IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANIGUILLA CIRCUIT
(CIVIL)
A.D. 2017

CLAIM NO. AXAHCV 2017/0033

In the matter of the Registered Land Act, RSA, Chapter R30 Section 141 and 153

AND

In the matter of an appeal by Donnalee Richardson and Kirthley Richardson against an Order of the Registrar of Lands dated 21st April 2017

BETWEEN:

[1] DONNALEE RICHARDSON
[2] KIRTHLEY RICHARDSON
CLAIMANTS/APPELLANTS

AND

[1] REGISTRAR OF LANDS
[2] THE ATTORNEY GENERAL
DEFENDANTS

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Appearances

Ms. Samantha Wright for the claimants/appellants
Mrs. Sherma Blaize Sylvester, Crown Counsel for the defendants
Mr. Stanley Reid, for interested party, Mitchell Connor

2017: June 30; July 7; November 30.

DECISION

[1] **RAMDHANI J.: (Ag.)** This is an appeal brought by way of a Fixed Date Claim form filed by the appellants against a decision of the Registrar of Lands made on the 21st April 2017, by which the Registrar held that these appellants who had applied to be registered as owners of certain parcels of land, were not permitted to present evidential matters supporting their application, in a statutory declaration in response, such matters not being first contained in the original application. The Registrar in essence held that such an attempt was in breach of a 'Notice of Directions' given to the parties for the ordered conduct of applications under the Act. The appellants being aggrieved contend on their appeal, *inter alia* that a strict adherence to 'directions', provided by the Registrar, which were not properly published and in any event unclear ought not to lead to such drastic consequences against them, and that the justice of the case requires that they should be allowed to present the evidence in their answer to the objection against their application. The appeal is allowed for the reasons which are set out in this decision.

Brief Factual Background

[2] On the 23rd May 2016, the appellants applied to the Registrar of Lands under the Registered Land Act, Chapter R30, to be registered as owners by prescription of two parcels of land, namely Parcels 227 and 228 being properties situate in Registration Section Central B9 Block 38510B, the said parts containing 0.26 of an acre (part of Parcel 227) and one acre (part of Parcel 228) as shown on Survey Plan Ref. No. RADS 05/16.

[3] In their application the appellants presented a statutory declaration containing matters grounding their application. This statutory declaration spoke of their occupation and matters related to the claim for prescriptive title.

[4] It is undisputed that both parcels of land are registered to one Mitchell Connor of Blowing Point, Anguilla in his capacity as Personal Representative of the Estate of George Edward Connor. And on the 8th August 2016, being informed by a Notice of Application issued by the Registrar of Lands earlier that same day, Mr. Connor gave notice to the Registrar that he was objecting to the application for prescriptive title.

[5] The next day, the 9th August 2016, the Registrar issued a document entitled 'Notice of Directions' giving both parties directions to be followed in preparation for the hearing of the application. Among other things, this 'Notice of Directions' stated that any applicant for prescriptive title must set out in full all matters on which he seeks to rely on in his application for prescriptive title. These directions also stated that any objector must set out the grounds of his objections in full in his answer attaching all evidence on which he seeks to rely in his objection.

[6] On the 20th September 2016, the objector, seeking to comply with the Notice of Directions, filed two statutory declarations, one sworn to by Mr. Connor and the other sworn to by a Mr. Rocklyn Maynard. These declarations presented evidence to ground the objection.

[7] On the 17th October 2016, the appellants submitted a second statutory declaration, entitled 'Supplemental Statutory Declaration' in support of their application. This was a more detailed affidavit than their first affidavit containing 77 paragraphs.

[8] By a letter dated the 22nd December 2016, Mr. Connor, through his attorney Mr. Reid, objected to the 'Supplemental Statutory Declaration', essentially contending that this supplemental declaration was impermissible in light of the 'directions' given by the Registrar and for the reason that it contained matters which should have been properly set out in the initial Statutory Declaration.

[9] The Registrar heard both sides on the issue that was raised, and on the 21st April 2017, the Registrar decided that the objection was valid, and she accordingly struck out a number of 'offending' matters from the supplemental Statutory Declaration.

[10] In her written decision, the Registrar sought to apply section 7 of the Act which she noted as giving her the power to take a declaration in lieu of administering oaths and the requirement that any proceedings, information or explanation shall be delivered on oath or

statutory declaration. She stated that 'in accordance with this provision' she has implemented a well-established procedure; that of filing a Statutory Declaration by the applicant and a response Statutory Declaration by the objectioner, and by giving both an opportunity to be heard; both sides to cross examine witnesses at the hearing and thereby adduce further evidence.' The Registrar stated that '[i]n filing a Supplemental Statutory Declaration the applicants are in non-compliance with this procedure and [sic] made by the Registrar of Lands pursuant to this provision in the RLA.'

[11] The Registrar stated that '[b]y said Section 7, the parties are required, by law, to comply with the procedures set by the Registrar of Lands in so far as it pertains to the giving of evidence and in particular the Notice in preparation for Hearing 9th August 2016 which directed the applicants to submit a "response (in duplicate) to the Statutory Declaration of Mr. Mitchell Connor if any." At its most basic interpretation or definition this Notice is directing the applicants to review the Statutory Declaration of the objectioner and make replies or answer to the facts contained therein."

[12] The Registrar further stated that: "There was no allowance given to the Applicants in the said Notice, for the Applicants to add to or expand on any of the facts contained in their original Statutory Declaration except and in so far as they were responses to the objectioner's Statutory Declaration. The contents of the Supplemental Statutory Declaration filed on the 17th October, 2016 cannot in all respects be described as mere replies or answers to the facts raised in the objectioner's Statutory Declaration as it introduces facts not previously stated in the Applicants' original Statutory Declaration which does appear to be an effort to bolster their initial application."

[13] The Registrar further reasoned that '[f]airness in procedure also plays an integral role in the administration of the Registrar's powers under the RLA. It is absolutely correct that the Applicants' application is the place where the facts necessary to support their application are to be set out in detail. The contents of the applicants' application should satisfy the requirements of Section 141 of the RLA. Permitting the entire Supplementary Statutory Declaration into evidence in so far as it contains extraneous facts and matters non-

responsive to the Applicants' Statutory Declaration without the objectioner having an opportunity to respond in a Statutory Declaration, would prejudice him."

[14] The Registrar stated: "The applicants were at liberty to fill their Statutory Declaration with as much facts as they deemed relevant and were at liberty to consult with Solicitors prior to filing same but choose not to do so. No supplementary Statutory Declaration was filed by the Applicants in between the filing of their original Statutory Declaration and the Statutory Declaration of the Objectioner. This indicates that up until that point, when the applicants filed a Supplemental Statutory Declaration they were fully satisfied with the contents of their Original Statutory Declaration to satisfy the statutory requirement. Further, no justifiable reason has been and could be presented as to why these facts, above and beyond mere responses to the Objectioner's Statutory Declaration, which could have been included in the original Statutory Declaration of the Application, were omitted from the original Statutory Declaration and for the first time introduced in the Supplemental Statutory Declaration.

[15] A point had been taken before the Registrar that the Applicants were lay persons and that they were unrepresented when they filed the original Statutory declaration. This too found no favour with the Registar who stated: "…not much weight is attached to the implication of [this submission] for two reasons; one, the applicants are not ordinary lay persons because they have years of experience in land matters and specifically prescription applications and two, the applicants have retained Solicitors in the past.

[16] On the basis of these reasons, the Registrar struck out what she considered the offending material from the supplemental statutory declaration.

[17] On this appeal the appellants have argued that the Registrar has erred as a matter of law in many regards and challenged every basis of her decision. Several of these are crucial to this appeal. First, the Appellants are contending that the Registrar acted beyond her powers by relying on 'procedures' not provided for under section 7 of the Act to exclude evidence prior to the matter being heard. This is especially so as they have not been given

notice of the detailed 'procedures' with regards the filing of evidence and that the 'Notice of Directions' did not state that their 'response' was to be limited and that additional or 'new' material could not be included. Second, they contended that the Registrar failed to have any regard to the prejudice which would be suffered by them on the exclusion of the evidence of the particulars of their possession. Third, they also contended the conclusion of the Registrar that the appellants 'were not ordinary lay persons' was an unreasonable and irrelevant conclusion. Essentially, the appellants are also pointing to breach of the principles of natural justice.

[18] The Respondent Registrar, through her Attorney has resisted this appeal, arguing that the decision to strike out those offending matters in the Supplemental Statutory Declaration was not in excess of jurisdiction. The essence of the Registrar's answer is that the Act gives the Registrar power to regulate proceedings which govern applications for title by prescription. The Registrar acting on these powers established procedures, and as such she was within her powers when she decided to strike out the evidence. The Registrar pressed through counsel that these appellants not being 'ordinary lay persons' were to be taken to know the importance of 'pleadings' and that a 'response' could not contain new matters. To allow the appellants to introduce such 'new matters in a response would not only prejudice the objector but would also open the floodgates for 'all and sundry to make sparse applications'.

[19] For this Court, these opposing contentions have framed the issues for me. It is really whether the Registrar was acting within her jurisdiction when she gave directions on the procedure to be followed, and then to strike out the evidence on what she considered was a breach of that procedure. In resolving this issue, certain crucial questions would be addressed. One of these questions is whether the Registrar could have properly given any weight to whether the appellants were lay persons. A second question is whether there was any real prejudice to be caused to either of the parties and whether this could have been resolved in any other way.

Discussions and Findings

[20] The power to hear applications for title by prescription is set out in the Registered Land Act RSA c.30 of the Laws of Anguilla. Section 141 of the Act gives to anyone a right to apply to the Registrar to be registered as a proprietor of land which that person claims to occupy *nec vi nec clam nec precario* for a period of 12 years.

[21] Section 143 of the Act claims to treat with the procedure on an application for title. It states:

> *"Procedure on Application*
>
> *(1) An Application by any person for registration as proprietor under section 141 shall be advertised by the Registrar at the expense of the applicant in such manner as the Registrar may direct.*
>
> *(2) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other persons, who may, in his opinion, be affected thereby.*
>
> *(3) After one month has elapsed from the date of giving notice under subsection (2), the Registrar, on being satisfied that the Applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register that has not been extinguished by the possession."*

[22] There is no specific provision which sets out in more detail the detailed procedural steps which may be applied to the process of making a finding on an application. Section 7 of the Act sets out generally the powers of the Registrar exercising her functions under the Act. It is appropriate that this section be set out in full.

[23] While there is no express power given to the Registrar to regulate proceedings under the Act, I am of the view by virtue of sections 7 and 43 of the Act that there can hardly be any doubt that it is for the Registrar to regulate the proceedings governing the application for title by prescription. This is so as the Registrar is required to conduct a hearing of an application and must determine rights and make findings. This is akin to a judicial function and it would make nonsense of the statutory duties imposed on her, if she were unable to regulate matters relating to the conduct of the application.

[24] That being so, in regulating her own procedures, the Registrar is not to create any new jurisdiction nor is she to act in breach of any established rules of procedure[1]. Further, such an implied right to regulate procedures must be grounded in principles of natural justice so that fairness is always ensured. A tribunal's inherent power to regulate its own procedure is in keeping with these principles is fundamental to our system of justice.[2]

[25] It has been well recognized that from time to time courts themselves imported into various statutory schemes elements of procedure which are designed to ensure fairness. But even the courts have cautioned themselves that there is always a risk that laying down rigid and inflexible rules may actually adversely affect fairness and breach the principles of natural justice in certain cases. As Lord Reid noted in **Wiseman v Borneman** [1971] AC 297 at 308:

> *Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate in a series of hard-and-fast rules. For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation*

[26] There is of course nothing unusual about regulating procedure where the legislation gives a power to exercise a judicial function and to hear matters and does not provide for the procedural aspects. The passage above was speaking of the courts 'supplementing procedure' which is found in legislation to achieve natural justice and identifies the danger where the courts go further than necessary. This passage is equally applicable to decision makers exercising a judicial function who chooses to put in place procedural rules which have the effect that Lord Reid was adverting to, namely that these rules themselves then get in the way of natural justice and fairness.

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[1] Langley v North West Water Authority - [1991] 3 All ER 610

[2] Al Rawi and others v Security Service and others (JUSTICE and others intervening) - [2012] 1 AC 531

[27] It is also crucial to natural justice that where procedural rules relating to hearings affecting rights, are put in place that proper and adequate notification is given to the persons who they are expected to apply to. In this same way, such notification must set out clearly the consequences of failure to comply. Where rights to property are being affected, the rule maker must be careful not to set overly rigid or inflexible rules which have no room for the exercise of discretion in the event of failures.

[28] It is with these principles in mind that I turn to this matter. The first obvious matter where the Registrar fell into error in this case was with the issue of her 'Notice of Directions' which are set out in the challenged decision. It stated:

> *"(1) Mr. Mitchell Connor to a file a Statutory Declaration (in duplicate) stating his factual reasons for objecting to the Application, at the Land Registry, on or before* ***September 20, 2016****.*
>
> *(2) Ms. Donnalee Richardson and Mr. Kirthley Richardson of Blowing Point, Anguilla to file, a response (in duplicate) to the Statutory Declaration of Mr. Mitchell if any, at the Land Registry on or before* ***October 19, 2016****.*
> [original emphasis]

[29] It is this notice which led the Registrar to eventually hold that these Appellants could not be allowed to file a supplemental Statutory Declaration after the 20th September 2016. She effectively reasoned that this notice was sufficiently clear that the appellants must have realized that if they wished to add to their application they must do so before any objector filed his opposing Statutory Declaration, and that further 'a response' from the appellants could not contain 'new matters' but must be confined to only answering matters raised in the objection.

[30] Crown Counsel for the Registrar argued, drawing on authorities that pleadings were important to a case. Having made this point, Crown Counsel submitted that by virtue of section 7 of the Act, the appellants had an obligation to put before the Registrar all the facts upon which they rely to prove prescriptive title so that any potential objector could be informed of the claim he is to contend with. Crown Counsel pointed to several treatises to argue that the applicant for prescriptive title must set out all the details of his occupation and must do so in his application. Counsel read all of this to mean the 'original application'.

Crown Counsel then contended that no applicant had any right to then seek to supplement his application where he had first made only a bare bones application because he considered he had such an obvious case, and then after seeing an objection realizing that he had to add more details.

[31] Crown Counsel argued that: 'the onus rested on the appellants to take advantage of all the assistance, legal or otherwise, they deemed necessary, to ensure that all the factual information they thought would be necessary to satisfy a claim for prescriptive title under section 141 of the Registered Land Act was included in their application to the Registrar. Ignorance of procedure is no excuse for failing to wholly present your case from the outset and satisfy the requirements of section 141.

[32] Crown Counsel further submitted, 'that the Registrar had acted fairly in striking out those parts of the appellants' Supplemental Statutory Declaration which presented their case/application afresh and introduced new facts which would have resulted in prejudice to the other side.

[33] In my view, these submissions do not lead me to find that the Registrar acted within her powers. While I agree that an applicant for possessory title must present all the facts to the Registrar on which he relies, I do not find that any of the authorities compel me to the view that all of the matters relied on should be placed in the first statutory declaration which is filed with the application. No doubt it makes sense that an applicant ought to present all the matters that he relies on before the Registrar, but that is quite a different thing from saying that if it is not done together with the application then it cannot be presented in evidence.

[34] In any event, the notice which was sent out could not lead any reader to conclude that a further supplemental Statutory Declaration introducing 'new facts' was impermissible. It further did not state any consequence for the failing to file new facts before the objector filed his own answer.

[35] I can hardly understand why the Registrar has insisted on this rigid and inflexible approach to regulate the process. There appears to have been an insistence to relate the process to high court proceedings and the rules governing those processes. There is a need for care as it has been recognized that in instances an excessive resort to strict rules of procedure can bring the process of a tribunal into disrepute.[3] Even the Civil Procedure Rules allow for a considerable degree of flexibility, and in any event are sufficiently clear for lawyers to more often than not get their applications right. I am of the view to the expect applicants under the Act to comply with CPR 2000 would lead to disastrous consequences; there is a reason why parliament omitted detailed rules of procedure from the Act. What is essential is that the Registrar should do justice between the parties.

[36] In this case, the two appellants were seeking to be registered as proprietors of land. It is clear that they felt that they had made a 'bare bones' application and when they saw the objection, they decided on newly appointed counsel to file a supplemental Statutory Declaration. Why should they be shut out before a hearing where there are no clear rules in place which can guide their conduct in making the application? The mere fact that they have made previous applications and have been assisted in the past by attorneys, does not lead to any certain conclusion that they knew what was required in the first application **and** that if they failed to put in all the facts in that first declaration they would be barred from doing so later. This consequence was never notified to them.

[37] I am of the view that the Registrar has acted bona fide in seeking to regulate these types of applications. But the Registrar has fallen short in this matter. I have heard the Registrar as saying that even though the new evidence was struck out, the appellants were still able to seek to amplify their original declaration at the hearing, so that they were not totally barred. On this note, I examined all of the evidence laid before the Registrar and I am of the view that I can hardly see how these appellants should not be allowed to present this material to the Registrar. Most of it can amount in any event to amplification; it sets out the details of their occupation. Further, to contend that prejudice would be suffered by the

[3] ERDC Construction Ltd. and HM Love and Co 1996 SC 523

objector is curious. All that needs to be done to resolve that is to allow the objector an opportunity to file a further answer to the new evidence. Problem solved.

[38] It has not been properly articulated before me, but I am certain that what the Registrar must be concerned about is to ensure that this type of proceedings does not become burdensome with parties filing affidavits after affidavits and approaching the matter as they please. (I can hardly see how floodgates will be open for 'sparse' application; where these do not meet the threshold they may be simply struck out in the ordinary course.) There is real utility in ensuring that the process is structured and ordered. Such structure and order will save costs and reduce the administrative burden on the Registrar and her office and even the parties appearing in any given application. But for this to be done, it must be done properly. It may be that the Registrar can seek to adopt a set of rules which regulate the conduct of these applications. There must be some degree of flexibility in these rules so that the principles of natural justice may be observed and fairness ensured. If this course is followed, then such rules must be properly published and each person seeking to make an application should be referred to such rules. Care and caution is required and the Registrar must bear in mind at all times, that the principles of natural justice is crucial and further that this being a public process, justice must not only be done, but must also be seen to be done.

[39] The Supplemental Statutory Declaration shall be admissible as evidence into the hearing of the application. It is only proper that the Registrar should provide the objector with an opportunity to file an answer to the new matters raised. The Registrar is within her powers to give clear directions, set timelines and to indicate consequences for breach of those directions.

[40] The appeal is therefore allowed. The Order of the Registrar made on the 21st April 2017 is hereby set aside. Costs are for the appellants to be assessed if not agreed within 21 days.

[41] The Court is grateful to the parties for their assistance and their patience.

Darshan Ramdhani
High Court Judge (Ag.)

By the Court

Registrar