

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 1996/0400

BETWEEN:

**SUZANNA ISIDORE (acting on behalf of the Heirs of)
ZEPHERN MATHIEU**

Claimant

and

**[1] NORTON GASPARD of Bridge Street Castries
[2] ELFRIDGE GASPARD of Gros Islet
[3] NORTON and ELFRIDGE GASPARD acting on
behalf of the Heirs of EVARISTE GASPARD**

Defendants

Appearances:

Mr. Alvin St. Clair for Claimant
Mr. Kenneth Monplaisir QC for Defendants

2011: August 12.

JUDGMENT

[1] **GEORGES, J. [AG.]:** On 17th May 1996 the claimant Suzanna Isidore acting on behalf of the Heirs of Zephern Mathieu filed a writ of summons indorsed with statement of claim claiming against the defendants, Norton Gaspard, Elfridge Gaspard and Norton and Elfridge Gaspard acting on behalf of the Heirs of Evariste Gaspard, an order rectifying the Land Register by expunging the names of the defendants from the Proprietorship of the Land Register as owners with absolute title of two parcels of land situate at Vieux-Sucreic in the Quarter of Gros-Islet

registered as Block 1253 B 138 and Block 1253 B 142 respectively (hereinafter referred to as "the disputed lands").

- [2] Along with an order for costs and other consequential relief, the claimant also applied for a perpetual injunction restraining the defendants from further occupation of the disputed lands.
- [3] It must be said that the matter has been before the court for 15 years and ought properly to be disposed of now if for no other reason than for the efficient administration of justice. In light of the numerous events which occurred during that time it is appropriate that a brief background be furnished to put the case in proper perspective.

Background

- [4] The reason for the claimant's action stems from a decision of Land Adjudication Officer J.M.F White who heard Petition 6A21P on 12th and 22nd September 1986 which was an appeal by the claimant from a decision he had made on 24th April 1986 and in which he awarded the disputed lands to the defendants but apparently partially reversed his decision on appeal.

The Substantive Claim

- [5] The gravamen of Suzanna Isidore's claim is that she is the rightful owner of the disputed lands on the basis that the lands were awarded to her by the Adjudication Officer in his decision coming out of Petition 6A21P (the appeal petition). She alleges that after the decision of the Adjudication Officer was made the names of the defendants were erroneously entered as owners with absolute title on the Land Register. Upon realizing the error the claimant alleges that she wrote to the Registrar of Lands informing him of this but her letter was of no avail as the error was not rectified. It was this inaction which led her to file action in May of 1996 just under 10 years to the date of the Adjudication Officer's decision.

Defence

- [6] On 19th June 1996 the defendants filed a defence to the claim in which they denied that the claimant was the lawful owner with absolute title of the disputed lands. They averred that the lands were in fact registered in their respective names. Alternatively, they pleaded that even if the court were to find that the claimant was entitled to her claim then in their view the claim was now prescribed. On this basis the defendants urged the court to dismiss the claim with costs.

Chronology of Events

- [7] A number of events occurred in relation to the claim which merit mention. On 20th February 1998 the claimant filed an application with supporting affidavit for an injunction to restrain the defendants from carrying out work on the disputed lands. On 23rd March 1998 an affidavit in reply was filed in which it was denied that any work was being carried out on the disputed lands. The hearing of the application was adjourned a number of times but eventually, on 5th May 1998, Archibald J (Ag.) granted the injunction endorsed with a penal notice restraining the defendants from clearing the disputed lands.
- [8] On 9th July 2001 the matter came on for pre-trial review before Barrow J (Ag.) The learned judge ordered an adjournment so as to “allow the defendants to consider whether the documentary evidence permits the defence to be maintained.”
- [9] On 17th June 2002 Saunders J (as he then was) ordered counsel for the parties to attend before the Registrar of Lands to ascertain whether the disputed lands were awarded to the claimant by the Adjudication Officer in his decision arising out of Petition 6A21P. The Registrar was also ordered to make a written report on the issue by 30th June 2002 and serve copies on all parties.
- [10] In compliance with the order a report was submitted by the Acting Registrar at the time Agnes Actie but was not dated. In that report she concluded that:
“...Parcel 1253B 142 was the subject of the dispute in 6A4D. Parcel

1253B 142 was awarded to Norton & Evariste Gaspard. The Adjudicator accepted that parcel 1253B 142 was sold to Norton & Evariste Gaspard by virtue of Deed of Sale by Evaris Gaspar dated 1st August 1944 and registered in Vol.87 No.53310. The vendor, Evaris Gaspar obtained title from Wd. Zepherin Mathieu in Deed of Sale registered in vol. 65 No. 31640..."

She continued by addressing the circumstances surrounding parcel 1253B 138:

"...Parcel 1253B 138 was awarded to the Evaristes' in Dispute 6A4D. In Petition 6A21P the decision was reversed and the parcel was awarded to the Mathieus'. Upon finalization of the Adjudication Record parcel 1253B 138 was erroneously registered in the name of the Heirs of Evaris Gaspard."

The court makes no comment on the Acting Registrar's conclusion for the time being.

- [11] On 14th February 2004 an application to strike out the statement of claim as disclosing no reasonable grounds and having no prospect of success came on for hearing before Master Brian Cottle. On the basis of written submissions of learned counsel the learned Master on 30th August 2004 struck out the claim against which an appeal was filed on 14th February 2005. The appeal was allowed and the learned Master's decision was set aside. The Court of Appeal ordered that the matter go back to the High Court for case management in preparation for trial. It should be mentioned that the claimant changed her attorney shortly after the appeal.
- [12] Thereafter the matter came up before Mason J. where it was adjourned for diverse reasons. Eventually, witness statements were filed in June, July, and August of 2005 and the parties complied with standard disclosure procedures. Finally, with some prospect of resolution on the horizon on 25th September 2007 the trial bundle was filed by learned counsel for the claimant.
- [13] On 8th October 2008 the matter came on for hearing and I ordered that a report from the Registrar of Lands be made available to counsel for each party. It was also ordered that counsel file and exchange written submissions no later than 21st October 2008. I pause only to say that the Acting Registrar of Lands at this time was now Paul Popo who adopted the original report submitted by his predecessor

Agnes Actie.

- [14] On 21st October 2008 upon hearing counsel for the respective parties the court committed to write its judgment as soon as it received the Surveyor's Report and the written submissions of counsel for the parties. The submissions were filed on 6th November 2008 and 17th November 2008 respectively. I now proceed to decide the issues as pleaded.

Issue to be determined

- [15] The main question which falls to be decided is whether the names of the defendants were erroneously entered on the Land Register as owners of the disputed lands warranting an order for rectification of the Register to reflect the name of the claimant as proprietors thereof.

All other related issues that bear on the main issue will be addressed as they arise.

Submissions of the Parties

- [16] Learned counsel for the claimant submitted that the disputed lands included parcel 1253 B142. I am unable to accept this especially when read with the report of the Acting Registrar. The excerpts of the Acting Registrar's Report in paragraph 10 (above) comports with the decision of the Adjudication Officer although it is not crystal clear what the Adjudication Officer meant by his use of the expression "disputed land" in his second decision. Upon careful reading of the Report of the Acting Registrar with the two decisions of the Adjudication Officer against the background of the evidence and the unfolding of events, I accept the conclusion in the Acting Registrar's Report that the disputed lands were awarded to the Gaspards in the first decision of the Adjudication Officer. I also accept that the second decision of the Adjudication Officer reversed his previous decision only in respect of parcel 1253 B138 of the disputed lands which, in the words of the Acting Registrar's Report was "erroneously registered in the names of the

defendants.”

[17] The court is entitled to draw inferences from the two decisions of the Adjudication Officer read as a whole. In his words:

“There is little doubt that the Gaspards do own a half carre of the Vieux Sucreic lands as indicated by their documents submitted...After careful consideration of the above facts I believe that this disputed area is not the half carre that is owned by the Gaspard brothers...”

[18] The inference to which I am irresistibly driven, and do draw, is that the Adjudication Officer seemed to be suggesting that the area owned by the Gaspards (parcel 1253B 142) is not the subject of his second decision. Therefore, when he reversed his first decision after the claimant had filed Petition 6A21P he awarded ownership of parcel 1253B 138 to the claimant. His decision in respect of parcel 1253B 142 remained unreversed and unaffected.

[19] It is therefore my considered view that in light of all the circumstances the registration of parcel 1253B 138 in the names of the defendants must have been done by mistake because it is clear from his second decision that the Adjudication Officer awarded that parcel of land to the claimant. It cannot be disputed that section 98 of the **Land Registration Act** (LRA) empowers the court to rectify the Register because there must have been a mistake in the recording process in light of the second decision and that view is reinforced by Byron J.A. in **Webster v Flemming**, Anguilla Civil Appeal No. 6 of 1993 where the learned judge lays down the governing principle in this way:

“In my judgment any mistake made in the registration process could be rectified. The court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 of the Land Adjudication Ordinance provides relief only for those mistakes occurring in the registration process”

[20] Learned Queen’s Counsel for the defendants Mr. Kenneth Monplaisir submitted that Dispute 6A4D was a boundary dispute and sought to impugn the decision of the Adjudication Officer on the basis that he had no authority under section 20(2)

of the **Land Adjudication Act (LAA)** to the hear the appeal against his own decision. In her report the Acting Registrar of Lands shed some light on the workings of the land adjudication process. I can do no better than refer in full to the relevant part of her Report:

“In arriving to my conclusion I consulted Mr. Lester Matyr, the former Registrar of Lands, for clarification of the conflicting decisions of J.M.F White. He intimated that during the Land Registration and Titling Project (LRTP) where a dispute arose there would first be a hearing before the adjudication officer. Where an aggrieved party was dissatisfied with the decision of the adjudication officer, a written notice of an intention to appeal would be given in accordance with s.15 of the Land Adjudication Act No II of 1984 as amended by Amendment No.8 of 1986. A petition would be filed whereby the adjudication officer would revisit his decision. The practice continued throughout the project despite objections by Attorneys-at-Law and other concerned individuals.”

That practice has in fact remained unchallenged and has crystallized into the norm. In light of this, the decision of the Adjudication Officer in this matter is final and binding.

[21] Moreover, section 15(3) of the **LAA** allows a person who is dissatisfied with the decision of the Adjudication Officer to give him written notice of his or her intention to appeal. This provision is repeated in section 20(2) of the **LAA**. Section 20(4) allows parties, after the Adjudication Record is finalized by the signing of a certificate by the Adjudication Officer 2 months within which to appeal his decision to the Adjudication Tribunal. Section 24 goes on to grant yet another safeguard by allowing a party who is dissatisfied with the decision of the Land Adjudication Tribunal 2 months within which to appeal the Tribunal’s decision to the court.

Thus the onus fell on the defendants to utilize all these statutory provisions to have their grievances resolved. None of the available means of redress were utilized in the time allotted and so in my view the defendants ought not to be allowed to use this court to seek a remedy which is plainly out of time. This would be tantamount to an abuse of process.

[22] That view is further reinforced by the decision of Barrow J. [Ag.] (as he then was)

in Saint Lucia Suit No. 680 of 1993 **Felicite Castang (nee Emilien) and Florus Joseph (commonly called Rufus) Louis on his own behalf and on behalf of the Heirs of Walter Louis (deceased)** which is instructive. There the learned judge said that the whole scheme of the LAA 1984 was to provide a final determination of the ownership of land. Decisions of the Adjudication Officer were subject to appeal and such decisions functioned as judgments in rem. In the learned judge's estimation the decision of the Land Adjudication Officer represented a final decision of a competent tribunal and where such decisions are unchallenged **within the relevant time** the matter is res judicata (My emphasis).

[23] In light of the defendants' laxity in using the statutory provisions available to them, this court is unwilling to inquire into the findings and decisions of the Adjudication Officer. In **Skelton v Skelton** (1986) 37 WIR 177 the court in pronouncing on section 140 of the **Land Registration Ordinance** of the British Virgin Islands (identical to section 98 of the **LRA**) said this:

"I would agree that if the expression of the final decision of the Adjudication Officer was incorrectly recorded on the Land Register section 140 could be resorted to. I cannot, however, accept that it can be applied in the original jurisdiction of the High Court to alter in a material particular his individual findings of fact, based upon his own enquiry, simply because the judge sitting in an original jurisdiction is of the opinion that his findings were erroneous."

[24] Finally, the defendants pleaded that if this court should find that the claimant is entitled to her claim then it is their view that her claim is prescribed. I accept the submissions of learned counsel for the claimant that **Article 2112** of the **Civil Code** of Saint Lucia does not apply on these facts. Examination of all the relevant documents clearly shows that the defendants were erroneously registered as owners with absolute title of parcel 1253 B 138 of the disputed lands in October 1986. This meant that the claimant had until October 1996 to file a claim in order to interrupt prescription. This was in fact done in May 1996.

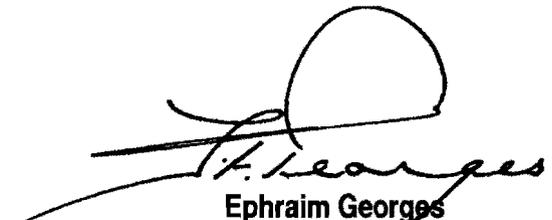
[25] **Article 2085** of the **Civil Code** stipulates that prescription may be interrupted by "a judicial demand in proper form, served upon the person whose prescription it is

sought to hinder...” The position was reaffirmed by Gordon J.A. in Civil Appeal 7 of 2005 **Anastasié Charles et al v Winjammer Landing Company Limited et al** and Civil Appeal No. 42 of 2005 **David Sweetnam et al v the Government of Saint Lucia et al** (consolidated) where he said:

“It must follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such a suit on the party whose prescription it is sought to interrupt. This conforms absolutely with the plain and ordinary meaning of the language of Article 2085 of the Civil Code...”

Conclusion

- [26] In light of all of the foregoing, I find that the defendants' names were entered by mistake as owners with absolute title of parcel 1253B 138 on the Land Register. It is accordingly ordered and directed that the Registrar of Lands do rectify the Land Register in respect of parcel 1253B 138 in the Quarter of Gros-Islet by deleting the names Norton Gaspard and Elfridge Gaspard from the Proprietorship Section and substituting the name of Suzanna Isidore.
- [27] I also order that the defendants pay the claimant's costs in the amount of \$5,000.00.



Ephraim Georges
High Court Judge [Ag.]