IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2004/0097

BETWEEN:

ANTHONY EUGENE

Claimant/
Judgment Creditor

and

JOSEPH JN PIERRE

Defendant/
Judgment Debtor

and

CLAIM NO. SLUHCV 2006/0708

BETWEEN:

JOSEPH JN PIERRE (No. 1)
JOSEPH JN PIERRE (No. 2)

Applicants

and

(1) The Attorney General
(2) Emmanuel St. Croix (Sheriff of the High Court)
(3) Anthony Eugene
(4) Emmanuel Prevost Mande

Respondents

Appearances :

Mr. Dexter Theodore for Claimant
Ms. Eugenie Francis for Applicants
Ms. Brender Portland and Mr. Leslie Prosper for the 1st and 2nd Respondents
Mrs. Veronica Barnard for the 4th Respondent

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2006: December 20,
2007: February 21,

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# JUDGMENT

## INTRODUCTION

[1] EDWARDS, J.: The procedure under the Code of Civil Procedure Ch. 243 (St. Lucia) concerning the Judicial Sale of immovable property seized under a Writ of Execution is deficient, particular where it does not compel the judgment creditor to fix an upset price for the sale of such immovable property seized by the Sheriff, prior to a judicial sale.

[2] Consequently, the Judgment Creditor/Claimant Mr. Anthony Eugene in this matter has unwittingly procured the judicial sale of immovable property under the statutory bidding process, resulting in 3.80 hectares/9.39 acres of land situate at Micoud registered as Parcel No. 1224B-53 being sold to Mr. Emmanuel Prevost Mande for $1,600.00. The seizure and sale of this property was carried out, to enforce a judgment debt of $19,684.77 inclusive of costs and interest, against the judgment debtor Mr. Joseph Jn Pierre.

## BACKGROUND FACTS

[3] The Application before the Court arises from the fact that this property in question was never owned by the Judgment Debtor Mr. Jn Pierre. The registered Proprietors of this property are unrelated to the Judgment Debtor, though 2 of them also have the name Joseph Jn Pierre. The 4 Registered Proprietors are Mr. Joseph Jn Pierre (No. 1), Jn Baptiste Jn Pierre, Anestaise Jn Pierre, and Mr. Joseph Jn Pierre (No. 2) who all hold the property as Trustees for sale. These Registered Proprietors are four of the 7 co-owners of the said property registered as Parcel No. 1224B-53 in the Land Register.

[4] Section 62 of The Land Registration Act Cap 5:01 of the Revised Laws of St. Lucia 2001 states –

"(1) When any land is conveyed, transferred, devised, or devolves to 2 or more persons in their own right, such persons shall be deemed and taken to be proprietors in common.

(2) When any land is conveyed, transferred, devised or devolves to 4 or more persons the first 4 named shall hold the property on trust for sale."

[5] By an Application filed on the 6th November 2006 in Claim No. SLUHCV2004/0097/Mr. Joseph Jn Pierre (No. 1) and Mr. Joseph Jn Pierre (No. 2) are seeking the following order:

1. That Joseph Jn Pierre (No. 1) also known as Joseph Louis and Joseph Jn Pierre (No. 2) be added as opposants to the Claim;

2. That the Attorney General of Saint Lucia; Emmanuel St. Croix (Sheriff of the High Court), and Emmanuel Prevost Mande be added as Ancillary Defendants; and

3. That the Judicial Sale dated 9th August 2006 of the parcel of land registered in the Registry of Lands as Parcel 1224B 53 in the Registration Section of Micoud be and is hereby vacated.

[6] The Application in Claim No. SLUHCV 2006/0708 filed on 11th September 2006 had sought an order to annul the sale of the land. Further, that the 1st, 2nd and 3rd Respondents pay the costs of this Application.

[7] This Application was disposed of by the Master on 25th October 2006 who ordered as follows - "Applicants absent, Application is premature, Refused No Order as to costs."

APPLICATION IN CLAIM NO. SLUHCV 2004/0097

[8] On 20th December 2006 when this Application came before me for hearing, the file initially could not be found.

[9] The Counsel for the Parties indicated to the Court that they were in the process of formulating a draft consent order. Having recalled the matter after standing it down, I was informed by Counsel that previously Counsel for the parties had all agreed that a Consent Order be made in the following terms –

> "1. That Joseph Jn Pierre (No. 1) also known as Joseph Louis and Joseph Jn Pierre (No. 2) be added as opposants to the claim.
>
> 2. That the Attorney General of Saint Lucia, Emmanuel St. Croix (Sheriff of the High Court) and Emmanuel Prevost Mande be added as ancillary defendants.
>
> 3. That the Judicial Sale dated 9th August 2006 of the parcel of land registered in the Registry of Lands as Parcel 1224B-53 in the Registration of Micoud be and is hereby vacated.
>
> 4. That the Attorney General shall refund to the Third Ancillary Defendant the sum of $1,600.00 not later than one month from the date hereof. If the said sum is not paid within one month then it shall bear interest rate of 6% per annum from 9th August 2006 until payment.

5. That the Attorney General of Saint Lucia shall pay costs in the sum of $2,000.00 to the Opposants and in the sum of $1,500.00 to the Third Ancillary Defendant with one month from the date hereof."

[10] It appeared however from this Draft Consent Order that Counsel for the Attorney General had withheld her signature.

[11] Learned Counsel Ms. Portland was having second thoughts as to who should pay the costs, since in her view, the party who had identified Parcel 1224B-53 as the property of the Judgment Debtor should bear the costs. She was also questioning the validity or correctness of the Default Judgment.

[12] Learned Counsel Mr. Theodore argued otherwise. He contended at the hearing that the claim was for a specified sum of money the Judgment Debtor had and received to his use, and that the Default Judgment was validly entered under the Rules. He did not address the issue as to its correctness. He contended further that pursuant to Article 501 of The Code of Civil Procedure Ch. 243 Mr. Emmanuel St. Croix and the Sheriff of the High Court had a duty to ensure that it was the Judgment Debtor's property that was seized.

[13] I had reserved my decision until 21st February 2007 promising to give a written decision, since I consider a review of the law concerning judicial sales to be of significant importance for St. Lucia.

[14] I have considered the Affidavits which I had requested Counsel Mr. Theodore and Ms. Portland to file at the time of writing this decision.

THE DEFAULT JUDGMENT

[15] The facts stated in the Statement of Claim probably can support an inference that the claim was for the sum of $7,310.00 for moneys had and received by the Defendant/Judgment Debtor to his use in my opinion. The pleaded facts also disclose that there was a contract between the Claimant and the Defendant.

[16] The amount claimed was $7300.00
Court Fees was $132.50
Legal Practitioner's fixed costs on issue was stated as $986.85
(Daily Rate thereafter = $2.71 per day)

The Total Claimed was $9,179.35
Interest on the amount found to be due to the Claimant pursuant to Article 1009A was also claimed.

[17] PART 12.4 of CPR 2000 states that "The Court Office at the request of the Claimant must enter judgment for failure to file an acknowledgment of service if –

(a) the Claimant proves service of the claim form and statement of claim;

(b) the Defendant has not filed –

(i) an acknowledgment of service; or
(ii) a defence to the claim or any part of it;
(iii) the defendant has not satisfied in full the claim on which the claimant seeks judgment;

(c) the only claim is for a specified sum of money, apart from costs

and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;

(d) the period for filing an acknowledgment of service under rule 9.3 has expired; . . .

(e) . . ."

[18] PART 2.4 defines "claim for a specified sum of money" to mean -

"(a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract; . . ."

[19] The Affidavit of Service filed on 3rd March 2004 disclosed that the Defendant was served on 17th February 2004.

[20] Having examined the Request for Default Judgment timely filed on 23rd March pursuant to PART 12.4 (d), I note that the amount claimed is not $7,310.00 but $9,179.35. The Court Fees on the claim are stated as $32.50, Service Fees on claim are $165.00, Legal Practitioner's fixed costs on claim are $750.00. Interest from 11/10/01 to 25/02/05 is stated to be $1825.87. (Daily rate thereafter =$5.04 per day). Court fees on judgment is stated as $33.00, Legal Practitioner's fixed costs on judgment is $350.00, and the Total claimed is $12,345.72.

[21] The amount for which judgment was requested to be entered was therefore $12,345.72.

[22] The Deputy Registrar adjusted the interest claimed from 11/10/01 to 25/02/05 to be $3,338.72, ignoring the fact that the claim was for $7,310.00 and that interest

had already been included in the $9,179.35 for period 10/11/01 to 3rd February 2004. The Deputy Registrar also adjusted the Court fees on the judgment by increasing it to $55.00. The service fees on the claim was reduced to $100.00.

[23] The Default Judgment entered on 25th April 2005 for $13,800.57 is therefore obviously incorrect, as Learned Counsel Ms. Portland has pointed out.

[24] I cannot set aside this default judgment under PART 13.2 or 13.3 of the CPR 2000 in my opinion. I also do not regard what has occurred as a clerical mistake, or an error arising in a judgment from an accidental slip or omission under PART 42.10.

[25] I look to PART 26.9. This rule applies in my view since there is no rule or practice direction in this jurisdiction specifying what are the consequences where a judgment has been entered for more than the amount that can be validly claimed in circumstances as the instant judgment. The rules governing the substance of this default Judgment are to be found in PARTS 12.8, 12.10, PART 8.6(4) and PART 65.4 Appendix A, Tables 1 and 2.

[26] PART 12.8 (2) states that –

> "A Claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for . . . the sum of money claimed –
>
> (a) and for interest to be assessed; or
>
> (b) together with interest at the statutory rate from the date of the claim to the date of entering judgment.

[27] PART 12.10 (1) states that

> "Default judgment on a claim for –
>
> (a) a specified sum of money - must be judgment for payment of that amount, or [if] a part has been paid, the amount certified by the Claimant as outstanding

(i) . . .

(ii) . . . at the time and rate specified in the request for judgment."

[28] Pursuant to PART 8.6 (4) and (5), in order to obtain interest in a default judgment for a specified sum of money, the Claimant must state that he is seeking interest expressly on the claim form, and include in the claim form or statement of claim the details of the basis of entitlement, the rate of interest, the period for which it is claimed, the total amount of interest claimed to the date of the claim, and the daily rate at which interest will accrue after the date of the claim.

[29] Since the Claimant claimed a specified sum with interest, and did not state the rate of interest in the claim form, he is entitled in my view only to the total amount of interest claimed in the Claim form together with interest at the statutory rate from the date of the claim to the date of entering judgment which is 6% per annum on $7,310.00 from 4th February 2004 to 25th April 2005. I have taken into account that compound interest can only be permitted when there is a special agreement to that effect, (and this must be proven by evidence), or where such interest is specially demanded in the claim, (See Article 1009-1 and 2 of The Civil Code Cap. 242). There was no special demand for compound interest in the instant claim. Based on my calculations the amount of interest would be the $986.85 plus interest calculated at $1.20 per day for 446 days being $535.20 totaling $1,522.05. The Court fees paid on this Default Judgment was $15.00.

[30] PART 65.4 deals with Fixed Costs in accordance with Appendix A, and Table 1 and Table 2 are applicable. Table 1 which shows the amounts to be entered on a claim form in respect of a legal practitioner's charges in a claim for payment of a specified sum of money, allows $750 for the legal practitioner's fees in this case, plus $100 for personal service of the claim form, plus the Court fees $32.50. Table 2 permits an additional amount of $350.00 on the entry of a default judgment for

costs for a specified sum of money. Judgment should therefore have been entered for $10,079.55 if my calculations are correct.

[31] Returning to PART 26.9 (2), it states that "An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the Court so orders."

[32] PART 26.9 (3) and (4) allows me to make an order without an application by a party if there has been an error of procedure or failure to comply with rules.

[33] In my opinion, the default judgment entered failed to comply with the rules in PARTS 12.10 (1), 12.8 (2), 8.6 (4) and (5), 65.4 Appendix A Tables 1 and 2.

[34] The question therefore is what sort of Order I should make, given the nature of the Application before me.

[35] I am guided by the decision in Muir v Jenks [1913] 2 K.B. 412.

[36] This was a case in which the Judgment debtor made an application to have the judgment set aside on the ground that the writ had not been properly served upon the defendant. A bankruptcy notice issued after default judgment was entered, had asked for payment of the correct sum, but it was founded upon a judgment for an incorrect sum. From May 1912 to March 1913 no question as to the judgment was raised by the judgment debtor. The point was taken that the judgment was irregular on the ground that it was signed for the wrong amount. The Master suggested that the judgment should be amended as being wrong through an accidental slip. However Counsel for the judgment creditor elected to stand by his judgment as it was. The Master dismissed the Application and this decision was upheld by Bucknill J. Both the Master and the Judge had concluded that the debtor ought to have taken steps to get the judgment corrected, and that for

default in so doing, he was now precluded by delay from having the judgment set aside.

[37] The judgment debtor appealed on several grounds, including the ground that the judgment was wrong in as much as it was signed and made for a larger sum than was in fact due and owing from the defendant to the plaintiff.

[38] Buckley L.J. (at pages 415 to 417) having stated that the decision of the Master and Bucknill J were wrong continued as follows:

> "It is the duty of the creditor if he obtains a wrong judgment to have it set right. It is not the duty of the debtor against whom he has obtained the judgment to do so. The question therefore does not turn upon delay by the debtor. The position is this. Here is a judgment which is wrong. The person who holds it has not sought to set it right, on the contrary he has said that there was no good in doing so. Under these circumstances the bankruptcy notice is founded upon a wrong judgment. What then is to be done? There are three cases which assist me. One of them, a decision of this Court in Hughes v Justin . . .[[1894] 1 Q.B. 667], is directly in point. That was a case in which a writ was issued indorsed for a liquidated demand, and after the writ had been issued, but before either the plaintiff or the defendant knew that it had been issued, they met, and it is stated that this took place: they discussed the question of the indebtedness of the defendant, and of a claim he asserted he had against the plaintiff. The result of the discussion was that a sum was agreed on which the defendant was to pay in settlement of the whole matter, and that sum was accordingly paid. Notwithstanding that judgment was signed for the debt and costs. The only indebtedness was for the amount of the costs. The judgment for debt and costs was irregular. The point argued was that the judgment was far too

large a sum, that the debt was gone but that the liability for costs remained. That was the view which the Court took of the state of things. Lord Esher in giving judgment says this: *"Although the plaintiff was within his rights in issuing the writ he was wrong in signing a judgment for more than was due, and as nothing was due he could only sign judgment for costs." Lopes L.J. says: "The judgment signed was one which the plaintiff was not entitled to and it must be set aside."* He quotes what was said by Willes J in Hodges v Callaghan . . . [1857] 2 C.B. (N.S.) 306 at p. 315]: *"The plaintiff ought to represent the Court as pronouncing judgment in his favour only for the sum which is really due to him", and then goes on to say: "It appears to me that the defendant had a right, as pointed out in Anlaby v Praetorius . . . [20 Q.B.D. 764], to have the irregular judgment set aside, and that must be done."* I pause to say that I do not think Anlaby v Praetorius . . . was a decision which necessarily led to this because it was on a different ground, namely, that the plaintiff was not entitled to sign judgment at all, not that he was signing judgment for a wrong sum. However, Hughes v Justin . . . is an authority for the following proposition: If the plaintiff in the absence of the defendant, proceeding properly under the rules, signs judgment for a sum in excess of that which is due to him, the defendant is entitled to have that judgment set aside, unless the party who holds the judgment applies as he may to reduce it to the proper amount. If application be duly made it may be right not to set the judgment aside but to reduce it to the proper sum, but unless the party who holds the judgment elects to have it put right then upon the authority of Hughes v Justin it seems to me the defendant is entitled to say "This is a wrong judgment, set it aside." In the case of Armitage v Parsons . . . [[1908] 2 K.B. 410]] the right to amend which I have mentioned was exercised. The application there was to set aside the judgment, but the judgment was reduced. The party by

> mistake had charged £5.6s instead of £4.14s for costs. He had exceeded the proper amount by a trifling sum of 12s, and the Court decided that they were not driven to set aside the judgment when the party who held it asked them to reduce it to a proper sum. That is the position with the authorities. In the present case the party holding the judgment has never availed himself of that right to bring it down to a proper sum. He had issued a bankruptcy notice upon the footing that the judgment is right . . . In this state of things it seems to me that the defendant is entitled to say "In as much as you have never sought to set your judgment right but have sought to enforce it by a bankruptcy notice in which you, at the same time, deduct the sum which shows the judgment is wrong, I am entitled to have the judgment set aside." I therefore think that this appeal succeeds, and that the judgment must be set aside with costs."

[39] Kennedy L.J. (at pages 417 to 418) opined: ". . . [A]lthough the matter is a technical one it is important, having regard to the consequences which flow from such a judgment, that the question should not be treated as merely a matter of form . . . At the same time it is important that we should see that claims which are based upon a judgment signed for an excessive amount are not allowed to succeed when the course which has been deliberately taken by the creditor has prevented that amendment for the correction of the error which might have been made, in my view, in accordance with the rules and authorities."

[40] I have observed from the Affidavit of Ms. Julie Cyril filed by Counsel Mr. Theodore on 2nd February 2007, that Mr. Theodore seems to be treating the judgment signed for an excessive amount as a clerical error and a matter of form for which the Court should be blamed. Ms. Cyril deposed:

"4. I am informed by Mr. Theodore that he did concede to Ms. Portland that there was a clerical error in line 1 of the request for default judgment) when the amount claimed was stated to be $9,179.35 which was the total amount claimed in the Statement of Claim, instead of $7,3109.00.

6. This application for default judgment was sent to the Court whose duty it was to spot any mathematical or other errors in the request for judgment because any judgment that is entered is the independent act of the Court for which it must take full responsibility. 6. In any event, I respectfully submit that the judgment may at any time be corrected by the Court under PART 42.10 of the CPR 2000."

[41] Ms. Cyril is a law clerk in Mr. Theodore's Chambers. The Rules do not permit a law clerk, or anyone else to make legal submissions in their Affidavit. Affidavits are to address questions of fact and are not supposed to raise questions of law. In any event the views of learned Counsel. Mr. Theodore do not accord with the authoritative pronouncements of Buckley L.J. and Kennedy L.J. in Muir v Jenks (Supra).

[42] I therefore adopt the view of Kennedy L.J. Although the matter of this excessive judgment is a technical one, it is important, having regard to the consequences which flow from this judgment, that its irregularity should not be treated merely as a matter of form. Justice dictates that I must put matters right.

[43] It is evident that in making an order to put matters right concerning the Default Judgment, without an application by the Claimant or Defendant, the judicial statements at paragraphs 38 and 39 of this Judgment must be applied. However I am mindful of PART 26.2 (2) of CPR 2000 which requires that I give any party

likely to be affected a reasonable opportunity to make representations before making the order.

[44] I shall therefore postpone the making of my order to allow such representations to be made by Mr. Anthony Eugene and Mr. Joseph Jn Pierre the Defendant/Judgment Debtor.

THE SEIZURE OF THE WRONG PROPERTY

[45] Moving on now to deal with the Execution of the Writ of Seizure and Sale, it is necessary to consider the relevant provisions in the Code of Civil Procedure Cap 243.

[46] Article 424 of this Code states:

> "A creditor may cause to be seized in execution the movable or immovable property of his debtor, in the possession of such debtor . . ."

[47] Article 425 states: "A creditor may exercise at the same time the different means of execution which the law allows him. He may cause the movable property and the immovable to be seized under the same writ, except in the case of judgments in hypothecary actions."

[48] Article 498 states that "The seizure of immovables can only be made against the judgment debtor. No seizure can be made of immovables declared . . . by law, to be exempt from seizure."

[49] Article 499 provides that "The seizure of immovables can only be made in virtue of a writ, clothed with the same formalities as writs of execution against movables ordering the Sheriff to seize the immovables of the

Defendant and to sell them in satisfaction of the judgment pronounced against him for principal, interest and costs . . ."

[50] Though the Writ is addressed to the Sheriff of the High Court. Article 500 authorises that it be executed by the Sheriff or by one of her officers. In this case the Sheriff who is the Registrar directed the High Court Bailiff Mr. Emmanuel St. Croix to execute this Writ.

[51] Article 501 directs as follows:

> "Before proceeding to seize immovable, the seizing officer calls upon the defendant to declare and specify his immovable property, and upon his failure so to declare and specify, or if he is absent, the executing officer may seize the property in possession of the defendant, at the risk and peril of the latter."

[52] Article 502 required Mr. St. Croix to prepare Minutes for the seizure of the immovable. Such Minutes must contain:

> "1. Mention of the title under which the seizure is made;
>
> 2. Mention of the defendant having been called upon, as required by the preceding article;
>
> 3. A description of the immovables seized, indicating the town, village, or parish as well as the Street (when in a town or village) in which they are situated, and the coterminous lands;
>
> 4. . . . If the property to be seized consists of incorporeal rights, such as rents, leases, or other real charges, mention must be

made of the title under which they are due, with a description, as above-mentioned, of the real property charged with the same;

5. Mention that the minutes are made in duplicate, and that one duplicate thereof has been delivered to the Judgment debtor, either personally or at his actual or legal domicile."

[53] In the Affidavit of Ms. Julie Cyril, the law clerk in the firm of Theodore & Associates, she deposed: "8. It is impossible for a judgment creditor to know with certainty whether land which is registered in the Registry of Lands in the name of a judgment debtor belongs to the particular judgment debtor since details of identity (identification card number and so on) are not recorded in deeds made before about the year 2005. 9. The bailiff of the High Court has recorded in his minutes of seizure that he did not locate the judgment debtor, but yet proceeded to seize parcel 1224B 53 without first verifying that it was in the possession of the judgment debtor."

[54] The question to be answered is: How does the Sheriff's officers determine that the property identified by the judgment creditor in the Writ of Execution as the immovable of the judgment debtor is in possession of the said judgment debtor?

[55] In the instant case, only an undivided 1/7th share in the whole of the immovable property registered as Parcel No. 1224B 53 was the property of Joseph Jn Pierre. Notwithstanding this the instructions to levy execution to the Sheriff filed by Counsel Mr. Theodore on 19th April 2006 instructed:

"By Virtue of a Writ of Execution issued herein dated 5th April 2006 seize the immovable property of the Defendant to wit:-

SCHEDULE

> "ALL that parcel of land situated in the Registration, Section of Micoud and Registered in the Land Registry as Block and Parcel No. 1224B-53 . . . Together with all the appurtenances and dependencies thereof."

[56] One would have expected that since on the title it was glaringly obvious that the property was owned by 4 named persons as Trustees of Sale, 2 of whom had the name "JOSEPH JN PIERRE", Counsel for the Judgment Creditor would have ascertained who the other unnamed co-owners were. It was of the utmost importance for Counsel Mr. Theodore to know who the other Co-owners were because of Article 520 of The Code of Civil Procedure. It states, concerning Oppositions to the Sale of Immovables Seized and more particular to Oppositions to Withdraw –

> "Oppositions to withdraw may be third parties who claim as their property part of any immovable or rent under seizure. When the property is undivisible the Judge may order the sale of the whole property upon the petition of a creditor of the defendant, such petition having been previously served upon the opposant and the other known proprietors of the property seized. If the sale be so ordered, each undivided proprietor has a claim on the proceeds, according to his share in the property."

[57] Even where the property is divisible in the case of proprietorship in common, the aliquot undivided share of each co-owner is protected under Section 63 to 64 of The Land Registration Act Cap. 5.01 of The Revised Laws of St. Lucia (2001).

[58] Section 63 states: "Where any land, lease or hypothec is held in undivided ownership each proprietor shall be entitled to an undivided share in the

whole, and on the death of a proprietor his or her share shall be administered as part of his or her estate."

[59] Section 64 states:

> "1. If all the proprietors in common who are of full age agree, partition of land owned by them shall be effected in notarial form. However such partition shall not be effected without the written consent of the proprietor of the hypothec; which consent shall not be unreasonably withheld.
>
> (2) Subject to subsection (1), an application for the partition of land owned by proprietors in common may be made in the prescribed form to the Registrar by -
>
> (a) any one or more of the proprietors; or
> (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree, and subject to the provisions of this Act and of any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect the partition of the land, in such manner as the Registrar may order.
>
> (3) Partition shall be completed by closing the Register of the parcel partitioned and opening Registers in respect of the new parcels created by the partition and filing the notarial deed or order."

[60] The effect of Sections 23, 24 and 28 of The Land Registration Act is that though the 7 Proprietors in common of Parcel No. 1224 B-53 have a Provisional Title, the Registration has the same effect, as if they have absolute ownership of this Parcel, subject to the enforcement of any right or interest adverse to, or in derogation of the title of those proprietors arising before such date, or under such instrument, or in such other manner, as is specified in the register of the said parcel, and free from all other interests and claims, except for any lawful overriding interests, leases, hypothecs or other encumbrances.

[61] Section 37 (1) of the Land Registration Act provides that "No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this Act shall be ineffectual to create, extinguish on transfer, vary or affect any right or interest in the land, lease or hypothec."

[62] Given Article 498 (reproduced at paragraph 48 above) and the relevant provision of the Land Registration Act, Counsel for the Judgment Creditor must be taken to have known that only the aliquot share of Joseph Jn Pierre in Parcel No. 1224B-53 could be seized and sold, assuming Joseph Jn Pierre the Defendant was one of the co-owners. This was never stated in the Instructions to Levy Execution. Instead Mr. Theodore ordered the Sheriff to seize all of the 9.39 acres of land that did not belong to the judgment debtor.

[63] In his Affidavit filed on 15th January 2007, Mr. Emmanuel St. Croix deposed:

> "19. I did at all times follow instructions issued from the Solicitor for the Claimant and the Sheriff of the High Court of Justice. The error in the sale of the property emanated from the documents filed by the Solicitor for the Claimant which was subsequently acknowledged by him."

[64] It is obvious from the Duplicate Minutes of Seizure of Immovables dated 16th May 2006 that Mr. St Croix did not complete the Minutes as required by the law. He failed to state on the first page of the minutes whether the judgment debtor declared and specified his immovable property, or whether he failed to do so, or whether the judgment debtor was absent.

[65] I note however that on page 3 of the Minutes captioned RETURN OF SERVICE he stated:

> "I certify that I have made fruitless endeavours to find the judgment debtor and to the best of my belief the said judgment debtor cannot be found within the limits of the state.
>
> Dated 10th June 2006
> Sgd. ESC Sheriff's Officer"

[66] Consequently, Article 502-5 was not considered in the minutes, bearing in mind that the duplicate minutes could have been served on Mr. Joseph Jn Pierre by delivering the duplicate minutes at his actual or legal domicile.

[67] Had a copy of the minutes been served at the Defendant's actual or legal domicile at Derniere Riviere in the Quarter of Dennery, it is probable that the error would have been discovered.

[68] I note that on the Affidavit of Service of the Claim Form made by Victor Maurice of Tapion and filed on 3rd March 2004, he deposed that he served Joseph Jn Pierre on 17th February 2004 at Au Leon in Dennery personally by leaving the documents on the railings of his verandah about 3 feet from his house when he refused to receive the documents, having previously informed him of the contents.

[69] There are other confusing features in this case, disclosed in the Affidavit in Answer made by the Solicitor General of St. Lucia Mrs. Vivian Georgis Taylor-Alexander, apart from her observations concerning the irregular excessive default judgment. Learned Counsel Mr. Theodore has sought to address these issues in the Affidavit of Ms. Julie Cyril filed on the 2nd February 2007 with documentary exhibits. Suffice it to say that given the nature of the Application that I am considering, I have concluded that these matters raised in the Affidavit, regarding the propriety in bringing the Claim against the Defendant Mr. Joseph Jn Pierre, cannot be addressed in the present Application.

[70] Notwithstanding my conclusions, the Affidavit discloses that the Claimant had placed a caution by way of Judicial Hypothec against 4 properties for the Default Judgment entered in this Claim. The properties were registered as Block 1448B-358 in Dennery, 1448B-292 in Dauphin, 1224B-53 in Micoud and 1430B-45 in Praslin.

[71] Parcel 1448B-292 is registered in the names of Pierre Joseph Jn Pierre, George Jn Pierre, Henry Simeon and Nicholas Minvielle as Trustees for Sale.

[72] Parcel 1430B-45 is registered in the name Joseph Jn Pierre and Maxmillan Jn Pierre.

[73] Parcel 1448B-358 was registered on 31st October 2000 in the names of George Jn Pierre, Anthony Eugene, Pamela Eugene and Nicholas Lindy Minvielle as Trustees for Sale. On 24th March 2006 this property was registered in the name Anthony Eugene, Babonneau P.O. Castries, St. Lucia, obviously the Claimant in this case.

[74] I have observed throughout the period I have presided in St. Lucia, that many individuals have the same combination of Christian and Surnames. This has

served to create genuine mistakes being made, and sometimes fraudulent transactions are generated at the Land Registry and elsewhere.

[75] It behoves legal practitioners and their employees therefore to collect as much data as they can concerning litigants and their clients. This will probably assist in differentiating for example, between Joseph Jn Pierre the teacher, Joseph Jn Pierre the doctor, Joseph Jn Pierre the labourer, Joseph Jn Pierre the Accountant. Apart from this, the time has come for Legal Practitioners and their clients to make the necessary enquiries and conduct adequate research, apart from confining their focus to the Land Registry Records only in their quest to enforce judgments.

[76] Article 511 of The Civil Code mandates as follows –

> "The Sheriff is bound to advertise in the Gazette, three separate times within the space of two months from the date of the first publication, the sale of immovables seized. The advertisement must contain:
>
> 1. The number of the cause and the date of the judgment under which the execution takes place;
>
> 2. The names and surname of the Plaintiff in the suit; or if there are several plaintiffs, a designation of the first named in the writ, with an indication that there are others;
>
> 3. The names and surname of the defendant in the suit, or if there are several defendants, a designation of the one first named in the writ, with an indication that there are others;
>
> If the plaintiff or defendant is acting as a tutor to minors, it is sufficient to state that he is acting as tutor to the minor children

of the deceased person, without designating the minors by name;

4. A description of the immovables, or of the rents, as the case may be as inserted in the minutes of the charges therein mentioned and of those also which the seizing party has requested in writing to have inverted and mentioning upon which of the defendants the property is seized;
5. The time and place at which the immovables or rents will be put up for sale and adjudged;

6. The date at which the writ of execution is returned into Court

7. The conditions of payment of the purchase money;

8. The upset price, if one has been fixed in accordance with the following articles."

9. The deposit required by Act No. 2 of 1988.

[77] Though there is no statutory requirement for the designation as to the ownership or proprietors to be advertised, it would be of tremendous assistance and in the interest of justice equity and good conscience, for the legal representatives of Judgment Creditors to include in their Instructions to Levy Execution, the designation as to Proprietors on the Land Register for the Immovable property to be seized, and any existing Registered Encumbrance on the Title. This information would serve to alert the Sheriff as to what undivided share in the property can pass to the Purchaser at the Judicial Sale. This of course would not absolve the Sheriff from any statutory responsibility to the Purchaser, and the responsibility to ensure that the property being seized is in fact the property of the Judgment Debtor.

[78] Returning therefore to the Application under consideration, I am of the view that the Judicial Sale constituted an attempt to dispose of Parcel 1224B-53 otherwise than in accordance with the Land Registration Act and Articles 424,425,499 of the Code of Civil Procedure Cap 243. Pursuant to Section 37 (1) of the Land Registration Act, the Judicial Sale is ineffectual to create, extinguish or transfer, vary or affect any rights or interests of the Applicants Mr. Joseph Jn Pierre (No.1) and Mr. Joseph Jn Pierre (No.2) and the 5 other Co-owners in the said Parcel. I note that Mr. Emmanuel Prevost Mande the purported Purchaser has been very co-operative throughout these proceedings.

CONCLUSION

[79] In relation to Claim SLUHCV2004/0097, the Applicants must be joined as Opposants to the Claim.

[80] On the said Claim the Attorney General of St. Lucia and Mr. Emmanuel St. Croix and Mr. Emmanuel Prevost Mande are to be added as Ancillary Defendants.

[81] The Deed of Sale and Adjudication by the Sheriff dated 9th August 2006 must be set aside.

[82] The Attorney General shall refund to Mr. Emmanuel Prevost Mande the sum of $1600.00 within 1 month from the date of delivering this Judgment, with interest thereon at the rate of 6% per annum as long as this sum remains unpaid after the 21st March 2007.

[83] The Claimant/Judgment Creditor, having caused the wrong immovable to the seized under the Writ of Execution must bear 75% of the Costs to be paid to the Opposants and Mr. Emmanuel Mande, being $1500 to the Applicants/Opposants and $1125.00 to Mr. Mande.

[84] The Ancillary Defendants, that is the Attorney General and Mr. Emmanuel St. Croix, will bear 25% of the Costs being $500.00 to the Applicants/Opposants and $375 to Mr. Mande, for Mr. St. Croix's failure to comply with Article 502 and his failure to exercise due diligence in executing the Writ.

[85] I trust that what occurred in the instant case, will mobilize the Sheriff to seek the co-operation of legal practitioners so as to prevent any re-occurrence of this nature.

Dated this 20th day of February 2007

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OLA MAE EDWARDS
HIGH COURT JUDGE