

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 of 1990

BETWEEN:

SIMON FRETT and THOMAS FRETTE
(Administrators of the Estate
of Rebecca Fahie, deceased and
Jacob Thomas) - Applicants

and

ALICE THOMAS and ALPHONSO THOMAS
(Administrators of the Estate
of Caesar Thomas, deceased) - Respondents

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Byron (Acting)

Appearances: L.S. Hunte for the Applicants
G. Farrara for the Respondents

1990: June 27,
1991: Jan. 14

JUDGMENT

ROBOTHAM, C.J.

This is an application by Simon Frett and Thomas Frett (Administrators of the Estate of Rebecca Fahie, deceased, and Jacob Thomas) in which they sought an extension of time within which to appeal against the decision of the Adjudication Officer, whereby he awarded land then registered as Parcel 2 Block 3337B to Caesar Thomas.

The award was made on 15th November, 1972, and this application was filed in the Registry of the Virgin Islands on 3rd April, 1990. It is therefore now on to 18 years out of time.

When the claimant Caesar Thomas first filed the claim on 1st May, 1972 with the Adjudicating Officer, he made it in the name of himself and 8 others. However, it was signed by the said Caesar Thomas alone.

Apparently, as submitted by Counsel for the applicant, and not denied by Counsel for the respondent, there was no dispute and on 15th November, 1972, the final award was made to Caesar Thomas only. It was acknowledged and accepted by Caesar Thomas in accordance with section 18(2) of the Land Adjudication Ordinance 5/1970 and duly

/authenticated.....

authenticated by the recording officer.

Section 17(5) of the Land Adjudication Ordinance reads as follows:-

"Where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Ordinance 1970 the Recording Officer shall record such persons as joint owners or owners in common, as the case may be and if owners in common the share of each owner."

Although Caesar Thomas made the claim on behalf of himself and others, the Adjudicating Officer none-the-less made the award to Caesar Thomas only and Thomas signed acknowledging the award in accordance with section 18(2) of the Land Adjudication Ordinance 1970 (The Ordinance).

Section 19 of the Ordinance reads:

"When the adjudication record in respect of any adjudication section has been completed, the Adjudication Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof and of the place or places at which the same can be inspected together with the demarcation map."

There is nothing to show that the requirements were not duly complied with. The effect of section 19 is to give persons who wish to object to the finality of the record an opportunity to do so after inspection.

Section 20 of the Ordinance as amended by the Land Adjudication (Amendment) Ordinance No. 13 of 1971 allows for any person who considers the adjudication record or demarcation map to be inaccurate, or incomplete, or any person who is aggrieved by that decision of the Adjudicating Officer to petition within 90 days of the date of publication of the notice given under section 19 for a rehearing.

Section 21 reads as follows:

"At any time before the adjudication record becomes final, the Adjudication Officer -

- (a) may correct in the record any error or omission not materially affecting the interests of any persons; and
- (b) after taking such steps as he thinks fit, to bring to the notice of every person whose interest is affected, his intention to make any material alteration in the record which he considers necessary, and after giving these persons an opportunity to be heard, may make a material alteration."

Section 22 reads as follows:

/"After the.....

"After the expiry of ninety days from the date of publication of the notice of completion of the adjudication record or on determination of all petitions presented in accordance with section 20, whichever shall be the later, the adjudication record shall, subject to the provisions of the Registered Land Ordinance, 1970, become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the adjudication record and the demarcation map to the Registrar together with all documents received by him in the process of adjudication."

Section 23 gives a right of appeal to the Court of Appeal and is as follows:

"Any person including the Administrator who is aggrieved by any act or decision or omission of the Adjudication Officer and desires to question it or any part of it on the ground that it is erroneous in point of law or on the ground of failure to comply with any procedural requirement of this Ordinance may within ninety days from the date of the certificate of the Adjudication Officer under section 22 or within such extended time as the Court of Appeal, in the interests of justice, may allow, appeal to that Court in the form prescribed in the Court of Appeal Rules for civil appeals from the High Court."

The applicants in this case did nothing in the exercise of their rights of inspection given under section 19 of the Ordinance, and now seek an extension of time 18 years later, alleging that the interests of justice so require.

It has often been said that the interest of justice is not a unilateral matter and we were told by Counsel that there have since 1972 been dealings in the land.

The applicants at this stage cannot be heard to say that they did not have ample opportunity to have questioned what they now claim to be an error on the part of the Adjudication Officer. The truth is that they were negligent and sat down on their rights. Caesar Thomas died in 1984 and the adjudicating process in the British Virgin Islands has been closed.

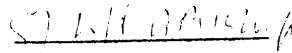
I am not of the view taking all the circumstances of the case into consideration that the Court should at this late stage exercise its discretion in granting an extension of time in which to appeal.

The application for leave to appeal out of time is accordingly refused with no order as to costs.

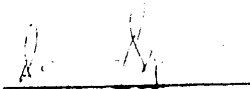
/L.L. ROBOTHAM.....



L.L. ROROTHAM,
Chief Justice



E.H. A. BISHOP,
Justice of Appeal



C.M.D. BYRON,
Justice of Appeal (Acting)