argument that their Avril Africain owned the land in dispute and had forever occupied the disputed land which is North of Ravine Colombien whereas the Defendants' Avril Africain occupied three carres of lands South and South-west of the said Ravine Colombien.

[13] Learned Queen's Counsel argued that the Plaintiffs are the legal representatives of the real Avril Africain by virtue of the Deed of Sale by Gaston de Brettes in 1880. The Plaintiffs contended that in furtherance of the ownership of that document, the lands have from time immemorial from 1891 up to 1993 been possessed and were occupied by the Plaintiffs.

[14] Learned Counsel argued quite vociferously that how could the Defendants now say that the Deed of Sale of 1880 is theirs when in Civil Suit No. 225 of 1975,

[Exhibit DM 78] they deposed that they did not have any title deeds or receipts and sought to claim the land in dispute by prescription. According to Counsel, the documents of St. George Murray is pellucid and he urged the Court to apply the *contra preferendum rule*.

[15] The Plaintiffs also argued that the Deed of Sale of 1929 [Exhibit DM 4 1] was wrongly made because at the time of its making, the land was not so demarcated and the boundaries were non-existent.

[16] In attempting to show that the Plaintiffs are the lawful heirs of the Avril Africain who owned the land in dispute, two witnesses testified on behalf of the Plaintiffs namely Lucius Joseph and his mother Benedicte Joseph also known as Celina. Lucius Joseph testified as follows:

“ The late Jean Baptiste Joseph is my grandfather. There is another Jean Baptiste Joseph who is my great grandfather. He was also called Avril Joseph. He was also called Avril Africain. According to records, he was married at Cap Estate whilst residing there. He had six [6] children born to him and his wife on Tivoli Lands and he died at Gros Islet. Benedicte Joseph aged 73, is a child of his son....In 1891, Avril Africain also called Jean Baptiste Joseph Africain married Marie Madeleine Prosper [Exhibit LJ 2] [my emphasis]. They had lived together in family house on the same Tivoli Lands. They had Jean Baptiste Joseph also known as Benoit also known as Bernard. They lived and died on the said Tivoli Lands. They had lots of other children...”

[17] In his testimony on this aspect of the case, the witness produced the birth certificates of the children of Jean Baptiste Joseph and Marie Madeleine Prosper also called Therese Prosper and the marriage certificate of Jean Baptiste Joseph. In that marriage certificate, the name of the father is recorded as Jean Baptiste Joseph Africain.

[18] Lucius Joseph continued his evidence:

“My great grandfather died on 12th day of November 1935 [Exhibit L J 9]...On or about 14th day of January 1929, Juliette Richard Africain, widow of Avril Africain sold her half share...In 1929, my Avril Africain was alive because he died in 1935.”

[19] Under intense cross-examination by leading Counsel for the Defendants, Mr. Dexter Theodore, the witness said:

“I have heard the name Juliette Richard Africain but I don't know the person. I do not know who Juliette Richard Africain is. According to the record, she is the wife of Avril Africain. I do not know Juliette Richard Africain personally but I recognize her as the wife of Avril Africain. Avril Africain was a common name. Only on the marriage certificate of Jean Baptiste Joseph was the name Avril Africain. There is no such document where Jean Baptiste Joseph is referred to as Avril Africain but on the marriage certificate of Jean Baptiste Joseph, it is written the lawful son of Jean Baptiste Joseph Africain and witness to the marriage was Benoit Joseph; the brother of the bridegroom showing that he was the lawful son of Jean Baptiste Joseph also known as Africain. The Marriage Certificate is the document which states so. The Birth Certificate of the children of Jean Baptiste Joseph has Avril Joseph. There is no document of Jean Baptiste Joseph where he is called Avril Africain. We cannot find Avril Africain on his Marriage Certificate or on his children's Birth Certificate. There are two Avril Africains owning lands on Tivoli Estate and I am claiming as one of the Africains” [my emphasis].

[20] A common thread running through the evidence of Lucius Joseph, the principal witness for the Plaintiffs was that there were two Avril Africains. This was explicit when on further cross-examination he stated:

“On the Partition Plan G I 172 made by John Quinlan in 1893, when he surveyed the 6 carres of land in conjunction with the other 6.5 carres, he did that at the instance of our Avril Africain. Present at this survey were DeFerdinand. Also present were Gaston La Brette (owner of those lands) and another Avril Africain was present at the survey. According to the report of Mr. Quinlan, that another Avril Africain was West of the Survey. In Plan G I 172, John Quinlan mentioned an other Africain...my whole case is based on the fact of two Avril Africains” [my emphasis].

[21] In my opinion, the evidence of Benedicte Joseph, the other witness and mother to the principal witness did not assist the Court in any material way in determining the crucial issue in this matter.

[22] It is also significant to note that the Plaintiffs, in their written skeletal submissions stated that they make no claim to 6 carres of land which they state is located to the North of the Plaintiffs' lands which measures 28 acres 3 roods 34 perches or 9 carres as appears by Plan of Survey GI 137 (Block 1457B) surveyed by John Quinlan.

[23] In closing, Learned Counsel for the Plaintiffs urged the Court to accept what St. George Murray said that there were no deeds or receipts pertaining to the land in dispute. Counsel added that the 1929 Deed compounded the wrongness that was part of the fraud committed by the Defendants. He concluded that the main thrust of the Plaintiffs' argument is that there were two Avril Africains and it is their Avril Africain who owned the land in dispute.

THE DEFENDANTS' CASE

[24] Leading Counsel for the Defendants, Mr. Dexter Theodore, in his usual comprehensive style provided to the Court a family tree and detailed written submissions supported by the relevant exhibit.

[25] In chronological order, Learned Counsel laboriously traced the family tree of the Defendants juxtaposed with that of the Plaintiffs. He also traced the history of the Tivoli Lands (subject matter of this dispute).

[26] According to Counsel, the crucial issue to be determined is whether Jean Baptiste Joseph is the Avril Africain who owned the land in dispute. He submitted that Jean Baptiste Joseph was never referred to in any document as Avril Africain.

- [27] Counsel further submitted that at turn of the last century, there was an obviously hard working and ambitious man called Antoine Avril Africain. Apart from his Marriage Certificate in which he is called Antoine he is consistently referred to as Avril Africain in all civil status records, deeds, plans and reports of the time. He married Juliette Richard of Cap Estate, daughter of Richard Africain and Delia Africain on 10th day of May 1870 as is evidenced by Marriage Certificate- [Exhibit DM 4].
- [28] On 13th day of September 1873, [Exhibit DM 1] Avril Africain and Juliette Richard, both of Cap Estate had a daughter whom they baptized Elizabeth.
- [29] Avril Africain, according to Learned Counsel was never described anywhere as a fisherman but frequently as a landowner.
- [30] Learned Counsel submitted that Elizabeth [also known as La brune] Africain married Nemorin Felicien and they lived on the land in dispute with their children, most of the Defendants, who were born and raised at Tivoli where they cultivated gardens and grazed animals. By Deed of Sale dated 10th day of April 1880 and registered in Vol. 41 No.12632, Avril Africain purchased a portion of land of six [6] carres of the Tivoli Estate situate in the Parish of Gros Islet, the said portion of land bounded to the North by Cap Estate, to the South by Beausejour, to the East by Esperance and to the West by the lands called Cardinal [Exhibit DM 9]. Avril Africain also purchased a further 6.5 carres in 1893 as is evidenced by Survey Plan GI 172 and its accompanying report [Exhibits DM 12 and DM 13 respectively]. According to Counsel, there is no Deed of Sale relating to this sale; the only information about it is contained in the Report to GI 172 which established that the Avril Africain who owned the 6- carres of land was the same Avril Africain who in 1893 was acquiring the 6.5 carres of land.
- [31] On 24th day of January 1894 Surveyor John Quinlan dismembered 28 acres 3 roods and 34 perches from the adjoining Beausejour Estate at the instance of Avril

Africain [Exhibit DM 16]. This plan shows Ti Voli and Cap Estate [owned by Avril Africain to the West and North respectively]. Of significance, the report of Quinlan explained that the survey was in contemplation of a purchase by Avril Africain from a Mr. Houry and Avril Africain was present during the survey.

[32] According to Counsel, on a neighbouring estate at Tivoli owned by Leonard Marie and his wife, Turina Marie also known as “Ma Saman” lived Jean Baptiste Joseph and his wife, Marie Madeleine Prosper. They were fishermen and not landowners. Jean Baptiste Joseph married Marie Madeleine Prosper on 10th day of March 1891.

[33] Avril Africain died on 9th day of October 1917 at the age of 89 [Exhibit DM 40]. On 14th day of January 1929 (after his death) his widow, Juliette Richard Africain sold her community one-half share of the 6-carre Tivoli plot to her grandchildren, Edward Felicien (Eddie) and Bernadette Felicien also known as Dame Villeneuve Sylvestre and her husband Villeneuve Sylvestre [Exhibit DM 41]. Counsel submitted that this sale is critically important because it identifies the Avril Africain who was the owner of the 6-carre plot and by extension, the 6.5 carre portion. The simple derivative is: the Avril Africain who owned the 6-carre plot (and the 6.5 carre portion) was the one who married Juliette Richard and who died before 1929. Learned Counsel submitted “this has been conclusively proved beyond a shadow of a doubt to have been Avril Africain and not Avril Joseph (or Jean Baptiste Joseph as he is also called) who died in 1935 and who married Mary Madeleine Prosper.”

[34] Learned Counsel confidently argued that this decides the case, unless Juliette Richard Africain as far back as 1929 was an accomplice of the Defendants in a dastardly scheme to deprive the Plaintiffs of their lands. Counsel noted that Jean Baptiste Joseph was alive at that date and could have taken steps to correct such an egregious wrong. Mr. Theodore implored the Court to find that a Juliette

conspiracy is too far-fetched to contemplate and in any event, the Plaintiffs have not pleaded this.

[35] What the Plaintiffs have pleaded is that *the Defendants are 'probably' the children of Nemorin and Elizabeth Avril who falsely claimed to be the children of Nemorin Felicien and Labrune Felicien whereby the Plaintiffs were excluded as the lawful heirs of Avril Africain*. Their pleaded case was that they were the heirs of Nemorin Felicien and Labrune Felicien, the latter being the daughter of Avril Africain.

[36] Under cross-examination, this is what Lucius Joseph deposed:

“The children of the other Avril Africain are the Feliciens. Elizabeth, the daughter of Avril Africain married Nemorin Felicien and had the Defendants as their children. I accept this. I accept that Eddie Felicien is the son of Elizabeth who was baptized Sylvestre. I agree that Marie Villeneuve is the daughter of Elizabeth and Nemorin Felicien. Juliette Richard was the mother of Elizabeth Avril who was married to Nemorin Felicien. I accept that Juliette was married to Avril Antoine Africain. None of those Africains were related to me. I never claimed that I was related to the Defendants. I never claimed that I was related to David Moise. The only relation to David Moise is in relation to his father, Edwin Moise through Philo. When I was about 10 years old, there was a terrible fire in Gros Ilet and Marie Avril Joseph died in this fire. She was my great grandmother. She is the same Marie Madeleine Prosper who married Jean Baptiste Joseph also known as Avril Joseph.”

[37] In the light of overwhelming evidence, Lucius Joseph conceded that Labrune and Elizabeth were one and the same person. What then did the Plaintiffs do? They came up with a splendid idea albeit in violation of the rules of pleading in the High Court.

[38] The Plaintiffs' case became that there were two Avril Africains and their Avril Africain owned the land in dispute. The first hurdle confronted by the Plaintiffs was that there was an abundance of evidence to support the finding that Jean Baptiste Joseph was their ancestor. The Plaintiffs then attempted to convince the Court that Jean Baptiste Joseph was also called Avril Joseph even in the death of civil

status records. The closest document that made mention of the name "Africain" is a Marriage Certificate of one of his sons where Avril Joseph was also called Jean Baptiste Joseph Africain.

[39] Contending that there have no algebraic equations to stumble through to ascertain whom the one and only Avril Africain is, the Defendants agreed with the Plaintiffs that Jean Baptiste Joseph was called Avril Joseph. The Defendants agreed that Jean Baptiste Joseph was also called Jean Baptiste Joseph Africain. But the Defendants emphatically disagreed that Jean Baptiste Joseph was ever called Avril Africain. The Defendants asserted that there was only one Avril Africain and he has been consistently referred to by that name in all civil status records, except for his Marriage Certificate where he was named Antoine Africain. In his eloquent timbre, Mr. Theodore exclaimed: "but never was Avril Africain called Jean Baptiste Joseph."

[40] At this juncture, Learned Counsel for the Defendants attacked the skeletal arguments of the Plaintiffs where they conceded that the Avril Africain who purchased the 6-carre plot of Tivoli Estate from de Brettes was the Defendants' Avril Africain. The Plaintiffs stated categorically that "*we make no claims to these 6 carres*" without realizing that was a fatal concession. In a Chamber application, the Defendants moved the Court for Judgment on Admission. According to Counsel, the Plaintiffs were cornered. Up to late August 1999 when the Defendants produced the Survey Report GI 172, the Plaintiffs were unaware that the one and only Avril Africain was crucially linked to both the 6 carre and the 6.5 carre plots.

[41] According to the Defendants, another ingenious plan was devised by Lucius Joseph: to show that there were two Avril Africains based on John Quinlan's style of writing his reports. To support his argument, Lucius Joseph made reference to a Survey done at the instance of Dame Ferdinand on 26th day of April 1893 (Exhibit DM 14). In my view, this argument has no merit.

[42] Mr. Theodore launched another attack at the Plaintiffs “fishing expedition” as he termed it. Counsel submitted that the Plaintiffs tried to convince the Court that they knew the Tivoli Estate owned by Avril Africain. They engaged Mr. Jerome Joseph, a Licensed Land Surveyor who testified as follows:

“I was engaged by Mr. Joseph to go to the Tivoli area in Cap Estate sometime last year. I accompanied Lucius Joseph to an area called South Hills and then to Parcel 234. We passed the Cas-en-bas Road, up by the development by Mr. Fostin over South Hills to Parcel 234. Lucius Joseph claimed that the area between pink and yellow belonged to him as well as South Hills as well as the Fostin’s development.”

[43] The Jerome Joseph’s induction into the case shed some light that the Plaintiffs had no idea of the topography of the lands that they claimed. On the evidence presented, I found as a fact that the Plaintiffs had occupied the lands of Leonard Marie and his wife, Turina Marie, the very cousin Turina they had mentioned in their skeletal arguments.

[44] Although the case was based predominantly on factual findings, Learned Counsel was still unprepared to leave any stone unturned. He injected the law into his arguments. He emphasized that in order for the Plaintiffs to succeed in this case, they have to improbably the 1929 Deed by Juliette Richard Africain; overturn the Prescriptive Order of the Court made in 1974 which is *res judicata* and the decision of the Land Registration and Titling Project in 1985 which is also *res judicata*.

[45] He referred to Article 2112 of the Civil Code which reads:

“He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years.”

- [46] Counsel submitted that this Article would operate to convey title to Eddie Felicien and Bernadette Sylvestre of the lands acquired under the Juliette Richard African Deed of 1929 after ten years occupation.
- [47] In respect of the Title Deed of 1880, the Defendants maintained that this is another straw that the Plaintiffs have clung to. According to the Defendants, after Juliette died, her grandchildren misplaced the Deed and so, in Civil Suit No. 225 of 1975, the Defendants deposed that they did not have any title deeds or receipts. I agree with Mr. Theodore that the arguments advanced by Learned Counsel for the Plaintiffs that the *contra preferendum rule* is applicable cannot hold good as the Juliette Deed and the civil status records prove that the Avril African who owned the Tivoli Estate was the ancestor of the Defendants.
- [48] The Plaintiffs clung to their final straw: the Declaration of Succession by Adrienne Felicien [Exhibit 93]. They fought hard to show either that the Defendants were entitled only to Parcel 100 or that the deceased, Jean Baptiste Richard also known as Richard Jn Baptiste or Jn Baptiste Delia referred to in that Declaration was somehow a relation of theirs. In my view, this argument lacks substance as the Defendants ably produced the Birth Certificate of Jean Baptiste Richard which established his identity as the son of Richard and Juliette African [Exhibit DM 95].
- [49] Finally, the Defendants submitted that they have nothing to prove and urged the Court to dismiss the action with Costs.

CONCLUSION

- [50] On the whole, I find the arguments advanced by Learned Counsel for the Defendants to be more compelling. The argument advanced by Learned Queen's Counsel, Mr. Kenneth Foster that there were two Avril Africans is in my view with all due respect to Counsel, specious. In no civil status record is Jean Baptiste Joseph ever referred to as Avril African.

- [51] In addition, I am bemused that the main thrust of the Plaintiffs' argument was not specifically pleaded in accordance with the rules of pleading in the High Court.
- [52] Another mysterious circumstance relates to the Plaintiffs' skeletal submissions where they categorically stated: "*we make no claims to these 6 carres*". On the facts as I found them, there was only one Avril Africain. He owned both the 6 carre and the 6.5 carre plots of land and he was the ancestor of the Defendants.
- [53] As the evidence unfolded, it seemed clear to me that the Plaintiffs did not know their own case. The Plaintiffs also have to satisfy the Court on a balance of probabilities that they are the heirs of Avril Africain who owned the land in dispute. They have failed to do so in all respects.
- [54] In the final analysis, I cannot agree more with Mr. Theodore that this action by the Plaintiffs is nothing more than a "big fishing expedition" which they have engaged in at the expense of the Court and the Defendants.
- [55] Accordingly, the action is dismissed with Costs to the Defendants.

Indra Hariprashad-Charles
High Court Judge