

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0031

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 OF AN APPLICATION BY ERIC RANDOLPH COTTLE FOR THE RECTIFICATION OF
DEED OF GIFT NUMBER 2746 OF 1991 AND DEED OF GIFT NUMBER 1138 OF 1993

BETWEEN

ERIC RANDOLPH COTTLE

CLAIMANT

AND

THE REGISTRAR OF THE HIGH COURT OF JUSTICE

DEFENDANT

Appearances:

Ms. Suzanne Commissiong of counsel for the claimant.

Mrs. Cerepha Harper-Joseph and Ms. Gabrielle Mayers of counsel for the defendant.

2020: Sept. 30

ORAL DECISION

BACKGROUND

[1] **Henry, J.:** Eric Randolph Cottle claimed that he is registered as the owner of two parcels of land located at Hope, in the Parish of Saint Andrew, Saint Vincent and the Grenadines, one being a portion of the other. To support this claim, he produced 2 Deeds of Gift numbered 2746 of 1991

and 1138 of 1993 respectively. The later deed purports to convey a larger area of land than the previous deed. The Deeds name 'Eric Ormond Cottle' as the donor and Eric Ormond Cottle as the donee. Embodied in this assertion is the idea that the 1991 deed was ineffective to transfer the subject land. If it was effective, the donor in the 1993 deed should have been Eric Ormond Cottle. Mr. Eric Cottle sought orders to amend the Deeds by replacing the name 'Eric Ormond Cottle' with the name 'Eric Randolph Cottle'. The Registrar of the High Court who serves as the Registrar of Deeds was the sole defendant.

- [2] The Registrar filed a defence in which she indicated that she stands as a neutral party. The persons identified in the Deeds of Gift as adjoining landowners did not testify and they were not made parties to the claim. Mr. Cottle provided no explanation as to why they were not served with copies of the filings and named as interested parties or defendants. Mr. Cottle's claim is dismissed for the reasons outlined in this judgment.

ISSUE

- [3] The issue is whether an order should be made to change the name of owner in the referenced Deeds of Gift, from 'Eric Ormond Cottle' to 'Eric Randolph Cottle'.

ANALYSIS

Issue - Should an order be made to change the name of owner in the referenced Deeds of Gift from 'Eric Ormond Cottle' to 'Eric Randolph Cottle'?

- [4] The law empowers the Court to make corrections to a Deed by rectifying any omission or imperfection¹, if the Court is satisfied that it is just to do so. The Court must evaluate carefully whether the proposed changes would affect any third party legal or equitable interest, right or title to the property. It must ensure that each person who is likely to be affected by such an order is given an opportunity to be heard.
- [5] Mr. Cottle was the only witness. He stated that his father Ormond Fandolph Cottle aka Fandolph

¹ Registration of Documents Act, Cap 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 17(c) ('the Act').

Ormond Cottle gave him 27,878 square feet of land at Hope in 1991. He indicated that the gift was evidenced by Deed of Gift 2746 of 1991. He averred that it was subsequently discovered that the area of land specified in the Deed was not accurate and therefore a 'supplemental' Deed of Gift (number 1138 of 1993) was prepared to increase the size of land to 33,660 square feet. Counsel for both parties acknowledged that they are unaware of any legal provision or authority which authorizes such an approach for correction of Deeds.

- [6] Mr. Cottle testified that his father passed away on November 30th, 2014. A death certificate was exhibited to this effect. Mr. Cottle also produced a birth certificate² in respect of a male child named 'Eric Randolph Ian Cottle' born to Shirley Cottle on 21 April 1961 and fathered by Fandolph Ormond Cottle. He asserted that this was the record of his birth. He provided no proof of identification which would support a finding either that he is the person named in the birth certificate or that there is no other person known as 'Eric Ormond Cottle' who was the intended donee in both Deeds. He averred that he wished to sell the subject land and required the corrections to be made to facilitate this transaction.
- [7] Mr. Cottle supplied no evidence regarding what notification if any, was provided to adjoining landowners in 1993, of the purported increase of the boundaries of the subject land which the 'Supplemental Deed of Gift' sought to effect. No documentation was presented to the court which demonstrated that notification to this effect was made available to those landowners. Mr. Cottle made no representations as to the legal basis on which the 'supplemental' Deed of Gift could validly effect an increase in the size of the subject property, or effect any change in the earlier Deed. This court is not aware of any such law.
- [8] Mr. Cottle submitted that the sole issue to be determined is whether his Christian names in the Deeds of Conveyance should be corrected in accordance with Section 17 (c) of the Act. He submitted further that he disclosed an affidavit of identity³ to which he exhibited his drivers' licence

² Recorded as entry number A484, page number 97, for the First Registration District Vol year 1961; Saint Vincent and the Grenadines.

³ Dated 17th February 2020.

and a certified copy of his birth certificate as proof of identity and in which his name is stated as Eric Randolph Ian Cottle. He pointed out that the father's name on the latter is entered as 'Fandolph Ormond Cottle'. The affidavit of identity was not filed⁴ and forms no part of the evidence. It is disregarded.

- [9] Mr. Cottle contended that he also exhibited a certified copy of the death certificate of Ormond Fandolph Cottle dated the 30th day of November 2014. He submitted that it is evident from the birth and death certificates that Fandolph Ormond Cottle and Ormond Fandolph Cottle are the same person. He submitted further that the error in the Deeds of Conveyance is simple; that the Registrar has not opposed the application, has remained a neutral party in the proceedings and the application should therefore be granted.
- [10] Mr. Cottle reasoned that the case of **Maudrie Wilson-Williams v Stanley Williams**⁵, involved a similar application to rectify a Deed of Gift between a husband and wife, in which the Christian names were incorrectly stated. He submitted that Mrs. Williams produced the deeds, birth certificates and the death certificate of her brother while Mr. Williams produced his identity card. He noted that an order to rectify the Deed of Conveyance was granted. Mr. Cottle argued that he has produced the same documents as the Williamses.
- [11] He contended that one of his Christian names is incorrectly stated as Ormond instead of Randolph. He submitted that enough documentary evidence has been exhibited as proof of his correct name. He contended that the Court can easily make a determination and make an Order that the Registrar of the High Court rectify this error in both Deeds to reflect his correct Christian name at pages 1 and 4 of the Deeds of Gift.
- [12] The Registrar submitted that Mr. Cottle filed no declaration of identity and that there is no evidence to indicate that the name 'Eric Ormond Cottle' on the Deed and the name 'Eric Randolph Ian Cottle' refers to one and the same person. She submitted further that while she accepts that the different names could be attributable to errors, the evidence before the court is not 'as clear to assist the court in coming to its determination'.

⁴ As mandated by CPR 30.1(6).

⁵ SVGHCV2016/092.

- [13] She argued that the estate of the deceased Ormond Fandolph Cottle or Fandolph Ormond Cottle is not represented in these proceedings and therefore one cannot ascertain the intention of the named donor in the Deeds. She reasoned that the heart of the case lies with identification. The Registrar submitted that no party likely to be affected by these proceedings was joined as a defendant; and therefore, the court cannot grant the orders sought. She cited as authority the decision in **Kenson Wilson v the Registrar**⁶.
- [14] Mr. Cottle acknowledged that the facts of this case demonstrate that a boundary issue arises for consideration by the court. He thereby conceded by implication, that adjoining landowners have an interest in the present proceedings. He also accepted that there is no good root of title in either deed.
- [15] It does not escape the court's attention that an order granting the orders sought, would have the effect of sanctioning the irregular and legally flawed attempt at correcting the first Deed (by increasing the area of land) without notification to the public and particularly to the adjoining land owners. For obvious reasons this cannot be permitted.
- [16] Similarly, in the absence of credible substantive evidence of his identity, this court is unable to find that the person who testified in the instant case was the intended donee identified in both Deeds as 'Eric Ormond Cottle'. I am not satisfied that he is, and I make no such finding.
- [17] Significantly, Mr. Cottle provided no Deed or other documentary evidence which illustrated that the land conveyed by the first Deed fell short of the area legally vested in and owned by the donor. In this regard, Mr. Cottle did not provide the Deed of Indenture or other instrument by which Ormond Fandolph Cottle aka Fandolph Ormond Cottle was originally registered as owner. The factual underpinning for concluding that an error had been made, is absent. Furthermore, it would be unjust to ratify that change in the absence of the adjoining landowners. These features distinguish this case from the **Maudrie Wilson-Williams v Stanley Williams** precedent referenced by Mr. Cottle. He has failed to establish his claim. Accordingly, it is dismissed.

⁶ SVGHCV2109/0163 (unreported).

Costs

[18] The Registrar was represented by the chambers of the Honourable Attorney General. She filed no pleadings. Only very brief cross-examination was conducted. In matters of this nature, it is usual to make no order as to costs. Nothing emerges from the circumstances which warrant a departure from the usual 'no costs' order.

[19] It is accordingly ordered: -

1. Eric Randolph Cottle's claim for an order to rectify the Deeds of Gift No. **2746 of 1991** and **1138 of 1993** is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar