

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV2021/0319

BETWEEN:

NICK LTD.

Claimant

and

**FLEUR BYRONCOX
also known as FLEUR ODLUM**

Defendant

Heard together with

SLUHCV2022/0026

BETWEEN:

**FLEUR BYRON COX
also known as FLEUR ODLUM**

Claimant

and

NICK LTD.

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Diana Thomas for the Nick Ltd.

Mrs. Cynthia Hinkson-Ouhla for Fleur Byron Cox also known as Fleur Odlum

2022: June 29;
2023: January 12.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** This decision concerns two claims, the first filed in 2019 by Nick Ltd. against Fleur Byron Cox also known as Fleur Odlum ("Ms.

Cox”) for vacant possession of property which was previously owned by Ms. Cox and had been sold by way of judicial sale in April 2020. The second claim was filed by Ms. Cox against Nick Ltd. in 2022 essentially seeking to annul the judicial sale of the property in question.

First Claim SLUHCV2021/0319

- [2] In the first claim, the claimant, Nick Ltd. filed a fixed date claim against Ms. Cox on 29th July 2021 seeking vacant possession of a property registered at the Land Registry as Block and Parcel No. 1052B 219 (“the Property”) situate at Marisule in the Quarter of Castries, an order that Ms. Cox give up possession of the Property, damages for use and occupation, interest and costs. The claim is supported by an affidavit of Mr. Wissam Chreiki, a Director of Nick Ltd.
- [3] Nick Ltd.’s evidence as set out in the affidavit of Mr. W. Chreiki is that Ms. Cox was the proprietor of the Property as recorded in the proprietorship section of the Land Registry from 29th October 1986. Nick Ltd. is a company incorporated under the Companies Act of Saint Lucia on 11th May 2020 as 2020/C073. Nick Ltd. was the purchaser of the Property at a judicial sale held on 29th April 2020 as appears by certificate of judicial sale dated 28th July 2020. A Deed of Sale and Adjudication was executed by the Sheriff in favour of the Nick Ltd. on 31st July 2020 and registered as Instrument No. 2961 of 2020 at the Registry of Lands on 13th August 2020.
- [4] On 14th July 2020, Ms. Cox was served with an order of the Sheriff requesting that she deliver up vacant possession of the Property. Ms. Cox has failed and/or refused to deliver up possession as appears by Certificate of Refusal to Deliver up Possession dated and filed on 30th July 2020.
- [5] By letter dated 21st August 2020 and delivered to Ms. Cox on 31st August 2020, Nick Ltd. requested that Ms. Cox vacate the premises on or before 30th September 2020. However, Ms. Cox failed to deliver up possession.

- [6] By a letter dated 17th September 2020, Ms. Cox's lawyer wrote to the Nick Ltd.'s lawyer requesting that Ms. Cox be permitted to continue to occupy the Property until 31st December 2020. Nick Ltd. agreed and by letter dated 18th September 2020 informed Ms. Cox of its agreement. Ms. Cox made a further request and by letter dated 21st December 2020. Nick Ltd. permitted Ms. Cox to remain in the Property provided that she gave up vacant possession on or before 30th June 2021. (the affidavit has 2020 which must be an error). Again, Ms. Cox failed to give up possession of the Property by the stipulated date.
- [7] Nick Ltd. alleges that by granting Ms. Cox several extensions, it has suffered loss and damage in that it has not been able to make its own use of the Property notwithstanding the fact that it has purchased it.
- [8] Ms. Cox filed an affidavit in response to the claim. Her evidence is that Nick Ltd. is not a proper party to the claim as it has no proper title to the Property as according to the minutes of Bidding and Sale, Maher Chreiki was adjudicated as the owner of the Property at the sale on 29th April 2020.
- [9] Ms. Cox says that there is no valid document showing a transfer of title from Maher Chereiki to Nick Ltd. or as a result of the judicial sale. She says further that the Bank meaning Bank of Saint Lucia has since discontinued the proceedings against her. Ms. Cox admits that she still occupies the Property but denies that Nick Ltd. has any authority to request that she vacates the Property or that Nick Ltd. acquired the Property as a result of the judicial sale which took place on 29th April 2020.
- [10] Ms. Cox's position is that the sale should be annulled and that the claim for possession should be dismissed with costs.
- [11] Nick Ltd. also filed in support of its claim an affidavit from Mr. Maher Chreiki ("Mr. M. Chreiki"). In that affidavit, Mr. M. Chreiki depones that he was the winning bidder of the Property at the judicial sale. He paid for the Property with his own funds and upon payment of the funds he assigned all his rights, title and interest to Nick Ltd., including the payment and fully and

unconditionally agreed for Nick Ltd. to be the registered owner of the Property. He states that he has no objections to the Deed of Sale and Adjudication by the Sheriff dated 31st July 2020 being in the name of Nick Ltd.

Second Claim

- [12] In the second claim, Ms. Cox filed a claim against Nick Ltd. on 24th January 2022 seeking rectification of the land register; a declaration that (i) Nick Ltd. did not purchase the Property registered as Block and Parcel 1052B 319 (“the Property”) at the judicial sale; (ii) Nick Ltd. was mistakenly entered as proprietor of the Property; (iii) Nick Ltd. is not the owner of the Property; (iv) the transfer of Property must be effected in notarial form; an order cancelling the documents registered as Instrument Number 2961/2020 in the Land Registry which purported to effect the transfer of the Property to Nick Ltd.; damages, interest and costs.
- [13] Ms. Cox’s avers that she was the registered owner of the Property which was sold by way of judicial sale on 29th April 2020. The minutes of that sale show that the Property was sold to Maher Chreiki and Nick Ltd. was neither present nor did it participate in the bidding. She exhibits the minutes of the sale in support.
- [14] Ms. Cox alleges that Nick Ltd. negligently applied to be registered as proprietor on the basis of it having acquired the Property by judicial sale. She says the Deed of Adjudication and Sale by the Sheriff is not in notarial form and erroneously states that the Property was purchased by Nick Ltd. by the judicial sale ‘as being the last and highest bidder’.
- [15] Ms. Cox alleges the following particulars of negligence:
- (i) applying to be inserted as owner as a result of a judicial sale in circumstances that Nick Ltd. ought to have known that it had never participated in or attended the judicial sale;
 - (ii) producing documents to the Registrar of Lands which did not support the outcome of the judicial sale;
 - (iii) not caring whether the statements in the documents were true or not;

- (iv) knowing that Nick Ltd. is erroneously entered as registered owner and filing proceedings which seek to evict her;
- (v) recklessly disregarding the rules regarding registration as owner;

[16] Ms. Cox alleges that based on this Nick Ltd. has caused the Registrar to mistakenly register Nick Ltd. as proprietor and as a result she has suffered loss and damage of \$16,000.00 being costs of defending the action of \$14,000.00 and expenses of \$2,000.00.

[17] Nick Ltd. filed a defence and counterclaim and states that on 13th August 2020, it became registered owner of the Property and thereafter has continued to be the registered owner of the Property.

[18] Nick Ltd. became owner by Transmission by Compulsory Acquisition or Judgment of the Court in Claim No. SLUHCV1997/0272 to wit: 1st National Bank St. Lucia Limited v Fleur Byron-Cox, registered on 13th August 2020 as Instrument Number 2961/2020 pursuant to Deed of Sale under the hand of the Sheriff of the High Court dated 31st July 2020 and Certificate of Sale dated 28th July 2020 wherein Nick Ltd. purchased the Property from the Sheriff for the price of \$2,022,087.59.

[19] Nick Ltd. says that the claim should be struck out as disclosing no reasonable grounds for bringing the claim as (i) Ms. Cox was the judgment debtor in Claim No. SLUHCV1997/0272 by which the Property was adjudicated to Nick Ltd. in the Sheriff's sale; (ii) the claim is really to vacate the Sheriff's sale disguised as a claim for rectification; (iii) Ms. Cox had 15 days post the adjudication of the Property to Nick Ltd. to vacate or set aside the Sheriff's sale.

[20] Nick Ltd. avers that in the judicial sale held on 29th April 2020 Mr. M.Chreiki was the highest bidder of the Property and therefore acquired the statutory right or alternatively a contractual right to complete adjudication of the Property on payment of the balance of the purchase price. At the time of the sale, Mr. M. Chreiki did not hold a proxy and was required to pay the Property himself.

- [21] Upon the incorporation of Nick Ltd., Mr. M. Chreiki paid the balance of the purchase price, and assigned his rights, title and interest in the Property to Nick Ltd. Mr. M. Chreiki has never objected to nor denied Nick Ltd the right to complete the adjudication.
- [22] Nick Ltd denies that the Transmission by Judgment of the Court was required to be in notarial form nor was it required to state who actually bid on the Property. Nick Ltd. having not been incorporated at the time of the judicial sale could not have appeared on the minutes of sale on the ground that it was neither a bidder nor a person on whose behalf the bidder held a proxy. Further nothing prevented Mr. M. Chreiki from assigning his rights to Nick Ltd. Nick Ltd. says that there is nothing erroneous about the Deed of Sale or Certificate of Sale or the Transmission registered as Instrument Number 2961/2020. Nick Ltd. therefore denies the allegations of negligence or recklessness. Nick Ltd. denies that there was any mistake in the process of registration and says that the Registrar of Lands properly registered Nick Ltd. as the proprietor of the Property on the Land Register.
- [23] Nick Ltd. denies the allegations of loss and damage claimed by Ms. Cox and says that Ms. Cox would be unjustly enriched by an order of the Court in her favour in that Nick Ltd. has paid the sum of \$2,022,087.59 to the Sheriff part of which was paid to 1st National Bank Limited to substantially reduce Ms. Cox's liability to 1st National Bank. Ms. Cox seeks to cancel registration of Nick Ltd. as registered proprietor without making provision to repay it all sums paid towards her debts and without such payment, Ms. Cox would be defrauding Nick Ltd. in the sum of \$2,022,087.59. Nick Ltd. therefore prays that the claim be dismissed with costs.
- [24] Nick Ltd. filed a counterclaim in which it avers that Ms. Cox despite her agreement to give up possession of the Property has failed or refused to do so in breach of the agreement. Nick Ltd. says it is entitled to rescind the agreement and to be put back in the same position it was prior to making the agreement giving Ms. Cox more time to remain in possession of the Property.

As a result of Ms. Cox's refusal to give up possession of the Property, Nick Ltd.says it has suffered loss and damage.

[25] By this counterclaim, Nick Ltd. claims (a) damages for breach of contract; (b) alternatively, damages for use and occupation from 31st July 2020 until delivery up of possession; (c) an inquiry into damages that may be due to Nick Ltd. by reason of Ms. Cox's failure to deliver up possession; (d) alternatively, the sum of \$2,022,087.59; (e) interest and (f) costs.

[26] As part of its case management of the matter, the Court ordered that it would determine liability on the claims and that the issue of any resulting damages would be dealt with by way of assessment. For the purposes of the trial, Ms. Cox and Nick Ltd. rely on the affidavit evidence filed in the first claim.

[27] The issues to be determined were identified in the pre-trial memoranda filed by Nick Ltd. They are as follows:

- A. Is Nick Ltd. the registered owner of the Property and legally the person entitled to bring a claim for possession?
- B. Is Ms. Cox stopped from denying or challenging the Nick Ltd.'s title to the Property?
- C. Whether there needs to be a "document" showing the transfer of title from Maher Chreiki to Nick Ltd. in order for Nick Ltd. to be registered proprietor?
- D. Whether the judicial sale relating to the Property should be annulled?
- E. Whether the document by which Nick Ltd. became registered proprietor is required to be a notarial deed in order to effectively transfer title to the company?
- F. Whether the filing of a Notice of Discontinuance by 1st National Bank in Claim No. SLUHCV1997/0272, effectively removed Ms. Cox's liability to pay the judgment obtained in favour of 1st National Bank, and therefore invalidated the judicial sale?
- G. Whether Nick Ltd. was registered on the land register for the Property by mistake and as such that registration ought to be cancelled?

- H. Whether the Claimant was in breach of an agreement with the Defendant to vacate?
- I. Whether the Defendant is entitled to damages from the Claimant for use and occupation of the Property from 31st July 2020 until the Claimant vacates the property?
- J. Whether the Defendant is entitled to damages representing the loss of the opportunity to develop the Defendant's property in accordance with the Defendant's development plans?

Discussion and Analysis

Adjudication-when does it take place?

- [28] It is not disputed that Mr. M. Cheriki was adjudged the highest bidder of the Property at the judicial sale held on 29th April 2020. By virtue of article 539 of the **Code of Civil Procedure**,¹ ("the CCP") Mr. M. Cheriki was obligated to pay to the Sheriff the balance of the purchase price within six months of the date of sale to complete the adjudication. There is no evidence that Mr. M. Cheriki purchased as proxy for another person and therefore he was not obligated to comply with article 538 of the CCP and therefore he was held to have purchased in his own name.
- [29] It is apparent from the evidence that Nick Ltd. was not in existence at the date of the judicial sale as it was only incorporated in May 2020 and therefore Mr. M. Cheriki could not have purchased the Property as proxy for Nick Ltd. at that time.
- [30] An examination of article 535 and the provisions relating to judicial sales clearly reveal that adjudication refers to the process whereby the intended purchaser is pronounced as the highest and last bidder. Article 535 states that the Sheriff or other officer conducting the sale is bound immediately after the adjudication to refund to every bidder except the purchaser the deposit which they would have paid. Article 551 states that no adjudication is perfect until the price is paid. Adjudication cannot be at the date when the balance of the

¹Cap 4.01A of the Revised Laws of Saint Lucia.

purchase price is paid nor when the deed of sale is executed. Therefore, adjudication takes place at the date of the sale. This is important as it has bearing on time relative to annulling or vacation of judicial sales.

Analysis of Issues

A. Is Nick Ltd. the registered owner of the Property and legally the person entitled to bring a claim for possession?

[31] The land register pertaining to the Property shows that Nick Ltd. is the registered proprietor of the Property. It is well-known that the land register is evidence of title to property under the land registration system in Saint Lucia. As the proprietor of the Property as stated on the land register, Nick Ltd. is entitled to bring a claim for possession against Ms. Cox. This is trite.

[32] The other course of action which can be utilized by a purchaser and is sanctioned by article 556 of the CCP to achieve possession of property bought at a judicial sale permits a purchaser who cannot obtain delivery of property from the judgment debtor to demand it of the Sheriff. If the judgment debtor refuses to deliver up possession, he is entitled to apply to the Court to obtain an order commanding the Sheriff to dispossess the debtor and put the purchaser in possession. This is not applicable in this current case as this procedure was not utilised.

B. Is Ms. Cox estopped from denying or challenging the Nick Ltd.'s title to the Property?

H. Whether the Claimant was in breach of an agreement with the Defendant to vacate?

[32] The evidence is that by a Certificate of Sale dated 28th July 2020 the Sheriff certified that the Property had been sold to Nick Ltd. on 30th July 2020; the Sheriff issued a certificate of refusal to deliver up possession certifying that on 14th July 2020, the Sheriff's Officer had served a copy of the Sheriff's notice to Deliver Up Possession on Ms. Cox and that she had refused to deliver up possession; the Deed of Sale and Adjudication was executed by the Sheriff and Nick Ltd. on 31st July 2020; Nick Ltd. was registered as proprietor of the Property at the Land Registry on 13th August 2020.

- [33] By letter dated 21st August 2020, Nick Ltd. through its counsel wrote to Ms. Cox demanding delivery of vacant possession of the Property and the buildings erected thereon on or before 30th September 2020. That letter was served on Ms. Cox on 31st August 2020. By letter dated 17th September 2020, Ms. Cox through her counsel wrote to counsel for Nick Ltd. indicating that Ms. Cox and her daughter were willing to accept the terms of an extension allowing them to continue to occupy the Property until 31st December 2020. Counsel for Nick Ltd. responded by letter dated 18th September 2020 confirming on behalf of Nick Ltd. that Ms. Cox could remain in occupation of the Property until 31st December 2020.
- [34] On 21st December 2020, counsel for Nick Ltd. wrote to counsel for Ms. Cox indicating that Ms. Cox's daughter had requested a further extension to 31st June 2021 (corrected to read 30th June 2021 in the letter dated 28th December 2020) in order to relocate her mother. The letter indicated that her client had agreed to allow Ms. Cox to remain in the Property as a licensee and that this would be the final extension and Ms. Cox was expected to vacate the Property by 4:00 p.m. on [30th] June 2021.²
- [35] None of the correspondence from counsel for Ms. Cox gave any indication that there was any issue with Nick Ltd. as proprietor of the Property. It was only after Nick Ltd. filed its claim for vacant possession in July 2021 that Ms. Cox started to make allegations as regards the judicial sale and, on the date set for trial of the claim, filed her own claim against Nick Ltd. essentially raising the same matters which had been raised in the defence to Nick Ltd.'s claim. The directions for trial of Nick Ltd.'s claim were given on 29th November 2021 and Ms. Cox only filed her claim on 24th January 2022.
- [36] The judicial sale took place in April 2020. The Deed of Sale was executed in July 2020 and registration of Nick Ltd. as proprietor was in August 2020. Yet Ms. Cox only raised issues with the judicial sale when Nick Ltd. filed its claim. It is clear from the correspondence that Ms. Cox and her counsel would have

²See correspondence at pages 107-109 and 115 of the Trial Bundle (TB).

known that Nick Ltd. was the owner of the Property as this is clearly stated in all the correspondence, yet no steps were taken to do anything about the sale.

- [37] Ms. Cox cannot now seek to impugn a judicial sale in the manner which she has and in view of her clear request for two extensions to permit her to remain in occupation of the Property which suggests an acknowledgement that Nick Ltd. was owner. Nick Ltd. agreed and Ms. Cox accepted the offer of the extensions to remain in the Property and to vacate by certain dates on at least two occasions and by Ms. Cox's refusal to vacate, she has clearly breached these agreements which entitles Nick Ltd. to relief.

C. Whether there needs to be a “document” showing the transfer of title from Maher Chreiki to the Nick Ltd. in order for Nick Ltd. to be registered proprietor?

- [38] On the evidence, Mr. M. Chreiki who was the highest bidder and who paid the purchase price chose to put the Property which he purchased in the name of Nick Ltd, a company which did not exist at the date of the sale. There is nothing which prevents this from being done especially where, as in this case, the company in whose name the Property is to be recorded was not in existence at the date of the judicial sale. The only thing which would make this unlawful is if the person in whose name the Property is to be registered is a person who is excluded from participating in a judicial sale under the relevant provisions of the CCP or was in existence at the date of the sale where the property could have been bought by way of proxy on their behalf and that was not done. Such circumstances should raise serious alarm bells for the Sheriff. In the circumstances of this case, Mr. M. Chreiki in his affidavit confirms that he did assign his rights to Nick Ltd. and that he has no difficulty with the Property being in the name of Nick Ltd. After all, he is the purchaser so it is only he who could have an issue with someone else being registered as the proprietor of the Property.
- [39] Mr. M. Chereiki in cross-examination further clarified the situation as to how the transaction/deed was recorded in the name of Nick Ltd. His evidence was that he won the bid and paid for the Property with his money, and he had said

that he wanted three months to form a company as he was getting old and wanted the Property to be in the company. The transaction between Mr. M. Chreiki and Nick Ltd. was clearly ratified by Nick Ltd. when it signed the deed of sale. I fail to understand how Ms. Cox has any standing to address this at all or to challenge Nick Ltd.'s proprietorship as it is a matter for Mr. M. Chreiki, who is the one who paid for the Property.

D. Whether the judicial sale relating to the Property should be annulled?

[40] The CCP at article 558 makes provision for Sheriff's sales to be annulled. The article clearly sets out the basis upon which a sale may be annulled at the instance of a judgment debtor, either (i) if fraud or artifice was employed, with the knowledge of the purchaser or other interested person; or (ii) if the essential conditions and formalities prescribed for the sale have not been observed.

[41] Ms. Cox's position is that the sale should be annulled but she does not provide the basis for this and makes no reference to article 558. In oral submissions, Counsel for the defendant, Mrs. Cynthia Hinkson-Ouhla ("Mrs. Ouhla") submitted that what is objected to is the manner in which Nick Ltd. became a registered owner and because of the way they became owner, the registration ought to be cancelled. Perhaps the most critical point is that article 560 provides that an application on behalf of the judgment debtor must be made within fifteen (15) days from the date of adjudication. Given my finding above that adjudication took place on the day of the sale when the Property was adjudged to the highest and last bidder, this means that Ms. Cox should have made her application to annul the April 2020 sale on or before 15th May 2020.

[42] If I am wrong that adjudication is at the date that I have determined and it falls to be considered from the date the deed of sale is executed, then Ms. Cox still falls way outside of the fifteen (15) day time period as her time to apply would have expired on 16th August 2020. She only filed a claim in 2022.

[43] There is no basis on the pleadings for annulment of the 29th April 2020 judicial sale and in any event the time for so doing has long passed.

E. Whether the document by which Nick Ltd. became registered proprietor is required to be a notarial deed in order to effectively transfer title the company?

[44] Ms. Cox's position is that the deed of sale must be in notarial form to be effective and therefore is a nullity, that not being the case. This argument is misconceived. Article 541 of the CCP provides for the execution of a deed of sale in favour of the purchaser upon compliance with the relevant sections of the CCP. It goes on to detail what the deed must contain.

[45] As submitted by the counsel for Nick Ltd., section 80 of the **Land Registration Act**³ ("LRA") provides as follows:

"Where the Crown or any person has become entitled to any land, lease or hypothec under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he or she may require, register the Crown or the person entitled, as the proprietor."

This section clearly contemplates the process envisaged by the CCP as relates to judicial sales and allows for recognition of a certificate of sale as that which was issued at the hand of the Sheriff dated 28th July 2020. The process as relates to judicial sales is specifically provided for in the CCP and there is no requirement that the deed of sale be a notarial document. It is a deed executed by the Sheriff in that capacity and not as notary. Incidentally, the Registrar of the High Court who is a notary is ex officio the Sheriff and therefore it could be argued that the deed of sale issued under the hand of the Registrar of the High Court is a notarial document although that is not a necessary argument given the very detailed and specific provisions relating to the deed of sale on a judicial sale. There is absolutely no merit in Ms. Cox's assertions on this issue.

F. Whether the filing of a Notice of Discontinuance by 1st National Bank in Claim No. SLUHCV1997/0272, effectively removed the Ms. Cox's liability to pay the judgment obtained in favour of 1st National Bank, and therefore invalidated the judicial sale?

³Chap 5.01, Revised Laws of Saint Lucia.

[46] The evidence shows that on 29th March 2021, 1st National Bank St. Lucia Limited filed a notice of discontinuance in the Claim Number SLUHCV1997/0272 stating that it wholly discontinued the action. That discontinuance followed the judicial sale in April 2020 and the Deed of Adjudication and Sale and Certificate of Sale issued under the hand of the Sheriff in July 2020.

[47] It is unclear what Ms. Cox's contention is as relates to the notice of discontinuance as she simply states that a notice of discontinuance was filed by 1st National Bank. However, it is well-known that after a judicial sale, the Sheriff embarks upon a scheme of ranking to distribute the proceeds of the sale. 1st National Bank St. Lucia Limited being the judgment creditor would have been paid out of the proceeds of sale. A discontinuance filed subsequent to a judicial sale and the creditor being in receipt of proceeds of the sale could only signify an intention on the part of the creditor not to pursue any balance may be owed to the creditor. It could not possibly be that it could reverse a judicial sale or invalidate it. I agree with the submissions of counsel for Nick Ltd., Ms. Diana Thomas ("Ms. Thomas") that there is nothing on the notice of discontinuance filed by 1st National Bank to suggest that it intended to give up its rights in the judicial hypothec which resulted in it having obtained proceeds of the judicial sale.

[48] Mrs. Ouhla in oral submissions contended that a notice of discontinuance means that there is no longer any judgment against Ms. Cox. I find it quite disturbing that counsel for Ms. Cox would make this submission as relates to the effect of the notice of discontinuance in the face of a judicial sale and a deed of sale under the hand of the Sheriff. A discontinuance of the claim in such circumstances does not erase the judgment against Ms. Cox but simply stops 1st National Bank from pursuing her for any part of the judgment which may still be due.

G. Whether Nick Ltd. was registered on the land register for the Property by mistake and as such that registration should be cancelled?

[49] In her claim, Ms. Cox seeks an order that the registration of Nick Ltd. as proprietor of the Property be cancelled as it was mistakenly registered as proprietor. The claim does not suggest the basis for the order sought but one can assume that what Ms. Cox seeks is rectification of the land register. Section 98 of the LRA provides for rectification of the land register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

[50] The claim does not appear to be alleging any fraud. It also does not plead any particulars of mistake. In the case of **Zinna Zimbanni (as personal representative of the estate of Adelaide Joseph) v Computron Limited**,⁴ our Court of Appeal was clear that in order to be considered, assertions of mistake or fraud must be expressly pleaded by the litigant. Our jurisprudence is replete with case law on the meaning of mistake for the purposes of section 98. It has been made clear that it is a mistake in the registration process which is required in order for section 98 to be engaged. (See **Louisien v Jacob**[2009]UKPC 3]

[51] In this case, there is no allegation that there was a mistake in the process of registration. Instead of pleading particulars of mistake, Ms. Cox pleaded particulars of negligence which is confusing to say the least as Ms. Cox's claim is not based in negligence at all. The land register correctly reflects what is in the deed of sale and correctly reflects the proprietor as stated therein. There was no mistake in the registration process.

I. Whether Nick Ltd. is entitled to damages from the Ms. Cox for use and occupation of the Property from 31st July 2020 until she vacates the Property?

[52] Whilst the Deed of Sale and Adjudication is dated 30th July 2020, the first letter asking Ms. Cox to vacate the Property was sent in August 2020. Nick Ltd. agreed to the grant of the various extensions which had been sought and

⁴SLUHC VAP2019/0017, delivered 10th January 2022, unreported.

therefore the damages for use and occupation can only run from 1st July 2021. Ms. Cox was to have vacated the Property by 30th June 2021 which was the last date to which time had been extended by Nick Ltd. and she has not to date. It is accepted therefore that Nick Ltd. has been put out and is entitled to damages for use and occupation of the Property from 1st July 2021 to the date of delivery of the Property, the quantification of these damages to be on assessment given the bifurcation of the trial ordered at case management.

J. Whether Nick Ltd. is entitled to damages representing the loss of the opportunity to develop the Property in accordance with its development plans?

- [53] This is a matter which will be left to determination on the assessment. Nick Ltd. has been out of use of the Property and it will be for it to prove the loss and resulting damage and for the Court to ultimately determine whether in fact Nick Ltd. is entitled to such damages.

Conclusion

- [54] It is rather unfortunate that Ms. Cox had to be put through this trial process. The fact is even if Ms. Cox were able to show that the Property should not have been registered in the name of Nick Ltd., the matter could only go back to Maher Chreiki, the person to whom the Property was adjudged and who completed the sale by paying the purchase price. Mrs. Ohula agreed that this would indeed be the position-the Property could only revert to Mr. M. Chereiki. Ms. Cox would have no right to the Property even then and to have it registered in her name. She would still be obliged to vacate the Property as provided for in the CCP. As I indicated, Ms. Cox has no standing to seek such relief and is only Mr. M. Chereiki as the purchaser who could raise such objection or challenge.
- [55] It is also the case that Ms. Cox cannot have her cake and eat it. She cannot on the one hand have had her debt to 1st National Bank paid through the proceeds of the judicial sale and then want to have the Property put back in her name. I urge Ms. Cox to seek to engage her family to try to find alternative accommodation for her as soon as possible rather than continue to incur

unnecessary expenses, damages and legal costs. By my delay in the delivery of this judgment, Ms. Cox has gained additional six months to remain in the Property but that cannot continue ad infinitum. I understand that it must be distressing for the owner of property to have to part with it in the circumstances of a judicial sale and it is really important that the relevant persons seek to assist Ms. Cox with her transition out of the Property rather than put her to more legal expense.

Final Order/s

[56] Having canvassed the issues relative to both claims, it is the case that Ms. Cox's claim in SLUHCV2022/0026 must fail and Nick Ltd.'s claim in SLUHCV2021/0319 must succeed. Therefore, I make the following orders:

In relation to Claim No. SLUHCV2021/0319

- (a) Judgment is entered for the claimant, Nick Ltd. against the defendant, Fleur Byron-Cox also known as Fleur Odum.
- (b) The claimant, Nick Ltd. is granted vacant possession of the property registered at the Land Registry as Block and Parcel 1052B 219 together with the buildings thereon.
- (c) The defendant, Fleur Byron-Cox also known as Fleur Odum is to deliver up vacant possession of the property registered at the Land Registry as Block and Parcel 1052B 219 together with the buildings erected thereon on or before 28th February 2023.
- (d) The defendant, Fleur Byron-Cox also known as Fleur Odum is to pay damages to the claimant, Nick Ltd. for use and occupation to be assessed by the Master.
- (e) Prescribed costs to Nick Ltd. to be calculated on the sum awarded as damages on the assessment.

In relation to Claim No. SLUHCV2022/0026

- (a) The claim is dismissed.
- (b) Prescribed costs on the claim are awarded to the defendant, Nick Ltd. in the sum of \$2,400.00 to be paid by the claimant, Ms. Cox.

In relation to the counterclaim in SLUHCV2022/0026

The remedies sought on the counterclaim essentially mirror in the main those sought on the claim by Nick Ltd. in Claim No. SLUHCV2021/0319. The fact that Ms. Cox did not deliver up possession of the Property by the agreed date gave rise to a claim for vacant possession which Nick Ltd. has made and which has been granted. Nick Ltd. has on the counterclaim as well as the claim sought damages for use and occupation. Therefore, it cannot be that Nick Ltd. is entitled to damages for breach of contract as well. Nick Ltd. has also claimed damages for loss of opportunity to develop the Property which it is entitled to once it can prove this loss. Consequently, I make the following order in relation to this counterclaim:

- (a) Judgment is granted on the counterclaim in favour of the counterclaimant, Nick Ltd. against Fleur Byron-Cox also known as Fleur Odum for damages for loss of opportunity to develop the Property to be assessed by the Master.
- (b) Prescribed costs are awarded on the sum assessed to be discounted to take into account the fact that this is the only relief granted on the counterclaim as the other relief have already been granted on Nick Ltd.'s claim.

[57] Finally, I sincerely apologise to counsel and the parties for the delay in delivering this decision which I had promised to do in short order but was unable to due to circumstances beyond my control. I thank counsel and the parties for their patience.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar