

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

GRENADA

CLAIM NO. GDAHCV2015/0140

BETWEEN:

KYRON CHARLES

Claimant

and

CALVIN ALEXIS

Defendant

Before:

The. Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Celia Edwards, QC with her Ms. Celene Edwards for the Claimant
Mr. Alban John for the Defendant

2021: November 2
2022: March 8 .

JUDGMENT

[1] **ACTIE, J.:** This claim concerns whether the claimant can maintain an action against the defendant for possession of property situate at Florida in the parish of Saint John, Grenada measuring two acres (the property).

Claimant's case

[2] On 13th April 2015, the claimant filed a fixed date claim seeking an order for possession of the property. In essence, the claimant asserts that he is the owner of

the property by virtue of conveyances dated 11th November 2011 and 1st April 2015 respectively annexed to the statement of claim.

- [3] The claimant pleads that Conrad Campbell conveyed the property to Bernard Campbell pursuant to a conveyance dated 11th November 2011. Additionally, the claimant pleads that the defendant was a tenant of Bernard Campbell. When Bernard Campbell owned the property, he issued a notice to quit to the defendant on 9th March 2012 which expired on 31st December 2012. Thereafter, Bernard Campbell conveyed the property to the claimant on 1st April 2015. The claimant pleads that notwithstanding the notice to quit, the defendant has refused to give up possession of the property and the claimant is being deprived of its use.

Defendant's case

- [4] The defendant contends that the conveyances which were pleaded in the statement of claim, all purport to derive from a deed of assent. The defendant pleads that Thomas John died intestate and left his wife Anita John (also known as Anetta John) and his two siblings, Wiseman John and Virginia John, who collectively were the three persons entitled to his estate. Further, the defendant notes the assertions in the alleged deed of assent that Anita John died and left Conrad Campbell, her only surviving beneficiary. Additionally, the defendant notes that Wiseman John, deceased left four children. However, there is no deed executed in favour of the siblings of Thomas John, namely Wiseman John and Virginia John.
- [5] The defendant contends that the deed of assent was non-compliant with standard conveyancing practice and as such is defective and void in law. Having regard to the deed of assent, the conveyance to the claimant is equally flawed and void. In essence, the defendant is asserting that there were no vesting deeds from the estate of Wiseman or Virginia John to the claimant's predecessors-in-title.

- [6] As it relates to the ownership of the land, the defendant pleads that Wiseman John, the late brother of Thomas John had four children, namely Esmie John, Andries John, Norris John, all deceased and Peter Joseph John. The defendant pleads further that Andries John lived on the land. Andries John had a son, Paul Jerome, who was the defendant's cousin. The defendant avers that he assisted Andries and Paul Jerome and spent much time with them on the property as a neighbour.
- [7] When Andries John died, the defendant pleads that he continued assisting her son, Paul Jerome. Thereafter, Paul Jerome died and left the defendant in possession of the property. Moreover, the defendant pleads that he has never known the claimant to be in possession of the property.
- [8] With respect to the order for possession, the defendant states that he does not know the claimant and never had any dealings with him. In the premises, the defendant asks the court to refuse the claimant's prayers for relief.

Issue

- [9] Having regard to the pleadings, the main issue to be determined is whether the claimant is entitled to an order of possession of the property against the defendant.

Claimant's submissions

- [10] Counsel for the claimant, Mrs. Celia Edwards QC states that Thomas John died without children leaving his wife, Anita John and his siblings. Anita John administered his estate and partitioned the property. When Anita John died, she left Conrad Campbell as the only person entitled to her estate. Mrs. Edwards QC submits that Conrad Campbell administered Anita's estate and therefore "*stood in her shoes*" and that of Thomas John as a derivative personal representative. Thereafter, Conrad Campbell conveyed the property to Bernard Campbell, who then conveyed to the claimant.

- [11] Mrs. Edwards QC submits that section 32 of the Conveyancing and Law of Property Act¹. **Section 32** states:

“32. Provision for all the estate, etc.

(1) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to or on the property conveyed or expressed or intended so to be, or which they respectively have power to convey in, to or on the same.

(2) This section applies only if and so far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies only to conveyances made after the commencement of this Act.”

Defendant's submissions

- [12] Conversely, counsel for the defendant, Mr. Alban John submits that the first conveyance between Conrad Campbell and Bernard Campbell are premised on a deed of assent made between Conrad Campbell and himself. Mr. John submits that the assent recited the entitlement to property in the estate of Wiseman John and Virginia John. Notwithstanding the above, Wiseman John is not joined in the assent to convey his interest. Counsel for the defendant Mr. John in his submissions² informed the court of the beneficiaries of Wiseman John and states that, although three of Wiseman's children are deceased, one of his children, Peter Joseph John was still alive at the time of filing of the defence. However, Mr. John states that Peter Joseph John died on 7th January 2017³, survived by his widow, Patris John and three children, namely Eslyn John, Glenna John and Joseph John Jr.

- [13] In relation to the possession of the property, Mr. John submits that Andries John lived on the property until her death and was survived in possession by her son, Paul Jerome. Further, Mr. John submits that the defendant has continued in possession of the property since the death of Paul Jerome to present and did not know or account to the claimant for his occupation of the property. Additionally, Mr.

¹ Cap. 64 of the 2010 Continuous Revised Edition of the Laws of Grenada

² Para. 6 of the Defendant's submissions filed on 22nd October 2021.

³ See Supplemental list of documents filed on 29th October 2021

John submits that neither the claimant nor Conrad Campbell are or were or the true owners of the property. Therefore, they are not able as matter of law to require him to vacate the same.

Discussion and Analysis

- [14] It is the evidence that Thomas John died⁴ intestate on 28th December 1970. The law is trite that upon the death of a person, his or her real estate vests in their personal representative. **Section 3 Real Estate Devolution Act**⁵ prescribes:

“Devolution of legal interest in real estate on death

(1) Where real estate is vested in a person without a right in any other person to take by survivorship it shall, on his or her death, notwithstanding any testamentary disposition, devolve to and become vested in his or her personal representatives or representative from time to time as if it were a chattel real vesting in them, him or her.

(2) This section shall apply to real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him or her.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.” (Underlining supplied)

- [15] Additionally, **section 4 of the Intestate Estates Act**⁶ provides:

“...if the intestate leaves a husband or wife, but no issue, the surviving husband or wife shall be entitled to one-half absolutely and the remaining half shall devolve as if the deceased had left no husband or wife; provided that the remaining half shall devolve on the surviving husband or wife in priority to the Crown if all the remaining classes named in this section fail”
(Underlining supplied)

- [16] Section 4 of the Intestate Estates Act states that when an intestate die leaving spouse, but no issue, his or her spouse shall be entitled to one-half and the other half would devolve as if he or she had no spouse, if all the remaining classes fail. In the case at bar, it is not disputed that Thomas John’s widow, Anita John, applied for and obtained a grant of letters of administration in his estate on the 1st December

⁴ Defendant’s List of documents page 104 of Trial Bundle

⁵ Cap. 274 of the 2010 Continuous Revised Edition of the Laws of Grenada

⁶ Cap. 154 of the 1990 Revised Laws of Grenada

1972. The oath of Administration by Anita John deposed that Thomas John “*died leaving me Anetta John his lawful wife and Wiseman John (brother), Virginia John (sister) and Margaret John (niece), the only persons entitled to his estate, him surviving.*”

- [17] Having regard to the provisions of the Intestate Estates Act, Anita John, as Administratrix of the estate of Thomas John was required to administer the deceased’s estate accordingly to law and vest the property in the beneficiaries. This statement of law was subject to recent judicial pronouncement by our Court of Appeal in **Eliza Thompson v Catherine Thompson**⁷, where the court held that:

“A grant of letters of administration only empowers the administrator to administer the estate of the deceased in accordance with the laws of intestacy of the country. In Grenada, the laws of intestacy are contained in the Intestate Estates Act and the Real Estate Devolution Act.⁸”

- [18] The court notes from the evidence that Anita John obtained the grant, but died on 18th October 1992 without fully administering the estate. Further, there is no evidence that Anita vested or conveyed the property to herself, Wiseman John and Virginia John or anyone for that matter. In light of Anita’s death, a second grant was required to fully administer the estate of Thomas John and vest the property in the persons entitled to the beneficial interest of his estate.

- [19] The evidence reveals that a deed of assent dated 11th November 2011⁹ in favour of Conrad Campbell being the Administrator of Anita John’s estate vesting the entire property in himself. The court notes that the deed of assent is defective on its face since Conrad Campbell was never appointed as the personal representative of the estate of Thomas John. Equally, the property was not vested in Anita John nor Virginia John and Wiseman John or their beneficiaries by way of a deed of assent.

⁷ GDAHCVAP2021/0002

⁸ Eliza Thompson v Catherine Thompson GDAHCVAP2021/0002 at para. 1 of the headnote

⁹ Claimant’s List of documents at pages 87-95

[20] What is noteworthy is that Conrad Campbell's deed of assent contained the following recitals that:

"WHEREAS the late Thomas John was the owner in fee simple in possession of certain properties of which the properties described in the Schedule hereto form part"

"AND WHEREAS the said Thomas John died intestate without issue on December 28th One Thousand Nine Hundred and Seventy leaving Anita John (also spelt Anetta John) his relict Wiseman John his brother and Virginia John his sister the only persons entitled to his estate him surviving"

"AND WHEREAS the said Anita John (also spelt Anneta John) is entitled to a moiety of the estate of the deceased Thomas John and the other moiety to Wiseman John and Virginia John under the provisions of the Intestate Estates Act Chapter 154 as amended of the Revised Laws of Grenada 1990 edition."

[21] Notwithstanding the above recitals in the deed of assent, Conrad Campbell purported to vest the entire property in himself when he would have only been entitled to Anita John's one-half share of the property as her only beneficiary.

[22] Moreover, the court is of the view that section 32 of the Conveyancing and Law of Property Act referred to by the claimant does not take matters any further. This section, in the court's view, is a general rule which protects defects in a conveyance. Further, the section also explained that the general rule is to apply, unless contrary intention is shown in the conveyance. The court is of the view notwithstanding the recital in Conrad Campbell's deed of assent that Wiseman John and Virginia John were entitled to other "moiety", it is clear that he intended to vest the entire property of Thomas John in himself.

[23] The court notes the following recital in Conrad Campbell's deed of assent:

"AND WHEREAS the properties described in the schedule hereto were allotted to the lawful relict as her undivided moiety in the estate of the said Thomas John deceased by Wiseman John and Virginia John but no deed was executed in favour of Anita John (also spelt Anetta John) who took possession of the said properties" (Underlining supplied)

- [24] Indeed, a fair construction of the above recital in the deed of assent reveals that Conrad Campbell was of the view that the property was allotted to Anita John by Wiseman John and Virginia John. Therefore, the deed is premised on the assertion that Anita John was in possession of the property at the time of her death and as such Conrad Campbell being the sole beneficiary of her estate was entitled to the entire property. The court notes that no title to the property was ever vested in Conrad nor his aunt by a personal representative of the estate of Thomas John. Indeed, this was acknowledged in the above recital where it states “*but no deed was executed in favour of Anita John*”.
- [25] Moreover, the claimant cannot maintain that Conrad Campbell “*stood in the shoes of Anita John and as a consequence of Thomas John as his derivative personal representative*”. There is no chain of administration as in executorship. Even if that were the case, Conrad Campbell was not the only person entitled to a share in the estate of Thomas John. Conrad Campbell was only entitled to his aunt’s one-half share in the property. Further, apart from the claimant’s assertions that the property was partitioned, the court has not been referred to any evidence which shows that the property was partitioned by Anita John or the estate of Thomas John.
- [26] Additionally, the court notes that there is no recital in Conrad’s deed of assent that the other beneficiaries of Thomas John, namely Wiseman and Virginia John consented to the conveyance or relinquished their interests to him. Equally, there is no recital that the beneficiaries of Wiseman and Virginia John gave their consent to his deed of assent. In any event, Conrad could not have conveyed the entire property to himself. An Administrator must vest property accordingly to law as held by the Court of Appeal in **Eliza Thompson**¹⁰. Conrad Campbell was not appointed as the personal representative of Thomas John, deceased. Therefore, Conrad Campbell being the Administrator of the estate of Anita John lacked the capacity

¹⁰ GDAHCVAP2021/0002

and lawful authority to vest the entire property of the estate of Thomas John to himself.

Conclusion

[27] Having regard to the findings that the claimant's title is defective, the court is of the view that the claimant cannot maintain an action for possession against the defendant. Accordingly, the claimant's claim for an order of possession against the defendant must fail.

[28] For reasons advanced, the court orders as follows:

- (1) The claimant's fixed date claim filed on 13th April 2015 is dismissed.
- (2) The defendant is awarded costs in the sum of \$7,500.00.

Agnes Actie
High Court Judge

By the Court

Registrar