

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. 140 OF 1988

BETWEEN THE ATTORNEY GENERAL PLAINTIFF  
AND RAMALHALE KAMHARRACK DEFENDANT

Patrick Foster for the Plaintiff.

W.B. Frankson Q.C. for the Defendant.

Heard: October 4, 1988.

CORAM: WOLFE J.

The Plaintiff by an Originating Summons filed on the 8th day of July, 1988 seeks an order pursuant to section 42 of the Registration of Titles Act.

The relevant portion of section 42 supra is set out hereunder:

"Upon registering a certificate of title, the Registrar shall retain in his custody and possession all deeds, instruments and documents, evidencing the title of the person registered, and shall endorse upon the last of them, if there be more than one, a memorandum that the land included in the certificate has been brought under this Act, and shall sign such memorandum:

Provided always that if any such deeds, instruments or documents, relate to any property other than the land included in such certificate, the Registrar shall cause such deed, document or instrument (if unrecorded) to be copied at the expense of the applicant, such copy to be retained by Registrar, and shall return such deed, instrument or document to the person from whom he received the same, having first endorsed upon the same a memorandum signed by him to the effect that the land included in the certificate has been brought under the Act.

No person shall be entitled to inspection of any such deeds, instruments or documents, except upon the written order of the persons who originally deposited the same, or of some person claiming through or under him, or upon the order of a Judge."

The Affidavit of Donald Hannon in support of the Originating Summons indicates that the Defendant is the Registered Proprietor of land known as Narine Lands part of Old Harbour Bay in the parish of St. Catherine. The said land was brought under the Registration of Titles Act on the 11th day of July, 1967 and is registered at Volume 1207 Folio 374 of the Registered Book of Titles.

The Affidavit of the Defendant Romalhale Ramharrack dated the 20th day of July 1988 discloses that the Honourable Minister of Housing and Construction in exercise of the powers conferred upon him by section 3 of the Local Improvements (Community Amenities) Act has brought the said land under the Special Improvements (Infrastructure) Area by the Special Improvements (Infrastructure) Area (Narine Lands, Old Harbour Bay, St. Catherine) Order 1988.

Section 3 (1)

"The Minister may by order declare any area defined in the order and comprising lands specified in sub-section (2) to be a special improvements (infrastructure) area for the purposes of this Act."

Mr. Foster for the Plaintiff submitted that the order sought was necessary in order to enable the Honourable Minister to comply with section 7(1) of the Local Improvements (Community Amenities) Act.

Section 7 (1)

"Upon the publication of an order under section 3 in the Gazette, the Minister shall notify the Registrar of Titles of any registered titles to land known to the Minister to be affected by the order and shall cause a copy of the order to be served on the Registrar who shall forthwith note the fact of the order having been made on any registered title so known to be affected by the order and of which he has been notified."

The affidavit filed in support of the Originating Summons avers that the Defendant was requested to produce the documents for inspection and has neglected so to do. Hence this application.

Section 42 of the Registration of Titles Act provides a veil of secrecy or confidentiality to persons registering lands under the Registration of Titles Act. It is similar to the veil of incorporation. The statute has stipulated the methods by which this veil may be lifted.

A Judge in exercising the discretion bestowed upon him by virtue of section 42 of the Registration of Titles Act must be cautious in removing the veil of confidentiality. The circumstances which lead a judge so to do must be compelling. So compelling must be the circumstances, in my view, that a failure so to do would lead to a denial of justice.

The question which must now be resolved is whether the order sought is necessary for the Minister to comply with section 7(1) of the Local Improvements (Community Amenities) Act. All section 7(1) requires the Minister to do upon publication of an order under section 3 in the Gazette, is to give the Registrar of Titles notice of any registered land which the Minister knows is affected by the order and in addition thereto to serve a copy of the order on the Registrar.

The affidavit of Donald Hannan indicates that it is known that the Narine Lands are registered lands and all the Minister has to do is to inform the Registrar that the said lands are affected by the Order. It is my considered opinion that it is wholly unnecessary for the Minister to inspect the documents which formed the root of the Derendant's title in order to comply with section 7(1) of the Local Improvements (Community Amenities) Act.

In the absence of Fraud section 68 of the Registration of Titles Act gives the Registered Proprietor of Land an indefeasible title. There is no allegation of Fraud made herein and even if it

were so my view is that it would be irrelevant for the purpose of this summons.

Paragraph 4 of the Affidavit in support of the Originating Summons makes reference to the fact of other persons being in possession of Registered Title for parcels of land which is now comprised in the Certificate of Title registered at Volume 1207 Folio 374 held by the Defendant. The Titles exhibited as "DH 4" do not support this contention. The Registered Title at Volume 1207 Folio 374 refers specifically to "All that parcel of land known as Narine Land" whereas the other titles exhibited as "DH4" only speak of "All that parcel of land part of Old Harbour Bay." There is no evidential basis for the statement contained in paragraph 4 of Donald Hansen's affidavit. Paragraph 7 of the affidavit contends that the interest of the citizens of Narine Lands makes it desirable to inspect the documents lodged at the office of Titles in support of the Defendant's application to bring the Narine Lands under the operation of the Registration of Titles Act.

The question may be asked, what is the interest to which the deponent refers: Is it to embark upon a fishing expedition or is it to prove an allegation. If the latter, what allegation because no allegation has been made against the Defendant.

Further to the foregoing it is my considered opinion that the provisions of section 42 of the Registration of Titles Act cannot be invoked in this manner. Before the provisions of the section are prayed in aid a substantive action must have been commenced and there must be an allegation which goes to the root of the title making it necessary for inspection to be ordered so that the court may satisfy itself as to the truth or otherwise of the allegation.

Finally the question may be asked what is the Locus Standi of the Plaintiff herein vis-a-vis the "alleged dispute" between the other landowners and the Defendant. The affidavit filed in support of the Originating Summons has not established to my satisfaction that the

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Plaintiff has any status in the "alleged Dispute" which would warrant the exercise of the courts' discretion in his favour.

Finally the Court must never succumb to the temptation of allowing itself to be used as an agent for garnering evidence in order to assist a party to establish a cause of action.

For the reasons stated herein I am satisfied that there is no basis on which the order sought could properly be made.

The Application is therefore refused with costs to the Defendant to be taxed if not agreed.