

DRAFT ADVANCED COPY

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 58 OF 1997

BETWEEN:

- (1) THE HEIRS OF DOXEY CLAW
- (2) ELIZABETH JN. PIERRE (nee DOXEY)
- (3) STEPHANIE THEODORE (nee DOXEY)
- (4) MAGDELINE CAMILLE

Claimants

and

- (1) ATTORNEY GENERAL
- (2) HEIRS OF EDMUND AFRICAIN represented by
JEROME XAVIER
- (3) LESTER MARTYR (former REGISTRAR OF LANDS)

Defendants

Appearances:

Mr. Kenneth Foster QC and Ms. Margaret Foster for the Claimants.
Mr. Dexter Theodore for the Defendants.

2002: February 07
March 15
March 18
April 08

JUDGMENT

- [1] HARIPRASHAD-CHARLES J: The Claimants and the Defendants owned large portions of lands in the Planna, Dugard area in the Registration Quarter of Micoud. On 1st day of October 1987, the Land Adjudication Tribunal made the following awards (at pages 3 to 4 of the Judgment):

“In regard to the claim by the Heirs of Edmund Africain, (See Sheet 1626B.73). The Tribunal awards to them with absolute title three carres of land in parcel No. 73, and also the remainder of that parcel which was awarded to the Crown with a Provisional Title [Emphasis mine].

Concerning the claim by the Heirs of Mathurine Malzaire, the Adjudicator has written as follows:

The Claim by the Heirs of Mathurine Malzaire Dugard was not convincing. They have not paid land tax, and in my opinion, have not demonstrated that their rights existing in and over the land they are claiming, amount to full ownership.

The Tribunal would agree. Further to this, the survey plan by Rodrigues has shown this area to have been occupied by the Doxey Claws before 1950. The Mathurine Malzaire claim is accordingly rejected.

This area is shown on Sheet No. 1626B as parcel 69. The Tribunal would award it to the Heirs of Doxey Claw with a Provisional Title. The Tribunal would also award to them with Provisional Title the remainder of Parcel No. 1 as shown on Sheets 1625B and 1626B [Emphasis mine].”

- [2] At paragraph 4 of the Statement of Claim, the Claimant alleged that prior to the decision on the Land Adjudication Tribunal, there was one area of land refers to as Parcels 86 and 87 on Plan 1626B, which was awarded to the Crown.
- [3] That subsequent to the decision of the Land Adjudication Tribunal, part of these lands was awarded to the Heirs of Edmund Africain, that is to say, Lot 86 on plan 1626B, provisional title where as the remainder was awarded to the heirs of Doxey Claw with provisional title.
- [4] The Claimants alleged that the Land Registry opened the Register showing Plan 1626B Parcel 87 for Heirs Doxey, whereby the amended Registry Map now erroneously sheweth that instead of Lot No. 86 to be numbered 86, the Registry, in error, numbered the said lot 88 whereby the Claimants are without their lands where all their houses were located from time immemorial.
- [5] The Claimants are seeking a rectification of the Land Register to correct the mistake of Lester Martyr, the then Registrar of Lands.

[6] Section 98(1) states as follows:

“ Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.”

[7] There is no allegation of fraud. The argument of the Claimant is that the Registrar of Lands made errors in rectifying the register as it pertains to the decision of the Land Adjudication Tribunal.

[8] Section 97 of the Land Registration Act 1984 as amended by Act No. 7 of 1986 empowers the Registrar to rectify the register or any instrument presented for registration in the following cases –

(e) upon receipt of any decision of the Land Adjudication Tribunal made under section 20 (3) of the Land Adjudication Act 1984.

[9] On 19th day of January 1989, Mr. Martyr proceeded to rectify the Register. He communicated by letter to Earl Cenac, Licensed Land Surveyor that an inconsistency exists in relation to the numbering of Parcels 86, 87 and 88 as appears on the Registry Map 1626B. In that letter, he stated as follows:

“In order that the Land Register for each of the respective proprietors may refer to the correct parcel as shown on the Registry Map the following changes to the Registry Map 1626B will be effected.

1. The parcel now numbered as 86 will be numbered 88.
2. The parcel now numbered as 87 will be numbered 86.
3. The parcel now numbered as 88 will be numbered 87.

Please be guided accordingly. By copy of this letter Mr. Kenneth Foster is kept informed.”

[10] The Registrar made his decision. The Claimants had the right to appeal if they were dissatisfied. Section 105(1) states as follows:

“The Minister or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Registrar in the prescribed form of his intention to appeal to the Court against the decision, direction, order, determination or award.”

[11] Not having done so, the claim should not be entertained by the Court despite the submission of Mr. Foster for the Claimants that this is the first time that the Defence is raising the issue of jurisdiction. It is therefore my respectful view that this claim should be dismissed.

[12] In the event that I was wrong to come to this conclusion, the Defendants denied that any errors appear in the Land Registry as alleged at paragraph 3 of the Statement of Claim. The Defendants asserted that the decision of the Land Tribunal is truly and accurately reflected in the said Land Register.

[13] Mr. Theodore for No.2 Defendant maintained that the No. 2 Defendant was awarded Parcel No. 1626 B 73 with absolute title and the remainder of that parcel which was previously awarded to the Crown being Parcel 86, with provisional title.

[14] Mr. Foster for the Claimants vociferously challenged the interpretation advanced by the Defendants. The decision of the Tribunal reads:

“In regard to the claim by the Heirs of Edmund Africain, (See Sheet 1626B.73). The Tribunal awards to them with absolute title three carres of land in parcel No. 73, and also the remainder of that parcel which was awarded to the Crown with a Provisional Title.”

[15] Mr. Foster submitted that Parcel 73 was the only parcel awarded to the Claimants. He explained that when the Tribunal spoke of the *remainder of that parcel which was previously awarded to the Crown*, the Tribunal was referring to Parcel 73. I do not agree with Mr. Foster for the following reasons:

- (a) If the Tribunal was referring only to Parcel 73, I think it would have been apposite to specifically say “ The Tribunal awards to them with absolute title Parcel 73”.
- (b) The Adjudicator vested in the name of the Crown the following lands including “all that land falling east of the so called Shillingford Line, claimed by the Heirs of Edmund Africain.” Parcel 69 fell East of the so-called Shillingford Line and that Parcel of land was the subject of the appeal before the Land Adjudication Tribunal. Not Parcel 73. Parcel 73 fell West of the so-called Shillingford Line and was never in dispute.

[16] I agree with Mr. Martyr that prior to the decision of the Land Adjudication Tribunal there was one parcel of land, which was awarded to the Crown and labeled Number 69 on the Registry Map 1626B. I am also in agreement with Mr. Martyr that in accordance with the decision of the Tribunal, part of the area labeled Number 69 on the Registry Map 1626B was awarded to the heirs of Edmund Africain and the remainder thereof to the heirs of Doxey Claw.

[17] From the evidence adduced in Court, I cannot find that the Claimants have satisfied this Court that the Registrar of Lands erred in the rectification of the Land Register. He proffered ample evidence to demonstrate that the decision of the Land Tribunal is accurately reflected in the said land Register. Indeed, he was the most critical witness and he impressed the Court. He was candid and forthright in his testimony to the Court.

[18] On the whole, I find the arguments advanced by Mr. Theodore for the second-named Defendant and Mr. Cox for the Registrar of Lands represented by the Attorney General to be more compelling. Indeed, for much of the hearing I was of the view that the Claimant's case, although fully in accord with the merits as I see them, could not be sustained as they could not prove that Mr. Martyr erred in the rectification of the Land Register. In short, the Claimants could not prove mistake as alleged.

- [19] As earlier indicated, I am of the opinion that the Court has no jurisdiction to entertain such proceedings since the Claimants failed to appeal against the Registrar's decision within the 30 days fixed by statute. In fact, up to this very day, the Claimants have not submitted an appeal.
- [20] Accordingly, the Claim is dismissed with costs to the Defendants of \$15,000.00 to each Defendant to be paid not later than 31st day of July 2002.
- [21] Lastly, I would like to commend the lawyers for their sterling presentation and immeasurable assistance to this Court. I am indeed grateful to Mr. Lester Martyr, former Registrar of Lands who availed himself to the Court on very short notice. His in depth knowledge of the practice and procedure involved in the rectification process was refreshing.

INDRA HARIPRASHAD-CHARLES
High Court Judge