

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO. SLUHCV 2004/0415

BETWEEN:

**ANSONIA LYDIA CHARLES
GUY CHARLES
ROCKFORD CLARKE
PATSY H. CYRIL
ERNEST C. CHARLES
ANSELMA V. CHARLES
BRENDA D. CHARLES**

Claimants

AND

UFITA FRANCIS

Defendant

Appearances:

**Mrs. Wauneen Louis – Harris for the Claimants
Mr. Alfred Alcide for the Defendant**

**2007: July 13, 23, 25
September 20**

JUDGMENT

Mason J

- [1] Part 5 of the Land Adjudication Act 1984 as amended captioned “Objections and Finality” makes provision by sections 20 to 24 for the procedure for appeals by persons aggrieved by any decision of the Land Adjudication Officer. Within certain prescribed times, an appeal must be made to the Land Adjudication Tribunal whose decision can be appealed to the Court of Appeal. In the absence of such appeals, the decision of the Land Adjudication Officer is final (section 23).
- [2] By section 10 of the Land Registration Act 1984 as amended, when an adjudication becomes final under section 23 of the Land Adjudication Act, the Registrar of Lands registers the particulars of the land in a register kept for that purpose. However by section 98 of the Land Registration Act, the Court can order rectification of the register if that registration is found to have been obtained, made or omitted by fraud or mistake.
- [3] Evidence before the Court in the case at bar reveals that on 6th March 1987 a petition was heard by the Land Adjudication Officer concerning the ownership of a parcel of land situate at Marigot in the Quarter of Castries. This petition was brought by Thelma Charles, the now deceased mother of the Claimants against the Defendant. This land is the subject of the present proceedings.
- [4] On 9th March 1987 the Land Adjudication Officer gave a written decision in which he noted that there having been no other claims when the matter first came before the Recording Officer, that officer had awarded the land to the Defendant based on her affidavit. However, he the Adjudication Officer, now having had the benefit of the evidence of the

two (2) parties of the sight of the Deeds of Declaration and of Sale as produced by Thelma Charles, made the following decision:

"Land awarded to Thelma Charles with Absolute Title".

- [5] On 22nd May 1987, Thelma Charles proceeded to have the land duly registered in her name in the Land Registry.
- [6] There is no record of any appeal of the decision of the Land Adjudication Officer nor any rectification of the Land Register.
- [7] As a consequence and also in light of the fact that seventeen (17) years have elapsed between the Land Adjudication Officer's decision and the institution of these proceedings, I am of the opinion that there cannot now be any refutation of the Claimants' ownership of the land.
- [8] I am fortified in this view by the statement of Robotham CJ in the celebrated case from the British Virgin Islands - **Skelton v Skelton (1985) 37 W1R 177:**

"I am of the view that the respondent not having exercised his right to petition the adjudication officer, and not having exercised his right of appeal to the Court of Appeal, nor sought an extension of time within which to appeal, and easily not having done anything for a period of nine (9) years,

cannot now impeach the finding of the adjudication officer by an ingenious action for rectification in the High Court”.

- [9] And similarly by the statement of Byron CJ (ag.), as he then was, in the case of Thelma Crane v David Worrell et al Civil Appeal No. 13 of 1997 which was quoted by Counsel for the Claimants:

“The Land Adjudication Act had unmistakably created a regime to produce ` finality to the adjudication process which would lead to a firm and certain register of lands”

Pleadings

- [10] On 27th May 2004 the Claimants filed a fixed date claim against three (3) Defendants but subsequently discontinued the action against two (2) of them those other two (2) having removed themselves from the disputed land. By this claim, the Claimants are seeking an order for, inter alia, possession of the said land as well as an injunction to restrain the Defendant from remaining on, continuing in occupation of, or in any other manner, occupying, entering upon or committing acts of waste on the land.
- [11] In their Statement of Claim, the Claimants aver that they are the owners of and are thus entitled to possession of the land having derived title by virtue of the will of their mother, Thelma Charles which was executed on 12th April, 1991, duly proved on 19th March 1992,

and registered on 14th August, 1992 following the death of the said Thelma Charles on 10th June, 1991.

[12] The Claimants stated that the Defendant having wrongly entered on the land and taken possession was now a trespasser and continued so to trespass and had in bad faith constructed a wall house on the land without their knowledge, authority or consent.

[13] The Defendant filed her Defence on 13th August 2004 and while admitting the Claimant's ownership and entitlement to possession, then went on to assert that the Claimants were not in possession of the property at the time of her (the Defendant's) entry thereon, that the Claimants did not at that time have any rights to possession of it, that the Defendant and her family had been in possession and had resided on the property for approximately forty eight (48) years.

[14] The Defendant denied the Claimants' allegation of her wrongful entry, possession and trespass and their claim of bad faith on her part in constructing the wall structure.

[15] She claimed to have been given possession around 1956 by someone acting on behalf of the former owner to occupy the property together with her husband provided they paid the property tax and compensate another person for crops that person had planted on the land. The Defendant also stated that she had been promised the land on the death of the owner.

[16] The Defendant also counterclaimed stating that the Claimants were aware at all material times that the Defendant and her family remained on the property and had erected concrete structures even before the Claimants had acquired or inherited the property. She was therefore seeking an order that the Claimants sell her the portion of land she was occupying or alternatively compensate her for the concrete structures erected on the land and the crops which she had growing there.

Evidence

[17] - **by the Claimant**

By order of the court made on 28th October 2004, the first Claimant was appointed to represent the other Claimants and consequently on 30th June 2006, she filed her Witness Statement in which she basically reiterated the contents of the Statement of Claim. She amplified that Statement of Claim by deposing that it was in the 1990's that the Defendant began to construct a house on the property and that her brother, the 2nd Claimant, had warned the Defendant that since the property was not hers (the Defendant's) she had no right to do so, but despite his protestations, the Defendant persisted. In addition, in 2004, a Notice to Quit was served on the Defendant but that she continued in occupation.

[18] Under cross examination the Claimant stated that at the time the land was awarded to her mother she was 16 years old, that when she went to the land in 2004, there were three (3) wooden shacks there but that she was chased by the Defendant. She stated that her godmother, the previous owner of the land raised her in Barbados. She maintained that there had been a financial transaction between her godmother and her mother for the sale and purchase of the land. She stated that when the Defendant's daughter approached

her to purchase the land, she informed her that this was not an option because there were too many parties involved and that she should therefore vacate the land.

[19] On reexamination she reiterated that no one had given permission to the Defendant to occupy the land and that after the land adjudication process, she had been told not to occupy the land.

[20] - **by the Defendant**

Through her Witness Statement, the Defendant declared that she was 84 years old and that she had been living on the land since 1956, that she gave birth to her nine (9) children there and that most of her children also still resided on the land with their own families.

[21] It is to her knowledge that the property belonged to Marie Angie Beatrix who left St. Lucia in 1935 to reside in Barbados. Ms. Beatrix's husband remained in St. Lucia and after an arrangement with another person to occupy the land fell through, the Defendant and her husband were given the same permission to occupy the land on condition that they paid the property taxes and kept the receipts until Ms. Beatrix returned from Barbados at which time arrangements would be made for reimbursement of the taxes. The Defendant stated that they paid the taxes until 1992 when the Tax Department informed them that they did not have to pay any more taxes.

- [22] It is the Defendant's evidence that in 1985 Ms. Thelma Charles informed her that she was now the owner of the land, having bought it from Ms. Beatrix.
- [23] The Defendant also stated that after Thelma Charles died in 1991, her son the second Defendant came to her asking for rent money.
- [24] The Defendant also in her Witness Statement recounted matters which it was decided that given the nature of their content could not be entertained since that would amount to a relitigation of the land adjudication issue of 1987 and therefore contravene the doctrine of res judicata.
- [25] In conclusion the Defendant was of the view that having lived on the land for over fifty (50) years, it would be unfair and unjust for her to be removed, that Thelma Charles had obtained title to the property by deception or fraud, that she (the Defendant) ought to obtain title to her land by prescription or by virtue of adverse possession. In the alternative she ought to be compensated for all of the buildings and crops on the land.
- [26] Under cross examination the Defendant admitted that the land is not hers because she was not the one who bought it but stated that it had been given to her: the land belonged to Ms. Beatrix. She stated that this was the third time that she was going to court about this land. She denied that the adjudication had awarded the land to Thelma Charles. She was of the view that it was she who had won the case. She remained adamant that the land was never awarded to Thelma Charles. Although she conceded that a police officer had brought a notice to her in 2004, she denied that it was a Notice to Quit. She also

denied knowing the second Defendant or that she had ever paid him any rent. She further denied being aware that the land had been registered in the Land Registry or that the land had passed to the Claimants on the death of Thelma Charles because she was of the opinion that Thelma Charles could not pass the land since it was her (the Defendant's) family land. Mr. Beatrix had left her on the land when she went to Barbados and that was why she was still there.

[27] On re examination Counsel for the Defendant attempted to introduce documents which he said the Defendant needed to support her claim of fraud. The Court upheld the objection by Counsel for the Claimant that matters pertaining to fraud ought to have been pleaded and that this was not the appropriate stage at which Counsel for the Defendant could seek to introduce this evidence.

[28] The court was of the opinion that in accordance with Part 10.5 CPR 2000, it was the Defendant's duty to fully set out her case and in keeping with Part 10.5 (6) she had to identify in or annex to the defence any document which it was considered to be necessary to the defence and this had not been done. In addition following Part 10.7 (1) the Defendant could not rely on any allegation or factual argument which had not been set out in the defence but which could have been set out there. The court was not prepared to exercise its discretion given the protracted nature of events leading up to trial. The court also considered Part 29.5 (1) (g) which provides that the Defendant's witness statement had to sufficiently identify any document to which the statement referred. There had been no mention or identification in the Defendant's Witness Statement of any of these documents to which Counsel for the Defendant was now referring or seeking to introduce

for the first time. The Defendant by Part 29.9 (a) had not made any application to amplify her Witness Statement.

Findings

[29] Although the evidence of the Defendant was at times contradictory, I did not form the view that she was being deliberately untruthful. In my opinion she is merely an old lady who is sincerely obdurate in her belief that she is entitled to possession of what she considers “family land” and so has little regard for or adequate appreciation of any legal decision which provides otherwise.

[30] While I do not deem it necessary having regard to my finding with respect to the finality of the adjudication process of 1987. I shall nevertheless briefly consider the Defendant's claim for prescriptive title.

[31] In accordance with Article 2103A of the Civil Code of St. Lucia, it is the Defendant's duty when claiming title by prescription to prove to the satisfaction of the court that she has been in sole and undisputed possession of the property for a period of thirty (30) years.

[32] Coupled with that is the necessity to prove that all the elements of possession as set out in Article 2057 are present:

“For the purpose of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor”

[33] From the evidence as adduced by the Defendant herself and from the events as presented, it is clear that these components of possession have not all been satisfied. For while the Defendant's possession of the land might have been regarded as continuous and public, what peaceableness there was, had been interrupted by the land adjudication proceedings which succeeded in jettisoning the Defendant's claim for prescriptive title. In terms of Article 2105 of the Code, the production of documentary evidence of ownership by Thelma Charles, helped "to establish the defects of the possession which hinder prescription".

[34] Similarly when the Defendant constantly and consistently claimed that the land belonged to her cousin, Ms. Beatrix, who had permitted her to remain there under condition that she pay the property taxes for which she would be eventually reimbursed, she effectively defeated any claim to an unequivocal possession. For by Article 2067 it is provided:

"Those who possess for another, or under acknowledgement that they hold under another, never prescribe the ownership, even by the continuance of their possession after the term fixed"

[35] In the circumstances I find that the Defendant's defence of title by prescription fails as a consequence of which she must be deemed a trespasser on the lands of the Claimants.

[36] In her counterclaim the Defendant is seeking an order for compensation for the concrete structures she has erected on the land and the crops growing thereon.

[37] Article 372 of the Code provides:

“When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor”.

“If they were necessary, the owner of the land cannot have them taken away. He must, in all cases, pay what they cost, even when they no longer exist; except, in the case of bad faith, the compensation of rents issues and profits”

“If they were not necessary, and were made by a possessor in good faith, the owner is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented”.

“If, on the contrary, the possessor were in bad faith, the owner has the option either of keeping them, upon paying what they cost on their actual value, or of permitting such possessor, if the latter can do so with advantage to himself without deteriorating the land, to remove them at his own expense. Otherwise in each case, the improvements belong to the owner, without identification. The owner may, in every case, compel the possessor in bad faith to remove them”

[38] It is the contention of the Claimants that the Defendant acted in bad faith. Article 2066 of the Code provides:

“Good faith is always presumed.

He who alleges bad faith must prove it”.

[39] To support their contention of bad faith, the Claimants averred in their Witness Statements as follows:

(6) In the 1990’s the Defendant began to construct a house on the property and her brother, Guy Charles warned her that the property did not belong to her and she had no right to do so.

(7) The Defendant persisted despite his objections.

(8) The Defendant continue to remain in unlawful occupation of the property.

(11)The Defendant knew and ought to have known that she was never the owner of the said parcel of land and that she has wrongly taken possession of the Property. Despite the decision of the Land Adjudicator and Ms. Charles title to the property, the Defendant remain in unlawful occupation of the property.

(13)The Defendant has occupied the property in bad faith in that despite the decision of the Land Adjudicator in 1987 she has remained in occupation of the property.

[40] This evidence was neither challenged in cross examination nor rebutted by the Defendant and therefore would in the circumstances remain uncontroverted.

[41] Further while by the provision of Article 367 of the Code the Defendant could in March 1987 have been termed a possessor in good faith because she was in possession of the land by:

“virtue of a title the defects of which as well as the happening of the resolatory cause which puts an end to it are unknown”

as the Article continues to say:

“Such good faith cease(d)from the moment that these defects or the resolatory cause (were) made known to (her)”

[42] In other words before the determination of the land adjudication proceedings, the Defendant occupied the land by virtue of her belief that the land was owned by her cousin, Ms. Beatrix. However her occupation “in good faith” ended when the award of the land to Thelma Charles was made known to her, whether or not she accepted that fact.

- [43] I am not satisfied that the Defendant is entitled to compensation, for as submitted by Counsel for the Claimants, the Defendant has led no evidence to justify such an award having merely referred vaguely to buildings and crops without specifying quality or quantity.
- [44] In the absence of evidence to support her claim of unfairness and injustice, the Defendant's alternative prayer for an order for the sale to her of the portion of land she now occupies cannot be granted.
- [45] In the same vein the Claimants prayer for an order for mesne profits and damages for waste cannot be sustained and must also be dismissed. No evidence has been adduced to support these claims.

ORDER

Judgment is hereby entered for the Claimants.

The Claimants are hereby entitled to possession of the disputed lands.

The Defendant is hereby restrained, whether by herself, her servants and/or agents from entering on, remaining on, or continuing in occupation of, or in any other manner from occupying, entering or committing acts of waste on the said land.

Within three (3) months of this Order, the Defendant must at her own expense remove all structures from the said land belonging to the Claimants.

The Defendant will pay to the Claimant prescribed costs in accordance within Part 65.5 CPR 2000.

The counterclaim of the Defendant is hereby dismissed.

SANDRA MASON Q.C.

High Court Judge