

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.17 OF 2004

BETWEEN:

SYLVANIA LOUSIEN

Appellant

and

JOACHIM RODNEY JACOB

Respondent

Before:

The Hon. Michael Gordon, QC
The Hon. Denys Barrow, SC
The Hon. Hugh A. Rawlins

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mrs. Edith Petra Jeffrey-Nelson for the Appellant
Mr. Dexter Theodore for the Respondent

2006: February 6;
June 19 .

JUDGMENT

[1] **GORDON J.A.:** In her written skeleton argument, learned Counsel for the appellant stated the issues raised in this appeal in the following terms:

- (1) Can the Adjudication record for claim no. 4 A681 for Block 1656B Parcel No. 9 which was completed on the 3rd day of September, 1985 and became final ninety (90) days thereafter and entered on the Land Register on the 19th day of November, 1986 be subject to review or appeal by way of instituting proceedings in the High Court of Justice.
- (2) Can the Respondents/Claimants challenge the indefeasibility of the title given to the Appellants/Defendants pursuant to Section 98 (1) of the Land Registration Act in the absence of pleading particulars of mistake which actually took place in the registration process and not the adjudication process as alleged.

- (3) Can the Ultra Vires act of a Recording Officer during the Adjudication Process cause the Adjudication Record to be Null and Void.

Background

- [2] The appellant and the respondent both claim to be descendants of the late Arsienne Felicien who was also known by a variety of other names. Arsienne Felicien died testate leaving her estate to her four children. There is a dispute as to whether Philomene Felicien, the predecessor in title to the respondent, was one of those children. This dispute, whilst providing the genesis of this case, is not a dispute with which this Court is concerned at this time.
- [3] In 1984 St. Lucia decided to change from a system of registration of title to a system of registration of land. In pursuit of this objective two laws were passed, the one to provide for the adjudication of rights and interests in land, the Land Adjudication Act, Cap 5.06 of the Laws of Saint Lucia, (LAA) and the other to provide for the registration of land and for dealing in land so registered, the Land Registration Act, Cap 5.01 of the Laws of Saint Lucia, (LRA). The LAA was the statutory authority for the determination of rights in different parcels of land and provided the adjudicating framework for the resolution of any disputes in relation to any particular parcel of land; the LRA established a system of registering title and ancillary interests to and in land.
- [4] Pursuant to the LAA an adjudication officer was appointed by the minister with responsibility for agriculture and the adjudication officer had responsibility for dividing the island into various adjudication sections. Once an adjudication section was defined the adjudication officer would cause a notice to be published. The notice contained a date and time by and at which claims to land within the adjudication section had to be made.

The adjudication

[5] The learned trial Judge found that it was undisputed that claim form No. 4 A681 dated February 25, 1985 submitted by the respondent was the only claim-form the recording officer received for a lot of land some 42 acres in area known as Parcel 1656B 9 (hereafter the disputed land)¹. The respondent, Rodney Jacob, claimed on his own behalf and on behalf of Vera Pamphile, Edna Jacob and Palmer Jacob. The demarcating certificate, dated 17 – 7 – 85 states the following:

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

Thereafter appears an initial or initials and the legend continues:

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

[6] The appellant in this case represents the heirs of St. Martin Felicien, in whose favour the land was adjudicated.

[7] The LAA and the LRA sought to bring certainty and finality in the adjudicating and registering process. To that end a regime of recording and, where disputes arose, a hierarchy of dispute resolution mechanisms was put in place by the LAA. Accordingly, Sections 14 and 15 of the LAA obliged the recording officer to consider all claims to any interest in land and to prepare, after such investigations as the officer considered necessary, a record in respect of every parcel of land shown on the demarcation map, provided that if in respect of any parcel of land there was a dispute, whether as to boundary or interests in the parcel of land and the recording officer is unable to effect agreement between the competing interests, then, “the demarcation officer or the adjudicating officer as the case may be shall refer the matter to the adjudicating officer.”

[8] As stated above, apart from claim form No.4 A681 in respect of the disputed land, there was no other. One may speculate that there may have been another claim

¹ Paragraph 48, judgment

form which was lost, or that the recording officer went off on a frolic of his own, or on any other circumstance that resulted in the recording officer awarding the disputed land to the appellants, but no speculation or inference can gainsay that a claim was filed and an award was made to a person other than the person who it is known filed a claim. One is therefore driven inevitably to the conclusion that there must have been two or more claimants to the disputed land. Section 15 of the LAA is mandatory. Unless the recording officer is able to resolve amicably rival claims for a parcel of land, then he shall refer the matter to the adjudicating officer. There is no record of the recording officer having referred the issue to the adjudicating officer. The adjudication record is bereft of any detail of an adjudication between competing claims. As the learned trial Judge found and concluded, in my view correctly:

"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.

"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."**

"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.

"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 Adjudication 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.

"In the circumstances existing then, it was therefore mandatory for the Recording Officer to refer the rival claim problem to the Adjudicating Officer."²

[9] Once the adjudication record in respect of any adjudication section has been completed, the adjudication officer was required to sign and publish a certificate to that effect. Within 90 days of the publication of the notice of completion any person named in or affected by the adjudication record or the demarcation map who considers such record or map to be inaccurate in any respect might give notice of his intention to petition the adjudication officer in respect of the alleged mistake and the petition is heard by the adjudication officer³. An appeal from a determination by the adjudication officer lay to the Land Adjudication Tribunal and from that body to the Court of Appeal.

[10] For the sake of completeness of the dispute resolution mechanisms, one final section of the LAA is reproduced hereunder. Section 23 of the LAA reads as follows:

"23. FINALITY OF ADJUDICATION RECORD

After the expiry of 90 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 section 20(1), whichever shall be later, the adjudication record shall, subject to the provisions of the Land Registration Act, become final and the adjudication officer shall sign a certificate to that effect and shall deliver the adjudication record and demarcation map to the Registrar⁴ together with all documents received by him or her in the process of adjudication."

[11] It is common ground between the parties that the respondent did not avail himself of the dispute resolution mechanisms and so what was recorded in the Land Registry, in accordance with section 9 (1) of the LRA, was a register in respect of

² Paragraphs 63 – 67 judgment

³ Section 20 (1) LAA

⁴ "Registrar" is defined as the Registrar of Lands appointed under the Land Registration Act

parcel 1656B 9 (the disputed land) reflecting the adjudication by the Adjudication Officer in favour of the appellants.

Certainty and finality

- [12] Once a register in respect of a discreet parcel of land is established by the registrar of lands, the court may only intervene to alter or amend such registration in severely limited circumstances. Section 98 of the LRA reads as follows:

“98. RECTIFICATION BY COURT

(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 or her act, neglect or default.”

- [13] With the background facts now clearly identified, the issues as stated in the skeleton argument of the appellant and repeated at paragraph 1 above come into stark relief. If issue 3 is decided in favour of the respondent, then this will dispose of the appeal and make it unnecessary to consider issues 1 and 2. For ease of reference I repeat here issue 3 as stated by the appellant:

“Can the Ultra Vires act of a Recording Officer during the Adjudication Process cause the Adjudication Record to be Null and Void.”

- [14] A very similar point came before this court in **J. R. Webster et al v B. St. C. Fleming**⁵ where Byron J.A (as he then was) said the following in relation to the Land Adjudication Ordinance of Anguilla on which the LAA is closely patterned:

“The legislation does not confer on the Recording Officer any power to adjudicate where there are two or more claimants to any interest in land.

⁵ Civil Appeal No 6 of 1993, Anguilla, Judgment dated May 8, 1995

That power is specifically reserved to the Adjudication Officer by the land Adjudication Ordinance 1974 Section 15.

Section 15 provides as follows

'(1) If in any case –

(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 Adjudication Officer'

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under sub-section (1), having due regard to any law which may be applicable...'

In a case such as this where the appellants and the respondent were, in effect, two claimants to the land contained in parcel 9, the Recording Officer did not have the power to determine which of them should be adjudicated as Registered 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 never adjudicated between these rival claims. The Recording Officer's adjudication of parcel 9 in favour of the appellant was, therefore, ultra vires section 15."

[15] Counsel for the appellant, quite properly, acknowledges in her skeleton argument that the act of the Recording Officer in this case in recording the appellant as owner of the disputed land was ultra vires. In **Webster v Fleming** this court dealt with the consequence in this way:

"In this case there was no allegation of fraud in the pleadings. The case was based on mistake.

There has been no comprehensive definition of the word mistake. In the case of **Chowood Ld v Lyall** [1930] 2 Ch at p. 156 Lawrence LJ considered the application of the word in the context of the English Land Registration Act 1925 Section 82 which provided for rectification of the land register. He said at p. 157:

"The other point was that the case has not been brought within s.82, because the registration of the plaintiffs' title was not a mistake within the meaning of sub-s. 1[h] of that section. I disagree with that contention. 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 the register should be rectified. Here I think there has been an obvious mistake by the erroneous inclusion in the plan filed in the register of this and of the two other strips of land which did not belong to their vendors. The evidence is clear that the predecessors in title of the plaintiffs had in fact no title and did not claim to have any title to the strip in question, and obviously therefore never intended to convey it to the plaintiffs. I have no reason to doubt that the plaintiffs thought that they were purchasing the land delineated on the plan, but in getting their title registered in the Land Registry they were acting on the mistakes which had been made in that the plan, and the entry made in the Registry in derogation of the right of the true owner who was in possession was an entry made by mistake within the meaning of the section."

The application of a provision in the Land Registration Ordinance of the British Virgin Islands identical with Section 140 in the Anguilla Ordinance⁶ was considered in **Skelton v Skelton** [1986] 37 W.I.R. 177 where Robotham C.J. said at p.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. That is not the type of mistake contemplated by section 140."

I think that there is no difference in the opinions expressed as to the meaning of mistake in these two cases. In *Skelton* the phrase "type of mistake" was used to distinguish between the authors of the mistake, not the nature of the mistake itself. The distinction was between a mistake made by the Adjudication Officer, which was not a mistake contemplated by Section 140, and a mistake made by someone in the registration process which could be rectified under Section 140.

In my judgment 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 registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration process. A misunderstanding as to what was the real decision of the Adjudication Officer resulting in registering something that was not his decision as if it were, would be a mistake in the registration process.

⁶ Which is itself in *pari materia* with section 98 of the LRA

There was no legal authority for the Recording Officer to alter the adjudication record for Parcel 1 which was completed on 6th May, 1975. The alteration of the record by the Recording Officer on 12th August 1975 was a usurpation of the statutory power vested in the Adjudication Officer. It was an act entirely without legal authority.

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. It was *ultra vires*."

[16] Byron JA (as he then was) determined what was the effect of the ultra vires act of the recording officer in this passage of the judgment:

"In my view, the Court is empowered by Section 140 to ensure that the first registration is based on the final decision of the Adjudication Officer and not on the ultra vires adjudication records issued by the Recording Officer.

The power of the court to apply this reasoning has been eloquently expressed in the well known case of **Anisminic, Ltd v The Foreign Compensation Commission and Another** [1969] 1 All E.R. 208 which explains that a "purported" or "forged" document is a nullity and could have no legal effect, and that the court would not protect a nullity without some specific statutory requirement to do so.

Lord Reid expressed the opinion at p.213, thus:

"Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination but which is in fact no determination at all. And there are no degrees of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity. I do not see how it could be said that such a provision

protects some kinds of nullity but not others; if that were intended it would be easy to say so”.

In my Judgment, therefore, the learned trial Judge was justified in finding 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 he made. Section 140[2] does not inhibit the power of the Court to make the order because the learned trial Judge found that the appellants were not in possession of the land. In any event it seemed open to the Court to find that the first appellant had knowledge of the mistake based on the extract from the evidence to which reference was earlier made.”

[17] The learned trial Judge, following, as she was bound to do, the learning in **Webster v Fleming** came to the conclusion that the answer to the third issue was that the ultra vires act of the recording officer was a mistake in the registration process, rather than the adjudication process, as must I, this Court adhering to the principle of stare decisis.

[18] In the circumstances, I would dismiss the appeal with costs to the respondent.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal