

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2012/0048



IN THE MATTER OF AN APPLICATION BY ANTHONY GODFREY WYLLIE
FOR A DECLARATION OF POSSESSORY TITLE OF LAND

ANTHONY GODFREY WYLLIE

APPLICANT

Appearances:

Ms. Vynette Frederick for the Applicant;

2017: Mar. 13

ORAL DECISION

- [1] **Henry, J.:** This is an application by the claimant Anthony Godfrey Wyllie for an order that possessory title claim number 48/2012 which was struck out for want of prosecution be revived and be returned to the active court list and disposed of.
- [2] On the face of the application it is being made pursuant to part 26.2 of the Civil Procedure Rules and in accordance with the inherent jurisdiction of the court. The grounds of the application as set out on the face of the Notice of Application are:
- (1) The failure of counsel to attend the hearing of the application is solely the fault of the practitioner and not that of the client who resides in London.
 - (2) Counsel was out of state and had no prior notice of the hearing and as such could not inform any colleague to hold in the circumstances.

(3) But for the hearing of the application, the application is otherwise complete in that all steps required under the law have been complied with.

(4) The law provides for the court to make any order it sees fit in any situation and under its inherent jurisdiction, the court is charged with the responsibility to see justice done, this is one such situation.

(5) The limitation period for bringing a possessory title claim before the court does not apply so that there is no bar in law to the relief being sought by the applicant.

[3] It is supported by the affidavit of one Niasha Joseph of Fair Hall, legal clerk of Frederick's Attorneys who deposed to certain averments on the basis of her own knowledge information and belief to the effect that:

- Frederick's Attorneys and more specifically Vynette Frederick was retained to make an application for possessory title in this matter on behalf of Anthony Wyllie;
- Ms. Joseph is responsible for preparing the documents which are required in applications such as these;
- She is responsible for advising counsel of the court schedule and scheduling appointments in such a way as to avoid conflicts for counsel;
- When there is an unavoidable conflict she is responsible for alerting other counsel to hold papers for Ms. Frederick so that judicial time is not wasted.

[4] Additionally, that Ms. Frederick was a Member of Parliament and Executive Member PRO of the New Democratic Party up until December 2015; that when the Government announced the date of election Ms. Joseph knew that counsel wrote a letter to the Registrar asking please that her matters not be listed during the month of November and December. A copy of the letter is attached and marked "NJ1" dated 9th November, 2015 and it reads:

'Dear Madame Registrar,

Re: Court Attendance from 9th November, 2015 to 9th December, 2015.

I write with regard to the matter at caption. I wish to request please adjournment of all matters in which Frederick's Attorneys or Vynette Frederick is involved until any date after December 9th, 2015. My involvement in the election campaign will make court attendance virtually impossible given my position within the New Democratic Party.

Thank you for assisting.

Signed Vynette A. Frederick.

- [5] Ms. Joseph continued in her affidavit in support that she was told by counsel and verily believed that there was no guarantee to her freely being able to wear other hats and that Ms. Joseph should be vigilant to ensure that none of her court matters suffered; that she knew that during that time given her responsibility within the political party that counsel would have to travel within short notice and sometimes with no notice at all; that counsel ended up traveling in December 2015 and January 2016.
- [6] Sometime in June 2016, Ms. Joseph said she was asked by counsel to make application for Mr. Wyllie the applicant to attend the hearing for his possessory title matter by Skype. In preparing the application for the file she realized the matter had been struck out for want of prosecution as counsel did not appear on two occasions, once in January 2016 and then again in June 2016.
- [7] Upon her further investigation she realized that on both occasions counsel had been out of state on post election business and no arrangements had been made for the papers to be held by other counsel.
- [8] She, Ms. Joseph realized that she had completely missed the court date on the court list and the listing of the matter in January 2016. When she discovered the mistake she informed counsel who needless to say was beside herself and indicated that responsibility for these administrative failings ultimately fall on her shoulders as counsel. Ms. Joseph further deposed 'I hereby believe that all of the requirements for bringing the application and satisfying the court all procedures have been complied with' and that the application is uncontested. She therefore prayed that the application be resuscitated. That is the extent of the application.

- [9] In her submissions today, learned Counsel Ms. Vynette Frederick sought to correct the statement by Ms. Niasha Joseph and she indicated that contrary to the statement of Ms. Joseph that she Ms. Frederick was out of state on the 13th June, 2016 when this matter was struck out for want of prosecution, she was in fact in state. She indicated by implication that she therefore did not write to the learned Registrar seeking an adjournment of her matters on the ground that she was out of state.
- [10] Accordingly with respect to ground (2) of his application, there is no basis on which Mr. Wyllie can rely on the absence of counsel out of state, and not being given prior notice of the hearing as that has now been corrected by Ms. Frederick. The record does show, based on endorsement of two notices of hearing by Bailiff Elroy Samuel, that Elroy Samuel on the 8th June, 2016 attempted to serve notice of hearing for the 13th June, 2016 on the applicant himself Anthony G. Wyllie. Mr. Samuel noted on the back of that notice of hearing by way of his observations that Mr. Anthony G. Wyllie was out of the country and could not be located. On the other notice of hearing he made a notation that Bayliss Frederick who happens to be one of the attorneys at Frederick's Attorneys Chambers did not accept the notice of hearing indicating that he did not want to have anything to do concerning Mr. Wyllie. The bailiff accordingly noted that he was unable to serve the notice of hearing. I raise that because it goes to ground two of the application that counsel was out of state and had no prior notice.
- [11] I am not sure that in this case the court had emailed the usual cause list to Frederick's Attorneys. I am aware however that it is usual practice for the court to email cause lists of hearing dates to counsel. At paragraph 13, Ms. Joseph did say she missed the court date on the court list which suggests that the court list was served on Frederick's Attorneys. So in respect of their ground two there is no basis on which the court could grant the order sought pursuant to that ground two.
- [12] In respect of ground one of the application, Counsel Ms. Vynette Frederick has commendably thrown herself at the mercy of the court and indicated that the failure of counsel to attend the hearing is solely that of the practitioner herself and not the claimant who resides in London. I however wish to note that litigants before the court have a responsibility to themselves and to the court to keep abreast of the progress in the matters in the court. They have a duty to contact

counsel and failing that to contact the court to ascertain the trial date or the hearing dates established for matters. If they fail to do so they have failed in their duty and signaled to the court very clearly that they have no interest in how the matter progresses before the court.

- [13] With respect to whether or not the application for possessory title is complete and all steps required under the law have been complied with, I note that in respect of this matter the application required by the Possessory Title Act was filed, affidavits were filed, certificates of compliance was filed pursuant to section 7 of the act. Certificate of compliance signifying that the notice was published in the registry, there is also certificate of compliance in respect of publication of notice in the Magistrate's Court in the third district. Valuation report was filed dated the 16th October, 2015 and it gives a value of the land; survey plan was also filed on the 16th October, 2015 as required by the Act and affidavits in support.
- [14] Mr. Wyllie in his application signified at paragraph 5 that he and his father had been in exclusive and undisturbed possession of the land for more than twelve years; that his father was the possessor and he was put into possession of the land by his father Clive Wyllie, who was put into possession by his uncle before him Jack Wyllie the initial owner. He states that he (Winston Wyllie) put his son into possession of the lands as he took over responsibility for the cultivation of the property, which is farming the land. It was continued by the applicant's caretaker Asquith Ryan after the applicant immigrated to the United Kingdom. The applicant now continues to cultivate the said lands but wishes to finalize the title.
- [15] The applicant finally on the 30th October, 2015 filed three further affidavits of Isola Byron, Judy Prescott, Judy Ryan, Asquith Ryan setting out what they know about the land. To the extent that those affidavits provide information required under the Possessory Title Act, to that extent Mr. Anthony Wyllie has complied with the provisions of the Possessory Title Act.
- [16] In respect of paragraph 4 of the notice of application which sets out ground 4 that the court may make any order that it sees fit in any situation and under its inherent jurisdiction in making an order, in respect of the application which is before the court, the court is required to have regard to the overriding objective of the Civil Procedure Rules which is to do justice between the parties. In exercising the discretion, the court must be mindful of all of the Civil Procedure Rules.

- [11] The applicant is seeking for the court to make an order of its own initiative pursuant to CPR 26.2. The court is not minded to make an order pursuant to CPR 26.2 of its own initiative having regard to the history of this matter which has already been set out; that the applicant has basically since the filing of this order and indeed on the 13th June, 2016 eight months after the previous hearing date did not appear in court. The applicant appeared in court on one occasion - the second occasion 19th October, 2015.
- [12] The limitation period for filing a possessory title claim before the court does not apply, so there is no bar in law to the relief being sought by the applicant. If in fact the limitation period has not run, the applicant is well poised to file another application, an identical application or a similar application along the lines of the one which is presently before the court.
- [13] I note that the applicant filed in support of his application, publications of his application in the Vincentian and Searchlight newspaper dated 12th October, 2012, his application having being filed on the 8th August, 2012. The applicant refers to the advertisements dated 12th October, 2012 as his first publication. Looking at the publication in the Vincentian newspaper it does not say whether it is the first or the second publication. The publication on the 12th October, 2012 in the Searchlight newspaper likewise does not say if it is the first publication or the second. The publication in the Vincentian newspaper on 14th November, 2014 says it is the second publication and the publication in the Searchlight newspaper on the 14th November, 2014 does not state whether it is the second publication or the first publication. So there are certain irregularities in the manner in which the applicant has proceeded with his application. There is no guarantee in the circumstances that his application for possessory title would have been granted on the basis of the documentation he has already filed in this court.
- [14] I am satisfied that the justice of the case demands that the application which is before the court be not granted. Accordingly, before ruling on this application I must consider the submission by the applicant pursuant to CPR part 39.5 which provides for a party to apply to the court to set aside a judgment or an order which is made in his absence. CPR 39.5 stipulates that an application to set aside a judgment or an order which is made in a party's absence must be made within fourteen days after the date on which the judgment or order was served on the applicant. The

applicant/claimant has indicated that he became aware that the order of June 13, 2016 was made in his absence when Ms. Joseph was preparing (on instructions from learned counsel) to make an application in June of 2016 for the applicant to be present in court via Skype. It is now 13th March 2017 some nine months or so after the date of the order. The application is therefore tardy; it does not comply with CPR 39.5. That is the additional reason why it is not being granted.

ORDER

[15] Accordingly it is ordered that:

1. The application of Anthony Godfrey Wyllie filed on the 2nd February, 2017 to set aside the order striking out his application for possessory title be dismissed.
2. Court office has carriage of this order.



JUSTICE ESCO L. HENRY
HIGH COURT JUDGE