

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Suit No: 471 of 1997

Between: **ELSEE JULIET** (born William) the widow of the late ALFRED JULIET who sues as (1) the sole Administratrix of the succession of the late ALFRED JULIET and (2) one of the lawful heirs of the said ALFRED JULIET deceased

Plaintiff

and

1. JULIETTA LOUIS
2. AGATHA SONSON
3. JOHN PHILGENCE
4. WAYNE EDWARD

Defendants

Appearances

Mr. Dexter Theodore for Plaintiff
Mr. Hilford Deterville and Miss Jan Drysdale for second Defendant
Mr. Peter Foster for third Defendant
First and fourth Defendants un-represented

**2001: January 15th & 16th
April 20th**

JUDGMENT

[1] **d, Auvergne J:** In order to appreciate the claims, the arguments and the decision in this case it is essential that the background and history of the case be given.

[2] The portion of land which is the subject matter of dispute in this case is situated at Marisule in the quarter of Gros-Islet in the state of St. Lucia and forms part of a

larger parcel of land which was formerly registered as Parcel 1052 B 334 in the registration quarter of Gros-Islet.

- [3] During the years 1984 to 1987 certain land reform measures were introduced into St. Lucia whereby the ownership of land came to be determined only by registration; land would be adjudicated upon by an adjudication officer and would later be registered. In 1984 two acts were passed namely, the Land Adjudication Act and the Land Registration Act.
- [4] Consequent upon the passing of these two acts and their later amendments all St. Lucians, both home and abroad, registered all lands to which they had title, those which they occupied or had in their possession for many years. The result was that many people were claiming the same piece of land.
- [5] But the law in its wisdom devised sets of procedure for the determination of such disputes between claimants. A dissatisfied claimant would firstly seek redress from the Land Adjudication officer. If he was still dissatisfied he may then appeal to the Land Adjudication Tribunal and if still dissatisfied, he may within two (2) months of the date of the certificate of the Land Tribunal, appeal to the Court of Appeal, who on any such appeal may make such order, or substitute for the decision of the Land Adjudication Tribunal, such decision as it may consider just.

- [6] The facts in this case disclose that Alfred Juliet, a St. Lucian national, and deceased husband of the Plaintiff emigrated to the United States of America and after many years became a citizen of that Country, and there, together with Robert Juliet gave permission in notarised form, dated 8th July 1957 to Mrs. Francis Sebastien and Mrs. John B. Louis to use lands owned by Robert E. Juliet.
- [7] Eleven years later, that is, on 10th July 1968 in another notarised document (which was later deposited at the registry in St. Lucia on the 6th January 1971.) Alfred Juliet gave all his property moveable and immovable to the said Francis Sebastien and Mrs. John B. Louis
- [8] About fifteen years later, during the demarcation of the land process in St. Lucia one Harris Stephen representing Thomas Juliet, the son of Alfred Juliet claimed the Marisule piece of land. Mrs. Francis Sebastien and Mrs. John B. Louis were also Claimants.
- [9] On the 1st of April 1986 the land was awarded to Mrs. Francis Sebastien and Mrs. John B. Louis with provisional title dating from 6th January 1971 by the Adjudication officer in Dispute Number 6A 8D).
- [10] The Plaintiff never appealed but by Writ of Summons dated and filed on the 6th June 1997, the Plaintiff, as widow of the late Alfred Juliet sued as Sole

Administratrix of his succession and secondly as one of his lawful heirs brought the present action in which she claims:

1. A declaration that the New York Instrument did not convey or transfer any right title or interest in the Marisule parcel either to (1) Francis Sebastien or (2) Anita Baptiste.
2. A Declaration that neither (1) Julietta Louis, the first Defendant nor (2) Agatha Sonson has or had any right title or interest in or over the Marisule parcel.
3. A declaration that the Plaintiff is the absolute owner of the Marisule parcel as the sole administratrix of the succession of the late Alfred Juliet.
4. Mense Profits.
5. Possession of the Marisule parcel.
6. Further or other relief.
7. Cost.

[11] On the 24th of June 1997 an appearance was entered on behalf of the second named Defendant and on the 21st of July 1997 for the third named Defendant.

[12] The second named Defendant filed her defence on the 30th July 1997 wherein she stated that prior to the issuing of the Writ mentioned above, she was the owner with absolute title of the land in question and dealt with it as owner for she purchased the land from Mrs. Francis Sebastien who at the date of purchase was entered on the Land Register as the sole proprietor of the land.

[13] A perusal of the Court's file will show that many applications were filed and determined and that on the 5th of October 2000 a **Summons for Trial of Preliminary Issue** on the part of the second Defendant was filed. The issues to be determined are as follows:

1. The determination of the Adjudication Officer in dispute Number 6A 8D is final and is res judicata and not subject to review or appeal by way of the proceedings herein or at all.
2. This Court has no jurisdiction to grant to the Plaintiff the relief sought herein or any part thereof and that the Statement of claim discloses no reasonable cause of action.
3. That for the following reasons the Plaintiffs are estopped by the acquiescence from impugning the second named Defendant's title:
 - (a) By their acquiescence (silence, inaction, interference, non objection or other passive conduct) for eleven years with respect to Adjudicator's decision dated 1st April 1986 the Plaintiff represented that as Administratrix of the Estate and Succession of the late Alfred Juliet or as heir of this Estate that she had no legal rights or had abandoned her legal right (if any) to the Marisule Parcel.
 - (b) This representation created or encourage the second named Defendant to believe that Morgiana Sebastien also called Francis Sebastien was legally entitled to a portion of the Marisule Land more particularly described in Land Register Number 1052 B 520 and such capable of disposing of the same free and clear of al encumbrances.
 - © On the faith of or in reliance on that belief the second named Defendant acted to her detriment by expending money in purchasing Parcel 1052 B 520 and subsequently selling portions therefrom.
 - (d) The Plaintiff's contestation of the second named Defendant's title to her property at this late stage would defeat or disappoint the second named Defendant's belief created or encouraged by the Plaintiff's acquiescence.

4. That it is an abuse of the process of the Court to institute proceedings as herein, challenging the title of a person who has been declared as the proprietor of a parcel of land by the Adjudicator under the Land Adjudication Act and by the Registrar of Lands under the Land Registration Act, relying on facts and/or documents which predated the adjudicator's decision, unless such a challenge is made on the basis of overriding interests as provided for in Section 28 of the Land Registration Act and/or fraud or mistake as provided for in Section 98 of the land Registration Act.

[14] **Arguments**

At the trial Learned Counsel for the second named defendant sought to include another issue for determination “that the Plaintiff had no **Locus Standi**”. He argued that Plaintiff would not be taken by surprise since it was pleaded in paragraph two (2) of the defence. He said that the Plaintiff had no **Locus Standi** for her seisen had ended, that Letters of Administration had been granted to the Plaintiff on the 4th of November 1975 and the Writ was filed on the 30th of July 1997. He quoted Article 599(1) of the **Civil Code** which clearly states that “ a personal representative shall administer the succession and shall perform all his obligations with the least possible delay; and shall thereafter, not later than one year from the date of the probate..... distribute amongst the heirs.....the property of the succession.”

- [15] He also noted Article 599(3) which empowers the Court or Judge to extend the time for administering the succession beyond the year.

- [16] Learned Counsel for the Plaintiff argued that the matter set for trial was not the Summons of 5th October 2000 but the application filed on 12th January 1999 and that the issue of **Locus Standi** was not part of the said application.
- [17] I perused the two applications and arrived at the conclusion that the issues for determination were substantially the same and allowed the amendment “that the Plaintiff had no **Locus Standi**” to be included in the list of issues to be determined.
- [18] Learned Counsel for the second named Defendant continued his arguments by stating that Parcel 1052B334 was closed by the Registrar of Lands dated 28th June 1990 (execution of deed of sale by Morgianna Sebastien also called Francis Sebastien) then a partition of the said parcel was effected and two new parcels were opened, namely Parcels 1052B520 and 1052B521 and that the above order of the Registrar of Lands was never appealed against.
- [19] He said that on the 13th day of May 1991 Parcel 1052B520 was closed then divided into Parcels 1052B521, 522, 538 and 539 and was on that day converted from provisional title to absolute title; that on the 4th July 1991 the second named Defendant transferred her ownership in 1052B538 and that transfer was completed by order of the Registrar of Lands on the 16th July 1991; that on the 11th November 1993 the Registrar of Land ordered Parcel No. 1052B539 to be closed and then divided into Parcels 1052B580 and 1052B581; that on the 22nd of

November 1993 the second named Defendant transferred ownership in parcel 1052B580 and the said transfer was completed by order of the Registrar of Lands on the 30th November 1993 and consequently the second named Defendant is registered as owner of the portion of land registered in the Land Register as Parcel No. 1052B581 with all rights and privileges.

[20] Learned Counsel for the second named Defendant quoted many cases to substantiate his arguments.

Skelton v Skelton 1986 37WIR page 177

Berthillia Ennis and (1) Phillis Barras (2) Agna Henry (St. Lucia) (High Court Civil) Suit #760 of 1995.

James Ronald Webster (2) Cleopatra Webster and Beryl St. Clair Fleming OECS Court of Appeal (St. Lucia) C.A No 2 of 1992

Thelma Crane and David Worrell etal OECS Court of Appeal (St. Lucia) CA No 13 of 1997

Racoon Ltd and Turnbull and another (1996) 3WLR 353

Jerome Jn Francois etal and Robert Angus Bain etal (St. Lucia) High Court Civil) Suit # 290 of 1992

He further argued on the issue of **Locus standi** that the Plaintiff was fully aware that she was not an heir for by **suit 541 of 1994 Stanley Maraj-Malaykhan vs Agatha Sonson etal**. Thomas Juliet was pleaded to be the sole heir of Alfred Juliet.

[21] He argued that the Plaintiff is estopped by her acquiescence (silence, inaction, interference, non objection or other passive conduct) for eleven years with respect to Adjudicator's decision dated 1st April 1986. He said that this non objection on the part of the Plaintiff created or encouraged the second named Defendant to believe that Morgiana Sebastien also called Francis Sebastien was legally entitled to a portion of the piece of land at Marisule, more particularly described in the Land Register as No. 1052 B520.

[22] Learned Counsel argued that the action was an abuse of the process of the Court because a competent tribunal had already adjudicated upon the ownership of the said land. Moreover, that the land to which declaratory orders were being sought, no longer exists.

[23] Learned Counsel for the Plaintiff commenced his argument by stating that once the Plaintiff had been granted letters of Administration in the succession of the deceased Alfred Juliet then she remained his Personal Representative for life and quoted from **Parry and Clarke on Succession** at page 336 which provides:

[24] **Personal Representative holds office for life**

After a grant of representation has been made to him, a person holds the office of personal representative for the whole of his life **Attenborough v Solomon 1913 AC 76** unless the grant was of limited duration, **Harvell v Foster 1954 2Q. B 367** at 383 e.g a grant of letters of administration with the will annexed, for the use

and benefit of a minor, who was appointed executor; the grant terminates when the minor attains 18 years of age or dies; or is subsequently revoked.

[25] He contended that even though a personal representative has fully administered the deceased's estate, he retains the capacity to represent the estate in any future legal proceedings; that a personal representative continues to hold office as such, though he no longer holds any property in that capacity.

[26] He said that Article 599(3) of the Civil Code of St. Luica only applies to distributing of the Succession even though it reads "administering the Succession."

[27] He quoted **Ennis v Barras et al Suit No. 760 of 1995** a decision of the High Court of St. Luica where Mitchel J. held "Adjudication does not, by itself alter existing rights or create new ones."

[28] He argued that based on the above the Plaintiff has a right of redress against the decision of the Adjudication officer under Section 98 of the Land Registration Act 1984; that the registration of the land in favour of the Defendants were obtained by "mistake or fraud"; and as such since pleadings can be amended up to judgment the Plaintiff should be allowed to amend her statement of claim to include "fraud or mistake."

[29] Learned Counsel argued that the New York Instrument referred to in the Statement of Claim purporting to the vest title in the said Anita Baptiste and the said Francis Sebastien was null and void in so far as it was not in material form as required by Section 56(1) Land Registration Act 1984 and it would therefore be unjust not to rectify the register to allow the Plaintiff who is lawfully entitled to the said property to acquire title thereto **Chowood Ltd. vs Lyall (1930)**
Chancery 156

[30] Learned Counsel contended that a holistic view of the entire scenario must be taken before it could be said that the Plaintiff's conduct could amount to acquiescence or constitute a representation of any kind. He said that the term Acquiescence is used where a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it to believe that he assents to its being committed. **Halsbury's Laws of England 4th Edition Vol. 16 para 1473.**

[31] Leaned Counsel for the second named Defendant urged the Court to note Articles 586 subsections (1), (2) and (3) and in particular (3) which stated "for the Court or a judge..... to appoint an administrator to administer the intestate succession" and Article 599 (3) "the Court or judge may extend the time for administering the Succession beyond the year for such reasons as it or he may think sufficient".

[32] He concluded that if the Res judicata principle was accepted by the Court, then indeed in nine (9) out of ten (10) cases a person with a legitimate claim could be turned from the Court.

[33] **Conclusion**

Section 97 of the Land Registration Act No12 of 1984 sets out the types of cases where a Registrar of lands can rectify the Land Register.

Section 98 of the Land Registration Act reads as follows:

“98(1) subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act neglect or default.”

[34] By the decision of the Adjudicator dated 1st April 1986, between Mrs. Francis Sebastien, Mrs John Louis and Harris Stephen acting on behalf of Thomas Juliet, the son of Alfred Juliet, the land was awarded to Mrs. Francis Sebastien and Mrs.

John Louis with provisional title dating from 6th January 1971. Subsequently on the 15th day of May 1991 by instrument number 1612/91 the registration was converted to absolute title. That is six years after the decision of the Adjudicator. The Plaintiff, wife of Alfred Juliet fully knowing or supposed to have known of the decision never used the procedures set down by the **Adjudication Act** nor **Registration Act**.

[35] **In 1994 in Suit 541 of 1994** [Supra] Thomas Juliet the son of Plaintiff and Alfred Juliet as stated in the statement of claim filed the said suit through an attorney and claimed as sole heir of Alfred Juliet. This is the very same man who had claimed through his then Attorney Stephen Harris before the adjudicator. Immediately the words of **Lord Halsbury in Reichel v Magrath (1889)** 14 App. Cases 665 at 668 noted in **Civil Appeal No. 10 of 1993 Donald Halstead vs (1) The Attorney General (2) Cosmos Phillips (3) Wright George** comes to mind and I quote: “My Lords, I think it would be a scandal to the administration of justice if the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again.”

[36] To compound this the Plaintiff, having filed this action eleven years after the decision of the Adjudicator and despite the pretence of seeking declaratory orders, she is in reality asking this Court to rectify the land register and make her along with her alleged lawful heir absolute owners of the land in question.

- [37] It is to be noted that the statement of claim does not deal with the rectification on the ground of fraud or mistake, though Learned Counsel for the Plaintiff argued that an amendment should be granted to allow its inclusion.
- [38] It has repeatedly been stated since **Skelton vs Skelton** [supra] that a finding of fact reached by an Adjudicating officer and entered in the land register could not be challenged in the High Court. The correct procedure is an appeal in accordance with the procedure laid down viz. Section 23 of the **Adjudication Act 1984**. The Plaintiff should have appealed first to the adjudicating officer, then to the Land Adjudication Tribunal and if still dissatisfied to the Court of Appeal within the time frame set out by the said Section 23.
- [39] As stated earlier there was no issue on the ground of fraud nor has the Plaintiff pointed out to any mistake made by the Adjudicating officer.
- [40] On the issue of **Locus Standi**. The Code of St. Lucia is the appropriate law. The Plaintiff was granted Letters of Administration on the 4th November 1975 and did nothing as administratrix till the filing of this case in 1997, twenty two (22) years later.
- [41] As I see it, Plaintiff was made the Administratrix of the estate of Alfred Juliet in November 1975 therefore she acquired the right to administer the estate but she remained silent. She never even claimed the land before the Adjudicator in 1986;

her son through an attorney, claimed and lost. She is by law supposed to have known, yet continues to remain silent even after the land was subjected to several mutations.

[42] The law is that if after November 3rd 1976 she intended to act as Administratrix she had to seek an extension of her seisen (Civil Code Article 599 (3).) She did not. While it is possible that she could rectify this error and proceed with the action before judgment was given, in this case it would be useless since the matter was already Res Judicata.

[43] In her statement of claim the Plaintiff claims to be a lawful heir and her son Thomas Juliet another heir. The evidence however discloses that the rights of action and remedies claimed were already determined before 1997. The principle of Res Judicata forbids a litigant from relitigating an adjudicated cause of action (Halstead's Case.) **Article 1171 of the Civil Code of St. Lucia 1957** applied.

[44] I now turn to the issues that the statement of claim discloses no reasonable cause of action and secondly that it is an abuse of the process of the Court to institute proceedings challenging the title of a person who has been declared as the proprietor of a parcel of land by the adjudicator.

[45] Upon the application of the relevant law to the facts of this case it is manifestly apparent from the findings above that the statement of claim discloses no

reasonable cause of action and that the Plaintiff cannot succeed in this action. I therefore conclude that this action is an abuse of the process of the Court for it is Res Judicata.

[46] My order is therefore as follows:

The statement of claim against the second named Defendant is dismissed.

The Plaintiff is to pay costs to the second named Defendant to be agreed or otherwise taxed.

**Suzie d’Auvergne
High Court Judge**