

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 387 OF 2005

BETWEEN:

JANICE LITTLE

Claimant

V

NOREEN COLE

Defendant

Appearances:

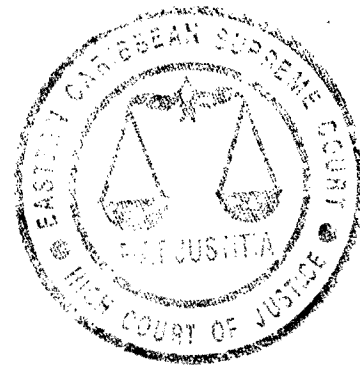
Mr. S.E. Commissiong for the Claimant

Mr. S. Williams for the Defendant

2007: October 23;
November 16.

JUDGMENT

- [1] **MATTHEW J (Ag.):** On August 16, 2005 the Claimant instituted a claim against the Defendant for damages for trespass to land and a declaration that the Defendant is not the owner of lots A and C on a draft unregistered survey plan drawn by David W. Frederick, licensed land surveyor in October, 2004.
- [2] According to the plan of survey Lot A contains 1,568 square feet; Lot B next to it contains 4,301 square feet; and Lot C next to Lot B contains 2,282 square feet. So the extent of the land according to the surveyor is 8,151 square feet.
- [3] In her statement of claim the Claimant conceded that the Defendant may be entitled to Lot B, but according to her it is an entirely different matter with Lots A and C.



- [4] On August 19, 2005 Bruce-Lyle J granted an ex parte injunction against the Defendant restraining her from entering upon the Claimant's land shown as Lots A and C on the unregistered survey plan.
- [5] On August 24, 2005 Lauraine Samuel swore to an affidavit that on August 22, 2005 she served the Defendant with a copy of the injunction order together with other documents. I note that the ex parte order of injunction has no return day as was the old practice, but on September 27 another ex parte order to continue the injunction was granted by Thom J.
- [6] On November 11, 2005 Thom J made an order permitting the Defendant to file a defence on or before December 9, 2005. The Defendant filed a defence and counterclaim on January 12, 2006.
- [7] In her defence the Defendant claimed to be the owner of the entire portion of land and refers to a declaration of possessory title, No. 4168 of 2004, to this effect made by her on November 9, 2004; and in her counterclaim she seeks a declaration that she is the fee simple owner of the said portion of land.
- [8] The Claimant filed a reply and a defence to the counterclaim that do not take the pleadings further except to say that the original owner of the land was Albertha McFee who died intestate on June 20, 1988 and Letters of Administration of her estate were granted to the Claimant by grant No. 212 of 1993.
- [9] She said: "Thus the Claimant is the only person entitled to deal with the legal and beneficial interests in the said land."
- [10] At the trial the Claimant gave evidence and called as her only witness George Edwards. She tendered her witness statement in evidence and was later cross-examined on it.
- [11] In her witness statement the Claimant said that Albertha McFee, the owner of the land in dispute according to her, gave Mary Cole, the grandmother of the Defendant, to occupy a

small portion of the land for her lifetime only and up to the time of Mary's death in 1992 she only occupied the land which now represents Lot B.

- [12] She said Clare Cole never planted anything on the portions of land A and C. Under cross-examination she said the land has no boundaries but she is still able to have an idea of the exact portion of land which the Defendant was occupying.
- [13] She said it was one bit of land before the surveyor divided it into three portions after she showed him what the Defendant occupied. She said Noreen Cole told the surveyor she occupied A, B and C.
- [14] George Edwards aged 82, swore to an affidavit to the effect that Noreen Cole; her mother Clara Cole; and her grandmother Mary Cole; always lived on the portion of land marked B where they planted peas, potatoes, and a couple of banana trees.
- [15] He said Noreen never ventured on Lots A and C until recently when she began to dig a trench around Lots A, B and C, the event which allegedly gave rise to the application for the interlocutory injunction.
- [16] When Edwards was cross-examined he said Mary Cole occupied the land in the 1950's. He said there were three small houses on the land. He said he had been living near the land from the late 1930's.
- [17] He said he did not know what the boundaries of the land were. He did not know the length in feet on one side of the land which the Defendant occupied. He knew the width of the Court Room was about 14 feet but he did not know what was 100 feet. He did not know whether the length of the land Noreen Cole was occupying was 50 feet or 100 feet.
- [18] Noreen Cole was cross-examined on her witness statement made on April 18, 2007. She said the land in dispute was the property of the late William Durrant who was the husband of her great aunt Moriah Cole.

- [19] She stated that she had always been occupying the parcel of land shown on the survey plan as Lots A, B and C.
- [20] Under cross-examination she said she did not know from 1956 onwards Albertha McFee owned all the land. She said her grandmother Mary Cole, lived far from the land in dispute but when her husband died the house was brought nearer the road.
- [21] She said McFee looked after the old people and later made children with her uncle and then the land was put in her name. She said she did not know anything about parcels A, B and C and had been paying the taxes for many years.
- [22] Noreen Cole was supported by her brother, Ernest Cole; and her sister, Stella Ferris. Under cross-examination Ernest Cole said he lived on the land and portion A was used for planting crops as well as part of C. He said his father built a two-bedroomed house on C. He said the entire estate of about 3 ½ acres was owned by Mr. Durrant who died intestate.

CONCLUSIONS:

- [23] The case for the Claimant is that she is the Administrator of the Estate of her grandmother, Albertha McFee, who owned the land. She is saying as regards the portion of land in question that the Defendant has only been occupying portion B. The Defendant's case is that she has been occupying portions A, B and C.
- [24] Neither in her pleadings nor in her evidence has the Claimant said she ever occupied portions A and C. And that accords with her position in her reply and defence to counterclaim that because she is the Administrator she is the only person entitled to deal with the land. She is relying solely on her paper title.
- [25] It means there was a parcel of land of the extent of 8,151 square feet and the Defendant and her predecessors only occupied the middle portion and although no known person

was occupying small portions of land to the right or to the left neither the Defendant nor her predecessors strayed from their original possession. This sounds illogical.

[26] The Claimant brought a 82 year old George Edwards to support her and there I noticed the deficiencies in the practice of witness statements. True there are advantages in that time taken for examination in chief is curtailed.

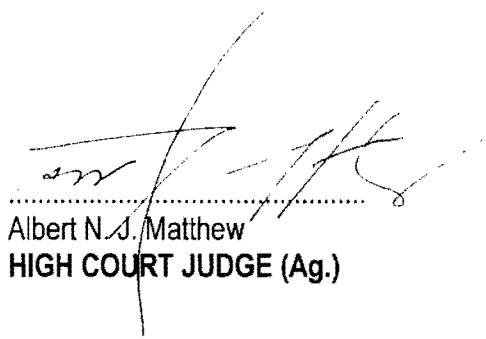
[27] Over the past few months I have seen witness statements which are to the greater extent nothing more than pleadings and arguments prepared by the solicitor. In one case a solicitor's clerk said she had the authority of the client to make the statement. In another high profile case the Junior Lawyer was said to be agent for the witness in preparation of the witness statement.

[28] George Edwards in his witness statement said, "I know as a fact that Clare lived on the area of land shown as Lot B. Noreen lived only on Lot B but never ventured on Lots A and C." But learned Counsel for the Defendant did not hand him the unregistered plan. But this is a man that cannot point out 50 feet or 100 feet. Surely the land has not got written in it A, B and C. I am forced to come to the conclusion that George Edwards did not of his own make that statement with reference to A, B and C on the survey plan. And it was not established that he could read.

[29] Much of the case for the Claimant is taken up with the activities of the Defendant and her mother and grandmother on portion B which the Claimant does not contest.

[30] The Parties to this case may not be blood relatives but they are to some extent close. Mary Cole who died in 1962 was married to a man who was the brother of Moriah Cole. Moriah got married to William Durrant the original owner of the land. After Moriah's death which was before her brother's death William formed an association with Albertha McFee who is the grandmother of the Claimant. As already stated Mary Cole is the mother of Clara Cole who was the mother of the Defendant.

- [31] Defendant knows nothing about the land as parcels A, B and C. In my judgment that is a convenient division at the instance of the Claimant to make a claim to a portion or portions of what was originally one piece of land measuring 8,151 square feet.
- [32] Defendant has one house on parcel B which she built in 1992 and which she puts up for rent. No houses are presently on parcels A and C. The Defendant claims she planted on either side of her house, that is A and C.
- [33] The ex parte injunction does not strengthen Claimant's case. At that preliminary stage the Defendant was never given the chance to present her case.
- [34] According to Ernest Cole his mother's house would be on C and A is land they used to work. Further, his father also built a house on C. The sewerage system is on portion A.
- [35] I believe the Defendant has been in occupation of the entire portion of land, A, B and C for a very long time, and not only on B, and has satisfactorily dispossessed the Claimant with the paper title at a time long before she obtained Letters of Administration.
- [36] The Claimant's suit is dismissed with costs of \$3,000.00 to the Defendant.



Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)