

SAINT LUCIA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. SLUHCV 1999/0827

BETWEEN:

JOACHIM RODNEY JACOB

Suing herein on behalf of the heirs of
PHILOMENE ALEXANDRE FELICIEN also called
FELICIEN FELICIEN also called FELICIENNE FELICIEN
also called Mde SYMPHORIEN JACOB

Claimant

and

SYLVINA LOUISIEN

Acting herein and Representing
the heirs of ST MARTIN FELICIEN

Defendant

Appearances:

Mr. D. Theodore for the Claimant.

Ms. P. Nelson for the Defendant.

**2004: May 10
September 7**

JUDGMENT

1. **EDWARDS J:** This decision is a Ruling on the Preliminary Objections by Counsel for the Defendant to the Claimant's Claim for Rectification of the Land Register, on the grounds of Mistake, pursuant to Section 98 (1) of The Land Registration Act No. 12 of 1984.

BACKGROUND FACTS

2. The Claimant and the Defendant are allegedly descendants of the late Arsienne Felicienne also spelt Felicien Felicien, also called Mde Symphorien Jacob (born Petit Frere) Widow Brann (or Brand) Felicien also called Felicien Alexandre.
3. She died testate leaving 4 children including Felicien Felicien and St. Martin Felicien now deceased. There is dispute as to whether Philomene Felicien was one of these 4 children. She is also deceased.
4. A Declaration by Hortencia Joseph (born Felicien), and Louisa Felicien, dated 18th September 1949, and recorded in the Registry of Deeds and Mortgages at Vol. 109A No. 69447 at 1.45, gives the family history, and an account of the manner in which the land owned by Arsienne Felicienne at Case Café in Gros-Islet, was distributed under her Probated Will by the named Executor St Martin Felicien. It states that Arsienne Felicienne had only 4 sons.
5. This Declaration states that there was an amicable partition of the Case Café property between the legatees for which no formal document was drawn up. Further, that the deceased St Martin Felicien during his lifetime acquired his 1/4 share pursuant to a survey and division made with the consent of the co-proprietors by Adrien Monplasil, Land Surveyor in January 1921.
6. The 1/4 share of St Martin Felicien comprises “All that portion of the “Case Café” or “Morne Café” Estate situate in the Quarter of Gros-Islet comprising thirty-five acres two roods and six perches and bounded on the North and West by the property of Joseph Felicien, south partly by a swamp and partly by the property of Mde Sinforin and east by the sea the same as appears by plan of survey thereof by Adrien Monplasil, Land Surveyor, dated 11th June, 1921 and lodged on the same day, together with all other the appurtenances and dependences thereof”.
7. The Declaration states that St Martin Felicien and his successors in title have been and still are in uninterrupted public, peaceable and unequivocal possession as owners of the said immovable property since the said partition.

8. The Declarants Hortencia Joseph (born Felicien) and Louisa Felicien are daughters of St Martin Felicien who died intestate on or about the 24th January 1940. Their Declaration concerns the immovable passing under the succession of the late St Martin Felicien, of which each of them are entitled to an undivided $\frac{1}{5}$ share.
9. By an Amended Writ and Statement of Claim filed on the 7th March 2001, the Claimant alleges that by the said partition the daughter of Arsienne Felicienne, Philomena Felicien, was apportioned 41 acres, 3 roods, 31 perches from her deceased mother's land at Case Café. The Claimant Joachim Rodney Jacob is a grandson of Philomena Felicien.
10. It is alleged that Philomena Felicien's portion of land known as Block 1656B Parcel No. 9 was mistakenly registered in the Land Registry in the name of the Heirs of St Martin Felicien (heirs of SMF) as owners with absolute title.
11. The relief sought includes a Declaration that the Heirs of Philomena Felicien (heirs of PF) are the true owners of the said parcel, and Rectification of the Land Register to reflect their ownership.
12. By the Defence filed on the 25th February 2003 the Defendant contends among other things, that the issue of the merit of the Claimant's claim to the said parcel was decided by the Adjudicating Officer pursuant to the provisions of the Land Adjudication Act No. 11 of 1984 as amended by The Land Adjudication (Amendment) Act No. 8 of 1986.
13. Further, that since the Adjudicating Officer's award of the said parcel to the Heirs of SMF was never challenged in accordance with the statutory provisions of the Adjudication Acts, the issue as to ownership is Res Judicata.
14. The Defendant contends that this Court has no jurisdiction to hear the matter in the existing circumstances.
15. On the 10th of May 2004 at the Pre Trial Review Conference, I heard preliminary submissions from both Counsel based on their filed Skeletal Arguments.

THE ISSUES

16. Both Counsel have requested that I determine the following issues –
- A. Can the Adjudication Record for claim No. 4A681 for Block 1656B Parcel No. 9 which was completed on the 3rd September 1985, became final 90 days thereafter, and was entered on the Land Register on the 19th November 1986, be subjected to review or appeal by way of instituting proceedings in the High Court of Justice?
 - B. Can the Claimant challenge the indefeasibility of the title given to the Defendants pursuant to Section 98(1) of the Land Registration Act in the absence of pleading mistake in the registration process?
 - C. Whether an adjudication between competing claims by the Recording Officer, as distinct from the Adjudication Officer, is a mistake in the Registration process?
 - D. Whether the Land Adjudication Record issued in respect of Parcel 1656B9 is null and void?
 - E. Whether the heirs of St Martin Felicien hold Parcel 1656B9 in trust for the Claimant?
 - F. Whether the principle of Res Judicata is applicable when the court has jurisdiction to rectify under Section 98 of The Land Registration Act?
 - G. Whether a misunderstanding as to what was the real decision of the Adjudication Officer resulting in the registration of something that was not his decision is a mistake in the Registration process?
17. I propose to consider the relevant law on Mistake under the Registration Process for the purposes of this case, after which, I shall examine how the Adjudication Process was applied for Parcel 1656B9, and its effect on the Registration Process for the said parcel, having regard to the submissions of Counsel and the law. Finally, I

will deal directly with the issues, and then conclude. It will not be necessary to repeat the submissions of Counsel in light of their direct questions posed.

LAW ON MISTAKE UNDER THE REGISTRATION PROCESS

18. Section 98(1) of the Land Registration Act provides that **“... 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 by fraud or mistake”**.
19. Though the Act does not specify what type of mistake Section 98(1) envisages, our Courts have applied the approach of Lawrence L.J. in **Chowood Limited vs Lyall** [1930] Ch (No. 2) 156. In the application of the English provision Section 82 (1) (h) of the Law of Property Act 1925, which allows Rectification where there has been a mistake, Lawrence L.J. said at page 168 –

“I see no reason to limit the word “mistake” in that section to any particular kind of mistake. The Court must determine in every case whether there has been a mistake in the registration of the title, and if so, whether justice requires that that register should be rectified.”
20. Speaking of Section 140 of the Anguilla Registered Land Ordinance, which is similar to Section 98 of the St. Lucia Act, Byron J.A. in his judgment pronounced that **“any mistake made in the registration process could be rectified. The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in the registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the Registration process”**: (**James Ronald Webster and another vs Beryl St Clair Fleming (as personal Representative of the Estate of Samuel Henry Hodge, deceased** Civil Appeal No. 6 of 1993 (Anguilla) delivered 8th May 1995 at page 12).

21. It is very important to state the facts in **Webster v Fleming (supra)**. This was a case where the grandson of the deceased intestate Samuel Hodge, having sold Mr. Webster a portion of the deceased's estate, subsequently claimed all the estate comprising 27 acres.
22. In February 1975 the entire estate was adjudicated with absolute title to the Heirs of Samuel Hodge. It was recorded in the Land Register as West Central Block 2811B Parcel 1.
23. Mr. Webster failed to make a claim before the Adjudication Record was finalized.
24. However the Recording Officer accommodated Mr. Webster's late claim by altering the Adjudication Record after the Adjudication for the West Central Section became final in May 1975.
25. On the 12th August 1975 the Recording Officer unlawfully altered the Record and adjudicated an undetermined acreage from the 27 acres already entered as Block 2811B Parcel 1, with provisional title to Mr. Webster.
26. The Adjudicating Record signed by the Recording Officer stated that the date on which possession by the provisional owner commenced was the 1st January 1975. The undetermined acreage was recorded as West Central Block 2811B Parcel 9.
27. The learned trial Judge found that the Recording Officer had acted in contravention of the Land Adjudication Ordinance when he altered the Adjudication Record finalized since the 6th May 1975, and created the Adjudication Record for Parcel 9. The trial Judge concluded that the Court should rectify the illegality.
28. On appeal, the Court of Appeal distinguished the Adjudicating Officer's functions from the Recording Officer's functions under the Adjudication Ordinance.
29. In particular, the Court focused on the functions of both officers where there were 2 Claimants to the land, as was the case with Mr. Webster and the deceased's grandson for Parcel 9.

30. The Court also focused on the statutory method for challenging any act or omission of the Recording Officer in the preparation of the Adjudication Record, and the statutory process for altering the Adjudication Record before it becomes final.
31. Further, the Court considered the finality of the Adjudication process, and the statutory intermediate steps for appealing against any act or decision of the Adjudicating Officer, after the Adjudicating Officer has issued his certificate, stating that the Adjudication Record has been completed, and published the required notice under the Ordinance. It is necessary to set out the statutory provisions in the Anguilla Ordinance, which formed the basis for the Court's decision.
32. Section 9(1) of the Land Adjudication Ordinance gives the Adjudicating Officer, Demarcation Officer, and the Recording Officer, power to proceed as if a claim had been made, if satisfied that a person who has not made a claim, has a claim to an interest in land within the adjudication section.
33. Section 15(1)(b) of the Ordinance provides that if in any case there are 2 or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them, the Demarcation Officer or the Recording Officer as the case may be, **SHALL REFER THE MATTER TO THE ADJUDICATING OFFICER.**
34. Section 15(2) provides that **“the Adjudicating Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable...”**
35. Section 22 provides-

**“At any time before the adjudication record becomes final
the Adjudication Officer-**

**(a) May correct in the record any error or omission
not materially affecting the interest of any person;
and**

**(b) After taking such steps as he thinks fit, to bring to
the notice of every person whose interest is**

different, his intention to make any material alteration in the record which he considers necessary, and after giving such person an opportunity to be heard, may make such alteration; provided...”

36. Byron J. A. delivered the Judgment of the Court of Appeal. He perceived the parties to be rival claimants to the land contained in Parcel 9. He declared that in such circumstances **“the Recording Officer did not have the power to determine which of them should be adjudicated as Registeral Proprietor. Section 15 prescribed that judicial function to be exercised solely by the Adjudication Officer and mandated the Recording Officer to refer the matter for his decision. No such reference was made and the Adjudication Officer adjudicated between these rival claims. The Recording Officer’s adjudication of Parcel 9 in favour of the Appellant was therefore, ultra vires Section 15”**: (at pages 6 to 7).
37. His Lordship Justice Byron also concluded that the Adjudication Record for Parcel 9 was not a document which the Recording Officer was empowered to issue, because it purported to make an adjudication between rival claimants and it was made after the adjudication record was finalized.
38. He continued at page 13:

“These unauthorized acts of the Recording Officer made it appear that the Adjudicating Officer had altered the adjudication of 27 acres to the Respondents in Parcel 1 and had adjudicated a parcel of land in favour of the first named appellant in Parcel 9, none of which was accurate.

The documents on which the Registrar of Lands acted in the entries made in the Register of Lands were therefore, invalid documents which were used as if they were genuine orders of the Adjudicating Officer. They must be regarded as being null, void and of no legal effect.”

39. Byron J.A. was of the view that **“the Court is empowered by Section 140 to ensure that the first Registration is based on the final decision of the Adjudicating Officer and not on the ultra vires adjudication records issued by the Recording Officer”**: (at page 13).
40. The Court of Appeal upheld the decision of the learned trial judge. It concluded that the registration of the appellants as proprietors of Parcel 9, and the omission to register the respondent as proprietor of the land contained therein, was a registration by mistake, which could be rectified under Section 140 of the Registered Land Ordinance 1974, by the Order the trial judge made.
41. Another set of circumstances which may cause a Court to conclude that there has been a mistake in the Registration process was suggested by Robotham C.J. in **Skelton v Skelton** (1986) 37 WIR 177.
42. The Learned Chief Justice was then considering the application of Section 140(1) of the Land Registration Ordinance of the British Virgin Islands which is a provision identical to Section 140(1) of the Anguilla Ordinance, and Section 98(1) of the St. Lucia Act.
43. The Court of Appeal had to determine whether or not a High Court Judge sitting in her original jurisdiction has the right to alter or amend a final decision of the Adjudication Officer, by invoking the provisions of Section 140(1) of the Registered Land Ordinance (there having been no appeal) after a lapse of 9 years from the date of the decision of the Adjudication Officer.
44. Robotham C. J. concluded at pages 180-181

“I would agree that, if the expression of the final decision of the Adjudication Officer was incorrectly recorded on the Land Register, Section 140 could be resorted to. I cannot, however, accept that it can be applied in the Original Jurisdiction of the High Court to alter in a material particular his individual findings of fact, based upon his own inquiry, simply because the judge sitting in an original jurisdiction is of the opinion that his findings were

erroneous. This is not the type of mistake contemplated by Section 140.”

45. **“It is already well settled that the jurisdiction to rectify the register of land is not to be used as an indirect method of Appeal against decisions taken under the Land Adjudication Act 1984, and that the term “mistake” in Section 98(1) of the Land Registration Act 1984 does not include a failure to employ the appellate procedure laid down by the Land Adjudication Act 1984 as amended...**

An inadvertence to claim under the Land Adjudication Act 1984, and... a failure to appeal from an unfavourable finding by the relevant officer...neither of these factors could invoke the jurisdiction to order rectification of the land register under Section 98 of the Registered Land Act”: **(Byron J.A. in Heirs of Hamilton La Force represented by Nathan La Force vs Attorney General of Castries and others Civil Appeal No. 11 of 1993 (St. Lucia) delivered 22nd July 1996 at pages 4 and 5).**

46. The Court has no jurisdiction to order rectification on grounds of mistake where the Adjudication Officer who has the lawful authority to alter the Adjudication Record exercises that power. The Court cannot consider the process by which the Adjudication Officer came to exercise his power to alter. **“Once the Adjudicating Officer has signed the certificate that the Adjudicating Record is final, the remedy of any aggrieved person is to appeal against his decision. The Adjudication Record is a valid and effective record. The well established principle is that a judicial order is effective and binding until set aside.”** : **(Byron J.A. in Loopsome Portland and others vs Sidonia Joseph Civil Appeal No. 2 of 1992 (St. Lucia) delivered 25th January 1993 at pages 7-8).**

47. I now move on to consider how the Adjudication process was applied for the parcel in question.

THE ADJUDICATION AND REGISTRATION OF PARCEL 1656 B 9

48. It is undisputed that Claim Form No. 4A681 dated 25th February 1985 submitted by the Claimant Rodney Jacob, was the only claim that the

Recording Officer received for the approximately 42 acres of land registered as Parcel 1656 B 9.

49. Louisa Felicien who claimed on behalf of the Heirs of St. Martin Felicien, submitted Claim Form No. 4A912 dated 25th April 1985 in respect of the 35.5 acres referred to in her Declaration (mentioned at paragraphs 4 to 8 of this Judgment).
50. The Adjudication Record for Parcel 1656 B 9, which was prepared and signed by the Recording Officer Mr. T.J.B Viney, shows that the owners name and address was recorded as **“HEIRS OF ST. MARTIN FELICIEN C/O PLAMER JACOB, LA BORNE, MONCHY P.O.”**.
51. There is no mention anywhere on the Claim Form No. 4A681 that the Heirs of SMF were claiming Parcel 1656B 9. The names and addresses of the other co-owners apart from Rodney Jacobs are listed as VERA PAMPHILE – out of the Island, EDNA JACOB – out of the Island, MARTY JACOB – living at La Borne, PALMER JACOB – living at La Borne.
52. The Claim Form No. 4A912 submitted by Louisa Felicien for the Heirs of SMF shows that the 35.5 acres were claimed as family land for the Heirs of St. Martin Felicien – Address – Massade, Gros Islet P.O. No where on this Claim Form is the name and address **“PLAMER JACOB, La Borne, Monchy P.O.”** stated.
53. I shall not indulge in any speculation as to the reasons why Mr. Viney recorded the owners as he did, on the Adjudication Record for Parcel 1656 B 9. Both Counsel, by their extensive submissions, attempting to explain how this could have happened, are inviting me to do what is not necessary in my view.
54. Section 9 (1) of the Land Adjudication Act is similar to Section 9(1) of the Land Adjudication Ordinance in the Anguilla case **Webster v Fleming** (supra). It states-

“If the Adjudicating Officer Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has a claim to any interest in land within the

adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may, in his discretion proceed as if a claim had been made, and may call upon the Registrar of Deeds to supply him with a certified copy of any document of title relevant.”

55. The principles of Adjudication and the preparation of the Adjudication Record are covered by Section 16 of the Act. Section 16(1)(a) states-

“16-(1) In preparing the adjudication record-

- (a) if the Recording Officer is satisfied that a person-**
- (i) is in public, continuous, uninterrupted, unequivocal peaceable possession as proprietor of a parcel of land other than a parcel which is Crown Land and has been in such possession, by himself or his predecessors in title, for an uninterrupted period of thirty years or more; or**
 - (ii) has a good title to the parcel and that no other person has acquired or is in course of acquiring a title thereto under any law relating to prescription or limitation, and that he would succeed in maintaining the title against any other person claiming the land on any part thereof.**

The Recording Officer shall record that person as the owner of the parcel and declare his title to be absolute;”

56. The Adjudicating Record shows that the Claimant Rodney Jacob produced the following documents to the recording Officer – (1) Deed of Sale by Mrs. (widow) De Brettes to Mrs. Felicien Alexander Rec. 3.02.1880 Vol. 40 No. 12559; (2) Probate (Notorial Will) Rec. 6.11.20 for Arscente Felicien Vol. 74 A No. 41050.
57. However, in connection with Claim Form No. 4A 681 by Rodney Jacob, there was a Demarcation Certificate prepared in which the

following Notes were written by the Demarcator Mr. T Viney on the 17th July 1985-

“Lot as shown on Plan Mr. Jacob had cleared boundaries but after survey these turned out to be incorrect. He has been informed and we now await his response.

T.V.

Absolute Title to Heirs St. Martin Felicien. (evidence in Declaration in 4A165 by Louisa Felicien indicate that this land was partitioned in 1920).”

58. It seems to me therefore that there was another Claim Form No. 4A165 submitted by Louisa Felicien on behalf of the Heirs of SMF for which land, a Declaration was produced. It also appears that the officer who prepared the Demarcation Certificate relied on this Declaration in coming to the conclusion about “Absolute title to heirs St. Martin Felicien” when Rodney Jacob’s Claim to Parcel 1656B9 was being considered.
59. This therefore leaves me with no doubt in my mind, that there were competing Claimants for Parcel 1656 B 9, and that this was obvious from 17th July 1985, if not before.
60. The question to be answered therefore is – What should have been done in accordance with the Land Adjudication Act in such circumstances?
61. The answer lies in Section 9(1) and Section 15 of the Act. Section 16(1)(a) (set out at paragraph 55 of this Judgment) could not be applicable in these circumstances in my opinion.
62. Section 15 requires that-

“15(1) If in any case-

(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him; which the Demarcation Officer is unable to resolve; or

(b)there are two or more Claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be, shall refer the matter to the Adjudicating Officer.

- (2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable; and shall make and sign a record.**
- (3) Where the Adjudication Officer has adjudicated on any dispute under this section the Minister or any other person who is dissatisfied with the decision of the Adjudication Officer shall give written notice to the Adjudication Officer of his intention to appeal.”**

63. It seems clear to me therefore that there was a boundary dispute/ problem, according to the Notes on the Demarcation Certificate, and there were also 2 or more Claimants to Parcel 1656B9.
64. Section 12(1) of the Act required the Demarcation Officer to resolve the boundary problem with the consent of Rodney Jacob and Louisa Felicien or any other owners where it empowers the Demarcation Officer as follows-

“12-(1) The Demarcation Officer may-

(a) ...;

(b)with the consent of the owners concerned, adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision.”

65. It appears to me on a close scrutiny of the Act, that if the Demarcation Officer did not resolve the dispute with the consent of the Claimant and any other owner concerned, in accordance with Section 12(1)(b), then it was mandatory for him to refer the matter to the Adjudicating Officer. If he did not do so, then he was acting unlawfully as he had

no legal authority to re-adjust a disputed boundary without the consent of the owners concerned.

66. Concerning the issue as to who really owned Parcel 1656B9, this appears to have been resolved unlawfully, according to the Demarcation Officer's notes on the Demarcation Certificate, and the inscription as to ownership by the Recording Officer on the Adjudicating Record. This resolution is certainly not what is contemplated by Section 15(1)(b). It definitely does not reflect that agreement was effected by the Recording Officer between the rival Claimants.
67. In the circumstances existing then, it was therefore mandatory for the Recording Officer to refer the rival claim problem to the Adjudicating Officer.
68. Section 21 as amended, deals with the procedure that the Adjudicating Officer should use in hearing a dispute under Section 15 or a petition under Section 20. It provides -

“21(1)...the Adjudication Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits, save that in his absolute discretion he may admit evidence which would not be admissible in a court of law and may use evidence adduced in any other claim or contained in any official record and may call evidence on his own motion.

(2) The adjudication officer shall

(a) make or cause to be made a record of all proceedings on a dispute or a petition ;and

(b) make the record referred to in paragraph (a) available to the Land Adjudication Tribunal and the parties when an appeal is being heard under this Act”

69. In the absence of any notes as to how both the boundary dispute and the dispute as to ownership was resolved, or any signed record of the Adjudication Officer evidencing his adjudication, I am compelled to

- conclude that Parcel 1656B9 was not adjudicated in accordance with the Land Adjudication Act as amended.
70. Regarding the Registration, Section 9(1) of the Land Registration Act provides for the Land Register to comprise **“a register in respect of every Parcel which has been adjudicated in accordance with the Land Adjudication Act.”**
 71. Section 10 states that **“whenever an Adjudication Record has become final under Section 23 of the Land Adjudication Act and the Adjudication Officer has delivered the adjudication record to the Registrar, the Registrar shall prepare a register for each parcel shown in the adjudication record..., and shall register therein any of the particulars in the adjudication record which requires registration.”**
 72. The “particulars” for parcel 1656B9 requiring registration, must be particulars in respect of parcel 1656B9, derived from an Adjudication Record which has been finalised in accordance with the Land Adjudication Act. The preamble to the Land Adjudication Act states that it is **“An Act to provide for the adjudication of rights and interests in land and for purposes connected therewith and incidental thereto”**.
 73. Applying the reasoning of Byron J.A. in **Webster v Fleming** (supra), and the provisions of Section 9 and 10 of the Land Registration Act, the following conclusion is inescapable in my view.
 74. A mistake in the registration process occurs where the rights and interests in a parcel for which these were rival claimants were not adjudicated by the Adjudication Officer having the lawful authority to do so, in accordance with Section 15 of the Land Adjudication Act, thereby rendering the Adjudication Record for that parcel invalid; and the Registrar of Lands, labouring under a misapprehension that the Adjudication Record is valid, and that the parcel was adjudicated in accordance with Land Adjudication Act, registers the particulars for that parcel.
 75. Turning now to answer the specific issues raised, my answers are as follows.

75. **Question A.**

Can the Adjudication Record for claim No.4A681 for block 1656B Parcel No. 9 which was completed on the 3rd September 1985, became final 90 days thereafter, and was entered on the Land Register on the 19th November 198, be subjected to Review on appeal by way of instituting proceedings in the High Court of Justice?

Answer

76. The Adjudicating Officer is empowered to hear Claimants' disputes and boundary disputes referred to him pursuant to Section 15, and also petitions against the Adjudication Record or the acts or decisions of the Demarcating /Survey/Recording Officer, where such referrals or petitions are made, within 90 days of the date, that the Notice of completion of the Adjudication Record is published by the Adjudication Officer, pursuant to Section 20(1) of the Land Adjudication Act as amended.

77. Section 20(4) of The Act as amended, gives disputing Claimants and Petitioners or other persons the right of Appeal to the Land Adjudication Tribunal, against any decision of the Adjudication Officer, within 2 months from the date of the Adjudicating Officer's Certificate, certifying that the Adjudicating Record is final.

78. Section 23 of the Act as amended enacts-

“After the expiry of ninety days from the date of publication of the notice of completion of the adjudication record or on the determination by the Adjudication Officer of all petitions presented in accordance with subsection (1) of Section 20, which shall be later, the adjudication record shall, subject to the provisions of the Land Registration Act 1984, become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the Adjudication Record and demarcation map to the Registrar together with all documents received by him in the process of adjudication.” (My emphasis)

79. Section 24(1) and (2) as amended states-

“(1) Any person, including the Minister, who is aggrieved by any decision of the Land Adjudication Tribunal and desires to question that decision or any part of that decision, may within two months from the date of the decision or within such extended time as the court, in the interests of justice, may allow, appeal to the Court.

(2) On any such appeal, the Court of Appeal may make such order or substitute for the decision of the Land Adjudication Tribunal such decision as it may consider just and may under the provisions of the Land Registration Act, 1984, order rectification of the Registrar.”

80. **“These provisions demonstrate that the adjudication process was a judicial process with a right of appeal. They also provide for the finality of the adjudication process, and make it clear that the document on which the Registrar of Land becomes bound to act is the final adjudication record:”** (Per Byron J.A. in **Loopsome Portland and others v Sidonia Joseph** Civil Appeal No. 2 of 1992 (St. Lucia) delivered 25th January 1993).
81. Section 23 makes it very clear that the finality of the Adjudication Record is subject to the provisions of the Land Registration Act.
82. It appears to me therefore that one of the provisions in the Land Registration Act that the finality of the Adjudication Record is subject to is Section 98(1) which authorizes the High Court of St. Lucia to order a rectification of the register where a mistake has been made in the Registration process. The High Court is therefore empowered by Section 98(1) to ensure that the first registration of a parcel is based on the final decision of the Adjudicating Officer where there are rival claimants.
83. My understanding of the decisions in **Webster v Fleming**(supra) and **Portland v Joseph** (supra) therefore leads me to conclude, that the Adjudication Record is subject to limited review by the High Court.

84. Such a review can only be effected to determine whether the Adjudication Record reflects the decision of the officer having the lawful authority to make that decision in the adjudication process: (Byron J.A. in **Webster v Fleming** (supra) at page 9).
85. Where the decision was made by the officer having lawful authority, the process by which that officer exercised his power or his findings of fact is not subject to review because of Section 23 of the Land Adjudication Act as amended, which states that the process is final (Byron J.A. in **Portland v Joseph** (supra) at pages 7 and 8; Per Robothan C.J. in **Skelton v Skelton** (1986) 37 WIR at page 181).
86. The High Court has no jurisdiction to hear an appeal concerning the Adjudication Record, or any acts done or decisions made by any officer during the Adjudication Process.

87. **Question B**

Can the Claimant challenge the indefeasibility of the title given to the Defendant pursuant to Section 98(1) of the Land Registration Act in the absence of pleading mistake in the registration process?

Answer

88. To successfully challenge the indefeasibility of the Defendant's title the challenge can only be mounted pursuant to Section 98(1). The pleadings must allege fraud or mistake in the registration process and give particulars.
89. Where the mistake in the registration process is due to the Registrar's misapprehension as to what was the final decision of the Adjudicating Officer, then allegations and particulars relating to the decision of the Adjudicating Officer, or any usurpation of the Adjudicating Officer's lawful authority during the Adjudicating process is relevant and should be pleaded in my view.

Question C

90. Whether an adjudication between competing claims by the Recording Officer, as distinct from the Adjudication Officer, is a mistake in the registration process?

Answer

91. Yes it is, where the Recording Officer is unable to effect agreement between the competing claimants. Please see paragraphs 36 to 38, 40 and 66 to 74 of this Judgment as to why it is a mistake in the registration process.

Question D

92. Whether the Land Adjudication Record issued in respect of Parcel 1656 B9 is null and void?

93. In my opinion it is ultra vires, null and void because it reflects an Adjudication in favour of the Heirs of St. Martin Felicien issued by the Recording Officer, who had no authority to adjudicate upon and determine the ownership of land where there were competing claims for the same parcel of land in the absence of any agreement between the competing claimants. I refer you to paragraph 36, 38 and 40 of this Judgment.

94. **Question E**

Whether the heirs of St. Martin Felicien hold Parcel 1656 B9 in trust for the Claimant?

Answer

95. The issue as to who owns Parcel 1656 B9 is a live one, based on the pleadings of the parties. The Court will have to determine whether or not Philomene Alexander Felicien is the person referred to as Felicien Felicien in the will of Arscenne Felicien. Further, whether the land in Parcel 1656 B9 is a portion of the land which passed under the will of Arscenne Felicien to her 4 children in equal undivided shares.

96. Finally the Court will also have to determine who has been in undisputed, undisturbed and continuous possession of the land in question since June 1921, or whether any law of prescription or limitation applies. In the absence of the parties settling or consenting to an order, a trial is necessary.
97. It is only after these issues have been determined that this question can be answered in my view.

Question F

98. Whether the principle of Res Judicata is applicable when the court has jurisdiction to rectify under Section 98 of the Land Registration Act?

Answer

99. In my opinion it cannot be applicable since the High Court has the power to ensure that the first registration is based on the final decision of the Adjudicating Officer and not on the ultra vires records issued by the Recording Officer. That principle does not affect the specific provisions of Section 98(1) which makes it clear that the Court does have jurisdiction to order rectification on the ground of mistake or fraud :(**Webster v Fleming** (supra) at page 11).

Question G

100. Whether a misunderstanding as to what was the real decision of the Adjudication Officer resulting in the registration of something that was not his decision is a mistake in the registration process.

Answer

101. This obviously would be a mistake in the registration process, based on my previous discussions of the law at paragraphs 36 to 38 and 44 of this Judgment.

CONCLUSION

102. Contrary to the views expressed by Learned Counsel Ms. Nelson, in my opinion the Amended Statement of Claim discloses a well-

founded cause of action to which the Defence of Estoppel, Res Judicata and Acquiescence cannot apply.

103. Since it is obvious that the Recording officer and the Demarcation Officer acted contrary to the provisions of the Land Adjudication Act, the Court should rectify this illegality.
104. The issue as to who owns the land comprised in Parcel 1656 B9 is to be determined prior to any order regarding the cancellation of the entry in the Land Register. Since the Registrar of Lands has placed a Restriction on any dealings with the land without the Order of the Court or Registrar, the interests of the Claimant seem to be protected.
105. A date is to be set by the Registrar for Pre Trial Review by Justice Edwards.

Dated this 10th August 2004

OLA MAE EDWARDS
HIGH COURT JUDGE