



**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**HIGH COURT CLAIM NO. 328 OF 2006**

**BETWEEN:**

**KUNTA LAYNE**

Claimant

**V**

**KELSON LAYNE a.k.a.  
KELSON McBARNETT**

Defendant

**Appearances:**

Mr. S. Williams for the Claimant

Mr. C. Glasgow for the Defendant

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2007: July 23;  
September 21.  
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**JUDGMENT**

[1] **MATTHEW J (Ag.):** On August 3, 2006 the Claimant filed a fixed date claim form in which he sought against the Defendant the following:

- (a) a declaration that he is the fee simple owner of the property set out in Deed of Assent No. 2680 of 2005;
- (b) an order that the Defendant forthwith vacate the said dwelling house;
- (c) an injunction to restrain the Defendant or his agents from remaining in the said dwelling house;
- (d) such further and or other relief; and
- (e) costs.

- [2] In his statement of claim the Claimant alleged that he became the fee simple owner of the parcel of land situated at Georgetown and measuring 1,500 square feet by virtue of a deed of assent dated August 25, 2005 and registered as Deed No. 2680 of 2005.
- [3] He alleged that the Defendant and the Claimant's cousin, Edna Marksman, live in a dilapidated house on the land.
- [4] He alleged that he wants to demolish the building and rebuild a modern house on the spot, but the Defendant, despite three notices written to him between July 21, 2005 and April 21, 2006, has refused to leave the premises.
- [5] The Defendant acknowledged service of the claim and filed his defence on September 27, 2006. In his defence the Defendant alleged that the property does not belong to the Claimant and that he is entitled to an interest in the property.
- [6] The Defendant filed a counterclaim in which he sought the following:
- (a) a declaration that he is entitled to a one-sixth share of the property;
  - (b) cancellation or amendment of the grant of Letters of Administration No. 121 of 2005;
  - (c) cancellation of Deed No. 2680 of 2005;
  - (d) costs; and
  - (e) such further or other relief as to the Court may seem just.
- [7] At the trial only the Claimant gave evidence in respect of the claim. The Defendant gave evidence on his behalf and called his cousin, Noel Layne, as the only witness.
- [8] In his witness summary Kunta Layne stated that he was presently residing in New York, USA. He said that on August 23, 2005 he obtained a grant of Letters of Administration in the estate of his mother, Esmie Layne, who died on March 19, 1978; and on August 25, 2005, as Personal Representative, he transferred the property to himself.

- [9] He stated that the Defendant is the son of his sister, Virginia Layne, who has since died.
- [10] He claimed that none of his siblings who all live abroad have shown any interest in the land or property and he had paid taxes on the property. He submitted six receipts to indicate that he had paid taxes for periods between 2004 and 2005.
- [11] When he was cross-examined, he admitted that Esmie Layne had six children including himself. The other five were:
- (a) Carmen Layne who lives in Curacao;
  - (b) Henderson Layne who is dead;
  - (c) Virginia Layne who is dead;
  - (d) Wesley Layne who lives in New York; and
  - (e) Neville Layne who lives in England.
- [12] He said that Henderson and Virginia died after their mother, Esmie. Virginia had four children, two boys and two girls; and Henderson had a lot of children.
- [13] He said he applied for Letters of Administration because the others were not interested. They did not come up with the money to help. He said that the Defendant lived on the property together with Edna Marksman and Noel Layne, but Noel had recently moved out. He admitted that the Defendant had been living on the property from 1955 to the present time.
- [14] He said that Edna was the daughter of his mother's sister. He said also that since the deed of assent he had transferred the property to his three children while maintaining a life interest in the property.
- [15] He admitted that from 1959 he had not effected any repairs on the house. He admitted that the Defendant and Noel had effected repairs to improve the building.

- [16] Kelson Layne stated that he was born on September 24, 1955 in the house which is the subject matter of these proceedings. He said the property was owned by Margaret Layne, the mother of Esmie Layne.
- [17] He stated that after Esmie Layne died on the 19<sup>th</sup> of April 1978 the house was occupied by Edna Marksman, Noel Layne and himself. He said he paid taxes for the property which remained in the name of Margaret Layne.
- [18] He said he made repairs to the house during the years and was assisted by his cousin, Noel Layne. He said he was very surprised when he received a letter from the Claimant's solicitor asking him to vacate the premises.
- [19] Under cross-examination he said the house that he lives in is family property.
- [20] Noel Layne stated that he was born in Curacao on the 7<sup>th</sup> day of April 1950, to Carmen Layne and came to St. Vincent as a baby in 1952 to live with his grandmother, Esmie Layne. He said his grandmother died in 1978.
- [21] He said after his grandmother's death he was aware that his cousin, Kelson Layne, paid taxes in the late 1970's and over the years he paid some of the taxes as well.
- [22] He said he assisted Kelson to repair the house in the years 1991 and 1999. He said he later learnt that the Claimant was going ahead of Kelson and himself to pay the taxes.
- [23] When he was cross-examined he said he understood that from about the year 2000 the Claimant paid the taxes.
- [24] Learned Counsel for the Claimant submitted that the Defendant does not have a legal interest in the property and as such he is not entitled to remain in possession of the property.

- [25] Counsel further submitted that the Defendant had no locus standi to challenge the ownership of the Claimant to the property.
- [26] Learned Counsel for the Defendant submitted that the conduct of the Claimant to transfer the entire property to himself and later to his children to the exclusion of his other siblings and/or their children was dishonest and amounted to a fraud. Counsel cited the case *R v Sinclair* 1968 3 All E.R. 241.
- [27] Counsel further submitted that under Section 47 of the Administration of Estates Act, Cap 377, an Administrator such as the Claimant in this case once appointed holds the Intestate's estate on trust for the beneficiaries of whom the Defendant is one. Counsel cited the case of *Hussey v Palmer* 1972 3 All E.R. 744 for that proposition.

#### CONCLUSIONS:

- [28] Margaret Layne was the owner of certain property in Georgetown when she died leaving her daughter, Esmie Layne, as her beneficiary.
- [29] Esmie Layne died on the 19<sup>th</sup> day of April 1978 leaving the following six children:
- (a) Kunta, the Claimant who resides in New York;
  - (b) Carmen, the mother of Noel Layne
  - (c) Henderson, who has since died, but leaving several children;
  - (d) Wesley, presently residing in New York;
  - (e) Neville, who lives in England; and
  - (f) Virginia, the Defendant's mother, who died on the 9<sup>th</sup> day of November 1989.
- [30] Since the death of Esmie the persons who have lived in the portion of land measuring approximately 1,500 square feet have been Edna Marksman, Esmie's niece; Kelson Layne and Noel Layne until recently. The Claimant has not lived on the land since that time.

[31] Upon his mother's death the Claimant obtained Letters of Administration No. 121 of 2005 on August 23, 2005 and then by deed of assent No. 2680 made on August 25, 2005 he transferred the land to himself and in evidence he admitted that he has since transferred the land to his three children while maintaining a life interest in it.

[32] It seems to me that between 1978 and 2005 when the Defendant, Noel and Marksman were living on the land they could be in adverse possession.

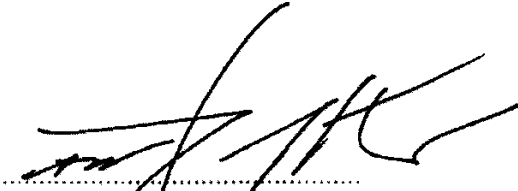
[33] The Claimant can on no account, 27 years after the death of his mother, claim the land as his own to the exclusion of all the other children and grandchildren of Esmie Layne. Section 47 of the Administration of Estates Act, Cap 377 imposes a trust upon him.

[34] Any deed of the land made by him to his three children must be set aside. At best he only has an interest together with all his other siblings and in the case where these siblings have died, their children.

[35] In the circumstances, I refuse to make a declaration that the Claimant is the fee simple owner of the property set out in the deed of assent, No. 2680 of 2005.

[36] I order the cancellation of deed of assent No. 2680 of 2005 and declare that the Defendant is entitled to a one-sixth share of the property.

[37] There will be no order as to costs but I think the Defendant is liable to pay one-sixth of the expenses paid by the Claimant in obtaining Letters of Administration.

  
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Albert N. J. Matthew  
HIGH COURT JUDGE (Ag.)