

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2023/0132

BETWEEN:

SHARON SIMMONS, REGISTRAR OF LANDS

Claimant

And

ALBERTINE JURGENSEN

Defendant

ANTIGUA DISTILLERY LIMITED

Interested Party

Appearances:

Ms. Joy Dublin for the Claimant

Mr. Sherfield Bowen for the Defendant

Ms. E. Ann Henry KC for the Interested Party

2025: June 17th,
July 11th

JUDGMENT

[1] **WILLIAMS, J.:** The Registrar of Lands by Fixed Date Claim Form filed on 6th April 2023 and pursuant to **section 146** of the **Registered Land Act**¹ seeks the opinion of the court on the following issues:

1. Can an application for the determination of boundaries be heard where there are clear inconsistencies with the parcel numbers affecting the said application?

¹ Cap. 374

2. Can the application for determination of boundaries be heard and decided on without a rectification of all the parcels containing the leased area?
3. Can the Claimant rely on section 139(1)(a) of the Registered Land Act to amend the affected registers despite the defendant's unfounded allegations of fraud?
4. If the Claimant can rectify the affected land registers without the defendant's consent, should the defendant's renewed lease be registered against the Registration Section: Villa Block 62-1492A Parcel 171?
5. Was the Government of Antigua and Barbuda lawfully required to seek the consent of or provide notice to the Defendant of its subdivision of land containing her lease?

Background

[2] The relevant background is as follows:

1. The Crown is the registered proprietor of the parcel of land known as Registration Section: Villa; Block: 62-14924; Parcel: 30, which is central to these proceedings.
2. On 13th July 1982, the Defendant's leasehold interest in a portion of this parcel was registered by instrument number 2841/1982 pursuant to the Registered Land Act.
3. At that time, the parcel was identified as Registration Section: Villa; Block: 62-14944; Parcel: 17.
4. Parcel: 12, Block: 62-1492A, Registration Section: Villa (also registered to the Crown and leased to Antigua Distilleries Limited), shares a boundary line with parcel 30 (formerly parcel 17).

5. There is an unresolved boundary dispute between the Defendant and Antigua Distillery Limited regarding these parcels.
6. This dispute is subject to High Court Proceedings Claim No. ANUHCV2002/0348, wherein the Defendant seeks damages for trespass against Antigua Distillery Limited concerning the leased premises.
7. The Defendant is also involved in High Court proceedings Claim No. ANUHCV2012/0176, seeking:
 - A. An order against the Crown for renewal of the lease.
 - B. A declaration that the Crown unlawfully allocated 0.28 acres of the leased property to Antigua Distillery Limited.
8. That claim pursuant to the Order of the Court dated 21st September 2016 is stayed pending a Court ordered determination of the boundaries.

[3] The Registrar of Lands upon considering the determination of the boundaries, noted several errors which arose from the subdivision of parcel 17 over the past forty years. These are outlined at paragraph 3 of the Statement of Claim as follows:

"Parcel 17

Mutation No. M.O 212/1986 was erroneously duplicated, resulting in the closure of another parcel of land at Registration Section: South West Block 55-1386A Parcel; 168. Copies of the land registers are exhibited hereto and marked SS6. Parcel 17 was closed to create parcels 26 and 27 of Registration Section: Villa Block 62-1492A. The parcel was closed, but the signature of the Registrar of Lands does not appear on the face of the land register.

Parcel 27

The Land Registry's records show that the parcel was subdivided by mutation number 4/1988, creating parcels 28, 29 and 30. Parcel 30 contained the 6.56 acres leased to the defendant.

Parcel 30

According to the Land Registry's mutation book and the land register, which to date remains open, the parcel was supposedly subdivided by mutation number 2/1988, which effectively closes a parcel before it was created (see parcel 27). Although as stated earlier, parcel 30 remains open, the Registry opened parcels 33,34 and 35, which resulted from its subdivision. Parcel 35 contained the area leased to the defendant.

Parcel 35

The parcel was subdivided by mutation number 86/1988, creating parcel 664 of Block 62 1693 and 40 of Block 62-1492A.

Parcel 40

The parcel was mutated by duplicate instrument number 314/88, creating parcels 41 to 47. Parcel 47 contains the area subject to the defendant's lease. According to the land register and the mutation form (a copy of which is exhibited hereto marked "SS7"), the parcel was closed using instrument number 314/88. It is noted that the said instrument number was duplicated and used for the subdivision and closure of Registration Section: Cassada Gardens & New Winthorpes Block 42-1992B Parcel: 228 and creating 231 and 232. Unfortunately, the lease did not appear in the incumbrances section of the land register; however, the Registry opened the lease register 40/1 in favour of the defendant.

Parcel 47

This parcel appears to be the last register containing entries of the defendant's leasehold interest, which was erroneously omitted from all subsequent eleven subdivisions affecting the area containing her lease."

[4] Having observed these errors, the Registrar of Lands was of the opinion that these parcels should be rectified before determination of the boundaries could take place. By letter dated 26th August 2020, the Registrar of Lands proposed; "We therefore recommend that the parties meet to explore the possibility of agreeing to the rectification. Should an agreement be reached, the leased area can be resurveyed, and all land registers from 47 to 171 be amended to reflect the said lease." (my emphasis)

[5] The Registrar of Lands proposes to invoke **section 139** of the Act to effect the rectification. **Section 139** of the Act provides as follows:

(1) The Registrar may rectify the register or any instrument presented for registration in the following cases-

- (a) in formal matters and in the case of errors or omissions not materially affecting the interest of any proprietor;
- (b) where any person has acquired an interest in land by prescription under PART IX;
- (c) in any case and at any time with the consent of all persons interested;
- (d) where, upon resurvey, a dimension or area shown in the register or registry map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.

- [6] It appears that the Registrar attempted to encourage the parties to consent to rectification but the defendant's consent to the same was not forthcoming. This prompted the Registrar of Lands to commence this action.

Question No. 1: Can an application for the determination of boundaries be heard where there are clear inconsistencies with the parcel numbers affecting the said application?

- [7] **Sections 4(a) and (b) of the Registered Land Act** mandates the keeping of the following:

“(a) a register, to be known as the Land Register, in accordance with Division 2 of this Part;

(b) a map to be known as the Registry Map, in accordance with Division 3 of this Part;”

- [8] **Section 9(1) of the Registered Land Act** outlines how the Land Register is created as follows:

“The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Act and a register in respect of each lease required by this Act to be registered.”

- [9] **Section 9(2) of the Act** goes on to specify that each land register comprises of the Property Section, the Proprietorship Section and an Incumbrances Section. The Property Section describes the land or lease whilst the Proprietorship Section contains the name and address of the proprietor and also notes any restraints on disposition such as cautions and inhibitions. Finally, the Incumbrances Section notes incumbrances and every right adversely affecting the land or lease.

- [10] **Section 14** of the Act specifies how the Registry Map is created and maintained. **Section 14(2)** provides as follows:

“(2) The parcels in each registration section or block shall be numbered consecutively following the numbering in the adjudication proceedings, and the name of the registration section and the number or letter of the block (if any), and the number of the parcel shall together be a sufficient reference to any parcel.

- [11] It is clear from the legislative scheme that the information from the Land Register especially the Property Section of each register is used to create the Registry Map. Thus, although it is not expressly stated in the **Registered Land Act** there should be consistency between Land Registers and the said Registry Map. This of course includes the parcel numbering which is the primary means of identifying a particular parcel of land. Further, the determination of boundaries pursuant to sections 17 and 18 of the Act contributes to the overall accuracy of the Registry Map.

Conclusion on Question No. 1

- [12] Thus, the court will answer the question posed by the Registrar in the affirmative to state that generally a determination of boundaries should not take place if there are inconsistencies with the parcel numbers involved.

Question No. 2: Can the application for determination of boundaries be heard and decided on without a rectification of all the parcels containing the leased area?

Conclusion on Question No. 2

- [13] It follows that in this particular case a determination of boundaries cannot take place without rectifying all parcels which comprise the leased area.

Question No. 3: Can the Claimant rely on section 139(1)(a) of Registered Land Act to amend the affected registers despite the defendant’s unfounded allegations of fraud?

- [14] Rectification of the parcels in this case would not materially affect the interest of any party. What is being proposed is a correction of the numbering of the affected parcels and not cancellation of the particulars of any interest. Even if the parcels may have been mutated, unless an application is made pursuant to **section 62** of the Act to cancel registration of the said expired lease or the Registrar of Lands acts pursuant to **section 12** to cancel obsolete entries, the lease must remain entered on any new parcels created.

Question No. 4: If the Claimant can rectify the affected land registers without the defendant's consent, should the defendants renewed lease be registered against the Registration Section: Villa Block 62-1492A Parcel 171?

- [15] The court declines to answer this question on the basis that this is a determination to be made by the Registrar after investigation based on survey evidence if necessary.

Question No. 5: Was the Government of Antigua and Barbuda lawfully required to seek the consent of or provide notice to the Defendant of its subdivision of land containing her lease?

- [16] **Section 16(1)** of the **Registered Land Act** provides as follows:

“On the application of a proprietor of land, and subject to the agreement of all persons affected thereby, the Registrar may order alteration of the Registry Map, but no such alteration shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form and the mutation form shall be filed.”

- [17] **Section 16(1)** of the **Registered Land Act** is clear that the agreement of all persons affected is required to effect a mutation of a parcel of land. A lessee of said parcel is definitely a person affected as a lease involves exclusive possession of a defined area.² Any change in description of the leased area would therefore affect the lessee.

² See Definition of “Lease” Registered Land Act-section 2

[18] Further, **section 21(2)(ii)** of the **Registered Land Act** provides as follows:

“(2) Upon the application of the proprietor of a parcel for division of his parcel into two or more parcels, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that-

(i)

(ii) no parcel which is subject to a lease shall be subdivided so as to subdivide the land comprised in such lease;”

[19] Thus, apart from the issue of the defendant consenting, based on **section 21(2)(ii)** of the Act it appears that the lands should not have been subdivided at all whilst the defendant’s lease subsisted. However, two important factors must be considered:

1. The original term of the lease has now expired, and its renewal is now the subject of court proceedings (Claim No. ANUHCV2012/0176).
2. The mutations took place nearly forty years ago and third parties may have obtained interests in the newly created parcels.

Conclusion on Question No. 5

[20] The defendant’s consent should have been obtained before parcel 17 was subdivided. It is even arguable that the parcel should not have been subdivided at all by virtue of **section 21(2)(ii)** of the Act. However, due to the passage of time the Registrar of Land’s proposal to have the defendant’s lease reflected on all parcels subsequently created is the most prudent way forward.

Order

[21] For these reasons the court answers the case stated as follows:

1. Generally, determination of boundaries should not take place if there are inconsistencies with the parcel numbers involved.
2. In the present case, determination of boundaries should not take place without rectifying the parcels in the leased area.
3. In the present case the Registrar may rely on **section 139(1)(a)** of the Act as the proposed rectification would not materially affect the interest of the defendant.
4. The court declines to answer Question No. 4 as this requires investigation by the Registrar of Lands.
5. The Defendant's consent was required prior to mutation pursuant to **section 16(1)** of the Act provided the lease subsisted at the material time. It is even arguable that the parcel should not have been subdivided at all by virtue of **section 21(2)(ii)** of the Act. However, due to the passage of time, the Registrar of Land's proposal to have the defendant's lease reflected on all parcels subsequently created is the most prudent way forward.
6. No order as to costs.

Rene Williams

High Court Judge

By The Court



Sharon Registrar