

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

**CA. NO. S 060 of 2013
CV 2009-03221**

Between

H.V. HOLDINGS LIMITED

APPELLANT

AND

ADELLA HAMID

JUNE HAMID

TREVOR HAMID

RESPONDENTS

PANEL:

**Peter Jamadar, J.A.
Charmaine Pemberton, J.A.
André des Vignes, J.A.**

APPEARANCES:

**Mr. A. Manwah instructed by Mr. R. Dowlath for the Appellant
Mr. L. Thompson for the First Respondent
No appearance on behalf of the Second and Third Respondent**

DATE OF DELIVERY: 20th October, 2017

JUDGMENT

1. This is an appeal against the decision of Seepersad J. (“the trial Judge”) to dismiss the Appellant’s claim for possession of Lots 95 and 95A, Guaracara Tabaquite Road, Marabella.
2. By Notice of Appeal filed on 13th March 2013, the Appellant challenged the trial Judge’s findings that the document annexed to the Witness Statement of Byron Gopaul and marked “BG4” was not served on Ernestine Hamid, (“Mrs. Hamid”) the wife of Abdool Hamid, deceased (“the deceased”) on 16th June 1970. The Appellant contends that the trial Judge’s decision cannot be supported by the evidence and/or is against the weight of the evidence and/or is contrary to law.
3. At the trial, Byron Gopaul and Hollister Taylor gave evidence on behalf of the Appellant and the First Respondent gave evidence on behalf of the Respondents.
4. In his judgment, the trial Judge identified as an issue “*whether a Notice to quit dated 15th June 1970 was duly served on Abdool Hamid and, if so, what was the effect and/or validity of the said Notice.*”
5. On this issue, the trial Judge was not satisfied on a balance of probabilities that the document annexed as “BG4” was in fact the document served on Mrs. Hamid for the following reasons:
 - (i) the Notice to quit bore no endorsement as to service thereon;
 - (ii) Byron Gopaul did not say that he read the notice given to Mrs. Hamid before the same was handed over to her;
 - (iii) the record of service, “BG5”, did not have annexed thereto a notice dated 15th June 1970 addressed to the deceased or any notice at all; and
 - (iv) the First Respondent annexed to her Witness Statement a Notice dated 9th July 1996 from the Appellant to the Estate of the deceased which called upon his Estate to pay rent and taxes for the years 1994 to 1996 in the amount of \$505.68. The trial Judge found that this Notice was inconsistent with the Appellant’s case and cast significant doubt as to the veracity of the Appellant’s position.
6. Accordingly, the trial Judge refused to hold that:
 - (i) The deceased’s contractual tenancy was determined;

(ii) His continued possession of the subject land was as a statutory tenant under the Rent Restriction Ordinance;

(iii) Upon his death, his interest passed to Mrs. Hamid; and

(iv) Upon her death, there was no further transmission to anyone thereby entitling the Appellant to possession of the subject lands.

7. This Court notes the following from the receipts annexed to the Witness Statement of the First Respondent:

(i) Between June 1970 and June 1983 (bearing in mind that the deceased died on 11th June 1983) receipts were issued in the name of the deceased for Land Rent and House Tax without any endorsements thereon to the effect that they were issued without prejudice to the Notice to quit and/or that the deceased was a statutory tenant;

(ii) On 6th June 1984 a similar receipt, without endorsement, was issued in the name of the deceased, although he was now deceased;

(iii) From June 1985 to June 1987, receipts were issued in the name of “the Personal Representative of the Estate of Abdool Hamid – a statutory tenant” for the years 1985 to 1987;

(iv) From June 1985 to June 1992, receipts were issued in the name of “the Personal Representative of the Estate of Abdool Hamid -- a statutory tenant.” These 5 receipts were also endorsed with the words “Payment is received without prejudice to Notice to quit served on 16/6/70”.

8. Further, this Court also notes from the Notes of Evidence that:

(i) In the cross-examination of Byron Gopaul, he was not asked whether he read the Notice to quit marked “BG4” before it was handed to Mrs. Hamid;

(ii) Mr. Gopaul was not questioned about the Notice to quit not being attached to the Record of service.

(iii) The First Respondent gave no evidence in her Witness Statement nor was she cross-examined with respect to a Notice dated 9th July, 2006 from the Appellant to

the estate of the deceased calling upon his estate to pay rent and taxes for the years 1994 to 1996; and

(iv) The First Respondent gave no evidence with respect to the service of a Notice to quit in 1970 since she was a child at that time.

9. The sole issue to be determined on this appeal, therefore, is whether the trial Judge was plainly wrong in his finding that the Notice to quit marked “BG4” was not served on Mrs. Hamid on 16th June 1970.

10. It is well settled that in relation to a trial judge’s findings of fact, the Court of Appeal ought not to interfere with such findings unless the trial judge is shown to be plainly wrong.¹ In the most recent decision of the Privy Council², the Board cited with approval the following passage from **Henderson v. Foxworth Investments Ltd:**³

“67. It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.”

11. In our opinion, the trial Judge was plainly wrong in his findings of fact for the following reasons:

(i) He took into account matters that were neither raised in the evidence nor tested in cross-examination before him, for instance (a) whether or not Byron Gopaul read the Notice to quit, (b) whether the Notice to quit was annexed to the Record of service (c), and a Notice sent in 1996 by the Appellant calling for payment of rent and taxes for 1994 to 1996;

¹ Beacon Insurance Co. Ltd v. Maharaj Bookstore Ltd [2014]UKPC 21 at paras. 12-17; Henderson v. Foxworth Investments Ltd [2014]

² Petroleum Company of Trinidad and Tobago Limited v. Ryan and Another [2017] UKPC 30 at para. 15 (delivered on 19th October 2017)

³ [2014] 1 WLR 2600 at para. 67

(ii) He failed to take into account that the receipts adduced into evidence by the First Respondent revealed that the receipts issued to the estate of the deceased for 1985 to 1987 included a notation that described the estate as a statutory tenant. This is consistent with the Appellant's case that, after the death of the deceased in 1983, the Appellant was treating Mrs. Hamid as a statutory tenant protected by the Rent Restriction Ordinance;

(iii) He failed to take into account that the receipts issued by the Appellant from 1988 to 1992 were endorsed with the notations "statutory tenant" and "Payment is received without prejudice to Notice to quit served on 16/6/70." This was again consistent with the Appellant's case that Mrs. Hamid was a statutory tenant and that the Appellant was receiving rent from the estate of the deceased while reserving its rights under the Notice to quit served on 16th June, 1970.

12. In the circumstances, we are of the opinion that the Court of Appeal, as a Court of review, is entitled to overturn the trial Judge's finding that the Notice to quit was not served on Mrs. Hamid on 16th June, 1970. Accordingly, we are prepared to interfere with the trial Judge's finding and to find that, on the evidence of Mr. Gopaul, the Appellant had served Mrs. Hamid with the Notice to quit and that this gave rise to the strong presumption of fact that the Notice to quit reached the deceased.⁴ In the absence of any evidence from the First Respondent to rebut this presumption, the trial judge ought to have found that the Notice to quit was duly served on the deceased and that it terminated his contractual tenancy on 31st December 1970. Thereafter, the deceased was entitled to remain in possession as a statutory tenant protected by the Rent Restriction Ordinance until his death on 11th June 1983. Thereafter, his wife, Mrs. Hamid, pursuant to Section 2 of the Rent Restriction Ordinance, was entitled to remain in possession until her death on 10th September 1993.

13. After 31st December 1970, neither the deceased nor Mrs. Hamid had any interest in the subject lands and they only had the status of irremovability. When Mrs. Hamid died on 10th September 1993, therefore, she had no interest in the lands that could devolve to the Respondents by a Deed of Assent or otherwise. The deceased and Mrs. Hamid, as statutory tenants protected by the Rent Restriction Ordinance, were not entitled to the protection of the

⁴ Ali Jumadeen v. H.V. Holdings Limited, CA No. 93 of 1988

Lands Tenants (Security of Tenure) Act: Edwin Alexander v. R. Sat Rampersad.⁵ After the death of Mrs. Hamid on 10th September 1993, therefore, the Respondents were trespassers.

14. These proceedings were instituted against the Respondents on 8th September 2009, just two days short of 16 years after the death of Mrs. Hamid. Therefore, the Respondents were not entitled to raise the issue of possessory title based on adverse possession.
15. Accordingly, the appeal will be allowed and the Appellant is entitled to a declaration that the Deed of Assent registered as No DE 200500371240 made in favour of the First Respondent passed no interest whatsoever to the First Respondent. Further, the Appellant is entitled to an order that the Respondents do deliver up to the Appellant possession of Lots 95 and 95A Guaracara Tabaquite Road, Marabella.
16. With the consent of the Appellant, there will be a stay of execution of this Order until 1st May, 2018 and, since the Respondent is assisted by the Legal Aid and Advisory Authority, there will be no order as to costs.

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P. Jamadar
Justice of Appeal

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C. Pemberton
Justice of Appeal

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A. des Vignes
Justice of Appeal

⁵ Civil Appeal No. 11 of 1989, per Hamel-Smith JA