

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11 OF 2002

BETWEEN:

[1] HEIRS OF DOXEY CLAW represented by Heirs
[2] ELIZABETH JNPIERRE [nee DOXEY]
[3] STEPHANIE THEODORE [nee DOXEY]
MAGDELINE CAMILLE all of Dugard Quarter of Micoud
Appellants

and

[1] ATTORNEY GENERAL
[2] HEIRS OF EDMUND AFRICAIN represented by JEROME XAVIER of
Dugard in the Quarter of Micoud
Respondents

Before:

The Hon. Sir Dennis Byron

Chief Justice

Appearances:

Mr. Kenneth Foster, QC for the Appellants

Mr. Dexter Theodore for the second Respondent

2003: October 30;
2004: January 12.

JUDGMENT

[1] **BYRON, C.J.:** On 15th May 2002 the Appellants filed a Notice of Appeal against a judgment of the High Court delivered on 8th April 2002.

[2] On 8th August 2003 Jerome Xavier one of the Respondents applied to have the notice of appeal struck out for failure to comply with rules of Court requiring the Appellants to file a Record of Appeal.

- [3] On 29th October 2003 the Appellant applied for an extension of time in which to file the Record of Appeal.
- [4] The affidavits revealed that the Court office published to all parties notice of the availability of the transcript of the trial on 2nd December 2002. On 16th April 2003, Mr. Dexter Theodore, Legal practitioner acting for Xavier wrote Mr. Kenneth Foster, QC acting for the Appellants and reminded him that the record was available, and gave him notice of the documents that he considered should be included in the record. He also reminded him of the obligations of filing the Record of Appeal.
- [5] The Appellant did not take any steps. In the affidavit supporting the application for extension of time, the document filed on behalf of the Appellant, stated that the deponent who lives far from Castries, in Micoud, has difficulty in communicating with his lawyer and only found out that the transcript was available on 7th October 2003.
- [6] In accordance with the line of authority on this issue, the delay is inordinate and the reason given for it does not provide a good basis for relief.
- [7] During argument issues were raised concerning the merits of the appeal. Both the Doxey Claw heirs and the Edmund Africain heirs owned large portions of land north of the Anse Ger River in an area known as Beauford, Planna or Dugard in the Registration Quarter of Micoud. The dispute as to the exact areas of land which each owned commenced when the new system of land registration came into effect with the Registered Land Act and the Land Adjudication Act. The Land adjudicator's decision was appealed and on 1st October 1987 the Land Adjudication Tribunal, under chairmanship of Sir Neville Peterkin, after hearing the appeal delivered a written judgment making its award. On 4th May 1988 the Registrar of Lands duly registered the instruments for the purpose of giving effect to the decision of the Land Adjudication Tribunal. On 19th January 1989, after further interventions the Registrar of lands wrote to Mr. Cenac, licensed surveyor, confirming an inconsistency in the registration and stated as follows:

“In order that the Land Registry Map for each of the respective proprietors may refer to the correct parcel as shown on the Registry Map the following changes to the Registry Map 1626B will be effected:

[i] The parcel now numbered as 86 will be numbered 88

[ii] The parcel now numbered as 87 will be numbered 86

[iii] The parcel now numbered as 88 will be numbered 87.

Please be guided accordingly. By copy of this letter Mr. Kenneth Foster is kept informed of this action.”

[8] The Appellants did not avail themselves of the appeal procedure provided by section 105 of the Act. Instead, and in conflict with the legislation, 10 years later they issued proceedings to rectify what they alleged was a mistake by the Registrar of lands. In her decision, the learned trial Judge indicated that the procedural deficiencies of the Appellants could have been sufficient to dispose of the litigation. Detailed and serious consideration was, nonetheless, given to the merits of the issue and the learned trial Judge concluded:

“Looking at the evidence as a whole, I cannot find that the Claimants have satisfied this Court that the Registrar of Land erred in the rectification of the Land Register. In my view, the awards of the Land Adjudication Tribunal are accurately and truly reflected in the Land Register.”

[9] There were two grounds of appeal. One challenging the correctness of the trial Judge in entertaining arguments on the jurisdiction and procedural issues and complaining that the decision was against the weight of the evidence.

[10] In all the circumstances I would dismiss the application for extension of time, and order that the appeal be dismissed with costs to the Heirs of Edmund Africain in the sum of \$1,500.00 assessed in accordance with CPR part 65.11.

Sir Dennis Byron
Chief Justice