

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2013-00846

**IN THE MATTER OF THE REAL PROPERTY ACT
CH.56:02**

AND

**IN THE MATTER OF AN APPLICATION BY CLIFFORD KNOLLY
NICHOLAR INNISS FOR DAMAGES FOR UNLAWFUL DEPRIVATION
OF ALL AND SINGULAR THAT CERTAIN PIECE OR PARCEL OF LAND
SITUATE AT BEAUSEJOUR VILLAGE IN THE COUNTY OF
MAYARO/GUAYAGUAYARE IN THE ISLAND OF TRINIDAD
COMPRISING FOURTEEN ACRES TWO ROODS NINE PERCHES
CALLED "THE ESPERANCE ESTATE" AND ABUTTING ON THE NORTH
WEST AND SOUTH UPON LANDS NOW OR LATELY OF GUILLAUME
ASSER DE POMPIGNAN AND ON THE EAST UPON THE SEA TOGETHER
WITH ALL THE BUILDINGS THEREON AND THE APPURTENANCES
THERETO BELONGING SAVE AND EXCEPT THEREFROM ONE ACRE
CONVEYED BY DEED DATED THE 12TH MARCH 1928, REGISTERED
AS NO. 1424 OF 1928 CONTRARY TO SECTIONS 17, 18 AND 148 OF THE
REAL PROPERTY ACT**

BETWEEN

CLIFFORD KNOLLYS NICHOLAS INNIS

Claimant

AND

THE REGISTRAR GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Hon. Madam Justice C. Gobin
Appearances:

Mr. Mervyn Campbell for the Claimant
Ms. W. Charles instructed by Ms. R. Granado and
Ms. Rodrigues for the Defendant

RULING ON PRELIMINARY POINT

1. By this action the claimant claims damages pursuant to S. 148 of the Real Property Act 56:02 for loss and damage sustained through an alleged omission or mistake on the part of the Registrar General.
2. Essentially the claimant claimed that he was deprived of his estate in a parcel of land located in Mayaro, measuring 4½ quarries known as the Esperance Estate.
3. The deprivation came about as a result of the wrongful registration on the 21st October 1983 of one Cyril Doppia as the owner of the lands on the grant of latter's application No.42 of 1982 to bring the Esperance Estate under the provisions of the Act and to have same vested in him.
4. The alleged error or omission was specified. The report on title on the basis of which the Registrar General acted, did not pick up the existence of a Deed of Assent from Hildegonde Doppia which purportedly vested Esperance Estate in the claimant.
5. The claimant claimed to have been in continuous possession of the Estate until 15th June 2012 on which date Mr. Justice Kokaram in CV 2010-04559 (the earlier proceedings) ejected him therefrom. The claimant claimed damages equivalent to the value of the lands which he placed a \$2.4Mn.

6. In the defence, the defendant did not dispute that the department failed to pick up the deed of assent but contended that the application was granted on the basis of Cyril Doppia's compliance with the provisions of the Ordinance and only after due consideration by a judge and after strict compliance with the judge's directions for such notice as was considered adequate in the circumstances. Such notice as was directed by the judge or required by the Act constituted "constructive notice".

7. The defendant pleaded therefore that any deprivation, if such occurred was not caused by the omission on the part of the Registrar General regarding the claimant's deed of assent, but his own failure to take steps to protect/assert his claim.

8. As an alternative the defendant pleaded the limitation provided for by S.150 of the ordinance which limits the time for bringing a claim such as this one to 6 years from the date of such deprivation.

9. In his reply the claimant particularized his alleged acts of possession and occupation and in response to the limitation plea, responded that the instant cause of action arose only when the registration came to his notice after a pre-action protocol letter was written and the subsequent claim filed in the earlier proceedings. He said that prior to that, there was no reason to investigate his title prior as there was no evidence of persons in possession of the estate other than himself, his servants and or agents. In other words, time did not run until his discovery of the registration of Cyril Doppia as owner in 2010.

10. In the course of case management two preliminary legal issues were identified which could determine the case without more. These were first, a general one as to whether in the circumstances of this case, in the light of the judgment of Justice Kokaram in the earlier proceedings, and the very fact of the claimant's counterclaim in them, the claimant could maintain this case against the Registrar General and secondly, the limitation issue.

11. Counsel on both sides presented fuller submissions that I had anticipated and I am grateful for the further assistance. Having considered them I find that the defendant is entitled to succeed on the limitation point without more.

12. I find that the date of deprivation was indeed the date of registration of the certificate of title of Cyril Doppia on the 21st October 1983. The authorities relied upon by the defendant to establish this proposition, and the decision in the case of **Bonin and Anor v Andrews S.A. Law Reports 1879 p.153** which was relied upon by the claimant confirmed the position, even where as in this case the person claiming depreciation had not been aware of the registration. Counsel for the claimant sought to distinguish the facts of the instant case from those in **Bonin** by emphasising that in **Bonin** the person claiming deprivation was not in occupation, the lands were unoccupied. In this case counsel argued that the claimant was at all times in possession of the estate, so by virtue of that fact, the deprivation could not have

occurred until there was a challenge to his ownership through the proceedings, which culminated in the order of Kokaram J.

13. The judgment of Kokaram J is before the Court. The judge concluded that there was no real prospect of success in the claimant's (Mr. Inniss') counterclaim in that matter of adverse possession. The judge considered the acts of possession alleged in the pleadings and found that were insufficient to support a claim of adverse possession. That judgment was not appealed.

14. In the circumstances I do not consider it open to me to revisit the issue of the claimant's alleged possession, whether it arises in the context of "possession" or adverse possession. The particulars of possession pleaded here appear to be identical to what was before Kokaram J. Any attempt to distinguish the facts of **Bonin** therefore would necessarily involve some reassessment of the claim to possession and I did not believe that I can conduct such.

15. The date of deprivation is therefore confirmed as 21st October 1983 and this action is well outside of the six year period prescribed by S. 150 (1). The section also provides a maximum limitation period of 27 years. This matter was raised by the court in the course of submissions. There is no answer to the submission that this claim against the Registrar is statute barred in the circumstances even on the 27 year limit. There are similar provisions in other jurisdictions which operate systems of

Registered land and the Torrens system. This provides in my opinion an absolute bar to this claim.

16. While it is not necessary to consider the remaining preliminary point, out of deference to both counsel and in recognition of their industry I shall indicate some of my findings. The issue arose as to whether in the circumstances of this case, a claim could be brought against the Registrar General. S.148 provides:

“Any person sustaining loss or damage through any omission, mistake, or misfeasance of the Registrar General, or any of his officers or clerks, in the execution of their respective duties under the provisions of this Ordinance, or by the registration of any other person as proprietor of such land, or by any error, omission, or misdescription in any certificate of title, or any entry or memorial in the Register Book, and who, by the provisions of this Ordinance, is barred from bringing action for the recovery of such land, estate, or interest, may, in any case in which the remedy by action for recovery of damages as hereinbefore provided is inapplicable, bring an action for recovery of damages against the Registrar General as nominal defendant”.

17. The cause of action is available to a person who is barred by the provisions of the Act from bringing an action for the recovery of such land, estate or interest. The fact of the claimant’s counterclaim in the earlier proceedings for recovery of possession on the grounds of fraud, against not just his predecessor but the claimant therein, suggests that Mr. Inniss was not barred by the provisions of the Act and therefore cannot avail himself of the right to institute these proceedings.

18. From the judgment it is clear that Mr. Inniss did indeed raise the issue of fraud on the part of the claimant to whom Mr. Doppia had sold in 2010 and that he failed on

the basis of his pleadings which were considered inadequate. Kokaram J went so far as to refer to evidence included in the witness statements which were inconsistent with the pleadings. The learned judge also mentioned to submissions which indicated that certain things “might have come out at trial”.

19. So it appears that Mr. Inniss, well appreciating that he was not barred, brought a counterclaim in the earlier proceedings which unfortunately did not get very far. I do not think that Section 148 was intended to provide a fall back position for persons who embark on unsuccessful litigation for the recovery of lands against others. S.143 also provides for a remedy against Cyril Doppia which has not been pursued. Nothing on the pleadings in this case indicates why no attempts have been made in this regard.

20. But more fundamentally when the pleadings in this case and the earlier case are compared and analysed, there remains the issue of whether a causal connection has been established between the failure of the Registrar General’s department to pick up the deed and the deprivation as claimed.

21. The claimant and Cyril Doppia both claimed through Hildegonde Doppia. The claimant claims to have been deprived of a legal title to the land because a Deed of Assent which vested her estate in him was not picked up. That deed of assent could not have provided a perfect root of title. As indeed the Registrar General’s title clerk indicated on his title search which was produced on Cyril’s application, there was a defect as there was the absence on record of a deed or document vesting the

lands in the applicant Hildegonde Doppia. The title in respect of which the claimant claimed the deprivation was the same, on the pleadings. No better root was pleaded.

22. The lands were eventually brought under the Ordinance on the basis, not of entitlement to inheritance of Hildegonde's paper title, rather on the basis of alleged actual possession of Hildegonde from 1950, her death in 1974 and the alleged factual possession of Cyril Doppia until the time of the making of the application for a sufficient number of years to meet the 30 year statutory requirement.

23. Had the Deed of Assent been discovered and included in the report on title, that by itself would not have been sufficient to establish a good paper title in the claimant. To meet any rival claim at that time, the claimant would at all times have been relying on his own exclusive possession of the estate, and the ruling of Kokaram J conclusively put that claim to rest.

24. And still further, even if Mr. Inniss had been able to establish that he was deprived of a proper paper title and to my mind he was not, then had he been found to have been in continuous and exclusive possession of the lands he could very well have prescribed against Mr. Cyril Doppia. If he had been found to have been in actual possession it may well be that the paper title of Cyril Doppia would have been extinguished. This issue was before Kokaram J in the earlier proceedings. It is his failure to establish that he was so in possession which accounted for his deprivation at

the end of the day. It does not seem to me that in the circumstances a cause of action can be maintained against the Registrar General.

25. In the circumstances it seems to me that both on the limitation point as well as the sustainability of this case in the circumstances of the existence and the determination of earlier litigation, the claimant has no prospect of success and I will dismiss the claim pursuant to CPR 26:2 1(c) with costs of \$14,000.00 to be paid by the claimant to the Respondent.

Dated this 6th day of June 2014

CAROL GOBIN

JUDGE