

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

Claim Number: **NEVHCV2015/0017**
NEVHCV2021/0126

Between

Deborah Tyrell

Applicant

-and-

Tessa Nicholas

Applicant/Respondent

BEFORE: His Lordship, the Honourable Justice Ermin Moise

APPEARANCES:

Mr. Brian Barnes of Counsel for the claimant
Ms. Kurlyn Merchant of Counsel for the defendant

2021: December, 10th

JUDGMENT

- [1] **Moise, J:** This is yet another judgment on a dispute over a narrow strip of land situated at Cane Garden in the Parish of St. John Nevis. On 9th July, 2021, the court dismissed a claim commenced by Ms. Tessa Nicholas in which she sought to prove that she owned the land by way of proprietary estoppel and adverse possession. The court ruled then that Ms. Nicholas had never been promised the land by its previous owner. It also found that she had not acted to her detriment and was in fact not in possession of the land as owner. The court also ruled then that she was not entitled to bring an action in adverse possession as the doctrine only operates as a shield against the actual owner. Ms. Tyrell now seeks to have caveats lodged by Ms. Nicholas removed in order to obtain her certificate of title. Ms. Nicholas has lodged yet another objection to the completion of this process as well as an application to strike out Ms. Tyrell's request for a certificate of title. In addition Ms. Nicholas has now filed an application of her own for a first certificate of title to be issued to her.

- [2] When the matters came up the court expressed its concern that Ms. Nicholas may be guilty of abusing its process. Not only are the procedures under the Title by Registration Act being persistently flouted, but Ms. Nicholas is again calling on the court to decide on issues upon which it has already proclaimed. She had an opportunity to litigate the interest she claims to have had. All the while, an outstanding application by Ms. Tyrell for a first certificate of title has been placed in abeyance for over 6 years now; notwithstanding the fact that there is a mortgage issued to her in relation to the land.
- [3] There must be finality to litigation and I observe that the court has an inherent jurisdiction to protect its process from this level of abuse. I am of the view that the circumstances of this case rises to the level in which the court should exercise its powers to not only proclaim the law but to prevent Ms. Nicholas from abusing its process in this way.

A Brief Summary of the Facts

- [4] On 15th February, 2015, Ms. Tyrell applied for the issue of a First Certificate of Title to that parcel of land situated at Cane Garden, St. John, Nevis. The property was purchased from Selvin and Violette Webb who swore to affidavits in support of Ms. Tyrell's application. There is no general dispute as to the actual purchase of the property. However, on 12th August, 2015, Ms. Nicholas lodged a caveat claiming to be the owner of a small strip of land which seems to form part of that being claimed by Ms. Tyrell. On 2nd March, 2016 the Registrar of Titles, wrote to Ms. Nicholas informing her that Ms. Tyrell had filed an order for the removal of the caveat. Ms. Nicholas however filed yet another caveat on 29th September, 2016. For reasons which are unknown and inexplicable, Ms. Nicholas lodged yet another caveat on 31st March, 2017. In addition to lodging these caveats, Ms. Nicholas filed a claim before the court in 2017, which was dismissed on 9th July, 2021 with costs to Ms. Tyrell. As I stated earlier, the court made findings of fact to the effect that Ms. Nicholas had not acquired any interest in the land by way of proprietary estoppel, neither was she in possession of the land as owner.
- [5] After 6 years, 3 caveats and one high court claim, Ms. Tyrell now seeks to have the caveats removed and filed an application seeking this order on 4th October, 2021. Counsel for Ms. Tyrell indicated to the court that she deliberately delayed in making this application so as to give Ms.

Nicholas sufficient time to appeal the decision of the court dated 9th July, 2021. Ms. Nicholas did not do that. However, on 14th October, 2021 she filed an opposition to the removal of caveats primarily asserting that Ms. Tyrell's application for a certificate of title is mistaken or amounts to a mistaken or fraudulent misrepresentation of the facts relating to her ownership of the property. If that was not enough, Ms. Nicholas also filed an application to strike out Ms. Tyrell's request for a certificate of title, despite there being no provision in the law for such an application. In essence, she now asserts that, based on a new survey, the strip of land is in fact no man's land and Ms. Tyrell is not entitled to it. She presents an affidavit from a surveyor, questioning the full extent of Ms. Tyrell's property.

- [6] In addition to that Ms. Nicholas has filed an application for the issue of a first certificate of title to the strip of land in dispute on 7th September, 2021. In that application she relies on section 12(d) of the Title by Registration Act, claiming that she is in actual possession of the land, for much the same reasons the court has already adjudicated upon. It is difficult to reconcile this course of action as on the one hand Ms. Nicholas argues that the land is "no man's land", whilst on the other she seeks a certificate of title as owner in possession.

Ms. Nicholas' Application for a Certificate of Title

- [7] Before addressing the issue of the removal of the caveat, I will briefly address Ms. Nicholas' application of 7th September, 2021. In that application she clearly states that she has been in possession of the property since 1992. She acknowledges in her own affidavit evidence that this amounts to over 28 years of occupation. In addition to the fact that I have already found in case number **NEVHCV2017/0131** that this was not the case. However, even if that were not so Ms. Nicholas' alleged occupation falls short of the period of time prescribed by the law for which a certificate of title can be issued to her. Section 12(d) of the Act (which is the section under which her application is expressly stated to have been filed) states as follows:

12. Right to first certificate defined and application therefor.

(1) Land not registered under this Act may be so registered

...

(d) *if the land has been in the sole and undisturbed possession of the applicant alone in his or her own right or as executor, administrator or trustee, or partly in the sole and undisturbed possession of the applicant in any such right and partly in the sole and undisturbed possession of any other person through whom he or she claims, continuously for a period of thirty years next before the date of the presentation of the request under this Act.*

[8] By stating in her own affidavit that she has not been in possession of the land for at least 30 years, Ms. Nicholas is clearly not entitled to the issue of a first certificate of title in the manner applied for. The Registrar can therefore not issue a certificate of title to her and the application must be denied.

The Removal of the Caveats and Application to Strike out Ms. Tyrell's Request

[9] The first observation I wish to make in relation to the caveats is that there ought not to have been as many as 3 caveats filed in relation to Ms. Tyrell's application in the first place. This is expressly contrary to the law. Section 122 of the Act states clearly that ***"[n]o second or other caveat shall be lawful, at the instance of the same person, in relation to the same matter, and the Registrar shall refuse to receive or note the same on the register."*** Even in the absence of this section, there is no basis for Ms. Nicholas to have lodged as many caveats addressing the same issue. Therefore the caveats lodged on 29th September, 2016 and 31st March, 2017 ought not to have been received or noted in the first place. Ms. Tyrell is entitled to have them removed as a matter of law and I would order that they be removed as there is no basis in law for them to have been entered in the first place. In any event, I am of the view that Ms. Nicholas has been heard on in the interest which she claims to have had and the court has ruled on it.

[10] As it relates to the caveat of 12th August, 2015 it is important for the court to outline the law on the registration of caveats as well as consider the history of how this caveat has been dealt with.

[11] Section 16 of the Act states as follows:

16. Parties interested may enter caveat.

Any person who claims to be the proprietor of any land, or to be interested in any mortgage or encumbrance, may enter a caveat in the office of the Registrar of Titles, either forbidding the issue of any certificate of title for any land to any specified person, or claiming that a note may be made upon any certificate of title in regard to any mortgage or encumbrance, or in any other manner stating an interest in any land, and such caveat shall be in Form 2 set out in the Second Schedule and the caveator shall be heard before the certificate of title is issued, or the mortgage or encumbrance noted or rejected.

[12] I note firstly, that the right to register a caveat under this section is based on a claim to be the proprietor of the land or to be interested in any mortgage or encumbrance. Ms. Nicholas' caveat was said to be on the basis that she was the legal owner of 1401 square feet of that land. On the basis of section 16 she would have been entitled to be heard before the certificate of title was issued. However, that entitlement, as she had claimed, is limited to her assertion to be the actual owner of the strip of land in question.

[13] A letter was in fact issued to Ms. Nicholas on 2nd March, 2016 indicating that an order for the removal of the caveat was filed. She did nothing about this, other than lodging subsequent caveats in direct contradiction of the law. In any event, even if the caveat of 12th August, 2015 was to be considered at this stage, the section specifically states that she has a right to be heard on her asserted interest in the land as owner or in relation to any mortgage or encumbrance. The caveat lodged on 12th August, 2015 was lodged for the specific claim that Ms. Nicholas was the legal owner of the land. That was expressly stated as the basis for the lodging of the caveat.

[14] However, what Ms. Nicholas did was to lodge a civil claim in the high court to litigate those interests and she was not successful. The court specifically ruled that she was not the owner; neither by way of proprietary estoppel nor as one in possession as owner. Despite this she again appears to oppose the removal of the caveat on similar grounds in addition to grounds which are completely unconnected to her own interests or that which was specifically stated in the caveat in the first place.

[15] She states in her application to strike out Ms. Tyrell's request for a first certificate of title, that the land is in fact no man's land. Not only is this not the basis upon which she lodged the caveat in the first place, but I am unaware of anything in law which allows one to maintain a caveat on the basis of the fact that the land belongs to no one. To my mind, Ms. Nicholas has litigated her asserted interests and was unsuccessful. She is not entitled to change the scope of the allegations made in the caveat she has lodged in the first place. The issue to be heard on as it relates to the caveat of 12th August, 2015 was her claimed interest as "legal owner". She cannot now raise issues of misrepresentation and mistake in an attempt to prove that the land is no man's land. That is not the basis upon which her caveat was lodged in the first place and it is certainly not the basis upon a caveat is lodged pursuant to section 16 of the Act.

[16] One other point to be made is that Ms. Tyrell's request for a first certificate of title is in relation to over 20,000 square feet of land which she purchased by way of loan financing. Yet Ms. Nicholas would wish for the court to strike out Ms. Tyrell's entire application on the basis of 1401 square feet of that land upon an asserted interest that she has not been able to prove. Not only is this an entirely disproportionate request but there is no grounding in law for this to be done. It is certainly inequitable to allow Ms. Nicholas to persist in being an obstacle to Ms. Tyrell's request being considered in this way. It does nothing positive for the administration of justice for litigation to be never ending in this manner. I am of the view that this court should exercise its inherent powers to put an end to this once and for all.

[17] In any event, Ms. Tyrell is not necessarily entitled to have a certificate of title issued to her without the oversight of the court. Any issues which have now been raised regarding the full extent of her interest will be considered by the court. However, Ms. Nicholas' interest in this matter has been litigated and is at an end. She is no longer entitled to be an obstacle in the process.

[18] In the circumstances I make the following declarations and orders:

- (a) Ms. Nicholas' application for a certificate of title dated 7th September, 2021 is to be refused;
- (b) Ms. Nicholas' notice of opposition to the removal of the Caveats filed on 14th October, 2021 is struck out;

- (c) Ms. Nicholas' application to strike out Ms. Tyrell's request for a first certificate of title filed on 15th October, 2021 is also struck out.
- (d) The caveats lodged on 12th August, 2015, 29th September, 2015 and 31st March, 2017 are to be removed;
- (e) Ms. Nicholas is prohibited from filing any additional caveats or any application in opposition to Ms. Tyrell's request for the issue of the First Certificate of title to the said land without first obtaining leave of the court;
- (f) Insofar as Ms. Tyrell has also brought an application for damages pursuant to section 120 of the Title by Registration Act, the application is to be relisted for the hearing of this issue as well as the issue of costs.
- (g) Ms. Tyrell's application for a first certificate of title will be considered by the court with no more input or intervention from Ms. Nicholas. The matter will be listed for counsel for Ms. Tyrell to address the court on any discrepancy which may exist regarding the full extent of Ms. Tyrell's property.
- (h) Ms. Tyrell will have carriage of this order.

Ermin Moise
High Court Judge

By the Court

Registrar