SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2006/0991

BETWEEN:

MORELLA VITALIS in her capacity as executrix of the estate of the late LENNARD VITALIS deceased of Bishop Gap, Castries

Claimant

and

[1] PAUL ST. ROSE
[2] MICILAN JANVIER aka MICILLA JANVIER NEE ST. ROSE
Both heirs of Vitalis St. Rose Simon, Bagatelle, Castries

Defendants

Appearances:

Mr. Horace Fraser for the Claimant
Ms. Eldonna Lendor for the Defendants

2009: January 27;
February 24;
May 28;
2011: December 9.

JUDGMENT

[1] **GEORGES J. [AG.]:** In this action which was instituted by claim form dated and filed 22nd December 2006 the claimant claims against the defendants the following declarations and orders namely:

(1) A declaration that Lennard Vitalis, deceased, is the sole beneficial owner of 5½ carres or 5.57 acres or 2.25 hectares of land situate at Du Brossay in the quarter of Castries registered in the Land Registry as Block 1045B Parcel 3.

(2) An order directing the Registrar of Lands to correct the Land Register on the ground of mistake to insert the name Lennard Vitalis as the owner of land registered as Block 1045B Parcel 3.

(3) A declaration that the defendants and persons claiming through them have no claim or right or interest in the land registered as Block 1045B parcel 3 and are therefore trespassers.

(4) An order of possession be directed to the defendants and persons claiming through them and who are in occupation of land registered as Block 1045B Parcel 3 to vacate the said land immediately.

(5) Mesne Profit.

(6) Costs.

Historical Background

[2] In paragraph 2 of her supporting affidavit of even date the claimant avers that at the date of Lennard Vitalis' death (hereinafter referred to as "the deceased") he had an interest as purchaser in a parcel of land situate at Du Brossay in the quarter of Castries more particularly described as Block 1045B Parcel 3 which is registered in the Land Registry in the name of "heirs of St. Rose Simon, c/o Lennard Vitalis, 49 Chisel Street, Castries" as proprietors.

[3] The said parcel of land was purchased by the deceased in 1971 from Isidore St. Rose aka Lionel St. Rose for $720.00 the claimant averred and was evidenced by a Deed of Sale executed before Vernon Alexander Cooper Notary Royal on 20th August 1971 and registered in the Registry of Deeds and Mortgages on 26th August 1971 in Volume 11 of No. 96558. Isidore St. Rose derived this title in the said land by virtue of succession – he and his brother Sanciis St. Rose being the last surviving heirs of their father St. Ville St. Rose succeeding to his estate. Sanciis St. Rose died without issue on 27th February 1963 thus leaving Isidore St. Rose as his sole heir-at-law and legal representative.

[4] The said parcel of land (Parcel 3) measured 2.25 hectares or 5.57 acres according to a plan of survey by Licensed Land Surveyor J.D. Girard dated 12th September 1989 and lodged at the Survey Office on 1st November 1989 as Drawing No. C7510B Record No. 458/1989.

[5] On 14th January 1986 the deceased filed a claim under the Land Registration and Titling Project (LRTP) pursuant to the Land Adjudication Act 1984 (LAA) in relation to the said parcel of land (Parcel 3) in the name of "the Heirs of St. Rose Simon c/o Lennard Vitalis, 49 Chisel Street, Castries".

[6] At paragraph 8 of her said affidavit Morella Vitalis the claimant declared that it should be noted that **when the deceased made the said claim it was in respect of 8½ carres of land – a greater portion of land than the land he had purchased from Isidore St. Rose which was in actual fact 5½ carres**. Morella Vitalis acknowledged and contended that the deceased in all earnestness recognized that the additional 3 carres of land was owned by heirs of St. Rose Simon but by mistake instead of inserting the name of "heirs of St. Rose Simon" alongside his own as claimants jointly he inserted the name "heirs of St. Rose Simon" in care of his name in the honest but mistaken belief that the effect would have been a joint claim. (Emphasis supplied.)

[7] Ever since August 1971 as a result of the purchase of the said land the deceased according to Morella Vitalis has exercised dominion over the said land to the exclusion of the whole world she avers until his death in June 2000.

[8] Therein lies the rub for after the deceased's death Paul V. St. Rose the first defendant began renting part of the said land to persons and by a judgment dated 15th November 1991 in Suit No. 1991/0194 the deceased obtained an order of possession against the defendants who had unlawfully trespassed on the said land. By that order the claimant/affiant asserted that the court had given due recognition to the deceased's ownership of the land.

[9] Furthermore by yet another order dated 21st October 1992 in the selfsame suit leave was granted to the deceased to issue a Writ of Possession to evict the defendants from the said land namely Block 1054B Parcel 3.

[10] I pause to say that practically all the assertions and declarations made by Morella Vitalis in her affidavit are supported by documentary evidence of heirship land title and ownership of the land in question and no appeal was lodged against the eviction order of the Court dated 21st October 1992 and no challenge by any or all of the defendants being heirs of St. Rose Simon has been made in respect of the deceased's ownership of the said land. In the premises the claimant craves that this Court give full effect to the judgment of Justice Albert N.J. Matthew (as he then was) dated 21st October 1992.

[11] The claimant further prays that based on the Deed of Sale dated 20th August 1971 followed by the deceased's physical possession of the said parcel of land (Parcel 3) from August 1971 to June 2000 the date of his death he had legally and effectively prescribed ownership of the said parcel of land in accordance with Article 2112 of the **Civil Code** Chapter 242 of the **Revised Laws of St. Lucia** 1957 ("the Code").

[12] Article 2112 of the Code stipulates that:

> "He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years.

[13] Curiously by without notice application by Morella Vitalis pursuant to Part 11: 14 of Civil Procedure Rules 2000 (CPR) in Civil Suit 1991/0194 Master Brian Cottle (as he then was) on determination without hearing on 16th September 2004 ordered that the judgment of Justice Albert Matthew dated 21st October 1992 granting Lennard Vitalis possession of Block and Parcel No. 1045B 3 be interpreted to hold the meaning that Lennard Vitalis also has title of the said Parcel.

[14] The learned Master further ordered that the Registrar of Lands amends (sic) the Land Register to reflect the Judgment and declaration of this Court.

[15] On 8th November 2006 however on a with notice application by Paul St. Rose an heir of Vitalis St. Rose Simon as "a Proposed Party" with Micillan Janvier (nee St. Rose) also known as Micilla Janvier (nee St. Rose) Her Ladyship the Honourable Justice Ola Mae Edwards (as she then was) ordered that:

1. The purported order made by the Master on 16th September 2004 was never made by the Master and is therefore invalid.
2. Consequently any subsequent rectification of the Land Register arising from the purported order made on 16th September 2004 is null and void.

[16] In his affidavit in response to the claimant's claim and supporting affidavit Paul St. Rose lays great store on the order of Justice Ola Mae Edwards impugning the validity of the purported order of Master Cottle (as he then was) in Civil Claim 1991/0194 dated 16th September 2004 and declaring any subsequent rectification of the Land Register arising from the purported order as null and void.

[17] He further avers at paragraph 41 that although Lennard Vitalis had the August 1971 Deed of Sale (as evidence of his title) the land adjudicators refused to register title to the lands to him being satisfied that he did not have documentary legal evidence of same. He went on to assert that Lennard Vitalis never had actual possession nor any effective possession of any parts of the land (Parcel 3).

[18] Consequently he sought the following relief namely:

1. A declaration that all the Lands belong to the Heirs of Vitalis St. Rose Simon being the lawful heirs of Vitalis St. Rose Simon.
2. A declaration that the claimant and her deceased husband Lennard Vitalis have no legal right title and or interest in the Lands.
3. An order directing the Registrar of Lands to restore any Land Register relating to the Lands particularly that of Block 1045B Parcel 3 and Block 1045B Parcel 53.

4. Any other order as to the Court may seem just.

[19] In her affidavit in reply filed 1st March 2007 Morella Vitalis contended that the contents of the affidavits of Paul St. Rose as well as that of Micilla Janvier were in the main inaccurate misleading and scandalous. They were clearly confusing Vitalis St. Rose Simon with Vitalis St. Rose. The second defendant she declared was not the daughter of Vitalis St. Rose. At all material times she maintained Vitalis St. Rose was the grandson of Vitalis St. Rose Simon.

[20] At all material times the claimant further averred the lands owned by Vitalis St. Rose were divided among his three children. Vitalis St. Rose she pointed out was married to Anestasia St. Rose who inherited his interest in the land he claimed from his father on his death and the land which she herself claimed through her deceased husband is not the land inherited by Anestasia St. Rose to which the defendants had a claim.

[21] In conclusion, the claimant deposed that the defendants have never been in possession of the land which she is claiming.

History of the Action

[22] This fixed date claim first came before Her Ladyship, Justice Sandra Mason, QC on 29th January 2007 and was adjourned for case management on 1st March 2007. Affidavits in reply were ordered to be filed on 12th February 2007. Case management was adjourned to 26th June 2007. Trial was set for 22nd October 2007 but was adjourned to 20th February 2008. No reasons for those adjournments were stated.

[23] The matter first came before me on 18th November 2008 and was adjourned to 9th December 2008 when learned Counsel sought permission to be removed from the record as Attorney for the defendants on the grounds that:

(a) The defendant Paul St. Rose was not in agreement with the applicant's decision to have the matter determined by written submissions.

(b) The applicant clearly indicated to the defendant that this matter could be determined on consideration of (1) documentary evidence of heirship (2) documentary evidence of land title and ownership and (3) the interpretation of the land laws of Saint Lucia and therefore could properly be disposed of by written submissions as agreed by the Court. However the defendant rose and indicated to the Court that he wished to cross-examine Morella Vitalis the claimant who is herself claiming the property through her deceased husband.

(c) The defendant further misrepresented to the Court that the applicant had not complied with an order of Justice Ola Mae Edwards referring to Claim No. SLUHCV 1991/0194 in which the applicant successfully got set aside an order which had purportedly but not in fact been made by Master Cottle as he then was.

Contrary to the distortions of the first defendant the applicant registered the said order and ensured that the Land Register was reverted to the name Heirs Vitalis St. Rose Simon. It was as a result of this action that the claimant filed the present suit to finally determine the matter.

In light of the misrepresentations and declarations of the defendant to the Court it would not be possible for a lawyer client relationship to continue between the applicant and the defendant.

[24] On 9th December 2008 hearing of the matter was adjourned to 27th January 2009 to afford the defendant time to retain new counsel whereupon Eldonna Lendor filed a notice of acting on 24th February 2009 as representing the defendants.

[25] The matter finally came on for hearing on 23rd March 2009 when Ms. Lendor was directed to peruse the recent Privy Council decision of **Sylvina Louisien v**

Joachim Rodney Jacob[1] to determine its impact on the instant case and the defendants' case in particular.

[26] When the matter was finally argued before the court on 5th May 2009 it was ordered and directed that counsel for the claimant put his submissions in writing by 26th May 2009 and that counsel for the defendants reply thereto by 16th June 2009 and that the court was to rule 14 days thereafter (i.e. on 30th June 2009) to which date the matter was adjourned.

[27] Mr. Horace Fraser learned counsel for the claimant filed comprehensive legal submissions on 26th May 2009 and five case authorities. Regrettably no written submissions in reply as ordered by the Court on 5th May 2009 were filed by Ms. Lendor on behalf of the defendants who instead by notice of application purportedly made pursuant to Parts 26.2(2) and 26.9 CPR and filed on 16th June 2009 alleged that the claimant in his application made on 5th May 2009 had failed to comply with the provisions of Part 11 CPR and in particular Rule 11.6, Rule 11.7, Rule 11.8 and Rule 11.11 and as such was not properly before the court and was therefore void and of no effect with costs to be deferred until the final determination of the hearing. It must be noted however that whilst it is true that the general rule (R11.6 CPR) is that an application of this kind must be in writing in Form 6 an application may nevertheless be made orally if the court dispenses with the requirement – Rule 11.6(2)(a) which was what had in fact occurred.

[28] Alternatively, Ms. Lendor prayed that the defendants be granted an extension of time in which to file submissions pursuant to the Court Order of 15th May 2009 (sic) such extension not to exceed three days hereof and that the claimant (sic) be relieved from any and all sanctions arising from the non-compliance with the said order and that there be no order as to costs against the defendants.

[29] Having carefully perused the grounds of the defendants' application which largely repeats the contents of the application and the affidavit in support of Paul St. Rose

[1] Appeal No. 93 of 2007 delivered in February 2009.

(the first-named defendant) there is no doubt in my mind that in light of the generally unsatisfactory nature of the application itself and no good reason having been advanced by counsel for non-compliance with the order of the Court dated **5th May 2009** the application was dismissed. And that decision is reinforced having regard to the woefully dilatory chronology of events in this matter. (Emphasis supplied)

The Hearing of 5th May 2009

[30] The hearing before the court was relatively brief. In a nutshell the claimant Morella Vitalis in her capacity as executrix of the estate of the late Lennard Vitalis claims to be the legal owner of 5½ carres or 5.57 acres or 2.25 hectares of land situate at Du Brossoy in the Quarter of Castries registered in the Land Register as Block 1045B Parcel 3.

[31] Lennard Vitalis the claimant's husband became seized with title to the said land by Deed of Sale having purchased the said parcel of land in August 1971 from Isidore St. Rose.

[32] At the Land Registration and Titling Project (LRTP) Lennard Vitalis made a claim in respect of 8½ carres of land – his 5½ carres and 3 carres belonging to the heirs of St. Rose Simon – the claim being made in the name of "the Heirs of St. Rose Simon" c/o Lennard Vitalis 49 Chisel Street Castries.

[33] The claimant now moves the court for an order directing the Registrar of Lands inter alia to correct the Land Register in relation to the 5 ½ carres on the ground of mistake and also on the basis of Lennard Vitalis' title to the said land and by prescription as a result of his long possession.

Claimant's Legal Contention

Learned counsel for the claimant submitted that the legal owner of land by good title before the LRTP could not be dispossessed of that land by the LRTP whether by his fault or by his own mistake or any mistake whatsoever during the land

adjudication process. That in my view is with respect a sweeping and a not altogether accurate statement of the law especially in respect of the words which I have underlined.

[34] In this regard learned Counsel continued sections 98(2) and 99(2) of the **Land Registration Act** 1984 (LRA) were questionable because their effect seemed to deprive a legal owner of his property.

[35] Section 98(2) LRA which is headed "Rectification by Court" states that:

> "(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default."

And section 99(2) which is captioned "Right to Compensation" stipulates that:

> "(2) No compensation shall be payable under this Act to any person who has himself or herself caused or substantially contributed to the damage by his or her fraud or negligence, or who derives title (otherwise than under a registered disposition made in good faith and for consideration) from a person who so caused or substantially contributed to the damage."

Each case would therefore in my view have to be determined on its merits that is to say on its own peculiar facts and surrounding circumstances.

[36] Learned Counsel argued that his case was premised on the fact that the claimant's husband's title (i.e Lennard Vitalis) to the land was protected by section 6 of the **Constitution Order of Saint Lucia** 1978 – protection from deprivation of property without compensation and it followed that no system could be implemented by the Crown that could serve to defeat a perfect title without an avenue for correction of any defects which affects a previously acquired perfect title. The question is what is a so-called "perfect title?" Bearing in mind that a registered title is indefeasible (except on the grounds of fraud or mistake) it is imperative that claims for title or registration should be subject to searching

scrutiny to ensure that they satisfy the necessary requirements of the registration process. Vigilance must be constantly exercised and standards must on no account be compromised.

[37] A restrictive meaning of what constitutes "a mistake" in the context of section 98 of the LRA could have the possible effect of stymieing the constitutional protection afforded to owners of land by section 6 which could not be right, learned counsel submitted. For the reasons stated I beg to demur.

The Issue

[38] That as I see it is the question or issue which falls to be determined in this matter and lies at the heart of this case. That is to say, are the facts and circumstances (i.e. the evidence) by which the claimant's husband Lennard Vitalis obtained ownership of Block 1045B Parcel 3 (as outlined in paragraphs 30 – 33) tantamount to or constitute a mistake within the context of section 98 LRA so as to justify rectification of the register?

[39] Addressing the court Mr. Fraser declared that he had an opposing view of the Privy Council decision in **Sylvina Louisien v Joachim Rodney Jacob**. The claimant he said had sought to claim two specific parcels of land namely Block 1045B Parcel 3 and Parcel 53. Ms. Lendor contended that the claim should not be allowed on the basis of res judicata and constituted an abuse of process. The doctrine of res judicata clearly cannot apply when one is seeking to rectify the Land Register on the ground of mistake or fraud in the registration process and where those issues were never the subject matter before any tribunal under the LRTP.

[40] It is noteworthy that at paragraph 41 of **Louisien v Jacobs** their Lordships indicated that the principle set out in **Skelton v Skelton**[2] and the line of cases that followed it are in fact a correct and useful statement of the law. Mr. Fraser, however, pointed out that **Louisien v Jacob** could clearly be distinguished from

[2] (1986) 36 WIR 177, 181-182

the instant case on the basis of the facts. **Louisien v Jacob** he contended concerned a preliminary point raised in respect of a boundary dispute and the parties in that case were seeking to rely upon a certain survey as well as a deed of partition which had been presented during the land registration process and would form part of the record put before the Recording Officer at the time.

[41] However in the document written and produced, no record was made of the partition on the demarcation certificate with the result that there was an error in the adjudication process which later affected the registration process. It was worth noting Mr. Fraser pointed out that in **Louisien v Jacob** both parties had made separate and independent claims to two separate and distinct parcels of land and that both parties had commited themselves and claimed land under the adjudication process which forms part of the LRTP.

[42] The circumstances in which rectification of the Land Register are available on the ground of mistake are in my view explicitly set out in paragraphs 40 to 44 of the judgment in **Louisien v Jacob** which are set out below:

> 40. It is clear that rectification of the register under section 98 of the LRA can sometimes be ordered in respect of a first registration. That is clear from the words "subject to the provisions of the Land Registration Act" in section 23 of the LAA, and from the references to first registration in sections 98(1) and 99(1)(b) of the LRA. But it is also clear from the authorities that rectification is not intended to be an alternative remedy for a claimant under the LAA who having failed in a contested claim before the adjudication officer, omitted to use the avenues of review and appeal provided for by sections 20 and 24 of the LAA. This conclusion does not depend on *res judicata* or estoppel properly so called; it follows simply from a correct understanding of the statutory machinery (see Byron JA in *Portland v Joseph,* 25 January 1993, Civ App No 2 1992).
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> 41. There is a line of jurisprudence on section 98 of the LRA and similar enactment in force in other Caribbean countries, indicating that rectification of the register is available only if the mistake in question (or, no doubt, the fraud, when fraud is in question) occurred in the process of registration. See *Skelton v Skelton* (1986) 36 WIR 177, 181-182; *Portland v Joseph*; and *Webster v*

Fleming. Their Lordships consider that this principle is a correct and useful statement of the law, but would add two footnotes by way of explanation or amplification.

42. "A mistake in the process of registration" is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of the facts of the particular case. Moreover the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.

43. Several different situations can be imagined. First, an entirely correct adjudication record, confirmed by the adjudication officer, is passed to the Land Registry, where one of the staff makes a mistake in transcribing the contents of the record into the Register. In that case there is plainly a mistake in the process of registration (there has been no mistake in the process of adjudication). Rectification is available. Secondly, suppose there has been a mistake in the process of adjudication, such as a recording officer acting beyond his statutory authority by altering the record after its confirmation by the adjudication officer. In a case of that sort there is a serious mistake (probably amounting to nullity) in the process, since the staff of the Land Registry are presented with a record which does not correctly embody the adjudication officer's final decision. Again, rectification is available. That is *Webster v Fleming.*

44. In their Lordship's opinion the same principle may extend to a case in which the adjudication record, although not a nullity, contains on its face an obvious error or inconsistency such as to put the staff of the Land Registry on enquiry as to the correctness of the record. If they were to omit to make such enquires, and proceed on the basis of a defective adjudication record, that may amount to repeating the original mistake so that it becomes part of the process of registration. In a case of that sort, again, rectification would be available.

[43] Reference was also made by claimant counsel in his list of authorities to the case of **Heirs of Hamilton La Force v Attorney General of Castries et al**[3] in which

[3] [1996] ECLR 246.

Byron JA (as he then was) after referring to **Skelton v Skelton** and applying **Webster v Fleming**[4] held that:

> "Section 98(1) of the Land Registration Act restricts the remedy of rectification to a registration obtained or omitted by fraud or mistake; in this case there was no registration of the prescriptive title and the section does not apply to the failure to register property; there is also a separate section of the Act to resolve disputes with respect to the ownership of land, and the jurisdiction to rectify the registration of land is not to be used as an indirect method of appeal against decisions made under the Land Adjudication Act."

Conclusion

[44] In conclusion I am satisfied that when on 14th January 1986, the claimant's husband Lennard Vitalis filed a claim under the LRTP pursuant to the LAA in respect of a parcel of land situate at Du Brossay in the Quarter of Castries more particularly described as Block 1045B Parcel 3 in the name of "the Heirs of St. Rose Simon c/o Lennard Vitalis, 49 Chisel Street Castries" that clearly was on the face of it an error since when he made the said claim it was in respect of 8½ carres of land – a greater portion of land than he had in truth and in actual fact purchased from Isidore St. Rose aka Lionel St. Rose namely 5½ carres which he in all earnestness recognised with the additional 3 carres being owned by heirs of St. Rose Simon but by mistake instead of inserting the name of "heirs of St. Rose Simon" alongside his own as claimants jointly he inserted the name "heirs of St. Rose Simon" in care of his name in the honest mistaken belief that the effect would have been a joint claim.

[45] It is my considered opinion that on the basis of section 98(1) of the LRA and the case authorities referred to that this was manifestly a mistake in the adjudication process which was carried forward to the registration process.

[46] I accordingly declare that, Lennard Vitalis, deceased is the sole beneficial owner of 5 ½ carres or 5.57 acres or 2.25 hectares of land situate at Du Brossay in the Quarter of Castries registered in the Land Registry as Block 1045B Parcel 3 and

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[4] Anguilla Civil Appeal No. 6 of 1993.

that the defendants and persons claiming through them have no claim or right or interest in the land registered as Block 1045B Parcel 3.

[47] And it is further ordered and directed that the Registrar of Lands do correct the Land Register on the ground of mistake to insert LENNARD VITALIS as the owner of land registered as Block 1045B Parcel 3.

[48] Costs to the claimant in the sum of $3,000.00 to be paid by the defendants.

Ephraim Georges
High Court Judge [Ag.]