

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2020/0200 formerly SLUHCV2019/0327

BETWEEN:

DENNIS BERNARD DOXILLY

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Vernantius James for the Claimant

Mrs. Antonia Charlemagne with Mrs. Rochelle John-Charles for the
Defendant

2021: May19;
2023: January12.

JUDGMENT

[1] **CENAC-PHULGENCE J:** This decision concerns a constitutional motion alleging breaches of the Constitution of Saint Lucia¹ (“the Constitution”) filed by the claimant Mr. Dennis Doxilly (“Mr. Doxilly”) against the Attorney General of Saint Lucia (“the AG”). For the reasons which follow, I determined that the claim should be dismissed with costs to the defendant.

[2] Mr. Doxilly, the executor named in the will of Horace Jn Pierre also known as Oras Jn Pierre (“Mr. Jn. Pierre”) dated 26th March 1973, obtained a grant of

¹Chap 1.01, Revised Laws of Saint Lucia.

probate of the said will on 20th May 2011. Mr. Jn. Pierre died on 23rd April 1973.

- [3] The evidence for the claimant is contained in affidavits of Mr. Doxilly filed on 1st November 2019, 7th February 2020 and 10th November 2020. The evidence for the defendant is provided in the affidavit of Mr. John Labadie ("Mr. Labadie"), Chief Surveyor for Saint Lucia filed on 26th October 2020.

- [4] By his will, Mr. Jn. Pierre bequeathed all his property moveable and immovable, wherever situated and in whatever extent he owns in Saint Lucia to Mr. Doxilly. Mr. Doxilly alleges that at the time of the execution of the will, Mr. Jn. Pierre was entitled to (a) one half share of all the lands at Beanfield in the Vieux Fort area which included Pointe Sable, Tournay, Anse Noire, Black Bay, Retreate, Resource, Beausejour, Moreau, Sarrote, St. Urban Estates and (b) over 300 acres of land in the Mabouya, Fond D'Or and Bois Joli areas in Dennery, Saint Lucia.

- [5] Mr. Doxilly claims that these lands in which he has an interest were confiscated by the Government of Saint Lucia ("the Government") and to date he has not received any compensation. He asserts that the confiscation of his Vieux Fort and Dennery lands is harsh, unconstitutional and inhumane and infringes his rights under section 6 of the Constitution and seeks damages for loss, distress and inconvenience in the sum of ninety-two million dollars (\$92,000,000.00). He also seeks an order that he is entitled to protection of the law in accordance with section 1 of the Constitution, damages for breach of section 6 of the Constitution, costs and further or other orders as the Court thinks fit.

- [6] Mr. Doxilly refers to a Deed of Sale by the Barbados Settlement Company to Horace and Leona Jn. Pierre for a one-half share of the Vieux Fort lands dated 11th September 1951 and registered at the Registry of Deeds and Mortgages on 12th September 1951 ("the 1951 Deed"). He also refers to a Declaration of Possession and Ownership by Mr. Jn. Pierre to the Dennery lands executed on 18th April 1963 and registered at the Registry of Deeds and Mortgages on

18th April 1963 (“1963 Declaration”). These two documents are presented as evidence of Mr. Jn. Pierre’s ownership of the lands which are alleged to have been ‘confiscated’.

- [7] Mr. Doxilly alleges that by Statutory Rules and Orders 1974 No. 31 and other Statutory Instruments by the Government of Saint Lucia passed between 1974 and 1985, the lands owned by Mr. Jn. Pierre were acquired and vested in various statutory boards and that no compensation was paid to him as the beneficial owner. Mr. Doxilly alleges that he was out of the island at the time the lands were acquired.
- [8] Mr. Doxilly therefore claims that he is entitled to the funds in respect of the lands acquired by the Government and that the Government is not in compliance with the provisions of the Constitution. He avers that he must be compensated for the acquiring and vesting of ‘his’ lands.
- [9] After the first hearing, Mr. Doxilly was given permission to file a supplemental affidavit to address specific matters in an effort to advance the claim including the date and manner of acquisition by the Government of the Vieux Fort and Dennerly lands mentioned in the claim, and the Block and Parcel Numbers for the Dennerly lands. In the supplemental affidavit filed on 7th February 2020, Mr. Doxilly says that the 1951 Deed and the 1963 Declaration were both registered at the Registry of Deeds and Mortgages and constituted notice of Mr. Jn. Pierre’s ownership to the world. Mr. Doxilly alleges that notwithstanding, the Government by Deed of Sale dated 24th January 1952 bought all the Vieux Fort lands from the Barbados Settlement Company Limited. He did not address the matters for which leave had been granted to file the supplemental affidavit.
- [10] Mr. Doxilly alleges that where lands have been compulsorily acquired by the Government as in his case, he is entitled to full and prompt compensation for the value of the lands as at the date of the acquisition.

- [11] The AG denies that the Government acquired any property in Vieux Fort or Dennery in which Mr. Doxilly has an interest. In response to the claim, Mr. Labadie avers that Mr. Doxilly had alternative remedies available to him before invoking the Court's constitutional jurisdiction and therefore the claim ought to be struck out.
- [12] Mr. Labadie puts Mr. Doxilly to strict proof that Mr. Jn Pierre was not the owner of any lands situated in Vieux Fort or Dennery or as alleged. The defendant made no admissions as regards the 1951 Deed and the 1963 Declaration. It was admitted that the Government did acquire various parcels of land in Vieux Fort from the Barbados Settlement Company. Mr. Labadie avers that he consulted available records at his Department as well as the National Archives and found no evidence that Mr. Jn. Pierre or anyone on his behalf ever objected to the sale of lands by taking legal action or otherwise against either the Government or the Barbados Settlement Company Limited. According to the records most of the lands were vested in the National Development Corporation (now known as Invest St.Lucia), a statutory corporation on 11th May 1974.
- [13] Mr. Labadie says that Mr. Doxilly has failed to prove that any of the lands, Vieux Fort or Dennery were ever acquired by the Government and therefore the claim ought to be dismissed. In relation to the Vieux Fort land, these lands were not compulsorily acquired by the Government but were bought from the Barbados Settlement Company Limited by Deed of Sale in 1952 without notice of Mr. Jn. Pierre's alleged interest. In relation to the Dennery lands, Mr. Labadie says Mr. Doxilly provided no evidence that these lands were owned by Mr. Jn Pierre.
- [14] Mr. Labadie avers that Mr. Doxilly is not entitled to any funds as he claims as there has been no compulsory acquisition of property and there is therefore no basis for the claim for ninety-two million dollars.

Issues for determination

- [15] The issues for the Court's determination are:
- (a) Whether Mr. Doxilly has provided sufficient evidence to enable the defendant to identify the lands to which he refers?
 - (b) Whether the Government confiscated, acquired or compulsorily acquired any lands in Vieux Fort belonging to Mr. Doxilly or in which he has an interest?
 - (c) Whether the Government acquired any lands in Dennery belonging to Mr. Doxilly or in which he has an interest?
 - (d) Whether section 1 of the Constitution guarantees any protections or rights to Citizens which are enforceable under section 16 of the Constitution?
 - (e) Whether the claimant has proved that there has been a breach of section 6 of the Constitution and that he is entitled to the relief which he seeks?
 - (f) Whether the delay of approximately 47 years in bringing a constitutional claim is so inordinate that it amounts to an abuse of process?

Analysis and Discussion

Pleadings

- [16] At the outset, I note that though Mr. Doxilly filed the Constitutional Motion alleging breaches of sections 1, 3, 6, 8, 12 and 13 in the preamble/heading of the claim, he only mentions breaches of sections 1 and 6 of the Constitution in the pleadings. There are no pleadings in relation to sections 3, 8, 12 and 13 of the Constitution and no indication as to the breaches alleged in relation to those sections.
- [17] I refer to the case of **Shankiel Myland v Commissioner of Police et al**² where Ellis J (as she then was) addressed deficiencies in pleadings in constitutional matters. This is what she had to say:

“[37] Litigation proceeds on the basis that the court is a court of pleadings. They are critical in that they give fair notice of the

²GDAHCV2012/0045, delivered 9th May 2014, unreported.

case that has to be met, so that the opposing party may direct its evidence to the issues disclosed and they assist the court in adjudicating on the allegations made by the litigants. Not only should they define the issue(s) between litigants with clarity and precision, but they also serve as a record of the issues involved in the action which can (if necessary) be referred to at a later date.

...

[39] Thus, every pleading must contain a concise statement of the material facts on which a party relies for his or her claim. Material facts must be stated clearly and definitely in a summary way. They should not need to be inferred from vague or ambiguous expressions, or from statements of circumstances consistent with different conclusions.

[40] This is particularly so in the case of public law claims where it is now settled law that a Claimant who seeks to claim breach of constitutional provisions must show on the face of the pleadings the nature of the alleged violation or contravention that is being asserted.¹¹ Part 56.7 (4) clearly sets out a claimant's responsibility in this regard.

[41] In order to succeed in his claim for relief, the Claimant must therefore not only allege but provide cogent evidence that these Defendants have through their action or inaction breached or violated his rights under the Constitution. He would have to demonstrate that the Defendants have in some way acted inconsistently with his rights, which obliges them to refrain from or remedy the activities which are otherwise unlawful. The Court cannot accept that in these circumstances it is appropriate for a claimant to ignore the requirements set out under the CPR and to seek to litigate an issue which has not been raised in his pleadings, thus taking the opposite party completely by surprise."

[18] I will therefore not be addressing any of those sections identified above (s. 3, 8, 12, 13) as there are no pleadings in relation to them and no evidence was given as to the breaches alleged and the rights which have been infringed.

Burden of Proof

[19] In constitutional claims the burden of proof rests on the claimant to prove a prima facie infringement of the right. It is therefore for Mr. Doxilly to prove that his rights have been infringed. He must provide the evidence of that infringement.

(a) Whether Mr. Doxilly has provided sufficient evidence to enable the defendant to identify the lands to which he refers?

[20] Mr. Doxilly disclosed several land registers in his list of documents filed on 28th December 2020 but none of these were referred to in any of his affidavits which contain his evidence in the matter so it unclear which registers refer to which lands or whether these registers refer to the lands in question at all. Even after Mr. Doxilly was given leave to file a supplemental affidavit to address matters such as the block and parcel numbers for the land referred to in the claim, he failed to provide that information in the supplemental affidavit and simply referred to the 1951 Deed and the 1963 Declaration. He does not produce any evidence of a surveyor to assist the Court in identifying the lands to which he refers since all lands have now been registered pursuant to the Land Registration and Titling Project and have been assigned block and parcel numbers by which they are identified.

[21] Mr. Doxilly's responses in cross-examination further support the position that he failed to provide evidence to enable proper identification of the lands in question. He was asked whether he could say with certainty that Mr. Jn Pierre had not sold the land which he bought in Vieux Fort in 1951 to the Government at any time and he said he had no idea. When questioned about the fact that he had not specifically stated the block and parcels numbers for the lands, Mr. Doxilly response was that he did not have them with him at the time and he would have to put it together. He agreed though that a licensed land surveyor could have assisted to trace the lands in question to the relevant block and parcel numbers. When asked similar questions about the Dennery lands and the lack of evidence of any block and parcel numbers, Mr. Doxilly's response was that it was his lawyer, Mr. James who had put everything together.

[22] The AG submits that Mr. Doxilly has failed to plead his claim in a manner to enable the AG to know in sufficient detail the case against it and to be in a position to respond to the claim. I am in total agreement with this submission. He has failed to properly identify the lands which are allegedly the subject matter of this claim and which he alleges were acquired by the Government.

(b) Whether the Government confiscated, acquired or compulsorily acquired any lands in Vieux Fort belonging to Mr. Doxilly or in which he has an interest?

- [23] In addition to Mr. Doxilly not having provided evidence to identify the lands which he refers to as the Vieux Fort lands, he has failed to show that Government either confiscated, acquired or compulsorily acquired any lands belonging to Mr. Jn Pierre from him. What Mr. Doxilly's pleadings suggest is that the Barbados Settlement Company Limited sold land to Mr. Jn Pierre in 1951 and then turned around and sold that same land as part of a bigger portion of lands to the Government in 1952. Mr. Doxilly has not assisted the Court to show that the land sold in 1951 was indeed sold again in 1952. That was for him to do. In any event, that is not an acquisition of land by the Government from Mr. Jn Pierre as the lands in the 1952 Deed were acquired through sale and not compulsory acquisition.
- [24] Additionally, as Counsel for the AG correctly submits, the 1952 Deed sets out the land which was bought by the Government of Saint Lucia from the Barbados Settlement Company Limited but it is unclear whether these lands are one and the same as the lands bought by virtue of the 1951 Deed as Mr. Doxilly has failed to properly identify the block and parcel numbers of the lands which he claims were confiscated/acquired. Mr. Doxilly's own confusion is seen from his use of the terms acquired, confiscated and compulsorily acquired at various points in his pleadings and submissions. Additionally, Mr. Doxilly has provided no evidence from a surveyor to clarify that the lands referred to in the 1951 Deed are indeed those described in the 1952 Deed. The Court is in no position to make that determination.
- [25] The absence of this evidence coupled with the lack of evidence of any acquisition by the Government of any Vieux Fort lands makes it difficult to ascertain the basis for Mr. Doxilly's claim.

(c) Whether the Government acquired any lands in Dennery belonging to Mr. Doxilly or in which he has an interest?

- [26] As in the case of the Vieux Fort lands, Mr. Doxilly has failed to show that the lands in the 1963 Declaration were indeed compulsorily acquired at any point in time by the Government. There is absolutely no evidence of such an acquisition.
- [27] As submitted by Counsel for the AG, at the time of the alleged acquisition which is a date unknown after Mr. Jn Pierre's death in 1973, the Land Acquisition Act No. 12 of 1945 which came into force on 1st March 1946³ was the relevant legislation and provided for certain procedural steps to be taken before property could be said to have been compulsorily acquired by the Government. Part of this process includes publication of a declaration by the Governor General in two ordinary issues of the Gazette and posting of the declaration on the buildings (if any) on the land and the declaration is to contain certain particulars.
- [28] It is the AG's submission and I agree that in light of this Act, documents ought to exist relating to this alleged acquisition by the Government but Mr. Doxilly has failed to produce any such document or record of such acquisition.
- [29] Mr. Doxilly has not exhibited any publication of any declaration as regards acquisition of the Vieux Fort and Dennery lands. He makes a bold statement concerning the acquisition of the lands which is not supported by evidence. As stated earlier, the burden is on Mr. Doxilly to prove the breach which he alleges. Mr. Doxilly in cross examination admitted that when the Gazettes for the period 1973 to present time were searched no declaration of compulsory acquisition was found.

³Chap 5.04, Revised Laws of Saint Lucia

(d) Whether section 1 of the Constitution guarantees any protections or rights to Citizens which are enforceable under section 16 of the Constitution?

[30] Section 1 of the Constitution states as follows:

“Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person, equality before the law and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for his or her family life, his or her personal privacy, the privacy of his or her home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.”

[31] It is the AG’s contention that section 1 of the Constitution is a general provision and is not enforceable and reliance is placed on **Kent Andrews v The Attorney General**⁴ where Baptiste JA addressed the question of whether the general statement of fundamental rights and freedoms in identical provision of section 1 in the St. Vincent and the Grenadines Constitution is separately enforceable.

[32] At paragraph 29 of **Kent Andrews**, Baptiste JA says:

“The Constitution itself provides the answer. It is evident from a reading of the Constitution that section 1 is not separately enforceable. It is not included in the enforcement provision. Section 16(1) of the Constitution gives a right to apply for redress to any person alleging a right of direct access to the High Court for the purposes enumerated in the section. Again, like St. Vincent and the Grenadines, section 16 gives a right to apply for redress to any person alleging a contravention of any of the provisions of sections 2 to 15 (inclusive) but did not refer to section 1. In Blomquist the Privy Council

⁴SLUHCVP2010/0019, delivered 7th November 2011, unreported.

held that the power to provide such redress was limited to that provided for in section 6 and rejected the argument that section 1 conferred an independent and wider power which was separately enforceable.”

[33] The AG submits that likewise section 16 of the Saint Lucia Constitution confers a right of access to the High Court to persons who allege contravention of any of the provisions of sections 2 to 15 but does not include section 1.

[34] I highlight two cases in that regard. In relation to section 5 of the **Malta Constitution**, which is identical to section 1 of the Saint Lucia Constitution, the Privy Council in **Oliver and another v Buttigieg**⁵ said:

“It is to be noted that the section begins with the word “Whereas”. Though the section must be given such declaratory force as it independently possesses, it would appear in the main to be of the nature of a preamble. It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow. It is a declaration of entitlement—coupled however with a declaration that though “every person in Malta” is entitled to the “fundamental rights and freedoms of the individual as specified, yet such entitlement is “subject to respect for the rights and freedoms of others and for the public interest”. The section appears to proceed by way of explanation of the scheme of the succeeding sections. ... (my emphasis)

[35] In the case of **Campbell-Rodrigues and others v Attorney General**,⁶ the Board said in relation to section 13 of the Jamaican Constitution, identical to section 1 of the Saint Lucia Constitution that:

“[12] Both the Constitutional Court and the Court of Appeal rejected the Appellants' argument that s 13 conferred separate and independent rights. They regarded it as in essence a preamble and accepted the Respondent's submission that its declaratory force was confined to declaring that the rights set out in Ch III of the Constitution were not being created de novo but existed prior to the Constitution. Their Lordships are satisfied that s 13 does not confer any freestanding rights and that on the clear interpretation of the provisions of Ch III the rights and freedoms enforceable under s 25 are to be those set out in s 14 to 24 inclusive. They agree with Cooke JA when he said (Record, p 379) that “a 'generous and purposive interpretation' does not

⁵ [1966] 2 All ER 459 at 461.

⁶ [2007] UKPC 65.

permit a distortion of the explicit relevant constitutional provisions.” (my emphasis)

[36] I note that Mr. James, Counsel for Mr. Doxilly did not address this matter at all in his submissions, written or oral. I agree based on the authority of **Kent Andrews** from our Court of Appeal and the Privy Council decisions from jurisdictions with similar provisions as the Saint Lucia Constitution that section 1 does not confer free-standing rights enforceable under section 16 and therefore Mr. Doxilly cannot claim that section 1 has been breached and entitles him to seek redress pursuant to section 16.

(e) Whether the claimant has proved that there has been a breach of section 6 of the Constitution and that he is entitled to the relief which he seeks?

[37] The relevant parts of section 6 of the Constitution read:

- “(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
- (2) Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—
 - (a) determining the nature and extent of that interest or right;
 - (b) determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorising the taking of possession or acquisition;
 - (c) determining what compensation he or she is entitled to under the law applicable to that taking of possession or acquisition;
 - (d) obtaining that compensation.”

[38] The starting point must be the establishment that the lands in question have been compulsorily taken possession of or have been compulsorily acquired.

[39] Having established that Mr. Doxilly has failed to prove or provide any evidence that the Government ever acquired any of the lands mentioned in his claim, he

has failed to establish a breach of section 6 of the Constitution. Consequently, Mr. Doxilly is not entitled to any of the relief which he seeks.

- [40] As a result of my finding above, it is not necessary for there to be any discussion regarding whether the provision to section 16 of the Constitution should apply and whether the Court is satisfied that adequate means of redress for the contravention alleged are or have been available to Mr. Doxilly.

(f) Whether the delay of approximately 47 years in bringing a constitutional claim is so inordinate that it amounts to an abuse of process.

- [41] The lands allegedly owned by Mr. Jn Pierre were acquired by him according to Mr. Doxilly's evidence in 1951 and 1963. Mr. Jn. Pierre died in 1973. The LRTP spanned the years 1984-1987. However, there was no claim by Mr. Doxilly as his executor or as a person having an interest in the lands belonging to Mr. Jn. Pierre during the LRTP. Mr. Doxilly says this is because he was not in Saint Lucia during the LRTP. It would take thirty-eight years after Mr. Jn. Pierre's death for Mr. Doxilly to apply for probate of Mr. Jn. Pierre's will, the will having been admitted to probate in 2011. He alleges that Mr. Jn. Pierre's lands were acquired by the Government long before the LRTP, yet it would take him another eight (8) years to file this claim after he obtained the grant of probate in 2011. Whilst Counsel for Mr. Doxilly, Mr. James in his pre-trial memorandum refers to certain letters written to the AG concerning this matter, this is nowhere in the evidence provided by Mr. Doxilly in his several affidavits.

- [42] Mr. Doxilly has filed a claim which makes bare allegations and is at best speculative. He has provided no evidence of this alleged acquisition of lands and has left the defendant with nothing to answer. The AG extended courtesies and consented to allowing Mr. Doxilly the opportunity to provide the relevant information which may have assisted his claim and he still did not provide what was required.

- [43] It is important that Counsel remember that pleadings are important and lay the foundation of a claim. Evidence is critical. A list of documents is not evidence

and the documents being relied on in support of a party's case must be referred to in the affidavits. As I indicated earlier several land registers were disclosed but none were mentioned in the affidavit evidence. The Court does not possess the ability to know what is in a litigant's contemplation as far as the evidence they intend to rely on and therefore the litigant and counsel must take care to provide it in the proper manner.

[44] Mr. Doxilly's complaint about the Vieux Fort lands appears to be that Mr. Jn. Pierre's lands were sold to the Government of Saint Lucia by the Barbados Settlement Company Limited in 1952 albeit they had already been sold the year prior to Mr. Jn. Pierre. This meant that Mr. Doxilly as executor and beneficiary should have made a claim to the said lands and presented the 1951 Deed during the LRTP to ensure that his interest (whatever it was) was taken into account. Having not done so during that process, Mr. Doxilly cannot now use this constitutional claim alleging that 'his' lands were compulsorily acquired without providing any proof of such acquisition, to be compensated for lands which he omitted to claim or register an interest in.⁷

[45] The AG referred to the Trinidadian case of **Dr. Trevor Analtol v North Central Regional Health Authority**⁸ where Boodoosingh J stated the general principle that there is no time limit for filing a constitutional claim and delay ought not to shut a litigant out of the Court. However, he went on to say that delay may render a constitutional claim an abuse of process or disentitle a claimant to relief if that delay is so inordinate.

[46] The general rule as per CPR 56.13(6) is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

⁷See the dicta of Pereira CJ in *Joseph and others v Francois*; and *Matty and others v Francois*, SLUHC VAP 2011/0025 and SLUHC VAP 2012/0037, delivered 21st August 2015.

⁸CV 2011-02619, delivered 19th July 2012.

[47] In light of the discussion above, I am of the view that the filing of this claim is an abuse of the Court's process due to the inordinate delay in the claimant approaching the Court. The Court also considers that the claimant has acted unreasonably in bringing the claim. In light of this, I am minded to consider making an award of costs against the claimant notwithstanding the general rule and would invite submissions from the parties in this regard.

Final Order

[48] Based on the foregoing, I make the following order:

(a) The claim is dismissed.

(b) The parties shall file submissions on costs within fourteen (14) days of the date of this judgment failing which the Court will assess the costs.

[49] Finally, the Court conveys its sincere regrets for the delay in rendering the judgment in this matter and must thank Counsel and the parties for their patience.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar