

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2008/1112

BETWEEN:

VERONICA GUARDZIK

Claimant/Respondent

And

MIGUEL ENDRUS CLIFFORD

Defendant/Applicant

Appearances:

Mr. Gerard Williams for Claimant

Ms. Carol J. Gedeon Clovis for Defendant

2009: March 27
2010: January 13

JUDGMENT

- [1] GEORGES .J (Ag): In this case legal submissions were filed by both Counsel to enable the Court to arrive at a decision after cross-examination of the parties.
- [2] As I see it the case is relatively straightforward. It consists of a dispute between an aunt and one of her nephews (the defendant) relating to a parcel of land (the Land) situate at Bexon and registered as Block 1043B Parcel 121 measuring 271,245 square feet in area or approximately 6.3acres.
- [3] The undisputed facts are that the land belonged to the Claimant's parents and there are six other siblings.
- [4] On her mother Agnita George's death on 7th March 1995 the Claimant applied for and was granted letters of administration on 9th September 2002 of her mother's estate.

- [5] On the subsequent death of his grandfather Ramson George the husband of Agnita George the defendant in 2007 was granted letters of administration in his estate. He is the son of Cynthia Clifford (née George) one of the Claimant's siblings.
- [6] The evidence reveals and it was not disputed that on 25th March 2004, the Claimant obtained a loan from the Bank of St. Lucia for \$63,000.00 for the construction and operation of a chicken farm and mortgaged the Land for that purpose.
- [7] Alas that turned out to be an ill-started venture for by May 2006 the bank's Recoveries Officer wrote to the Claimant stating that:

On several occasions we have had to write you regarding the unsatisfactory conduct of your account detailed at caption. The situation continues to remain unchanged.

Though we have been quite tolerant, we are just not prepared to allow this situation to continue indefinitely and request that you make immediate arrangements to settle the account by latest June 10th 2006. We take the opportunity to remind you that the installment falls due on the 30th of every month and a penalty of \$50 becomes applicable for late payment. Failure to comply would leave us with no alternative but to institute legal action against you.

- [8] In paragraphs 6 and 7 of her witness statement dated 13th March 2009 the Claimant states that in 2006 she eventually gave up the poultry farm as the expenses in running it was greater than the returns and gave the defendant the poultry farm with the express agreement that he would take over the loan held in her name. Rather the defendant commenced his business of rearing pigs instead and was never able to come through financially for the poultry farm the Claimant averred.
- [9] In his defence the defendant whilst admitting that around August 2006 there was an agreement between the Claimant and himself that he should get a loan and start afresh to pay the Claimant's loan by continuing the chicken farm the loan was in fact never granted by the bank as he would have had to pledge the same property as security which was already encumbered. He could not therefore continue the business. The Claimant was in fact leaving the jurisdiction the defendant revealed and was encouraging him to take over the business. He would as I see it be left holding the bag colloquially speaking.
- [10] The outstanding balance on the loan then stood at \$56,628.00 with interest at \$9,702.00. The defendant estimated that he would have needed around \$60,000.00 to take over the business. When the Claimant left he added there was no livestock only feeders and water trays. It clearly would have been a losing hazard. Contrary to the Claimant's assertion that the income generated by the chicken farm was for the use of the family and upkeep of the estate it was in fact for her own use and benefit the defendant asserted. I believe him. I find as a fact that this was the Claimant's sole venture in which she put the family land at risk and which eventually foundered.

- [11] As a rescue operation the Claimant now wishes to sell a parcel of the land - part of which she claims is her entitlement to a third party but the other six heirs are not agreeable to the proposed sale on the basis that the land ought first to be surveyed and partitioned to ensure that each heir obtains his/her just fair and equitable share.
- [12] In her fixed date claim the Claimant seeks an order against the defendant commanding him to sign an application for Land Development form and all subsequent documents relating to the proposed sale of that portion of land forming part of the Claimant's entitlement only and should he fail or refuse to do so as ordered then the Registrar should be authorized to sign on his behalf.
- [13] As learned Counsel for the Defendant submitted whilst Article 632 of the Civil Code provides that no one can be compelled to remain in undivided ownership a partition may always be demanded. This appears to be the obvious course to be taken in the circumstances and to which the other heirs are amenable. Article 638 provides for valuation of land by experts and other ancillary matters whilst Article 639 provides for sale of the land in order to discharge the liabilities of the succession. Until and unless there is a definable sharing of the estate (i.e. the land) there can be no sale and the land remains undivided.
- [14] I fully agree with Defendant Counsel's submission that there is no provision for sale by one administrator where two exist in order to satisfy a personal debt of that administrator who holds one half of the estate in trust for others.
- [15] In the absence of a survey and partition of the land the Claimant cannot as she purports to do unilaterally and arbitrarily determine her own entitlement to a share of the land to the exclusion of the other heirs which she holds in trust for them.
- [16] In the circumstances the Claimant's case is dismissed with costs in the sum of \$3,000.00



EPHRAIM GEORGES
HIGH COURT JUDGE (Ag.)