

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 788 of 1995

BETWEEN

SAMUEL FELICIEN

Suing on behalf of the heirs of Felicien Alexander

Claimant

and

STANISLAUS MODESTE

Defendant

Appearances

For the Claimant: Ms. F. Byron-Cox

For the Defendant: Mr. M. Gordon QC with Ms. M. J. Charles

2003: January 20, 21, 23
February 6th

JUDGMENT

[1] **Saunders J:** "Les Mineurs Moisson" is a parcel of land approximately 11 and 2/3 carres in extent that was once annexed to the Beausejour estate. The current registered title owner of that land is the defendant, Mr. Stanislaus Modeste. The fundamental factual question posed by this case is whether he owns this parcel of land in his own right or whether he holds it as trustee for the heirs of a gentleman long deceased called Felicien Alexander. The claimants are some of the heirs of this Felicien Alexander, deceased. They allege that the defendant holds the land as a trustee for all the heirs.

[2] Mr. Modeste traces his title to the disputed land right back to a judicial sale in 1894. In that year a large parcel of land, described as "the remainder of the Beausejour Estate", was

purchased by a Mr. Frederick Lawrence. In 1900 Mr. Lawrence sold 11 and 2/3 carres of these lands to Joseph Felicien. Mr. Felicien, in turn, passed the lands on to his son and his daughter, Juliet Wilson. Ms Wilson was survived by her daughter, Ms. Geralda McCauldy, who inherited Ms. Wilson's share. Subsequently, by a deed of Partition in 1953, Ms. McCauldy had the entirety of the 11 and 2/3 carres vested in herself. At this stage I must point out that Joseph Felicien was the son of Felicien Alexander so that in fact, the claimants and Geralda McCauldy are cousins. They have a common great grandfather, none other than the said Felicien Alexander.

[3] During the Land Registration process in St. Lucia in the mid 1980s, Ms. McCauldy claimed for, and had registered in her name as absolute owner, the land known as Les Mineurs Moisson. Ms McCauldy died in 1988 leaving all her real estate to the defendant, Mr. Modeste.

[4] Everyone therefore agrees that Les Mineurs Moisson is indeed the subject of the registered title currently in the name of Mr. Modeste. Unquestionably, with a root of title going back to the judicial sale to Frederick Lawrence in 1894, Mr. Modeste can also easily demonstrate his entitlement to a parcel of land comprising 11 and 2/3 carres. For the claimants to succeed in this action therefore it was for them to establish two, or at least one of two, propositions: Firstly, that when Les Mineurs Moisson was registered by Ms. McCauldy as being owned by her, a mistake was made. That perhaps there were actually two parcels of land both comprising 11 and 2/3 carres and that the one Ms. McCauldy registered, which was subsequently passed on to the defendant, was *not* Les Mineurs Moisson because Ms. McCauldy's land was actually located elsewhere. In lieu of this, or in addition to it, the claimants could contend that, irrespective of their success on the first issue, the lands known as Les Mineurs Moisson were never owned by Ms. McCauldy because they were always owned by and remained throughout in the possession of Felicien Alexander and his heirs.

[5] Counsel for the claimants invested a tremendous amount of time, industry and research in attempting to establish these two propositions. As to the first, counsel pointed to the

boundaries of the 11 and 2/3 carres sold in 1900 to Joseph Felicien and theorised that those boundaries were compatible with a hypothetical parcel that could be carved out from among lands that once formed part of the Beausejour estate and that could conceivably approximate 11 and 2/3 carres in extent. Unfortunately for counsel, this notion remains just a bare theory. There was absolutely no evidence adduced to buttress it, nor was there any natural or survey marks on the ground that could lend support to it.

[6] As to the second proposition, Counsel's submission that Felicien Alexander purchased Les Mineurs Moisson, or a portion of those lands, in the mid nineteenth century and that Les Mineurs Moisson have always remained in the possession of his heirs was not entirely lacking in some substance. A deed of sale dated 17th December, 1853 was placed in evidence. Pursuant to that deed Felicien Alexander did purchase four carres of land "in the quarter of Gros Islet near to the sugar factory called Beausejour.....[to].....be measured up to the boundary of the property called "Lerminier" which borders them to the south..."

[7] The Chief Surveyor of Saint Lucia opined in 2002 that these four carres of land fell "in the estate called Fardelon .. which estate is situated north of the estate called Lerminier" In the survey plans exhibited in this action there is much evidence that Les Mineurs Moisson and "Fardelon" are indeed one and the same parcel of land.

[8] To substantiate the contention that Felicien Alexander had always occupied Les Mineurs Moisson, Counsel for the claimants also adduced Baptism, Birth and Marriage Certificates of children of Felicien Alexander. These documents indicate that the children were born and their parents resided in the estate of Fadelon. In addition, a number of survey plans of the area, from the late 19th century right up to the latter part of the 20th century, consistently denoted the lands of Les Mineurs Moisson as being in the possession of Felicien Alexander or heirs of Felicien Alexander.

[9] Several claimants gave oral evidence. These witnesses gave evidence on the assumption that Fadelon and Les Mineurs Moisson, as we now know it, were one and the same piece of land. The gist of their evidence was that as far as they were aware Fadelon had never

been purchased by Joseph Felicien. In partial proof of that assertion, one of them testified that "...[Joseph Felicien's] grand-daughter who played with us every day never boasted that Fadelon belonged to her grand-father".

[10] The claimants stated that they had always been in possession of Les Mineurs Moisson and that Ms. McCauldy had essentially tricked them during the Land Registration process. Sylvina Felicien stated that she currently occupies a portion of Les Mineurs Moisson where she has a garden.

"...It is a wide garden. It is bigger than this court room. Much bigger. There is cassava, potatos, cane, plaintain, yam, okra and corn. All that is there now. If we went to the land we would see that there now".

[11] This witness testified that Ms. McCauldy had always acknowledged that Les Mineurs Moisson was "terre famille" and that during the Land Registration process Ms. McCauldy had agreed to register a claim to the land for the benefit of the entire estate. I pause here to note firstly that, Felicien Alexander was the great grandfather of both Ms. McCauldy and this witness. Secondly, relative to her cousins, Ms. McCauldy possessed superior literacy skills.

[13] The court however had several difficulties with the claimants' evidence. Much of it was anecdotal rather than being rooted in firsthand experience, knowledge or observation. The witnesses were often forced to rely on stories that they had been told. The value of the evidence alleging current occupation of the lands was appreciably weakened by the fact that one of the claimants' own witnesses contradicted that testimony. Jn. Baptiste Victor stated that

"Presently there are no gardens there. There are animals moving around the area destroying all gardens. About two years ago there were gardens there. There was one garden owned by Dilianna also known as Muriel...."

[14] The 1853 deed of Felicien Alexander is not for 11 and 2/3 carres. It is for four carres. Moreover, this deed is singularly lacking in a precise description of the land purchased. and it recites that "without exception nor reservation the buyer declares he knows it well, is

happy and satisfied, is not desirous or more ample proportions and renounces all exceptions to the contrary”.

[15] Another complicating factor about the claimants’ case is the heavy reliance, as proof of possession, on the annotation on survey plans that Les Mineurs Moisson is occupied by “heirs of Felicien Alexander”. The fact is that Joseph Felicien, who bought this land in 1900, was the son of Felicien Alexander. In a real sense therefore, to say, after 1900, that Les Mineurs Moisson is occupied by “heirs of Felicien Alexander” is not entirely incompatible with the defendant’s case. To make matters worse for the claimants, some survey plans also refer to the land as being occupied by “heirs of Joseph Felicien”. The claimants argue that this “Joseph Felicien” was another of the many aliases of Felicien Alexander but there is scant proof of this. I will grant that prior to Joseph Felicien’s purchase in 1900, there are references to Les Mineurs Moisson as being occupied by heirs of Felicien Alexander. In my judgment that circumstance will simply have to go down as one of the unresolved issues in this case. So too must the 1853 deed to Felicien Alexander which appears to show the sale to Felicien Alexander of four carres of land of Les Mineurs Moisson. It is anyone’s guess as to what happened to that land after it was purchased.

[16] The burden of proof in this case is on the claimants. However, once the defendant was able to establish that the lands of Les Mineurs Moisson were included in the judicial sale to Frederick Lawrence and that in 1900 what was sold by Lawrence to Joseph Felicien was indeed Les Mineurs Moisson, then it is difficult to see how the claimants’ case could be sustained.

[17] It is common ground that Felicien Alexander appears to have left no will. He was survived by his wife Arcenne Alexander. She was a landowner in her own right. In 1880, after the death of Felicien Alexander, Arcenne purchased the Case Café estate. That estate abuts Les Mineurs Moisson along the latter’s eastern boundary. Arcenne’s deed for Case Café recites that her western boundary is the Beausejour estate. Conversely, when one examines Frederick Lawrence’s 1894 deed, the eastern boundary of the lands sold to him by the Sheriff is Case Café. These plans therefore suggest that, irrespective of who might

have owned those lands before, Les Mineurs Moisson must have been included in the Beausejour lands conveyed by judicial sale to Frederick Lawrence in 1894.

[18] Counsel for the defendant also points to the boundaries of the 11 and 2/3 carres, sold in 1900 by Lawrence to Joseph Felicien. Those boundaries are precisely in keeping with the actual boundaries of Les Mineurs Moisson. For one reason or another the words or description "Les Mineurs Moisson" were not used in that 1900 conveyance. Conversely, the said description, "Les Mineurs Moisson", was frequently used as a reference point in relation to adjoining lands. I don't think I should read a whole lot into that. Experienced conveyancers appreciate that very often the identical description of a parcel of land is carried over from the root of title to each successive deed of conveyance involving those precise lands. Those 11 and 2/3 carres are described in several deeds or legal writings between 1900 and 1953 and on each occasion the same old boundaries are repeated.

[19] Arcenne died on 19th November, 1919 leaving a Will that was admitted to probate in 1920. That Last Will makes no mention of the disputed lands, again suggesting that her late husband's estate did not in fact have an interest in Les Mineurs Moisson. As his widow, Arcenne would have been entitled to at least a half share, being the community of any lands that he would have owned. Interestingly, the executor of Arcenne's Will, St. Martin Felicien, when he vested her estate, made no mention either of a property known as Les Mineurs Moisson or of any property comprising 11 and 2/3 carres. Equally, Felicien Alexander's grandson, Lawrence Felicien, did not allege, in a Declaration of Succession to his father's estate dated 20th September, 1938, that his father had any interest in Les Mineurs Moisson. The stark fact is that in these proceedings, a few great grandchildren are asking this court to declare Felicien Alexander to be the owner of certain lands when neither Mr. Alexander's widow nor his children ever regarded that land as belonging to him.

[20] I can see no reason why Geralda McCauldy would have acknowledged to any of the claimants that the disputed land was "terre famille". After all, she had a valid paper title to the same. When she registered the land pursuant to the Land Registration process, she

did not represent herself to the Adjudication Officer as an heir of Felicien Alexander but instead as an owner in her own right.

[21] The defendant states that he grew up as a boy with Ms. McCauldy, his aunt, and that she and her husband actively occupied the disputed lands which were referred to by them as Fadelon. According to him sections of the land were cultivated by his aunt. That evidence was corroborated by Eugene Ferlandes who was employed by Ms. McCauldy for about 30 years. He stated that he worked for her on the lands and that during her lifetime the claimants did not occupy the disputed lands. He said that after Ms. McCauldy's death the claimants began cutting wood from the land to make charcoal. The defendant's case also gained ample support from witnesses with expert knowledge including the Chief Surveyor of Saint Lucia.

[22] On the evidence adduced, it is my judgment that the claimants have not established a prescriptive title to the disputed lands. Such evidence as there is to establish that Felicien Alexander was, during his lifetime, in possession of Les Mineurs Moisson is at best, tenuous. The judicial sale of 1894, held after Felicien Alexander had died, would have cleansed the title to these lands. See: Article 554 of the Code of Civil Procedure. The claimants have not demonstrated a start date after 1894 when possession by their ancestors might have begun nor have they shown any prolonged possession as proprietor thereafter. As to possession during the time of the great grandchildren, the evidence of the defendant and his witnesses appears to me more credible than that of the claimants. I do not accept that any relationship of trust existed between Geralda McCauldy and the claimants.

[23] The above findings of fact would be sufficient to dispose of this case but counsel for the claimants has also submitted that, pursuant to *Skelton vs. Skelton (1986) 37 W.I.R. 177*, and the line of cases that follow it, the Claimants are not entitled to bring this claim to seek in effect to set aside the Adjudication Officer's decision to award the disputed lands to the defendant's predecessor in title. I agree with that submission.

[23] The claim is therefore dismissed with costs to the defendant in the sum of \$30,000.00.

Adrian D. Saunders
High Court Judge