

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO. MNIHCV 2024/0028

BETWEEN:

[1] MaryAnn Florabelle Allen

Claimant

and

[1] The Registrar of Lands

Defendant

Appearances:

Mr. Jean Kelsick for the Claimants

Mrs. Amelia Daley for the Defendant

2024: DECEMBER 17

2025: JANUARY 17

MARCH 31

RULING

COTTLE [AG.]:

- [1] The Claimant initially applied to the Defendant to be registered as proprietor of a parcel of land on the basis of prescription. The Registrar refused the application because at that time, the land register showed that the proprietor of the parcel was the Claimant as Administratrix of the Estate of Edgar Mortimer Allen. Section 136(7) of the Registered Land Act ("RLA") provides that *"No person possessing land in a fiduciary capacity on behalf of another shall acquire by prescription the ownership of the land as against such other."*
- [2] Since the Claimant appeared to be in possession in a fiduciary capacity the application for prescriptive title was refused. The Claimant immediately applied to the Registrar to have the Land Register amended to record the Estate of Edgar Mortimer Allen as the proprietor. This application was granted. The Claimant once more renewed her application for prescriptive title. The Registrar again refused the application. He gave his reason in writing. He based his refusal on section 136 (6) (c) of the RLA. That subsection provides that adverse possession is interrupted "by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted." Since adverse possession for the prescribed period was interrupted, the Registrar concluded that the Claimant had failed to make out a case to be granted prescriptive title to the land. The Claimant was aggrieved by this refusal and appealed to the High Court against the decision of the Registrar. This is the consideration of that appeal.
- [3] At the hearing of the appeal the Defendant sought to rely on additional grounds to justify his decision to refuse to grant a prescriptive title to the applicant/claimant. In his amended defence the Registrar averred that he also denied the claim for prescriptive title because, formerly the proprietor of the lands in question had been noted as the Claimant as Administratrix of the Estate of Edgar Mortimer Allen. This was an error caused or contributed to by the Claimant and she should not be allowed to benefit from an error she caused or contributed to, which had the effect of causing the Claimant not to have been in possession for the required period to establish a prescriptive title. The Registrar also sought to rely on the fact that the survey plan submitted by the Claimant was unauthorised and as such it was of no legal effect. Another reason advanced by the Registrar for refusing the application for title was that the initial registration error might have dissuaded other potential applicants for prescriptive title. The Registrar continued to rely on Section 136(6)(c) of the RLA. He also added that the lands in question now vest in the crown

as bona vacantia as it appeared that the Estate had no personal representative, and no one had come forward to claim the land under the rules of intestate succession or a valid will.

[4] Counsel for the Claimant urged the court to reject all the other bases now advanced by the Registrar and to confine itself only to determine whether the refusal under section 136 (6)(c) could be sustained.

[5] An appeal to the High Court from a decision of the Registrar of Lands entails a full rehearing by the High Court and not a review of the Registrar's decision. This is made clear by CPR 60.8 (1). CPR 60.8 states as follows:

“(1) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.

(2) The court may receive further evidence on matters of fact.

(3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.

(4) The court may–

(a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed; and

(b) make such further or other order as the case requires; or

(c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.

(5) The court is not bound to allow an appeal because of –

(a) a misdirection; or

(b) the improper admission or rejection of evidence, unless it considers that a substantial wrong or a miscarriage of justice has been caused.”

[6] The Claimant filed written submissions. Counsel for the Claimant argued that;

*“The effect of CPR 60.8 was explained by the Court of Appeal in **Janette Cynthelia Lee v The Estate of Noel Osborne deceased and The Registrar of Lands MNIHCVAP 2019/0013. Ramdhani JA (ag) stated:***

“[26] ----- This is where rule 60.8 of the CPR comes alive. This rule makes it clear that that any appeal from such a tribunal is to be by way of a ‘re-hearing’. The rule further provides that the court may receive further evidence on matters of facts and may draw such inference which could have been drawn by the tribunal. Significantly, the court is entitled to give any such decision or order which could have been made by the Tribunal.

[28] -----A rehearing, though not a hearing de novo, is a full hearing of the proceedings where the court is required to consider all the evidence that was before the Registrar of Lands and may where warranted, hear further evidence. In short it is not by way of review. If the issues on appeal are not limited by the fixed date claim, such as a discrete point of law, all issues are open to the High Court on the appeal. A fixed date claim seeking a reversal of the order of the Registrar granting title cannot limit the scope of the High Court's powers; in fact, everything is at large. The Court would ordinarily be duty bound to case manage the fixed date claim and clearly make such orders which would allow each party to know what to expect at the hearing, including whether additional evidence was to be allowed and whether cross examination would be limited. At the hearing where the dispute remains one of fact, the learned judge would be obliged to consider all the evidence, written oral and documentary which was before the Registrar, as well as any further evidence which may have been directed to be filed -----."

- [7] Counsel continued; "In *Janette Cynthelia Lee* the court held that "If the issues on appeal are not limited by the fixed date claim, such as a discrete point of law, all issues are open to the High Court on the appeal." It is submitted that the effect of this passage is that if an appeal is limited to a discrete point of law [in this case the Defendant's sole reliance on s. 136(6)(c)] the appeal is confined to the hearing of that point of law. It is only if an appeal challenges findings of fact made by the Registrar of Lands that all issues are open to the High Court on the appeal. The latter is not the case in the instant appeal."
- [8] Counsel for the Claimant asked the court to find that the Registrar, having made his decision and advanced a single reason for denying the application for prescriptive title, is now functus officio. It is no longer open to him to revisit his decision and offer alternative reasons why the application should not have been granted to the claimant/ applicant.
- [9] I do not agree with counsel for the Claimant on this point. It appears to me that by his refusal the Registrar indicated that he was not satisfied that the Claimant is entitled to be granted prescriptive title to the land. The fact that he chose to indicate one reason for his dissatisfaction cannot be taken to mean that no other reasons exist. Both parties to this claim appreciate that this court, on considering this appeal, is conducting a rehearing. This court is duty bound to consider whether the claim for prescriptive title is made out. This court in arriving at this decision must consider all the evidence that was available to the Registrar. Indeed, additional evidence for the court's consideration may even be warranted in appropriate cases. This court must apply the law as I understand it to the evidence and come to a conclusion.
- [10] Counsel for the claimant submitted that the Registrar was wrong to decide that the Claimant, by causing the Estate of Edgar Mortimer Allen to be recorded as proprietor of the land, was thereby acknowledging ownership of the land to a person. There is much force in this submission. Clearly the Estate is not a natural or legal person. That much is implicit in the CPR 2023. Part 21.7 which empowers the court to appoint a representative, ad litem, in cases where the court is of the view

that a person is interested in litigation but is deceased without any personal representative having been appointed. Sub rule 4 prohibits a Claimant from taking any step in such proceedings apart from applying to have a personal representative of the deceased person appointed by the court. In the present matter Edgar Mortimer Allen would clearly have been interested in a claim for prescriptive title to land that he owned. If the estate of the deceased is not a legal person, this explains why the CPR 2023 would require a legal person who can represent his interests to be appointed to protect his interests. The obvious conclusion of this analysis is that the present claim cannot proceed unless the Claimant applies for and obtains the appointment of a personal representative of the deceased. I accept that the court can make such an order without an application. I decline to do so in the circumstances of this case.

- [11] In the amended defence the Defendant also raised the question of whether the lands are bona vacantia. The Intestates Act, Cap 3:04 of the laws of this land settles the question. At section 4(1)(f) it is provided that in cases where no one has come forward to claim, as beneficiary, the residuary estate of an intestate deceased person, such estate “shall belong to the Crown, bona vacantia.” Counsel for the Claimant considered this section. I can do no better than to reproduce his careful and clever analysis verbatim. He argued that

“...the Defendant posits that the Claimant’s application must fail as the Land belongs to the Crown as bona vacantia. It is submitted that for the following reasons this contention is misconceived. The land is currently registered in the name of the Estate and not the Crown. No steps have been taken by the Attorney General to claim the land for the Crown. The vesting of land in the Crown as bona vacantia is not an automatic process. For this to crystallise administration must be granted to a nominee of the Crown pursuant to an application to the court a grant of letters of administration and subject to the Crown proving to the satisfaction of the court that no person exists who can take an absolute interest in the land. (see Halsbury’s laws of England 3rd Edn., Vol 16, pg. 219, para 3971). For as long as the Land remains registered in the name of the Estate, s. 4(1)(f) of the Intestates Estates Act is no bar to an application for prescriptive title being made and granted. Moreover, any future claim the Crown may make to title would be subject to the Claimant’s overriding interest in the Land under s. 28(g) of the RLA, which states: ‘Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;’ ”

[12] I agree with Counsel that while the legislation appears to be in imperative terms, there is need for the Crown to take action to have its ownership of the land reflected on the land register. However, this is not to be interpreted as saying that the crown’s interest does not arise immediately by operation of statute. What is postponed is the vesting of the Crown’s interest until there is an application to have the Crown’s ownership noted on the Land Register. In the case of **Lesline Ho Young and another V Ardon Bess, Civil Appeal number 16 of 1989** from St Vincent and the Grenadines, the Court of Appeal was dealing with a matter involving land held by an unlicensed alien. The legislation provided that any lands held by an unlicensed alien was forfeited to the crown. In that case an unlicensed alien jointly purchased certain lands. The joint tenant died. The unlicensed alien sought ownership of all the lands by reason of jus accrecendi. The Court of Appeal held that the aliens landholding legislation operated to forfeit the land to the crown even in the absence of a court order vesting the property in His Majesty. Similarly in this case residuary estate of Edgar Mortimer Allen, including the lands in question now belong to the Crown as no one has come forward to claim as beneficiary. That interest will vest when an order or judgement of the court in that regard is obtained by the Defendant or a representative of the Crown and the Land register is amended accordingly. Until that time the crown nonetheless remains the owner of the unclaimed residuary estate.

[13] For the reasons I have set out, this court finds for the Defendant. The Claimant has failed to establish that she is entitled to prescriptive title to the lands in issue. The claim is dismissed. In the circumstances of this claim, I make no order as to costs.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR