

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

IN THE HIGH COURT OF JUSTICE

SVGHCV2011/0221

**IN THE MATTER OF AN APPLICATION BY CLIVE CRICK FOR THE CANCELLATION OF DEEDS
BEARING REGISTRATION NUMBERS 3052 OF 2010 AND 1187 OF 2010 AND 1186 OF 2010**

BETWEEN

CLIVE CRICK
of Sion Hill

CLAIMANT

AND

OTHNELL THOMAS
of Carriere

FIRST DEFENDANT

JUDITH NYAPADI
(formerly of Evesham but presently
residing in the United Kingdom)

SECOND DEFENDANT

JOAN LEWIS NÉE CRICK
Administrator De Bonis Non of the Estate of Molly Crick Deceased

THIRD DEFENDANT

JOAN LEWIS NÉE CRICK

FOURTH DEFENDANT

**CONSOLIDATED WITH
SVGHCV2011/0423**

**IN THE MATTER OF THE REGISTRATION OF DOCUMENTS ACT CAP 132 OF THE LAWS OF SAINT
VINCENT AND THE GRENADINES REVISED EDITION 2009**

AND

**IN THE MATTER AN APPLICATION BY JUDITH NYAPADI NEE CRICK BY HER LAWFUL ATTORNEY
ON RECORD JOAN LEWIS NEE CRICK AN APPLICATION BY JOAN LEWIS NEE CRICK FOR THE
CANCELLATION OF DEEDS BEARING THE REGISTRATION NUMBERS 500 OF 1986 501 OF 1986
1803 OF 2003 AND 1861 OF 2003**

BETWEEN

JUDITH NAYAPADI
(formerly of Evesham but presently
residing in the United Kingdom)

CLAIMANT

AND

CLIVE CRICK

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry

High Court Judge

Appearances:

Mr. Richard Williams for the claimant/defendant Clive Crick.

Mr. Ronald Marks for the defendants/claimants Othnell Thomas, Judith Crick-Nyapadi and Joan Lewis née Crick

2021: May 27

ORAL DECISION

BACKGROUND

[1] **Henry, J.:** This matter involves cross-claims by siblings, in-laws and a third party (Othnell Thomas) over title to two parcels of land situated at Carapan Mountain. Mr. Clive Crick claimed that both parcels (Lots 1 and 9) belong to him and that Mr. Othnell Thomas trespassed on them around 2011.

Hebrought action¹ against Mr. Thomas for among other things damages for trespass. Mr. Thomas denied being a trespasser and contended that he purchased lot 9 from Mr. Crick's sister Judith Crick-Nyapadi. In respect of lot 1 he asserted that he acted with the authority of Mr. Crick's sister Joan Lewis née Crick whom he averred was the lawful owner.

- [2] Mr. Crick subsequently amended his claim form². He added Mrs. Nyapadi and Mrs. Lewis as defendants. He also joined Mrs. Lewis in her capacity of Administrator de bonis non of Molly Crick's estate. Molly Crick is their deceased mother. Mr. Crick alleged that his sisters had fraudulently conveyed the respective parcels of land. He claimed damages for trespass against them and cancellation of certain Deeds.
- [3] Mr. Thomas filed a counterclaim in which he sought a declaration that he owns Lot 9. Mrs. Lewis in her personal and representative capacities and Mrs. Nyapadi refuted Mr. Crick's claims and filed ancillary claims in which they sought *inter alia* cancellation of the impugned deeds. On 9th November 2011, Mrs. Nyapadi and Mrs. Lewis filed suit against Mr. Clive Crick seeking damages for trespass of both lots of land and possession of the same. Mr. Crick has resisted that claim and counterclaimed for the identical relief sought in his initial suit.
- [4] The parties filed witness statements and witness summaries. Mr. Crick has filed an application³ for an order striking out portions of the witness summaries of Bertrum Valentine Crick Carl, Crick, Jean Yearwood and Joan Lewis Crick⁴. He contended that Bertrum Valentine Crick's witness summary was not signed or dated and further that it and the impugned witness summaries contain inadmissible, scandalous, irrelevant, or otherwise oppressive material. The parties were directed⁵ to file written submissions and were granted an extension of time to May 14th, 2021 to do so. Mr. Crick did so but none was filed by Mr. Thomas, Mrs. Lewis or Mrs. Nyapadi. The application is granted in

¹ By Fixed Date Claim Form filed on 19th May 2011.

² Amended Fixed Date Claim Form filed on 18th October 2012.

³ On March 9th, 2021.

⁴ All filed on 27th March 2013.

⁵ By order dated 20th January 2021.

part for the reasons outlined in this decision.

ISSUE

[5] The issue is whether the impugned portions of the referenced witness summaries should be struck out.

LAW AND ANALYSIS

Issue – Should the impugned portions of the witness summaries be struck out?

[6] Mr. Crick grounded his application in rules 29.5(1)(a), (b) and (e) and 29.5(2) of the Civil Procedure Rules 2000 ('CPR'). Those provisions mandate that a witness statement be dated, signed and include any matters of information or belief which are inadmissible or do not state the source; or that are inadmissible, scandalous, irrelevant or otherwise oppressive. Mr. Crick's application was supported by affidavit of Ms. Danielle France filed on even date. She repeated in it the grounds of the application and further articulated why the impugned paragraphs of the several witness summaries were being challenged.

Witness summary unsigned and undated

[7] Mr. Crick contended that Bertrum Valentine Crick's witness summary should be struck out because it was not signed or dated. This was not addressed in his written submissions. Ms. France averred that the witness summary of Bertrum Valentine nee Crick which was filed in the consolidated matter was not dated or signed. She asserted that it should be struck out. The record reveals that a witness summary was filed on behalf of Bertrum Valentine Crick on 27th March 2013. It is dated 27th March 2013. A signature is subscribed on it above the name Patricia P. Marks of Marks & Marks. It appears to be the signature of learned counsel Mrs. Patricia Marks-Minors.

[8] This Notice of Application was heard on May 27th, 2021. On being presented with Bertrum Crick's signed and dated witness summary Mr. Clive Crick withdrew his objection on that basis. No order is made striking it out on this ground.

Hearsay

[9] Mr. Crick submitted that the starting point in determining whether evidence is generally admissible is

that it is relevant. He argued further that it is open to the court to consider questions of admissibility in relation to witness summaries. He cited the decision in **Ken Ormiston Boyea v Luke Boyea**⁶. He pleaded that paragraphs 4, 5, 6 and 7 of Mr. Bertrum Crick's witness summary should be struck out because they contain inadmissible, scandalous, irrelevant or otherwise oppressive matter. He argued that portions of paragraphs 3, 4 and 5 of that witness summary directly contravenes CPR 29.5(1) (e), in that they include matters of information or belief and do not state their source. Ms. France made the same averments in her affidavit.

[10] Mr. Crick's Notice of Application made no reference to paragraph 3 of Mr. Bertrum Crick's witness summary. Accordingly, Ms. France's and his submissions attacking that paragraph are therefore disregarded.

[11] CPR 29.5(1) (e) provides:

'A witness statement must –

(e) not include any matters of information or belief which are not admissible or where admissible, must state the source of any matters of information or belief.'

[12] Mr. Crick submitted that the rationale behind rule 29.5(1) (e) is to identify the maker of any out of court statement in witness statements. He cited the case of **Rowan Bailey v Ferdinand Carty et al**⁷. In that decision, Justice of Appeal Edwards [Ag.] set out the rule and noted:

'It is therefore evident that the maker of any out of court hearsay statements in a witness statement should be disclosed in the witness statement.'⁸

Mr. Crick argued that although hearsay evidence is admissible certain mandated safeguards and requirements must be observed before such evidence can be admitted. He contended that the witness did not identify the source of the knowledge. He concluded that for that reason the above referenced passages in Mr. Crick's witness summary are inadmissible and should be struck out.

[13] Mr. Crick also relied on those authorities in respect of his attacks on certain paragraphs of the witness

⁶VGHCv2019/0175 paras. 30 and 22 respectively.

⁷ ANUHCvAP2006/0014

⁸ At para. [13].

summaries of Carl Crick⁹, Reverend Jean Yearwood¹⁰ and Joan Lewis née Crick¹¹. Ms. France did likewise in her affidavit. Those objections are conveniently dealt with together. I will therefore set out and address seriatim the impugned parts of those witness summaries at this juncture.

[14] The impugned portions of paragraphs 4 and 5 of Bertrum Crick's witness summary state respectively:

'To the best of my knowledge Joan did as she was told and secured a buyer for Judith and the sale was carried out.'

I am aware that Clive was interested in purchasing the land but Judith has never sold the land to Clive...'
(underlining added)

For their part, Mr. Thomas, Mrs. Nyapadi and Mrs. Lewis argued that paragraphs 4 and 5 of Bertrum Crick's affidavit address issues within his personal knowledge and should not be excised.

[15] It is trite that a witness will be permitted to give testimony about matters within his own knowledge which he has gained by witnessing an event for himself, as opposed to receiving information about such event through another. Firsthand accounts of such observations are not objectionable on the ground of hearsay.

[16] In the case of **Rowan Bailey v Ferdinand Carty et al** the Court of Appeal discussed the position which obtains in Antigua and Barbuda in relation to the use of hearsay statements and specifically the implications of CPR 29.5(1)(e). The state of the law in Saint Vincent and the Grenadines is similar. A workable description of hearsay evidence is set out in **Halsbury's Laws of England** where the learned authors state:

'Hearsay evidence in its legal sense is evidence given by a testifying witness of a statement made on some other occasion, when it is intended as evidence of the truth of what was asserted. It is essential to appreciate that evidence is only hearsay when

⁹ Para. 5.

¹⁰ Paras. 5 and 6.

¹¹ Para. 4.

tendered to prove the truth of the facts asserted, not when tendered simply to show that the statement was made. Hearsay may be first hand, when a witness says what he heard someone else say, or second hand (or even more distant) when he relates what he was told that someone else said. It may be oral or documentary, of fact or of opinion.’¹²

[17] The learned authors noted that hearsay evidence was not admissible at common law but is now acceptable and admitted in civil proceedings by virtue of the Civil Evidence Act 1968 with agreement of the parties and in accordance with the applicable rules of court. That position obtains in Saint Vincent and the Grenadines which has adopted portions of those rules¹³. They noted further that it ‘is not hearsay when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made.’¹⁴

[18] On the issue of relevance the court remains cognizant that material is admissible as evidence only if it is relevant and probative.¹⁵ In assessing relevance and admissibility the court should consider the relevant passages within their context. As stated by Pereira CJ in **Mable Phillips v Corine Clara**:

‘Paragraphs of a witness statement are not to be read in isolation and subjected to sterile construction.’¹⁶

[19] In similar fashion, a court should exercise restraint in cases where it is not clear that a specific averment is inadmissible on its face. In the words of Boodoosingh J.:

‘... it is not always possible to determine the significance of a particular aspect of the evidence until the end of all the cross-examination in the matter. A judge would also, therefore, be entitled to admit evidence *de bene esse* or conditionally subject to its relevance being

¹² Vol. 12 (2020), para. 861.

¹³ Pursuant to sections 3 and 55(12) of the Evidence Act, Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

¹⁴ Footnote to Halsbury’s para. 861; as held in *Subramaniam v Public Prosecutor* [1956] 1 WLR 965, PC.

¹⁵ *Kelsick v Kuruvilla*, North West Regional Health Authority & AG of Trinidad & Tobago, TT 2012 HC 379, per Boodoosingh J.

¹⁶ GDAHCVAP2014/0023, at para. 23.

shown at the trial. ... at the pre-trial review a judge may not always be able to determine the exact significance to be attached to a particular, aspect of the evidence until all of the cross-examination unfolds and the witnesses are tested on their statements. It is always open to the parties to advance submissions on what weight, if any, is to be attached to a specific bit of evidence.’¹⁷

[20] In the two foregoing impugned sentences, Mr. Bertrum Crick has purported to outline in his witness summary matters of his personal knowledge, signified by his use of the words ‘my knowledge’ and ‘am aware’. There is no reason to conclude that he is referring in either instance to information he has received from another. In the circumstances, those statements will not be struck out at this stage. Mr. Clive Crick is at liberty to probe in the usual manner as to whether they are matters of belief or information. Accordingly, I make no order striking out either sentence.

[21] The following statement appears at paragraph 5 of Mr. Carl Crick’s witness summary:

‘I am aware that my brother Clive was interested in purchasing from the others but to the best my knowledge, Clive never bought Judith’s parcel. Up to this date he has never paid Judith for her portion and I have been in regular contact with my sister over the years.’
(Underlining added)

Mr. Thomas, Mrs. Nyapadi and Mrs. Lewis submitted that those statements do not offend against the rules.

[22] Mr. Carl Crick’s averments in this paragraph are expressed to be from his knowledge. It might be implied that his reference to being in contact with his sister suggests that he received information from her. His words do not exclude the possibility that he has direct knowledge about such matters. This paragraph is therefore not objectionable on its face. No order is made striking it out.

[23] Paragraphs 5 and 6 of Reverend Jean Yearwood’s witness summary state respectively:

‘I am aware that one Othnell Thomas purchased the land and soon after was informed by Clive that the land belonged to him and he should not trespass upon it.’

‘Clive claimed that Judith sold him the land but this is not so as I am aware that on several occasions he asked her to sell it to him but she never did so. Judith and I are very close

¹⁷ At para. 13 of the Kelsick v Kuruvilla case.

and had she sold the land to Clive I would know. Furthermore, she would never authorize Joan to sell the land is (sic) she sold it to Clive. She is not a dishonest person.'(underlining added)

Mr. Thomas, Mrs. Nyapadi and Mrs. Lewis contended that those paragraphs should not be struck out because they do not offend the referenced rules.

[24] In these paragraphs, Reverend Jean Yearwood refers to matters of which she is aware and informed of by Clive. Neither constitutes hearsay. I make no order striking out either paragraph on that ground.

[25] Paragraph 4 of Joan Lewis' witness summary states:

'I am aware that Clive wanted to purchase some of the parcels from the beneficiaries. He purchased Eldon's parcel but somehow it is my parcel number which is in that Deed. I believe that Clive did this on purpose to take my parcel as he had the deed prepared and sent to Eldon for signature despite knowing that Eldon's parcel is not Lot No. 1.'(underlining added)

[26] The first sentence is not objectionable for the reasons outlined in respect of the preceding paragraphs. The second sentence is objectionable as it expresses a purely speculative belief. It is therefore inadmissible and is struck out.

Relevance and Opinion

[27] Mr. Clive Crick submitted that paragraph 6 of Bertrum Crick's witness summary is inadmissible because it is not relevant to the fact in issue. He argued that it does not constitute evidence but is rather an opinion about what evidence the court should require him to provide. He contended that it is trite law that opinion evidence is not admissible unless it is given with the court's leave by a witness deemed by the court to be an expert. He argued that Bertrum Crick was not deemed an expert and this part of his testimony should be excised. Ms. France made similar statements in her affidavit.

[28] Mr. Bertrum Crick's paragraph 6 states:

‘My sisters and I are very disappointed in my brother Clive for his dishonesty in relation to this matter. I myself inherited a parcel of land under my mother’s estate which I sold to Clive around 1982.’

The contention that Mr. Bertrum Crick’s description of Mr. Clive Crick as being dishonest is irrelevant

to the issues and is well-founded. The claims against Mr. Clive Crick are in trespass which does not entail consideration of whether he is dishonest. That clause adds nothing to the sisters’ claim. The offending part ‘for his dishonesty in relation to this matter’ is therefore struck out.

[29] Mr. Clive Crick submitted that paragraph 7 of Mr. Bertrum Crick’s witness summary contains a statement on dishonesty which is scandalous and irrelevant. He contended that the sisters did not raise any allegation in their pleadings that he was fraudulent or dishonest and should be barred from doing so in their witness summary.

[30] He argued correctly that in relation to scandalous and irrelevant evidence the Court of Appeal opined in **Joseph W. Horsford v Geoffrey Croft**¹⁸:-

‘Allegations or evidence are held to be scandalous if they state matters which are indecent or offensive or are made for the mere purpose of abusing or prejudicing the other party. Moreover, any unnecessary or immaterial allegations will be struck out as being scandalous if they contain any imputation on the opposite party or make any charge of misconduct. However, an allegation which is scandalous, as, for example, by making charges of dishonesty, immorality or outrageous conduct, cannot be struck out if it is necessary or relevant to any issue in the action.’

I agree that any reference to Mr. Crick being dishonest should be excluded from the witness summary on this basis.

[31] Courts have held that opinion evidence is admissible in circumstances where it being supplied by an expert in the field under consideration or in respect of matters within a witness’ competence. As explained by the trial judge in the **Kelsick v Kuruvilla** case:

¹⁸ANUHCVP2014/0006, para. 43.

'An ordinary witness (as opposed to an expert) will also in appropriate cases be able to give evidence of matters which may appear to be an expression of opinion if the matter is one in which they may be experienced in. ... Ultimately, it will be an issue of what weight can be attached to the evidence. ... Evidence will sometimes be allowed as part of the narrative if it helps explain some other aspect of the evidence which is directly relevant.'¹⁵

[32] Paragraph 7 of Mr. Bertrum Crick's witness summary states:

'My sisters have no reason to be dishonest to the Court. Joan is also entitled to a portion of land under our mother's estate and I understand Clive is also claiming this and I heard but I am not sure that he is also claiming Jean's parcel.'

Although the word 'dishonest' is used, it was used in connection with the sisters, Mrs. Lewis and Mrs. Nyapadi. Taken together with the second sentence, it is problematic. The second sentence contains reference to rumoured hearsay material. It is therefore struck out as being inadmissible. The first sentence is retained.

[33] Mr. Clive Crick also objected to statements made by Mr. Carl Crick for similar reasons. He argued that paragraph 6 of the witness summary is inadmissible because the beliefs and opinions expressed therein are irrelevant as the affiant was not deemed to be an expert. He contended further that the last part of paragraph 7 is caught by this objection because the matter of dishonesty was not pleaded by the sisters. Ms. France stated likewise in the supporting affidavit.

[34] Paragraph 6 of Carl Crick's witness summary states:

'I believe that if Clive claims to own Judith's parcel then he should be made to prove that she did in fact sign a deed knowingly and he should show that she received the money he claims to have paid her.'

I agree that this paragraph is inadmissible. It purports to direct the court as to what evidence to require from Mr. Clive Crick. It is not helpful, relevant or probative of any matter in issue. It is accordingly struck out.

[35] At paragraph 7 Mr. Carl Crick states:

'As I stated everyone of my mother's children had a portion of land allotted to them and this includes Jean and Joan my sisters. I am aware that Clive is seeking to claim their parcels and in my opinion this is very unfair and dishonest on his part'. (underlining added)

Mr. Clive Crick objected to Mr. Carl Crick expressing an opinion as to how he views the allegations that Mr. Clive Crick is seeking to claim his sisters' allotted parcels of land. While strictly speaking he is permitted to make an observation and provide an opinion of such observation, that clause is inflammatory and not grounded in the pleadings. It is more prejudicial than probative and is therefore inadmissible. The words 'and in my opinion this is very unfair and dishonest on his part' are excised.

[36] Mr. Clive Crick submitted that the contents of paragraph 7 of Reverend Yearwood's witness summary are not relevant to a fact in issue and that her paragraph 8 contains opinion evidence. He argued that they should be struck out for those reasons. Ms. France agreed. Those paragraphs state respectively:

'Judith was very surprised by Clive assertions as she was relying on the sale to supplement her pension. She is very disappointed in Clive.'

'In my personal and moral opinion, I totally dislike wrong doing especially when it relates to a family member. My sister Judith requires her money and Clive should not be doing this to her.'

[37] Reverend Yearwood purports to describe Mrs. Nyapadi's state of mind in paragraph 7. This is not permitted, without more. Those sentences are therefore excised. Reverend Yearwood's moral opinion about what she likes is irrelevant to a determination of the issues in this case. Accordingly, the first sentence in paragraph 8 is excised. The second sentence is retained.

[38] Mr. Clive Crick submitted that paragraphs 5, 6 and 9 of Joan Lewis' witness summary are scandalous, irrelevant to the facts in issue and should be struck out. Ms. France's affidavit contains similar objections. At the hearing on May 27th, 2021, Mr. Crick withdrew his objection to paragraph 6 of Joan Lewis' witness summary. No order is made excising it. Mr. Thomas, Mrs. Nyapadi and Mrs. Lewis argued that paragraph 5 does not offend against any of the rules. Paragraphs 5 and 9 state respectively: -

'He is now claiming to be the owner of my parcel based on this despite knowing that is the parcel I am entitled to under our mother's estate. This goes to show just how dishonest he is and I ask the court to take notice of what he has done as it relates to my lot of land.'

'After the sale Clive claimed that Judith's parcel belonged to him. I know that he tried to purchase the land from her in the past but Judith never sold the land to Clive. When I told her about this matter she was very upset by Clive's dishonesty as are our other siblings.'

[39] Based on the reasoning outlined earlier, in respect of paragraph 5, the clause 'this just goes to show

how dishonest he is' is inadmissible and is excised as being irrelevant. The remainder of that paragraph is retained. I make no finding that paragraph 6 is irrelevant or scandalous. Those statements arise from the pleadings, relate to the claimant and are not struck out. In respect of paragraph 9, the clause 'she was very upset by Clive's dishonesty as are our other siblings' is similar to others which were excised. It is struck out for the same reasons.

Costs

[40] The success during this part of the proceedings has been shared. The parties that agreed costs of \$500.00 should be paid to Mr. Clive Crick by Mr. Thomas, Mrs. Nyapadi and Mrs. Lewis.

ORDER

[41] It is accordingly ordered:

1. Bertrum Valentine Crick's witness summary is amended by excising the: -
 - (a) second clause of the first sentence in paragraph 6; namely 'for his dishonesty in relation to this matter'; and
 - (b) second sentence of paragraph 7.
2. Carl Crick's witness summary is amended by excising the second clause in the second sentence in paragraph 7; namely, the words: '-and in my opinion this is very unfair and dishonest on his part'.
3. Reverend Jean Yearwood's witness summary is amended by excising:
 - (a) paragraph 7; and

- (b) paragraph 8.
4. Joan Lewis' witness summary is amended by excising the:
- (a) second sentence in paragraph 4;
 - (b) first clause in the second sentence in paragraph 5; namely: - 'this just goes to show how dishonest he is'; and
 - (c) final clause in the third sentence in paragraph 9, namely: - 'she was very upset by Clive's dishonesty as are our other siblings'.
5. No order is made excising:
- a) paragraph 4 or 5 from Bertrum Crick's witness summary;
 - b) paragraph 5 of Carl Crick's witness summary;
 - c) from Joan Lewis' witness summary:
 - (i) the first sentence in paragraph 4; and
 - (ii) paragraph 6;
 - d) from Reverend Yearwood's witness summary: -
 - (i) paragraphs 5; and
 - (ii) paragraph 6.
6. The defendants/claimants Judith Nyapadi, Joan Lewis and Othnell Thomas shall pay agreed costs of \$500.00 to the claimant/defendant Clive Crick.

[42] I am grateful to learned counsel Mr. Richard Williams for his written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar