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

SAINT LUCIA

CLAIM NO. SLUHCV 2005/0375

BETWEEN:

FRANCIS CHITOLIE
A.K.A. CATCHEL

Claimant

and

(1) THERESA VITALIS
(2) PAUL MERKEY CHITOLIE

Defendants

Appearances :
Ms. S. Chitolie for Claimant
Mr. V. Gill for Defendants

2007: January 29, 30
April 30.

JUDGMENT

INTRODUCTION

[1] EDWARDS, J.: This is a Ruling on the preliminary issue, made upon the submissions of Counsel for the parties, at the commencement of the trial of this claim for Rectification of the Land Register on the grounds of fraud, and other Reliefs. The Preliminary submissions were made because of an Order that the Court made on the 16th February 2006 upon the Application of the Claimant to Strike Out the Defence to the Amended Statement of Claim.

[2] Mason J ordered that in order for the Claimant to sustain the Application, the Claimant must prove that he is the sole grand heir of the deceased Chitolie Coolie.

Though the Application remained unheard, extensive written submissions with supporting authority were filed by Counsel for the Claimant on the 26th May 2006 based on this Court Order.

[3] When this matter came before me on the 9th October 2006 for case management, it was obvious from the nature of the pleadings, the Affidavits in Support of the Claim, and the documents that the parties would rely on to prove their case, that a resolution of this issue as a preliminary point could probably determine the claim, pursuant to PART 26.1 (2) (i) of CPR 2000.

[4] Consequently, on the 9th October 2006, in the absence of Counsel for the Parties and the Defendant, I set the matter down for trial with accompanying case management directions.

[5] On the 27th November 2006 the Court rescheduled the trial date at the request of Claimant's Counsel, and varied the previous case management directions. On being reminded by Learned Counsel Mr. Gill that the Claimant had been ordered to prove that he was the sole and first grand heir of Chitolie Coolie, I indicated that the matter would be better dealt with as a preliminary issue at the trial. Consequently the Application to Strike Out the Defence was not heard.

[6] At the beginning of the trial, I dealt with this preliminary issue by hearing the oral submissions of both Counsel which supplemented their written submissions. Although Learned Counsel Ms. Chitolie indicated that she had been caught off guard, was unprepared, and requested time to respond to Mr. Gills written submissions filed on the 26th January 2007, I did not accede to her request. I was of the view that there was no need to do this, since she had already filed extensive submissions concerning this preliminary issue in May 2006. Her Skeletal Arguments Introduction filed on the 19th January 2007 (at pages 8-14) and her Submissions (at pages 9-22 and 38-41) also addressed the issue comprehensively.

[7] Before me for my consideration were the Supporting Affidavits of Francis Chitolie with documentary exhibits for the Claim and Application to Strike Out the Defence, along with the Pleadings and the Written Submissions of Counsel.

[8] Upon hearing both Counsel, I ruled in substance orally, that the English law of real property concerning vested reversionary interests did not apply to St. Lucia, and that based on the Deed of Sale that the parties had relied on, Chitolie Coolie never had ownership of the land in question.

[9] I promised then to give a reasoned written ruling, since Counsel for Claimant was unappreciative of the impact this oral ruling had on the Claim. I indicated also that I would address the prospects of the rest of the claim and the Question of Costs in this Ruling.

BACKGROUND FACTS

[10] The Claimant Mr. Francis Chitolie and the 2 Defendants Ms. Theresa Vitalis and Mr. Paul Chitolie are siblings. They are all children of Stephen Chitolie. The Claimant has alleged that property which was owned by Chitolie Coolie his deceased grandfather and which has devolved upon and vested in him as sole and first grand heir, was falsely and fraudulently adjudicated in the adjudication process as belonging to the Heirs of Stephen Chitolie his deceased father, who died on the 9th August 1976.

[11] Consequently, he contends that the first registration of his grandfather's property as Parcel No. 1022B-37 in the Registration Quarter of Vieux Fort, owned by the Heirs of Stephen Chitolie, is a fraud.

[12] The Defendants obtained Letters of Administration in the Estate of their father Stephen Chitolie on the 8th June 1994. They were registered as the Administrators of the Estate of Stephen Chitolie on the Land Register for the

disputed property Parcel No. 1022B-37 on the 7th July 1994. The Claimant contends also that the Letters of Administration were fraudulently obtained, and that their registration on the Land Register amounts to a fraud.

[13] By the Amended Fixed Date Claim filed on the 9th August 2005, the Claimant claims the following:

> "1. A Declaration that the Defendants are not entitled to be registered as administrators of a piece or parcel of land situate at Augier in the Quarter of Vieux Fort and registered in Block 1022B Parcel 37.
> 2. A Declaration that the Defendants have no right, title or interests to the property of 1022B – 37.
> 3. An Order that the Grant of Letters of Administration LA 91/94 to the Defendants for Block 1022B Parcel 37 be revoked per Article 586 (4) Ch. 242 of Volume IV St. Lucia Revised Laws 1957.
> 4. The cancellation of the existing registration in the names of Theresa Vitalis and Paul Merkey Chitolie.
> 5. The cancellation of the Adjudication Record 6K271: 1022B-37 in the name of the Heirs of Stephen Chitolie c/o Francis Chitolie.
> 6. A Declaration that the Claimant is the sole proprietor of 1022B-37.
> 7. The Registration of the Declaration of Succession of the Claimant dated 29th September 2004.
> 8. The registration of the Claimant as the sole proprietor of Block 1022B Parcel 37 with absolute title.
> 9. The rectification of the land register for Block 1022B Parcel 37 under Section 98 of the Land Registration Act No. 12 of 1984.

10. The rectification of the land register to be retrospective to the date of first registration on 23/6/87.
11. Mesne Profits.
12. Damages
13. Absolute possession of Block and Parcel Number 1022B-37.
14. A lien on the property pending the hearing and determination of the Claimant's Claim.
15. Alternatively, an Order restraining the Defendants from any further interference of the property 1022B-37 unless and until the Claimant's claim is heard and determined.
16. Further or other relief
17. Costs."

[14] The land in question was acquired by Chitolie Coolie on the 9th September 1911 by Deed of Sale from Sydney Dalzelle Melville. The fifth paragraph of this Deed of Sale contains the consideration, its acknowledgment, the operative words of transfer and the habendum. The extent of the interest taken by Chitolie Coolie was stated in the habendum clause in the following manner:

> ". . . the vendor hereby sells and conveys free from encumberances unto the purchaser who accepts thereof of the usufruct for himself and Marani Coolie during their joint and separate lives and of the naked ownership to which the usufruct shall be reunited at the death of the survivor of them for and in the names and behalf of their children 1. GEORGE CHITOLIE 2. JOHN CHITOLIE and 3. STEPHEN CHITOLIE with right of survivorship between them and with share and share alike."

THE CLAIMANT'S CASE

[15] In the absence of a stipulation that the last survivor should take the whole property as owner, the Claimant and his Counsel contend that Chitolie Coolie had reserved the ownership of the property to himself whilst imparting a usufructory right to Marani Coolie together with a naked ownership to survivorship of his 3 named children.

[16] Learned Counsel for the Claimant maintains that Chitolie Coolie did not take a "life interest" in the property despite the presence of the words "usufruct for himself" in the habendum clause, since he was the purchaser and proprietor of the property. She maintains that this ownership of the property which Chitolie Coolie retained was in law the reversion (vested interest). She contends that following the death of Marani Coolie on the 31st October 1941 the life interest to her was terminated and the property reverted to Chitolie Coolie who had predeceased her on the 20th April 1933.

[17] The case for the Claimant as pleaded and argued, is that thereafter, the 3 named children were granted the reversionary property of Chitolie Coolie with a right of survivorship qualified by a naked ownership to this property of Chitolie Coolie. Further, it is said that this right of survivorship in the reversionary property of Chitolie Coolie was terminated on the deaths of the 3 named children, and that with the death of the last survivor Stephen Chitolie in 1976, the property was still in reversion to Chitolie Coolie or his lawful successor.

[18] The Claimant has pleaded that since Chitolie Coolie had no lawful heirs, the succession of Chitolie Coolie by law devolved upon and vested absolutely in the Claimant since he is the sole and first grand heir of Chitolie Coolie, and he solely remained and lived, built, and established himself on the property while caring for Stephen Chitolie and the property.

[19] The Claimant has pleaded also that in the period of Land Adjudication 1986 he had asserted his ownership as grand heir to the property of Chitolie Coolie under section 8 (1) of the Land Adjudication Act No. 11 of 1984 (as amended).

[20] He contends that the Adjudication Record 6K 271: 1022B-37 falsely and fraudulently adjudicated that the persons entitled to be registered as the owners of the said property were "HEIRS OF STEPHEN CHITOLIE C/O FRANCIS CHITOLIE." He has pleaded 25 Particulars of Fraud.

[21] Stephen Chitolie aka Stephen Titolie aka Stephen Chitolie had 14 children with Thereza Laic aka Therese Laic aka Thereza Laique aka Theresa Lyic aka Theresa Laick aka Theresa Laic aka Theresa Lahie aka Theresa Chitolie aka Theresa Lahic aka Theresa Laie aka Teresa Lahie aka Theresa Laceth.

[22] The Claimant has averred at paragraph 27 of his Amended Statement of Claim that "The Grant of Letters of Administration LA 91/94 to the Defendants against the property . . . is fraud under Articles 549, 550, 584, 586 (3) 592 (3) of the Civil Code Ch 242 and Article 1016 (1) (a) of the Code of Civil Procedure Ch 243 in Volume IV of the Saint Lucia Revised Laws 1957 and by the desire and successors as stated by the purchaser, Chitolie Coolie to his property.

PARTICULARS OF FRAUD

(a) By the Order of naked ownership to the survivorship of Stephen Chitolie, no intestate succession had passed on the death of the Deceased in respect of the property per Article 549 Ch 242.

(b) The Deceased Stephen Chitolie was not lawfully seized of the property at death by the Order of naked ownership to his survivorship of the property of Chitolie Coolie.

(c) Notwithstanding that stated in paragraphs (a) and (b) above, neither of the Defendants nor the eleven (11) named heirs (excluding the Claimant) as unlawful children of the Deceased can inherit from the intestacy of the Deceased per Article 549 Ch 242.

(d) Notwithstanding that stated in paragraphs (a) and (b) above, neither of the Defendants nor the eleven (11) named heirs (excluding the Claimant) as unlawful children of the Deceased are/were seized by law of the property per Article 550 Ch 242.

(e) Notwithstanding that stated in paragraphs (a) and (b) above, neither of the Defendants nor the eleven (11) named heirs (excluding the Claimant) as unlawful children of the Deceased are/were qualified to be administrators at law per Articles 549 and 550 Ch 242.

(f) The Grant of Letters of Administration 91/94 is grossly repugnant to the Order of naked ownership to the survivorship of the Deceased Stephen Chitolie as stated by Chitolie Coolie himself in respect to the property.

(g) Notwithstanding that stated in (f) above, the Deed of Sale of Chitolie Coolie Number 34323 is not stated in Section 2 of the Adjudication record to substantiate neither the first registration in the name of the Heirs of Stephen Chitolie c/o Francis Chitolie nor the Letters of Administration to the Defendants against the property of Chitolie Coolie.

(h) The death of Chitolie Coolie in 1933 as the sole proprietor of the property precludes the Application of letters of administration against the property per Article 584 Ch 242.

(i) Notwithstanding that stated in paragraphs (a) and (b) above, the Defendants are not lawful heirs of the Deceased to be his personal representatives at law per Article 592 (3) Ch 242.

(j) Notwithstanding that stated in paragraphs (a) and (b) above, the Defendants as unlawful heirs are not within the heritable degree of the Deceased to be his personal representatives at law for the grant of letters of administration per Article 1016 (1) (a) Ch 243.

(k) Further to that stated in paragraphs (a) and (b) above, there is and was no property or succession of Stephen Chitolie at death to be the subject of administration per Article 586 (3) Ch. 242."

[23] By paragraphs 28, 29, 31 and 32 of the Amended Statement of Claim the Claimant pleads further:

"28. That the Grant of Letters of Administration LA 91/94 for the estate of Deceased Stephen Chitolie registered in Number 170 687 at the Registry of Deeds and Mortgages in paragraph 24 (a) was obtained by fraud.

PARTICULARS OF FRAUD

(a) The Defendants had falsely represented themselves to the Court as lawful heirs of the Deceased to be his personal representatives at law. At the time of the said representation, the Defendants had full knowledge and awareness they are unlawful children of the Deceased and cannot be his personal representatives at law. The Defendants knew at the time the said representation was untrue or had no

honest or reasonable belief that representation was true.

(b) The Defendants had falsely represented themselves and the other eleven (11) named children (excepting) the Claimant to the Court as the lawful heirs of the Deceased to inherit the property. At the time of the said representation, the Defendants had full knowledge and awareness they are all unlawful children of the Deceased and cannot inherit from the intestacy of the Deceased, neither can [they] inherit the property of Chitolie Coolie from the intestacy of the Deceased. The Defendants knew at the time the said representation was untrue or had no honest or reasonable belief the representation was true.

(c) to (f) . . .

(g) The Defendants had falsely represented to the Court the Claimant's interest without his notice, knowledge and consent. At the time of the said representation the Defendants had full knowledge and awareness that the application was being presented without the Claimant's notice, knowledge and consent. The Defendants knew at the time the said representation was untrue or had no honest or reasonable belief the representation was true.

(h) The Defendants had falsely represented themselves and the other eleven (11) named children of the Deceased to the Court as beneficiaries against the Claimant as the sole grand heir of Chitolie . . .

29. That the Defendants [at] all material times had full knowledge and awareness that the representations made in paragraph 28 (a-j) were false by each of the particulars of knowledge 26

(a) – (l), together with the Defendants' submission and presentation of the baptism and birth certificates of all the heirs of the Deceased in their Application for Letters of Administration. The Defendants thereby knew at the time the said representations were untrue or had no honest or reasonable belief in the truth of representations made. The Defendants had willfully and/or recklessly made the representations to induce the Court to grant the letters of administration in reliance thereof and thereafter to facilitate, effectuate and secure the registration of the property to themselves.

30. . . .

31. Further that the Grant of Letters of Administration is contrary to the Pre-requisite provisions of the Civil Code and Code of Civil Procedure Ch 242 and Ch 243 of Volume IV Saint Lucia Revised Laws 1957; contrary to the desire and successors as stated by Chitolie Coolie in respect to the property and is null, void and of no legal effect by each of the particulars in paragraph 27 (a-k).

32. Further that the Letters of Administration LA 91/94 was obtained by the fraudulent representations of the Defendants and is void for fraud by reason of each of the particulars in paragraphs 28 (a-j) and 29."

THE DEFENDANT'S CASE

[24] The Defendants by their Defence to the Amended Statement of Claim filed on the 17th October 2005 contend that Chitolie Coolie did not reserve the ownership of the property to himself. That he took a life interest with Marani Coolie in the property for their natural lives, and that upon the death of Chitolie Coolie and Marani Coolie the usufruct (life interest) in the property reunited with the nuda

proprietas giving absolute title to their children George, John and Stephen Chitolie with a right of survivorship between them.

[25] They allege that by way of a Deed of Partition executed on the 11th July 1946 before Alfred Elwin Augustin, Notary Public and registered at the Office of Deeds and Mortgages on the 17th July 1946 in Volume 90 A No. 5426, the 3 children of Chitolie Coolie: George, John and Stephen, voluntarily brought an end to the survivorship by way of an amicable partition amongst themselves.

[26] They have averred that the Claimant is the 10th child of Stephen Chitolie and not the sole heir of Stephen Chitolie, that the representation made to the Court for the grant of letters of administration in the estate of Stephen Chitolie was not that Stephen Chitolie was the lawful heir of Chitolie, but that the Defendants, the Claimant and their 11 other siblings were the lawful heirs of Stephen Chitolie.

[27] They allege also that the Claimant willingly and actively participated in the process of applying for Letters of Administration, and signified his consent to the appointment of the 2 Defendants as the Administrators. They have averred that the Claimant should therefore be estopped from making these allegations made in his Amended Statement of Claim.

[28] They contend that the property having been partitioned and the survivorship brought to an end, the property belonged to the heirs of Stephen Chitolie and not just one of them, the Claimant. For the Claimant to have been entitled on his own to the Estate of Stephen Chitolie and by extension Chitolie Coolie, he would have had to be the sole beneficiary under a will of which there was none, they have contended. They state also that they are all lawful issue of Stephen Chitolie and all grand children of Chitolie Coolie.

[29] The Defendant averred that the Adjudication Records suggest that the Claimant made a claim and produced the relevant documents including the Deed of Sale

dated 9th September 1911 by which Chitolie Coolie acquired the property, and the said Deed of Partition executed on the 11th July 1946, and it is clear that the Claimant was not recorded as owner. They have denied all of the allegations of fraud.

[30] The Defendants contend that the first Defendant has lived on the property since 1972, but the Claimant alleges this has been since 2000. While denying that the Claimant is the sole and first grand heir of Chitolie Coolie, they have put the Claimant to prove same.

[31] The Reply of the Claimant has in substance re-iterated the pleadings in the Amended Statement of Claim, and joined issue with the Defendant. My oral Ruling on the 30th January 2007 depended on my interpretation of paragraph 5 of The Deed of Sale, and my understanding of the law governing ownership of immovable property in St. Lucia. Before addressing the submissions of Counsel and the evidence, I must identify and consider the relevant law.

THE LAW

[32] St. Lucia has inherited the ancient French law of real property, which is reflected in the Old Quebec Civil Code of Lower Canada 1866. "Most of the articles of our Civil Code are still identical with or equivalent to articles of the Old Quebec Code. In fact the old Quebec Code continues to be the source of vital aspects of our law of property in its widest sense. Most of our articles relating to the different kinds of property, ownership, usufruct, use and habitation, servitudes, emphyteusis, successions, gifts inter vivos and by will . . . registrations or real rights and prescription echo the laws summarized in the Old Quebec Code": (The Interpretation of the Civil Code of Saint Lucia at page 9, Occasional Paper delivered by V.F. Floissac O.B.E. Q.C. LL.M (Lond) at a Seminar on THE INFLUENCE OF COMMON LAW ON THE

CIVIL CODES OF QUEBEC AND SAINT LUCIA at Montebello, Quebec, Canada 17th – 20th May 1983).

[33] It is therefore the French system of ownership of property, which was previously reflected in the 1879 Civil Code of St. Lucia, that is now reflected in the relevant Articles of The Civil Code of St. Lucia 1957 Cap 242, except for the English law of Trusts, which was introduced as Article 916A by The Civil Code (Amendment) Ordinance No. 34 of 1956, and which came into force on the 30th June 1957.

[34] Article 360 of the 1957 Civil Code states that "A person may have with respect to property, either a right of ownership, or a simple right of enjoyment, or a servitude to exercise.

[35] Article 364 states that "Individuals have the free disposal of the things belonging to them under the modifications of established law."

[36] Article 361 defines ownership as "the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations made in accordance with law." Article 363 states that "Ownership in a thing, whether movable or immovable, gives the right to all it produces, and to all that is joined to it as an accessory whether naturally or artificially. This right is called the right of accession."

[37] Article 360 obviously contemplates that a person may have a qualified ownership interest in property as opposed to absolute ownership. Where a person has only a right of limited duration to use and enjoy property, he cannot be the owner of the property in accordance with Article 361. The civil law concept of ownership regards such a person as having only a 'usufruct'.

[38] Article 394 states that "usufruct is the right of using and enjoying things of which another has ownership; in the same manner as the owner uses and enjoys them, but subject to the obligation of preserving their substance."

[39] A person possessing such a right is known as the usufructuary, and the proprietor cannot by any act whatsoever, injure the rights of the usufructuary: (Article 412).

[40] "The Usufruct ends, if it be fore life, by the death of the usufructuary. By the expiration of the time for which it was granted; By the confusion or reunion in one person of the two qualities of usufructuary and of proprietor . . ." (Article 429).

[41] The proprietor of property which is subject to a usufruct, has a 'nuda proprietas' or naked ownership. Though Article 1980 refers to the "nuda proprietas" of an immovable without explaining or defining it, it is defined in Civil Law to Common Law Dictionary: Kinsella at page 23 thus:

> "The ownership of a thing burdened with a usufruct is the naked ownership, which is owned by the naked owner. Naked ownership is similar to a reversion or estate in reversion, the residue of a life estate": (www.kinsellalaw.com/publications/dictionary.pdf).

[42] Kinsella also states that the 'usufruct' is similar to the common law's life estate, although the usufruct need not last for life.

[43] Article 529 states that "Ownership in property is acquired by pretension or occupation, by accession, by descent, by will, by contract, by prescription, and otherwise by the effect of law and of obligations."

[44] Article 961 states that a contract can bestow a benefit on a third person. It provides that "A party . . . may stipulate for the benefit of a third person, when

such benefit is the condition of a contract which he makes for himself, or of a gift which he makes to another; . . ."

[45] Article 695 states that a person cannot dispose of his property by gratuitous title otherwise than by gift inter vivos or by will. Article 698 states that certain gifts may in a contract be made irrevocably inter vivos to take effect after the death of the giver. They partake of gifts inter vivos and of wills.

[46] Article 717 states that Deeds containing gifts inter vivos must under pain of nullity be executed in notarial form. Article 1980 states: "All acts inter vivos, conveying the ownership, nuda proprietas or usufruct of an immovable must be registered at length or by an abstract hereinafter called a memorial.

In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property or received an onerous gift of it from the same vendor or donor for a valuable consideration and whose title is registered."

[47] "Registration at length is effected by transcribing on the register the title document which creates or give rise to the right, or an extract from such title made and certified according to the provisions of Article 1148 . . ." (Article 2013). Article 2015 prescribes the procedure for the registration at length of a notarial deed.

[48] "A memorial for registration is a summary description of the real rights which the party interested wishes to preserve. The memorial is delivered to the Registrar and transcribed upon the register:" [Article 2017].

[49] "The memorial must be in writing and may be made at the request of any party interested in or bound to effect the registration, and must be attested by two subscribing witnesses." (Article 2018).

[50] Prior to Act 34 of 1956 which imported the English law of Trusts into the 1957 Civil Code, the provisions of the existing 1879 Civil Code did not recognize the distinctions between law and equity which obtain in England.

[51] The English concept of ownership whereby an owner of freehold land is said to have an estate in fee simple absolute in possession, and is able to grant a life interest or other particular estate out of his own estate while retaining the residue of his original estate known as a reversion, was inconceivable under St. Lucia's French system of ownership of land: (Megarry's Manual: The Law of Real Property (2002) page 213, The Evolution of Land Law in St. Lucia: Coutoune De Paris to 1988 by Winston F Cenac, Q.C. LLb (Lond.)

[52] Under English law, a "Reversion" signifies the residue of an owner's interest after he has granted away some lesser estate in possession to some other person. This is to be contrasted with an estate in remainder in which case, the owner of the land creates a future gift to some person not previously entitled to the land. A "reversion" will thus be found in every case where the owner has made a grant which does not exhaust the whole of his own interest in land: (Megarry & Wade (2000): Law of Real Property page 43, 44, 297).

[53] Under the complicated English system of land ownership, the "reversion" is a vested interest. An interest is 'vested in possession' when it gives the right of present enjoyment. If it is vested in interest but not in possession, it is a future interest since the right of enjoyment is postponed, yet it is also an already subsisting right in property vested in its owner, it is a present right to future enjoyment: (Megarry & Wade: The Law of Real Property (supra) page 291).

[54] Under the English law of real property, where the owner of the estate in fee simple with the reversionary vested interest is dead, his representatives stand ready to receive the land as soon as the particular estate determines: (Megarry's Manual of the Law of Real Property (2002) page 213).

[55] After 1925, the English law provides that a "reversion" upon a life estate is equitable and it exists behind a trust. The legal estate in the land is therefore held by an estate owner whose function it is as trustee to give effect successively to the life interest and to the reversion: (Cheshire & Burns Modern Law of Real Property (2000) page 93; Megarry's Manual of the Law of Real Property (2002) page 213).

[56] The English law of Trusts is perceived by French jurists as "a fragmentation of the tributes of ownership, the legal ownership belongs to the trustee but the equitable ownership belongs to the castui que trust: (Rene David and John E.C. Brierley, Major Legal Systems In the World Today (English Edition) page 295 cited in The Evolution of Land Law in St. Lucia by Winston F.Cenac Q.C. supra at page 12).

[57] The circumscribed anglicization of the French system of land ownership now reflected in Article 916A of the 1957 Civil Code of St. Lucia states:

> "916A (1) All persons capable of disposing freely of their property, may convey property, movable or immovable, to trustees by act inter vivos or by will for the benefit of any persons in whose favour they can validly dispose of their property. They may also constitute themselves, either alone or jointly with others, trustees of their own property for the benefit of other persons.
>
> (2) Implied, constructive and resulting trusts shall arise under the law of the Colony in the same circumstances as they arise under the law of England.

(3) Subject to the provisions of this Code or of any other statute the law of England for the time being in force governing the rights, powers and duties of trustees and beneficiaries under a trust shall extend to and apply in the Colony.

(4) Whenever by the law of England a beneficiary of a trust is entitled to a right in equity a beneficiary shall be entitled to a like right under this Code.

(5) Notwithstanding any other provisions of this Code as to acceptance of gifts inter vivos the acceptance of a gift by a beneficiary shall not be necessary for the creation of a valid trust."

[58] In an attempt to harmonize the conflicting ideas of ownership of land based upon the ancient French law as enacted in Articles 360, 361 and 363 of the 1957 Civil Code, and the English law of Trusts introduced by Article 916A, Winston F. Cenac Q.C. in The Evolution of Land Law in St. Lucia supra at page 42 observes that: "The importation of the law of trusts into our law of property though productive of same beneficial effects, has had the effect of bringing together rules and concepts which can only co-exist as strange bedfellows and whose coexistence creates some interesting problems."

[59] Cenac op.cit at page 45, has relied on the treatise of Dorcas White: "Equity in the Law of Saint Lucia" at page 19 published by The Facility of Law, University of the West Indies Cave Hill Campus, Barbados, in his reconciliation of the "strange bedfellows."

[60] Cenac concludes: "The conflict could have been avoided by expressly amending the provisions of the 1957 Civil Code relating to ownership in such a manner as would recognize the division of ownership in our law into legal ownership and equitable ownership. However, despite the failure to

amend the Code in that specific manner, there is force in the contention that Article 916A impliedly amends Article 360 of the Code. It is submitted, therefore that from the date when Article 916A came into force a person can have with respect to property in St. Lucia either a legal right of ownership or an equitable right of ownership or a simple right of enjoyment or a servitude to exercise. This is obviously the implied intention and effect of Article 916A of the 1957 Civil Code . . . On the premise that Article 916A impliedly amends Article 360 and introduces the concept of dual ownership into the Law of St. Lucia, Dorcas White concedes that the Saint Lucia trust has eliminated the possibility of being distorted into a hybrid institution. One is inclined to agree with this view and principle." (My emphasis).

[61] Though the conclusions of Winston Cenac Q.C. are eminently applicable for the present case, I respectfully differ in my conclusions concerning the impact Article 916A has had on Article 360. I prefer to view Article 916A as co-existing with Article 916A rather than impliedly amending it. Consequently in my view the Civil Code stipulates that a person can have with respect to immovable property either a right of ownership, or a simple right of enjoyment, or a servitude to exercise, or a legal ownership as trustee, or an equitable ownership as beneficiary.

[62] Turning now to consider the habendum clause in paragraph 5 of the Deed of Sale, it is immediately obvious that the Claimant and his Counsel have merged the English law of real property with the French law of real property in arriving at their peculiar interpretation of the habendum clause and their conclusions reflected in their pleadings and submissions.

SUBMISSIONS ON THE DEED OF SALE

[63] Concerning the interpretation of the habendum clause reproduced at paragraph 14 of this judgment, and her understanding of the law that should be applied, Learned Counsel Ms.Chitolie made the following submissions:-

(i) Chitolie Coolie was the sole proprietor of the property in question. The phrase "usufruct for himself" means that the Vendor sold Chitolie Coolie the interest of the proprietor. The word "usufruct for himself" cannot in law denote that the purchaser/proprietor of the property had a usufruct for himself since Article 394 establishes a clear divide between ownership and the thing comprising the usufruct. Chitolie Coolie therefore, being the purchaser of the property, cannot in law have a usufruct to his own property.

(ii) The ownership of the usufruct (property purchased) retained by Chitolie Coolie was in law the reversion (vested interest in law) to his properties whilst granting the life interest to Marani Coolie: Megarry & Wade: The Law of Real Property (2000) at page 44 "A reversion will be found in every case where the owner has made a grant which does not exhaust the whole of his interest."

(iii) The property is in reversion to Chitolie Coolie after the life interest to Marani Coolie because of the English law of real property which is stated in Megarry & Wade. The Law of Real Property (2000) at page 296). It states that "if the tenant in fee simple grants a life interest, the fee simple which he retains is called a reversion. His estate in fee simple in possession has become a fee simple in reversion. Chitolie Coolie had only granted the life interest to Marani Coolie and the termination of which would be in reversion to Chitolie Coolie. In law, upon the termination of a life estate the property usually reverts to the original proprietor." (Megarry's Manual of the Law of Real Property, (2002) page 213; Megarry & Wade in the Law of Real Property (2000), page 302). "A reversion arises by operation of law." (Megarry & Wade in The Law of Real Property (2000) at page 296).

(iv) "Following the death of Marani Coolie, the life interest is terminated and the property is at law in reversion to Chitolie Coolie. Chitolie Coolie then stated that the usufruct (property purchased) and in reversion to himself at law would be reunited (coming together again, returning in a naked ownership with the right of survivorship to the three named children.

(v) The term reunited is most relevant since by Article 429 of the Civil Code, the life interest of Marani Coolie was terminated at death and cannot reunite into absolute ownership at death unless there was an expressed will that devised the continuity of that interest in favour of named beneficiaries by virtue of Article 395. Article 395 of the Civil Code states that a usufruct (life interest) is established by will or by law."

(vi) Article 1980 expressly states that all acts inter vivos conveying the ownership, usufruct or nuda proprietas of an immovable must be registered at length or by memorial. Subject to Articles 1980, 2013 and 2017, the inter vivos disposition of Chitolie Coolie is neither registered at length nor by memorial, and therefore neither the usufruct nor nuda proprietas had been conveyed to Marani Coolie and the named children: Chitolie Coolie had maintained the legal estate in his properties at all material times.

(vii) The 3 named children having been granted the reversionary property of Chitolie Coolie, they had a right of survivorship qualified by a naked ownership to the said properties of Chitolie Coolie. At the death of the last survivor the property is still in reversion to Chitolie Coolie or his successor on the property.

(viii) The 3 named children had a naked ownership to the properties of Chitolie Coolie. Naked ownership in civil law is similar to reversion or estate in reversion, the residue of a life estate. Naked ownership means bare ownership or bare legal title, lacking the

usual rights and privileges of ownership, same as a trustee does not receive the same rights and standard ownership, (Kinsella: Common law Dictionary).

(ix) The 3 named children had a right of survivorship which is a characteristic feature of joint tenancy, thereby ownership becomes indivisible and the survivor and his heirs inherit the property to the exclusion of all others: (Cheshire and Burns, Modern Law of Real Property, (2000) at page 242.

(x) Neither of the 3 named children including Stephen Chitolie is a joint tenant or party to the conveyance with Chitolie Coolie: Furthermore, the expression "share and share alike" in the Deed of Sale, are words of severance which preclude the existence of joint tenancy between the parties: (Cheshire & Burns Modern Law of Real Property (2000) at page 249).

(xi) In the absence of any expressed joint tenancy, according to the principle of right of survivorship the right of Stephen Chitolie (last survivor) to the properties of Chitolie Coolie was extinguished at death.

(xii) Since Chitolie Coolie retained the ownership/reversion (vested interest) to himself, the interest of the named children was in law no greater than a simple right of enjoyment to the property pursuant to Article 360. Upon the death of Stephen Chitolie who is the last survivor, the estate is by operation or construction of law in reversion to Chitolie Coolie.

(xiii) The birth registers of the Administrators and other eleven named children of Stephen Chitolie clearly indicate they are born out of wedlock and are illegitimate. No marriage certificate had been presented by the Administrators to attest their lawfulness for letters of administration. There is a 2 year gap before and after the birth of the Claimant as a lawful son. Even if a marriage certificate was produced Article 203 of the Civil Code requires that

the administrators and other 11 named children of Stephen Chitolie produce declarations of legitimacy by the High Court to attest their lawfulness for letters of administration. In the case of Mary Lewis v Bowens and Others (2000) St. Vincent & Grenadines C.A. it was stated that where no marriage certificate had been produced to attest the lawfulness of the administration for letters of administration, the said application was stated to have been obtained fraudulently or falsely.

(xiv) The Claimant is therefore the sole lawful son of Stephen Chitolie and first and sole lawful grandson of Chitolie Coolie. Pursuant to Article 540, a person upon whom the residue of a succession devolves after 1952 is called an 'heir'. Pursuant to Article 541 successions devolve to lawful relatives.

(xv) By virtue of Articles 540 & 541 the devolution of the succession of Chitolie Coolie is upon the Claimant being the lawful grandson of Chitolie Coolie after the death of Stephen Chitolie in 1976. Article 560 establishes the devolution of succession in degrees. Article 539 expressly provides that ownership can be acquired by descent. The first degree succession was completed upon the death of the last survivor and the vested interest in the Claimant as the grand heir of Chitolie Coolie from grand father to grandson is in the second degree.

(xvi) In the realm of equity, the Claimant is still the sole and first grand heir of Chitolie Coolie to the properties since a reversion (future interest) can subsist only in equity and not in law. With the reversion, the fact that Chitolie Coolie is the legal owner of the land or that Chitolie has the legal estate in the land, and the fact that the 3 named children had the benefits of ownership is expressed by saying they were the equitable or beneficial owners or that they had the equitable estate or interest in the land: (Megarry and Wade in the Law of Real Property (2000) at page

113, Green & Henderson: Land Law, (1995) at page 32, Cheshire & Burns, Modern Law of Real Property 2000 at pages 93 and 302.

(xvii) At the death of the last survivor the legal estate in reversion vests absolutely in the lawful successor of the last survivor in possession of the properties of Chitolie Coolie.

(xviii) In the case of Equipment Rental and Services Ltd v Texaco (W.I.) Ltd (1993) Dominica C.A. Byron CJ Ag. stated that where the legal estate is outstanding, the priority of equitable interests is prima facie governed by the rule qui prior est tempore, potior est jure (he who is first has the strongest right). The Claimant is the first lawful grandson of Chitolie Coolie who remained to live, build and established himself on the lands of Chitolie Coolie and never moved.

(xix) As first lawful grandson, the Claimant remained on the properties in the life and death of the last survivor; the first lawful grandson who re-surveyed the lands of Chitolie Coolie in the life and presence of the last survivor, the first lawful grandson who survived the last survivor on the properties, the first lawful grandson in sole possession of the lands of Chitolie Coolie in the life and death of the last survivor; the first lawful grandson who remained on the lands of Chitolie Coolie and positioned himself to inherit the properties in resurveying the lands of Chitolie Coolie to himself, the sole lawful son of the deceased Stephen Chitolie - last survivor who remained on the lands in caring for the deceased and personally undertook all funeral expenses at death. Eleven of the children of Stephen Chitolie had migrated to the United Kingdom, United States during the 1950's, while 2 others had purchased their own properties and settled thereon.

(xx) Given the fact that a reversion is an equitable interest in law, had the administrators or other 11 children of the deceased Stephen Chitolie been lawful and remained on the lands of Chitolie Coolie, their equities would be equal but the principle of first in time would still prevail. Thereby the Claimant's claim as the sole grand heir would still be manifest. The Claimant is thereby, the sole grand heir of Chitolie Coolie to the properties of Chitolie Coolie both in law and in equity.

[64] Learned Counsel Mr. Gill's submissions dovetailed with the provisions of the Civil Code relating to ownership of land in St. Lucia, (reproduced at paragraphs 34 to 49 and 57 of this judgment).

[65] He interpreted the habendum clause in the Deed of Sale, and applied the Law of St. Lucia reflected in the relevant Articles while making the following submissions:-

A. Chitolie Coolie had a simple right of enjoyment to the property since he reserved a usufruct for himself and his wife Marani Coolie, while divesting the nuda proprietas or bare ownership in favour of his three sons with a right of survivorship between them.

B. Under the right of survivorship, ownership belonged to the survivor of the 3 children who was Stephen Chitolie.

C. Upon the death of Stephen Chitolie, Article 568 would apply since Stephen Chitolie's wife predeceased him in 1964. Article 568 states:

> "(1) If there be no surviving spouse capable of inheriting, children or their descendants succeed to their father and mother and grandfather and grandmother, or other ascendants.
>
> (2) In all cases, children or other descendants

> succeed without distinction of sex or primogeniture, and whether they are the same or of different marriages. In all cases they inherit in equal portions and by heads when they are all in the same degree and in their own right, they inherit by roots when all, or some of them come by representation."

D. Stephen Chitolie had 14 children and 2 predeceased him without issue, so his 12 children who were legitimate would inherit in equal portions.

E. The contention that Claimant occupied the property to the exclusion of his other siblings involves the Application of prescriptive title. One heir cannot prescribe against the lawful owner who is another heir. Article 2068 states that "Heirs and successors by universal title of those whom the preceding article hinders from prescribing cannot themselves prescribe."

F. Article 2067 also states that "Those who possess for another, or under acknowledgment that they hold under another, never prescribe the ownership even by the continuance of their possession after the term fixed."

G. None of the Articles 539 to 610 of the Civil Code which deal with the law of Succession as they relate to descendants or collateral heirs provide for one child out of 12 to succeed to an estate to the exclusion of the others.

H. Since Claimant was the 10th of 14 legitimate children of the last surviving son being Stephen Chitolie, the laws of succession do not assist the Claimant in his assertion of being the sole grand heir of Chitolie Coolie.

FINDINGS

[66] In my opinion, the Deed of Sale in question was registered at length pursuant to Article 2015 of the Civil Code. At paragraph 3 of the Amended Statement of Claim, it is pleaded that the Deed of Sale is recorded in the Registry of Deeds and Mortgages in Volume 68 Numbers 343 23 and registered on the 21st October 1911. Consequently Article 1980 of the Civil Code requiring "all acts inter vivos, conveying the ownership nuda proprietas or usufruct of an immovable" to be registered at length has been satisfied.

[67] The Civil Code has codified the law relating to ownership of property in St. Lucia. The cardinal rule for interpreting the Civil Code is the Vagliano rule of interpretation illustrated in Bank of England v Vagliano Brothers (1891) A.C. 107.

[68] Vincent Floissac O.B.E. Q.C. who is now Sir Vincent Floissac C.J, retired Chief Justice of our Court, analysed this rule in his dissertation (referred to at paragraph 32 of this Judgment). At pages 11 to 12 op.cit he stated that "According to the Vagliano Rule, unless there is a valid and cogent reason for going beyond a Code, it should be interpreted internally or by reference to the language contained therein, without additions thereto or subtractions therefrom, without enquiring into previous state of the law or otherwise resorting to external aids to its construction."

[69] It is obvious therefore on the application of the Vagliano Rule of interpretation, that Learned Counsel Ms. Chitolie does not have liberty to go outside the Civil Code and import divergent English concepts of land ownership and in particular the concept of reversionary vested interests in land, which are substantially different from the French concept found in the Articles of the Civil Code, in construing paragraph 5 of the Deed of Sale, unless the Civil Code authorizes this.

Apart from Article 916A, there are no other provisions which permit Counsel for Claimant to import English concepts of real property in my view.

[70] The words of the habendum clause in paragraph 5 of the Deed of Sale are precise and unambiguous. In my opinion, the meaning of these words according to the law of St. Lucia (identified at paragraphs 32 to 47 above) is the meaning ascribed to them by Learned Counsel Mr. Gill, and pleaded in the Defence.

[71] Although the words "with right of survivorship between them" in the habendum clause of the Deed of Sale seemingly relate to joint tenancy co-ownership in English law, "joint-tenancy" is not recognized under the law of St. Lucia, it is a strange phenomenon to the French system of co-ownership.

[72] Article 632 states that "No one can be compelled to remain in undivided ownership. A partition may always be demanded notwithstanding any prohibition or agreement to the contrary."

[73] Winston Cenac Q.C. an erudite jurist in his lifetime, in his treatise supra (at paragraph 51 above) points out that there is no right of survivorship applicable to co-owners in the ancient French law, and under the Civil Code when one co-owner dies his share passes to his personal representatives: (pages 13 and 15).

[74] However at page 18 he states that . . . "Nothing has been found in the ancient law preventing a person from disposing of a property in favour of two or more persons with a stipulation that the last survivor of them should eventually take the whole property as owner. Dispositions of this nature can be found in many wills made in St. Lucia and registered in the Registry of Deeds and Mortgages."

[75] I conclude therefore that pursuant to Article 632, Stephen Chitolie and his brothers George and John could have voluntarily brought an end to the survivorship by way

of an amicable partition amongst themselves in the manner pleaded at paragraph 6 of the Defence; although I had ruled that the sanction for failing to disclose the alleged Deed of Partition before the Trial date, was that the Defendants would not be allowed to rely on it.

[76] In the absence of any partitioning, Stephen Chitolie was the sole owner of the property after the death of his 2 brothers on the facts and law of St. Lucia.

[77] Referring to Counsel Ms. Chitolie's submission at paragraph 63 (xiii) above, the Claimant's attempts to contest or challenge the legitimacy of his 12 siblings including the 2 Defendants is doomed to fail for the following reasons –

(1) Pursuant to Articles 38 to 41 of the Civil Code, a record of birth includes a Baptism and Birth Certificate.

(2) Article 129 states that "No one can claim the title of husband and wife and the civil effects of marriage, unless he produces a certificate of the marriage, as inscribed in the registers of civil status, except in the cases provided by Article 35".

(3) Article 35 provides for proof of marriage by the production of family registers or papers or by other writings or by witnesses, upon proof that civil status registers have been unkept, lost, or destroyed.

(4) Article 130 states that "Possession of the status of married persons does not dispense those who pretend to be husband and wife from producing the certificate of their marriage."

(5) Article 132 provides that -

> "Nevertheless in the case of articles 129 and 130, if there be children, issue of two persons who lived publicly as husband and wife, and who are both dead, the legitimacy of such children cannot be contested solely on the pretext that no certificate is produced, whenever such legitimacy is supported by

possession of the status uncontradicted by the record of birth."

(6) Article 196 states that "The filiation of legitimate children is proved by the records of birth inscribed in the register of civil status."

(7) Article 199 states that "No one can claim a status contrary to that which is given him by the record of his birth, accompanied with the possession conformable to such record, and reciprocally no one can contest the status of him who has a possession conformable to the record of his birth."

(8) The Records of the Births and Baptism of the 14 children of Stephen Chitolie show the following information -

(a) The Certified copy of the Extract from the Register of Baptisms, Marriages and Burials for Parish of Vieux Fort for 1923 shows that WILLIAM was born on the 12th October 1923, LEGITIMATE SON OF STEPHEN CHITOLIE AND THERIZA LAIC. No. 122 of Register of Births Page 101 has an entry for unnamed male child of Stephen Chitolie and Louisa Laike born 12/10/23.

(b) The Certified copy of the Extract from the Register of Baptisms, Marriages and Burials for Parish of Vieux Fort for 1923 shows that PHILIPPE was born on the 12th October 1923, LEGITIMATE SON OF STEPHEN CHITOLIE AND THERESE LAIC.

(c) No. 120 Register of Births Page 41 has an entry for unnamed son of STEPHEN CHITOLIE and THEREZA LAIQUE born 11th November 1927. Baptism and Birth Certificate for GEORGE son of STEPHEN CHITOLIE and THEREZA LAIQUE born 11th November 1927.

(d) Baptism and Birth Certificates for

Linda born 7/2/30

Joseph born 18/7/32

Maurice born 21/9/34

Carmen born 1/10/36

Edward born 19/11/37

Paul born 31/7/39

all born to STEPHEN CHITOLIE aka STEPHEN TITOLIE and THEREZA LAIC otherwise known by the other names mentioned at paragraph 21 of this Judgment.

REGISTER OF BIRTHS PAGES contain entries for each of these children though unnamed.

(e) Baptism and Birth Certificate for FRANCIS born 27th February 1941 son of STEPHEN CHITOLIE and THERESA CHITOLIE. No. 28 Page 153 OF REGISTER OF BIRTHS contains an entry for unnamed male child born 27/2/41 of STEPHEN TITOLIE and TERESA LAHIE.

(f) Baptism and Birth Certificate for

Veronica born 16/2/43

Paul Merky born 23/7/45

Theresa born 24/6/48

Allan Gordon born 6/1/51

all born to STEPHEN CHITOLIE and THERESA LAHIC otherwise known by the other names mentioned at paragraph 21 of this Judgment.

REGISTER OF BIRTHS PAGES contain entries for each of these children though unnamed.

(9) Since the Extracts from the relevant Registers for WILLIAM who was the first child, and PHILIPPE who was the second child, disclose that they were legitimate despite their mother not being recorded as THERIZA CHITOLIE or THERESE CHITOLIE, by Virtue of Article 132, their legitimacy cannot be contested solely

on the pretext that no marriage certificate has been produced, since their legitimacy is supported by them having that status on their birth records.

(10) This presumption that William and Phillipe were legitimate children of the Claimant's parents must of necessity serve to compel the conclusion that the Claimant's parents were married before the 12th October 1923. Consequently, the absence of their marriage certificate, is inconclusive, and this does not establish that the Claimant's parents had unmarried status for the nine children preceding the Claimant. Moreover, the Claimant's birth records are also inconsistent since Entry No. 28 Page 153 of the Registrar of Births relating to him, does not disclose that his mother was THERESA CHITOLIE. It states that his mother was TERESA LAHIE.

(11) Since up to the time of Stephen Chitolie's wife's death in 1964, by virtue of Article 155, marriage could only be dissolved by the death of one of the parties, and while both parties to the marriage lived the marriage was indissoluble, the parents of the Claimant and his siblings would have remained married up until the death of Mrs. Stephen Chitolie in 1964.

(12) Besides this, under Articles 196 to 198, the filiation of legitimate children is proved by the records of birth inscribed in the register of civil status, or the uninterrupted possession of the Status of a legitimate child, and such possession is established by a sufficient concurrence of facts indicating the connection of filiation and relationship between the individual and the family.

(13) In light of the provisions, I have considered in the Civil Code, and the facts in this case, Article 203 which states that "proceedings to establish the status of legitimacy may be brought by a petition presented to the Supreme Court for a declaration that the petitioner is a legitimate child" – would be irrelevant. It

certainly cannot be a pre requisite for proceedings relating to the succession of Stephen Chitolie in my view.

(14) On my review of the law and documentary evidence in relation to the Claimant's assertions that he is the only legitimate child of Stephen Chitolie, I have concluded that his assertions lack merit and cannot be relied on to advance his claim.

[78] I also endorse the submissions of Mr. Gill at paragraph 65 H above. The central plinth of the Claimant's case is that he is the sole and first grand heir of CHITOLIE COOLIE who had a reversionary vested interest in the property. In light of my findings on this decisive issue, it is difficult to see how he can successfully advance any of his other contentions, since he is one of the 13 heirs of Stephen Chitolie.

CONCLUSIONS

[79] I therefore rule that the Claimant's statement of case cannot be sustained as a matter of law, and the reliefs sought cannot be ordered by the Court.

[80] I will not permit the Claimant to proceed. I am of the view that my decision has determined the case as a whole.

[81] The Claimant's Claim is therefore dismissed with Prescribed Costs to be calculated on the amount of $50,000.00 pursuant to PART 65.5 (2) (b) (iii) and Appendix B being $14,000.00, with interest at 6% per annum on the Judgment Debt until full and final payment.

Dated this 5th day of April 2007

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OLA MAE EDWARDS
HIGH COURT JUDGE