

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 100 OF 2004



BETWEEN:

KEZIAH BAPTISTE

Claimant

v

DONALD McTAIR aka DONALD ACKIE

Defendant

Appearances: Mr. Emery Robertson for the Claimant
Mr. S. Williams for the Defendant

2005: July 11
2006: October 10
November 1
November 28

JUDGMENT

- [1] **THOM, J:** This is a claim for cancellation of a Deed and for a declaration that the Claimant is entitled to the land described in the Deed.
- [2] The Claimant Keziah Baptiste is the mother of the Defendant Donald McTair.
- [3] On the 6th day of March 1989 by Deed of Conveyance number 624 of 1989 a portion of land at Union Island was transferred from Avington Joseph to Donald Ackie, the Defendant's name at that time was Donald Ackie. On the same 6th day of March 1989 by Deed of Conveyance number 625 of 1989 a parcel of land adjoining the parcel of land described in Deed No. 624 of 1989 was transferred from the said Avington Joseph to the Claimant.

- [4] In 1987 the Defendant commenced building a house on the land described in Deed No. 625 of 1989. The house was completed in 1989.
- [5] On the 27th day of June 2003 a Deed of Conveyance was registered transferring the land described in Deed No. 625 of 1989 from the Claimant to the Defendant, the consideration being love and affection. This Deed was registered as Deed No. 1983 of 2003.
- [6] On the 17th day of February 2004 the Claimant brought an action claiming cancellation of the Deed No. 1983 of 2003 and a declaration that she is entitled to the land described in the schedule to Deed No. 625 of 1989.
- [7] In her statement of claim the Claimant alleges that there was an agreement between herself and the Defendant that there would be an exchange of land between the Claimant and the Defendant.
- [8] The Defendant in his defence deny that there was any agreement between himself and the Claimant to exchange land. He alleged he requested the Claimant to purchase both pieces of land for him since he was living in Trinidad at the time. At his request the Claimant conveyed the land described in Deed No. 1983 of 2003 to him since he had paid for the land.
- [9] At the trial, the Claimant testified on her own behalf and called two witnesses being Matthias Ackie and McCauley Baptiste. The Defendant testified on his own behalf.
- [10] The evidence led on behalf of the Claimant is that the Claimant resides at Union Island. During the 1970's the Defendant went to Trinidad to work. He opened a joint bank account with the Claimant into which he deposited money. This was not done regularly. The Claimant would withdraw money from the account to conduct the Defendant's business on Union Island. In 1982 the Claimant advised the Defendant that land was being sold in Union Island by one Avington Joseph. The Defendant agreed to purchase land from

Avington Joseph. The Claimant purchased one lot of land for the Defendant from Avington Joseph using money from the joint account. That lot of land is described in Deed No. 624 of 1989. The Claimant also purchased a lot of land for herself using money that her husband received from the sale of a house he had in Trinidad to the Claimant's son. The house was sold for \$800 and the husband's savings from Trinidad amounted to \$1,200. The Defendant built a house on the lot of land that was registered in the Claimant's name. The Claimant did not object to this. She allowed it since the Defendant preferred the piece of land that was in front and it was on the understanding that they would exchange the Deeds. In June 2003 the Defendant gave her a Deed to sign and she signed it believing it was to give effect to the agreement for exchange which they had. She subsequently requested the Defendant to execute a Deed in favour of her for his land and he refused to do so.

- [11] The evidence of the Defendant is that the Defendant lived and worked in Trinidad during the period 1979 to 1985. He authorized the Claimant to open a joint account in their names at Barclays Bank in Union Island. He sent money frequently to be deposited into the account. In 1982 the Claimant advised him that land was being sold at the cost of \$1,500 per lot. He requested the Claimant to purchase two lots for him. Sometime in 1987 he enquired of the Claimant about the Deeds for the land. The Claimant informed him that Attorney Mr. Emery Robertson had the Deeds, He was owed money for the Deeds. He paid Attorney Mr. Emery Robertson for the Deeds and he collected same. He enquired of the Claimant why she had put one of the Deeds in her name and she replied that it was nothing. The two lots were enclosed by a fence as one area of land. He built his house on the front lot. He was not prevented or hindered in any way from building his house. In June 2003 after a discussion with the Claimant in which she agreed to transfer the land described in Deed No. 625 of 1989 to him, he contacted Attorney Mr. Raymond Cadette. Mr. Cadette prepared a Deed of Gift transferring the land described in Deed No. 625 of 1989 from the Claimant to him. The Claimant executed the deed before a Justice of the Peace in Union Island. The Deed was registered on the 27th day of June 2003 as Deed No. 1983 of 2003. There was no agreement between himself and the Claimant to

exchange the lots of land. He paid for both lots of land and he paid all of the Solicitor's fees.

[12] Under cross-examination all of the witnesses adhered to their testimony in chief. The Claimant denied that she signed the Deed No. 1983 of 2003 before a Justice of the Peace. She testified she could not read. When it was put to her that she was a Sunday School Teacher she took a very long time to acknowledge this fact. The Claimant in her witness statement stated that she was in occupation of the land described in Deed No. 624 of 1989, however no details of her occupation was given and both herself and her husband Mr. McCauley Baptiste testified that the two lots in Deeds Nos. 624 and 625 of 1989 were fenced as one portion of land and the Defendant built his house on the land in Deed No. 625 while they built their house on a neighbouring lot of land which they purchased from the said Avington Joseph.

[13] Having seen all of the witnesses and having reviewed all of the evidence I believe the testimony of the Defendant. The Defendant worked and sent his money for his mother to deposit on a joint account and for her to conduct his business. His mother who had fifteen (15) children had the privilege of withdrawing money from the account for her personal use. The Claimant admitted that she had this privilege and she would withdraw money from the account to purchase food. She had no account of her own. The two pieces of land were fenced as one lot of land. The Claimant and her husband bought a neighbouring lot of land from the said Avington Joseph on which they built their house, that parcel of land is registered in both the Claimant and her husband's name. The Defendant readily agreed that he took both Deeds No. 624 and 625 of 1989 to Mr. Cadette. He explained that the purpose of taking Deed No. 624 to Mr. Cadette was for his name to be changed from Donald Ackie to Donald McTair. A Deed was prepared by Mr. Cadette to effect the change and that Deed was registered as Deed No. 3952 of 2003.

[14] Having considered all of the evidence I find that the Claimant has not established on a balance of probabilities that she is entitled to the land described in Deed No. 625 of 1989.

[15] The Claim is hereby dismissed. Judgment is entered for the Defendant on the counterclaim. It is ordered:

- (1) A declaration is hereby granted that the Defendant is the fee simple owner and entitled to all that lot piece or parcel of land as comprised in the schedule to Deed Number 1983 of 2003.
- (2) A declaration is hereby granted that the Defendant is the fee simple owner and entitled to all that lot piece or parcel of land comprised in the schedule to Deed Number 624 of 1989.
- (3) The Claimant shall pay the Defendant costs in the sum of \$14,000.00.


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Gertel Thom
HIGH COURT JUDGE