

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2020/0010

BETWEEN:

**[1] NORTON GASPARD
[2] ELFRIDGE GASPARD
[3] HEIRS OF EVARISTE GASPARD
represented by VIVIANNE GASPARD-AIMABLE**

Appellants

and

**BERNARD ISIDORE
representative of the HEIRS OF ZEPHERN MATHIEU**

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Gerard St. C. Farara
The Hon. Mde. Esco Henry

Chief Justice
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Mr. Horace Fraser for the Appellants
Mr. Alvin St. Clair for the Respondents

2021: June 28;
October 7.

Civil appeal – Registration of Title - Section 22 of the Land Adjudication Act – Jurisdiction of Adjudication Officer - Whether adjudication officer had jurisdiction to review initial decision before adjudication record was finalized – Section 98 of Land Registration Act – Mistake in registration of title - Rectification of Land Register

In or about 1986, during the land adjudication process under the Land Registration and Titling Project (“LRTP”), a claim was made on behalf of the respondents, the Heirs of Zephern Mathieu (“Heirs of Zephern”) in respect of land registered as Parcel 130. Another claim was made, in respect of land registered as Parcel 138 by the first and second

appellants, Norton and Elfridge Gaspard, as owners in their own right and acting on behalf of the third appellants, the Heirs of Evariste Gaspard ("Heirs of Evariste").

A dispute subsequently arose concerning a parcel of land registered as Block 1253B which included Parcels 130 and 138. The Adjudication Officer, Mr. J.M.F White ("Mr. White"), who was appointed under the Land Adjudication Act ("the LAA") heard the dispute on 24th April 1986 and gave his decision on 30th April 1986 ("the First Decision"). In this decision, he awarded Parcel 138 to the Heirs of Evariste.

The Heirs of Zephern challenged the First Decision by Petition 6A 21P ("the petition") which was heard by Mr. White on 12th and 22nd September 1986. In his decision delivered on 13th October 1986 ("the Second Decision"), Mr. White reversed the First Decision in respect of Parcel 138 and awarded the said parcel to the Heirs of Zephern. On 29th October 1986, this Second Decision was given the imprimatur of a certificate of finality pursuant to section 23 of the LAA. Notwithstanding this, Parcel 138 was later recorded in the Land Register as being owned by the Heirs of Evariste absolutely instead of the Heirs of Zephern.

A claim was filed by Suzanna Isidore, on behalf of the Heirs of Zephern, in 1996 seeking to rectify the land register to reflect the Second Decision on the basis that the Heirs of Evariste had been recorded by mistake. On 12th August 2011, Georges J [Ag.] declared that the appellants' names were entered as owners of Parcel 138 by mistake and ordered that the Land Registrar rectify the Land Register in respect of Parcel 138, by entering the name of Suzanna Isidore. The appellants appealed but then the parties consented to attending mediation. Mediation was unsuccessful and eventually the matter reverted to the High Court for another determination. The learned judge, in her judgment delivered on 28th April 2020, granted the respondents' claim and ordered that the Registrar of Lands rectify the Land Register to reflect the Second Decision in accordance with the final adjudication record. The judge found that the adjudication officer had jurisdiction under section 22 of the LAA to hear and determine the petition and was empowered to make the Second Decision. She accordingly held that the Second Decision was valid and that the heirs of Evariste were entered by mistake on the Land Register.

Dissatisfied with the decision of the learned judge, the appellant appealed. The main issue on appeal was whether the judge erred in finding that the adjudication officer had jurisdiction to hear and determine the petition.

Held: dismissing the appeal; and ordering that the appellants pay the respondents costs on the appeal to be no more than two-thirds of the prescribed costs awarded in the court below, that:

1. The adjudication officer is given a substantive power of review under section 22 of the LAA and this power is part and parcel of the adjudication process and is among the arsenal of powers which was available to the adjudication officer in carrying out the mandate of the LAA.

Section 22 of the **Land Adjudication Act**, Cap. 5:06, Revised Laws of Saint Lucia, 2017 considered; **Loopsome Portland et al v Sidonia Joseph** Civil Appeal No. 2

of 1992 (delivered 25th January 1993, unreported) applied; **James Ronald Webster and another v Beryl St. Clair Fleming** [1995] ECSCJ No. 32 applied.

2. Under section 22(b), the adjudication officer is vested with the power to make material alterations in the record as he or she considers necessary. There is nothing in section 22 or elsewhere in the LAA which limits the reasons for which the adjudication officer may review and alter his decision. In view of the clear language of the section, there cannot be considered to be any restriction on the power of the adjudication officer to alter any of the contents of the adjudication record referred to in section 18, which includes the name of the person entitled to be registered as the owner, prior to the finalization of the record by the issuance of a certificate of finality of the adjudication record under section 23 of the LAA.

Sections 22(b) and 23 of the **Land Adjudication Act**, Cap. 5:06, Revised Laws of Saint Lucia, 2017 applied; Section 18 of the **Land Adjudication Act**, Cap. 5:06, Revised Laws of Saint Lucia, 2017 considered.

3. The only qualification on the adjudication officer's power of review is where he intends to make a material alteration to the adjudication record. In such a case, the principles of natural justice apply and the adjudication officer is only required to take such steps as he deems 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. In this case, it is undisputed and, in any event, pellucid on the face of the record, that the parties were given an opportunity to be heard by Mr. White on the petition on 12th and 22nd September 1986 and evidence was in fact given on behalf of the appellants.
4. While section 22 of the LAA does not specify how the review process is to be instituted, it cannot be said that only the adjudication officer can institute the review process. This runs counter to the wide scope of powers vested in the adjudication officer under the LAA. In the circumstances, the learned trial judge was correct in her conclusion that, in view of the broad language used in section 22, the adjudication officer may review and alter the adjudication record of his volition, or equally where some matter is brought to his attention, whether by petition or otherwise. In all the premises, the learned judge was correct in holding that Mr. White had jurisdiction on hearing the parties to review and alter the adjudication record, prior to the finalization of the record, in favour of the Heirs of Zephern pursuant to section 22 of the LAA.

Section 22 of the **Land Adjudication Act** Cap. 5:06, Revised Laws of Saint Lucia, 2017 applied.

5. The court is empowered to make an order for rectification of the Land Register under section 98 of the Land Registration Act ("the LRA") on the basis of a mistake which occurred in the registration process. This includes a mistake which has been carried

forward into the registration process as a result of a mistake in the adjudication process, but the alleged mistake must not relate to the correctness of the adjudication officer's decision. This may occur where the adjudication record presented at the Land Registry does not correctly embody the final decision of the adjudication officer. It is clear that the final decision of Mr. White as embodied in his Second Decision and which became the subject of the final adjudication record was not accurately carried over and reflected on the Land Register. This amounted to a mistake in the registration process and rectification was accordingly available. Section 98(1) of the LRA was correctly engaged by the learned judge.

Section 98(1) of the **Land Registration Act**, Cap. 5:01, Revised Laws of Saint Lucia 2015 applied; **St. Torrence Matty et al v Alicia Francois** SLUHCVAP2012/0037 (delivered 21st August 2015, unreported) applied; **Sylvina Louisen v Joachim Rodney** [2009] UKPC 3 applied.

JUDGMENT

- [1] **PEREIRA CJ:** This matter is of some vintage and has had a protracted history of litigation. The underlying dispute arose in or about 1986 following a land adjudication under the Land Registration and Titling Project ("LRTP") in respect of certain parcels of land eventually registered as Block 1253B Parcels 130, 138, 139 and 142 situate in Vieux Sucre in the registration quarter of Gros Islet. The resulting claim in the court below in respect of the dispute was filed since May 1996. The said claim has already spawned two previous appeals, the latter of which was heard by this Court in December 2011. The appeal now before this Court arises from the decision of Cenac-Phulgence J dated 28th April 2020 in which the learned judge granted the respondents' claim seeking an order for rectification of the Land Register in respect of Parcel 138 only. Before turning to the issue raised on the appeal, I will set out the factual and procedural background which is largely undisputed.

Background

- [2] In or about 1986, during the land adjudication process under the LRTP, a claim was made on behalf of the respondents, the Heirs of Zepher Mathieu ("Heirs of Zepher"), represented in this appeal by Mr. Bernard Isidore. The claim was made in respect of a certain area of land later registered as Parcel 130 and was given the

designation 'Claim 6A 079'. Another claim was made by the first and second appellants, Norton and Elfridge Gaspard, as owners in their own right and acting on behalf of the third appellants, the Heirs of Evariste Gaspard ("Heirs of Evariste") represented in this appeal by Vivianne Gaspard-Aimable. The latter claim was made in respect of a certain area of land later registered as Parcel 138 and was designated as 'Claim 6A 242'.

- [3] Subsequent to the making of the claims, an area of land became the subject of a dispute between the Heirs of Zephern on the one hand and Norton and Elfridge Gaspard on the other. The disputed area incorporated all the lands eventually registered as Block 1253B Parcels 130, 138, 139 and 142. This dispute was given the designation 'Dispute 6A 4D'. The Land Adjudication Officer, Mr. J.M.F. White ("Mr. White"), appointed under the **Land Adjudication Act**¹ (the "**LAA**") heard the dispute on 24th April 1986 and gave his decision ("the First Decision") on 30th April 1986. By the First Decision, Mr. White awarded Parcels 130 and 139 to the Heirs of Zephern, Parcel 138 to the Heirs of Evariste and Parcel 142 to Norton and Elfridge Gaspard. The First Decision did not receive the imprimatur of the Land Adjudication Certificate which would have given it the character of finality as provided for under the **LAA**.
- [4] The Heirs of Zephern, by way of Petition 6A 21P ("the petition"), challenged the First Decision. Mr. White heard the petition on 12th and 22nd September 1986 and delivered his decision ("the Second Decision") on 13th October 1986. By the Second Decision, Mr. White reversed the First Decision in respect of Parcel 138, awarding the said parcel to the Heirs of Zephern. It is undisputed that the Second Decision was, on 29th October 1986, given the imprimatur of a certificate of finality when it became the subject of the final adjudication record on issuance of the certificate provided for under section 23 of the **LAA**. Notwithstanding this, the Second Decision, in respect of Parcel 138 was later recorded in the Land Register as being owned by the Heirs of Evariste absolutely instead of the Heirs of Zephern.

¹ Cap. 5.06, Revised Laws of Saint Lucia, 2017.

The Claim in the Court Below

- [5] In 1996, Ms. Suzanna Isidore ("Ms. Isidore"), acting on behalf of the Heirs of Zephern, filed a claim in the court below seeking an order for rectification of the Land Register in respect of Parcels 138 and 142. She sought to have the names of the first and second appellants, Norton Gaspard and Elfridge Gaspard, removed from the Land Register as owners in their own right and acting on behalf of the Heirs of Evariste and to substitute therefor the names of the Heirs of Zephern.
- [6] Ms. Isidore alleged that the Heirs of Zephern were the rightful owners of the Parcels following a land adjudication under the LRTP. She stated that the Parcels were awarded to the Heirs of Zephern by the Second Decision. That decision she alleged was the result of an appeal from Mr. White's earlier decision dated 24th April 1986. She contended that despite the Second Decision, the appellants' names remain on the Land Register as owners of the Parcels. Ms. Isidore further averred that the respondents informed the Registrar of Lands of the said error, but the error was not rectified and the respondents therefore had to resort to the filing of the claim in the court below for rectification of the Land Register.
- [7] The appellants denied the entirety of the respondents' claim, save that there was an adjudication by Mr. White and a division of lands under the LRTP. They contended that the respondents were not entitled to be registered as owners of Parcels 138 and 142, and in any event, that their claim is prescribed and should therefore be dismissed.
- [8] On 9th July 2001, the claim came on for pretrial review. The judge adjourned the matter 'to allow the defendants to consider whether the documentary evidence permits the defence to be maintained'. When the claim again came up for hearing on 17th June 2002, another judge ordered the parties to attend before the Registrar of Lands to ascertain whether Parcels 138 and 142 were awarded to the respondents by the Second Decision. The Registrar of Lands was also ordered to issue a written report on this question by 30th June 2002.

- [9] Subsequently, the appellants filed an application to strike out the respondents' statement of claim as disclosing no reasonable grounds and having no prospect of success. The application came on for hearing before a master who granted the application and struck out the respondents' statement of case. The respondents appealed against the master's decision. The Court of Appeal allowed the appeal and remitted the matter to the High Court for further case management.
- [10] The claim was case managed and thereafter came on for trial before Georges J [Ag.]. Georges J [Ag.] delivered his written judgment on 12th August 2011, whereby he declared that the appellants' names were entered as owners with absolute title of Parcel 138 by mistake. He therefore ordered and directed the Registrar of Lands to rectify the Land Register in respect of Parcel 138, by deleting the names of Norton Gaspard and Elfridge Gaspard from the Land Register substituting therefor the name of Suzanna Isidore.
- [11] The appellants appealed against the judgment of Georges J [Ag.]. That appeal was heard on 14th December 2011 and resulted in an order by consent of the parties allowing the appeal. The parties consented to attending mediation, and if mediation was unsuccessful the issue of title to Parcels 138 and 142 was to be determined by the High Court 'upon production by each party of their respective title deeds and other relevant facts and evidence'. The matter remained at mediation to facilitate discussions between the parties. Mediation was ultimately unsuccessful and the claim proceeded to trial before the learned judge. It bears noting that, at the commencement of the trial, the respondents indicated that their claim for rectification in respect of Parcel 142 was no longer being pursued.

Decision of the Court Below

[12] By a written judgment delivered on 28th April 2020, the learned judge granted the respondents' claim and ordered the Registrar of Lands to rectify the Land Register in respect of Parcel 138 by deleting the names of the Heirs of Evariste and substituting therefor the names of the Heirs of Zepher as owners with absolute title. The judge quite properly recorded that she did not consider the order of the Court of Appeal dated 14th December 2011 that 'the parties produce title deeds and other relevant facts and evidence' to be suggesting that she had the jurisdiction to reopen the adjudication process and make any findings as to the correctness of the adjudication officer's decision. She therefore considered that the issues for determination were: (i) whether the adjudication officer had jurisdiction to hear and determine the petition, and if not, (ii) whether doing so amounts to a mistake such that the respondents are not entitled to have the Land Register rectified in their favour in accordance with the Second Decision; and (iii) whether the respondents' claim was prescribed.

[13] The judge found that the adjudication officer had jurisdiction under section 22 of the **LAA** to hear and determine the petition and was therefore empowered to, on hearing the parties, alter the adjudication record which had not yet become final and decide in favour of the Heirs of Zepher. Accordingly, she held that the Second Decision was valid. The judge also found that the Heirs of Evariste were registered as owners with absolute title of Parcel 138 by mistake, this not reflecting the final decision of the adjudication officer. She therefore concluded that the respondents were entitled to have the Land Register in respect of Parcel 138 rectified in their favour. The judge also determined that the respondents' claim was not prescribed.

The Appeal

[14] Dissatisfied with the decision of the learned judge, the appellant appealed. The amended notice of appeal, which challenges several findings of the judge, admits of two grounds of appeal. The first ground of appeal together with the findings of the judge being challenged raise the broad issue of whether the judge erred in

finding that the adjudication officer had jurisdiction to hear and determine the petition (“the Jurisdiction Issue”). The second ground of appeal which challenged the judge’s finding that the appellants ought to have appealed the Second Decision to the Land Adjudication Tribunal under section 20(4) of the **LAA** was not pursued and was effectively abandoned by learned counsel on behalf of the appellants, Mr. Horace Fraser, during his oral submissions before this Court. It will therefore not be considered *in extenso* in this judgment.

The Jurisdiction Issue

Submissions on behalf of the Parties

[15] The crux of the submissions advanced on behalf of the appellants by Mr. Fraser is that the judge erred by interpreting section 22 of the **LAA** as ascribing unto the adjudication officer the function of review. He argued that the adjudication officer was *functus officio* after he gave the First Decision and as a result the Second Decision was a nullity. Mr. Fraser also contended that the scope of section 22 was limited to minor corrections to the record and the adjudication officer was not empowered to make a material alteration to the adjudication record, such as an alteration affecting an interest in land. He further argued that in any event the process of review under section 22 could not have been engaged by way of petition and accordingly, the petition fell to be determined by the adjudication officer under section 20 of the **LAA**. He contended that the adjudication officer by hearing the petition and making the Second Decision was therefore exercising an appellate function, a function which is reserved for the Land Adjudication Tribunal. Mr. Fraser posited that, as a result, the adjudication officer acted without jurisdiction and the Second Decision is a nullity. He stated that the judge accordingly erred in finding that the adjudication officer had jurisdiction to hear and determine the petition and in granting the respondents’ claim for rectification of the Land Register in respect of Parcel 138.

[16] In response, learned counsel for the respondents, Mr. Alvin St. Clair, contended that the adjudication officer had jurisdiction to correct or alter the adjudication record at

any time before it became final in accordance with section 23 of the **LAA**. He posited that, even if the adjudication officer had no jurisdiction to make the Second Decision, the Second Decision remains valid until set aside. Mr. St. Clair argued that the appropriate means of having the Second Decision set aside under the **LAA** is by way of an appeal to the Land Adjudication Tribunal and a possible further appeal to the Court of Appeal. This appeal process under the **LAA**, he stated, was not engaged by the appellants and could not now be engaged as the time for so doing as provided for under the **LAA** had long since expired. He therefore contended that the Heirs of Zephern were entitled to be registered as owners of Parcel 138 in accordance with the Second Decision as recorded on the final adjudication record. Mr. St. Clair relied on the decisions of **Loopsome Portland et al v Sidonia Joseph**,² **James Ronald Webster and another v Beryl St. Clair Fleming**³ and **Leymon Strachan v The Gleaner Company Limited and another**⁴ in support of his submissions.

Discussion

The Registered Land System in Saint Lucia

- [17] Before delving into the nub of the Jurisdiction Issue, it is perhaps useful to contextualise the registered land system in Saint Lucia. In the early 1980s, the Parliament of Saint Lucia decided to adopt the Torrens system of registration of title to land or what is commonly known as the registered land system. The **Land Registration Act**,⁵ (the “**LRA**”), the **LAA** and the **LRTP** were key components of the introduction of the registered land system which replaced the existing ‘title by deed’ system. The adoption of the registered land system in Saint Lucia has been examined in detail by both the Privy Council in **Sylvina Louisen v Joachim Rodney**⁶ and this Court in **Joseph and others v Francois and Matty and others**⁷ and **Ferdinand James v Planviron (Caribbean Practice) Limited and Rodney**

² Civil Appeal No. 2 of 1992 (delivered 25th January 1993, unreported).

³ [1995] ECSCJ No. 32.

⁴ [2005] UKPC 33.

⁵ Cap. 5:01, Revised Laws of Saint Lucia 2015.

⁶ [2009] UKPC 3.

⁷ SLUHCVP consolidated appeals 2011/0025 and 2012/0037, (delivered 18th October 2006, unreported).

Bay Marina Limited.⁸ Through the LRTP, all lands in Saint Lucia were surveyed and adjudicated upon under the **LAA**. It was this process of adjudication under the **Land Adjudication Act** which brought all lands under the registered land regime. It is sufficient for the purposes of this judgment to refer to the following passage from **Matty**:

“The LRTP...by the conjoint effect of the LAA and the LRA, provided an entirely new all-embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in Saint Lucia. It provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from decisions of the adjudicator as to ownership and other rights claimed...”⁹

The land adjudication process is now closed and the LRTP at an end as first registration of all lands in Saint Lucia has been completed.

- [18] This brings me to the nub of this appeal which concerns the jurisdiction of the adjudication officer. I now turn to consider the relevant provisions of the **LAA**.

The Land Adjudication Act

- [19] The long title of the **LAA** describes it as ‘An Act to provide for the adjudication of rights and interests in land and for purposes connected therewith and incidental thereto’. It is common ground that the **LAA** was enacted to facilitate the LRTP in Saint Lucia and concerns matters ranging from the investigation of claims to ownership of lands to adjudication of rival claims, including provisions for various processes of review and appeals in respect of decisions made in the adjudication process. As the Privy Council observed in **Louisien**, the entire process of adjudication culminated in ‘passing the results in the form of a certified adjudication record to the Registrar of Lands’. It is this certified adjudication record which formed the basis for first registration of title under the **LRA**.

⁸ SLUHCVP2017/0050 (delivered 16th October 2019, unreported).

⁹ See n.3 at para. 25.

[20] Under section 4 of the **LAA**, the Minister was authorised to declare adjudication areas in which he intended to effect registration of land and an adjudication officer was appointed to be in charge of the entire adjudication process. By the same section, the adjudication officer was authorised to appoint such other officers as were necessary for performing the duties imposed by the **LAA**; namely, demarcation officers, recording officers and survey officers. Under sections 10 and 11, the demarcation officer was responsible for demarcation of boundaries and had the power to indicate or cause to be indicated the boundaries of both claimed and unclaimed land, Crown land, public roads and rights of way. According to section 13, the survey officer was tasked with carrying out such survey works as required for adjudication. The recording officer was required to consider all claims to any interest in land and carry out such investigation of claims as he considered necessary. It appears from section 4(2) that the adjudication officer could have issued directions to any of these officers appointed by him and could have himself performed and exercised all or any of the duties and powers given under the **LAA**.

[21] Where a dispute arose in the adjudication process as to any boundary, the adjudication officer was required to hear and determine the dispute and make and sign a record of the proceedings. The full text of section 15 of the **LAA** which makes provision for the resolution of disputes reads as follows:

“(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;

(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.”

- [22] Sections 16 and 17 of the **LAA** set out the principles applicable to the adjudication process and the rules which ought to be followed by the adjudication officer in the adjudication process respectively.
- [23] Section 18 of the **LAA** provides for the form of the adjudication record for each parcel and identifies the information to be stated therein. The section makes plain that the adjudication record shall consist of a form in respect of each parcel of land, showing either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner by which that person acquired that parcel and of any restriction on his or her power of dealing with it, or the fact that the parcel is Crown land.
- [24] Section 19 of the **LAA** requires that when the adjudication record in respect of any adjudication has been completed, the adjudication officer shall sign and date a certificate to that effect and give notice of the completion thereof and of the place or places at which the adjudication record can be inspected together with the demarcation map.
- [25] Section 23 of the **LAA**, which deals 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 the determination by the adjudication officer of all petitions presented in accordance with section 20(1), whichever shall be later, the adjudication record shall, subject to the provisions of the **LRA**, become final and the adjudication officer shall sign a certificate to that effect and deliver same to the Registrar of Lands.
- [26] The **LAA** further provides for various types of challenges to be mounted against decisions which were made in the adjudication process. 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, survey or recording officer may, within 90 days of the date 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. Such petitions are to be determined in accordance with the procedure set out in section 21. Section 20(2) and (4) together allow for any person dissatisfied with the decision of the adjudication officer to give written notice to the adjudication officer of his or her intention to appeal against the decision to the Land Adjudication Tribunal. It is clear from the section that such notice must be given before the date on which the adjudication record becomes final and any appeal to the Land Adjudication Tribunal can only be made subsequent to the said date. Section 24 allows for a further appeal to the Court of Appeal from the decision of the Land Adjudication Tribunal. In determining any such further appeal, the Court of Appeal may substitute for the decision of the tribunal such decision as it considers just and order rectification in accordance with the **LRA**.

[27] In summary, there appears to be the following three avenues available under the **LAA** to persons dissatisfied with or aggrieved by a decision made in respect of the adjudication process:

- (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, survey or recording officer, or any entry in or omission from the adjudication record by the recording officers (section 20(1));
- (2) the right to appeal decisions of the adjudication officer to the Land Adjudication Tribunal (section 20(2) and (4)); and
- (3) the right to appeal decisions of the Land Adjudication Tribunal to the Court of Appeal (section 24).

[28] Notwithstanding the various avenues to which I have referred, it is quite apparent that the **LAA** empowers the adjudication officer to review his or her decision. Section 22 of the **LAA**, the marginal note of which reads 'Correction of adjudication record', provides that at any time before the adjudication record becomes final, the adjudication officer may correct in the record any error or omission not materially affecting the interests of any persons; and after taking such steps as he or she thinks fit, 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 to the adjudication record.

Could the adjudication officer have heard and determined the petition?

[29] Having considered the scheme of the **LAA**, it is clear that the adjudication officer is empowered to review his or her decision before the adjudication record becomes final. This power is distinct from the processes contemplated by section 20(1) of the **LAA** which delimits the decisions in respect of which a petition may be made to the adjudication officer. It is also quite different from section 20(4) which provides for an avenue of appeal to the Land Adjudication Tribunal from a substantive decision of the adjudication officer after the adjudication record became final. To my mind, what section 22 sought to achieve was to give the adjudication officer one last resort to put matters right before the adjudication record becomes final. It opens the door for the adjudication officer to reconsider or correct any error in his decision before finalisation of the adjudication record. The rationale behind this power of review is best understood in the context of the wide range of responsibilities given to the adjudication officer under the **LAA**, including carrying out the duties of the officers appointed by him. Indeed, it seems to me that the power of the adjudication officer under section 22 to review is part and parcel of the adjudication process and is among the arsenal of powers which was available to the adjudication officer in carrying out the mandate of the **LAA**. As explained by Byron JA (as he then was) in **Loopsome Portland**:

"The power to make alterations on the adjudication is thereby vested in the Adjudication Officer. The exercise of the power to make an alteration is but

one step in the adjudication process and becomes merged in it. After the exercise of such power the Registrar of Lands is bound by the adjudication record as amended, and must base the first registration on it.”

[30] Based on the language used in section 22, I do not agree with the proposition that the adjudication officer has no power to make an alteration which affects the interest of any person in land. First, there is nothing contained in section 22 or elsewhere in the **LAA** for that matter which limits the reasons for which the adjudication officer may review and alter his decision. Second, where the adjudication officer is vested with a substantive power as is the case under section 22, the intended alterations in my view cannot be limited to mere clerical or minor errors as contended by the appellants. In fact, section 22(b) empowers the adjudication officer to ‘make any material alternation in the record he or she considers necessary’ (underlining supplied) provided every person whose interest is affected is given an opportunity to be heard. I will return to this aspect later in the judgment. In view of the clear language of the section, I do not consider there to be any restriction on the power of the adjudication officer to alter any of the contents of the adjudication record referred to in section 18 prior to the finalisation of the record.

[31] Furthermore, while section 22 of the **LAA** does not specify how the review process is to be instituted, the section is drafted quite broadly. It seems to me that the adjudication officer must be prompted in some way to engage in the review process. The proposition that only the adjudication officer can institute the review process under section 22 runs counter to the wide scope of the powers vested in the adjudication officer under the **LAA**. It is my considered view that the judge was correct in her conclusion that, in view of the broad language used in section 22, the adjudication officer may review and alter the adjudication record of his volition, or equally where some matter is brought to his attention, whether by petition or otherwise.

[32] To my mind, the only qualification on the adjudication officer’s power of review arises where the adjudication officer intends to make a material alteration to the

adjudication record. In such a case, the adjudication officer is only required to take such steps as he deems 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. It is undisputed and, in any event, pellucid on the face of the record that the parties were given an opportunity to be heard by Mr. White on the petition on 12th and 22nd September 1986. The Second Decision records the evidence given by Suzanna Isidore, Norton and Elfridge Gaspard and other witnesses at the hearing of the petition and records Mr. White's conclusions. It also cannot properly be contended that the petition was heard after the adjudication record became final. The report of the then acting Registrar of Lands, Ms. Agnes Actie, makes plain that the adjudication record was finalised on 29th October 1986, subsequent to the hearing of the petition on 12th and 22nd September 1986 and the delivery of Mr. White's decision on the petition on 13th October 1986. It follows that Mr. White in hearing and determining the petition could not have been purporting to adjudicate an appeal of his First Decision as the time for appealing the decision of the adjudication officer began to run from the date on which the adjudication record became final. Shortly put, the adjudication officer is empowered under the **LAA** to oversee and review the entire adjudication process and make such changes and alterations as deemed fit, subject only to adhering to the principles of natural justice as enshrined in section 22 of the **LAA**, until the ink becomes dry on the issuance of the certificate of finality of the adjudication record. It is only on the issuance of the certificate making the adjudication record final that he becomes *functus*. The contention that the adjudication officer was *functus officio* when he made the Second Decision is therefore without merit.

- [33] It must also be borne in mind that section 98 of the **LRA** makes provision for rectification of the Land Registrar only in limited circumstances where the name of the registered proprietor was entered on the Land Register through mistake or fraud. It stands to reason that the power of the adjudication officer to review the adjudication record prior to its finalisation is an essential part of the adjudication

process, given the limited scope for correction of any error on the Land Register once the name of the registered proprietor had been entered and first registration had been effected.

- [34] I therefore consider the position in law to be that once the adjudication officer becomes aware of any fact, evidence or error, before the finalisation of the adjudication record, which would cast doubt on the correctness of his decision, the adjudication officer is at liberty to reconsider his decision. And, if the adjudication officer considers it fit to make a material alteration to the adjudication record, he must first provide every person whose interest is affected an opportunity to be heard. Again, this was clearly done by Mr. White in this case. In the premises, I am of the view that the learned judge was correct in holding that Mr. White had jurisdiction on hearing the parties to review and alter the adjudication record in favour of the Heirs of Zephern pursuant to section 22 of the **LAA**.

The Avenue for Challenge

- [35] Before departing from this aspect, I observe that much has been made by the respondents as to whether the appellants ought to have appealed the Second Decision to the Land Adjudication Tribunal. It has indeed been settled by a long line of authorities emanating from this Court such as **Loopsome Portland et al v Sidonia Joseph**,¹⁰ **James Ronald Webster and another v Beryl St. Clair Fleming**,¹¹ and **James Skelton et al v James Alfred Skelton**¹² that once the adjudication officer has signed the certificate that the adjudication record is final, the remedy of any aggrieved person is to appeal against his decision to the Land Adjudication Tribunal. The position is no different where the party asserts that the decision was a nullity. In this vein, I would approve the decision of Matthew J in **Jetrona Jn Francois et al v Robert Angus Bain et al**.¹³ I therefore consider it prudent for this Court to reiterate that where an enactment clearly provides an

¹⁰ Civil Appeal No. 2 of 1992 (delivered 25th January 1993, unreported).

¹¹ [1995] ECSCJ No. 32.

¹² (1986) 37 WIR 177.

¹³ Suit No. 290 of 1992 (Saint Lucia) (delivered 31st May 1995, unreported).

avenue for redress, it is that avenue which should be engaged by a party who is aggrieved by the decision made by a body or tribunal under the relevant enactment.

[36] For completeness, I now propose to briefly consider as an upshot of the Jurisdiction Issue the learned judge's conclusion that the Land Register in respect of Parcel 138 should be rectified in favour of the Heirs of Zephern. As stated earlier, since Mr. White had jurisdiction to determine the petition, the Heirs of Zephern ought to have been recorded as the owners with absolute title of Parcel 138 in accordance with the Second Decision which decision was contained in the final adjudication record. The Land Register however failed to record this information contained in the final adjudication record and instead reflected the Heirs of Evariste as the owners of Parcel 138. The judge concluded that this was a mistake which warranted rectification of the Land Register in respect of Parcel 138 in favour of the Heirs of Zephern. While no submissions were advanced by learned counsel on this specific finding at the hearing of the appeal, I am of the view that it is necessary to make the observation that it does not follow automatically that, because the adjudication officer had jurisdiction to determine the petition and the Heirs of Evariste were registered as the owners of Parcel 138 by mistake, the respondents were entitled to an order for rectification having regard to the qualifications contained in section 98(2) of the **LRA** to the rectification power contained in section 98(1).

[37] Section 98 of the **LRA** provides that:

"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." (Emphasis added)

[38] In **St. Torrence Matty et al v Alicia Francois**,¹⁴ this Court referring to the decision of the Board in **Louisen v Jacob** summarised the principles governing rectification of the Land Registrar in cases of mistake in the following way:

“Prior to *Louisien* there were the decisions of this court in *Skelton v Skelton*, and *Webster v Fleming* which authoritatively established that rectification of the register is available only if the mistake in question (or when fraud is in question, the fraud) occurred in the process of registration. The Board referred to this statement of the law as established in the *Skelton* and *Webster* cases, and opined that the principle is a correct and useful statement of the law but added two footnotes by way of explanation or amplification in the following terms:

‘A mistake in the process of registration’ is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of the facts of the particular case. Moreover the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.

Several different situations can be imagined. First, an entirely correct adjudication record, confirmed by the adjudication officer, is passed to the Land Registry, where one of the staff makes a mistake in transcribing the contents of the record into the Register. In that case there is plainly a mistake in the process of registration (there has been no mistake in the process of adjudication). Rectification is available. Secondly, suppose there has been a mistake in the process of adjudication, such as a recording officer acting beyond his statutory authority by altering the record after its confirmation by the adjudication officer. In a case of that sort there is a serious mistake (probably amounting to nullity) in the process of adjudication. That mistake gets carried forward to the registration process, since the staff of the Land Registry are presented with a record which does not correctly embody the adjudication officer’s final decision. Again, rectification is available. That is *Webster v Fleming*.

In their Lordships’ opinion the same principle may extend to a case in which the adjudication record, although not a nullity, contains on its face an obvious error or inconsistency such as to put the staff of the Land Registry on enquiry as to the correctness of the record. If they were to omit to make such enquiries, and proceed on the basis of a defective adjudication record, that may amount to

¹⁴ SLUHCVP2012/0037 (delivered 21st August 2015, unreported) at para. 34.

repeating the original mistake so that it becomes part of the process of registration. In a case of that sort, again, rectification would be available’.”

[39] From the learning in **Louisen** and **Matty**, the following principles are extracted:

- (1) the court is empowered to make an order for rectification of the Land Register under section 98 of the **LRA** on the basis of a mistake which occurred in the registration process. This necessarily includes a mistake in first registration at the end of the adjudication process; or
- (2) the mistake may also have carried forward into the registration process as a result of a mistake in the adjudication process. This may occur where the staff of the Land Registry are presented with an adjudication record which does not correctly embody the final decision of the adjudication officer; and
- (3) the alleged mistake must not relate to the correctness of the adjudication officer’s decision - in which case there are avenues provided for review or appeal as the case may be.¹⁵

[40] To my mind, section 98(1) of the **LRA** was correctly engaged by the learned judge. It is clear that the final decision of Mr. White as embodied in his Second Decision and which became the subject of the final adjudication record was not accurately carried over and reflected on the Land Register. This amounted to a mistake in the registration process and rectification was accordingly available. It has not been suggested that the qualifications contained in section 98(2) were ever engaged or called for consideration. In the premises therefore, I have no doubt that the learned judge was correct in ordering rectification of the Land Register in respect of Parcel 138, on the basis of mistake, in favour of the Heirs of Zephern.

¹⁵ See: SLUHCVAP2012/0037 (delivered 21st August 2015, unreported) at para. 36.

[41] For the reasons set out above, I would dismiss the appeal against the learned judge's judgment and order that the appellants shall bear the respondent's costs on this appeal.

Conclusion

[42] I would therefore make the following orders:

- (1) The appeal against the judgment of Cenac-Phulgence J dated 28th April 2020 is dismissed and the judgment is affirmed; and
- (2) The appellants shall pay the respondents' costs on this appeal to be no more than two-thirds of the prescribed costs awarded in the court below.

I concur.

Gerard St. C. Farara
Justice of Appeal [Ag.]

I concur

Esco Henry
Justice of Appeal [Ag.]

By the Court

Chief Registrar