

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2011/0065

BETWEEN:

DR LETON THOMAS

Claimant

and

(1) PAMELA BEVERLY ANN EUGENE

(2) RAYMOND GEORGE

(3) HEIRS OF THOMAS BERNARD

Defendants

Appearances:

Mr. George Charlemagne for the Claimant

Mr. Dexter Theodore for the Defendants

2011 : November 15;

2014 : October 22.

JUDGMENT

[1] **BELLE, J.:** The Claimant in this case filed his claim on 25th January, 2011. In that Claim he prayed for:

- (a) A declaration that the heirs of Bertrand Thomas also known as Thomas Bernard are the owners of 8 1/3 carres of land to be dismembered from a portion of land described in the Registry of Lands as Block 122 B Parcel No.16;
- (b) A Declaration that the Defendants are the owners of six carres of land to be dismembered from the said parcel.
- (c) The heirs of Bertrand Thomas be allowed to execute a survey of the said portion of land to extract their 8 1/3 carres.
- (d) An order for the partition of the said parcel.

- (e) The Registrar of Lands be directed to rectify the land register for the said parcel to reflect the heirs of Bertrand Thomas share of 8 1/3 carres;
- (f) The court in the circumstances and in the interest of justice make an order it deems necessary;
- (g) That the Claimant be paid costs by the Defendant.

[2] On 26th October, 2011 the Defendants filed an application to strike out the Claimant's Statement of Claim pursuant to Rule 26.3

[3] The Applicants/ Defendants stated that the ground of their application was that the Claimant's statement of claim discloses no reasonable ground for bringing the claim, and /or (2) is an abuse of the process of the court and /or (3) is likely to obstruct the just disposal of the proceedings.

[4] The Evidence filed in support of this application stated no more than that;

"The land is presently recorded in the Registry of lands in the name of Raymond George, Carlisle Eldwidge George, the heirs of Thomas Bernard and Pamela Beverly Ann Eugene as trustees for sale.

During the Land Adjudication and Titling Project in 1986 the land was adjudicated to the following persons with absolute title \

Heirs Thomas Bernard -1/3 share

Heirs Adelcia Luc Thomas -1/3 share

Senaie George (executor of the estate of Pauline Thomas- 1/3."

[5] After referring to other facts the Applicant/ Defendants per Vanita Thomas state that she is informed that the claim for prescription is res judicata and the Defendants respectfully request that his claim be accordingly struck out.

[6] In his statement of Claim Dr. Thomas the Claimant states that he derives title to parcel 1222B 16 from the succession of Griffith St. Catherine whom by judicial sale (Deed of Sale and Adjudication) on January 13, 1903 purchased from the Sheriff of the Court Alex Clavier a parcel of land measuring eight and one third (8 1/3) carres more or less situate at Amelin Estate in the Quarter of Vieux Fort presently located in Parcel 1222B 16 aforesaid the same being registered in Volume 61 No.26917.

- [7] The Claimant also claims that at all material time he was in possession of the remainder of the Parcel 1222B 16 having acquired it by legal title and through prescription by the possession of persons of whom he is their heir and successor and by himself.
- [8] In his affidavit in reply to Vanita Thomas who filed an affidavit in support of the Application to strike out Dr. Leton Thomas' Claim, and in reply to the Application to strike out, Dr. Leton Thomas states that at the time of the Titling Project he was residing overseas and a relative of his was placed in charge of the land.
- [9] Dr. Thomas said that this relative was one Andrew Leriche. According to Dr Thomas Andrew Leriche was in actual possession and occupation of the Land but he was never in possession of any title documents to the same nor could he have given any titled documents to the same nor could he have given them to the land Adjudicator. Therefore Andrew Leriche would not be aware of the existence of the will of Griffith St Catherine executed on the 25th day of May 1967 and probated on the 4th day of March 1971 which said Will devised and bequeathed the land to his father Bertrand Thomas.
- [10] Dr. Thomas also exhibits a copy of a probated Will marked "L.T.1." and pointed out that the said Griffith St Catherine derived his title for the land from a judicial sale by way of Deed of Sale and Adjudication dated January 13, 1903 purchased from the Sheriff of the Court Alex Clavier. Dr Thomas also exhibited the relevant Deed of Sale marked "L.T.2."
- [11] Dr. Thomas sets out facts relating to the steps taken by the Defendants to obtain title to the land which are recorded in the Adjudication Record. However he claims that upon examination of the parcel file for parcel 1222B 16 it is clearly seen that no mention was made of the said probated Will of Griffith St. Catherine and the Land Adjudicator had no recourse to the same nor is it mentioned in the Adjudication Record.
- [12] Dr Thomas denies that the matter is res judicata and states emphatically that he, his servants or agents and ancestors in title have been in possession of the land beyond the thirty (30) years required for positive prescription to accrue.

[13] Dr Thomas asserts that during the period of 30 years that he has been in actual occupation and possession of the land there has been no judicial demand ever made for the land by the Defendants or their predecessors in title nor have they shown any acts of possession towards the land but have always limited themselves to the six carres which they occupy.

Arguments

[14] The Defendants' counsel's argument was preceded by an outline of the legislative framework surrounding the adjudication and titling of land in Saint Lucia. The Defendants' counsel argues that based on the record the Mr Leriche who was supposed to have been put in charge of the 8 1/3 carres of land being disputed is named in the VT2 (the Demarcation Certificate) as the person who pointed out the land to the demarcators on the behalf of the heirs of Thomas Dechepart and the Demarcation Certificate was signed and witnessed by Mr Girard Thomas (deceased) , the brother of the Claimant.

[15] This argument does not assist the Defendants as much as they may think since these factual claims give some credibility to the Claimant's case that Leriche was on the land and had knowledge of the Claimant's possession. Indeed this also tends to imply that he was a person who knew the land well.

[16] Indeed the tenor of the Defendants' counsel's argument is heavily reliant on the line of cases which states that a rectification of the land register cannot be granted where there is no mistake in the registration process or where the Claimant failed to attend or adduce evidence at the Land Adjudication and titling process and also failed to appeal against the adjudicator's decision when they found it to be adverse to them. This line of cases includes **Skelton v Skelton** [1986] 37 IR 177, and **Webster v Fleming**, Anguilla Civil Appeal No.6 of 1993.

[17] The effect of this line of cases has now been revised by the decision of the Privy Council in **Sylvina Lousien v Joachim Rodney Jacob** Privy Council Appeal No. 93 of 2007. In this decision the learned judges analysed the relevant legislation and concluded that a claim can be made to

rectify the register on the basis of a mistake in the process of adjudication. The Privy Council held in the said case that;

“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. “

[18] The court then went on to consider various scenarios which may not be exhaustive . Among the mistakes the Privy Council cites is 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 enquiries, 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 the court held.

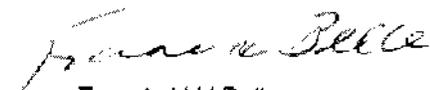
[19] Based on this decision of the Privy Council I am of the view that the facts surrounding the issue of the nature of the mistake or fraud alleged must be examined at trial before the court can arrive at a conclusion as to whether a mistake was made in the registration process. As the Privy Council put it, there must be a careful evaluation of the facts.

[20] I do not think that this court need go any further to arrive at the conclusion that this case is not one that should be struck out on the basis of an abuse of process or *res judicata*. Indeed the legislative scheme required that certain things be done within a statutory time frame which has long expired. However the significance of the **Louisien v Jacob** decision is that the legislative scheme does not preclude the examination of facts to determine whether there was an error in the adjudication process which was carried over into the Registration process.

[21] It is also important to note that the Claimant alleges that Mr Leriche was on the land during the titling project. This may raise the issue of an overriding interest over the relevant part of the disputed land. Section 28 of the Land Registration Act refers in part to "the rights of a person in

actual occupation of land or in receipt of income thereof save where enquiry is made of such person and the rights are not disclosed.”

- [22] A person who is in occupation and discloses same therefore may be deemed to have an overriding interest in the appropriate circumstances. This scenario is relevant to this case since the Claimant claims that he and his ancestors were in occupation of the disputed land and that this fact was disclosed. This issue would have to be litigated.
- [23] It should be noted that section 98 of the Land Registration Act provides for rectification of the register pursuant to subsection 98 (2) which provides that there should be no rectification unless the proprietor has knowledge of an omission fraud or mistake in consequence of which the rectification is sought, or caused the omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.
- [24] The exploration of the facts mentioned in **Louisien v Jacob** must involve questioning whether the Defendants were aware of any omission fraud or mistake or contributed to the mistake by their neglect or default. No such exploration can take place if the case is struck out at this stage.
- [25] Finally I agree with counsel for the Claimant that this could not be a matter of res judicata since the Claimant played no part in the adjudication or titling process and even if Mr Leriche did, he certainly did not appear as a representative of the Claimant. Therefore the Claimant would not have been privy to the process based on the record, unless this is proved otherwise.
- [26] The Applicant's application to strike out the Claimant's claim is therefore dismissed and costs are awarded to the Claimant /Respondent to be assessed if not agreed.
- [27] The court sincerely apologises for the length of time it has taken to deliver this decision.


Francis H V Belle
High Court Judge