

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2011/0065

BETWEEN:

**DR. LETON THOMAS
by his next friend Amelia Dawn Thomas-Odutei**

Claimant

and

**PAMELA BEVERLEY ANN EUGENE
RAYMOND GEORGE
HEIRS OF THOMAS BERNARD represented by Mary Williams**

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. George Charlemagne, Counsel for the Claimant

Mr. Dexter Theodore QC with Ms. Sueanna Frederick, Counsel for the 1st and 3rd
Defendants

2019: June 19;
July 31;
August 8;
2020: February 6.

JUDGMENT

Background

- [1] **CENAC-PHULGENCE, J:** This claim is of some vintage. Some time prior to trial, a next friend had to be appointed for Dr. Leton Thomas who was no longer in a mental condition to conduct the proceedings.

- [2] The claimant, Dr. Leton Thomas filed a claim on 25th January 2011 against the defendants, Pamela Beverly Ann Eugene (“Mrs. Eugene”), Raymond George and Heirs of Thomas Bernard represented by Mary Williams. No representative was ever appointed for the heirs of Raymond George who is now deceased.

The Claim

- [3] Dr. Thomas claims against the defendants:
- (a) A declaration that the heirs of Bertrand Thomas also known as Thomas Bernard are the owners of 81/3 carres of land to be dismembered from a portion of land described as Block and Parcel No. 1222B 16 (“the Disputed Property”);
 - (b) A declaration that the defendants are the owners of 6 carres of land to be dismembered from the Disputed Property;
 - (c) An order that the heirs of Bertrand Thomas be allowed to execute a survey of the Disputed Property to extract their 81/3 carres;
 - (d) An order for partition of the Disputed Property;
 - (e) An order directing the Registrar of Lands to rectify the Disputed Property to reflect the heirs of Bertrand Thomas’ share of 81/3 carres; and
 - (f) Costs.
- [4] Dr. Thomas alleges that he is an heir and administrator of the estate of Bertrand Thomas also known as Thomas Bernard¹ and that the defendants are all registered proprietors as trustees for sale of the Disputed Property. Carlisle Eldwidge George is also listed as a proprietor on the land register for the Disputed Property but is not named as a defendant in this claim.²

Background Facts

- [5] It is not disputed that the evidence reveals that on or about 9th June 1986, Senaie George submitted a claim form to the Land Registration and Titling Project (LRTP)

¹ Appointment made by order dated 26th March 1999 at page 171 of the Trial Bundle (TB).

² See page 176 of the TB.

in which he claimed on behalf of the heirs of Thomas Detchpart approximately nine carres of land part of the Claudeet and Amelien Estates. The Adjudication Record shows that the land was adjudicated to the heirs of Thomas Bernard, heirs of Adelcia Luc Thomas and Senaie George as executor of the Estate of Pauline Thomas each as to 1/3 share. The parcel number assigned was Block and Parcel 1222B 16. It also shows the approximate area as 19.0 hectares. The Adjudication Record shows that the following documents were all produced to the recording officer during the adjudication process:³

- (a) Deed of Sale by Catherine Recour to Thomas Detchpart dated 3rd September 1874⁴
- (b) Declaration of Succession by Elmina Thomas
- (c) Probate Certificate dated 14th October 1981 registered 3rd February 1982
- (d) Last Will and Testament of Pauline Luc Thomas dated 18th July 1979⁵
- (e) Deed of Cancellation and Substitution of Declaration of Succession dated 18th July 1979 registered 20th July 1979⁶
- (f) Affidavit of Assets and Liabilities of Pauline Luc Thomas dated 25th November 1980
- (g) Petition by Senaie George dated 25th November 1980
- (h) List of Exhibits dated 25th November 1980
- (i) Affidavit by Executor Senaie George
- (j) Certificate of Non-Objection to Probate and Receipt #106855 for succession duty
- (k) Power of Attorney, Benedict Bernard to Senaie George dated 5th March 1986
- (l) Last Will and Testament of James Thomas Ste. Catherine dated 28th November 1984⁷

[6] The claimant alleges that the claim made by Senaie George during the LRTP was based on a Deed of Sale in which Thomas Detchpart purchased 9 carres of land

³ See Adjudication Record, pages 296-299 of the TB.

⁴ See page 178-181 of TB.

⁵ See page 193-195 of TB.

⁶ See page 189-192 of TB.

⁷ See page 217-220 of TB.

from the vendor.⁸ Thomas Detchpart in 1893 by Deed of Sale sold 3 carres to one Luc Thomas (his son) leaving a remainder of 6 carres. This the claimant says is confirmed by the undated Declaration of Succession of the immovable property of Thomas Detchpart done by Elmina Thomas, granddaughter of Thomas Detchpart.⁹ In the schedule thereto, it refers to the land formerly consisting of nine carres but reduced to six carres by sale of three carres to Luc Thomas. (That document does not bear any registration marks and is undated). It would appear that sometime in 1979, Elmina Thomas executed a correction of the Declaration of Succession.

- [7] Elmina Thomas¹⁰ died in 1980 and Senaie George was granted probate of her will in October 1981. In her will she left three carres of land registered in Vol. 131a No. 120657 to Iona George, Raymond George and Senaie George in equal shares and another six carres of land of the Amelin Estate to Iona George, Raymond George, Senaie George, Daniel George and Aumentia Collymore.
- [8] In 1995, Senaie George in his capacity as executor of the estate of Pauline Luc Thomas aka Elmina Thomas executed a Vesting Assent ("the 1995 Vesting Assent") of 2/3 share of the 19.0 hectares recorded on the land register as comprising the Disputed Property in accordance with the provisions of her will.
- [9] The claimant alleges that by virtue of the 1995 Vesting Assent, the defendants negligently or fraudulently caused themselves to be mistakenly or fraudulently registered as the registered trustees for sale of the Disputed Property which is contrary to the portion of land vested pursuant to the 1995 Vesting Deed.
- [10] The relationships as far as I could discern from the documentary evidence are as follows:

⁸ (See Deed of Sale dated 3rd September 1874 at page 178-181 of TB).

⁹ (see pages 186-188 of TB).

¹⁰ Elmina Thomas is also referred to as Pauline Luc Thomas.

Thomas Detchpart married and had three children, Luke Thomas, Thomasine Thomas and Francois Thomas. Thomasine and Francois Thomas died leaving no issue. Luke Thomas had three children, Charlotte Bernard born Luc Thomas, Adelina Luc Thomas and Elmina Luc Thomas aka Pauline Luc Thomas. Charlotte Bernard had one child, Thomas Bernard.

- [11] The documents show that the Disputed Property was described in the Declaration of Succession of 1979 as being bounded on the north by the three carres sold to Luc Thomas, the south by Crown Land, on the east by the lands of Palmer Matty and on the west by the lands of Bertrand Thomas. This suggests that Bertrand Thomas owned lands adjoining the Disputed Property. In the 1995 Vesting Assent by Senaie George of the succession of Pauline Luc Thomas aka Elmina Thomas, the Disputed Property is described as being bounded with Parcel 15 on the west. Parcel 15 was adjudicated to the Heirs of Bertrand Thomas as to a 2/3 share and Leton Thomas as to 1/3 share during the LRTP.
- [12] The claimant alleges that the 81/3 carres to which he lays claim and which he says is part of the Disputed Property was obtained by Griffith St. Catherine via judicial sale in 1903. In 1952, the claimant claims that he acquired one half carre from Griffith St. Catherine by donation. This he says is registered as Block and Parcel 1222B 15 which abuts the Disputed Property. The schedule to that deed describes that land as being bounded on the east by lands formerly or now of Thomas Detchpart. In 1955 and 1959 respectively, Griffith St. Catherine sold one half carre each to Bertrand Thomas, father of the claimant. The 1959 Deed describes the land as being bounded on the east by Thomas Detchfour. The 1955 Deed did not state an eastern boundary. In 1967, Griffith St. Catherine executed a will in which he devised all his property located at Morne Cayenne to Bertrand Thomas.
- [13] The claimant therefore claims that the 81/3 carres owned by Bertrand Thomas is part of the Disputed Property notwithstanding that he has stated in his pleadings

that one half carre of this 81/3 carre was donated to him and is now registered as Block and Parcel 1222B 15 and the Land Register clearly shows that the heirs of Bertrand Thomas are recorded as proprietors of a two-thirds share. Clearly it cannot be that it is 81/3 carres that he is laying a claim to as being part of the Disputed Property when the one half carre donated to him was originally part of the 81/3 carres.

- [14] At paragraph 18 of the statement of claim, the claimant alleges a claim to the 81/3 carres by prescription or by virtue of an overriding interest.

The 1st and 3rd Defendants Defence

- [15] The defendants for their part aver that Senaie George and the other heirs of Thomas Detchpart have always been in possession of the entire Disputed Property. The defendants aver that Andrew Leriche whom the claimant states was overseer on the Disputed Property was present during the demarcation of the land and actually helped to demarcate the boundaries of the Disputed Property.¹¹ The defendants aver that following the adjudication neither the claimant nor anyone else ever appealed against the adjudication. The defendants state that the land being claimed by the claimant is not the same as the Disputed Property as seen by the boundaries in the various documents produced. They deny that the claimant has any overriding interest in the Disputed Property.

- [16] The claimant's claim appears to be based on fraud or mistake pursuant to section 98 of the **Land Registration Act**¹² (LRA). Alternatively, he claims an overriding interest although he has not pleaded the nature of the overriding interest that he claims. He also claims title by prescription.

- [17] The main issues for determination are whether the claimant has proved fraud or mistake and whether he has any overriding interest in the Disputed Property.

¹¹ See 2nd Demarcation Certificate dated 31st July 1986 showing that a re-demarcation was carried out.

¹² Cap 5.01 Revised Laws of Saint Lucia.

Analysis

Introduction

- [18] In the early 1980s, Saint Lucia adopted the Torrens system of registration of title to land. To give effect to this new system commonly known as the Land Registration and Titling Project (“LRTP”), two statutes were enacted in 1984: **Land Adjudication Act**¹³ (“LAA”) and the **Land Registration Act**¹⁴ (“LRA”). It is well-known and the Court has made several pronouncements as relates to the effect of the LRTP and its implications. I quote from the case of **Moses Joseph et al v Alicia Francois; St. Torrence Matty et al v Alicia Francois**¹⁵ where the learned Chief Justice after examining the objective of the LRTP and the history and scheme of the LAA and the LRA, and citing **Sylvina Louisien v Joachim Rodney Jacob**¹⁶ in relation thereto, concluded at paragraph 23 as follows:

“[23] ... the LRTP was not simply about registration of title but very importantly that all first registrations were predicated upon an adjudication under the LAA. This was so whether it flowed from a contested claim or (as is the case here) an uncontested claim. As the Privy Council said in **Louisen v Jacob** at paragraph 39:

“The LAA and the LRA were intended to operate as two interlocking elements of the process of first registration of title. The LAA was concerned, as its name indicates, with the adjudication of claims to land ownership. If there were competing claims the adjudication officer was to decide them in a quasi-judicial capacity, weighing up the evidence and applying principles of land law. Even if there was no contest between claims, the recording officer still had to subject the claim to scrutiny (section 14 refers to “such investigation as he or she considers necessary”) before completing and signing the adjudication record for certification by the adjudication officer. Once it became final the certified record was to be passed to the Registrar (as provided in section 10 of the LRA) for first registration. If the confirmed adjudication record appeared to be in

¹³ Cap 5.06 Revised Laws of Saint Lucia.

¹⁴ Cap 5.01 Revised Laws of Saint Lucia.

¹⁵ SLUHCV2011/0025; SLUHCV2012/0037.

¹⁶ [2009] UKPC 3.

order there would be no reason for the Registrar to seek to go behind it.” (my emphasis)

- [19] The LAA provided for advertising for and receiving of claims to ownership, investigating of the claims, and adjudicating on rival claims to the same land. Subject to various processes of review and appeal, the LAA provided for the passing of those results in the form of a certified adjudication record to the Registrar of Lands as the basis for first registration of title under the LRA. It is useful to briefly highlight some of the provisions of the LAA and LRA.
- [20] By section 10 of the LAA, the demarcation officer was to give notice of intended demarcation of boundaries and require every claimant to indicate the boundaries which he claimed. By section 13 of the LAA, the survey officer was responsible for conducting necessary surveys and for coordinating a demarcation index map. Section 14 required the recording officer to consider all claims to any interest in land and after investigation prepare a record in respect of every parcel of land shown on the demarcation map. Section 15, required, in any case in which there was a dispute as to any boundary, or there were two or more claims to any interest in land, the recording officer, if unable to secure agreement between the claimants, to refer the dispute to the adjudication officer. The adjudication officer was required to adjudicate upon and determine the dispute having due regard to any law applicable. Section 19 provided that when an adjudication record was completed, the adjudication officer was required to sign and date a certificate to that effect and give notice of completion thereof and the place and time the record and demarcation map could be inspected.
- [21] Importantly, section 20 provided that any person who was aggrieved by any decision of the demarcation officer, survey officer or recording officer could, within the stipulated time give notice of his or her intention to petition the adjudication officer and such petition be determined by the adjudication officer. Further any person who was dissatisfied with the decision of the adjudication officer could within the stipulated time give notice to the adjudication officer of his or her

intention to, and appeal against that decision to the Land Adjudication Tribunal. Section 24 provided that any person, aggrieved by any decision of the Land Adjudication Tribunal, could within the stipulated time, appeal to the Court of Appeal. Section 23 provided that the adjudication record, subject to the determination of any petition or appeal, was final. The adjudication officer was required to sign a certificate to that effect and deliver the adjudication record and demarcation map to the Registrar with all documents received in the process of adjudication.

[22] The LRA would then take effect. Section 10 of the LRA provides that whenever an adjudication record becomes final under section 23 of the LAA, the Registrar shall prepare a Register for the subject parcel and register therein the particulars of the adjudication record. This was the process that led to first registration of land under the LRTP. Section 98 of the LRA confers a circumscribed power of rectification of the Land Register on the Court, limited to circumstances in which the Court is satisfied that any registration, including a first registration was obtained by fraud or mistake.

[23] Based on the foregoing, making a claim to land, investigating that claim and adjudication and determination of any dispute in relation thereto was the purview of the land adjudicator and other officers appointed for that purpose during the land adjudication process pursuant to the LAA. That process having been completed and the Disputed Land having been registered under the LRA, that registration is final. The process which was available to all persons who had any claim to land was not utilized by the claimant at least not in relation to the Disputed Property.

[24] It must be remembered that by 1995 the land had already been adjudicated and the proprietors were heirs of Thomas Bernard, Heirs of Adelcia Luc Thomas and Senaie George as executor of the Estate of Pauline Thomas each as to 1/3 share. After the 1995 Vesting Deed, the proprietors of the Disputed Property were heirs

of Thomas Bernard as to one-third and the remaining two-thirds was in the names of Iona George, Raymond George, Senaie George, Daniel George and Aumentia Collymore. In 2006, the register was rectified to replace trustees as Senaie George and Iona George were now deceased. The substitute trustees for Senaie and Iona George were Pamela Beverly Ann Eugene and Carlisle Eldwidge George.

- [25] The claimant alleges on the one hand that he is entitled to the remainder of the Disputed Land having acquired same through legal title and on the other by prescription. That this is incongruous was discussed during case management as it is not possible to claim land by prescription and also claim to have legal title to that very land. A claim for title by prescription cannot be made in a claim such as this and must be done in accordance with the **Civil Code**¹⁷ and the provisions of the LRA. There is no basis for such a claim.

Has fraud or mistake been made out?

The Law

- [26] By virtue of section 98 of the LRA, title to property properly registered pursuant to section 23 of the LRA can only be rectified on the basis of fraud or mistake. These are the only circumstances when the Court may order rectification of the register pertaining to a particular piece of property.

- [27] Section 98 of the LRA states:

“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**

¹⁷ Cap. 4.01, Revised Laws of Saint Lucia.

omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.” (my emphasis)

Mistake

- [28] In the well-known case of **Sylvina Louison v Jacob**,¹⁸ the Privy Council set out the scope of section 98 of the LRA and said:

“[41] ...**rectification of the register is available only if the mistake in question (or, no doubt, the fraud, when fraud is in question) occurred in the process of registration.** See *Skelton v Skelton* (1986) 36 WIR 177, 181–182; *Portland v Joseph*; and *Webster v Fleming*. Their Lordships consider that this principle is a correct and useful statement of the law, but would add two footnotes by way of explanation or amplification.

[42] “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.” (my emphasis)

Fraud

- [29] In the case of **Ian Peters v Robert George Spencer**,¹⁹ George-Creque JA applying the case of **Assets Company Ltd. v Mere Roihi**²⁰ held that:

“A person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can be properly acted upon.” “But if it be shown that his suspicions were aroused, and that he abstained from making enquires for fear of learning the truth, the case is very different, and fraud may properly be ascribed to him.”

- [30] The Privy Council case of **Frazer v Walker et al**²¹ held that the exceptions provided for by similar provisions to our section 98 of the LRA in the case of fraud

¹⁸ [2009] UKPC 3 at para 41-42.

¹⁹ ANUHCVP2009/0016 delivered 22nd December 2009-at para 26.

²⁰ [1905] AC 176.

²¹ [1967] 1 AC 569.

has been limited by judicial decision to actual fraud by the registered proprietor or his agent. Actual fraud is what is required.

Mistake

- [31] The mistake alleged must be a mistake in the registration process. There are no particulars of the alleged mistake on the pleadings. All that is said is that in the 1995 Vesting Deed the defendants mistakenly caused themselves to be registered as the trustees for sale. This is an incorrect statement as the Vesting Deed was done by Senaie George and not by the defendants and the registration of the 1st defendant as trustee only took place in 2005. I am uncertain as to what the mistake being alleged is. There is nothing to show that what was recorded by the Registrar of Lands on registration of the Vesting Deed did not reflect what was in the Vesting Deed. That would have been an error in the registration process which is contemplated by section 98. But that is not what we have here.

Fraud

- [32] It is trite law that an allegation of fraud must be pleaded and particularised. The facts and circumstances relied on to evince the fraud must be clearly, distinctly and fully pleaded.²² There are no particulars of fraud on the pleadings—simply a blanket statement that by the vesting deed, the defendants fraudulently caused themselves to be registered as trustees. That is not supported by the evidence.
- [33] The evidence of the various witnesses for the claimant did nothing to assist. Ms. Irene Maxwell debunked the claimant's allegation which suggested that Bertrand Thomas and Thomas Bernard were the same person when in cross-examination, she said, "I know him as Bertrand Thomas. I do not live with him to know." She said that what she said in her witness statement was probably a mistake. Then she said maybe it was an oversight. And then, 'they are the same person, I sign it'. But she finally said she knew him as Bertrand Thomas. She said she never knew him by any other name. I think that is sufficient for me to conclude that the

²² Roberts v Toussaint (1963) 6 WIR 431.

claimant's claim that Bertrand Thomas and Thomas Bernard are the same person cannot be correct. The genealogy clearly shows two different individuals.

[34] Ms. Maxwell's witness statement is a carbon copy of the statement of claim. In cross-examination, Ms. Maxwell when asked whether she knew how the claimant was claiming the land in dispute, said the land was his (Leton's) dad's land and some of it was given to him by his aunt who was Uncle Griffith's wife. She knew that the claimant owned Block and Parcel 1222B 15 which is next to the Disputed Property.

[35] When asked where in the 1995 Vesting Deed it showed that the defendants were fraudulent in causing the document to be done, she said she did not understand. When asked to explain what she said at paragraph 10 of her witness statement, she said at the time she did not have the documents and what she knew for a fact is what her father Andrew Leriche told her. However, she could not remember what he had told her. She admitted to knowing that Senaie George occupied part of the land but could not say which part. Ms. Maxwell's evidence did nothing to assist the claimant's case any further.

[36] Ms. Monica Joseph said in cross-examination that she knows the land belongs to Bertrand Thomas and said that she is on the claimant's land. She denied knowing that Senaie George owned a piece of land next to the claimant's.

[37] Mr. Carlisle George in his evidence said that Bertrand Thomas was the claimant's father and he died on 14th July 1975. Thomas Bernard on the other hand was the son of Charlotte Bernard and he died on 22nd February 1986. He said he knew both men personally.

[38] I conclude that the claimant has failed to particularise his allegations of fraud and there is no evidence which could lead to a conclusion that registration whether first or indeed any subsequent registration was obtained by fraud. In any event, the

allegation was that the defendants had caused themselves to be fraudulently registered as trustees for sale of the Disputed Property but the evidence clearly shows that the defendants who are trustees for sale were not the ones who executed the document and there is nothing to suggest that they had any part to play in its execution.

[39] Counsel for the claimant embarked on a series of questions to Dr. Carlisle George, witness for the defendants about the survey of the Disputed Property simply based on mathematical calculation. However, the demarcation process was not based only on the documentary evidence but on actual occupation as well and on where the boundaries were demarcated. In this case, what the evidence clearly shows is that there was a demarcation process with respect to the Disputed Property. In fact, there were two, the first on 31st July 1986 and the other on 11th September 1986. A note to the back of the first demarcation certificate states disagreement with one of the boundaries and Mr. Senaie George 'agreeing to the adjudication of the boundary as per the Survey Plan and the Index Map would be compiled this way as shown overleaf by the backline 31/7-2 to 31/7-4.' The certificate points to the person pointing out the land being Andrew Leriche whom the claimant says was his overseer on the land. Clearly, it is safe to assume that Mr. Leriche represented the claimant at the time when the land was being demarcated given the claimant's assertion that Mr. Leriche was the overseer on the land.

[40] It was open to the claimant even at the point of the demarcation process if he had doubts or any issues with the demarcation to challenge same in accordance with section 20 of the LAA. He did not do that. It was also open to the claimant, the adjudication process having been completed if he was claiming an interest which was not taken into account during the LRTP, to challenge the final decision of the adjudicator and appeal the said decision in accordance with the provisions of the LAA. Again, the claimant did not do that.

[41] There is no evidence that any claim was made by the claimant or anyone to the Disputed Property or any part thereof for that matter. He sat on his rights in relation to that land but seemed to have been quite aware of the need to claim the parcel of land abutting the Disputed Property and which is registered as 1222B 15.

[42] Instead, the claimant has come some twenty-five years after the LRTP and sixteen years after the execution of the 1995 Vesting Deed to seek to re-open the process.

As was said in the case of **Louison v Jacob** at paragraph [40]:

“...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 ss 20 and 24 of the LAA....”

I would add, rectification is not an alternative remedy for an individual who did nothing to secure his interest in a particular property or was overseas and did not even seek to make his interest known which was an option open to him during the process.

[43] Additionally, rectification cannot be an alternative remedy for a litigant in a case such as this one, where the claimant failed to make use of the land adjudication process, where all the facts about the land could have been canvassed including any claim to a portion of the land being claimed by another person, boundary queries etc.

[44] As was stated in the case of **Heirs of Hamilton La Force v The Attorney General et al**:²³

“It is already well settled that the jurisdiction to rectify the register is not to be used as an indirect method of appeal against decisions taken under the Land Adjudication Act 1984, and that the term “mistake” in section 98[1] does not include a failure to employ the appellate procedure laid down by the Land Adjudication Act 1984 as amended.”

²³ SLUHCVP1993/0011, delivered 22nd July 1996, unreported.

- [45] The claimant has failed to establish any mistake in the registration process which would justify interfering with the Adjudicator's decision or warrant any adjustment to the Land Register. The mistake being suggested is highly speculative as seen from the evidence presented.
- [46] The claimant has therefore failed to prove his claim on a balance of probabilities.
- [47] The Court wishes to note that the pleadings in this case were predicated on fraud, mistake and overriding interest presumably based on prescription or actual occupation (that was not clear on the pleadings). In the claimant's pre-trial memorandum, the issues had evolved into whether the claimant had an equitable interest in the Disputed Property and whether the claimant's interest cannot be registered on the basis that no claim was made for the 81/3 carres during the LRTP. There was no mention of fraud or mistake in relation to the 1995 Vesting Deed in the pre-trial memorandum. In the submissions filed by the claimant, the issue of mistake was then canvassed but any discussion on fraud was noticeably absent. The purpose of pleadings is to enable the defendant to know the case he has to meet. They must therefore be clear and precise. In this case, the pleadings failed to particularise the allegations of fraud or mistake against the defendants. This made it even more difficult to decide what the claimant was complaining about.

Conclusion and Order:

- [48] In light of the foregoing, I would dismiss the claimant's claim with prescribed costs to the 1st and 3rd defendants in the sum of \$7,500.00. The second defendant is awarded no costs as there was no participation by them in the proceedings.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar