

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV2007-02156

BETWEEN

ASLYN CAMPBELL

Claimant

AND

MERLE THOMAS

Defendant

Before the Honourable Mr. Justice G. Smith

Appearances:

Mr. L. Phillips for the Plaintiff

Dr. C. Seepersad for the Defendant

REASONS

INTRODUCTION

1. The Plaintiff and the Defendant are sisters. The Plaintiff lives on a parcel of land to which the Defendant purportedly has a Deed of title. The Plaintiff is seeking to set aside this Deed. The Defendant by her Counterclaim is seeking possession of the land against the Plaintiff.

The Plaintiff wanted to discontinue her action since she claimed she had previously “won her case” against the Defendant. The Defendant wanted to continue with her Counterclaim for possession.

Both parties agreed that I should hear a Preliminary point before the trial. That Preliminary point is whether the Defendant’s Counterclaim should be dismissed because of the findings in prior proceedings between these same parties in relation to the same parcel of land.

2. After hearing the Preliminary point, I conclude that the Defendant’s Counterclaim must be dismissed because of the findings in prior proceedings between these same parties in relation to the same parcel of land.

I also grant leave to the Claimant to discontinue her claim against the Defendant.

History of the litigation between the Plaintiff and the Defendant:

3. In 1994 the Defendant (Merle Thomas) sued the Plaintiff (Aslyn Campbell) in the Petty Civil Court for possession of the same parcel of land (the First Action). In the First Action, Merle Thomas relied on a Deed of 1983 as proof of her title. The Magistrate

hearing the case dismissed the action of Merle Thomas upon a no case submission. The Magistrate decided that the 1983 Deed was not a sufficient root of title to enforce a claim for possession. Merle Thomas appealed this decision and the Court of Appeal dismissed her appeal (see the unreported decision in Petty Civil Appeal No.5 of 1996). They agreed with the Magistrate that Merle Thomas failed to prove a good root of title to the land in question.

4. Before the first action was determined in the Court of Appeal, Merle Thomas brought a fresh Petty Civil Court action in 1996 for possession against Aslyn Campbell in respect of the same parcel of land (the Second Action). In the Second Action, Merle Thomas pleaded a full root of title dating back to a Deed of 1959. The same Magistrate dismissed the Second Action upon a Preliminary submission of “res judicata”, namely, the decision in the First Action created an estoppel in respect of the Second Action. Merle Thomas also appealed the Magistrate’s decision in the Second Action. The Court of Appeal dismissed that second appeal (see the unreported decision in Petty Civil Appeal No. 14 of 1997). They found that the Second Action was res judicata.

5. In 1999 Aslyn Campbell commenced this action against Merle Thomas. Merle Thomas has Counterclaimed in this action for possession of the same land.

Analysis:

6. Merle Thomas's Counterclaim for possession against Aslyn Campbell must fail because:

- (A) The very same issue has already been decided against her in prior proceedings between the same parties by Courts of competent jurisdiction (*res judicata*).
- (B) This action is an abuse of the process of the Court.
- (C) The Court of Appeal has already decided the same issue against Merle Thomas and that decision binds the High Court (*stare decisis*).

A. *Merle Thomas' case is Res Judicata*

7. In the First Action, Merle Thomas tried to prove her title to the lands by the 1983 Deed and failed. In the Second Action she tried to plead a full root of title but again, her action failed. The decision of the Court of Appeal in the Second Action (Petty Civil Appeal No.14 of 1997) delivered by De La Bastide C. J. is very instructive.

Merle Thomas tried to argue that the Second Action was not *res judicata* because the First Action was dismissed upon a no case submission as a result of a defective Pleading. This, Merle Thomas argued, was not a dismissal on the merits. De La Bastide C.J. roundly dismissed that argument; he found that the dismissal of the First Action upon the no case submission was a dismissal on the merits (see page 5 and 6 of the decision).

8. In the appeal in the Second Action, Merle Thomas also sought to argue that she was relying on new facts in the second action, viz the 1959 root of title. Therefore, the

second action was properly constituted. De La Bastide C.J. rejected this argument. He held that Merle Thomas should have brought her whole case against Aslyn Campbell in the first action and should not now be allowed a second bite at the cherry (see page 6 of the decision). This is also res judicata in the sense of abuse of process (see Henderson v Henderson (1843) 3 Hare 100 at 115 and see paragraph 12 below).

9. The attempt by Merle Thomas to re-litigate the same issues in the Second Action failed on the principle of res judicata (see page 8 of the decision of De La Bastide C.J.).

10. In the present matter, Merle Thomas is trying to re-litigate the same issues that have been decided against her on the merits in both the First and the Second Actions namely, the right to possession of the same land against Aslyn Campbell based on her Deed title. This issue having been decided against her by the Court of Appeal, is now res judicata.

11. Merle Thomas also sought to argue that the present matter is not res judicata since the Petty Civil Court had no jurisdiction to deal with this dispute pursuant to the provisions of sections 8, 10, 12 and 15 of the Petty Civil Court Act. The High Court now has a fresh jurisdiction to deal with this action.

This argument cannot succeed because the Court of Appeal has decided on the merits that Merle Thomas has no title to sue for possession of the land as against Aslyn Campbell. This was a decision that the court was competent to make (see page 7 of the decision of De La Bastide C.J. in the Second Action; see also the decision of Ibrahim J.A.

in the First Action at page 9). These decisions as to the title of Merle Thomas are binding on this Court and on the Court of Appeal. Merle Thomas cannot re-litigate this issue in the present High Court Action. The jurisdiction issues surrounding the Petty Civil Court do not affect the findings of the Court of Appeal on the issue that Merle Thomas has no title to sue Aslyn Campbell for possession of the land.

B. Abuse of Process:

12. Another way of looking at this matter is that it is an abuse of the process of Court. Merle Thomas, by her Counterclaim is trying to litigate upon issues which she already pursued in the prior two actions. This is res judicata in the wider sense, namely abuse of the process of the Court. (See Kent Hector v Indranie Bhagoutie H.C.A. 1115 of 2000 at paragraphs 2.2, 2.3, 5.4)

C. Stare Decisis

13. Another way of looking at the matter is from the point of view of the binding effect of a decision of a higher court. (Stare decisis). The Court of Appeal has already decided on the merits that Merle Thomas' title to the land is defective as against Aslyn Campbell. Merle Thomas cannot enforce her title against Aslyn Campbell. This decision is binding on the High Court.

Conclusion:

14. Merle Thomas' Counterclaim for possession against Adlyn Campbell must fail because:

- (A) It is res judicata in the sense of issue estoppel
- (B) It is an abuse of the process of the Court (res judicata in the wider sense)
- (C) It is subject to the principle stare decisis

The Order:

15. The Defendant's Counterclaim is dismissed. I also grant leave to the Claimant to discontinue her claim.

Since neither party "succeeded" in this High Court Action I find that each side should bear its own costs of the litigation and I make no order as to the costs of the Claim and the Counterclaim.

**Mr. Justice G. Smith
JUDGE**