

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2015/0537

BETWEEN:

ALBERT VOISIN

Claimant

and

ELIZABETH WILLIAM

Defendant

APPEARANCES: Ms. Sylma Finisterre of counsel for the claimant
Ms. Alberta Richelieu of counsel for the defendant

2019: May 23
October 30

RULING

1. The claimant issued proceedings for the partition of Block 0643B Parcels 394, 395, 396 and 397, and all orders pursuant to **Articles 653A-653L of the Civil Code**¹.
2. The claimant is entitled as co-owner of a one-seventy fifth (1/75th) share in Block 0643B Parcels 394 and 395, consisting of 0.16 hectares and 2.44 hectares respectively. The claimant also claims to be the grandson and lawful heir of Vosen Severin Joseph who is the beneficiary of a one-fifteenth (1/15) share in Block 0643 B Parcels 396 and 397, consisting of 0.08 and 1.42 hectares respectively.
3. The claimant avers that the defendant, who is recorded with one-fifteenth (1/15) share in each of the above referenced parcels, has asserted authority over all the

¹ Cap 4.01 (Revised Laws of Saint Lucia)

parcels restricting the claimant and other beneficiaries of the use and occupation of the said parcels.

4. The defendant filed a defence denying the claimant's entitlement to the aforesaid parcels.

Procedural Defects

5. It is necessary to highlight several procedural defects in the defendant's defence before considering the claimant's claim.
6. At paragraph three (3) of the claim, the claimant pleads that he is the son of Agnes Laurent who was the daughter of late Vosen Severin Joseph. The claimant states that he obtained Letters of Administration for his mother's estate and has lived on Parcel 394 for the past twenty-three (23) years, along with numerous other family members (including the defendant).
7. At paragraph 4 of the claim, the claimant states that the defendant is a beneficiary of an undivided one-fifteenth (1/15th) share of the parcels. Paragraph 5 states that the defendant had for the last ten (10) years erroneously asserted authority over all the family lands and has restricted the claimant and the other family members from accessing crops which they harvested on the land.
8. The defendant filed a defence making a bald assertion that "Paragraphs 3,4, & 5 are denied".
9. At paragraph 7 of the claim, the claimant states: that he had not been able to enjoy the use of the land; is desirous of ending the undivided ownership; the defendant is not receptive to the claimant or any other family member being granted their lawful entitlement and acts as if all the land belongs to her alone.
10. The defendant in her defence responds "there is no claim for partition order".

11. At paragraph 8, the claimant states that he is no longer willing to remain in undivided ownership and seeks an order from the court for a partition in accordance with his beneficial interest.
12. The defence states “the claimant has not taken any action to impropiate the defendant’s designation and vesting deed registered in the land registry as instrument 2893/2008, as the vesting deed is valid unless set aside by the court”.
13. Counsel for the defendant, in submissions filed after the trial, focused mainly on **Article 579 of the Civil Code**. **Article 579** was amended in 1988 to enable illegitimate children to inherit from the intestate successions of single parents. Counsel contends that the claimant’s mother died on the 30th September 1986, prior to the amendment and therefore the claimant is incapable of inheriting under the provisions of **Article 579**. In her witness statement, the defendant alleges that the claimant fraudulently obtained title to the parcel through a consent order and a change of name to enable him to be an heir.

THE LAW

14. **CPR 10.5 (1)** requires a defence to set out all the facts on which the defendant relies to dispute the claim. The defendant must state whether the allegations in the claim are admitted, denied, neither admitted nor denied, and wishes the claimant to prove. **(10.5 (3))**. If the defendant denies any of the allegations in the claim form the defendant **must** state the reasons for doing so; and if the defendant intends to prove a different version of events from that given by the claimant; the defendant’s own version must be set out in the defence. **(CPR 10.5 (4))**.
15. Barrow JA in the Court of Appeal case in **East Caribbean Flour Mills Limited v Ormiston Ken Boyea**² states that “The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it”.

² SVGHCAV 12 of 2006 delivered 16 July 2007

16. The defendant's defence fails to plead the claimant's incapacity to inherit pursuant to **Article 579 of the Civil Code**. This issue was only raised at trial and in the further submissions filed after trial. It is also noted that the alleged particulars of fraud were first raised in the defendant's witness statement but were not pleaded in the defence.
17. It is trite law that particulars of fraud are to be specifically pleaded. Webster JA (Ag) in the Court of Appeal decision in **The Castries Constituency Council V Lambert Nelson**³ states :

"The law relating to the treatment of allegations of fraud by the courts is settled. An allegation of fraud must be specifically pleaded and particularised. The mere averment of fraud in general terms is not sufficient; there must be allegations of definite facts or specific conduct. In this case, fraud was not pleaded and was not being asserted by the respondent".
18. The defendant, having failed to plead the particulars of fraud in her defence cannot rely on the allegations in witness statement or in submissions to defeat the claimant's claim.
19. Paragraphs 3, and 4 of the defence in response to paragraphs 3, 4 & 5 of the claim form consist of bare denials in breach of the mandatory requirements of Rule 10.5 (4). The defence also proffers an answer that fails to address the claimant's pleaded facts at paragraphs 7 & 8 of the claim.
20. The defendant in her witness statement is asking the court for the improbation of the claimant's deed and to declare the defendant as sole owner of the property.
21. The court rejects the ingenious attempts by counsel for the defendant to expand and introduce new matters into the claim which had not been pleaded in the

³ SLUHC VAP2014/0016

defence. The authorities are replete and need not be re-emphasized. Pleading are to be made in a statement of case and not in submissions or witness statements. The Civil Code of Procedure provides the process for the improbation of a deed. The purpose of witness statements is to replace oral testimony and not to plead cases. The defendant could only proceed on the pleadings in the defence.

22. In my view, the defence does not comport with the requirements of the **CPR 10. 5**. The defence as it stands consists of bare denials without any coherent statement of facts in response to the claimant's pleadings.

The claimant's claim

23. The claimant seeks an order for partition of Block 0643 B Parcels 395-397 and all orders in accordance with Articles 653A – 653L of the Civil Code. The list of proprietors for the parcels indicates nineteen (19) co-owners with the claimant recorded as having a 1/75th share and the defendant with 1/45 share respectively in Block 0643 B Parcels 394 & 395. Vosen Severin Joseph, the purported grandfather of the claimant, is recorded with 1/15th share and the defendant with 1/45th 0643B Parcels 396 & 397.
24. An amendment to **Article 653 of the Civil Code** created subsection 653A which reads:

Special Provisions with Respect to Partition Actions

(Added by Act 34 of 1956)

1. In an action for partition, where, if this section had not been passed, a decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the action relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any

of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

2. Where the land sought to be partitioned in subsection (1) is capable of partition generally, but the resultant share of any of the parties interested would be so small that it would adversely affect the proper use of the land, the Judge may in lieu of directing a sale of the property add such share to the share of any other person interested or distribute such share between two or more other persons interested in such proportion as he thinks fit.
3. Where the Judge proceeds in accordance with subsection (2) he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share, by each proprietor who has received an addition to his share, the value of such addition.
4. Where any sum becomes payable under subsection (3) the Registrar may order that such sum be secured by way of hypothec on the share of the person liable to pay it.

25. **Article 653A** makes special provisions for the court to order a sale in complex partitions with many co-owners or where the resultant share entitlement is trivial. The court may order a sale where it is of the view that the sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property. The court may also increase the share entitlement and direct compensation by interested parties in circumstances where the resultant share in a proposed partition maybe too small.

26. It is axiomatic that to reach such a conclusion it is necessary for the applicant to provide the court with the relevant evidence to determine the proposed partition. The claimant has, in his witness statement, given an estimation of his share entitlement. The claimant also seeks to partition the share entitlement of Vosen Severin Joseph, his putative grandfather, but has failed to provide evidence of a vesting assent or a transmission of the property into his name as sole heir. In my

view, the claimant has not made a case for partition or to engage the court's jurisdiction to make any of the orders contemplated in **Articles 653A-653L**.

27. I am of the view that both parties have failed to comply with the basic requirements of the Civil Code and the CPR 2000, respectively. In the circumstances, the court is left with no other option but to dismiss the claim.

Order

27. In summary, it is ordered that claimant's case stands dismissed and each party shall bear their own costs.

Agnes Actie
High Court Judge (Ag)

BY THE COURT

REGISTRAR