

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 845 of 1996

BETWEEN

JEAN BAPTISTE PETIT FRERE aka Jn BAPTISTE
MONTOUTE
FREDERICK LORDE
URSULA MASON

Claimants

and

CATHERINE PAUL

Defendant

Appearances

Mr. P. Straughan for the Claimants
Mr. W. Hinkson for the Defendants

2002: June 4
August 2

JUDGMENT

- [1] **Saunders J:** Catherine Paul is the registered owner with absolute title to a parcel of land described as Block 1250B Parcel 68. She was initially awarded provisional title to the land. By Instrument No. 476 of 1998, while this case was pending, that title was enlarged to absolute pursuant to section 29 of the Land Registration Act No. 12 of 1984.
- [2] Ms. Paul's title to the land was premised upon a claim made before the Land Adjudicator for prescriptive title. The Land Adjudicator had at the time specifically requested from her evidence to substantiate her ownership of the land in question. Ms. Paul therefore

provided the Adjudicator with a sworn affidavit from one, Jn Baptiste Montoute aka Jn Baptiste Petit Frere, confirming her long possession of the land.

- [3] The claimants live on or near the land in question. They never did make any application of their own for prescriptive title although they were aware of the procedure that persons alleging to be owners of land should assert their claim. In the words of Mr. Frederick Lorde, the second claimant,

“I didn't make a claim for this land because I was not thinking about that. I hear they say people must claim their land but it was not in my mind. I never made one but if it is necessary I will do so. Everyone in the family have a claim there”.

- [4] In 1995 Ms. Paul objected to the carrying out of a survey on the land by persons associated with the claimants. The claimants then went to the Land Registry and there discovered that Ms. Paul had been registered as owner of the land on the basis of long possession. The claimants also noticed the supporting affidavit of Jn Baptiste Montoute and they were troubled by what they saw. They were convinced that his affidavit was a forgery. They therefore launched this suit. They are seeking cancellation of Ms. Paul's title on the ground that it was obtained by fraud. They are also seeking rectification of the Register so as to insert their names instead as owners of the land. The pleaded Defence is a denial of the fraud. The Defence further states that the alleged fraud was not material to the decision of the Land Adjudication Officer.

- [5] At the trial the claimants produced a handwriting expert who testified as to the existence of the forgery. He had carried out microscopic examinations of the signatures of Jn Baptiste Montoute and had concluded that the signature on the impugned affidavit could not have been executed by Mr. Montoute. Frankly, it didn't take an expert to convince the court of that fact. Mr. Montoute's signature on a Will executed by him very close to the time that he allegedly swore the affidavit in question bears no resemblance to the signature on the affidavit.

- [6] On the strength of the evidence I must find that the claimants have established the case of fraud that they set out to prove. The question though is, can the court now rectify the Land

Register? Several decided cases in this jurisdiction have made the point that the land adjudication process provides an entire judicial regime, including a comprehensive appeals process, for the ascertainment of legal rights. See: *Skelton vs. Skelton* (1986) 37 W.I.R. 177; *Crane vs. Worrell*, Saint Lucia Civil Appeal No. 13 of 1997; and *Portland et al vs. Joseph*, Saint Lucia Civil Appeal No. 2 of 1992. Litigants are not entitled to ignore this regime and then, years after the fact, invoke the jurisdiction of the High Court to re-litigate what had already been finally decided.

- [7] In these circumstances I have no choice but to dismiss the claims for cancellation and rectification of the Register. In the exercise of my discretion, bearing in mind that the case was fought on the basis of the forgery, I shall order the defendant to pay the costs of the claimant which I fix at \$5,000.00.

Adrian D. Saunders
High Court Judge