

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0163

IN THE MATTER OF THE REGISTRATION OF DOCUMENTS ACT CHAPTER 132 OF THE REVISED
LAWS OF SAINT VINCENT AND THE GRENADINES 2009

AND

IN THE MATTER OF AN APPLICATION BY KENSON WILSON FOR RECTIFICATION OF AN ERROR
IN A DEED OF CONVEYANCE BEARING REGISTRATION NUMBER 217 OF 2018

BETWEEN

KENSON WILSON

CLAIMANT

AND

THE REGISTRAR OF THE HIGH COURT OF JUSTICE

DEFENDANT

Appearances:

Mr. Roderick Jones of counsel for the claimant.

Mrs. Joezel Allen of counsel for the defendant.

2020: Feb. 12
Feb. 25

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** Kenson Wilson claimed that he is the registered owner of a parcel of land situated at Questelles in the State of Saint Vincent and the Grenadines. He produced a photocopy of Deed of

Indenture No. 217 of 2018 by which his interest is purportedly registered. He provided no certified copy or original. Mr. Wilson alleged that the Schedule to the Deed contains a number of errors. In his bid to correct the boundaries and area of land set out in the Deed, he filed this claim and sought an order for the corrections.

- [2] He asserted that he purchased the land from Wilson Alonzo Stapleton and Allison Georgina Stapleton in November 2016. They were not parties to the claim. Mr. Wilson joined the Registrar of the High Court ('Registrar') as the sole defendant. The Registrar is also Registrar of Deeds for the State. She did not defend the claim and she filed no defence. She filed an affidavit but proffered no evidence in support of or opposition to the claim. In her acknowledgement of service, she indicated that she is a neutral party. Mr. Wilson's claim is dismissed for the reasons outlined in this judgment.

ISSUE

- [3] The issue is whether an order should be made to amend the Schedule to the referenced Deed.

ANALYSIS

Issue - Should an order be made to amend the Schedule to the referenced Deed?

- [4] The Court is empowered to correct any omission or imperfection in a Deed¹, if satisfied that it is just to do so. In arriving at its decision, the court will consider the evidence led by the parties and their witnesses. It will also assess whether the proposed changes are likely to affect any legal or equitable interest, right or title held by others in the property. Such person or persons must also be given an opportunity to be heard.
- [5] Mr. Wilson testified and called one witness - Mr. Keron Stewart, a self-described authorized land surveyor. Mr. Wilson stated that he bought the subject land from Mr. and Mrs. Stapleton who were at the time acting through their lawful attorney on record Calvin Alexander. He explained that a boundary dispute erupted after the purchase and he therefore engaged Mr. Stewart to re-confirm his boundary markers. He averred that Mr. Stewart told him that major blunders were made in the acreage and description of the land in the Schedule to the Deed.

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

- [6] Mr. Wilson attested that he was subsequently advised by his attorney that the Schedule contained errors including a description of the subject land as being half acre instead of the actual 6804 sq. ft. He stated that the Southern, Eastern and Western boundaries were respectively erroneously described as:
- a) ‘... on the South by lands now or formerly of the Campden Park Estate...’ instead of ‘...on or toward the South partly by lands described as Lot 2 on plan A9/144 lands described in plan A15/101 and lands described in plan A5/97...’;
 - b) ‘... on the East by lands of Alonzo Stapleton and Buhle Caesar...’ instead of ‘... on or towards the East by A5/36...’; and
 - c) ‘... on the West partly by lands of Kenswick Caesar and by lands of Ormond Alexander and Urias Caesar...’ instead of ‘... on or towards the West by a road...’.
- [7] Mr. Wilson averred that the descriptions in the Schedule should therefore be changed by replacing the acreage with 6804 sq. ft. instead of half an acre and by varying the boundaries to bring them into conformity with the statements made by his attorney and Mr. Stewart. In support of his claim, he exhibited a copy of survey plan A15/123 prepared by Osborne Browne and lodged at the Survey Department on May 11th 2018. It is worth noting that the referenced Deed quantifies the area of land conveyed as being ‘one half acre (save and except one house spot)’. This signifies that it was less than half an acre. The addition of the bracketed words also demonstrates that the area was not exactly one half acre.
- [8] Mr. Stewart testified that he has been an authorized land surveyor since 2013. He produced no certification or other qualification to that effect. He confirmed that he had been engaged by Mr. Wilson to carry out a survey of the referenced land. He echoed Mr. Wilson’s observations regarding the stated errors in the description of the land in the Schedule. He asserted that he brought them to Mr. Wilson’s attention.
- [9] Under cross-examination, Mr. Stewart said that he conducted research and proceeded to conduct the survey. He recalled that he found several boundary marks from several plans, which he said indicated that the ‘area on the Deed is not what is there on the ground’ and ‘the boundaries on the

deed are not the boundaries on the ground.'

[10] Mr. Wilson did not add as defendants any of the adjoining land owners whose interest in their respective allotments might be affected by the grant of the orders sought by him. In this regard, it is worth noting that Deed No. 217 of 2018 names Alonzo Stapleton and Buhle Caesar as owners of land on the eastern boundary of the subject land and identifies Kensick Caesar, Ormond Alexander and Urias Caesar as the owners of land on the western boundary. Mr. Wilson did not produce any newspaper publications or affidavits of service which established that he served those adjoining landowners with notice of his intention to seek to vary the description of those boundaries. The court did not hear any representation on their behalves.

[11] In the premises, the court must be careful to take into account any possible variation to their holdings which might arise from this claim. Mr. Wilson and Mr. Stewart did not provide the court with a survey of the subject land based on the description outlined in the schedule to the Deed. The court is not in a position to have a visual comparison as between that and the diagram on survey plan A15/123. Suffice it to say, that on its face the survey plan makes no reference to Alonzo Stapleton, Buhle Caesar, Kensick Caesar, Ormond Alexander or Urias Caesar. I infer from the testimony supplied by Mr. Wilson and Mr. Stewart that the changes to the boundaries which have been effected by the survey plan has resulted in substantive changes not only to the description of those boundaries in the Deed, but also at the location in Questelles.

[12] Mr. Wilson and the Registrar submitted that Lord Evershed MR's pronouncement in the case of **Whiteside v Whiteside**² on the discretionary nature of rectification is instructive. The learned Master of the Rolls stated:

'Rectification is a discretionary remedy which must be cautiously watched and jealously guarded.'²

Mr. Wilson referred to similar statements made by this court in **Aster Bruce et al v The Registrar of the High Court**³. There, the court remarked that it should avoid granting an order of rectification

² [1950] Ch 65 at page 71; applied by Mitchell J in the Saint Vincent and the Grenadines case of Verina James v Alston McKenzie in Claim No. 318 of 2000, (unreported).

where the rights of third parties can be adversely affected and where they have not been given notice of the proposed change.

[13] Quite properly, Mr. Wilson acknowledged that the court must be slow to order rectification of a deed. However, he contended that the Court is authorized to add a new party to proceedings without application if it is desirable to do so to enable the court to resolve all the matters in dispute; or if there is an issue involving the new party which is connected to the matters in dispute and it is desirable to do so. He did not indicate how this should be approached where the parties have closed their respective cases and the matter is adjourned for decision to be delivered. His proposal ignores the practical consequences which flow from adding a party; such as the requirement that the added party be afforded an opportunity to be heard and if necessary to present evidence. That option is now closed.

[14] Mr. Wilson contended that the difference in the description of land in the Deed and on the referenced survey cannot go unnoticed. He argued that Mr. Stewart investigated those discrepancies and has provided evidence of his findings, as reflected in the survey plan. Mr. Wilson argued further that the description of lands has to be constantly updated since changes in ownership, acreage and description occur over time. Neither he nor his witness gave evidence of such changes to acreage and ownership in the instant case. I make no finding that there were any such changes.

[15] Mr. Wilson submitted further that a solicitor engaged to prepare a Deed of Conveyance is duty bound to do his due diligence to ensure that he is guided by the recent circumstances of the land on the ground, so that the correct descriptions are captured in the Deed. He reasoned that the only way to ensure this, is to instruct a surveyor to conduct a survey. He contended that although the vendor instructed a surveyor to provide such a survey which was then registered on May 11th 2018, this was not reflected in the Deed. He argued that it is apparent that the solicitor in his case ignored the updated description of the land when preparing the deed.

³ SVGHCV2019/0018.

- [16] Mr. Wilson further submitted that in relation to the area of land and boundary details, there is substantial discrepancy between the description of the property in the referenced survey plan and in the Schedule to the Deed. Mr. Wilson argued that in light of such glaring and irreconcilable inconsistencies, the Court is bound to grant the remedies that he seeks. He contended that he has provided adequate factual background to support his claim.
- [17] Mr. Wilson also contended that he has furnished the court with adequate reasons to grant the requested amendments to his deed, and that doing so would not adversely affect the interests of any third party. He acknowledged that he inadvertently omitted to add 'the third party as a defendant'. He submitted that the circumstances of this case require that the court 'invoke its discretion and on its own volition ... add the third party so that all issues can be properly resolved.' He did not indicate in his evidence who this third party could conceivably be. The Court is not permitted to speculate. I am satisfied that this is not an appropriate case in which the court can supply the missing particulars by summoning any of the adjoining neighbours to respond to a claim that has essentially run its full course. I make no such order adding a new unidentified party.
- [18] The Registrar submitted that the boundary descriptions in the Schedule to the deed differ significantly from the boundaries depicted on survey plan A15/123. She argued that despite this Mr. Wilson adduced no evidence to show that the land conveyed in the deed is the same as that illustrated on the survey plan. She contended that no evidence was presented on behalf of third party interests which might potentially be affected by a rectification of the deed. Such testimony she contended would probably come from legal title owners of adjacent parcels of land that share a common boundary with Mr. Wilson's.
- [19] The Registrar argued further that also pertinent is the existence of a boundary dispute in connection with the subject parcel of land. She submitted that '... the potential exists for the imposition of an inimical impact on third party unrepresented individuals if the reliefs sought are granted ...' in the absence of evidence from them.

[20] The Land Surveyors Act⁴ ('the Act') imposes a mandatory duty on a surveyor to serve a notice on any owner or occupier of any land which he intends to and does survey. No copy of any such notice has been exhibited in this case. Mr. Wilson has not provided the court with any surveyor's report or field notes prepared by Mr. Stewart during the course of the referenced survey. The court is therefore not in a position to assess whether the adjoining landowners Alonzo Stapleton, Buhle Caesar, Kensick Caesar, Ormond Alexander or Urias Caesar were served with such notice or were aware of the survey. I find that they were not.

[21] Mr. Wilson and Mr. Stewart have not asserted that the adjoining landowners Alonzo Stapleton, Buhle Caesar, Kensick Caesar, Ormond Alexander or Urias Caesar⁵ have agreed to the proposed changes to the description of the boundaries in the Deed or the boundaries delimited in the referenced survey plan. I make no finding that they are in agreement. In this regard, the court cannot ignore that Mr. Wilson made reference to a boundary dispute in respect of the land described in his Deed. His omission to name the other party to the dispute and that person's absence from this claim cannot be ignored. This does not assist the court and does not advance his claim.

[22] The Court takes judicial notice that the Chief Surveyor may authenticate any survey plan presented by an authorized land surveyor⁶ as it seems he did in respect of survey plan A15/123. He may also correct errors in any such survey plan of his own volition or otherwise and may cancel any authentication of a survey plan if he discovers that it contains errors or omissions⁷. It follows that a survey plan is not determinative of the boundaries to the lands delimited and/or partially depicted on it without more; and without the appropriate scrutiny and concurrence by all affected parties.

[23] In view of the circumstances which surround this case, I harbour grave doubts that the named

⁴ Cap. 370 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009; section 16(2).

⁵ Or any successors in title.

⁶ Section 25 of the Act.

⁷ Sections 24 and 26 of the Act.

adjoining landowners Alonzo Stapleton, Buhle Caesar, Kensick Caesar, Ormond Alexander and Urias Caesar or other persons who might have succeeded them as owners, have agreed to the boundaries outlined in the referenced survey plan A15/123. It would be unjust and inequitable to pronounce on those boundaries by making the order sought, without hearing from those persons. I therefore make no such order. Mr. Wilson's claim is dismissed.

[24] It is ordered that:-

1. Kenson Wilson's claim for an order to rectify the Schedule to Deed of Conveyance No. **217 of 2018** is dismissed.
2. No order as to costs.

[25] I am grateful to counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar