

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. 189 of 1994

BETWEEN:

SYDNEY BUTCHER

Plaintiff

and

LAURENCE HUNTE

Defendant

Mr. L. Williams for the Plaintiff
Miss C. Lewis for the Defendant

1996: June 5 and 19

J U D G M E N T

MATTHEW J. (In Chambers).

On March 17, 1994 the Plaintiff filed a writ of summons indorsed with statement of claim asking from the Defendant possession of a parcel of land at City Gate in the Quarter of Castries and other relief.

The Defendant entered appearance on November 23, 1994 after notice of the writ was ordered to be published in the local newspaper.

On January 30, 1995 the Defendant filed a defence and counterclaim.

The next document filed in the proceedings was a summons on March 18, 1996 by the Plaintiff asking for an order to file a reply and a defence to the counterclaim.

The summons came up for hearing on June 5, 1996. It was supported by an affidavit which stated that the Plaintiff was unable to meet his solicitor to give him the necessary instructions owing to

BUTCHER, SYDNEY
LAURENCE HUNTE

illness and a pressing family problem in Canada which took him out of Saint Lucia in 1995.

Learned Counsel for the Defendant opposed the application and relying on the provisions of Order 34 Rule 11 (1) (a) she submitted that the matter be deemed abandoned and incapable of being revived.

Order 34 Rule 11(1) (a) is as follows:

"A cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of the request for hearing or consent to judgment or the obtaining of judgment -

(a) any party has failed to take any proceeding or file any document therein for one year from the date of the last proceeding had or the filing of the last document therein."

In this case before the summons filed on March 18, 1996 the last document filed, the defence and counterclaim, was on January 30, 1995. The intervening period was close to 14 months.

The Judicial Committee of the Privy Council on May 22, 1996 upheld the decision of the Court of Appeal on the interpretation of this rule in the case LEWIS v. ST. HILLAIRE and BAPTISTE Civil Appeal No. 21 of 1993.

The Plaintiff's application is dismissed with costs of \$250.00 to the Defendant.

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A.N.J. MATTHEW
Puisne Judge