

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 535 of 2004

Consolidated with No. 501 of 2005

BETWEEN:

GERSHON ROBERTSON

Claimant

V

1. BALDWIN KING

2. HARIETTE RICHARDSON

Defendants

Appearances:

Mr. E. Robertson for the Claimant

Mr. A. Cummings Q.C. for the Defendants

2008: July 1, 2, and 3;
September 22.

JUDGMENT

[1] **MATTHEW J. (Ag.):** In suit 534 of 2004 between Gershon Robertson and Harriette Richardson the Claimant asks for the following relief:

- (1) A declaration that the Claimant and his predecessors in title are the lawful owners of lots 16, 17, 31, 32 and 33 situated at Little London;
- (2) An order restraining the Defendant from entering upon 5414 square feet of land situated at Little London, the property of the late William Robertson deceased as bequeathed to his grandchildren, their heirs and assigns forever;
- (3) An order declaring that Deed No. 1520 of 2003 is null, void and of no effect;
- (4) An order that the Defendant do forthwith deliver up possession of 5,414 square feet of land situated at Little London and described in the schedule of Deed No. 1520 of 2003 or pay its value being \$27,020.00;

- (5) Damages for trespass; and
- (6) Costs.

[2] In suit 501 of 2005 between Gershon Robertson and Baldwin King, the issues are similar. Here the Claimant asks for the following relief:

- 1. A declaration that the Claimant and his predecessors in title are the lawful owners of lots 16, 17, 31, 32 and 33 situated at Little London;
- 2. An order restraining the Defendant from entering upon the property of the late William Robertson deceased as bequeathed to his grandchildren, their heirs and assigns forever;
- 3. And order declaring that Deed No. 1520 of 2003 is null, void and of no effect;
- 4. An order that the Defendant pay over forthwith to the Claimant the sum of \$126,675.00, being the value of lands unlawfully sold as described in paragraph 18 of the statement of case;
- 5. An order that the Defendant do forthwith deliver up possession of the remaining lands of the estate of William Robertson deceased situated at Little London as recorded in Liber for the year 1857 at pages 497 – 498;
- 6. Damages for trespass; and
- 7. Costs.

[3] Harriette Richardson filed her defence and counterclaim on April 11, 2005. The counterclaim asks for an injunction against the Claimant and damages. Baldwin King filed his defence and counterclaim on November 30, 2006. In his counterclaim he asked for a declaration that he is the legal and bona fide owner of the land in question and costs. A reply and counterclaim filed in suit 534 of 2004 does not carry the matter further. I shall attempt to summarize the pleadings.

[4] In suit 501 of 2005 which may be considered the principal claim; the Claimant claims to be owner of five parcels of land, Lots 16, 17, 31, 32 and 33 situated at Little London.

- [5] The Claimant alleges that his title to the lands is derived from the Will of William Robertson dated January 20, 1856 and a conveyance accompanying the Will. He claims to be the sixth generation from the Deceased, who was his great, great, great, grandfather.
- [6] The Claimant alleged that the Defendant Baldwin King obtained four parcels of land, that is, Lots 16, 17, 31 and 32 by a deed of sale, No. 982 of 1986 from the Executor of Edward Robertson, that is Joseph Crick.
- [7] The Claimant further alleged that King's deed was not derived from the true owner of the lands, the said William Robertson.
- [8] He states that by the Will of Edward Robertson dated September 1, 1947 his wife, Adriana, and his friend, Joseph W. Crick, were the named Executors and in that Will the Testator said that Lots 16, 17, 31 and 32 devolved on him as heir-at-law by the last Will of William Robertson.
- [9] On the basis of the above the Claimant asked for the orders earlier referred to in paragraph 2 of this judgment.
- [10] As I said earlier suit 534/2004 is a similar claim since Baldwin King had sold a portion of his lands to Harriette Richardson.
- [11] Harriette Richardson is a teacher who by virtue of Deed No. 1520 of 2003 bought some of the land from Baldwin King and paying him the sum of \$27,070.00 for it. The Claimant asks against Harriette Richardson the relief referred to in the first paragraph of this judgment.
- [12] In her defence Harriette Richardson denied the Claimant's entitlement to the land under the Will of William Robertson and she stated that by virtue of her deed she was a bona fide purchaser for value without notice.

[13] She said also that her predecessors in title were in long, continuous and undisturbed possession of the land and any claim of the Claimant would be extinguished under the Limitation Act of Saint Vincent and the Grenadines.

[14] Baldwin King in his defence said he was a bona fide and lawful owner of the land. He said Edward Robertson was in long, undisturbed and continuous possession. He further stated that he obtained a good and proper title from the estate of William Robertson deceased.

EVIDENCE:

[15] I heard oral evidence from Gershon Robertson. He called as his only witness Westfield John who had given a witness statement but did not appear at the trial. The application by learned Counsel for the Claimant to treat his statement as evidence was opposed by learned Counsel for the Defendant. As the witness was not available for cross-examination I refuse to take into account his type written statement.

[16] Baldwin King, Harriette Richardson and Jonathan Samuel gave evidence for the defence.

[17] The Registrar of the High Court, Ms. Coleen McDonald, took the testimony of Joseph Crick at Mesopotamia on January 31, 2006 pursuant to an Order of Court dated June 3, 2005. He was cross-examined by Mr. Robertson and re-examined by Mr. Cummings.

[18] Gershon Robertson in his witness statement said he was a builder who lives at Fountain in the State of Saint Vincent and the Grenadines. He said his great, great, great, grandfather; William Robertson, owned several lots at Little London under and by virtue of a deed found in Liber for the year 1857 at pages 497 to 498. The lots were Nos. 16, 17, 31, 32 and 33.

[19] He said his ancestors settled the land upon their children for life and after their deaths to their children and ultimately devising the same to named great, great, grandchildren of

whom he was one. His claims do not indicate that he was acting for anybody else than himself.

- [20] He said William Robertson made a Will dated January 20, 1856 by which he settled his estate to his heirs. The said Will was given effect to by William Gemmel Alves. He said his predecessors in title were always in possession of the said land and are still in possession of same and have never recognized the Defendants as owners of the parcel of land.
- [21] He said the lands were in the occupation of several members of the Robertson family over the last 149 years. These included his great grandfather, Robert Robertson, his grandfather Berthold Robertson, his aunt Tilly Robertson, his father Adolphus Robertson, a relative Westfield John also known as Westfield Robertson, alias Gerico and others.
- [22] He said he noticed Jonathan Samuel was occupying a piece of the land and he heard Baldwin King had bought some and he issued them solicitors letters. He said he saw a copy of a deed which purported to be signed by Joseph Crick as Executor of the Estate of Edward Robertson for lands situated at Little London. He later found out that Baldwin King had sold portions of land to Jonathan Samuel, Harriette Richardson, Roslyn Richardson and Myron and Carolyn Williams.
- [23] He bought action only against Baldwin King and Harriette Richardson. One wonders why he left out Jonathan Samuel, Roslyn Richardson, Myron and Carolyn Williams.
- [24] He was extensively cross-examined. He could not say who the father of Robert Alexander Robertson was. He said he understood what he had said in paragraph 4 of his witness statement to the effect that his ancestors had settled the land upon their children for life.
- [25] He said Edward was great, great, grandson of William Robertson. He agreed Edward died when he was about 5 years old in 1947. He said Edward Albert Robertson is his relative.

- [26] He said it is true Edward Albert Robertson would be entitled to claim a portion of the land. He said a vast number of people would be entitled to a share of the land.
- [27] He said he did not know Mr. Crick was once in charge of the land and he did not accept that. He said he was on the land about two weeks before the hearing. One Jerry Cook, Tilley's son, was on the land all the time. He said if Dr. King sold bananas from the land that was when he was out of the country. He said he was out of the country for 13 to 14 years and he returned in 1995/1996.
- [28] He said he did not know exactly when Tilly Robertson worked the land. He said he got information from Gerico that there were tenants who worked the land.
- [29] He said he had not been able to work out how many members of his family are entitled to the land but he knows he is entitled even though he does not know to what fraction he is entitled.
- [30] He said several of the lots at Little London were developed and sold by Dr. King. He said the Will of Edward Robertson remained secret until he discovered it.
- [31] He denied that he had no claim to the land whatsoever and if he had any claim that has been long extinguished.
- [32] Upon re-examination he said the Will of William Robertson wanted his property to go down the line. He said William's wife Catherine had an interest, the children had an interest and the grandchildren had an interest.
- [33] He said Edward Albert Robertson was not a son of William Robertson and the heir-at-law is the first born son. He reiterated that the lands were in possession of the Robertson family.

- [34] He said he did not have the intention to deprive any of the relatives of their inheritance if he succeeds in this action.
- [35] In answer to the Court the Claimant could not say who among William Robertson's four children was or were the parents of the five grandchildren mentioned in paragraph 2 of the Will. He also reiterated that Robert Alexander Robertson was Edward's father.
- [36] He could not say when Robert Alexander Robertson was in possession of the land or who was in possession of the land in 1900.
- [37] Baldwin King in his witness statement said he had just retired as Professor of Chemistry at Drew University in the United States of America. He said by an indenture dated March 18, 1996 and bearing registration number 982 of 1986 he became the lawful owner of a piece or parcel of land at Little London.
- [38] He said Edward Robertson now deceased was in long, undisturbed, exclusive, absolute and continuous possession of the land which he lawfully obtained.
- [39] He stated that the Claimant never asserted any claim, right, title to and in the land until sale of the same to him. He said the Claimant has never been in possession of the land or never occupied the land momentarily or otherwise. Accordingly his claim, if any, is barred by laches, the Limitation Act and lack of title without notice thereof.
- [40] He further averred that he obtained good and proper title from the Estate of Edward Robertson deceased and is therefore on a sound legal footing to dispose of the land and to pass good and proper title to any purchaser or prospective purchaser.
- [41] Baldwin King gave additional parol evidence. He said he bought 3 acres 2 roods 20 poles of land and obtained a deed signed by Mr. Crick as Executor for Edward Albert Robertson. He said he bought the lands in March of 1991 and grew bananas on it with the help of his nephew, Alford King, called Bangass.

- [42] He said Mr. Crick was in possession of the land when he bought it. He said he developed one acre of the land and sold five lots to various persons.
- [43] Under cross-examination he said he went to Mr. Crick who signed the deed. He said he did not go to Mr. Crick's home with a Justice of the Peace. He said it was not Mr. Crick, but his realtor, who took him to see the land.
- [44] He said he was aware of the deposition of Mr. Crick. The deed was read to Mr. Crick but he did not remember who exactly read it. He said Mr. Crick was in his full senses.
- [45] He said he never saw Gerico on the land but he saw Julia Williams, Lester Davis and Fitzroy Peters working on the land.
- [46] He said his root title was from Edward Albert Robertson and he did not carry out research into the Will of William Robertson but not sure if his solicitors did.
- [47] He said he saw the Will of William Robertson and the deed of conveyance made in cooperation of the Will of Williams. He agreed Edward's name was not mentioned in the Will.
- [48] He said his possession could only be from 1996 and so he could not claim adverse possession since in 2003 the Claimant brought the action.
- [49] He said he made a deed in favour of Harriette Richardson and her deed would depend on his but he did not agree there was a serious flaw in his title.
- [50] In her witness statement Harriette Richardson stated that she is a qualified Assistant Teacher with the Government of Saint Vincent and the Grenadines and that on April 30, 2003 she bought a parcel of land from Baldwin King evidenced by a deed bearing

registration number 1502 of 2003. The land is of the extent of 5,414 square feet and it cost her \$27,000.

[51] She said she paid good and lawful money obtained through a loan from the Government Employees Cooperative Credit Union, Kingstown. She said she regarded herself as a bona fide purchaser for value without note.

[52] She has since built a property on the land which is valued at \$375,000.

[53] In further oral testimony she said she knows nothing about William Robertson or his Will or deed.

[54] Her cross-examination was to a large measure as to the effect that she continued to construct her dwelling house when she was put on notice that there was a dispute over the ownership of the land.

[55] On further cross-examination she said she did not know that the Robertsons owned the land. She did not buy her land directly through Mr. King but through real estate agents.

[56] When she was re-examined she stated that no court of law stopped her from building on the lands.

[57] Jonathan Samuel stated in his witness statement that he is a 42 year old employee of the Central Water and Sewerage Authority. He said he knows Little London since he was about 8 years old.

[58] He said he has been living in Evesham all his life and he knows the Claimant who lives at Fountain. He said he never knew the Claimant had any claim to land at Evesham or had ever seen him at Little London working or occupying any land there.

- [59] He said he regarded himself as a bona fide purchaser for value without notice of a parcel of land at Little London, Evesham, and he is the sole and exclusive owner in possession of that land.
- [60] On further parol evidence he said the size of his land is 4,800 square feet which he purchased from Mr. Baldwin King. He said he knew Joseph Crick was in charge of lands at Little London.
- [61] When he was cross-examined he said Gerico worked the lands about 20 years ago. He said he saw Gerico on the land.
- [62] He said when Gerico was working the land he saw Joseph Crick coming there. He never knew Gerico was a Robertson. He further said Joseph Crick was in charge when Julia Plough was working the land.
- [63] When he was re-examined he said he was almost like a son to Gerico. He said he got the impression from seeing them together that Gerico had to report to Mr. Crick. Gerico never told him he owned the land and as far as he knows Mr. Crick was in charge of the land.
- [64] From his depositions Joseph Crick was born in 1909. He made the deposition on January 21, 2006. He said he got to know the Claimant around two years before that date. He said the Claimant came to him and said he had some lands at Little London, they sold it and he had signed the deed.
- [65] He said Edward Robertson was his friend and he was Edward's Executor. He said in that capacity he signed a deed in favour of Baldwin King, Deed 982 of 1986.
- [66] He said Edward died in 1947 and between 1947 and 1996 Berkley Samuel was in charge of the land. He agreed that it was correct to say Adriana Robertson; wife of Edward was in charge of the lands up to her death in 1969.

- [67] He said he did not know if Gershon Robertson had any connections with the lands. He did not know him ever having control of the lands. He said from the time he became Executor in 1947 when Edward died, nobody ever laid a claim to those lands.
- [68] He said he used to collect rent from those lands but when Berkeley came from Trinidad he took over. He said he collected rent for about 5 years.
- [69] When he was cross-examined he said Berkeley Samuel is the grandson of Edward Robertson. He said he signed a deed for Mr. King but did not receive any money from Mr. King. He said Mr. King and the Justice of the Peace came to him.
- [70] He said he did not know directly the lands of Edward Robertson but he knew Edward had lands there; that he had several plots of land at Little London.
- [71] He did not know William Robertson or Catherine Robertson and did not know if William was a land owner at Little London.

CONCLUSIONS:

- [72] The Claimant is relying on the Will of William Robertson made on January 20, 1856 and a deed of conveyance executed by the Honourable William Gemmel Alves on July 11, 1856 in favour of Catherine Robertson, the widow of William Robertson, her four children and five grandchildren to give him title.
- [73] The Will and Deed state that both Catherine and her four children were to enjoy life interests in the property and afterwards the property was to devolve entirely unto the five grandchildren in equal shares. In his written submissions learned Counsel for the Plaintiff gave a devolution of the estate of the Claimant. He traces the property from one grandson of William Robertson, that is, Robert Robinson. No mention of the interests of Caroline Medica, Charles Robert Sinclair, Williams Sinclair or Louise Ann Robertson who were the other four siblings of Robert Alexander Robertson.

[74] I am not persuaded that the Will of William Robertson and the accompanying deed conferred an interest on the Claimant.

[75] In his written submissions learned Counsel for the Claimant stated –

“Claimant again showed from the Will and Deed of Settlement that there is no documentary evidence to show that the line of William Robertson ever disposed of their land for over 150 years.”

How does Counsel arrive at that conclusion?

[76] At best the Claimant was relying only on a paper title executed 151 years ago. Surely he cannot rely on that to enforce his claim. What is the history of the land during that very long period?

[77] In my judgment Counsel is not correct when he submitted that there was evidence to show continuous possession of the estate of William Robertson from his death down to the last person, Westfield John, otherwise known as Westfield Robertson.

[78] Incidentally is Westfield John a Robertson for the purposes of this case? Jonathan Samuel who regards Westfield as a father does not know him as Westfield Robertson. He knows him as Theophilus John or Gerico. I do not believe Westfield John has any connection to the original owner of the land or to his descendants.

[79] The Claimant under cross-examination said he was 66 years old. That would put his year of birth at 1942. Surely he cannot give evidence of possession of the land from 1856 or 1857 to 1942. I specifically asked him who was in possession of the land in 1900 and he replied that he really did not know. And he is the only witness.

[80] The Claimant stated under cross-examination that he was out of Saint Vincent for about 13 to 14 years and returned about 1995 to 1996 and so cannot say who was in possession of the land then. At any rate he himself was never in possession up to this day. All the

information he got about the land was from Gerico, the same Westfield John or Theophilus John, or Westfield Robertson for convenience.

- [81] Assuming, but not admitting, that Tilley Robertson and Gerico were in possession of the land for a period, does that mean they were in possession for an indefinite number of people, including the Claimant? It is preposterous that a person claiming to be in possession as owner should be able to point to another person or persons and say they were in possession for him without any agreement to that effect. The Claimant seems to be saying once a Robertson is in possession he is in possession as well.
- [82] There is absolutely no evidence in this case that Westfield John was chased off the land by Baldwin King, the purchaser, or his servants and agents. I believe the evidence of Jonathan Samuel who regards Westfield John as a father, that Westfield worked on the land under the control of Joseph Crick.
- [83] I believe Samuel also that he has lived all his life (47 years) at Evesham and that he never knew the Claimant had any claim to land at Evesham or ever saw him anywhere near to Evesham or at Little London.
- [84] I regret not being able to agree with the submissions of learned Counsel for the Claimant with regard to notice or registration. But I would observe that Baldwin King said under cross-examination that he went to see the land with his realtor before he purchased it. He made inquiries and found Julia Williams, Lester Davis and Fitzroy Peters all renting from or under the direction of Mr. Crick.
- [85] As regards the issue of limitation I do not think King is relying on his own long and continuous possession, but rather on that of Edward Albert Robertson.
- [86] Edward Albert Robertson is a couple generations ahead of the Claimant. The Claimant himself said Edward was the son of Robert Alexander Robertson and therefore the brother of the Claimant's grandfather, Berthold Robertson. The Claimant is not in a position to say

Edward Albert was never in possession. When Edward Albert died in 1947 the Claimant would have been just about 5 years old.

[87] Edward Albert Robertson was the great, grandson of William Robertson. The Claimant was the great, great, great, grandson. On September 1, 1947 Edward Albert Robertson made his Will in which he stated that his lands at Little London were numbered 16, 17, 31 and 32.

[88] Whether or not he was heir at law to William Robertson as he said he was in possession of those "worldly possession wherewith it had pleased Almighty God to bless" him with, Edward died possessed of the lands after which possession was traced to his wife Adriana and Joseph W. Crick, his two executors under his Will. By 1996 when Crick executed the conveyance in favour of Baldwin King the paper title of William Robertson would have been long ago vacated.

[89] In my judgment Baldwin King got a valid title and so did Harriette Richardson. It is unnecessary for me to deal with the claim of the Claimant which lacks clarity or his Counsel's submissions that the Court does not concern itself in what proportion the Claimant is entitled.

[90] The Claimant's suits are dismissed and I order him to pay costs to Baldwin King in the amount of \$3,000 and to Harriette Richardson in the amount of \$4,000.

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Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)
(August 11, 2008)