

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Judgment Book

IN MISCELLANEOUS

SUIT NO. M161/2002

BETWEEN WAYNEANN DEVELOPERS LTD APPLICANT
AND THE REGISTRAR OF TITLES 1ST RESPONDENT
AND GEORGE BROWN (sued in his
 capacity as Referee of Titles) 2ND RESPONDENT

Warren Clark Cousins for Applicant.

Mrs. Simone Mayhew instructed by Director of State Proceedings for the 1st and 2nd Respondents.

Heard on 14th January, 6th February 2003 and 21st April 2004

Campbell, J.

On the 26th August 1999 Wayneann Developers Ltd. applied to bring land under the Registration of Titles Act. The Referees of Titles response stated that the unimproved value of the land was unacceptable and requested an appraisal by a licensed Valuer, which should include all buildings and other improvements. Additionally, the Referee requested that a statutory declaration should support the valuation. In compliance, an appraisal was forwarded on the 12th May 2000. The applicant's papers were returned and instructions given that the valuation "should reflect the market values of the respective lots numbered 1-7. In response, the valuers forwarded their appraisal of the open market value of lots 1-6, 8 & 9 plus

lot 7 with house), which in their opinion was \$25,000,000.00. Based on this appraisal, the Registrar assessed an additional fee of \$160,000.00 and the Stamp Collector was informed to up stamp the instrument of application for the new value of \$25,000,000.

In response to this further assessment for fees payable, the applicant purported to assess the fees payable based on his determination of the aggregate value of lots 1-7 and concluded that the fee payable was \$82,500.00, and that the applicant having exceeded that amount "no further sum is payable at this time".

The Referee of Titles was dissatisfied with this approach and directed compliance with the Referee's earlier direction that appraisal be done on lots 1-7 only. Faced with the insistence of the Referee the applicant submitted a supplemental Declaration of value for lots 1-6 and 7(EX.B) and lots 8&9 (ex. a) in the amounts of \$6,700,000.00 and \$5,350,000.00 respectively.

This supplemental information was not satisfactory to the Referee who insisted on an exclusive assessment of Lots 1-7. The Referee subsequently returned the documentation to the Registrar of Titles for valuation by the Commissioner of Lands. The certificate of the commissioner of Land Valuations for lots 1-7, totaled \$3.6m.

On receipt of this valuation, the applicant in his letter claimed that "as the applicant has already paid fees based on a higher value it appears no further fees

are payable." The Referee of Titles was equally obstinate, returning the papers stating resubmission should await amendment and "payment of the additional fees assessed ". The next salvo was that fired by the applicant asking to be advised what was the reason the application has not been approved. On the 6th November 2002, the applicant renewed his request for approval of the application. The applicant filed an Originating Summons seeking, inter alia

A Declaration that the additional fee of one hundred and sixty thousand dollars imposed on the Applicant on the 25th day of October 2000 is wrong in law and null and void.

On a Preliminary Point, Counsel for the Respondent argued that the application was premature and was not in conformity with S156 of The Registration of Titles Act. It was submitted that the Act requires that an applicant who is dissatisfied with the decision of the Registrar of Titles or a recommendation from a Referee refusing any application must first -

- (I) request grounds of refusal if decision is a refusal
- (11) where grounds have been received then - the owner/applicant should summons the Referee/Registrar before the Court to substantiate his decision.

In addition, when the application is being made, there are fees payable, which in this case have not been paid.

In addition, the process of summoning the Registrar/Referee is defective, in that S156 requires the Summons to be under the hand of a Judge, this has not been done in this case.

There is some concession by Crown Counsel that The Referee of Titles letter dated 11th November 2002 may contain some grounds of refusal. Crown Counsel however contends that it is the applicant who ought to apply for the grounds and that the proper construction is that the reasons ought to be directed to the applicant.

Mr. Cousins, on the other contends that the Respondents cannot now properly argue that the Applicant's summons is premature as a result of non-compliance with S156 of the Act. For reason that the Respondents have either waived any objections to non-compliance to the Act or are estopped from so doing.

He further submits that the Court has before it the Referee's reasons. The applicant has made two separate and distinct requests for reasons. It is for the Court to determine whether these constitutes an explanation or reasons as to why the application has not yet been granted for the purpose of S156. Mr. Cousin went on to as if there was a refusal by the Referee, or a direction to pay increase fees.

On the question of summoning the Registrar, Mr. Cousins conceded that the statutory format was not followed, but he argues that the presence of the representative should be deemed to be a waiver of the statutory procedure.

I am not aware that the Registrar is at liberty to waive the statutory pre-conditions for summoning the Referee, because it appears to me that those conditions were imposed not for the benefit of the parties themselves but involves considerations of public interests. Why would the legislature require the issuance of the summons by a judicial officer of the status of a Judge? The language of the section is clear and unambiguous, *such summons to be issued under the hand of a Judge*. This statutory requirement is to enable an investigatory process to be launched which may well have the effect of bringing about an expeditious determination of the matter and avoiding unnecessary expense to the applicant as also to protect the public authority from vexatious and frivolous applications.

The learned authors of Craies of Statute Law, Seventh Edition states at page 269, "As a general rule, the conditions imposed by statutes which authorize legal proceedings are treated as being indispensable to give the court jurisdiction." (emphasis mine) But if it appears that the statutory conditions were inserted by the legislature simply for the security or the benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court." It is clear that there is a public interest consideration in these conditions.

The memorandum of the Referee to the Registrar of Titles contains several reasons in pursuance of the Referee statutory function. These reasons may concern other functionaries that the Referee has to deal with in the course of any application. In order to ensure that the applicant is aware of the reasons that concern his application, the statutory procedure should be followed. As it stands, the only way to ascertain the relevance of the reasons is by an enquiry directed to the Referee.

The necessary fees have not been paid; the statute does not exempt payment where the fees applicable are the source of challenge to the Referee's decision. The Respondent succeeds on the preliminary point. The application is dismissed. Cost to the Respondent to be agreed or taxed.