

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2009/0852

BETWEEN:

CONRAD CHARLES

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Winston Hinkson and Mrs. Cynthia Hinkson Oulah for the Claimant
Ms. Jan Drysdale and Ms Brender Portland Reynolds for the Defendant

2010: 15th December

2012: 19th January

JUDGEMENT

- [1] **BELLE J:** On October 15th 2009, the Claimant filed a Fixed Date Claim claiming against the Defendant, The Attorney General, lands devised to the Claimant, his sister Audrey Charles and brother Elton Charles under the Last Will and Testament of Joseph Charles their father, and title to which lands were wrongfully conveyed or transferred to the Government of Saint Lucia by Deed of Transfer executed on 3rd October, 1991 before Tyrone Chong Notary Royal and registered on the 18th day of October, 1991 in the Saint Lucia Land Registry as Instrument No. 4532 of 1991.
- [2] In his Statement of Claim, the Claimant states that his title to the lands claimed (i.e. 2 carres from Block 1655B Parcel 11) of the Fayole Estate derives from a long succession of ancestral ownership ending with Joseph Charles who left a Last Will and Testament by which he named his two sons Conrad Charles and Elton Charles and his daughter Audrey Charles as beneficiaries.

- [3] According to the claim, the Claimant's title to land devised to Clement Alexander, son of Alexander Boyer fell to be determined by JMF White Adjudicator under the Land Adjudication Act No.11 of 1984. Although armed with the knowledge that two (2) carres of Block 1655B Parcel 11 had been devised to him the Adjudicator caused the land to be conveyed to the Crown.
- [4] The Claimant claimed that the Adjudicator's finding that it was realistic to presume that Eloi Emmanuel Clement son of Alexander Boyer and Mary Devote were all dead and further, that any issue has had no connection with the land over the last 30 years, was incorrect.
- [5] The Claimant believed that this decision was a mistake and it lead to the vesting of the land in question to the Crown by Deed of Partition executed as previously stated.
- [6] The Claimant was of the view that the Adjudicator failed to address his mind to the authority granted to him under Section 9 (1) of the Land Adjudication Act which empowers the Adjudication officer in execution of his discretion can proceed as if a claim had been made, even though a claim had not been made by the land owner. Neither did the Adjudicator have any regard to Section 17 of the Land Adjudication Act despite the existence of the Last Will and Testament of Flavien Joseph which clearly states:

"I give and bequeath of my undivided half share on the remainder of the said Fayole Estate... two carres to Alexander Boyer's son called Clement."

Based on this claim the Claimant prayed for:

- (a) *"Improbation of Deed of Partition No. 4532/91 between the Government of Saint Lucia and Hilda Joseph et al or alternatively a partial improbation of the Deed of partition affecting only Block 1655B parcel 11*
- (b) *Rectification of the Land Register by vesting Parcel 11 in the Claimant with absolute title or alternatively an order permitting the Claimant to apply for a grant of Letters of Administration with Will annexed of the succession of Joseph Charles.*
- (c) *Damages for loss of economic opportunity including loss of Income, Costs.*

- [7] The Defendant's response was in terms that it denied each and every allegation made and contained in the Claimant's Statement of Claim. The Defendant claimed no knowledge of the chain of succession which led to the Claimant's alleged title.
- [8] The Defendant's position was that the Land Registration and Titling project was established to ensure that inter alia lands in the island were properly registered. The process was highly publicized and all persons having a claim to any property were advised to submit their claims to be determined before an Adjudicator.
- [9] In relation to this claim, the Defendant's defence was that during the 1984 to 1986, six persons made a claim for ownership of part or all of the Fayole Estate. Neither the Claimant nor any other person representing the Claimant or the estate of Clement Alexander made a claim during this process for a share or interest in Fayole Estate.
- [10] The Defendant stated that the Adjudicator was aware of the "unprobated" Last Will and Testament of Flavien Joseph executed 31st August 1907 which was considered before a decision was arrived at regarding the ownership of Fayole Estate was rendered.
- [11] The Defendant explained as follows:
- "Due to the number of claims a dispute hearing to determine ownership of Fayole Estate was convened on 6th February, 1986. Based on all the testimony and the documentary evidence submitted a decision was on the 10th day of February, 1986 rendered in the matter.*
- The Adjudication Record which recorded the decision in the matter was completed on 25th February 1986. The Defendant therefore contends that the Claimant ought to have appealed the decision within 90 days in accordance with the statutory provisions of the Land Adjudication Act Cap. 5.06."*
- [12] The essence of the Defendant's defence was that there was an absence of any indication that there were any persons capable of being entitled to the property upon the succession of Alexander Boyer, that the Adjudicator was entitled to rule in accordance with the decision rendered. The decision of the Adjudicator was no longer subject to appeal.

- [13] The Defendant ought to have pursued the matter in accordance with Section 24 of the Land Adjudication Act Cap.5.06 and should have taken the matter to the Court of Appeal pursuant to that Section of the Act, the Defendant argued.
- [14] Pursuant to these pleadings the Defendant denied that the Claimant suffered any loss and damage or is entitled to any relief claimed. Secondly, the Defendant contended these proceedings are not the correct process for improbatng the Deed of Partition or any authentic writings as prayed.
- [15] At trial Conrad Charles was the only witness since the other witnesses who had signed witness statements did not turn up at trial to be cross-examined on their witness statements. Their evidence was therefore struck out.
- [16] In his evidence in chief, Conrad Charles stated that he did not know of the Last Will and Testament left by Flavien Joseph under which Clement Alexander Boyer's son was devised 2 carres of land from Foyale Estate.
- [17] According to Conrad Charles, Flavien Joseph's Last Will and Testament was executed before Duncan Fergusson Notary Royal on 7th March, 1907 long before his birth. He was not aware of any of the contents of the said Will and only came to know of the land left to Clement in the year 2001 when he wrote to the Honourable Prime Minister and Members of Cabinet a letter in the following terms:

"Dear Sirs,

I, Conrad Charles a fisherman of Gros Islet, am the Executor and residuary Legatee of my father Joseph Charles, who died on 27th February, 1977. At the date of his death, my father was entitled to property owned by his lawful sister Bernadette Alexander nee Charles, who died in testate with no issue.

Bernadette Alexander nee Charles was the wife of Clement Alexander who by Will inherited from the Testator that part of Fayole Estate in the Quarter of Gros Islet registered as Parcel Number 1655B 11.

I am the sole heir-at-law and Legal Representative of Joseph Charles whose estate comprises the said property. I have attached the relevant documents demonstrating my legal entitlement to the succession of Joseph Charles.

Further during the Registration Titling Project, I therefore failed to put forward a claim for title to the said property. However I am seeking to rectify that by now requesting the Honourable House to consider my claim so that the title is transferred to myself and my family.

Enclosed you will find the relevant documents.

I am looking forward to your prompt consideration of this matter.

Thank you much for your consideration.

I was not aware that my father would have been entitled to the property.

Dated this 30th day of April, 2010."

- [18] The Defendant's witness was Celsus Baptiste, the Commissioner of Crown Lands. He gave evidence that it is his responsibility to be aware of all property which has been vested in the Crown and to manage those properties.
- [19] The Commissioner of Crown Lands said that he had an opportunity to research the root of title to the property and noted the execution of the Deed of Partition before Tyrone Donovan Chong, Notary Royal and registered in the Land Registry of Saint Lucia as Instrument No. 4532/91 whereby Block and Parcel No. 1655B 11 was partitioned to the Crown, Thomas Louis, Cyril Devaux, Hilda Joseph, Nora Devaux and Unitha Avetis.
- [20] It was this Deed of Partition which formalized the decision of the Adjudicator consequent on a dispute hearing which was conducted on the 6th of February, 1986.
- [21] The witness reviewed the known history of the land and stated that this ended in the following claims:-
- *On the 12th December 1984, Cyril Devaux claims 6 carres of the Fayoles Estate.*
 - *On the 12th December 1984, Nora Devaux claimed 20 $\frac{3}{4}$ carres of the Fayole Estate.*
 - *On the 23rd January 1985 and 30th April 1985 Hilda Joseph claims for 40 carres and 41 $\frac{1}{2}$ carres of the Fayole Estate.*

- *On the 6th April 1985, Thomas Louis claimed 6 carres of the Fayole Estate*
- *On the 29th May 1985, Raoul Daniel claimed 2 carres of the Fayole Estate on the basis of long possession*
- *On the 5th February 1986, Unitha Joseph makes a claim for 3/16 share of the Fayole Estate.*

[22] The Commissioner of Lands later confirmed that no one was capable of inheriting the property pursuant to the adjudication process. The result of this was that no one was capable of inheriting the property and the property devolved to the Crown. This entitled the Crown to participate in the Deed of Partition previously identified. In the circumstances the Adjudicator did not wrongly convey the property to the Crown.

[23] The Commissioner stated that the claims submitted do not indicate that any claims were made by Clement Alexander or any other person representing Clement Alexander or his estate.

Arguments

[24] In support of the Claimant's case, Mr. Hinkson argued that the Commissioner should consider the importance of Section 19 of the Crown Lands Act. This section according to Mr. Hinkson requires that he step cautiously. Indeed the Crown should not deprive people of property which belongs to them.

[25] Mr. Hinkson argued that the Will speaks from the death of the testator. Section 19 is there to protect ownership of persons whose land has fallen into the hands of the Crown. Where there is a serious deprivation of people's right to land a tribunal should tread cautiously.

[26] Ms. Brender Portland Reynolds on the behalf of the Crown argued that in relation to the first relief claimed namely improbation, there is a special procedure to do this and the procedure was not followed. I consider this submission to be correct in law.

[27] As far as rectification of the register is concerned this could only take place where fraud or mistake was proved. In this case the facts show that the Claimant failed to

appeal against the decision of the Adjudicator. He had ninety (90) days to appeal and instead came with a High Court Claim twenty-three (23) years later.

[28] With regard to the Will of Joseph Charles, the Claimant had not proved that Joseph Charles was dead. He was free to proceed to apply or obtain Letters of Administration with the Will annexed. But this was not yet done.

[29] Conrad Charles had also failed to show that Joseph Charles was entitled to the estate of Bernadette Charles since the Letters of Administration speaks to an heir.

[30] Counsel was of the view that the authority cited in Suit No. 432B/1984, **The Attorney General v Josephine Feisal** was in the Defendant's favour. I agree with this conclusion because the authority seems to re-enforce the view that the adjudication process was the best time to make claims for unsettled land. It also demonstrates the utility of the Crown Proceedings Section 19 Procedure.

[31] As far as damages were concerned there was no loss or damages or loss of opportunity proved.

[32] Mr. Hinkson rebutted only that James Daniel was denied Letters of Administration. He therefore was not the alleged heir.

Conclusions

[33] The significant aspects of these arguments are firstly that the Claimant has ignored due process but now wants the Court to afford him special treatment of due process against the Crown which obtained the ownership of the disputed land by due process in the first place. In my view to go that route one would have to have compelling evidence of fraud or mistake. See Section 98 of the Land Registration Act. However in this case there is evidence of neither.

[34] The Claimant failed to prove his entitlement at the time of the Adjudication exercise and failed to do so at trial. There is no evidence of any mistake or fraud.

[35] As far as the facts are concerned Conrad Charles would have had to have title at the time of the adjudication or have been able to show such a connection to the land by way of succession or by way of prescription in order to be adjudicated the rightful owner. But he has proved none of these things.

[36] Conrad Charles also stated that he was entitled to obtain Letters of Administration of the estate of Joseph Charles or that Joseph Charles was entitled to Letters of Administration of the Estate of Bernadette Charles. But no Letters of Administration have been granted to him.

[37] Yet in spite of this, the Commissioner of Lands is being asked to step cautiously and not deprive Mr. Charles of his land. I agree with the Commissioner of Lands that there is no need to do so.

[38] Section 19 of the Crown Lands Act states:

"When any land is unoccupied or occupied by a person who appears to the Commissioner to have no title, the Commissioner shall make an affidavit that such land is unoccupied, or is occupied by a person who, to the best of his or her knowledge and belief, has no title thereto, and the Attorney General may, on such affidavit apply by Petition to the High Court, or to the Judge, for a summons to all persons claiming an interest in such land to show cause why such land should not be declared to be the property of the Crown."

[39] This section seems to be nothing more than a repetition of the Adjudication process. But Section 23 of the Adjudication Act makes the adjudication final ninety (90) days after the process is completed. The Claimant therefore can no longer appeal.

[40] "Improbation" as has been argued cannot be approached the way the Claimant proceeded. The process set out in the Code of Civil Procedure has not been followed.

[41] Finally the process by which a person proves entitlement to land by Succession has not been adhered to by the Claimant and he cannot therefore hope to succeed by a short cut in a coherent and fair system of justice.

[42] Accordingly the Claimant's Claim is dismissed and costs are awarded to the Defendant pursuant to Part 65 of the CPR 2000.

[43] Mr Charles is free to apply for Letters of Administration of the Estate of Joseph Charles with the Will Annexed.

Francis H V Belle
High Court Judge