

**THE EASTERN CARIBBEAN SUPREME COURT  
SAINT LUCIA**

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

**SLUHCV1996/0400**

**BETWEEN:**

**BERNARD ISIDORE  
(representative of the Heirs of ZEPHERN MATHIEU)**

Claimant

and

**1. NORTON GASPARD  
2. ELFRIDGE GASPARD  
3. Heirs of EVARISTE GASPARD  
represented by VIVIANNE GASPARD-AIMABLE**

Defendants

**Before:**

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

**Appearances:**

Mr. Alvin St. Clair of Counsel for the Claimant

Mr. Horace Fraser of Counsel for the Defendants

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2019: September 25, 30;  
October 10;  
2020: April 28.

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**JUDGMENT**

**Background**

[1] **CENAC-PHULGENCE, J:** This is a rather dated claim, filed from as far back as 1996. Ms. Suzanna Isidore, on behalf of the Heirs of Zephern Mathieu, sought an order for rectification of the Land Register in respect of lands situate in Vieux Sucreic, Gros Islet, registered as Block and Parcel Nos.: 1253B 138 and 1253B 142

("the Parcels"). She asked the court to expunge the names of the defendants, Norton Gaspard and Elfridge Gaspard, as owners in their own right and acting on behalf of the Heirs of Evariste Gaspard, and to substitute therefore the names of the claimants. She also sought a perpetual injunction restraining the defendants from further occupation of the Parcels.

- [2] Suzanna Isidore ("Suzanna"), Mr. Norton Gaspard ("Norton") and Mr. Elfridge Gaspard ("Elfridge") are now, some 24 years later, deceased. The claim has continued with the Heirs of Zephern Mathieu ("Heirs of Zephern") being represented by Mr. Bernard Isidore, the executor of Suzanna and the Heirs of Evariste Gaspard ("Heirs of Evariste") being represented by Ms. Vivianne Gaspard-Aimable.
- [3] In their statement of claim, the claimants allege that, the Heirs of Zephern, are the rightful owners of the Parcels. They claim that the Parcels were awarded to Zephern Mathieu ("Zephern") by Mr. J.M.F. White, Land Adjudication Officer, by his decision of 12<sup>th</sup> September 1986 in respect of Petition No. 6A 21P. That decision they allege was the result of an appeal from his earlier decision of 24<sup>th</sup> April 1986. They say despite his decision of 12<sup>th</sup> September 1986 the defendants' names remain on the Land Register as owners of the Parcels to their exclusion. The defendants also continue to exercise acts of ownership over the Parcels. The claimants aver that by letter dated 7<sup>th</sup> February 1996, they informed the Registrar of Lands of the said error, which to date, has not been rectified. By reason of the foregoing, they have suffered loss and damage and have brought this claim.
- [4] The defendants deny the entirety of the claim, save that there was an adjudication by J.M.F. White and a division of lands at Belle Vue and Vieux Sucreic. They state, however, that the claimants are not entitled to be registered as owners of the Parcels, and in any event, their claim is prescribed. Accordingly, they asked the Court to dismiss the claim.

### **Procedural History**

- [5] A chronology of the events of the past 24 years is necessary to place the claim in its proper context and bears upon the final determination of the matter. Some of that chronology, I extract, for convenience, from the judgment of Georges J. (Ag.), dated 12<sup>th</sup> August 2011.
- a. On 17<sup>th</sup> May 1996, the claimants filed a writ of summons indorsed with statement of claim against the defendants seeking the abovementioned relief.
  - b. The claimants, on 20<sup>th</sup> February 1998, filed an application for an injunction that was heard and granted by Archibald J (Ag.) on 5<sup>th</sup> May 1998.
  - c. On 9<sup>th</sup> July 2001, the matter came on for pretrial review before Barrow J (Ag.), which he adjourned “to allow the defendants to consider whether the documentary evidence permits the defence to be maintained.”
  - d. On 17<sup>th</sup> June 2002, Saunders J ordered the parties to attend before the Registrar of Lands to ascertain whether the Parcels were awarded to the claimants in the Land Adjudication Officer’s decision arising out of Petition 6A 21P. The Registrar of Lands was ordered to issue a written report on the said question by 30<sup>th</sup> June 2002.
  - e. On 14<sup>th</sup> February 2004, Master Brian Cottle heard the defendants’ application to strike out the statement of claim as disclosing no reasonable grounds and having no prospect of success. He granted the application on 20<sup>th</sup> August 2004.
  - f. An appeal against Master Cottle’s order striking out the statement of claim was filed on 14<sup>th</sup> February 2005, which the Court of Appeal allowed, and remitted the matter to the Hight Court for further case management.
  - g. In June, July and August of 2005, witness statements were filed, and on 25<sup>th</sup> September 2007, counsel for the claimant filed the trial bundle.
  - h. On 8<sup>th</sup> October 2008, the matter came on for hearing before Georges J (Ag.), who gave directions that the written report of the Registrar of Lands previously ordered be made available to counsel for the parties, and for filing and exchange of written submissions no later than 21<sup>st</sup> October 2008.
  - i. On 21<sup>st</sup> October 2008, Georges J (Ag.) heard the matter and committed to deliver judgment as soon as he received a Surveyor’s Report and the written submissions of counsel for the parties.

- j. Written submissions were filed on 6<sup>th</sup> November 2008 and 17<sup>th</sup> November 2008, respectively.
- k. Georges J (Ag.) delivered judgment on 12<sup>th</sup> August 2011, whereby he declared that the defendants' names were entered as owners, with absolute title, of Parcel 1253B 138 by mistake. Accordingly, he ordered and directed the Registrar of Lands to rectify the Land Register in respect of Parcel 1253B 138, by deleting the names of Norton Gaspard and Elfridge Gaspard from the proprietorship section and substituting the name of Suzanna Isidore.
- l. The defendants appealed the decision of Georges J (Ag.), which was heard on 14<sup>th</sup> December 2011. The issues before the Court of Appeal were:
  - i. Whether the learned judge erred in law by failing to consider whether the unlawful act of the Land Adjudicator was a mistake?
  - ii. Whether the trial judge's ruling, that the appellant's failure to appeal the decision of the Land Adjudication Tribunal is a bar for seeking a remedy in the court, is plainly wrong?

The result of the appeal was an order by consent of the parties, which was approved by the Court of Appeal as follows:

1. "The appeal is allowed.
2. The matter is remitted to the High Court and the parties are required to attend a mediation session with a mediator within 3 months of today's date.
3. ...
4. That should the mediation session fail, the parties agree that the issue of title to Parcels 1253B 138 and 142 is to be determined by a High Court Judge upon production by each party of their respective title deeds and other relevant facts and evidence.
5. ..."

There were no reasons for the Court of Appeal's decision, save that "the parties managed to come to an agreement on a way forward."

- m. The court's file was at some time thereafter lost. However, from what I gather, the matter was scheduled for case management conference on 14<sup>th</sup> March 2016. However, by order of that date, it was noted that the parties were still attending mediation and the matter was adjourned to 17<sup>th</sup> October 2016.

- n. The matter remained at mediation, as on 17<sup>th</sup> October 2016, a mediation referral order of 20<sup>th</sup> May 2016 was extended; and was further extended on 24<sup>th</sup> April 2017 and the matter adjourned to 16<sup>th</sup> January 2018.
- o. On 16<sup>th</sup> January 2018, the matter was adjourned to 10<sup>th</sup> July 2018 to allow the parties to engage a surveyor and facilitate discussions. On 10<sup>th</sup> July 2018, the parties indicated that the survey had not yet been completed and the matter was adjourned to 27<sup>th</sup> November 2018.
- p. On 27<sup>th</sup> November 2018, the parties were asked to assist the Court with the reconstruction of its file and the matter was adjourned to 29<sup>th</sup> January 2019, this time, for case management. On 28<sup>th</sup> January 2019, case management directions were given, including dates set for filing lists of documents, witness statements and pretrial memoranda. Pretrial review was set for 8<sup>th</sup> July 2019 and trial for 25<sup>th</sup> September 2019.
- q. The matter came on for pretrial review on 8<sup>th</sup> July 2019 as scheduled, and further directions given.
- r. On 25<sup>th</sup> September 2019, the matter came on for trial and was heard.

### **The High Court's Remit**

- [6] Of relevance to the final determination of this matter is the consent order dated 14<sup>th</sup> December 2011 arising out of the appeal from the decision of Georges J (Ag.). Mediation was unsuccessful in resolving the claim, and therefore, based on that order, the matter is to be determined by the High Court. However, when the matter came before the Court of Appeal, it did not review the decision of Georges J (Ag.) or determine whether he erred in his decision in any way. Further, the Court of Appeal did not delimit the issues that would fall for consideration by the High Court.
- [7] My understanding of the scope of the High Court's remit, in light of the judgment of Georges J (Ag.) and the issues he considered, the issues that were placed before the Court of Appeal, and the intimation of counsel for the parties, in particular as set out in their pretrial memoranda, is that the primary issue is whether the Land Adjudication Officer had the jurisdiction to hear and determine Petition 6A 21P which

they allege is an appeal from his previous decision; and if not, whether doing so amounted to a mistake in the adjudication process. This issue had not been considered by Georges J (Ag) and impinges upon whether the Court is entitled to find that the Land Register could be rectified in favour of the claimants on the basis of the Land Adjudication Officer's decision on the petition as Georges J (Ag.) found.

- [8] For clarity and completeness, I do not interpret the order of the Court of Appeal that the parties produce "title deeds and other relevant facts and evidence" as suggesting that this Court has the authority or jurisdiction to reopen the adjudication process and make any finding as to the correctness of the Land Adjudication Officer's decision. It does not suggest that this Court has the authority or jurisdiction to examine deeds of title and other documentation and on that basis award title to either of the parties. It is now trite that the land adjudication process is now closed, with the Land Registration and Titling Project ("LRTP") having come to an end, and first registration of all lands in Saint Lucia completed. To suggest otherwise would go against the weight of authority, the majority of which emanate from the Court of Appeal itself. Therefore, I am constrained to interpret the consent order of 14<sup>th</sup> December 2011 in light of the very limited scope of this Court to consider whether the Land Adjudication Officer had jurisdiction to act as he did, in hearing Petition 6A 21P, and the consequences thereof. I now proceed accordingly.

### **Issues**

- [9] The issues for determination are as follows:
- i. Whether the Land Adjudication Officer ("the Adjudication Officer") had the jurisdiction to hear and determine Petition 6A 21P, which the parties allege was an appeal from his previous decision; and if not, whether doing so amounted to a mistake, such that the claimants are not entitled to have the

Land Register rectified in their favour pursuant to the decision arising therefrom.

- ii. Whether the defendants' names were entered as owners with absolute title of Parcel 138 and/or Parcel 142 by mistake, warranting an order for rectification of the Land Register to substitute the claimants' names?
- iii. Whether the claim is prescribed?

## **Analysis**

### **Findings of Fact**

[10] Before addressing each issue in turn, I propose to make certain factual findings which relate to one or more of the issues to be determined. In this regard, I rely upon the following:

- i. the written report of Ms. Agnes Actie, then Registrar of Lands (Ag.), which is undated but prepared and filed in accordance with the order of Saunders J. of 17<sup>th</sup> June 2002;
- ii. the decision of Mr J.M.F. White, Adjudication Officer, dated 30<sup>th</sup> April 1986; and
- iii. the decision of Mr J.M.F. White, Adjudication Officer, dated 13<sup>th</sup> October 1986.

[11] At this juncture, it is also useful to note that upon first registration, Parcel 138 was registered in the name of the Heirs of Evariste. Parcel 142 was registered in the names of Norton and Elfridge, who are Evariste Gaspard's ("Evariste's") grandsons. That registration status remains the same at present.

[12] During the land adjudication process in or about 1986, a claim was made on behalf of the Heirs of Zepher, in respect of a certain area of land. That claim was given the designation *Claim 6A 079* and appears to have referred to the area of land later registered as Parcel 130. A claim was also made by Norton and Elfridge, which was given the designation *Claim 6A 242* and appears to have referred to the area of land later registered as Parcel 138.

[13] In any event, thereafter, an area of land became the subject of dispute between the Heirs of Zephern on one hand and Norton and Elfridge on the other. The disputed area incorporated all the lands eventually registered as Block 1253B Parcels 130, 138, 139, and 142. The dispute was given the designation *Dispute 6A 4D* and was heard by Adjudication Officer J.M.F. White ("Mr. White") on 24<sup>th</sup> April 1986 and was the subject of his decision signed and dated 30<sup>th</sup> April 1986 ("the Original Decision"). By the Original Decision, after consideration of the evidence consisting of numerous title deeds placed before him by each of the parties (and listed therein), Mr. White apparently made the following awards:

- 1) Parcel 130 was awarded to the Heirs of Zephern.
- 2) Parcel 138 was awarded to the Heirs of Evariste.
- 3) Parcel 139 was awarded to the Heirs of Zephern.
- 4) Parcel 142 was awarded to Norton and Elfridge.

[14] The Heirs of Zephern, dissatisfied with the Original Decision, by way of a petition given the designation *Petition 6A 21P*, challenged it. Mr. White heard the Petition on 12<sup>th</sup> and 22<sup>nd</sup> September 1986 and gave his decision which was signed and dated 13<sup>th</sup> October 1986 ("the Petition Decision"). The Petition Decision appears to have pertained to Parcel 138 only, wherein, Mr. White, reversing his Original Decision in respect of Parcel 138, awarded it to the Heirs of Zephern.

[15] The Petition Decision was given prior to the date of finalization of the adjudication record on 29<sup>th</sup> October 1986. However, for some unknown reason, upon finalization of the adjudication record, Parcel 138 was recorded in the name of the Heirs of Evariste. This entry was seemingly carried over into registration, as Parcel 138 was later entered in the Land Register as being owned by the Heirs of Evariste, with absolute title.

**Issue 1: Whether the Adjudication Officer had the jurisdiction to hear and determine *Petition 6A 21P*, which the parties allege was an appeal from his previous decision; and if not, whether doing so amounts to a mistake, such**



**that the claimants are not entitled to have the Land Register rectified in their favour pursuant to the decision arising therefrom.**

### **Submissions**

- [16] Counsel for the respective parties presented oral submissions on the date of trial. However, they presented submissions in respect of this issue without regard to the statutory provisions of the **Land Adjudication Act**<sup>1</sup> (“the LAA”) and whether this legislation gave the Adjudication Officer the authority to act as he did. Both counsel were therefore given the opportunity to file written submissions to address this issue which they did on 30<sup>th</sup> September 2019 and 10<sup>th</sup> October 2019 respectively. At the outset, I note that at the commencement of his oral submissions, Mr. Alvin St. Clair (“Mr. St. Clair”), counsel for the claimants, indicated that the case was about Block and Parcel No. 1253B 138 (“the Disputed Parcel”) and that Block and Parcel No. 1253B 142 was no longer in issue.
- [17] Mr. St. Clair submitted that the Adjudication Officer had the jurisdiction to correct the adjudication record at any time before it became final in accordance with section 22 of the LAA. He accepted that if the Adjudication Officer did not have jurisdiction to do so, the Petition Decision would be a nullity and liable to be set aside. However, he submitted that until set aside, it remained an order of the court. The appropriate means of having it set aside is by way of appeal to a body of competent jurisdiction.<sup>2</sup> He submitted that in this case, the defendant would have to have utilized the appeal process stipulated under the LAA within the prescribed time and the competent bodies would have been the Land Adjudication Tribunal and then the Court of Appeal. However, this was not done. Having not done so, the Petition Decision stands and cannot now be set aside by the High Court. Even if set aside, the court doing so could not determine the matter on the merits but would have to remit the

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<sup>1</sup> Cap. 5:06, Revised Laws of Saint Lucia, 2008.

<sup>2</sup> Mr. St. Clair relied on the case of *Leymon Strachan v The Gleaner Company Limited and Dudley Stokes* [2005] UKPC 33

matter for rehearing.<sup>3</sup> This can no longer be achieved, and the claimant's claim could not simply be ignored.

- [18] Mr. Horace Fraser ("Mr. Fraser"), counsel for the defendants, submitted that section 15 of the LAA required the claimants to give the Adjudication Officer notice of their intention to appeal his decision, which, in substance, was an appeal against the adjudication record as complied by him. This was properly, therefore, an appeal that ought to have been heard by the Land Adjudication Tribunal pursuant to section 20(4). Instead, the Adjudication Officer wrongly treated it as an appeal pursuant to section 20(1), which is restricted to challenges to the adjudication record or demarcation map as being inaccurate or incomplete. He submitted that the claimants' challenge was to the record as complied and therefore ought to have been considered by the Tribunal as it went to the substance and foundation of the decision as adjudicated on the dispute, which superseded inaccuracy or incompleteness. The Land Adjudication Officer in doing so and reversing his decision, acted without jurisdiction, which made the decision a nullity and must be treated as if never made or entered.<sup>4</sup>

### **Analysis**

- [19] To determine this issue, we must look firstly to the LAA and then to the **Land Registration Act**<sup>5</sup> ("the LRA"). It is commonly accepted that to facilitate the L RTP in Saint Lucia, the LAA was enacted for the purpose of advertising, receiving and investigating claims to ownership of all lands. Provision was also made for adjudication of rival claims, subject to various processes of review and appeal. The entire process under the LAA culminated in the preparation of a certified adjudication record, which would then be passed to the Registrar of Lands as the basis for first registration of title pursuant to the provisions of the LRA.<sup>6</sup>

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<sup>3</sup> Mr. St. Clair relied on the case of *CARICOM Investments Limited et al v National Commercial Bank Limited et al* [2018] JMCA Civ 23 (Jamaica)

<sup>4</sup> Mr. Fraser also relied on the case of *Leymon Strachan v The Gleaner Company Limited and Dudley Stokes* [2005] UKPC 33

<sup>5</sup> Cap 5.01 of the Revised Laws of Saint Lucia

<sup>6</sup> *Sylvina Louisien v Joachim Rodney Jacob* [2009] UKPC 3, at paragraph 3.

[20] The instant claim arises from rival claims to land during the LRTP, as seen above. Therefore, section 15 of the LAA is relevant. Section 15 provides as follows:

**“15. Disputes**

(1) If in any case—

- (a) there is a dispute as to any boundary whether indicated to the demarcation officer or demarcated or readjusted by him or her, which the demarcation officer is unable to resolve; or
- (b) there are 2 or more claimants to any interest in land and the recording officer is unable to effect agreement between them, the demarcation officer or the recording officer as the case may be shall refer the matter to the adjudication officer.

(2) The adjudication officer shall adjudicate upon and determine any dispute referred to him or her under subsection (1), having due regard to any law which may be applicable, and shall make and sign a record of the proceedings.

(3) Where the adjudication officer has adjudicated on any dispute under this section the Minister or any other person who is dissatisfied with the decision of the adjudication officer shall give written notice to the adjudication officer of his or her intention to appeal.”

[21] Section 16 sets out the principles, and section 17 the rules applicable to adjudication. Section 18 addresses the form of the adjudication record for each parcel and stipulates the information to be contained therein. It also provided that the form should be signed by the recording officer, and where possible the owner and any person recorded as having an adverse interest in the parcel. Section 19 requires, when the adjudication record is completed for the adjudication section, that the adjudication officer sign and date a certificate to that effect and give notice of completion and where same may be inspected. Section 23, which dealt with finality of the adjudication record, provides that after the expiry of 90 days from the date of publication of the notice of completion of the adjudication record, or upon determination by the adjudication officer of all petitions, the adjudication record becomes final and the adjudication officer is required to sign a certificate to that effect and deliver same to the Registrar of Lands (“the section 23 certificate”).

[22] Sections 20-22 and 24 granted dissatisfied persons the right of review and appeal. Section 20(1) provides that any person affected by the adjudication record or demarcation map who considers it inaccurate or incomplete, or is aggrieved by any act, omission or decision of the demarcation officer, survey officer or recording officer may, within 90 days of the day upon which notice of completion of the adjudication record is published, give written notice of his or her intention to **petition** the adjudication officer and the adjudication officer shall hear and determine such petition. Section 21 provides the procedure to be followed by the adjudication officer in hearing such petitions, as well as disputes pursuant to section 15 mentioned above. Section 20(2) and (4) together provide that any person dissatisfied with the decision of the adjudication officer shall, before the date of the section 23 certificate, give written notice to the adjudication officer of his or her intention to appeal against that decision, and may within 2 months of the date of the section 23 certificate so appeal to the Land Adjudication Tribunal (“the Tribunal”). Section 24 gives the right of appeal from a decision of the Tribunal, by providing that any person who is aggrieved by any decision of the Tribunal and desires to question any part of that decision, may within 2 months from the date of the Tribunal’s decision or within any extended time, appeal to the Court of Appeal. The Court of Appeal may make such order or substitute for the decision of the Tribunal such decision as it considers just, and pursuant to the LRA, order rectification of the register.

[23] To summarize, under the LAA, there is (1) the right to petition to the adjudication officer in respect of (a) any adjudication record or demarcation map which was considered inaccurate or incomplete or (b) any acts or decisions of the demarcation or survey officer, or any entry in or omission from the adjudication record by recording officers; (2) the right to appeal decisions of the adjudication officer to the Tribunal; and (3) the right to appeal decisions of the Tribunal to the Court of Appeal. Even with all of these avenues of challenging decisions at the various stages, section 22 provides as follows:

**“22. Correction of adjudication record**

At any time before the adjudication record becomes final, the adjudication officer—

- (a) may correct in the record any error or omission not materially affecting the interests of any persons; and
- (b) **after taking such steps as he or she thinks fit, to bring to the notice of every person whose interest is affected his or her intention to make any material alteration in the record which he or she considers necessary, and after giving such person an opportunity to be heard, may make such alteration.”**

[24] It is this section of the LAA that I believe endows the adjudication officer with the jurisdiction to review his own decision, as was done by Mr. White in this case. In this regard, it is important to appreciate the wide powers given to the adjudication officer under the LAA. As will be seen, the LAA placed the adjudication officer in charge of all aspects of the adjudication of land, and even went so far as to permit him to, himself, perform all the duties and exercise all the powers necessary to so adjudicate land ownership.

[25] A survey of the scheme of the LAA reveals as follows. Under the LAA, the Minister was authorised to declare adjudication areas in which he intended to effect adjudication and registration of land<sup>7</sup>, and to appoint an adjudication officer for the area<sup>8</sup>. The adjudication officer was in charge of adjudication<sup>9</sup>, and was in turn authorised to appoint demarcation officers, recording officers and survey officers for performing the duties imposed by the LAA.<sup>10</sup> The LAA made the demarcation officer responsible for demarcation of boundaries and gave him the power to indicate or cause to be indicated the boundaries of both claimed and unclaimed land, Crown land, and public roads and rights of way.<sup>11</sup> The survey officer was responsible for carrying out such survey work as was required for adjudication and preparing a demarcation index map of the adjudication section from survey data and aerial photographs.<sup>12</sup> The recording officer was responsible for considering all claims to any interest in land and carrying out such investigation of claims as he considered

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<sup>7</sup> Section 3 of the LAA.

<sup>8</sup> Section 4(1) of the LAA.

<sup>9</sup> Section 4(2) of the LAA.

<sup>10</sup> Section 4(1) of the LAA.

<sup>11</sup> Sections 10 and 11 of the LAA.

<sup>12</sup> Section 13 of the LAA.

necessary. Except for where there was more than one claimant between whom he was unable to effect agreement, the recording officer was responsible for preparing the adjudication record in respect of each parcel.<sup>13</sup> The adjudication officer had the power to issue such directions as he thought necessary to such officers appointed by him, and could himself perform and exercise any and all of the duties and powers given by the LAA to such officers.<sup>14</sup> Resolution of disputes between claimants was the sole purview of the adjudication officer<sup>15</sup> in which he acted in a quasi-judicial capacity, weighing up evidence and applying principles of land law.<sup>16</sup> The adjudication officer was further competent to administer oaths and take affidavits on enquiry; issue summonses, notices and orders; and require attendance of persons and production of documents as he considered necessary for adjudication.<sup>17</sup>

[26] I am unaware of any authority which deals with the scope of section 22 of the LAA. However, to my mind, section 22 merely adds to the repository of powers already given to the adjudication officer, by granting him the power to review the adjudication record and alter it in any manner he sees fit at any time before it becomes final. Section 22 specifically gives the adjudication officer the power to do so, whether or not the alteration affects the interest of any person in the land. The only qualification is that persons whose interest may be affected must be given notice and the opportunity to be heard. There is no allegation that this was not done, and the evidence reveals otherwise. The Petition Decision records evidence given by Norton and Elfridge and others on their behalf at the hearing of Petition 6A 21P and Mr. White's consideration of and conclusion on that evidence. There is no allegation that the Petition was heard after the adjudication record became final. The Registrar's report is to the contrary. The Record became final on 29<sup>th</sup> October 1986 and the hearings of Petition 6A 21P were held on 12<sup>th</sup> and 22<sup>nd</sup> September 1986 and Mr. White's decision given on 13<sup>th</sup> October 1986.

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<sup>13</sup> Section 14 of the LAA.

<sup>14</sup> Section 4(2) of the LAA.

<sup>15</sup> Section 15 of the LAA.

<sup>16</sup> *Louisien v Jacob* [2009] UKPC 3 at paragraph 39.

<sup>17</sup> Section 4(3) of the LAA.

[27] I note that section 22 does not prescribe the basis upon which or limit the reasons for which the adjudication officer may review and alter his decision. Unlike section 20(1), which is more in the nature of an ‘appeal’ in the strict sense, and which sets out the decisions from which a petition may be made to the adjudication officer, section 22 is silent in this regard. It leaves it open for the adjudication officer to reconsider his own decision. This must be so given the express power to the adjudication officer to himself carry out the functions of the other offices concerned in adjudication under the LAA. The further implication of the broad manner in which section 22 is drafted is that the adjudication officer may review and alter the adjudication record of his own volition, or equally where some matter is brought to his attention, whether via petition or otherwise.

[28] My conclusion is therefore that the Adjudication Officer, Mr White, had the jurisdiction to review and alter the adjudication record on hearing the parties, as he did in favour of the Heirs of Zephern pursuant to section 22 of the LAA. Therefore, doing so did not amount to a mistake, or rather a nullity, which would preclude the claimants from having the Land Register rectified in their favour. Even if Mr. White had purported to deal with the Petition pursuant to section 20(1), it would not be a question of his jurisdiction to hear the petition but whether the decision he made was correct in substance and was of a nature that could be subject to an appeal pursuant to that section. If it were not, the only recourse open to the defendants would have been to appeal the decision to the Land Adjudication Tribunal pursuant to section 20(4). I shall therefore go on to consider the next issue.

**Issue 2: Whether the defendants’ names were entered as owners with absolute title of Parcel 138 and/or Parcel 142 by mistake, warranting an order for rectification of the Land Register to substitute the claimants’ names?**

**Submissions**

[29] Mr. St. Clair, relying of the case of **Louisien v Jacob**<sup>18</sup>, submitted that the Register could be rectified where an error occurred in the adjudication process and proceeded unchecked to the registration process and is so recorded. He submits these are the circumstances here, and so rectification is available to the claimants.

[30] No submissions were made by Mr. Fraser on this issue, given the defendant's position that the Adjudication Officer had no jurisdiction to hear the Petition, being an appeal from his previous decision and that therefore the Petition Decision was a nullity.

### **Analysis**

#### **Parcel 142**

[31] Based on the Registrar's report, Parcel 142 was incorporated in the disputed area which was the subject of *Dispute 6A 4D* and the Original Decision and was awarded to Norton and Elfridge. The Registrar's report also states that Parcel 142 was not the subject of *Petition 6A 21P* and that the only parcel in dispute in the Petition was Parcel 138. I accept that Parcel 138 was the only parcel the subject of the Petition in reliance upon the fact that the diagram attached to the Petition Decision identifies the disputed land as *Claim 6A 242*, which the Registrar indicated referred to Parcel 138. As alluded to earlier at paragraph 16 above, Mr. St. Clair, in his submissions, appears to accept this also. Having accepted the Registrar's report, and noting his reliance of her findings therein, he states: "any mistake which has to be rectified was with respect only to Parcel 138. The claimant therefore modifies their claim accordingly." Therefore, the Original Decision stands in respect of Parcel 142 and there is no mistake in the names of Norton and Elfridge having been registered as the owners thereof with absolute title. There is therefore no basis for an order for rectification of the Land Register in respect of Parcel 142.

#### **Parcel 138**

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<sup>18</sup> [2009] UKPC 3.



[32] I have stated above that Parcel 138 is the land which was in dispute and the subject of *Petition 6A 21P* and the resulting Petition Decision. By that decision Mr. White clearly decided that the land therein was not the half carre belonging to the Heirs of Evariste. It followed that the land therein formed part of the Vieux Sucreic Estate, which he accepted, save the portion sold to the Gaspards, belonged to the Heirs of Zephern. Mr. White, in effect, therefore, reversed his findings in the Original Decision in respect of Parcel 138 and adjudicated it in favour of the Heirs of Zephern. There is no evidence of any appeal from that decision by the Heirs of Evariste as provided for by the LAA. Therefore, on finalization of the adjudication record on 29<sup>th</sup> October 1986, it ought to have reflected the owner with absolute title of Parcel 138 as the Heirs of Zephern, which would then have been transcribed in the Land Register for Parcel 138. This was, however, not the case. Does this amount to a mistake which warrants an order for rectification of the Land Register pursuant to section 98 of the LRA?

[33] Section 98 of the LRA provides as follows:

**“98. Rectification by Court**

(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.”

[34] This section, and its equivalent in other jurisdictions, has been the subject of several judicial decisions. It is now well established that rectification of the Register is available only if the mistake in question occurred in ‘the process of registration’. However, the question, in any given circumstance, of what amounts to ‘a mistake in the process of registration’ must involve a careful evaluation of the facts of the particular case. The Privy Council has stated in this regard that “*the fact that there*

*has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same being carried forward, as it were, so that it has become a mistake in the registration process.*"<sup>19</sup> In **Sylvina Louisien**, the Board suggested this could occur where for example a mistake in the adjudication process gets carried forward to the registration process because the staff of the Land Registry are presented with a record which does not correctly embody the adjudication officer's final decision.<sup>20</sup> This is the case here.

- [35] Further, a 'mistake in the registration process' is always distinguished from a situation where a claimant alleges that the adjudication officer made a mistake in coming to his conclusion and therefore made the wrong decision in his adjudication of land. The Court has said time and again that that does not amount to a mistake for which section 98 of the LRA may be invoked. It is now trite that section 98 of the LRA cannot be utilized to alter in any material particular the individual findings of fact of the adjudication officer based upon his enquiry, simply because the Court sitting in its original jurisdiction, or the claimant for that matter, is of the opinion that his findings were erroneous.<sup>21</sup> It is for this reason that I have not averted to the several witness statements filed on behalf of the parties in the matter. I note that the witness statements sought to present evidence that focused entirely on events that occurred prior to and during adjudication by Mr. White in an attempt to prove to the court each parties' entitlement to claim ownership of the Parcels. I reiterate that it is not open to this Court to go back into the adjudication process and to determine the correctness or otherwise of the adjudication officer's decision. I would only restate here, the dicta of the Privy Council adopted by our Court of Appeal:

"But it is also clear from the authorities that rectification is not intended to be an alternative remedy for a claimant under the LAA who, having failed in a contested claim before the adjudication officer, omitted to use the avenues of review and appeal provided for by sections 20 and 24 of the LAA. This conclusion does not depend on res judicata or estoppel properly

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<sup>19</sup> Louisien v Jacob [2009] UKPC 3 at paragraph 43.

<sup>20</sup> Louisien v Jacob [2009] UKPC 3 at paragraph 43.

<sup>21</sup> James Skelton et al v James Alfred Skelton Civil Appeal No. 4 of 1985 (British Virgin Islands) delivered 15<sup>th</sup> January 1986; St. Torrence Matty et al v Alicia Francois SLUHCVP2012/0037; Louisien v Jacob [2009] UKPC 3.

so called; it follows simply from a correct understanding of the statutory machinery.”<sup>22</sup>

The defendants having not appealed the Petition Decision, it remains Mr. White’s final decision on the matter.

[36] The following cases aptly demonstrate the point. In **James Skelton et al v James Alfred Skelton**<sup>23</sup>, the respondent who had filed a claim with the adjudication officer together with his evidence of ownership of a parcel of land, returned to the United States before a final decision was given. Some 9 years later he became aware that his claim before the adjudication officer had been rejected and the land had been registered in favour of another. He filed a claim in the High Court for rectification of the Land Register on the basis of mistake. Robotham CJ agreed that *“if the expression of the final decision of the Adjudicating Officer was incorrectly recorded on the Land Register, section 140 of the Registered Land Ordinance (equivalent to section 98 of the LRA) could be resorted to.”* The learned Chief Justice held however, that the claimant, having not exercised his rights of petition and appeal, could not then impeach the finding of the adjudication officer by an ingenious action for rectification. He held that the decision of the adjudication officer stands, and the appeal was allowed.

[37] Similarly, in **St. Torrence Matty et al v Alicia Francois**<sup>24</sup>, the appellants, who made no claim to the disputed land during the LRTP, alleged the following mistake: that the demarcation process ought to have revealed their occupation of the disputed land as they claimed to have been in occupation thereof long before and during the LRTP; and that the Deeds showing the Estate of Louis Seraphin (from whom they claimed title) were registered and accessible to the adjudication officer. Pereira CJ held that what was being complained of, was in essence that the adjudication officer failed to have due regard to various matters and thus arrived at the wrong decision.

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<sup>22</sup> *Louisien v Jacob* [2009] UKPC 3 at paragraph 40; *St. Torrence Matty et al v Alicia Francois* SLUHCVP2012/0037 at paragraph 36.

<sup>23</sup> Civil Appeal No. 4 of 1985 (British Virgin Islands) delivered 15<sup>th</sup> January 1986.

<sup>24</sup> SLUHCVP2012/0037.

The learned Chief Justice held that *“this was not a mistake which may ground a rectification claim under section 98 of the LRA but is in every sense the complaints of a party aggrieved by the decision of the adjudication officer and one for which redress by way of appeal was specifically made available under the LAA but which was not utilised.”* The appeal was dismissed.

[38] In **Webster et al v Fleming**<sup>25</sup> on the other hand, an order for rectification of the Land Register was upheld where it was found that the recording officer had acted contrary to law in altering the adjudication record for Parcel 1 by ‘creating’ a Parcel 9 therefrom and adjudicating it in favour of the first appellant after the certificate of finalization for the section had been published. This was found to be an act entirely without legal authority and Byron JA held that the omission to register the respondent as proprietor of the land contained in Parcel 9 was a registration by mistake which could be rectified under section 140 of the Registered Land Ordinance.

[39] It is without doubt that the Court may order rectification of the Land Register on the basis of a mistake, including in respect of a first registration pursuant to section 98 of the LRA. The mistake must be one in respect of the registration process, which it is accepted may be carried over from a mistake in the adjudication process, where the adjudication record passed to the Registrar does not accurately reflect the adjudication officer’s final decision. This is distinct from mere disagreement with the correctness of his decision. It is clearly the case here that the adjudication record did not reflect the final outcome of *Petition 6A 21P* which was the Petition Decision and therefore warrants an order for rectification of the Land Register.

### **Issue 3: Whether the claim is prescribed?**

[40] Prescription is defined in article 2047 of the Civil Code as *“a means of ... being discharged from an obligation by lapse of time... Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation*

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<sup>25</sup> Civil Appeal No 6 of 1993 (Anguilla) delivered 8<sup>th</sup> May 1995

*or the acknowledgment of a right when the creditor has not preferred his or her claim within the time fixed by law.”* The defendants here seek to set up extinctive or negative prescription, precluding the claimants from bringing this claim for rectification of the Land Register. What is the relevant period for prescription?

[41] Article 2103 of the **Civil Code** provides that *“all things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years.”* The LRA does not stipulate any period after which a claim for rectification of the Land Register pursuant to section 98 can no longer be brought. To the contrary it speaks to *“any registration including a first registration”* which does not suggest any limitation as to time. In the circumstances, 30 years would be the applicable prescription period.

[42] By analogy, article 2103A which deals with immovable property states that *“title to immovable property ... or other right connected therewith, may be acquired by sole and undisturbed possession for 30 years...”* and that the Supreme Court *“may issue a declaration of title in regard to the property or right...”* It has been established that this applies equally to negative prescription barring such a claim.<sup>26</sup> One would therefore expect a similar period to apply to other claims to title to immoveable property. I am of the view that a period of 30 years is the applicable prescriptive period and therefore the claim is not prescribed.

[43] In the event I am wrong, even if the prescription period is the shorter period of 10 years, which I doubt, the claim would still have been filed within the prescriptive period. The evidence reveals that the defendants were erroneously registered as owners with absolute title to Parcel 138 in October 1986. The claimant would therefore have had until October 1996 to file a claim. This claim was duly filed and served in May 1996. Therefore, the claim is not prescribed. It is well established

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<sup>26</sup> St. Torrence Matty et al v Alicia Francois SLUHCVP2012/0037, at paragraph 18.

that a judicial demand in proper form filed and served upon the person whose prescription it is sought to hinder, interrupts prescription.<sup>27</sup>

### **Conclusion**

[44] Based on the foregoing, I make the following orders:

1. The Adjudication Officer had the jurisdiction to hear *Petition 6A 21P* and to review and alter the adjudication record pursuant to section 22 of the LAA.
2. The Heirs of Evariste Gaspard were registered as owners with absolute title in respect of Parcel 138 by mistake, this not reflecting the final decision of the Adjudication Officer in respect of Parcel 138. This mistake warrants an order for rectification of the Land Register pursuant to section 98 of the LRA.
3. The Registrar of Lands is hereby ordered to rectify the Land Register for Block 1253B Parcel 138 in the registration Quarter of Gros Islet by deleting Heirs of Evariste Gaspard and substituting therefor Heirs of Zepher Mathieu as owners with absolute title.
4. For the avoidance of doubt, Block and Parcel Number 1253B 142 is to remain registered in the names of Norton Gaspard and Elfridge Gaspard as the registered proprietors and there shall be no order for rectification in respect of Parcel 142.

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<sup>27</sup> Article 2085 of the Civil Code; *David Sweetnam et al v The Government of Saint Lucia et al* Civil Appeal No. 43 of 2005.

5. The defendants shall pay the claimants prescribed costs pursuant to CPR 65.5 in the sum of \$7,500.00.

**Kimberly Cenac-Phulgence  
High Court Judge**

**By the Court**

**Registrar**