

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.17 OF 2004

BETWEEN:

SYLVINA LOUISIEN

Appellant

and

JOACHIM RODNEY JACOB

Respondent

Before:

The Hon. Mr. Michael Gordon, QC

Justice of Appeal

The Hon. Mr. Denys Barrow, SC

Justice of Appeal

The Hon. Mr. Hugh A. Rawlins

Justice of Appeal

Appearances:

Mrs. Edith Petra Jeffrey-Nelson for the Appellant

Mr. Dexter Theodore for the Respondent

2006: February 6;
September 18.

JUDGMENT

[1] **GORDON J.A.:** In her written skeleton argument, learned Counsel for the appellant stated the issues raised in this appeal in the following terms:

- (1) Can the Adjudication record for claim no. 4 A681 for Block 1656B Parcel No. 9 which was completed on the 3rd day of September, 1985 and became final ninety (90) days thereafter and entered on the Land Register on the 19th day of November, 1986 be subject to review or appeal by way of instituting proceedings in the High Court of Justice.
- (2) Can the Respondents/Claimants challenge the indefeasibility of the title given to the Appellants/Defendants pursuant to Section 98 (1) of the Land Registration Act in the absence of pleading particulars of mistake which actually took place in the registration process and not the adjudication process as alleged.

- (3) Can the Ultra Vires act of a Recording Officer during the Adjudication Process cause the Adjudication Record to be Null and Void.

Background

- [2] The appellant and the respondent both claim to be descendants of the late Arsienne Felicien who was also known by a variety of other names. Arsienne Felicien died testate leaving her estate to her four children. There is a dispute as to whether Philomene Felicien, the predecessor in title to the respondent, was one of those children. This dispute, whilst providing the genesis of this case, is not a dispute with which this Court is concerned at this time.
- [3] In 1984 St. Lucia decided to change from a system of registration of title to a system of registration of land. In pursuit of this objective two laws were passed, the one to provide for the adjudication of rights and interests in land, the Land Adjudication Act, Cap 5.06 of the Laws of Saint Lucia, (LAA) and the other to provide for the registration of land and for dealing in land so registered, the Land Registration Act, Cap 5.01 of the Laws of Saint Lucia, (LRA). The LAA was the statutory authority for the determination of rights in different parcels of land and provided the adjudicating framework for the resolution of any disputes in relation to any particular parcel of land; the LRA established a system of registering title and ancillary interests to and in land.
- [4] Pursuant to the LAA an adjudication officer was appointed by the minister with responsibility for agriculture and the adjudication officer had responsibility for dividing the island into various adjudication sections. Once an adjudication section was defined the adjudication officer would cause a notice to be published. The notice contained a date and time by and at which claims to land within the adjudication section had to be made.

The adjudication

- [5] The learned trial Judge found that it was undisputed that claim form No. 4 A681 dated February 25, 1985 submitted by the respondent was the only claim-form the recording officer received for a lot of land some 42 acres in area known as Parcel 1656B 9 (hereafter the disputed land)¹. The respondent, Rodney Jacob, claimed on his own behalf and on behalf of Vera Pamphile, Edna Jacob and Palmer Jacob. The demarcating certificate, dated 17 – 7 – 85 states the following:

“Mr. Jacob had cleared boundaries but after survey these turned out to be incorrect. He has been informed and we now await his response.”

Thereafter appears an initial or initials and the legend continues:

“Absolute title to Heirs St. Martin Felicien. (evidence in Declaration in 4A165 by Louisa Felicien and that this land was partitioned in 1920)”

- [6] The appellant in this case represents the heirs of St. Martin Felicien, in whose favour the land was adjudicated.
- [7] The LAA and the LRA sought to bring certainty and finality in the adjudicating and registering process. To that end a regime of recording and, where disputes arose, a hierarchy of dispute resolution mechanisms was put in place by the LAA. Accordingly, Sections 14 and 15 of the LAA obliged the recording officer to consider all claims to any interest in land and to prepare, after such investigations as the officer considered necessary, a record in respect of every parcel of land shown on the demarcation map, provided that if in respect of any parcel of land there was a dispute, whether as to boundary or interests in the parcel of land and the recording officer is unable to effect agreement between the competing interests, then, “the demarcation officer or the adjudicating officer as the case may be shall refer the matter to the adjudicating officer.”
- [8] As stated above, apart from claim form No.4 A681 in respect of the disputed land, there was no other. One may speculate that there may have been another claim

¹ Paragraph 48, judgment

form which was lost, or that the recording officer went off on a frolic of his own, or on any other circumstance that resulted in the recording officer awarding the disputed land to the appellants, but no speculation or inference can gainsay that a claim was filed and an award was made to a person other than the person who it is known filed a claim. One is therefore driven inevitably to the conclusion that there must have been two or more claimants to the disputed land. Section 15 of the LAA is mandatory. Unless the recording officer is able to resolve amicably rival claims for a parcel of land, then he shall refer the matter to the adjudicating officer. There is no record of the recording officer having referred the issue to the adjudicating officer. The adjudication record is bereft of any detail of an adjudication between competing claims. As the learned trial Judge found and concluded, in my view correctly:

"It seems clear to me therefore that there was a boundary dispute problem, according to the Notes on the Demarcation Certificate, and there were also 2 or more Claimants to Parcel 1656B9.

"Section 12(1) of the Act required the Demarcation Officer to resolve the boundary problem with the consent of Rodney Jacob and Louisa Felicien or any other owners where it empowers the Demarcation Officer as follows-

"12-(1) The Demarcation Officer may-

- (a) ...;**
- (b) with the consent of the owners concerned, adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision."**

"It appears to me on a close scrutiny of the Act, that if the Demarcation Officer did not resolve the dispute with the consent of the Claimant and any other owner concerned, in accordance with Section 12(1)(b), then it was mandatory for him to refer the matter to the Adjudicating Officer. If he did not do so, then he was acting unlawfully as he had no legal authority to re-adjust a disputed boundary without the consent of the owners concerned.

"Concerning the issue as to who really owned Parcel 1656B9, this appears to have been resolved unlawfully, according to the Demarcation Officer's notes on the Demarcation Certificate, and the inscription as to

ownership by the Recording Officer on the Adjudication Record. This resolution is certainly not what is contemplated by Section 15(1)(b). It definitely does not reflect that agreement was effected by the Recording Officer between the rival Claimants.

"In the circumstances existing then, it was therefore mandatory for the Recording Officer to refer the rival claim problem to the Adjudicating Officer."²

[9] Once the adjudication record in respect of any adjudication section has been completed, the adjudication officer was required to sign and publish a certificate to that effect. Within 90 days of the publication of the notice of completion any person named in or affected by the adjudication record or the demarcation map who considers such record or map to be inaccurate in any respect might give notice of his intention to petition the adjudication officer in respect of the alleged mistake and the petition is heard by the adjudication officer³. An appeal from a determination by the adjudication officer lay to the Land Adjudication Tribunal and from that body to the Court of Appeal.

[10] For the sake of completeness of the dispute resolution mechanisms, one final section of the LAA is reproduced hereunder. Section 23 of the LAA reads as follows:

"23. FINALITY OF ADJUDICATION RECORD

After the expiry of 90 days from the date of publication of the notice of completion of the adjudication record or on the determination by the adjudication officer of all petitions presented in accordance with section 20(1), whichever shall be later, the adjudication record shall, subject to the provisions of the Land Registration Act, become final and the adjudication officer shall sign a certificate to that effect and shall deliver the adjudication record and demarcation map to the Registrar⁴ together with all documents received by him or her in the process of adjudication."

[11] It is common ground between the parties that the respondent did not avail himself of the dispute resolution mechanisms and so what was recorded in the Land Registry, in accordance with section 9 (1) of the LRA, was a register in respect of

² Paragraphs 63 – 67 judgment

³ Section 20 (1) LAA

⁴ "Registrar" is defined as the Registrar of Lands appointed under the Land Registration Act

parcel 1656B 9 (the disputed land) reflecting the adjudication by the Adjudication Officer in favour of the appellants.

Certainty and finality

- [12] Once a register in respect of a discreet parcel of land is established by the registrar of lands, the court may only intervene to alter or amend such registration in severely limited circumstances. Section 98 of the LRA reads as follows:

“98. RECTIFICATION BY COURT

(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(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.”

- [13] With the background facts now clearly identified, the issues as stated in the skeleton argument of the appellant and repeated at paragraph 1 above come into stark relief. If issue 3 is decided in favour of the respondent, then this will dispose of the appeal and make it unnecessary to consider issues 1 and 2. For ease of reference I repeat here issue 3 as stated by the appellant:

“Can the Ultra Vires act of a Recording Officer during the Adjudication Process cause the Adjudication Record to be Null and Void.”

- [14] A very similar point came before this court in **J. R. Webster et al v B. St. C. Fleming**⁵ where Byron J.A (as he then was) said the following in relation to the Land Adjudication Ordinance of Anguilla on which the LAA is closely patterned:

“The legislation does not confer on the Recording Officer any power to adjudicate where there are two or more claimants to any interest in land.

⁵ Civil Appeal No 6 of 1993, Anguilla, Judgment dated May 8, 1995

That power is specifically reserved to the Adjudication Officer by the land Adjudication Ordinance 1974 Section 15.

Section 15 provides as follows

‘(1) If in any case –

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them, the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer’

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under sub-section (1), having due regard to any law which may be applicable...’

In a case such as this where the appellants and the respondent were, in effect, two claimants to the land contained in parcel 9, the Recording Officer did not have the power to determine which of them should be adjudicated as Registered Proprietor. Section 15 prescribed that judicial function to be exercised solely by the Adjudication Officer and mandated the Recording Officer to refer the matter for his decision. No such reference was made and the Adjudication Officer never adjudicated between these rival claims. The Recording Officer’s adjudication of parcel 9 in favour of the appellant was, therefore, ultra vires section 15.”

[15] Counsel for the appellant, quite properly, acknowledges in her skeleton argument that the act of the Recording Officer in this case in recording the appellant as owner of the disputed land was ultra vires. In **Webster v Fleming** this court dealt with the consequence in this way:

“In this case there was no allegation of fraud in the pleadings. The case was based on mistake.

There has been no comprehensive definition of the word mistake. In the case of **Chowood Ltd v Lyall** [1930] 2 Ch at p. 156 Lawrence LJ considered the application of the word in the context of the English Land Registration Act 1925 Section 82 which provided for rectification of the land register. He said at p. 157:

“The other point was that the case has not been brought within s.82, because the registration of the plaintiffs’ title was not a mistake within the meaning of sub-s. 1[h] of that section. I disagree with that contention. I see no reason to limit the word ‘mistake’ in that section to any particular kind of mistake. The court must determine in every case whether there has been a mistake in the registration of the title, and if so, whether justice

requires that the register should be rectified. Here I think there has been an obvious mistake by the erroneous inclusion in the plan filed in the register of this and of the two other strips of land which did not belong to their vendors. The evidence is clear that the predecessors in title of the plaintiffs had in fact no title and did not claim to have any title to the strip in question, and obviously therefore never intended to convey it to the plaintiffs. I have no reason to doubt that the plaintiffs thought that they were purchasing the land delineated on the plan, but in getting their title registered in the Land Registry they were acting on the mistakes which had been made in that the plan, and the entry made in the Registry in derogation of the right of the true owner who was in possession was an entry made by mistake within the meaning of the section."

The application of a provision in the Land Registration Ordinance of the British Virgin Islands identical with Section 140 in the Anguilla Ordinance⁶ was considered in **Skelton v Skelton** [1986] 37 W.I.R. 177 where Robotham C.J. said at p.181:

"I would agree that, if the expression of the final decision of the adjudication officer was incorrectly recorded on the Land Register, section 140 could be resorted to. I cannot, however, accept that it can be applied in the original jurisdiction of the High Court to alter in a material particular his individual findings of fact, based upon his own inquiry, simply because the judge sitting in an original jurisdiction is of the opinion that his findings were erroneous. That is not the type of mistake contemplated by section 140."

I think that there is no difference in the opinions expressed as to the meaning of mistake in these two cases. In *Skelton* the phrase "type of mistake" was used to distinguish between the authors of the mistake, not the nature of the mistake itself. The distinction was between a mistake made by the Adjudication Officer, which was not a mistake contemplated by Section 140, and a mistake made by someone in the registration process which could be rectified under Section 140.

In my judgment any mistake made in the registration process could be rectified. The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration process. A misunderstanding as to what was the real decision of the Adjudication Officer resulting in registering something that was not his decision as if it were, would be a mistake in the registration process.

⁶ Which is itself in pari materia with section 98 of the LRA

There was no legal authority for the Recording Officer to alter the adjudication record for Parcel 1 which was completed on 6th May, 1975. The alteration of the record by the Recording Officer on 12th August 1975 was a usurpation of the statutory power vested in the Adjudication Officer. It was an act entirely without legal authority.

The adjudication record for Parcel 9 was not a document which the Recording Officer was empowered to issue because it purported to make an adjudication between rival claimants and it was made after the adjudication record was finalized. It was *ultra vires*.”

[16] Byron JA (as he then was) determined what was the effect of the ultra vires act of the recording officer in this passage of the judgment:

“In my view, the Court is empowered by Section 140 to ensure that the first registration is based on the final decision of the Adjudication Officer and not on the ultra vires adjudication records issued by the Recording Officer.

The power of the court to apply this reasoning has been eloquently expressed in the well known case of **Anisminic, Ltd v The Foreign Compensation Commission and Another** [1969] 1 All E.R. 208 which explains that a “purported” or “forged” document is a nullity and could have no legal effect, and that the court would not protect a nullity without some specific statutory requirement to do so.

Lord Reid expressed the opinion at p.213, thus:

“Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word “determination” as including everything which purports to be a determination but which is in fact no determination at all. And there are no degrees of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity. I do not see how it could be said that such a provision

protects some kinds of nullity but not others; if that were intended it would be easy to say so”.

In my Judgment, therefore, the learned trial Judge was justified in finding that the registration of the appellants as proprietors of Parcel 9 and the omission to register the respondent as proprietor of the land contained therein was a registration by mistake which could be rectified under Section 140 of the Registered Land Ordinance 1974 by the order he made. Section 140[2] does not inhibit the power of the Court to make the order because the learned trial Judge found that the appellants were not in possession of the land. In any event it seemed open to the Court to find that the first appellant had knowledge of the mistake based on the extract from the evidence to which reference was earlier made.”

[17] The learned trial Judge, following, as she was bound to do, the learning in **Webster v Fleming** came to the conclusion that the answer to the third issue was that the ultra vires act of the recording officer was a mistake in the registration process, rather than the adjudication process, as must I, this Court adhering to the principle of stare decisis.

[18] In the circumstances, I would dismiss the appeal with costs to the respondent.

Michael Gordon, QC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal

[19] **BARROW, J.A.:** The decision under appeal rests upon two findings. The first finding was that there was an adjudication of rival claims to ownership of the land that is the subject of these proceedings by a person who had no authority to adjudicate. The second finding was that the registered title to the disputed land that was issued to the defendant (the appellant), which the claimant (the respondent) challenges, was issued on the basis of that invalid adjudication. The appellant contends that the judge was wrong on each finding.

- [20] Parcel 9 in Block 1656B in the Registration Quarter of Gros Islet is the disputed land. Heirs of St. Martin Felicien, the substantive defendants/appellants, were registered as proprietors upon the first registration of the land on 19 November 1986. The land comprises 41 acres, 3 rods, and 31 perches. By writ of summons issued 29th October 1999 three plaintiffs claimed the land on their own behalf and on behalf of the Heirs of Philomene Felicien.
- [21] The appellant objected that **The Land Registration Act**⁷ gave the appellant absolute title that could not be challenged on the ground that anyone other than the registered proprietor was the true owner and that the claim should be struck out. A High Court judge upheld the objection but permitted the then plaintiffs to amend the statement of claim to rely on mistake as an exception to indefeasibility. The plaintiffs were also directed to bring the action in the names of the representative of the succession of Philomene Felicien. No doubt this was to reflect that the statement of claim disclosed that none of the then plaintiffs had any personal claim to the disputed land.

The mistake alleged

- [22] After the respondent had amended the appellant again objected that the claim should be struck out. The appellant submitted that the only mistake that could permit a challenge to the validity of the Land Register, and permit the assertion that someone other than the registered owner was the true owner, was a mistake in the registration process and that was not the mistake that the respondent alleged. The judge decided that it was such a mistake that the respondent alleged. The judge went on to find that the respondent had proved the alleged mistake in the registration process and decided that the court should rectify the land register

⁷ Chapter 5.01 of the Laws of St. Lucia, 2001

but that the issue as to who owns the land remained to be determined.⁸ It is that decision that gives rise to this appeal.

- [23] The mistake that the respondent alleged originated in the land adjudication process by which it was adjudicated that the Heirs of St. Martin Felicien (hereinafter SMF) were the owners of the land. Byron JA (later CJ) in **Webster v Fleming**⁹ lucidly explained the scheme of the legislation governing that process and I gratefully reproduce his explanation, with the necessary modifications to adapt it to St. Lucia instead of Anguilla, from where the judgment emanated.

The land adjudication process

- [24] The relevant portion, with adaptations, is as follows:

“In [1984] the **Land Adjudication [Act]**¹⁰ was enacted in [St.Lucia] “to provide for the adjudication of rights and interests in land and for ... [connected purposes]”, with provision of appeal to the High Court. At the same time the [Land registration Act] was enacted “to make provision for the registration of land and for dealings in land so registered and for [connected purposes]”. All land in [St.Lucia] became subject to these [Acts] which together prevailed over all other laws relating to land adjudication and registration. The end product of this judicial adjudication process was the compulsory creation by the Registrar of Lands of a first registration of land with absolute or provisional title on the Land Register under the [Land Registration Act] by virtue of the final adjudication record emanating from the judicial process under the Land Adjudication [Act]. Such a first or subsequent registration can be defeated and rectified only on proof of mistake or fraud under the [Land Registration Act].

“The Land Adjudication [Act]”

“In order to relate the judicial process under the Land Adjudication [Act 1984], to this case it is necessary to distinguish between the functions of the Adjudication Officer and the Recording Officer. The Adjudication Officer was in charge of the adjudication process. By section 4[1], he was empowered to appoint Recording Officers to perform the duties and exercise the powers conferred upon them by the [Act]. These duties and

⁸ Saint Lucia Claim No. SLUHCv 1999/0827, judgment delivered 7 September 2004, at paragraphs 103, 104.

⁹ Anguilla Civil Appeal No 6 of 1993

¹⁰ Chapter 5.06 of the Laws of St. Lucia, 2001

powers are described in Section 14 as being to investigate all claims to any interest in land, and to prepare adjudication records in accordance with Section 18 in respect of every parcel of land shown on the demarcation map.

“The legislation does not confer on the Recording Officer any power to adjudicate where there were two or more claimants to any interest in land. That power is specifically reserved to the Adjudication Officer by the Land Adjudication [Act 1984] Section 15.”

The only claim submitted

- [25] In the instant case the judge found that the only claim that was ever submitted for the subject land was by Rodney Jacob. The judge identified the claim form that Rodney Jacob submitted as No 4A681. That claim form is part of the record of appeal. Mrs. Jeffrey Nelson, counsel for the appellant, noted that Rodney Jacob then claimed in a purely personal capacity and that he now claims in a representative capacity. In claim no. 4A681 he specified that he was claiming pursuant to a deed of sale. Mrs. Nelson made the point that before these proceedings commenced the Heirs of Philomene Felicien had never made a claim to the disputed land.
- [26] The judge noted that the Adjudication Record for the subject land was prepared and signed by the Recording Officer Mr. T.J.B. Viney and the record stated the name of the owners to be “Heirs of St. Martin Felicien c/o Plamer Jacob, La Borne, Monchy P.O.” The Adjudication Record also forms part of the record of appeal. It is the adjudication record of claim no. 4A681. To be clear, this document is the record of the judicial determination that SMF were the owners of the disputed land.
- [27] It was also noted by the judge that there is no mention anywhere on claim form no. 4A681 that SMF were claiming the disputed land. The judge referred to certain particulars on the claim form and the adjudication record which could support the speculation that the Recording officer entered SMF as owners by mistake but, quite properly, the judge firmly resisted the invitations of counsel to speculate as to what happened.

- [28] The judge helpfully referred to s 9(1) of the Land Adjudication Act that permits the Recording Officer, where a person who has a claim to any interest in land has not made a claim, to proceed as if the person has made a claim. One gathers that the judge adverted to this provision to clarify that there was a proper legal basis for the Recording Officer to adjudicate that someone was the owner even though he did not make a claim. As noted earlier the judge had found that the claim by Rodney Jacob was the only claim that the Recording Officer received for the subject land.

Were there competing claims?

- [29] On the Demarcation Certificate in relation to claim no. 4A 681 the judge found that Mr. T. Viney, as Demarcator, had written the following notes on 17th July 1985:

“Lot as shown on Plan.

“Mr. Jacob has cleared boundaries but after survey these turned out to be incorrect. He has been informed and we now await his response.

T.V.

“Absolute Title to Heirs St, martin Felicien (evidence in Declaration in 4A 165 by Louisa Felicien indicate that this land was partitioned in 1920).”

- [30] From this material the judge reasoned as follows:

“58 It seems to me therefore that there was another Claim Form No. 4A165 submitted by Louisa Felicien on behalf of the Heirs of SMF for which land, a Declaration was produced. It also appears that the officer who prepared the Demarcation Certificate relied on this Declaration in coming to the conclusion about “Absolute title to heirs St. Martin Felicien” when Rodney Jacob’s Claim to parcel 1656B9 was being considered.

“59 This therefore leaves me with no doubt in my mind, that there were competing Claimants for Parcel 1656 B 9, and that this was obvious from 17th July 1985, if not before.

...

“63 It seems clear to me therefore that there was a boundary dispute/problem, according to the Notes on the Demarcation Certificate, and there were also 2 or more Claimants to Parcel 1656B 9.”

[31] I am unable to accept this reasoning. The judge had expressly stated, as I mentioned above, that there was only one claim. She stated:

“It is undisputed that Claim Form No. 4A681 dated 25th February 1985 submitted by the Claimant Rodney Jacob, was the only claim that the Recording Officer received for the approximately 42 acres of land registered as Parcel 1656B 9.”¹¹

In the face of what the judge herself stated to be the undisputed fact I cannot see how it could be correct for the judge to state that there were competing claims for the land.

Claim No. 4A 165

[32] Claim No. 4A 165 did not form part of the record of appeal, it was not otherwise put before this court and I gather that it was not put before the judge. It is from the Demarcator’s note that the judge concludes¹² that there was a claim no. 4A 165. That note, however, does not state that that claim was for the disputed parcel of land. It was only a possibility that claim no. 4A 165 was for the disputed land; it was equally possible that it was for a different parcel of land. The judge seems to have simply assumed that claim no. 4A 165 was for the disputed land. In fact, the material that is in the record points strongly against that assumption.

[33] At the back of the very Demarcation Certificate on which appear Mr. Viney’s notes (quoted above) that refer to claim no. 4A 165 there is reproduced a map. Three parcels of land are depicted. The first of those parcels is a parcel of 41 acres, 3 rods, 31 perches, which I take to be the disputed land. On that parcel is written “4A 681”. That is the claim number of Rodney Jacob’s claim. In respect of this parcel it is therefore the fact that the claim number is written on the parcel of land to which it relates. On the second parcel is written “4A 166”. I think it reasonable to infer in respect of this second parcel that this is the claim number that relates to this parcel. And on the third parcel is written “4A 165”. I think it reasonable to infer in

¹¹ paragraph 48 of the judgment

¹² paragraph 58 of the judgment

respect of this third parcel that this is the claim number that relates to this parcel. Even if this inference is treated as only one possible inference, and I can think of no other, the availability of the inference that claim no. 4A 165 was a claim for this third parcel means that it was not open to the judge simply to assume that claim no. 4A 165 was a competing claim for the disputed land.

- [34] A further observation that I would make concerning the assumption that there were competing claims arises from the Adjudication Record that counsel put before us. The claim number that appears on that document is 4A 681. This is the number of Rodney Jacob's claim. No other claim number appears on the Adjudication Record. The Adjudication Record was the final document in the process of adjudicating title to the subject land; it marked the end of the adjudication process. It is not possible that a competing claim could have been made after the Adjudication Record was issued. The fact that only one claim number appeared on the Adjudication Record therefore strongly suggests, in my view, that from start to finish, there was only one claim for the disputed land before the Recording Officer.
- [35] The matter is put beyond doubt, in my opinion, by the skeleton argument of Mr. Theodore, counsel for the respondent. The position of the respondent is stated to be that claim no. 4A 165 is for a parcel other than the disputed land and that "the only person who ever claimed the 41 ac parcel (1656B 9) was Rodney Jacob."¹³ To my mind this makes it conclusive that the judge was wrong when she assumed that there were competing claims to the disputed land.
- [36] The effect of that conclusion, it seems to me, is that the appeal must be allowed because the entire premise of the judge's decision was that the adjudication of ownership in favour of the appellant was invalid because the Recording Officer had no authority to adjudicate in a case of competing claims. If there were no competing claims there was no ground of invalidity. However, in deference to the extensive arguments that were put before us, including the respondent's reliance

¹³ At page 2 of respondent's skeleton argument, paragraphs (8), (12), (14) and (15).

on a completely different basis to support the challenge to the indefeasibility of the register, I go on.

Was the claim maintained?

- [37] If it were to be argued that the Recording Officer converted and treated claim 4A 165 as being in reality a claim for the disputed land, a further aspect of the judge's decision that there were competing claims for the disputed land that is troubling is that it is, again, pure assumption that Rodney Jacob maintained his claim. After Mr. Jacob claimed the subject land the Demarcation officer, Mr. Viney, inspected the land. The Demarcation Certificate is actually a record of the physical inspection of the land that is made on a form that contains provision for noting the person pointing out the land (in this case it was Rodney Jacobs) and any witnesses (in this case there was none). It appears from Mr. Viney's notes on the Demarcation Certificate that Mr. Jacob had cleared boundaries and that Mr. Viney determined, by reference to a survey that had been done, that Mr. Jacob had cleared the wrong boundaries. Mr. Viney's notes state that he informed Mr. Jacob that he had cleared the wrong boundaries and that he was waiting for Mr. Jacob to respond to that information.
- [38] What did Mr. Jacob do thereafter? There is not a shred of evidence that he did or did not do anything. There is no evidence that he maintained the claim or that he abandoned the claim. The absence of any note on the Demarcation Certificate that Mr. Jacob provided the awaited response points in a certain direction. So does the absence of any further reference to Mr. Jacob's claim. On the other hand it is a cogent argument pointing in the opposite direction that if Mr. Jacob had abandoned his claim Mr. Viney may have been expected to note that fact on the Demarcation Certificate.
- [39] In the end one simply does not know what took place except that absolute title was adjudicated to SMF. In that condition of ignorance I do not see how it can be said

that at the time the Recording Officer signed the Adjudication Record there were competing claims since it is not known if the original claimant (in fact the sole claimant, as the respondents said) maintained his claim. It is as open to speculation that Mr. Jacob abandoned his claim as that the Recording Officer wrongfully adjudicated a dispute that he should have known he had no authority to adjudicate.

Authority of the Recording Officer

[40] The whole of the judge's decision rests upon that finding that there were competing claims for the disputed land. Having found that there were competing claims the judge concluded that section 15(1) of the Land Adjudication Act obliged the Recording Officer to refer the matter to the Adjudicating Officer who alone had the authority to determine the dispute.

[41] The judge also found that there was a boundary dispute that the Demarcation Officer was also obliged to refer to the Adjudicating Officer. I must confess that I have been unable to find any evidence of a boundary dispute. I suspect that the judge took the note on the Demarcation Certificate, that Mr. Jacob was informed that the survey showed the boundaries he cleared were incorrect, to mean that there was a boundary dispute. I do not think that was right: the essence of a dispute is that there are two or more parties who take opposing positions on an issue. There was no evidence that anyone other than the Demarcator had any position on the boundary that Mr. Jacob cleared and the dispute could not be with the Demarcator; he was a judicial officer, not a party. In any case, s 15(1) of the Land Adjudication Act recognizes the authority of the Recording Officer to "resolve" a boundary dispute so it was wrong for the judge to find¹⁴ that the Demarcator was obliged to refer such a dispute to the Adjudication Officer.

¹⁴ Paragraph 65 of the judgment

[42] On the basis of her erroneous finding that there had been competing claims and a boundary dispute the judge went on to hold that because the Recording Officer and not the Adjudicating Officer had determined that SMF were the owners of the disputed land the Adjudication Record was invalid. The judge declared the Adjudication Record to be ultra vires, null and void.¹⁵ I have already indicated my view that the factual premise for this conclusion was wrong. In my view the legal basis for this conclusion was also wrong.

A judicial decision

[43] The adjudication decision is a judicial determination, as Byron J.A. observed in **Loopsome Portland v Sidonia Joseph**,¹⁶ not just an administrative decision. Therefore, it was not competent for a court to regard the adjudication as invalid because questions were raised as to how the decision was made and because, twenty years after it was made, the basis upon which it was made does not appear from such records as are found. This seems precisely what the judge did. She stated:

“In the absence of any notes as to how both the boundary dispute and the dispute as to ownership was resolved, or any signed record of the Adjudication Officer evidencing his adjudication, I am compelled to conclude that Parcel 1656B 9 was not adjudicated in accordance with the Land Adjudication Act as amended.”

[44] There is a presumption of validity in favour of the adjudication, not of invalidity. If it were permissible at this stage to challenge the validity of the adjudication, and for the reasons given below I am clear that it is not, it was for the party who challenged it to prove that the adjudication was invalidly made. It was not for the court to conclude, in the absence of evidence, and because the evidence to justify the result was not produced, that the adjudication was improperly made.

¹⁵ paragraph 93 of the judgment

¹⁶ St. Lucia Civil Appeal No. 2 of 1992, judgment delivered 25th January 1993, at p. 7

Finality of the adjudication

- [45] The reason why ownership was adjudicated to persons who did not claim the subject land is not a matter with which this court can properly concern itself. It is clear from the respondent's skeleton arguments that the case for the respondent is, fundamentally, not that the Recording Officer made a decision between competing claims that he was not authorised to make, but that by "a slip of the pen" he wrote down the wrong name, SMF, as proprietors.¹⁷ The true position was correctly stated by the judge:

"83 My understanding of the decisions in **Webster v Fleming** (supra) and **Portland v Joseph** (supra) therefore leads me to conclude that the Adjudication Record is subject to limited review by the High Court.

"84. Such a review can only be effected to determine whether the Adjudication Record reflects the decision of the officer having the lawful authority to make that decision in the adjudication process; (Byron J.A. in **Webster v Fleming** (supra) at page 9)."

- [46] If Rodney Jacobs was aggrieved by the decision of the Recording Officer he had a right of appeal. The Land Adjudication Act set out a clear procedure with generous time limits for any person who was dissatisfied to challenge the decision in the Adjudication Record. It provided in s. 19 that when the Adjudication Record had been completed the Adjudication Officer was required to sign and date a certificate to that effect and give notice of the completion and of the place where it may be inspected. Section 20 enabled any person who was aggrieved by any decision of the Recording Officer to petition the Adjudication Officer within ninety days in respect of the decision and provided for the Adjudication Officer to hear and determine petitions. From a decision on any petition an appeal laid to the Land Adjudication Tribunal and thereafter to the court of appeal.

- [47] The Act provided in s. 23 that after the expiry of ninety days from the date when the Adjudication Officer published notice that the Adjudication Record had been completed, or after the determination of any appeal, the Adjudication Record became final and the Adjudication Officer was required to sign a certificate to that

¹⁷ at page 7 of the respondent's skeleton argument, paragraph 24

effect and deliver it to the Registrar of Lands. The Registrar was then required to enter upon the Land Register the particulars of ownership contained in the Adjudication Record.¹⁸

- [48] The ultimate objective of the process was to produce finality. In the instant case Rodney Jacob did not appeal. As the judge observed, subject to the limited exceptions provided, the court cannot review the adjudication decision. The legerdemain that Mr. Theodore attempted in arguing that the adjudication was *ultra vires*¹⁹ and therefore subject to review by the court because the Recording Officer had no authority to decide competing claims is undone by his own starting premise that there was only one claim to the disputed land.

The alleged mistake in the registration process

- [49] It is settled law that a mistake in the adjudication process as distinct from the registration process cannot be relied upon to challenge the validity of a registered title.²⁰ Registration obtained upon the basis of a supposedly wrongful adjudication, or by an alleged slip of the adjudicator's pen in entering the name of the proprietor, does not amount to a mistake in the registration process. This court expressly decided so in **Skelton v Skelton**²¹, in which the trial judge had ordered rectification of the register having found that the Adjudication Officer had mistaken the identity of the respondent and thereby failed to award the respondent the amount of land to which he was entitled. Robotham CJ stated as follows:

“I would agree that, if the expression of the final decision of the adjudication officer was incorrectly recorded on the Land Register, section 140 [which allows rectification for fraud and mistake] could be resorted to. I cannot, however, accept that it can be applied in the original jurisdiction of the court to alter in a material particular his individual findings of fact,

¹⁸ s. 10 of the Land Registration Act

¹⁹ page 11, paragraph 45 of respondent's skeleton argument

²⁰ Webster v Fleming, at p. 12: “The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration section.” Per Byron J.A.

²¹ (1986) 37 WIR 177 at p 181

based upon his own inquiry, simply because the judge sitting in an original jurisdiction is of the opinion that his findings were erroneous. That is not the type of mistake contemplated by section 140. ...

"I am of the view that the respondent not having exercised his right to petition the adjudication officer, and not having exercised his right of appeal to the Court of Appeal, nor sought an extension of time within which to appeal, and lastly (but by no means least) not having done anything for a period of nine years, cannot now impeach the finding of the adjudication officer by an ingenious action for rectification in the High Court. What the trial judge did in this case was a function which was open only to the Court of Appeal, had the respondent sought relief therein in accordance with his established statutory rights."

A valid Adjudication Record

- [50] The decision in **Webster v Fleming** by which the judge guided herself does not in any way diminish that proposition. In that case the Registrar of Lands registered a person as proprietor in the mistaken belief that he was acting upon a valid Adjudication Record when in fact he was acting on an invalid document. It is crucial to note the difference between the two cases. The short point in that case was that ownership had been adjudicated in favour of the respondent, the Adjudication Record had issued and the Adjudicating Officer had signed his certificate of finalisation on 6th May 1975 in favour of the respondent.²² As Byron JA noted, when that happened there were no further statutory duties to be performed or powers to be exercised by the Recording Officer and he became *functus officio*.²³ On 12th August 1975 the Recording Officer altered the Adjudication Record.²⁴ The Adjudication Officer knew nothing of that alteration. When, therefore, the Registrar acted upon the altered Adjudication Record he was mistaken in thinking that he was acting upon the Adjudication Record that the Adjudicating Officer had certified; in fact he was acting upon an altered and invalid document.

²² p.7

²³ *ibid*

²⁴ p. 4

[51] There is a world of difference between those facts and the facts in the instant case in which the Registrar acted upon the Adjudication Record that the Adjudication Officer had certified as final and correct. Unlike the situation in **Webster v Fleming** no one altered the Adjudication Record in the instant case after the Adjudication Officer had certified it. Mrs. Nelson, counsel for the appellant, has properly emphasized this point. It is a complete answer to the misgivings that the judge expressed concerning the absence of any notes of proceedings before the Adjudication Officer or the absence of any signed record evidencing his adjudication. The certificate of finalisation, signed by the Adjudication Officer, imprinted his authority upon the Adjudication Record. He validated the adjudication that the Recording Officer had made. He pronounced it final. By his pronouncement he gave it force as a judicial determination of the absolute title that the law confers upon a proprietor when the Registrar enters the particulars of that determination upon the Land Register.

[52] The Adjudication Record upon which the Registrar acted in **Webster v Fleming** could be challenged because it was not the Adjudication Record that the Adjudication Officer had certified. In the instant case the Adjudication Record upon which the Registrar acted can not be challenged because it was the Adjudication Record that the Adjudication Officer certified correct and final over twenty years ago.

Conclusion

[53] I would therefore conclude that the judge erred in her decision that the first registration of Heirs of St. Martin Felicien as proprietors of the disputed land was obtained by a mistake in the registration process. I would allow the appeal and set aside the judge's decision. It follows, in my view, that the respondents cannot challenge the registered title of the appellant as proprietors of the disputed land and, hence, the statement of claim discloses no cause of action that is capable of succeeding. I would strike out the statement of claim and enter judgment for the

appellant with costs here and in the court below. Costs in the court below were not quantified. Accordingly I would refer the matter of costs back to the High Court for a judge or master to determine. I would award prescribed costs in this court in accordance with rule 65.13.

Denys Barrow, SC
Justice of Appeal