

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2009/0361

BETWEEN:

RAYMOND BORIEL

Claimant

And

THE ATTORNEY GENERAL

Defendant

Appearances:

Mrs Veronica Barnard for the Claimant

Ms Brender Portland Reynolds for the Defendant

2011: November 10th

2013: April 11th

JUDGMENT

- [1] **BELLE J:** On 24th, July, 1857 Administrator Henry Breen by way of Crown Grant, conveyed to the Heirs of Dominique Maurous title to the Pauline Estate. The boundaries of the Pauline Estate were described in that Grant as North and West by Royne Estate East by Savannes Estate, South by the Bay of Savannes.
- [2] After various sales, on 26th September , 1953 George Stephen Lay sold to Louis Boriel the land described as being bounded North by the Public High Road from Vieux Fort to Micoud, South by the sea, East partly by a dry ravine which separates it from Ravene Augeme and partly by the sea.
- [3] On 18th June, 1986 during the Land Registration and Titling Project (LRTP) Louis Boriel claimed the land described above. He described the boundaries of the land as North by the Castries Highway, South by Royne' Ravine, East by Ravine Seche

and Savannes Bay and West by Savannes Bay. The Adjudicator's record referred to a Deed of Deposit and various Deeds of sale but not to the Crown Grant of, 1857.

- [4] On 30th June, 1996 Joseph Alexander Licensed Land Surveyor surveyed and subdivided the lands and exercised as Queen's Chain, a significant portion of the lands previously thought to be owned by Louis Boriel purchased in 1953 from George Stephen Lay.
- [5] A previous survey of the portion of 16.0 acres eventually purchased by Louis Boriel which was represented in a plan called the Monplaisir Plan M232A of 1908 does not make reference to the Queen's Chain.
- [6] During the Land Adjudication period the property of Louis Boriel was demarcated into parcels 1421B 6 and 1421B 7. Parcel 1421B6 was awarded to him and subsequently subdivided into 1421B227 and 228 which were later donated to Raymond Boriel. At that time parcel 1421B 7 was designated as a portion of the Queen's Chain.
- [7] On 16th December, 1996 Louis Boriel donated to Raymon Boriel Parcels 1421B 227 and 228 comprising 7.76 acres.
- [8] On 9th April 2009 the Claimant filed a Claim Form seeking A Declaration:
 - (a) That parcel 1421B7 is part of "The Lands", namely 1421B227, 228
 - (b) That the adjudicator erroneously designated Parcel 1421B 7 as the Queen's Chain.
 - (c) That the Alexander Plan M1220R be declared null and void.
 - (d) That parcel 1421B 7 be declared the property of the Claimant.
- [9] In the Pre Trial Memorandum filed by the Defendant the Defendant set out the issues as follows:

- Whether the entry in the Land Register of Block and Parcel 1421B7, the Queen's Chain is incorrectly registered as the Crown?
- Whether there was a mistake in the adjudication process which consequently resulted in a mistake in the registration process?
- Whether, the claimant is entitled, as successor, to Block and Parcel No.1421B 7?
- Whether the Land Register with respect to Block and Parcel No. 1421B7 should be rectified?

[10] It was also noted that the parties have agreed that Raymond Boriel is the registered proprietor of two parcels of land registered as Block and Parcel 1421 B 227 and 228

[11] Block and Parcel No. 1421 B 7 is registered as Queens Chain and is bounded by Parcels 1421 B 227 and 228.

[12] The Claimant's counsel's argument is that the Claimant's predecessor in title Mr Louis Boriel purchased the land known as Pauline Estate which included Parcel 1421 B 7 which is now registered as the Queens Chain.

[13] She argues that the land adjudicator in the adjudication process would have been aware of this conveyance and yet in his adjudication purported to have the land mutated and registered as Parcels 1421 B 227 and 228 which excluded that part of the land now registered as 1421 B 7 the Queens Chain. Counsel attributes this decision to the fact that the adjudicator was unaware of the original donation of the Administrator in 1857 to the Heirs of Dominique Maurous of the entire Pauline Estate.

[14] According to Counsel for the Claimant this omission or ignorance of the facts led to the error in the adjudication record and in the registration of the land.

[15] Counsel is also very critical of the conclusions of the Court appointed expert Mr Martyr whom she accuses of arriving at legal conclusions and advocating the position of the Defendant.

[16] Counsel also argues that the court should disregard and deem erroneous the Survey of Licensed Land surveyor Mr Alexander whose survey in 1996 was the first to show the Queens chain being the parcel No. 1421 B 7. She asks the Court to adopt the survey done by Licensed Land Surveyor Mr Monplaisir instead which shows the land sold to Mr Louis Boriel including the Parcel which is now 1421 B7 and deemed the Queens Chain.

[17] What Mrs Bernard Counsel for the Claimant fails to explain are the following:

Firstly why did Louis Boriel fail to provide the adjudicator with the evidence of the extent of Pauline estate to include Parcel 1421 B 7 if it was missing from the records and would the extent of his land not have been pointed out to the relevant surveyor at the time?

Secondly although the court is aware of the Claimant's allegation that the Claimant and his father never had knowledge of the adjudicator's decision until 1996 why was Mr Louis Boriel apparently not interested in the extent of his registered property after the adjudication process and why would he have restricted himself to conveying to the Claimant only that property which was formerly parcel 1421 B 6 and not Parcel 1421 B 7? The answer of course can be that he could only convey that which was registered in his name. But he did not seek any remedy at that time.

[18] It is apposite to note at this stage that section 19 of the Land Adjudication Act provides that:

"When the adjudication record in respect of any adjudication has been completed, the adjudication officer shall sign and date a certificate to that effect and shall give notice of the completion thereof and of the place or places at which the same can be inspected together with the demarcation map."

- [19] It has to be presumed that this notice was given in a timely manner since this is the notice that would trigger any appeal process. The Claimant has not convinced me that it was not sent to his father Louis Boriel who is not now here to speak for himself.
- [20] It also has to be presumed and there has been no argument to the contrary, that the input of all interested parties led the adjudicator to come to the conclusion that he did during the adjudication process. For this reason it would have been very important that the Claimant or his father challenge the adjudicator's decision in a timely manner if either one of them was of the view that an error had been made.
- [21] As Mr Celsius Baptiste Commissioner of Lands pointed out, no-one challenged the findings of the land adjudication officer pursuant to section 24 of the Land Adjudication Act, neither has there been any challenge to the registration process pursuant to section 98 of the Land Registration Act prior to this action. Furthermore there has been no appeal in relation to designating Parcel 1421 B 7 to be the Queens Chain within the requisite 90 days in accordance with section 20 of the Land Adjudication Act.
- [22] In **Louisien v Jacob Privy Council Appeal No 93 of 2007** the Privy Council decided that there can be challenges to the record of the adjudication where there are clear mistakes or errors made on the record at various stages. For example a mistake could be made by staff of the Land Registry in transcribing the record. Secondly the recording officer in the adjudication process could act beyond his powers and alter the record and this altered record would be passed on to the Land Registry for registration purposes. In those or similar circumstances the court can order a rectification of the record pursuant to section 98 of the Land Registration Act to correct the record.
- [23] However, the facts as presented led to the conclusion that the decision of the adjudicator was consistent with the evidence presented to him, which included the fact that the entire Pauline estate included 16 acres. The record shows that in

spite of this he decided that the land of the proprietor Mr Louis Boriel did not include the Queens Chain. If this was a mistake then it was a mistake in the adjudication process based on the facts before the adjudicator, and that is exactly what counsel for the Claimant is arguing. But this would be of no avail to the Claimant in my view.

[24] In **Lousien v Jacob** the Privy Council stated as follows:

*There is a line of jurisprudence on section 98 of the LRA and similar enactments in force in other Caribbean Countries, indicating that 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.*

"A mistake in the registration process" 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."

[25] When Louis Boriel donated the land to his son Raymond Boriel he did not utter any protest about the size of the parcel being donated, he donated Parcels 1421 B 227 and 228 only.

[26] Counsel tries to argue this away by saying in her pleadings at paragraph 9 (vi) and later in her submissions that Louis Boriel neglected to re-establish his title to Parcel 1421B 7: the remainder of his legal right and interest bounded to his property and to which he was rightfully entitled. The sixteen acres of land that he purchased was a combination of Parcels 227, 228 and the remainder (parcel 7).

- [27] I conclude that on a balance of probabilities if Louis Boriel knew of the error which deprived him of his land in 1996 at the time of the donation to Raymond Boriel he would have done something about it.
- [28] The evidence before the court is that Mr Louis Boriel discovered the error when he decided to donate the land to his son.
- [29] In the premises I do not believe he intended to do anything about the alleged error, because he was well aware that the matter had been properly settled in the adjudication process and the disputed parcel had been designated Queens Chain.
- [30] In my view no criticism of the expert's comments which explained the background to the apparent gift of the Queen's Chain land as "temporary permission to use" such land among other things can change the fact that the Claimant and his father are deemed to have been aware of the decision of the adjudicator whose decisions were published at the end of the adjudication. In any event the court is not relying on the expert evidence to make its decision in relation to the facts surrounding the adjudication process.
- [31] Louis Boriel would have been aware that the land being donated to his son in 1996 was consistent with the decision of the adjudicator and that he had not challenged the adjudicator's decision at the time which he should have.
- [32] Consequently I have to conclude that the Claimant's claim for various declarations fails and must be dismissed.
- [33] The court orders the Claimant to pay the Defendant's costs pursuant to part 65 of the CPR 2000.


Francis H V Belle
High Court Judge