



[2024] JMSC Civ 141

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2015CV01256

BETWEEN	OWEN LAWRENCE	CLAIMANT
AND	CALVIN LAWRENCE	DEFENDANT

IN OPEN COURT

Ms Jacqueline Cummings instructed by Archer, Cummings & Company for the Claimant

Ms Caprice Morrison instructed by McMorrison & Williams for the Defendant

Heard: January 29, 30, February 1, 7 & November 12, 2024

Land – Last Will And Testament of Father of Parties – Title Obtained By Fraud – Executor breaching duty of trust by registering trust property in sole name – Co-Executor unaware of fraud – Injunction

Section 24 of the Registration of Titles Act, 1889,

Section 3 and 5 of the Real Property Representative Act, 1903,

Section 43 of the Trustees Act, 1987

WINT-BLAIR J

- [1]** The claim before the court concerns two parcels of land. The first is land part of Spring Village in the parish of Saint Catherine containing by survey One Acre One Rood Fifteen Perches and Thirty-seven Hundredths of a Perch. It is the land comprised in the Certificate of Title registered at Volume 1294 Folio 989, of the Register Book of Titles, (“known as pot house pen”).
- [2]** The second is all that parcel of land part of Spring Village in the parish of Saint Catherine containing by survey One Acre One Rood Thirty-three Perches and Seven-tenths of a Perch and is the land comprised in the Certificate of Title registered at Volume 1239 Folio 42, of the Register Book of Titles, (“known as old yard.”)
- [3]** The claimant’s case is that both parcels of land are held by the defendant on trust for the claimant and other beneficiaries of the estate of David Lawrence, deceased. Further that both registered titles were obtained by fraud. The claimant seeks declarations as also injunctive relief to prevent the defendant whether by himself, his servants and/or agents from selling or otherwise disposing of or transferring the said properties or either of them to any other person other than the claimant and other beneficiaries named in the will of David Lawrence, deceased. The claimant also seeks an injunction restraining the defendant whether by himself, his servants and/or agents from entering upon, trespassing upon, building upon, or in any manner whatsoever interfering with the rights of the beneficiaries of the late David Lawrence.
- [4]** The particulars of fraud state that the defendant fraudulently procured the issuing of the certificates of title herein by representing to the Registrar of Titles that he was the sole owner in possession of pot house pen and old yard when he knew or ought to have known that he was not the sole owner in possession, as the land was owned by members of the family of the late David Lawrence as was stated in

his Last Will and Testament. Further, that he represented to the Registrar of Titles that no other person had any legal and/or equitable interest in the said lands.

- [5]** The claimant contends that the defendant failed to disclose the terms of the Last Will and Testament of David Lawrence to the Registrar of Titles in relation to pot house pen and old yard and submitted false declarations in support of his fraudulent claim to ownership of the parcels of land thereby deceiving the Registrar of Titles into issuing the said certificates of title in his name knowing he was not entitled in law to these titles in his sole name.
- [6]** The defendant filed his defence on August 8, 2016. He relies on the copy will of David Lawrence dated February 23, 1981, a survey diagram and his statutory declaration used to bring the two parcels of land in dispute under the operation of the Registration of Titles Act.
- [7]** In his defence, he asserts that his father gave a portion of pot house pen registered at Volume 1239 Folio 42 of the Register Book of Titles, to him in 1983. He admits that he obtained the certificates of title registered at Volume 1239 Folio 42 and Volume 1294 Folio 989, of the Register Book of Titles in his own name. His intention was to obtain registered title only for the portion of land that was given to him by his father in 1983 and that this is the only land he has ever laid claim to.
- [8]** He had no intention of depriving the other named beneficiaries of their interest in the land in so doing. He accepts that as one of the executors of the estate of David Lawrence, deceased, he holds the land on trust for the named beneficiaries in accordance with the Last Will and Testament of his father which was never probated.
- [9]** Further, the land registered at Volume 1239 Folio 42 is partitioned on the ground in accordance with clause 18 of the will of David Lawrence. He maintains control of ¼ acre of the said land to the back of the property. Patrick and George Lawrence control the other section of the property.

- [10]** It is the defendant's case that the beneficiaries have put the terms of the will into effect. Additionally, David Lawrence made gifts before his death which were replicated in his will. The claimant and some of the beneficiaries objected to a grant of probate of the will of David Lawrence.
- [11]** The defendant admits that he is willing to transfer those portions of the land registered at Volume 1239 Folio 42 and Volume 1294 Folio 989, of the Register Book of Titles to the named beneficiaries of the late David Lawrence. He has admitted to approaching the named beneficiaries particularly Tivy Lawrence and George Lawrence to request that the land be subdivided and they have refused. The claimant and other beneficiaries object to the bequest made to the defendant and his son Marshall Lawrence of $\frac{1}{4}$ acre of land on which sits the dwelling house and shop in keeping with clause 11(e) of the will.
- [12]** The trial commenced with the evidence of Owen Lawrence, the claimant. His witness statement¹ said that his parents were David and Myrtle Lawrence and he and Calvin Lawrence, the defendant are among their twelve children. It is undisputed that David Lawrence was the owner of both parcels of land known as pot house pen where the family home and shop are located and also old yard.
- [13]** The claimant said that that old yard is registered at Volume 1239 Folio 42 but it is referred to in registration documents as pot house pen. The two parcels are distinguishable by their size as old yard measures One Acre, One Rood and 15.37 Perches, whereas pot house pen, where the family home and shop are located, is the slightly larger of the two measuring One Acre, One Rood and 33.7 Perches.
- [14]** The family resided in Spring Village Saint Catherine. For generations his mother stayed at home to raise all the children while growing vegetables and produce

¹ Filed February 3, 2020, stood as his evidence in chief

making food items for sale in the local market and for their home. In the 1970's she began to operate her shop directly in front of the family home. His father was a local policeman, farmer and security guard for the local water station in addition to being a church warden. His parents were active members of the local Shiloh Baptist Church which both of his grandfather's Robert Lawrence and Adam Bryan had helped to build. The Lawrences were stalwarts in the community from whence they came.

- [15]** He had a good relationship with his parents and most of his siblings. The first four siblings migrated to England. This meant that Owen Lawrence was the oldest child at home and his father gave him more responsibility. He was close to his father growing up, they talked a lot and his responsibilities were running the farm and managing his father's workers. Almost every night he and his father would discuss the management of the farm which generated income for maintaining the family. As the older siblings had migrated, he was generally considered to be the one to instill discipline in this other siblings including the defendant. This level of responsibility never went away. Eventually the claimant himself migrated to England in 1959.
- [16]** One of the issues joined with the defendant concerned evidence given in an affidavit filed by the claimant on March 11, 2015 seeking to restrain the defendant from building a barrier across, or preventing access to land known as pot house pen registered at Volume 1294 Folio 989 of the Register Book of Titles. This evidence of registration differs from the evidence in his witness statement. The registered title is before the court and the witness statement is incorrect as to registration.
- [17]** The claimant was confronted with another of his affidavits dated March 17, 2016 and filed on March 29, 2016. The witness' attention was directed to paragraph 4 which reads:

“That David Lawrence died on the 7th day of July, 1991 and I am advised by the Defendant that our father died leaving a Last Will and Testament in which both he and I are appointed the Executors but despite my requests for same the Defendant has failed, declined or otherwise refused to produce the original so that application could be made for Probate, and I exhibit annexed hereto, a copy of the said Last Will and Testament of David Lawrence deceased provided by the Defendant marked “OL I” for identity.”

- [18]** The claimant admitted that to the best of his knowledge the will produced by his brother was true and authentic. In the claimant’s affidavit filed March 11, 2015, paragraph 5 he accepted this averment as true:

“That following David Lawrence’s death no trace was found of the original last will and testament but the defendant produced a copy of a will dated the 23rd day of February 1981 and as the content thereof appeared to all the beneficiaries of the estate as being a genuine statement of the will of our deceased father it was accepted and to the best of my knowledge, information and belief application for Probate of the Last Will and Testament of David Lawrence was made in the Supreme Court of Judicature of Jamaica but I had no part in that application and to the date hereof I do not know whether Probate was granted.”

- [19]** The claimant’s evidence was that the copy will is false as there was foul play in relation to the purported will. No gifts were made to Calvin during his father’s lifetime and in the circumstances, it should be treated as if his father died intestate and the entire estate should be divided between all his children.

- [20]** Para 40 of his witness statement states: *“At the time of our father’s death no one thought to carry out any kind of search in the house to find a will. I was of the view that there was no will to be found because if a will existed, it would have been taken from the strong box some twenty years earlier and would be still missing...”*

- [21]** Para 50- 52 of the said witness statement reads:

"[50] The purported will appears not to be a complete document. At the bottom of the page head "-2-", the number 3 appears. At the bottom of the next page there is no number 4. Also clause 16 of the purported will on the page headed "-3-" does not match with the sentence at the top of the page marked "-4-"...

[51] There is something clearly missing which should have been continued from that page. It puts the whole document in question...

[52] The section at the bottom of the purported Will which is supposed to be signed by our father and his witnesses appears to be at an angle to the rest of the page. It seems as if the signature part was stuck on at an angle and then the whole page was copied over it."

[22] These statements were accepted in cross-examination as true and accurate statements made by the claimant in his witness statement.

[23] It was put to the claimant that the statements in paragraph 5 of the affidavit of March 15, 2015 and his witness statement could not both be true. By way of explanation, the claimant said Mr Frankson was the attorney for David Lawrence and that it was upon his second visit that a reading of the will was done in 1991 as no will was found on the first attempt at a reading. On the second visit, the defendant insisted that somebody go and look for the will and Merlene Lawrence went and came back laughing with a will. It was she who provided the will read by Mr Frankson.

[24] In relation to paragraph 4 of the second affidavit,⁴ the claimant agreed that he wanted the original will from the defendant in order to apply for a grant of Probate in the Supreme Court as a true reflection of his father's wishes. The claimant added that he had been accused of destroying the original will. He agreed that he

⁴ Sworn to on March 17, 2016, and filed on March 29, 2016

believes that the will is fraudulent as there could be another will in existence. He has never seen either the original or this other will.

- [25]** The claimant agreed that it is his belief that the defendant has taken possession of and occupied the family home at pot house pen to the exclusion of himself and his siblings despite their right to occupy the said house. The defendant has also excluded them from any profits from the said family home since 1992.
- [26]** The defendant erected a gate in front of the family home which was there up to the date of trial. Pot house pen is approximately one acre in size and Stephen Lawrence ("Tivy") built a house behind the family home on the said land. He and his family reside in that house. No steps have been taken to remove Tivy Lawrence from the land.
- [27]** The claimant testified that George Lawrence controls the extreme back portion of the land directly behind Tivy's house and rents the other $\frac{1}{3}$ of the land. This portion of the land controlled by George does not belong to him, rather it is for the benefit of all the siblings. All of his siblings have the right to build on any part of the land. All the siblings are entitled to the rent earned by George; however, no steps have been taken to recover the land rented out by George.
- [28]** The defendant put up a gate and dumped a load of sand to prevent his brothers from getting to the back of the property. Tivy could not get to his house and the defendant stopped Tivy and anyone else from going through the yard to the back of the property.
- [29]** The claimant gave evidence of assaulting the defendant's wife and daughter and admitted he was found guilty of that charge. He stated that this resulted from an argument between himself and the defendant about cows the defendant had sold. Since then, the claimant said he has kept his distance from the defendant, who he added was also found guilty of assaulting his own daughter in the process of evicting her from the family home.

[30] The defendant now lives in Canada. He does not run the shop nor has he ever lived in the family home which stands empty. However, he rents out the shop and has retained control of both house and shop since 1992.

George Lawrence

[31] George Lawrence gave evidence that the declaration in support of the application to register land dated April 29, 1991, purportedly signed by David Lawrence does not bear his father's authentic signature. In his witness statement, George Lawrence gave evidence that the statutory declaration could not have been genuine as his father would not have gone alone to see Mr Prince and it was unlikely that the defendant would have taken his father because the defendant had no car. It was he, George Lawrence, who always transported their father even though he was a taxi operator at the time. He would pull off the road to transport his father anywhere he wanted to go. He admitted that statutory declaration was not examined by a handwriting expert. He said the will dated February 23, 1981, does not bear the genuine signature his father.

[32] In cross-examination, this witness said that he did not believe the will presented to this court is valid as the estate of his father should be shared equally among the siblings and that his father did not give the family home and shop to the defendant, it was the defendant who took it as his own saying that it was given to him but this was not so.

[33] The witness admitted that he rented out what he called his portion of the land at pot house pen about ten years ago. He and Tivy had to fight in court to get the land as the defendant put up a gate and locked it claiming the land as his own. The first will as read by Mr Frankson, states where the defendant should live, however he has fenced in a portion of the land which belongs to him (George.) This first will was not the one found by Merlene Lawrence.

[34] George Lawrence testified that the first will was not valid. The witness testified that the will found by Merlene Lawrence is also not valid, it was the one read by

Mr Frankson which is being contested, as there is more than one will. The first reading of the will was with all the siblings present.

[35] The second reading took place in Mr Frankson's office in the presence of himself and Owen Lawrence. That is the valid will it is the one with which contents he agrees. That valid will was never probated as the executors had all died. They were Clifford Pinnock, Oswald Dawkins and Joseph Lawrence. The executors were never asked about the whereabouts of the previous will. His siblings were told of this second will.

[36] George Lawrence testified that pot house pen land comprises the shop and house at the front towards the main road. The shop is first, then his land which is rented out and belongs to the defendant, then Tivy occupies the middle behind his (George's) land. Directly behind the shop and house is cultivation and three tombs, that land is fenced with three rows of blocks and the defendant has continued putting up blocks while the matter is in court, up to two weeks before the trial commenced. Tivy's house is behind the tombs. The land with the tombs is controlled by the defendant.

[37] George Lawrence does not get along with the defendant, he admitted to physically assaulting him for killing a bull belonging to his father. The defendant wanted the witness to use a lane belonging to Lorna Bailey, a neighbour, to access his land. This lane is not on David Lawrence's land.

Patrick Lawrence

[38] This witness gave evidence that he left for England when the defendant was eight years old and he visited seventeen years after, returning every year or every other year. In his witness statement, he said that the defendant and his wife took over the running of his mother's shop, added a bar and the electricity bills for the shop began to skyrocket. The defendant has been running the shop and keeping the proceeds for more than twenty years before their parents died. He disagrees with the will found by Merlene in 1991 because of its contents. He was not told about

another will being read. He saw a notice in the newspaper and was disappointed that the defendant was trying to cheat his siblings by registering old yard in his name. He stopped those proceedings. He also testified that his father showed him where Tivy has built his house as the place Calvin should have built his house. Tivy was to live in the family home. It was the defendant who told Tivy to build on that spot and the house was built over twenty years ago. Tivy did not get the entire two-acre plot, but only a portion of the property.

Winston Lawrence

- [39]** The evidence contained in his witness statement was accepted by the defendant without challenge.

Merlene Lawrence

- [40]** This witness gave evidence that it was she who found a copy of the will. She did not find the original Last Will and Testament. She saw a signature on the will she found but was not sure it belonged to her father. This will was read by Mr Frankson in the presence of her siblings. She believes it to be fraudulent and does not agree with its contents as it left her siblings and herself in disbelief.

- [41]** Her witness statement says in paragraph 19 that after her father's funeral, the will a search for the will was undertaken but it could not be found. A meeting was requested with Mr Frankson in the hopes that he had a copy of the will. She added that her father would have left a will as that is the kind of organized man he was. This will she hoped had been left was never found.

Daphne Edwards

- [42]** This witness gave evidence along the lines of that of her siblings. She was present for the reading of the will found by Merlene Lawrence; she does not believe it to be valid because of its contents as well as her father would not have written a will like that. Her father was a decent and fair man who always looked out for his children. He would not put one child over the others. She knows that her father

made a will but has never seen it and it was never found. The will read by Mr Frankson when she was not present is the valid original will.

- [43] There could be three wills, the first was supposed to be there, when Merlene searched, it was not found. Mr Frankson's will was the right one. She was not present for its reading. The defendant was the only one who had a will that he read which said everything belongs to him. The family was shocked and the defendant chased them out of his house using words she had never heard and could not repeat. The will her sister found could be the second one. The one the defendant read is a copy of the one Merlene found. The one written by her father has never been found. The will read by the defendant is being called the third will. The defendant wrote both second and third wills. He read the will to the siblings first, then Mr Frankson read it to them on another occasion.

Tivy Lawrence

- [44] He too denies the authenticity of the will before the court and said the shop didn't belong to his father, but to his mother. The will that his father made was kept in a trunk in his bedroom. After his death, a family meeting was held in the family home and the trunk had been tampered with; there was no will found after a search. His father used to give him the key to go into the trunk, it was there that he saw the Will and would sometimes take a "little read off of it." The names of the executors he saw during his "little read" were Oswald Dawkins, Joseph Lawrence and Clifford Pinnock. This was before his mother died, he could not recall the date he saw these names. He told the claimant and his siblings about the will he had seen in the trunk. He never saw that will again and it was never found. Calvin never read a will to himself and his siblings.

- [45] He and his son Maurice used to live in the family home, before his parents died. When his parents died, the defendant was living in his wife's house in Spring Village. He admitted that he lives in a house built on a portion of pot house pen land while the defendant was living in Canada. He has lived in the house he built

for over fifteen years and the defendant has never sought to have him removed nor to stop him from building. He built his own house because the defendant threw him out of the family home by sending him letters from a lawyer in Canada telling him to "find somewhere to go." He moved out of the family home before his house was finished because of those letters. He denied moving out because of a termite infestation in the family home, guffawing loudly as he answered. George took control over a part of the pot house pen land when he began construction on his house.

- [46]** The defendant wanted him to use the lane adjacent to the pot house pen land. This lane goes down to the land occupied by George Lawrence. This lane, that was owned by Ms Bailey, is private and too small for vehicular traffic. His refusal led to the dispute between himself and the defendant. He testified that the defendant blocked access to his house on three occasions, by using a gate, a wire fence across the road, and a load of sand, leading to intervention by the police. A meeting held with the police ended with the defendant walking out loudly on the top of his voice. It took a court order from the Supreme Court to grant access to his house.

Calvin Lawrence

- [47]** The defendant testified that he read the authentic Last Will and Testament of his father to his siblings. The search for the will was undertaken by himself, Lloydie, his nephew and his sister Carol (she is Merlene Lawrence.) Carol found the will in a box in this father's room. She read the will in the house to all of his siblings and a lady named Miss Nassy who lives near to Old Harbour. Lloydie also read it. After the will was read, someone was to take the will to Mr Frankson the next day. Mr Frankson came to the yard the next day, asked for the will, read it to everyone that was there and took it with him to "look about the Will." Mr Frankson sent copies to everyone and that will was never seen by the defendant again. The executors were himself and the claimant. He did not apply for a grant of probate and he did not know whether the claimant did.

- [48]** In cross-examination, the defendant said that when his wife built her house he moved there and never lived in the family home afterwards. His father did not sign a document giving him the land, as his father told him in 1983 that he was giving him pot house pen, that is the land with the shop and the family home. He did not know that land can only be gifted by way of a conveyance in writing. His siblings knew that his father had given him the house as they were all told together. His father gave him the house with Merlene still living in it, Tivy was all about the place and not living there in 1983. His parents, sister, nieces and nephews all lived there however, he did not. His father gave the house to him because he worked for his father.
- [49]** The witness denied that it was he who placed the will in the dresser and then insisted that a search be made for it. The will Merlene found was the original will written by his father. The defendant denied reading the will saying that it was Lloydie and Carol who did, having found it. His siblings physically assaulted him from inside to outside of the house, saying he got too much after the will was read. After the reading, Mr Frankson showed it to him and then took it.
- [50]** It was put to the witness that the front page of the will identified as the original will and disclosed by him in evidence shows that it was prepared by R.L. Salmon and not Mr Frankson. The witness responded that he knew it went to Mr Frankson and responded that he could not recall when it was suggested to him that they are different lawyers.
- [51]** This witness did not know that his grandfather had owned property at Sheep Stone Tree willed to his older sisters or that his father owned property at Lloyds Pen with his brother George Lawrence. He knows the land at pot house pen was willed to himself, George and Tivy. His father told him which part was to be his. Tivy's portion is in the will. George's portion was shown to him by his father in the presence of both a surveyor and George in a year he could not recall but it was months before his father died.

- [52] His land was fenced on the two sides and the back by his father to keep in cows. His father put up three gates and the defendant put up a gate, which is still there, to prevent theft. This was before Tivy built his house.
- [53] The defendant denied all knowledge of the order from the Supreme Court dated July 16, 2015, relative to the gate he erected. He admitted putting up building blocks and a wire fence at each side of the lane to his part of the land and dumping sand, despite the order which remains in place barring any construction or fencing on the land. He said the lane belongs to his father and not to Ms Bailey. He further denied barring his brothers' access to their land but agreed that he prevented the burial of his sister on the land given to him.
- [54] The defendant gave these responses when confronted with the titles to pot house pen and old yard being registered in his sole name : *"I don't have a paper say that the land share up"*; *"to take out thief out of the yard"* and *"it is just a parcel of land for the three of us, I am at the bottom of the land."* Notably when he was asked if the title registered at Volume 1239 Folio 42 was wrong, the defendant said he got the title in order to pay taxes for it *"so nobody could take any of the land."* The defendant could not provide an answer when taxed as to why, if he was only to receive ½ acre, the title registered at Volume 1239 Folio 42 indicates that he was granted the entire 1 and ½ acres of land.
- [55] He testified that he was to get the bottom part of the land and that the will Merlene found said Tivy was to live in the family home until he builds his own and denied that the will stated that Merlene should stay in the family home until she married as his father never told him this. The girls all got land at Church Pen. The defendant did not know whether Merlene ever married. He knew that the will Merlene found said that the old yard was to be shared between himself, George and Patrick.
- [56] It was put to the defendant that he sold the cattle intended for his sisters. This was denied, it was George who had done so, said the defendant. He has his own cows

raised in his own pen. He denied taking the insurance benefit intended for Carmen, Iona, Conchita and Daphne and selling his father's bull, sending Tivy letters from Canada threatening eviction, chasing Corine out of the family home and selling his father's truck. He disagreed with the suggestion that his father's wishes were not carried out according to his will.

- [57]** The defendant believed that his father put the land in his name because he was "something on the Will and his father did not give him all of the land." Curiously, the defendant admitted that the land "is for the three of us" when asked why he put the title in his sole name. He testified that his father helped him get the title and he did not know why Tivy and George's names were not added to the title to pot house pen, nor why Patrick and George's names were not added to the title for old yard.
- [58]** It was suggested to him that his father having died in 1991, could not have helped him with obtaining the title for any of the land in 1996. He admitted that Locksley helped him to get that title. The defendant also could not recall failing to inform the Registrar of Titles in his application for title that Tivy lived on the land with his son. Neither could recall the date he attempted to ask George and Tivy to subdivide the land which he said in his witness statement at paragraph 28 that he has always been ready to do. At paragraph 29, the defendant could not recall when he asked the claimant and Tivy on multiple occasions to sub divide the land.
- [59]** Regarding the shop, the defendant said in his evidence that he built it. However when confronted with his witness statement at paragraph 32 which said the shop was built in 1968, he responded that he went to his father to do so. He drew cane at Bernard Lodge and worked at the factory to raise money to build the shop.
- [60]** The defendant did not know of a will in which his uncle Joseph Lawrence was named as an executor along with Oswald Dawkins and Clifford Pinnock. He was unaware that a copy will could not be probated without the permission of the court.

[61] Interestingly, the witness was asked whether he would want his name removed if the court found that it was a mistake that his name was put on all the land, the defendant responded, "no." Despite his pleadings, he did not agree that his siblings should have equal share in the land.

Idey Lawrence

[62] The defendant is her husband, he began living on her parent's land in 1965. They lived there until migrating to Canada in 2004. The defendant never went back to live on his parents' land. The witness was in the Lawrence family home after the death of David Lawrence but did not see the original will. Her children lived with their grandparents and she denied that it was Merlene who took care of her in-laws as it was she who had done so. The defendant was running the shop before his mother went to England and it was registered in her name in 1989 though she agreed that the shop belonged to David Lawrence.

[63] The witness admitted in her witness statement that her husband transferred the land to himself, but not to deprive the beneficiaries under the will. She did not know the size of the property; however, she agreed that based on the will, her father-in-law, husband and son were to get $\frac{1}{4}$ acre where the house and shop are located. She disclaimed any knowledge that the entire 1 and $\frac{1}{2}$ acres is registered in the defendant's name. She did not deny that the defendant had a title for the entire portion meanwhile in the next response, the witness testified that the defendant had decided to give his siblings their portion. She saw the defendant show Tivy where to build his house. She said it was true that the siblings objected to the land being subdivided though it had been surveyed.

Jenieve Lawrence

[64] She is the daughter of the defendant. She recalls being nineteen years when her grandparents died. At the time of their death, Tivy, Maurice, Leo, Rose-Marie all members of the Lawrence family and Shirley, the care giver lived in the family home.

[65] In her witness statement she said at paragraph 10 that the claimant is one of the executors of the will. She was asked no questions in cross examination regarding her knowledge of the will of which she gave evidence.

Discussion

[66] The parties have filed as part of their pleadings the Last Will and Testament of David Lawrence dated February 23, 1981. In it the claimant and defendant, who are brothers are appointed the executors of their late father's estate. The defendant raises the issue of standing and this can be summarily disposed of, as the claimant is an executor and trustee of the deceased's estate, albeit a beneficiary.

[67] David Lawrence, appointed executors and did not die intestate, his personal representatives are entrusted with the duty of administering his estate. The law is settled in that it is only after a grant or probate that any inchoate interest or estate in land becomes certain and this must still await an assent given by the executors for otherwise it remains an equitable estate or interest. The belated submission that the claimant lacks standing is without merit.

[68] The claimant asserts that the registered titles obtained by the defendant are in his sole name and have been obtained by fraud. The titles so registered are exhibits before this court. On the issue of fraud, the claimant asserts that the defendant relied on a copy will in his claim. He asserts that another will exists which is the original, however it was not produced by the defendant upon demand.

[69] In his defence filed on August 16, in order to establish his claim to the pot house pen land, the defendant stated that he relies on:

- (a) a copy of a declaration by David Lawrence, dated April 29, 1991, made in support of the defendant's application to have the land at pot house pen registered under the Registration of Titles Act;

- (b) a survey diagram of the said land dated June 2, 1983, made in the defendant's name by David Lawrence;
- (c) a copy of the Last Will and Testament of the late David Lawrence

[70] The land claimed by the defendant was subject to an application for registration under the Registration of Titles Act, the applicant being in sole, open, undisturbed and continuous possession as was declared by the defendant in his statutory declaration dated April 29, 1991. It reads:

“3. That the land was formerly in possession of my father DAVID LAWRENCE and in the year 1983 he gave me the land as a gift not by a written deed but by word of mouth and placed me in possession however I hereby submit a statutory declaration by him in support of my application for title in my name.

4. That since coming in possession of the land I have remained in sole open undisputed and undisturbed and continuous possession.”

[71] The defendant asserts that the land was given by David Lawrence to him orally, by way of gift in 1983 and the defendant applied for a registered title. The land was given to him without any memorandum in writing.

[72] However, David Lawrence was still alive and did not die until the 7th day of July 1991, therefore the defendant could not have been in sole, continuous, undisturbed possession of the land he claimed as David and Myrtle Lawrence still lived upon it, as did Merlene and Tivy Lawrence. This application was made while the defendant was not living on the land but only operating the shop which belonged to his mother. Further, the defendant was purportedly given the land by his father while his mother was still alive as she died two weeks before David Lawrence in 1991.

- [73] Notably, the defendant set down, as an admission in his pre-trial memorandum,⁵ that at the time of his death, David Lawrence was the owner in fee simple in possession of pot house pen
- [74] Additionally, it was the evidence in the witness statement of Mrs Iley Lawrence, wife of the defendant, that he began living on her parent's land in 1965 and lived there continuously until they migrated to Canada in 2004. The defendant had never gone back to live on his parents' land after 1965. These varying positions taken by the defendant as to possession could not be simultaneously true. The evidence presented by the defendant in his declaration to the Registrar of Titles is demonstrably false and rejected by this court.
- [75] The evidence of the defendant in his witness statement is that he has never had the original will of his father, he only ever had a copy of the will which had been given to him by his father's lawyer, Mr Frankson.⁶ There is no evidence before this court that either side has made an application for leave to admit that copy will. The Civil Procedure Rules require in rule 68.17(1)(ii) that a copy will be proved by way of an application for an order from this court admitting it to proof.
- [76] It was put to the claimant that he had made an application for a grant of probate and he was shown various paragraphs of affidavits he had made to that end. Without a copy of a court order admitting the copy will to proof, it was not open to the defendant to suggest to the claimant that he had made application for a grant or probate as the legal position applied equally to the defendant as co-executor.
- [77] Therefore, what is before this court is a copy will. Both sides agree that the original will is not the will before this court. The evidence of the claimant on this point is set out in his affidavit that following *David Lawrence's death no trace was found of the original will but the defendant produced a copy of a will dated the 23rd day of*

⁵ Filed on February 25, 2020

⁶ Paragraph 17

February 1981 and as the content thereof appeared to all the beneficiaries of the estate as being a genuine statement of the will of our deceased father it was accepted and to the best of my knowledge, information and belief application for Probate of the Last Will and Testament of David Lawrence was made in the Supreme Court of Judicature of Jamaica but I had no part in that application and to the date hereof I do not know whether Probate was granted.

[78] The estate having vested in both executors on the death of David Lawrence, there is no lawful basis by which the defendant ought to have obtained the title in his own name to the exclusion of the other personal representative.

[79] A testator is free to deal with his property despite the provisions of his will, his personal representatives are, likewise, not restricted. It is without question that a testator's real property vests in his personal representative at the time of his death. That is the effect of section 3 of the Real Property Representative Act.

Section 3(1) states: "Where real estate is vested in any person, without a right in any other person to take by survivorship, it shall on his death, notwithstanding any testamentary, disposition, devolve to and become vested in his personal representatives or representative from time to time, as if it were a chattel real vesting in them or him."

[80] The result of the operation of section 3(1) is that on the death of David Lawrence, the land vested in both of his executors Owen Lawrence and Calvin Lawrence. Both executors held the trust property, not for themselves, but in trust for the beneficiaries. That is the import of section 5 of the Real Property Representative Act.

[81] Section 5(1) of the Real Property Representative Act states as follows:

*"Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and **those***

persons shall have the same power of requiring a transfer of real estate, as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.” (Emphasis supplied)

[82] The provisions of the Trustees Act govern the actions of the executors. Section 43 of the Trustee Act speaks to executors securing the court’s permission to deal with trust property in a manner other than that specified in the will, if expediency demands it. Section 44 of that Act allows the court to excuse a trustee who has not secured the permission of the court and has acted in breach of trust. The court may grant its pardon where it finds that the trustee’s actions were honest and reasonable. There is no evidence of the defendant securing permission from this court to deal with the trust property in the way that he has done.

[83] In light of the failure of the claimant to first prove the copy will or to challenge its validity under the rules of this court, there is no basis for this court to determine whether the estate of David Lawrence should be treated as if he died intestate and divided among all his children.

[84] The claim succeeds on the basis of the following proven facts:

- 1) The false statement in the declaration made by the defendant to the Registrar of Titles as to his possession of the land.
- 2) The defendant’s failure to prove the copy will and having done so to set out in his declaration the terms of the copy will in his application to the Registrar of Titles.
- 3) The defendant’s failure to indicate that there were family members living on the land at the time of his application and their equitable interest in it.
- 4) The defendant obtaining the registered titles before the court by falsely representing to the Registrar of Titles that he was solely entitled to be the registered as proprietor the land in dispute.

[85] Orders:

- 1) Judgment for the claimant.
- 2) It is declared that all that parcel of land part of Spring Village called Pot House Pen in the parish of Saint Catherine containing by survey One Acre One Rood Fifteen Perches and Thirty-seven Hundredths of a Perch is the land comprised in the Certificate of Title registered at Volume 1294 Folio 989, of the Register Book of Titles issued in the sole name of the defendant was obtained by fraud.
- 3) It is declared that that parcel of land part of Spring Village called Old Yard in the parish of Saint Catherine containing by survey One Acre One Rood Thirty-three Perches and Seven-tenths of a Perch is the land comprised in the Certificate of Title registered at Volume 1239 Folio 42, of the Register Book of Titles issued in the sole name of the defendant was obtained by fraud.
- 4) The Registrar of Titles is hereby ordered to cancel the Certificates of Title numbered in orders number two and three herein.
- 5) An injunction is granted to restrain the defendant whether by himself or by his servants and or agents from selling or otherwise disposing of or transferring the said land registered at Volume 1294 Folio 989 and Volume 1239 Folio 42 of the Register Book of Titles or either parcel to any other person other than the claimant and other beneficiaries named in the will of David Lawrence, deceased.
- 6) An injunction is granted restraining the defendant whether by himself or by his servants and or agents from entering upon, trespassing upon, building upon or in any manner whatsoever interfering with the rights of the beneficiaries of the late David Lawrence.

- 7) The Registrar of the Supreme Court is empowered and authorized to sign and execute any and all documents necessary to give effect to the orders set out herein.
- 8) Costs to the claimant to be agreed or taxed.

Wint-Blair, J