

ANGUILLA

IN THE COURT OF APPEAL

CASE STATED APPEAL NO. 4 OF 2002

BETWEEN:

COMMISSIONER OF POLICE

Appellant

and

JOHN A. GUMBS

Respondent

Before:

The Hon. Mr. Satrohan Singh
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

Justice of Appeal
Justice of Appeal
Justice of Appeal (Ag)

Appearances:

Mr. Ronald Scipio, Attorney General, Crown Counsel Reid and Barrett with him for
the Commissioner of Police
Miss Bernice Lake Q.C., Mr. Elson Gaskin with her for John A. Gumbs

2002: June 6: 17.

JUDGMENT

[1] **SINGH, JA.:** John Gumbs was charged by the police for: **1. Wilfully obstructing the free passage of a road by parking motor car A 6603 across the said road, in breach of S38 of the Roads Act Revised Statutes of Anguilla Cap R 65 [The Roads Act.] 2. Wilfully obstructing Sylvia Hodge, a member of the Royal Anguilla Police Force, whilst in the execution of her duty, in breach of S 351 of the Criminal Code Revised Statutes of Anguilla Cap. C140.** The second offence related to the first offence.

[2] The case for the prosecution was premised on the existence of a public right of way or road over the lands of John Gumbs.

- [3] John Gumbs claimed that there was no such right of way or road over his lands.
- [4] In the Court below, Learned Counsel for Gumbs indicated to the Magistrate that John Gumbs was asserting a **bona fide** claim of title to the land in question and therefore the jurisdiction of the Magistrate was ousted.
- [5] With the consent of both sides, the Magistrate heard evidence from Inspector Sylvia Hodge, in order to determine whether or not there was merit in the assertion of a **bona fide** claim of title to the land in question.
- [6] Evidenced before the Magistrate was the official map and a certified copy of the land register relating to the disputed property. The Magistrate saw no road on the property of John Gumbs. The prosecution was asserting the existence of such a road based on the concepts of dedication and acquiescence which they hoped to prove by witnesses.
- [7] The Magistrate then dismissed the first complaint on the basis that it raised “issues relating to title over which this Court had no jurisdiction to preside” and adjourned the second complaint **sine die**.

THE CASE STATED

- [8] Pursuant to a notice given to him by the Attorney General, the Magistrate then stated a case for this Court to answer the following questions.
- “(1) Whether the magistrate was correct in law, based on the facts herein in deciding that the magistrate court had no jurisdiction to proceed and determine issues pertaining to title to land in a criminal proceeding, where the defendant asserts title as a defence to the charge(s) herein.
 - (2) Assuming the magistrate had no jurisdiction to proceed, did the magistrate err in dismissing complaint number 98/2002.
 - (3) Whether where the preliminary issue of jurisdiction of this court and title to land was limited solely to the charge of obstructing a

public road, but the charge of obstructing Inspector Sylvia Hodge in the execution of her duty is alleged to have occurred on the same land, did the magistrate err in adjourning complaint 99/2002 sine die, charging obstruction in the execution of duty pending the outcome of the issues affecting title."

- [9] The real issue before us therefore was whether the Magistrate was correct in law to decline jurisdiction and dismiss the first complaint on the ground that there was raised before him a **bona fide claim** of title to the land.

THE ISSUE:

- [10] **Halsbury's Laws of England 4th Ed. Vol. 29 para 307** at pp 171-172 sets out the law on the subject as follows:

"The defendant in a magistrates' court is entitled to set up a claim of right or title to do the act which is the subject of the information, and this claim may oust the court's jurisdiction. The claim of right or title is limited to questions of title to real property. If the claim is made in good faith it is not for the court to inquire into all the circumstances to see if it is impossible. If upon the consideration of admitted facts, it is clear that the law will not admit of the claim, the court's jurisdiction is not ousted, but if in order to decide whether a legal claim exists it is necessary to determine some disputed question of fact, or if it is not clear that the right claimed is impossible in law, the court's jurisdiction is ousted, and in such a case the question of right must be settled by a higher tribunal. It is for the magistrate's court to determine whether or not upon the evidence before it a bona fide question of title is raised.

It is only when it is plain that the claim is not a claim which can have any legal foundation or is one which is not made in good faith that the jurisdiction is not ousted.

This rule of law is nowadays of only limited application."

- [11] In **R -v- CRIDLAND [1857] 7E + B 853**, it was held that if a **bona fide** claim of title to real property is set up, a magistrate's court may not proceed further with the hearing. [See also **Paley's Law and Practice of Summary Convictions, 3rd Ed. P. 28**]

- [12] The general rule then is that, **in an appropriate case**, the jurisdiction of a Magistrate to convict summarily ceases as soon as a claim of title is **bona fide** made. The Magistrate has the jurisdiction to try the fact whether the claim is **bona fide** made. And, if it is so made, he had no jurisdiction to inquire into any further fact.
- [13] The learned Attorney General, in his arguments before this Court, submitted that there was no **bona fide** issue of title in this case as the prosecution never alleged any claim to the title of the land of John Gumbs.
- [14] I find this submission mind boggling. The evidence before the Magistrate [the maps and the title] showed clearly that no road existed over the land of the respondent. It is my view, that any claim by the prosecution to a right of way or a road over the said land, whether by dedication or otherwise, would be an attempt at erosion of the title of the respondent. It would be a challenge to the absolute nature of that title which has constitutional protection. That in my opinion would be enough to create a bona fide dispute as to title.
- [15] Mr. Scipio then submitted that the issue whether or not there is a public right of way over the respondent's land, was a question of fact for the magistrate, which the prosecution intended to prove by calling witnesses, based on the concepts of dedication and acquiescence. The learned Attorney referred to the case of **MERREN –v- FEURTADO [1964] 7 WIR 281** specifically to **para F at p284** in support of this submission.
- [16] I must express my disappointment at this submission. **FEURTADO** was an appeal to the Jamaica Court of Appeal from a decision of the High Court. It had nothing to do with a Magistrate's jurisdiction.
- [17] I also consider to be without merit, the submission of Mr. Scipio, that because the first offence charged, was a summary conviction offence, that the Magistrate's

jurisdiction given by **S20 of the Magistrate's Code of Procedure Act** could not be ousted as aforementioned. The learned Attorney General relied on **R -v- OGDEN [1963] W.I.R.** in support of this submission.

- [18] **OGDEN** says that if a statute gives a Magistrate jurisdiction to dispose of a matter summarily then he is bound to do so. **Prima facie**, I do not disagree with this. **Ashworth J** however, without deciding the issue, was impressed with the argument in that case that such jurisdiction would not be ousted by a mere claim of right but maybe only where title was in issue.

CONCLUSION

- [19] In the instant matter, the evidence **prima facie** shows that the respondent has absolute title to the property in question. The title does not show any right of way or public road over his property. The prosecution sought to assert a road, not by statute, but by dedication or acquiescence which they still have to establish by evidence. In my judgment, what is involved here is more than a claim of right. The respondent, because of the absolute nature of his title might be asserting a claim of right to exclude a road on his property but, the prosecution or the Crown, by their assertion of a public road thereon has challenged the absolute nature of the respondent's title, a right that has constitutional protection from erosion. If in fact the prosecution did prove the existence of such a road, then the respondent would no longer be the absolute owner of that portion of his property. There would be a diminution of his title. I cannot imagine that it was ever intended that such a serious matter could be summarily decided by a Magistrate.

- [20] For these reasons I answer the case stated as follows:
- (1) The Magistrate was correct in law to decline jurisdiction to hear the first complaint against the respondent on the ground that the evidence disclosed a genuine dispute as to his title.

- (2) The Magistrate was correct to dismiss the first complaint for want of jurisdiction. His certificate of dismissal should be corrected to reflect want of jurisdiction as his reason for the dismissal.
- (3) The Magistrate should also have dismissed the second complaint for want of jurisdiction. This second offence could only stand if in fact there was the alleged road.

Satrohan Singh
Justice of Appeal

I concur

Albert Redhead
Justice of Appeal

I concur

Ephraim Georges
Justice of Appeal (Ag)