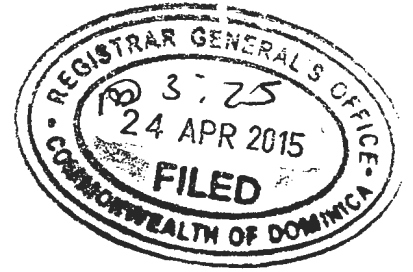


THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE



CLAIM NO: DOM/HCV2008/0225

IN THE MATTER OF THE APPLICATION OF JEANNE PELTIER FOR THE ISSUE OF A FIRST TITLE IN RESPECT OF A PORTION OF LAND, A PART OF BALATA ESTATE, IN POINTE MICHEL, IN THE PARISH OF ST. LUKE IN THE COMMONWEALTH OF DOMINICA CONTAINING 6.010 ACRES.

BETWEEN:

[1] JEANNE PELTIER

Caveatee/ Applicant

AND

[1] ALICE DANIEL  
[2] LORDEN BARDOUILLE

Caveators/ Respondents

AND

CLAIM NO: DOM/HCV2008/0226

IN THE MATTER OF THE APPLICATION OF MALLY PELTIER FOR THE FIRST ISSUE OF A FIRST ISSUE OF A FIRST CERTIFICATE OF TITLE IN RESPECT OF A PORTION OF LAND IN POINTE MICHEL, A PART OF LA FALAISE ESTATE IN THE PARISH OF ST. LUKE IN THE COMMONWEALTH OF DOMINICA CONTAINING 2.249 ACRES.

BETWEEN:

MALLY PELTIER

Caveatee/Applicant

AND

[1] ALICE DANIEL  
[2] LORDEN BARDOUILLE

Caveators/ Respondents

**Appearances:**

Mr. David Bruney for the Caveatees/Applicants

Mrs. Singoalla Blomqvist- Williams for the Caveators/Respondents

-----  
2013: June 17<sup>th</sup>

2015: April 24<sup>th</sup>  
-----

**JUDGEMENT**

- [1] **Cottle, J.:** The caveatees in these two claims are applying for the issue of a first certificate of title to lands at Pointe Michel, in the Commonwealth of Dominica.
- [2] Jeanne Peltier claims to be the owner of 6.01 acres of land while Mally Peltier applies for 2.249 acres. The claims were consolidated and heard together.
- [3] The caveators have sought to prevent the issue of certificates of title to the caveatees. They claim to be the true owners of the lands in question. They say they will apply for certificates of title in due course.
- [4] The delivery of the decision in this matter has been greatly delayed. This is due in no small measure to the quality of the evidence presented to the court to make a determination. The lands in issue formed part of the estate of one Alexander Phito Charles. By his will, dated 9<sup>th</sup> October 1922, Alexander Phito Charles devised the lands to certain relatives. This estate is yet to be administered and the bequests distributed. Obviously, in the intervening century, beneficiaries have died. Their descendants - five generations in some cases - may have inherited an interest in the estate. Not all of these beneficiaries have been identified. The will itself is a source of much confusion. No boundaries are set out which permit the lands bequeathed to be identified. I can do no better than reproduce the ancient will in its entirety.

"This is the Last Will and Testament of me, Alexander Phito Charles, Planter, of the parish of St. Luke presiding in Dominica revoke all former Wills and Codicils herein before by me at any time made executed.

1. I give and bequeath to my beloved daughter Josephine Charles now Josephine Bardouille the upper part of the Grand Ravine out of my estate known as Balata and the lower portion to my two children of my late daughter Beatrice Charles.
2. I give and bequeath to my cousin Mrs. Francis Peltier about half an acre of land first below Glover's land.
3. I give and bequeath to my beloved daughter Marie-Sainte Charles the portion of land in the small ravine.
4. I also give to my beloved son Francis Noel about half an acre of land by the boundary of Morne Igrame Estate.
5. I likewise give to my adopted daughter's children Norris Noel and Claude Noel about quarter of an acre of land by Glover's land to the south.

My house of four rooms and lot at Lautre Bord I give the two first rooms to my daughter Marie-Sainte Charles and the room facing North to the children of my late daughter Beatrice Charles and the room facing South to my daughter Josephine Charles now Josephine Bardouille."

My gold chain I give and bequeath to my grandson Leopold Foutiere.

I hereby direct to my beloved wife, Emelia Charles her life interest on the forenamed properties.

I appoint, nominate and constitute my said daughter Marie-Sainte Charles to be the sole executrix of this last Will and Testament."

In witness whereon I have hereunto set my hands this 9<sup>th</sup> October 1922.

Signed (by making his mark or cross thereto) the same having been first read over and explained to him and he appeared fully to understand the same.

Acknowledged and declared by the Testator in our presence and we in the presence of each other have hereto set and subscribed our names as witnesses to the foregoing instrument of writing declared by the Testator to be his last Will and Testament.

"Sgd. Donald Barboudille

Sgd. Francis W. Boyd

(Sgd) Alexander Phito Charles"

- [5] Against this muddled background, the caveators and caveatees now wish the court to arrive at a conclusion.
- [6] Jeanne Peltier has based her application for a certificate of title to 6.010 acres on her long possession of the parcel. She supports her application by an affidavit. She also has submitted affidavits in support by Leonard Peltier and Joseph Noel. A plan depicting the area claimed was annexed to her application.

## Affidavit of Jeanne Peltier

- [7] The applicant was 71 years old at the time the application was made. She deposes that she is familiar with the lands as she used to go to La Falaise as she calls the lands, with her mother, father and siblings since she was very young. Materially at paragraphs 6 and 7 she says:-
- “6. That during the time I lived abroad Jerome Noel and Everad Bardouille were then caretakers and whenever I would visit Dominica they would take crops cultivated from the land such as coconuts, cocoa, limes, bananas, mangoes, dasheens and avocados to me.  
7. I am now the only surviving member of the family but no formal deed was ever executed. That when my parents owned the said land they were always in uninterrupted possession of the said land and exercising acts of ownership over it for many years.”
- [8] Leonard Peltier swore that the lands belonged to Lixian Noel and Arthur Benoit, the parents of the applicant. He does not say how they came to be owners or how he knew they owned the lands. He is 76 years old.
- [9] Joseph Noel was 83 at the time he swore the land belonged to the applicant's parents. He too offers no basis for this bald statement.
- [10] The plan submitted by the applicant shows 6.010 acres, south of a ravine bounded by lands of Everton Estate to the East, Heirs of Vital Daniel to the South and Heirs of Emiline Peltier to the West.
- [11] Jeanne Peltier was cross-examined. She said her mother owned the parcel of land before her death. No document evidencing any *inter vivos* transfer of the land to Jeanne Peltier was shown. There is no evidence of the land passing on an intestacy. No will was seen. Ms. Peltier simply says she is the last surviving child of her mother. Upon further cross examination she said that her mother had a deed. She did not produce this deed. She could not say who the parties were.
- [12] She was asked about the physical location of the parcel she was claiming. She said it was located on the north of the ravine. A witness, Joseph Bique, confirmed this that her lands were north of the ravine. This is in stark contrast to her submitted plan.

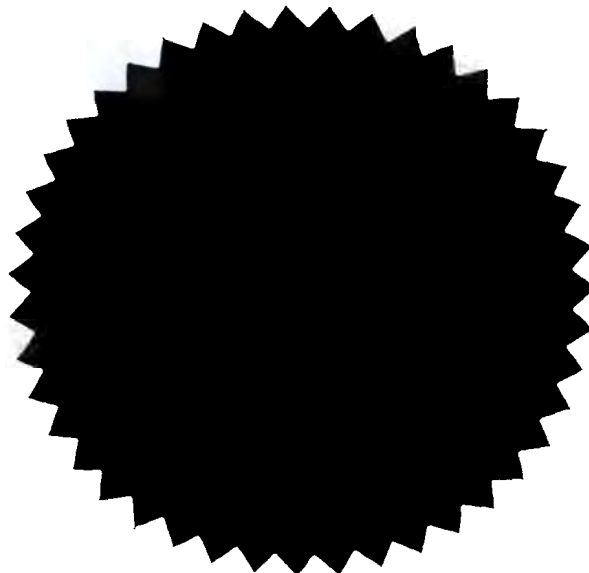
- [13] There is a second submitted 'master' plan of the La Falaise lands. It was drawn by Surveyor's Assistant Alphonso Casimir. The boundaries, shape, and location of the land claimed by Jeanne Peltier differ on both plans. Surveyor, Gaetan Seaman, approved and signed the Casimir prepared plan. On the Seaman/ Casimir plan the lands of Jeanne Peltier as seen seem to be south of the ravine and not north.
- [14] Mally Peltier seeks the issue of a first certificate of title to 2.249 acres of land. He filed an affidavit. He is supported by affidavits by Jeanne Peltier and Joseph Noel. In paragraphs 2, 3, 4 and 5 he swears as follows:-
- "2. That I know the land the subject matter of this application for all my life as I used to go up to the heights with my said grandfather and father in the same said area.
  3. That during my grandfather's lifetime he left the land for his son Wilfred Peltier and my uncle Joseph Peltier without leaving any formal deed.
  4. When my father and uncle was alive they always told me if anything happens to them I should be the one to hold on to the said land. I was the only son of my father Wilfred Peltier. No formal deed was ever executed.
  5. That when my late father and uncle owned the said land they were always in uninterrupted possession of the said land and exercising acts of ownership over it for over 70 years."
- [15] No deeds or other documents are shown to substantiate this claim for ownership. No will has been produced of the applicant's father or uncle. No letters of administration have been obtained. Jeanne Peltier swears at paragraph 3 of her affidavit that the applicant's late father and his uncle "were the owners" of the land. She does not say how they became owners. The court is not told if they were joint tenants or tenants in common. She refers to no deed. She does not reveal the source of her knowledge. Joseph Noel's affidavit goes no further than to baldly state that the lands were left to the applicant. He does not say if this is by deed, will or otherwise.
- [16] Mally Peltier was cross-examined. He testified that the land was first owned by his great grandfather who bought it and left it to go for male heirs so that the name could survive. He also said that the land had belonged to his grandfather but he did not know how his grandfather got the land. No explanation of this contradiction was forthcoming. His father predeceased his uncle. His uncle left a will which has yet to be probated. Despite these lacunae Mally Peltier applies for a certificate in his own name.

## The Law

- [17] The **Title by Registration Act** Chap 56:50 of the Laws of Dominica at section 12 (1)(d) allows for land not registered under the **Act** to be so registered:-
- “d) if the land has been in the sole and undisturbed possession of the applicant alone in his own right or as executor, administrator or trustee, or partly in the sole and undisturbed possession of the applicant in any such right and partly in the sole and undisturbed possession of any other person through whom he claims, continuously for a period of thirty years next before the date of the presentation of the request under the Act...”
- [18] Section 12 (8) mandates the submission of a plan made by a licensed surveyor. Section 12 (9) provides:-
- “Where the application for a first certificate is in any respect based on possession of the land, the requirement shall be accompanied by affidavits of the applicant and of two persons at least, and the affidavits shall set out in detail the facts establishing that the applicant has been in sole and undisturbed possession of the land continuously for the period of time required by this section as well as the acts of ownership exercised over the land and shall prove that the rents, fruits and profits accruing out of the land have been taken and appropriated by the applicant as owner during such period.”
- [19] In order for the applicants to obtain the desired certificates of title they must show sole and undisturbed possession of the respective parcels for over thirty years. They must show this by detailed affidavits.
- [20] When one examines the affidavits by the applicants it is difficult to say that these provide the level of comfort that will allow a court to conclude that they have discharged the burden of showing, on a balance of probabilities, that they meet the statutory criteria.
- [21] The very fact that both applicants submitted plans with their respective applications and then gave evidence which conflicts with those plans is enough to give pause. The facts revealed in the affidavits are bald recitals. They are unsupported statements with no explanation offered as to the source of the witnesses' information. Documentary support is conspicuously absent.
- [22] Even without the objection by the caveators it is uncertain that these applications can pass muster for the issue of first certificates of title. With the objections in mind, I have arrived at the conclusion

that the applicants have not demonstrated, to my satisfaction, that they merit the issue of certificates of title.

[23] The applications are consequently both refused.



A handwritten signature in black ink, appearing to read "Brian Cottle". The signature is written in a cursive style.

**Brian Cottle**  
High Court Judge