

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 58 OF 1997

BETWEEN:

- (1) THE HEIRS OF DOXEY CLAW
- (2) ELIZABETH JN. PIERRE (nee DOXEY)
- (3) STEPHANIE THEODORE (nee DOXEY)
- (4) MAGDELINE CAMILLE

Claimants

and

- (1) LESTER MARTYR (former Registrar of Lands)
represented herein by the ATTORNEY GENERAL
- (2) HEIRS OF EDMUND AFRICAIN represented by
JEROME XAVIER

Defendants

Appearances:

Mr. Kenneth A. H. Foster QC and Ms. Margaret Foster for the Claimants
Mr. David Cox, Crown Counsel for the First-named Defendant
Mr. Dexter V.O. Theodore for the Second-named Defendant

2002: February 07, March 15, 18
April 08

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** On 8th day of April, I dismissed the Claimants' Claim herein and I promised a more detailed written judgment. I do so now.

[2] The Claimants and the Defendants owned large portions of land north of the Anse Ger River in an area known as Beaufond, Planna or Dugard in the Registration Quarter of Micoud. Disputes arose among the parties and at the conclusion of the hearing, the

Adjudicator, after allowing the claim by Henry Doxon for his house spot as demarcated with Provisional Title vested the following lands in the name of the Crown.

- (i) All the land claimed by the heirs of Mathurine Malzaire Dugard under claim No. 3H, 526.
- (ii) ***All that land falling East of the so-called Shillingford Line, claimed by the Heirs of Edmund Africain [Emphasis mine].***
- (iii) All that land claimed by Sidoine Allen Sammy, north of the land already adjudicated in favour of the Claw family.
- (iv) All that land claimed by the heirs of Doxges Doxey Claw under Claim No. 3H, 68.

[3] The parties concerned have all appealed against the aforesaid decision of the Adjudicator. On 1st day of October 1987, the Land Adjudication Tribunal, after hearing the appeal made the following awards (at pages 3-4 of the Judgment):

“In regard to the claim by the Heirs of Edmund Africain, (See Sheet 1626B.73). The Tribunal awards to them with absolute title three carres of land in parcel No. 73, and also the remainder of that parcel which was awarded to the Crown with a Provisional Title [Emphasis mine].

Concerning the claim by the Heirs of Mathurine Malzaire, the Adjudicator has written as follows:

The claim by the Heirs of Mathurine Malzaire Dugard was not convincing. They have not paid land tax, and in my opinion, have not demonstrated that their rights existing in and over the land they are claiming, amount to full ownership.

The Tribunal would agree. Further to this, the survey plan by Rodrigues has shown this area to have been occupied by the Doxey Claws before 1950. The Mathurine Malzaire claim is accordingly rejected.

This area is shown on Sheet No. 1626B as parcel 69. The Tribunal would award it to the Heirs of Doxey Claw with a Provisional Title. The Tribunal would also award to them with Provisional Title the remainder of Parcel No. 1 as shown on Sheets 1625B and 1626B [Emphasis mine].”

[4] Section 97(1) of the Land Registration Act 1984 as amended by Act No. 7 of 1986 empowers the Registrar to rectify the register or any instrument presented for registration in the following cases:

(e) upon receipt of any decision of the Land Adjudication Tribunal made under Section 20 (3) of the Land Adjudication Act 1984.

[5] On 3rd day of May 1988, Mr. Lester Martyr, then Registrar of Lands, by virtue of his powers under Section 97 (1) (e) of the Land Registration Act ordered that the Land Registers be amended in accordance with the decision of the Land Adjudication Tribunal (Dispute 3/H/27 – 31/D). This was done and duly registered in the Land Registry on 4th day of May 1988 as Instrument Number 2399/88.

[6] Then there was further communication on this matter. On 19th day of January 1989, Mr. Martyr wrote to Mr. Earl Cenac, Licensed Land Surveyor confirming that an inconsistency exists in relation to the numbering of parcels 86, 87 and 88 as appears on the Registry Map 1626B. In that letter, he stated:

“In order that the Land Register for each of the respective proprietors may refer to the correct parcel as shown on the Registry Map the following changes to the Registry Map 1626B will be effected:

1. The parcel now numbered as 86 will be numbered 88.
2. The parcel now numbered as 87 will be numbered 86.
3. The parcel now numbered as 88 will be numbered 87.

Please be guided accordingly. By copy of this letter Mr. Kenneth Foster is kept informed of this action.”

[7] The Registrar made his decision. The Claimants had the right to appeal if they were dissatisfied with the decision of Mr. Martyr. Section 105 (1) provides as follows:

“The Minister or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Registrar in the

prescribed form of his intention to appeal to the Court against the decision, direction, order, determination or award.”

[8] There was no appeal of the decision of the Registrar of Lands. Instead, nearly ten years later, the Claimants filed a Writ of Summons with Statement of Claim seeking a rectification of the Land Register to correct the alleged mistake of Mr. Lester Martyr.

[9] At paragraph 4 of the Statement of Claim, the Claimants alleged that prior to the decision of the Land Adjudication Tribunal, there was the one area of land refers to as Parcels 86 and 87 on Plan 1626B, which was awarded to the Crown. That subsequent to the said decision, a part of these lands was awarded to the Heirs of Edmund Africain, that is to say, Lot 86 on plan 1626B with provisional title where as the remainder was awarded to the Heirs of Doxey Claw with provisional title.

[10] The Claimants next alleged that the Land Registry opened the Register showing Plan 1626B Parcel 87 for Heirs of Doxey Claw, whereby the amended Registry Map now erroneously sheweth that instead of Lot No. 86 to be numbered 86, the Registry, in error, numbered the said lot 88 whereby the Claimants are without their lands where all their houses were located from time immemorial.

[11] Section 98(1) states as follows:

“ 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.”

[12] There is no allegation of fraud. The real grievance of the Claimants is that the Registrar of Lands made errors in rectifying the register.

[13] Mr. Christopher Cox appearing for the Registrar of Lands submitted that by virtue of Section 105 (1) of the Land Registration Act, the Claimants had thirty days to give notice to the Registrar of their intention to appeal if they were aggrieved by the decision of the

Registrar. Not having done so, the Defendants argued that the claim should not be entertained by the Court despite the submission of Mr. Foster that it is too late in the day for the Defence to raise the issue of jurisdiction. I am in agreement with Mr. Cox that the claim should be dismissed. At the same time, I wish to add that the First-named Defendant, the Registrar of Lands was made a party to the Claim in February 2002 after the trial had commenced. The Court, on its own motion made an order that the First-named Defendant be joined as a party to the Claim. In my opinion, it seems impractical and almost impossible that the issue of jurisdiction could have been raised at an earlier stage of the proceedings.

[14] The Defendants denied that any error appears in the Land Registry as alleged at paragraph 3 of the Statement of Claim. They asserted that the decision of the Land Tribunal is truly and accurately reflected in the said Land Register.

[15] Mr. Theodore maintained that the Second-named Defendant was awarded Parcel No. 1626 B 73 with absolute title and the remainder of that parcel which was previously awarded to the Crown being Parcel 86, with provisional title.

[16] Mr. Foster for the Claimants vociferously challenged the interpretation advanced by Mr. Martyr in respect of the decision of the Land Adjudication Tribunal. The crucial part of the decision of the Tribunal reads:

"In regard to the claim by the Heirs of Edmund Africain, (See Sheet 1626B.73). The Tribunal awards to them with absolute title *three carres of land in parcel No. 73, and also the remainder of that parcel which was awarded to the Crown with a Provisional Title.*"

[17] Mr. Foster submitted that the Tribunal was referring only to Parcel 73. He insisted that the words "*and also the remainder of that parcel which was awarded to the Crown*" meant the remainder of Parcel 73. I do not agree with Mr. Foster for the following reasons:

(a) If the Tribunal was referring only to Parcel 73, I think it would have been apposite to specifically say "The Tribunal awards to them with absolute title Parcel 73".

(b) In his decision, the Adjudicator vested in the name of the Crown the following lands including **“all that land falling east of the so called Shillingford Line, claimed by the Heirs of Edmund Africain.”** Parcel 69 fell East of the so-called Shillingford Line and that parcel of land was the subject of the appeal before the Land Adjudication Tribunal. Parcel 73 was never in dispute as it fell West of the so-called Shillingford Line.

[18] I agree with Mr. Martyr that prior to the decision of the Land Adjudication Tribunal there was one parcel of land, which was awarded to the Crown and labeled Number 69 on the Registry Map 1626B. It is therefore incorrect to say that the area was “86 and 87” on Plan 1626B. I agree with Mr. Martyr that in accordance with the decision of the Tribunal, part of the area labeled Number 69 on the Registry Map 1626B was awarded to the Heirs of Edmund Africain and the remainder thereof to the Heirs of Doxey Claw.

[19] Mr. Martyr stated that as a result of the decision of the Tribunal, the area originally numbered as parcel 69 was subdivided and mutated to form parcels 86 and 87 on the Registry Map 1626B. Accordingly and in compliance with the award of the Tribunal, two land registers were opened: (a) Land Register No. 1626B86 in the name of Heirs of EDMUND AFRICAIN was entered in the proprietorship section and (b) Land Register No.1626B 87 in the name of the Heirs of DOXEY CLAW were entered in the proprietorship section. In fulfillment of the further award of the Tribunal, Land Register No. 1626B 88 was opened and the awards to JN PIERRE and SAMMY are correctly reflected in the proprietorship section.

[20] Mr. Martyr explained that he issued a directive on 14th day of April 1988 to amend the REGISTRY MAPS 1625B and 1626B pursuant to the decision of the Land Adjudication Tribunal in order to label the areas awarded to the successful parties. In this regard, he referred to the Combination and Subdivision (Mutation) Order No. 143/88 exhibited. He stated that after opening Land Registers Nos. 1626B 86, 1626B 87 and 1626B 88 aforementioned and finalization of the REGISTRY MAPS, it was pointed out by Mr. Earl Cenac Licensed Land Surveyor that there was a clerical error in placing the labels on the REGISTRY MAP 1626B in respect of the areas awarded by the Land Adjudication Tribunal; that is to say:

- (a) The names entered in the proprietorship section to wit, AFRICAIN, in respect of the Land Register No. 1626B 86 did not correspond to the area in fact awarded to AFRICAIN by the Tribunal which in error was labeled 87 and which should have been labeled 86 on the REGISTRY MAP 1626B.
- (b) The names entered in the proprietorship section to wit, DOXEY CLAW, in respect of the Land Register No. 1626B 87 did not correspond to the area in fact awarded to DOXEY CLAW by the Tribunal which in error was labeled 88 and which should have been labeled 87 on the REGISTRY MAP 1626B.
- (c) The names entered in the proprietorship section to wit, JN PIERRE and SAMMY, in respect of the Land Register No. 1626B 88 did not correspond to the areas in fact awarded to JN PIERRE and SAMMY by the Tribunal which in error was labeled 86 and should have been labeled 88 on the REGISTRY MAP 1626B.

[21] In a correspondence dated 19th day of January 1989, Mr. Martyr confirmed a clerical error in numbering the parcels on the Registry Map 1626B to Mr. Earl Cenac. Mr. Martyr however asserted that the corrected Registry Map 1626B properly reflects the awards of the Land Adjudication Tribunal and that his decision to correct the clerical error on the REGISTRY MAP was warranted and done in accordance with Sections 15 and 97 of the Land Registration Act 1984 (as amended) in order to ensure that the Land Registers Nos. 1626B 86, 1626B 87 and 1626B 88 correctly and accurately correlate with the numbers of the parcels on the REGISTRY MAP 1626B.

[22] Looking at the evidence as a whole, I cannot find that the Claimants have satisfied this Court that the Registrar of Lands erred in the rectification of the Land Register. In my view, the awards of the Land Adjudication Tribunal are accurately and truly reflected in the Land Register. Mr. Martyr was indeed the most critical witness in the instant case. He was candid and forthright in his testimony. Under intense cross-examination by Mr. Foster, the witness remained calm and collective. He impressed me as a witness of truth.

[23] I cannot say the same of Mr. John Pierre, the sole witness for the Claimants. He was not straightforward and frank in giving evidence. He seemed not to be very knowledgeable of the instant matter. He was unsure about his evidence and was unable to say whether there

was any appeal to the Court of Appeal. I preferred the evidence of the Defendants to that of the Claimants.

[24] As earlier stated, I am of the firm view that the Court has no jurisdiction to entertain these proceedings since the Claimants have failed to lodge an appeal against the decision of the Registrar of Lands. In fact, up to the present day, no appeal has been lodged.

[25] Accordingly, the Claim is dismissed with Costs which was agreed at \$15,000.00 to each Defendant to be paid not later than 31st day of July 2002.

[26] Lastly, I would like to commend the lawyers for their sterling presentation and immeasurable assistance to this Court. I am especially grateful to Mr. Lester Martyr, former Registrar of Lands who availed himself to the Court on very short notice. His thorough knowledge of the practice and procedure involved in the rectification process was most refreshing.

INDRA HARIPRASHAD-CHARLES

High Court Judge

20th day of June 2002