

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

CLAIM NO. SLUHCV2015/0969

BETWEEN:

**PRISCA SHARON IRVING
Qua Administratrix of the Estate of JOSEPH LEO aka JOSEPH ST. HOLL aka LUCIUS
JOSEPH POLIUS**

Claimant

and

**GEEST INDUSTRIES (ESTATES) LIMITED
KAYSHARMA BYRON
KAYSHAIKA LEO
KEVIN ST. HOLL
SHIRNICA ST. HOLL
JOSEPH JUNIRO ST. HOLL**

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Lydia Faisal for the Claimant

Mr. George F. Charlemagne with Mr. George Kamali Charlemagne for the 1st
Defendant

Mr. Alfred Alcide for the 2nd to 6th Defendants

2018: May 30;
June 8;
July 10, 11, 18.
2019: July 19.

JUDGMENT

[1] **CENAC-PHULGENCE J:** The claimant, Mrs. Prisca Sharon Irving (“Mrs. Irving”) in her capacity as administratrix of the estate of Joseph Leo also known as Joseph St. Holl also known as Lucius Joseph Polius (“the Deceased”) brought this claim against the defendants seeking (a) cancellation of the deed of sale executed on 18th July 2014 and registered as Instrument Number 2784/2014 (“the deed of sale”), (b) rectification of the Land Register in relation to Block and Parcel 0641B 364 (“the Property”) or (c) alternatively, the current market value of the Property and (d) damages for breach of trust and (e) costs. Mrs. Irving was appointed as administratrix of the Deceased’s estate by Letters of Administration granted on 30th October 2014 (“LA”), although in her statement of claim and witness statement the date of the grant is erroneously stated as 30th October 2012.

[2] The claim is contingent upon the acquisition by the second to sixth defendants of the Property following a sale to them by the first defendant, Geest Industries (Estates) Limited (“Geest”). Mrs. Irving alleges that at the time of the sale, Geest was holding the property on trust for the Deceased’s estate, the Deceased having during his lifetime paid the full purchase price of the Property save for \$270.00 which was due and owing to Geest at the time of his death. Mrs. Irving further alleges that without the intervention of the estate of the Deceased, Geest fraudulently or mistakenly and in breach of trust conveyed the Property to the second to sixth defendants.

Statement of Claim

[3] Mrs. Irving alleges that the Deceased died intestate in Canada on 16th January 2012 leaving as his heirs at law his brothers and sisters, she being one of his sisters. At the time of his death, Geest was holding the Property on trust for him and such trust extended to the Deceased’s estate upon his death. Mrs. Irving further alleges that following the death of the Deceased, Geest in breach of trust executed a deed of sale transferring the Property to the second to sixth

defendants, who are the illegitimate children of the Deceased. Mrs. Irving says that this transfer was actuated by fraud or mistake caused or contributed to by the defendants jointly and severally and sets out the particulars of fraud or mistake which I will deal with in detail later. Mrs. Irving alleges that estate of the Deceased has suffered loss as a result primarily due to the fact that the estate has been unable to pay the reasonable death and burial expenses of the Deceased which remain due and owing.

Defence-Geest

- [4] Geest admits that the full purchase price for the Property was paid by the Deceased. Geest admits that it held the Property on trust for the Deceased but denies that it committed any breach of trust in that it did not procure or cause the execution of the deed of sale. Geest avers that it was instructed by the Deceased that he was purchasing the Property for the benefit of the second to sixth defendants especially Kaysharma Byron whom he said was his lawful representative. Geest claims that the said Kaysharma Byron made payments on behalf of the Deceased but the receipts were always recorded in the Deceased's name. Geest denies that it was actuated by fraud or malice in executing the deed of sale and avers that to its knowledge the second to sixth defendants were children of the Deceased living with him on the Property but that it had no knowledge as to whether they were legitimate or not or whether the Deceased was a married man or not. Geest avers that no allegation of fraud or mistake could be made or imputed against it.

Defence-Second to Sixth Defendants

- [5] The second to sixth defendants allege in their defence that after the death of the Deceased there was still money owing and it was the second defendant, Kaysharma Byron who paid the balance to complete the payment for the Property. The second to sixth defendants aver that the Deceased died an unmarried man thereby making them his lawful heirs as his children. They aver that the Deceased's estate did not suffer any loss as any monies expended by Mrs. Irving

in relation to burial of the Deceased were paid to her by the rest of her siblings. They aver that it was always their father's intention that the Property was for the benefit of his children and he had communicated that to Geest. They deny that they committed any fraud to have the deed of sale executed in their names and aver that they did in fact have to pay a certain balance to Geest before Geest would agree to execute the deed in the names of the second to sixth defendants. The second to sixth defendants aver that Mrs. Irving has not shown any evidence that they are not entitled to the Property as the children of the Deceased and seek to question the legitimacy of the LA issued to Mrs. Irving. The second to sixth defendants therefore pray that the claim be dismissed with costs.

- [6] Though the second to sixth defendants filed a defence, they did not file any evidence in support of their defence at trial. There was therefore no evidence led to challenge the LA obtained by Mrs. Irving or to show that indeed the second to sixth defendants were children of the Deceased and his heirs by law. That being the case, the LA granted and issued by the High Court must be presumed to be legal and have been done in conformity with the relevant succession law. The maxim *omnia praesumuntur rite esse acta* must apply. Until revoked or set aside, it is presumed that the facts upon which the grant would have been made are true. Therefore, the issue of whether the second to sixth defendants are lawful heirs of the Deceased is not a matter for the Court on this claim.

Issues

- [7] The issues to be determined by the Court are:
- (a) Whether fraud or mistake has been made out against any of the defendants;
 - (b) Whether the claimant, Mrs. Irving is entitled to rectification of the land register relating to the Property;
 - (c) Whether the claimant is entitled to cancellation of the deed of sale registered as Instrument Number 2784/2014;
 - (d) Whether Geest is liable for breach of trust;

- (e) Whether the claimant is entitled to damages for breach of trust and if so what is the measure of damages.

Has fraud or mistake been made out?

The Law

- [8] By virtue of section 98 of the **Land Registration Act**¹ (“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.

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

Mistake

- [10] In the well-known case of **Sylvina Louison v Jacob**,² 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.

¹ Cap 5.01, Revised Laws of Saint Lucia, 2015.

² [2009] UKPC 3 at para 41-42.

[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

- [11] In the case of **Ian Peters v Robert George Spencer**,³ George-Creque JA applying the case of **Asset Company Ltd. v Mere Roihi**⁴ 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.”

- [12] The Privy Council case of **Frazer v Walker et al**⁵ held that the exceptions provided for by similar provisions to our section 98 of the LRA in the case of fraud has been limited by judicial decision to actual fraud by the registered proprietor or his agent. Actual fraud is what is required.

Analysis

- [13] Mrs. Irving must prove that a mistake or fraud was committed by the defendants and it is therefore incumbent upon her to specifically lead credible and reliable evidence of the exact nature of the mistake or fraud and how such was perpetrated. Each case must be examined in light of its own facts and circumstances in making a determination as to whether mistake or fraud has been made out.

³ ANUHCVP2009/0016 delivered 22nd December 2009-at para 26.

⁴ [1905] AC 176.

⁵ [1967] 1 AC 569.

- [14] Mrs. Irving has pleaded several allegations of fraud and mistake which I have set out below and the question to be answered is whether these been proven on the evidence as presented. The evidence in the case is set out below.

The Evidence
Mrs. Irving

- [15] Mrs. Irving gave evidence that the Deceased had paid for the Property in full and produced receipts which culminate in a receipt dated 16th July 2010 which shows a payment of \$270.00 and a notation saying paid in full. This evidence is contrary to the allegations of the second to sixth defendants that there was a balance which was due and owing after the Deceased's death which was allegedly paid by his daughter, Kaysharma Byron and which they led no evidence to support.
- [16] Mrs. Irving's evidence is that the Deceased died in Canada on 16th January 2012 and she undertook the expenses associated with his burial, which she says exceeded \$10,000.00 Canadian dollars and EC\$5,000.00. She exhibits receipts in support showing the expenditure of the \$10,000.00 Canadian dollars and one receipt showing expenditure of \$2,080.00.00 paid to Rambally's Funeral Parlour.
- [17] In cross-examination when it was suggested to Mrs. Irving that she had not at anytime presented the LA to Geest after it was granted, she denied that this was the case and said she did. She went further to say that prior to receiving the LA , she had gone to Geest and was told that she could not get the land documents and that she needed an LA. After she got the LA she says she took it to Geest but the land had already been given to the second to sixth defendants. She also says that after the LA was completed, her former counsel wrote asking for the land documents and Geest did not give them but that letter was not produced. None of this was ever pleaded nor was it a part of Mrs. Irving's evidence in chief. When asked whether she was aware that Kaysharma Byron, the second defendant had

made payments towards the purchase of the Property, Mrs. Irving said no and indicated that she was only aware when she went to Geest and she was told that Ms. Byron had paid \$150.00 to get the land from Geest. No timelines are provided by Mrs. Irving for any of these encounters with Geest which she for the first time speaks of in cross-examination.

Geest

- [18] The evidence for Geest was given by its managing director, Mr. Maximilus Johannes ("Mr. Johannes"). Mr. Johannes has been managing director of Geest from February 2012. He admits that from the records, the Deceased made his last payment to Geest for the Property about 16th July 2010. He also admits that the Property was held on trust for the Deceased until the Deceased requested a deed of sale. Mr. Johannes says he had no knowledge that the Deceased had died until 18th July 2014 when his daughter Kaysharma Byron came to the Geest office with a deed of sale. Mr. Johannes' evidence is that on the said date, the second to sixth defendants came to the Geest office with the deed of sale and their birth certificates indicating that they were all children of the Deceased.
- [19] Mr. Johannes says he executed the deed of sale and as far as he knew the Property was registered in the names of the second to sixth defendants. He says that at no time before or after executing the deed of sale did anyone come to the Geest office with an LA. Mr. Johannes says that there was no breach of trust and that the Deceased had instructed him that the Property was for the benefit of his children particularly Kaysharma Byron. He also speaks of payments being made by Kaysharma Byron on behalf of the Deceased but gives no evidence of these payments or when these payments were made.
- [20] Mr. Johannes says he did not commit any fraud or mistake in executing the deed of sale. As far as he knows the second to sixth defendants are the children of the Deceased, he has no knowledge whether they are legitimate or illegitimate or whether the Deceased was a married man or not.

[21] In cross-examination, Mr. Johannes said he knew what holding on trust meant and that his duties as trustee extended to the Deceased's estate after he died. He admitted that although he did not know before, when Ms. Byron came with the deed of sale in July 2014, he then knew that the Deceased had died. Mr. Johannes for the first time in cross-examination speaks of some data which was available to him and which influenced what he did. That was not part of his evidence in chief in support of his defence. He was clear that based on the notes at Geest, the name of Ms. Byron was listed and she was the one making payments on his behalf. There is not one receipt though which supports this despite the fact that there are other receipts which reflect payment 'for Mr. Joseph St. Holl' by a named person. Mr. Johannes in cross-examination says quite nonchalantly that once he saw the name of the second defendant on the deed of sale, he signed it. Mr. Johannes admits that when Ms. Byron came with the deed of sale, he did not seek advice from his lawyer, that at the time he signed the deed, he had no grant of LA or probate in respect of the Deceased. Interestingly, in his evidence in chief Mr. Johannes spoke first of the second defendant bringing the deed of sale to the Geest office, then he says that all the second to sixth defendants came to the office with the deed of sale and their birth certificates and then in cross-examination when asked whether all the defendants came when the deed of sale was brought, he says he was not there and he saw the deed of sale afterwards. Mr. Johannes' evidence is somewhat confusing as to who was present when the deed was brought to the office. What this signals is that Mr. Johannes who admits to holding the Property on trust for the Deceased's estate did not pay much attention to the details surrounding the deed of sale which had been brought to the office by the second to sixth defendants.

[22] Mr. Johannes admits in cross-examination that at the time he signed the deed of sale he understood that he was holding the Property on trust for the Deceased and that he was transferring it to five people not knowing whether they were actually his heirs or not. He said he made the decision to sign based on the information he

had and the receipts. But he agreed that when he signed the deed of sale he knew that the second to sixth defendants never paid any monies to Geest on the date of execution of the deed of sale. Mr. Johannes said he did not know that he was doing anything wrong when he signed the deed of sale.

Facts not in Dispute

- [23] An analysis of the evidence reveals that it is not disputed that sometime in the year 2000, Geest offered to sell the Property to the Deceased as part of a special offer to the occupiers of the lands at Roseau. The Deceased had been occupying the Property for a prolonged period. The offer was for payment of the value of the Property, said to be \$1,330.00 plus survey fees of \$150.00.⁶ It is also not disputed that the Deceased made payments towards the Property during the period 2001 and 2010, the final payment being made in July 2010 and that the land had been paid for in full prior to his death in 2012.

Particulars of Fraud or Mistake

- [24] The particulars of fraud or mistake pleaded in relation to Geest are as follows. That they:
- (a) knew of the death of the Deceased;
 - (b) had received prior to the date of his death the full agreed price of the Property;
 - (c) signed a deed of sale falsely asserting that the agreed price had been paid by the second to sixth defendants;
 - (d) purported to dispose of the Deceased's equitable interest in the Property without the requisite LA having been produced;
 - (e) acted together with the second to sixth defendants to dishonestly or mistakenly deprive the Deceased's estate of the Property.

⁶ See letter dated 21st July 2000 to Joseph St. Holl from the Programme Manager of Geest.

- [25] In relation to the second to sixth defendants, Mrs. Irving alleged the following particulars of fraud or mistake. That they:
- (a) are the illegitimate children of the Deceased who sought to obtain the Property despite not being heirs to the Deceased;
 - (b) knew that the Deceased had paid the price for the Property;
 - (c) knew that the Property belonged to the estate of the Deceased and could not validly be sold to them after his death without the intervention of his Administrator;
 - (d) knew that Geest was holding the Property on trust for the Deceased and they were not entitled to the Property;
 - (e) acquired the Property by relying on the sum of money already paid by the Deceased, the benefit of which they were not entitled to;
 - (f) knew that following the death of the Deceased, his rights, title or interest in any property could not be interfered without the grant of LA;
 - (g) knew that they were not entitled to acquire the benefit of the price already paid by the Deceased in respect of the Property and they could not have validly purchased the Property, having notice of the Deceased or his estate.

Mistake?

- [26] Was there a mistake in the registration process? The Act does not define 'mistake' and it is an area which is evolving and there is much academic discussion in the UK as to what is contemplated by the term 'mistake'. In **Sylvina Louison**, the court spoke of the term which had been coined by the judges- 'mistake in the registration process' and indicated that this is a judge-made and not a statutory term. They highlighted that the scope of what is a mistake in the registration process must depend on a careful evaluation of the facts of the particular case.
- [27] In the instant case, the mistake being alleged is that the defendants knew that no monies were paid by the second to sixth defendants and that they were not entitled as heirs of the Deceased and yet executed a deed of sale which stated

that they had paid monies to the first defendant when they had not. The question is whether this is the kind of mistake contemplated by section 98 of the LRA. I am of the opinion that it does not. The evidence does not reveal any mistake in the registration process. The evidence reveals that Geest executed a deed of sale in favour of the second to sixth defendants on the basis that they were the Deceased's children. Geest was clearly wrong to have simply just accepted this without more but there is no evidence that the second to sixth defendants knew that they were not entitled to the Property as the Deceased's children.

[28] Whilst I can accept that one may say that a mistake was made as to who the deed of sale should have been executed in favour of and further whether it should have been executed at all given that the second to sixth defendants had not obtained LA, there is no evidence to support a finding that there was any mistake in the registration process (which is what is required) to entitle the deed of sale to be cancelled or set aside. Put differently, it may be the case that the disposition of the Property was made by mistake but that does not render its entry on the register a mistake.

[29] My view is further substantiated by the English Court of Appeal decision of **NRAM Ltd. v Evans**.⁷ In that case the Court of Appeal gave guidance as to the circumstances that will govern when the land register may be rectified referring to Ruoff & Roper, Registered Conveyancing loose leaf ed. There will have been a mistake where the registrar (i) makes an entry in the register that he would not have made; (ii) makes an entry in the register that he would not have made in the form in which it was made; (iii) fails to make an entry in the register which he would otherwise have made; or (iv) deletes an entry which he would not have deleted; had he known the true state of affairs at the time of the entry or deletion. The mistake may consist of a mistaken entry in the register or the mistaken omission of an entry which should have been made. Whether an entry in the register is

⁷ [2017] EWCA Civ 1013.

mistaken depends upon its effect at the time of registration.⁸ These scenarios to my mind apply to situations post first registration and not to first registration and highlight that the mistakes refer to the registration process.

[30] According to the UK Court of Appeal this means that an entry made in the register of an interest acquired under a void disposition is a mistake and may be rectified, because it should never have been made, whereas an entry made in the register of a voidable disposition is not a mistake if at the date of its entry there has been no election to void the disposition. The question of whether there is a mistake being based on whether the particular disposition or transaction is void or voidable is still one filled with controversy and adds to the debate as to what 'mistake' really means.

[31] As it stands, the Privy Council case of **Louison v Jacob** settles the matter. What is contemplated is a mistake in the registration process and this does not exist in the case at bar.

Fraud?

[32] Has fraud been made out? From the evidence of Mr. Johannes, he was not aware of the death of the Deceased until after the deed of sale was brought to him for signature. The evidence reveals that the full purchase price was paid prior to and not at the execution of the deed of sale and so the second to sixth defendants did not pay any monies as stated in the deed of sale. The question is does this rise to the level of actual fraud? I think not. When one considers Mr. Johannes' explanation that the Deceased lived on the Property with the children and their mother and had said that the Property was for his children, it is understandable how payment by the Deceased could be seen as payment made on his children's behalf. That this is not correct procedure and cannot be disputed but it does not in my view rise to the level of fraud.

⁸ Para 51 of NRAM.

- [33] The fact that Geest executed a deed of sale without the requisite LA having been in their possession again does not in my view amount to fraud. Mr. Johannes is not an attorney and so although he seemed to know about holding on trust for the Deceased, he was clear that he did not think he was doing anything wrong. The evidence is clear that at the date of execution of the deed of sale in favour of the second to sixth defendants in July 2014, the LA was not in existence having only been granted in November 2014. It could therefore not be the case that Geest executed the deed of sale with any knowledge of the LA. Mistakenly, counsel for the first defendant spent much time suggesting that Mrs. Irving had the LA in her possession since 2012 and did nothing to bring it to Geest's attention. This is not supported by the LA document which is part of the evidence. It was clearly a typographical error made by Mrs. Irving in the statement of claim and her witness summary that the LA was obtained in November 2012.
- [34] There is no evidence of there being any collusion between Geest and the second to sixth defendants to deprive the Deceased's estate of the Property when the second to sixth defendants were clearly alleging that they were the ones entitled to the Property by virtue of being the Deceased's children.
- [35] In relation to the second to sixth defendants, notwithstanding the fact that they failed to adduce any evidence in support of their defence and to disprove or challenge the LA obtained by Mrs. Irving or any of the facts stated therein, I find that the evidence of Mrs. Irving simply cannot sustain a claim of fraud against them. I am of the view that a statement in a deed of sale that monies have been paid at the execution is not evidence of fraud especially if its proven that the purchase price was indeed paid. In this case, it is not in dispute that the full purchase price was paid. Whilst not paid by the second to sixth defendants, Geest provided an explanation as to why it accepted that the purchase price had in effect been paid on behalf of the second to sixth defendants as the Deceased's children. It would have been for the executing attorney to have provided advice on the

process to the parties or advise the vendor Geest of the need to obtain independent legal advice before executing the deed of sale.

[36] Counsel for Mrs. Irving suggests that the fact that the second to sixth defendants chose not to place evidence before the Court means that Mrs. Irving is entitled to judgment against them in the terms set out in the statement of claim and their defence is liable to be struck out. However, this is a fixed date claim and default judgment is not available on such a claim. The claimant must still prove her claim and the Court must still be satisfied on a balance of probabilities that she has done so.

[37] There is no evidence to support the allegations pleaded against the second to sixth defendants and listed at (c) to (g) above. There is no evidence that the second to sixth defendants knew any of the things which it is pleaded they knew. Counsel for Mrs. Irving submits that even if the second to sixth defendants were lawful heirs of the Deceased which they are not, they could not have interfered with the Property after his death without probate or LA. She submits further that the fact that the second to sixth defendants were duly represented by legal Counsel, they knew that such interference was unlawful and therefore there can be no lawful excuse for their conduct. However, no allegations of wrongdoing have been alleged against counsel for the second to sixth defendants and it is unclear how the second to sixth defendants are to be imputed with such knowledge by the mere fact that they are represented by counsel.

[38] Having assessed all the evidence, I am satisfied that the claimant, Mrs. Irving has not proven on a balance of probabilities allegations of mistake or fraud made against the first or second to sixth defendants. I therefore decline to grant the relief sought by the claimant to set aside the deed of sale executed on 18th July 2014 before Alfred Alcide, Notary Royal and registered as Instrument Number 2784/2014. As a consequence, there can be no rectification of the land register for Block and Parcel No. 0641B 364 on the basis of fraud or mistake.

Did the actions of Geest amount to a breach of trust?

- [39] A breach of trust will have occurred when the trustee made a decision which he should not have made or failed to make a decision which he should have made. It is not disputed that by virtue of the fact that the Deceased had paid for the Property in full by July 2010, he acquired a beneficial interest in the Property and that Geest would have held it on trust for the Deceased and after his death, for his estate.
- [40] This was Mr. Johannes' evidence which he confirmed in cross-examination. He admitted to understanding that the Property was held on trust for the Deceased until he executed a deed of sale and after his death for his estate. The evidence reveals that Mr. Johannes did not know about the Deceased's death until 2014 when the deed of sale was brought to him for signature. However, at that point and armed with that knowledge Mr. Johannes proceeded to sign the deed of sale and made no inquiries to ascertain whether in fact, the persons stated on the deed of sale were children of the Deceased and more importantly were really his heirs. Mr. Johannes also says in his evidence on cross examination that the information Geest had in its data base reflected the second defendant's name as well and so when he saw the name of the second defendant on the deed of sale, he signed it. This is rather interesting as Mr. Johannes did not seem perturbed that although he had one name in his records, being that of the second defendant, Kaysharma Byron the deed of sale had four other names, none of whom according to the evidence appeared to have been on any record/document with Geest. No evidence of this information in Geest's data base was adduced.
- [41] Mr. Johannes says that the second defendant made payments on the Deceased's behalf but provided no evidence to support this. None of the receipts exhibited show any payment in the name of the second defendant on behalf of the Deceased. Mr. Johannes is the managing director of Geest and he has admitted that he knew Geest was holding the Property on trust. This therefore means that

he, as managing director of Geest, stood in a fiduciary relationship to the Deceased and his estate and ought not to have done anything which would be detrimental to the interests of the Deceased and by extension his estate after his death.

[42] Whilst I appreciate that Mr. Johannes may not have known of the legal implications of his trusteeship or what process should have been employed since the Deceased who had made the purchase had now met his demise, he as a representative of Geest and standing in the shoes of a trustee ought to have taken steps to ascertain who the proper heirs of the Deceased were and the process which ought to have been employed before he proceeded to execute the deed of sale.

[43] Article 586 of the **Civil Code** is clear that when a person dies intestate as did the Deceased in this case, his immovable and movable property until administration is granted, vests in the Chief Justice and Puisne Judges severally. The article goes on to provide that in every case where a person dies intestate, it shall be lawful for the Court or a Judge thereof to appoint an administrator to administer the intestate succession of the Deceased, and for that purpose the Court is to grant letters of administration.

[44] Mr. Johannes on behalf of Geest has admitted that Geest stood as trustee in relation to the Deceased, that he never sought to ascertain whether the Deceased died leaving a will or not, that he did not seek legal advice before proceeding to execute the deed of sale, he had no knowledge as to whether the persons in whose favour the deed was executed were actually heirs of the Deceased and had obtained the requisite legal documents and he also did not ascertain whether the persons listed were all the children that the Deceased had. Mrs. Irving's evidence was that the Deceased had twelve children which evidence remains uncontroverted. It would appear by Mr. Johannes' posture that he was confident in his ability to do that which he did as, in cross examination when it was suggested

to him that he signed the deed of sale without seeing any letters of administration or probate, he retorted “what more do I need?”.

[45] The actions of Mr. Johannes on behalf of Geest are wholly inconsistent with the duties of a trustee which are to act in the best interests of the trust and not to do anything which would be detrimental and cause loss to be sustained. He acted with reckless disregard as to whether he could have taken the actions which he did and was negligent in not seeking legal advice before he proceeded to undertake a legal transaction. There is no evidence or suggestion that Mr. Johannes ever sought any legal or other advice before he executed the deed of sale. I cannot see that Mr. Johannes’ actions were an innocent mistake given the fact that this would not have been the first land transaction undertaken by Geest and therefore it would not have been difficult to consult Geest’s lawyers about this particular transaction which would have been slightly different given that the original intended purchaser was now deceased.

[46] In the case of **Nestle v National Westminster Bank plc**,⁹ the claimant said that the defendant bank as trustee of her late father’s estate had been negligent in its investment of trust assets. Although the court dismissed the claim because it found that the claimant had failed to prove either a breach of trust or any loss flowing from it, Dillon LJ thought that it was ‘inexcusable that the Bank had taken no steps to obtain any legal advice as to the scope of its power to invest in ordinary shares’.¹⁰ Staughton LJ pointed out that ‘trustees are not allowed to make mistakes in law; they should take legal advice, and if they are still left in doubt they can apply to the court for a ruling’.¹¹

[47] By virtue of Mr. Johannes’ actions on behalf of Geest, the estate of the Deceased and by extension the heirs of the Deceased have been deprived of the benefit of

⁹ [1993] 1 WLR 1260.

¹⁰ Nestle at page 1265.

¹¹ Nestle at page 1275.

the Property. Geest is therefore liable for breach of trust. In such circumstances, the estate of the Deceased is entitled to damages.

Conclusion

[48] In light of the foregoing, the order I make is as follows:

1. The claim against the first and second to sixth defendants for cancellation of the deed of sale executed on 18th July 2014 and registered as Instrument Number 2784/2014 and for rectification of the land register relating to Block and Parcel 0641B 364 ("the Property") is dismissed.
2. The second to sixth defendants are awarded no costs on the dismissal of the claim for rectification of the land register having regard to their conduct of the matter, having not filed any evidence despite being granted several opportunities to do so.
3. The first defendant is to pay to the claimant as administrator of the estate of Joseph Leo also known as Joseph St. Holl also known as Lucius Joseph Polius the current market value of the Property (Block and Parcel 0641B 364) as damages for breach of trust.
4. The Property is to be valued by a Quantity Surveyor, agreed to by both parties, and the costs thereof be borne by the first defendant.
5. The agreement as to the Quantity Surveyor and engagement of that person should be done no later than 21 days from the date of this order.
6. Once the valuation of the Property has been completed, the first defendant is to pay the claimant the sum assessed by the Quantity Surveyor as the current market value within 30 days of the date of the Quantity Surveyor's report.
7. The claimant is awarded prescribed costs on the claim to be calculated on the amount to be paid by the first defendant (being the current market value of the Property) discounted by 50% given that the claimant was only successful on part of her claim.

[49] I wish to sincerely apologise to counsel for the delay in the delivery of this judgment.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar