

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0167

BETWEEN

**JANICE DICK
LEONARD DICK**

CLAIMANTS

AND

ROSALINE WEEKES

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Mr. Cecil Blazer Williams for the claimants
Mrs. Kay Bacchus-Baptiste for the defendant

2021: June 9
June 10

WRITTEN REASONS FOR ORAL DECISION

INTRODUCTION

- [1] **Henry, J.:** This is an application by the defendant Rosalie Weekes to strike out portions of witness statements filed on behalf of Mrs. Janice Dick and Mr. Leonard Dick. Mrs. Dick is Ms. Weekes mother' Mr. Dick is her step-father. At the hearing on June 9th, 2021, Ms. Weekes withdrew most of her objections to the witness statements. The part of her application dealing with those portions, was dismissed. Her sole objection relates to Anthony Shallow's witness statement. In an oral decision, the court dismissed Ms. Weekes' application to strike out the impugned part of Mr. Shallow's witness statement. The reasons for the decision are set out below.

BACKGROUND

- [2] It is useful to provide the background to the dispute between the parties as it will supply the necessary context. Mr. and Mrs. Dick claimed that they agreed to purchase a parcel of land at Mesopotamia from Mr. Glenroy Samuel in 1996. They pleaded that they secured a loan of \$25,100.00 from the Bank of Nova Scotia for this purpose. They claimed that they work and live on Mustique and therefore entrusted Ms. Weekes with responsibility to finalize the purchase of the land with the loan monies and to have the deed registered in the joint names of her brother Ruel Weekes and her. They claimed that Ms. Weekes conducted all of her mother's business affairs on mainland Saint Vincent because Mrs. Dick lived in Mustique. They allege that instead of conducting the purchase as directed, that Ms. Weekes caused the property to be registered in her sole name and has since resisted their efforts to have her convey a half share to Ruel Weekes. The disputed property is registered by Deed of Conveyance No. 430 of 1997.
- [3] The Dicks alleged further that Ms. Weekes built a dwelling house on the disputed land with their assistance. They alleged further that they constructed a chattel house on the property and rented it out to Augustine Jackson. They alleged that Bernadette Caine occupied another part of the disputed land and paid rent to them. They allege that when Mrs. Dick attempted to collect the rent from Mr. Jackson in 2018, Ms. Weekes told him she owned the disputed land and directed him to make all payments to her.
- [4] Ms. Weekes denied the claim. She contended that it was her mother who caused the deed for the property to be registered in her name. She claimed that Mr. and Mrs. Dick were not living together at that time. She denied that it was ever decided that Ruel Weekes' name should be included in the deed as part owner of the disputed land. Mr. and Mrs. Dick filed several witness statements in support of their claim. Ms. Weekes has taken objection to averments Mr. Shallow's witness statements. She contended that it contains inadmissible irrelevant or otherwise oppressive matter. She has applied¹ for an order striking out the last two sentences in Anthony Shallow's witness statement². Mr. and

¹ By Notice of Application filed on 28th July 2020.

² Which was filed on May 20th, 2020.

Mrs. Dick countered that the objections are without merit. The court is satisfied that those sentences are admissible.

ISSUE

[5] The issue is whether the impugned part of Anthony Shallow's witness statement should be struck out.

LAW AND ANALYSIS

Issue – Should the impugned part of Anthony Shallow's witness statement be struck out?

[6] Ms. Weekes' application was supported by the affidavit of Lynette Jameson. The Notice of Application states simply that the impugned sentences are 'inadmissible, material, (sic) irrelevant or otherwise oppressive.' Ms. Jameson averred merely 'I am informed by Kay Bacchus-Baptiste and verily believe that the following paragraphs of the witness statement(s) of ... *Anthony Shallow* ... are offensive and inadmissible and ought to be struck out.'

[7] On 7th October 2020, the parties were ordered to file and serve written submissions in respect of the present application, on or before 29th October 2020. Ms. Weekes has not filed any written submissions. Mr. and Mrs. Dick filed two sets of written submissions – on July 28th, 2020, and 28th October 2020.

[8] The **Evidence Act**³ ('the Act') and the Civil Procedure Rules 2000 ('CPR') contain prescriptions as to types of testimony which are inadmissible. The Act provides that issues of admissibility must be determined in accordance with the Act or rules made under it. Section 3 states that the law and practice administered in England will apply where the Act is silent on a particular issue. Section 55 expressly provides that the rules of court made under the UK Civil Evidence Acts 1968 and 1972 will apply in Saint Vincent and the Grenadines until such time that rules of court are made under the Act.

[9] Part 29 of the CPR empowers the court to strike out any part of a witness statement that contains inadmissible, scandalous, irrelevant or otherwise oppressive matter; or matters of information or belief which although admissible do not indicate the source of any matters of information or belief⁴.

³ Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, sections 3 and 55.

⁴ Rules 29.9 (e) and (2) respectively.

The court is guided by those provisions.

Anthony Shallow

[10] The last 2 sentences in paragraph 4 of Anthony Shallow's witness statement state: -

'They told me that the house was for their son Ruel Weekes. They told me that they had bought the land for Ruel and Rosaline Weekes.'

Ms. Weekes has not specified the legal basis for her objection.

[11] Mr. and Mrs. Dick submitted that the impugned statements refer to facts in issue. I agree. The Dicks argued that those assertions are not offensive, scandalous, oppressive or inadmissible. The court notes that Mr. Shallow is here re-stating allegations which were reportedly communicated to him by the Dicks. He is permitted to give that testimony under section 47 of the Act which permits a witness to give hearsay evidence. Safeguards are built into section 55 of the Act and rules made thereunder to afford Ms. Weekes an opportunity to probe the veracity or reliability of such assertions. I therefore make no order excising them.

Costs

[12] The Dicks have largely prevailed in this part of the proceedings. They indicated to the court that they would not seek costs.

ORDER

[13] For completeness, the order made on June 9th, 2021, is set out completely. The order is as follows:

The defendant having withdrawn her Notice of Application filed on 28th July 2020 to strike out part of the claimant's witness statements, namely those in respect of Bernadette Caine, Ruel Weekes, Leonard Dick and Stephenson Wright;

It is ordered:

1. The Notice of Application filed by the defendant on 28th July 2020 to strike out part of the claimant's witnesses' witness statements, so far as it relates to the witness statements of Bernadette Caine, Ruel Weekes, Leonard Dick and Stephenson Wright is dismissed.
2. No order is made excising from Anthony Shallow's witness statement the last two sentences in paragraph 4.

3. No order is made as to costs.

4. The def. has carriage of this order which must be filed on or before June 17th, 2021.

[14] I wish to thank learned counsel Mr. Cecil Blazer Williams for his written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar