



[2016] JMSC Civ. 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013HCV05879

BETWEEN	EDGAR NATHANIEL PLUMMER	CLAIMANT
AND	THE REGISTRAR OF TITLES	DEFENDANT

IN CHAMBERS

Miss Janice Shim instructed by Shellie Leon Attorney-at-Law for the Claimant.

Miss Monique Harrison instructed by the Director of State Proceedings for the Defendant

Heard: 29th September 2015 and 21st January 2016

Striking out statement of case - CPR Rule 26.3(1) (c) - Registration of Land - Application to Correct Entry on Certificate of title - Registration of Titles Act sections 42, 158 and 160 - Whether Registrar of Titles Properly sued.

BERTRAM-LINTON (Ag.)

The Claim

[1] The subject of this claim is property registered at Volume 955 Folio 413; it is located in Denbigh in the parish of Clarendon and the face of the title reveals that it is known as lot 15 and is owned by “Edgar Nathaniel Plummer of Four Paths Clarendon, Mechanic and Eva his wife.” The claimant says he is the person referred to on the title but he was never married to anyone named Eva. His deceased father was the person who caused the registration of the transaction on his behalf in March 1962 while he, Edgar lived in the United Kingdom and

sent the money to finance the purchase. He asserts that the inclusion of the name Eva as his wife is a mistake which resulted from the antiquated method that was used in the 1960s to carry out transfers of land. And possibly his father's misconception as to his intention.

[2] The claim was subsequently served on the named defendant who has applied to have it struck out against the defendant, since they say it discloses no reasonable ground for bringing the claim. It is also the submission of counsel for the defendant that in any event the Registrar of Titles may be directed by the courts to take corrective action if the claimant is successful and is immune from this type of action based on Sections 158 and 160 of the Registration of Titles Act.

[3] In my adjudication of the matter I have found that it is necessary to consider the defendant's application first although it was made subsequent to the claimant's.

The Law

[4] Registration of Titles Act

Section 158 (2)(b)

(2) In any proceeding at law or equity in relation to land under the operation of this Act the court or a Judge may, upon such notice, if any, as the circumstances of the case may require, make an order directing the Registrar-

b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge.

Section 160

The Registrar shall not, nor shall the Referee or any person acting under the authority of either of them, be liable to any action, suit or proceeding, for or in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the power of this Act.

Issue 1: Whether the Defendant's application should be granted

[5] The Defendant on the 12th day of January made an application by way of a Notice of Application for Court Orders that the Fixed Date Claim Form and

Affidavit be struck out pursuant to rule 26.3(1) (c) on the grounds that the Registrar of Titles is immune from the Claim pursuant to 160 of the Registration of Titles Act having regards to the fact that the affidavit contains no allegations of fraud against the defendant. The affidavit in of Cheriese Walcott is filed in support of it on the 15th January, 2015. Secondly the counsel who appears for and on behalf of the Registrar of titles says that the remedies being sought by the claimant may be achieved without the Registrar being made a party to the claim.

Civil Procedure Rules

[6] Sanctions- striking out statement of case

Rule 26.3

(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -

(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;

(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or

(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or

In **Sebol Limited and Selective Homes v Ken Tomlinson et al** SCCA No.115 of 2007 delivered 12th December 2008, the court of appeal affirmed the principles that an action may be struck out pursuant to Rule 26.3 (1) (c)

“if it can be tried without the person who wishes it to be struck out being a party to the action.” (Para 17)

“...before a claim can be struck out it must clearly be obvious that no reasonable cause of action is disclosed.” (Para 27)

“The focus of the new rules is to deal with matters expeditiously and to save costs and time. If there are no reasonable grounds for bringing the action then the court ought to strike it out...” (Para 28)

[7] The case of **The Registrar of Titles v Melfitz Limited and Keith Donald Reid** SCCA is also helpful to us in the instant matter as it enunciates that where the remedies sought are declarations, injunctions, cancellation of certificate and re transfer of land, there is no necessity or requirement for the Registrar to be made a party to the action.

[8] The claimant is seeking to correct what he describes as a mistake of fact that is recorded on the title for the premises, and no allegation of wrongdoing is made against the Registrar of Titles or any other person in the claim. It is based on the foregoing then that I find that it was not necessary to name The Registrar of Titles as a defendant in the matter. It is certainly a practical consideration however that the matter could not have proceeded without the Registrar having been served with notice of the proceedings; it was not necessary though for the Registrar to be named as a defendant and ought to be removed as such. I order then that the Registrar of Titles be removed as the defendants in the action but the matter proceed to be heard as to the declarations sought by the claimant.

ISSUE 2

[9] **Whether the claimant's application should be considered and/or granted.**

Based on the assertion in **Sebol** that a matter could be struck as it relates to a party and still be determined I will go on to look at the substantive claim and to see if there is any basis for the granting of the application. The claimant could have simply come to the court to seek the declarations claimed in the fixed date claim form.

[10] The Civil Procedure Rules Rule 26.9 gives the court the power to ratify proceedings where the proper procedure or step may not have been taken.

CPR 26.9

[11] General power of the court to rectify matters where there has been a procedural error.

- (1) This rule applies where the consequence of a failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction or court order.*
- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.*
- (3) Where there has been an error of procedure or failure to comply with any rule, practice direction, court order or direction, the court may make an order to put matters right.*
- (4) The court may make such an order without the application by a party.*

[12] I find then that even though the Registrar of Titles can be struck out as a defendant it would make no sense or be in keeping with the overriding objective that the claimant should be sent back to file the matter in another format. I therefore invoke the rule and order that the matter should proceed.

[13] The claimant application is supported by affidavits sworn by him and a copy of his marriage certificate showing his marriage to one Inez Adassa Parkes on the 14th March 1959. He asserts that when the transfer was done he was in that marriage. The document which was filed to effect the transfer is attached to the affidavit filed in support of the defendant's application. It was executed on the 8th March 1962 by the Transferor Lascelles Lawson whose signature was witnessed by someone expressed to be Solicitor John McFarlane. There does not appear to have been a need for the transferee(s) to sign the document at that time, based on the system that existed, but the recital in the document clearly expresses that "Eva" his wife was one of the transferees. There is no independent evidence of the events that led to the names being recorded on the title as the claimant says, his father and the solicitor are both deceased.

[14] The claimant says he has been in possession of the land and the title to it since the transaction was completed some 54 years ago. Counsel says No one has been identified as Eva. No one has come forward in all these years to challenge

the claimant's assertion. If such a person existed, she would know about the land and would want to realize her share.

[15] I find then that it was very likely a mistake on the part of the deceased father of the claimant. The claimant got married to Adassa in March 1959, he says they subsequently divorced some several years later and he has not kept in touch with her. There is no evidence of when that divorce took place as the claimant who is an elderly man says he cannot recall that detail. In any event her name is not on the title and he would have had to have been divorced and remarried by March 1962 to Eva when this transfer took place. This is not impossible certainly but I consider it in the circumstances to have been improbable as I accept that he was married for quite a lengthy period before the marriage to Adassa ended.

[16] I accept that the registration was a mistake of fact made by the deceased father of the claimant and that the claimant is entitled to be registered as sole proprietor of the property in question.

[17] The orders are as follows:

1. The Registrar of titles is removed as a defendant and the claim against it struck out consequent upon the fact that there was no cause of action against it disclosed.
2. The claimant's application is granted as prayed in terms of paragraphs 1 and 2 of application filed on 29th of October, 2013.
3. Formal order is to be filed and served.