

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2012/0064

BETWEEN:

VILMA GOODLUCK

CLAIMANT/RESPONDENT

-AND-

SAMUEL GOODLUCK

APPLICANT/ DEFENDANT

Appearances: Mr Samuel E. Commissiong, Counsel for the Applicant/Defendant and Mr Michael Wyllie Counsel for the Claimant/Respondent.

2015: Jun. 1 and 23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Vilma Goodluck and Samuel Goodluck are cousins. Ms Goodluck claims that she bought land (“the disputed land”) from George Goodluck (deceased), occupied it for over 12 years and she now seeks a declaration of possessory title in respect of the land. Samuel Goodluck is George Goodluck’s son. He opposes Ms Goodluck’s application for the declaration and refutes her assertions that she purchased the disputed lands. Mr Goodluck seeks an order that portions of Ms Goodluck’s affidavit¹ be declared inadmissible and struck out on the ground that they contain hearsay. Ms Goodluck submits that the

¹ Filed on February 25, 2015.

impugned statements fall within exceptions to the hearsay rule and are admissible.

ISSUE

- [2] The sole issue is whether the impugned statements offend the hearsay rule and are thereby rendered inadmissible ?

ANALYSIS

Issue – Do the impugned statements offend the hearsay rule and are thereby rendered inadmissible?

- [3] Mr Goodluck has identified² five sections³ of the Ms Goodluck's affidavit which he claims offend against the hearsay rule. He submits that such statements should not be admitted as evidence and further that nothing in section 47 of the Evidence Act⁴ ("the Act") is relevant to the determination of this issue. Ms Goodluck argues that the statements are quite relevant as they give a sense of the overall case in relation to the contract between George Goodluck and her and that they are important to show the terms of the contract. She contends that they fall within the "hearsay exceptions" as they attest to Mr Goodluck's frame of mind at the time of the contract and were statements made by him against his proprietary interest.

- [4] The rules of evidence which obtain in England govern the admissibility of evidence in the State of Saint Vincent and the Grenadines, unless otherwise provided in the Act.⁵ It has long been established in English law that material is

² See the grounds of the application and paragraph 1 of his affidavit in support filed on May 18, 2015.

³ i.e. paragraph 4 – lines 2 to 5; paragraph 5 – lines 2 to 4 and 6 to 8; paragraph 6, lines 1 to 5 and paragraph 8, lines 2 to 7.

⁴ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁵ See section 3 of the Evidence Act the relevant portion of which provides:

admissible as evidence if it is sufficiently relevant to the issues in the case and if it is not rendered inadmissible by rules of court or practice.⁶ Hearsay evidence is described as “evidence given by a testifying witness of a statement made by some other person, when such evidence is tendered to prove the truth of the statement.”⁷ Generally, hearsay evidence is inadmissible unless the Act or rules of court render it admissible. The Act authorizes the admission of hearsay evidence subject to certain conditions.⁸ In deciding whether the questioned statements are admissible the court must conduct an examination of the pleadings and affidavits to identify the issues and determine the challenged statements’ relevance.⁹

“3. Whenever any question shall arise in any ... civil proceedings whatsoever in or before the court, ...touching the admissibility ... of any evidence... such question shall, except as provided for in this Act, be decided according to the law and practice administered for the time being in England with such modifications as may be applicable and necessary in Saint Vincent and the Grenadines.”

⁶ See Vol. 17 Halsbury’s Laws of England 4th ed. at para. 5 where the learned authors state:

“5. The prime requirement of anything sought to be admitted in evidence is that it is of sufficient relevance. (**Hollington v F. Hewthorn & Co. Ltd [1943] K.B. 587 CA per Goddard LJ.**)

...Admissible evidence is thus that which is (1) relevant and (2) not excluded by any rule of law or practice.”

⁷ Halsbury’s Laws of England, 4th Ed. para. 11.

⁸ See section 47(1) of the Act which provides:

- (1) “In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person whether called as a witness in those proceedings or not, shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.” (underlining mine.)

⁹ See the **East Caribbean Flour Mills Ltd. v Ormiston Ken Boyea SVGHCVAP2006/0012 at para. [44] per Barrow J.A. (as he then was)** where he stated:

“[44] ...In deciding that it was only the pleadings that she should look at to decide what were the issues between the parties, the judge erred,...If particulars were given,...in other witness statements the judge was obliged to look at these witness statements to see what were the issues between the parties.”

Issues in the Substantive Matter – relevance of impugned statements

[5] This case was initiated by Vilma Goodluck when she applied for a declaration of possessory title. She relies on affidavits by three of her sons and herself. They assert that she has been in exclusive and undisturbed possession of the disputed land for over 12 years.¹⁰ Likewise, Ms Goodluck claims that she had a contract with George Goodluck to purchase the lands for \$15,000.00. She avers that pursuant to the terms of the contract, she made monthly payments of \$200.00 first to Mr Goodluck and subsequently to his agent Mr Parnell Campbell until the full purchase price was paid in 1987. She deposes that at that time, she went into occupation of the lands, building first a wooden house and then a concrete house on part of it and cultivating other sections. Ms Goodluck's sons support her account and assert that she paid the taxes for the land for many years, before migrating to the USA in 1992. They aver that Mr George Goodluck died before he could execute a deed in her favour.

[6] Mr Samuel Goodluck objects to a grant of declaration of possessory title to Ms Goodluck. He alleges that although she contracted to purchase the lands from his father, the agreed purchase price was \$60,000.00 of which Ms Goodluck only paid \$2,720.00. He avers that Ms Goodluck could therefore not get a Deed from George Goodluck as she did not pay the full purchase price and never occupied the disputed land. He insists that she is therefore not entitled to a declaration of possessory title. He alleges also that George Goodluck devised the disputed lands to his¹¹ children by will, and he considers that fact to be confirmation that Ms Goodluck did not pay the full purchase price for the land. Mr Goodluck's account is supported substantially by affidavits of his two witnesses. They both aver that Ms Goodluck's sons, Gary and Dewaine occupied the disputed land from 1984 until 1992 cultivating bananas and thereafter discontinued cultivation until a brief period in 2012 when they were challenged by Samuel Goodluck.

¹⁰ i.e. since 1987.

¹¹ Samuel Goodluck's.

After this alleged challenge Gary and Dewaine reportedly did not return to the disputed land.

[7] Ms Goodluck filed supplemental affidavits¹² in response to Mr Goodluck's assertions that George Goodluck made a will. Ms Goodluck's further affidavit is the subject of the instant application. In it, she describes the circumstances surrounding the offer and the transaction between her and George Goodluck for the sale and purchase of the disputed land. Ms Goodluck also questions Samuel Goodluck's assertion that George Goodluck devised the lands by will to his children and opines that if he did, it must have been an error. The issues which arise for consideration in the substantive claim are:

(1) whether Vilma Goodluck purchased the disputed lands from George Goodluck? and

(2) whether Vilma Goodluck enjoyed exclusive and undisturbed possession of the said lands for a period in excess of 12 years?

Clearly, Ms Goodluck's account of the transaction between Mr George Goodluck and herself is relevant to the determination of the first of those two issues. If relevant, they are admissible unless some rule of court or procedure, rule of law or the Act precludes their admission.

[8] The Evidence Act expressly permits the admission of hearsay evidence in civil proceedings to prove the facts contained in it, if either the Act or rules of court so permit.¹³ It mandates that the court's permission must first be obtained. It

¹² On February 25, 2015 (sworn to by Clinton Goodluck and herself) and 27 February, 2015 (sworn to by Collin Goodluck) respectively.

¹³ Supra at. note 8.

See also the **East Caribbean Flour Mills Ltd. case at para. [56] per Barrow J.A. (as he then was)** where referring to section 47 of the now repealed Evidence Act Cap 158 (which is identical to the present Evidence Act), he said:

"[56] ...It is common ground that section 47 of the Act provides for the admission of hearsay evidence "whether [made] orally or in a document."

provides also that the hearsay evidence be adduced through a witness only after his examination-in-chief.¹⁴ Only the direct oral evidence of the maker of the statement or someone who heard him make it is admissible to prove the facts in it.¹⁵ In determining whether to admit hearsay into evidence and how much weight to attribute to it, the court is entitled to draw reasonable inferences from the circumstances in which it was made, consider whether the statement was made contemporaneously with the occurrence of the stated facts and whether the maker had an incentive to conceal or misrepresent those facts.¹⁶ The challenged statements will be assessed against these legal requirements.

¹⁴ Ibid. at section 47(2)(a) and (b) which provide:

“(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement-

(a) Shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and

(b) Without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except-

- (i) where before that person is called the court allows evidence of the making of the statement to be given on behalf of that party by some other person, or
- (ii) in so far as the court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely effect (sic) the intelligibility of his evidence.”

¹⁵ Ibid. at section 47(4) which states:

“(4) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it:

Provided that if the statement in question was made by a person while giving oral evidence in some other legal proceedings, it may be proved in any manner authorized by the court.”

See also the **East Caribbean Flour Mills Ltd. case at para. [84] per Barrow J.A. (as he then was)** where he acknowledged that the effect of section 47(4) of the Act is to allow for the admission and proof of hearsay evidence “...by the direct oral evidence of the person who made the statement or of a person who heard or otherwise perceived it being made.”

¹⁶ Ibid. at section 51(2) and (3)(a).

[9] I turn now to consider each of the impugned extracts from Ms Goodluck's affidavit to assess whether they satisfy the criteria set out in the Act and applicable rules of court, and whether they should be excluded. The impugned statements are contained in paragraphs 4, 5, 6 and 8. Paragraph 4 recounts a conversation Ms Goodluck allegedly had with her mother, now deceased. Ms Goodluck deposed:

"4. ...while getting ready to go into Kingstown, my mother Virol Marietta Goodluck (deceased 9/8/12) informed me that she met her brother (George Goodluck, my "uncle") going into the mountain and he said to tell me to please come with my biggest son, Clinton Leopold Goodluck, ("Clinton") to his house because he would like to see us."

I note that this statement was made by Ms Goodluck only after her application for declaration of possessory title was challenged by Mr Goodluck. It was not part of her original affidavit filed in October 2012. It recounts an incident which allegedly took place over 30 years ago, by no means contemporaneously with her account. Conceivably, Ms Goodluck might not have anticipated that there would have been objections to her application. This might explain her belated averments regarding these matters. It is an elaborate and realistic account which might actually have taken place. It is Ms Goodluck who reportedly heard the statements by the deceased Virol Goodluck and repeats them here. Ms Virol Goodluck is deceased and it is not possible to have her testify.

[10] It must not go unremarked that too often applications for declaration of possessory title do not provide the details which it appears the framers of the applicable legislation intended should be included in support of such applications. Bare assertions with insufficient details usually accompany the applications. Suffice it to say that this practice is to be frowned upon and discontinued as it could create difficulties for the applicant, not dissimilar to the instant case.

[11] Similarly, in paragraphs 5 and 6 Ms Goodluck is retelling a conversation she had with Mr George Goodluck. It is a firsthand account. There she deposes:

“5. ...While we were there, uncle stated that he was unable to continue cultivating the lands because he was getting down in age and will like to sell us 3-acres of the lands he had at Grummer, Adelphi. I was glad for the offer because my son Clinton was trying to ...
... He said, “it was out of respect for you Vilma helping me to care for my dying wife (Sam’s mother) without paying you a day, I will like you to have three (3) acres of those lands.”

“6. Clinton asked him how much he was selling an acre for and he responded EC\$15,000.00 per acre. Clinton then said to uncle that was a lot. Uncle responded that the land was agriculture land and we will be able to make enough off the land to pay him. At that time, he said he will give the land as a deed of gift: but I will have to make monthly payments directly to him instead of going to a bank and that it is cheaper for us.”

[12] In paragraph 8 is Ms Goodluck recalls a conversation she allegedly had with Mr Parnell Campbell Q.C. Unlike the other accounts, this one involves a person who is alive. The court takes judicial notice of this well-known fact. There Ms Goodluck states:

“8. ...Mr Campbell said that this document looks like a deed of gift and asked how are you going to pay for the land. I said I have already started paying and a down payment in the amount of EC\$2720.00 was made and that my son Clinton can pay \$200.00 per month from his salary. He then asked me for the receipt for the down-payment and proceeded to advise me to purchase a receipt book to record all of the money when a payment is made to uncle.”

[13] All of the impugned statements satisfy the statutory requirement that the proposed witness actually heard the reported speech. They are admissible if Ms Goodluck makes the necessary application under Part 29 of the Civil

Procedure Rules, 2000 and is granted leave to admit them. She has made no such application. The challenged statements are all relevant to the central issue to be decided in the substantive application for a declaration of possessory title. They are deposed to by someone who allegedly heard them uttered by the person who made them. They are accordingly admissible pursuant to section 47 of the Act if leave of the court is granted in accordance with rules of court. I therefore dismiss Samuel Goodluck's application that certain lines in paragraphs 4, 5, 6 and 8 of the Vilma Goodluck's Affidavit be struck out as hearsay and declared inadmissible.

ORDERS

[14] It is accordingly ordered:

1. Samuel Goodluck's application that certain lines in paragraphs 4, 5, 6 and 8 of the Vilma Goodluck's Affidavit be struck out, is dismissed.
2. Samuel Goodluck shall pay costs of \$500.00 to Vilma Goodluck pursuant to CPR Part 65.2(1) (a).

.....
Esco L. Henry
HIGH COURT JUDGE