

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2015-04190

Between

ANDRE HACKETT

**(Suing as Administrator Ad Litem of the Estate of
Lynna Lena Hackett, also called Lyna Hackett,
also called Lyna Lena Hackett who died on the 10th October, 2011)**

Claimant

And

MYRTLE JOHNSON-MC KNIGHT

SHARON MC KNIGHT-ROBERTS

Defendants

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Kofi Mc Intyre instructed by Ms Karen Piper for the Claimant

Ms Marion Ingrid Melville for the Defendants

Date: 16 January 2017

REASONS (Edited Oral Judgment)

1. This claim concerns a parcel of land at LP 16 Crompstain Trace, off Store Bay.

2. It was owned by Lynna Lena Hackett. She died on 10 October, 2011. Her son Andre Hackett has brought this claim. He has done so as an administrator ad litem. This was to preserve the assets of the estate. Dean Armorer J. on 12 November, 2015 appointed him as such to represent the estate and bring the claim against the intended defendants.
3. The defendants, according to the claimant, went onto lands forming part of the estate in 2015. They are mother and daughter. Sharon is the daughter. Her father, who is Myrtle Mc Knight's former husband, had at one time occupied the land.
4. Counsel for the defendants raised in submissions that in accordance with the principle of **Ingall v Moran [1944] KB 160**, the claimant could not bring the claim because at the time he brought the claim he had not obtained a grant of letters of administration.
5. While **Ingall –v- Moran** is undoubtedly good law in this jurisdiction, it does not apply to this case. This is because the claimant had obtained permission under the order of Dean Armorer J. to commence proceedings. In this regard the judgment of Mendonca JA in **Leo Abraham v Doll Basdeo, Civil Appeal No 74 of 2012**, delivered on 13 November, 2015, is apt.
6. The claimant says the deceased was the owner of the land pursuant to Deed No. 11936 of 1970. There was no issue made of this.
7. Philbert Mc Knight was married to the first defendant. He was on the land. The issue is, how did he come to be on the land? Further, did he leave the land? In what circumstances? And did he acquire any equitable interest in the land?
8. The defendants contend he had gained an equitable interest in the land and their counterclaim comes under this.

9. The defendants were the main witnesses for themselves. Myrtle Mc Knight said she met Philbert in 1975. They got married in 1980. When she met him he was living in a small house on the land. They separated in 2003.
10. Much of her witness statement contained hearsay about the history of Philbert and the family. This she could only have gotten from what she was told.
11. She said when they got married, the deceased encouraged Philbert to remain on the land. She said they maintained the land, planted crops and reared animals on it. She said that the deceased gave them permission to construct the house on the land. This was his mother's spot, she says, that the deceased gave him. She said the deceased treated Philbert as her son.
12. She said she does not want the property for herself. She considers it to be the legacy for his children. She says the second defendant has no place to live. She said the house was not constructed under any conditions.
13. She said the second defendant returned to live in the family home in May/June 2015. She started to renovate the house, encouraged by the claimant.
14. She said Philbert never abandoned the house. She noted he died in 2008. She said a promise was made by the deceased.
15. She claims that the second defendant should be given possession of the house and land at Crompstain.
16. The second defendant was born in 1980. She left the property at age nine years when her mother took her to live elsewhere when her parents parted ways.
17. She says she returned in May 2015 to live. She and her ill husband have nowhere else to go. She went to renovate the house and fulfil her father's dream. She said

the house was not abandoned after her father's death. One of the children could have gone and used it.

18. She said she was in touch with the claimant on many occasions after her father died. He encouraged her to go onto the land and renovate the house.
19. She said she and Mayleen Hackett, the aunt of the claimant, got into conflict about the land.
20. The second defendant said her father left the house on the land for her and her siblings.
21. She is unable to give evidence of any promises made by the deceased.
22. Samuel Quamina gave evidence. He said he knew Philbert being on the land and cultivating it and rearing animals. He said he used to see Philbert at the property in Cromptain.
23. Another person, Rawlins Cudjoe, filed a witness statement for the defendants. He died before the case was heard. I considered the contents. However, it did not add materially to the case for the defendants.
24. Andre Hackett gave evidence for the claimant. His mother was the deceased Lynna Hackett. She was a school teacher. She worked and lived in Trinidad as a teacher until her retirement. He lived with her as a child in Trinidad. They would come to Tobago over the holidays.
25. His grandfather sub-divided his land and gave his mother her portion by deed in 1972. He also gave her a small piece of land next to his home where she later built her house.

26. Philbert was the son of his deceased aunt, Iris Mc Knight, who he says died in 1956. Philbert was therefore his cousin.
27. The claimant said when Philbert got married the deceased allowed him to build a small house on her land at Crompstain. There were conditions. It was to be made of wood. He had to maintain and clear the land. She also consented to him getting water and electricity connections. He said from when he was 25 years, when she retired, he lived with his mother at Guy Street, Canaan.
28. He said Myrtle and Philbert separated in 1994. She went to live with the children at Mary's Hill.
29. Philbert started a common law relationship with one Juliet George and would spend time at her home in Canaan. They had a son.
30. He vacated the house at Crompstain and went to live with Juliet.
31. He said the house was abandoned. His mother made arrangements with the prison authorities to have the place cleaned up. She boarded up the house left by Philbert. When Philbert died, Juliet George made his funeral arrangements.
32. The house was in a broken down condition at the time his mother died. No one had ever resumed occupation.
33. He said as the only son of his mother at no time did any discussion ever come up about Philbert or his children having any possession or control of the house or property at Crompstain after he left it.
34. He said in mid-2015 the second defendant approached him about going onto the land. He told her not to go. She and her husband went on and started cutting down trees. They were warned off.

35. About October 2015 they went back on the land. He therefore sent a legal letter and began legal proceedings.
36. Andre Hackett called his aunt Mayleen Hackett as a witness. Her version was supportive of Andre Hackett's. She confirmed the arrangement between her sister Lynna and Philbert. She also said he abandoned the house and land.
37. She said after Philbert's mother died in 1956 he went to live with his father in Canaan and grew up there.
38. She said she lives near the land. The house was boarded up by Lynna after Philbert vacated it.
39. She gave evidence of an incident where Philbert owed maintenance for his children. Myrtle took out a warrant for his arrest. This caused a family strain among all of them.
40. A third witness Beresford Mc Knight was called. He is the older brother of Philbert.
41. He too supported the version of Andre and Mayleen. However, in addition, he says after Philbert left the house he went with his aunt Lynna and met Philbert. His aunt asked what he was planning to do with house. Philbert told them he did not want the house, he was not going back there.
42. It was on this indication that she made arrangements with the prison authorities to have the land cleaned and then she boarded it up.
43. He had many discussions with his brother who never spoke of having any interest in the house.

44. In July 2015 he and his sister saw the second defendant on the land and they went and told them what they were doing was wrong.
45. The cross examination of the witnesses followed. Both sides essentially maintained their contentions.
46. Beresford had two inconsistencies. He did not recall the name Juliet. But he later recalled her name.
47. In cross examination Myrtle said she was not present when Lynna made the promise to Philbert about the house. She was inconsistent with her affidavit in the injunction proceedings about whether Lynna assisted them with materials to build the house.
48. Samuel Quamina said he had seen Philbert living at Crompstain after 2009. However, he later accepted Philbert died in 2008.
49. Having examined the evidence on both sides, the evidence was overwhelmingly in support of the claimant's case.
50. There were two witnesses who supported the claimant in his evidence. In particular, they would be in a good position to know the family dealings.
51. Given the entirety of the evidence, I found the claimant's case to be far more supported and plausible.
52. I accepted that Philbert abandoned the house and land and he went to live elsewhere. I also accepted that he told Beresford, his brother, that he was not going back to the house.
53. I found the defendant's evidence to be full of gaps. I found it to be implausible.

54. It is clear to me that the defendants moved on with their lives after the separation of Philbert and Myrtle. It was only in 2015 that any interest was revived in the land.
55. Certainly there was no interest even up to the death of the deceased Lynna. The photographs in this matter also show clearly the abandonment of the house. I accepted the claimant's evidence that he did not have any discussion with the second defendant encouraging her to go onto the land and to repair the house.
56. Additionally, the evidence was insufficient, in any event to make a case of any equitable interest.
57. I find there was no promise made to Philbert or anyone else by Lynna.
58. This was a favour she had done him – he had a mere licence to occupy the land and he later abandoned this.
59. No equity arose. There was no expectation or belief engendered that Philbert or his children would have any interest in the property once he left.
60. I do not accept the defendant's evidence that Lynna had said on occasions that the property was Philbert's share.
61. It is unfortunate that he did not leave a place for his children. The second defendant cannot, however, lay claim to someone else's land.
62. There is therefore judgment for the claimant against the defendants. The defendants' counterclaim is dismissed.
63. The claimant is declared to be the lawful owner and in possession of the land described in Deed No. 11936 of 1970 situate at LP 16 Cromptain Trace.

64. An injunction is issued to prevent the defendants, their servants or agents from entering or carrying on any works on the said lands.

65. It is clear that the second defendant wrongfully entered the said lands. She thereby trespassed. Such conduct cannot be encouraged. However, no useful purpose, given the family relations, will be served by making an order for damages for trespass.

66. The defendants must pay the costs of the claim to the Claimant in the sum of \$14,000.00.

Ronnie Boodoosingh
Judge