

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 0881/2003

BETWEEN STERLING IVANHOE DANDY CLAIMANT

A N D THE REGISTRAR OF TITLES 1ST DEFENDANT

A N D THE ATTORNEY GENERAL 2ND DEFENDANT

Norman Samuels for Claimant

Curtis Cochrane, Michael Deans and Ayesha Richards for
Defendants instructed by Director of State Proceedings

**Heard: December 9, 2003, January 22 and 23, 2004, March
9, 2004 and April 8, 2009**

Cor: Rattray, J.

1. Sterling Ivanhoe Dandy applied to the Registrar of Titles in April, 1999 to be registered as proprietor of land situate at Byndloss, Cross Roads in the parish of St. Catherine. This land was already registered at Volume 1073 Folio 78 of the Registrar Book of Titles in the name of Eulalee Lucinda

Dandy. His application was therefore based on his claim to the said land by way of adverse possession.

2. In the Statutory Declaration sworn to on the 26th April, 1999 and filed in support of his application to be registered as a proprietor of land acquired by possession pursuant to Section 85 of the Registration of Titles Act, Sterling Dandy declared that he had known the said land for over 40 years. Further that in 1972, he entered and cultivated the land, planting crops and fruits thereon and he exercised all acts of ownership and paid all outgoings including taxes.
3. He contended that the registered owner had abandoned the said land, as he was informed that she had left the district in 1970 and it was believed she may have gone abroad to live with relatives. He further contended that for upwards of 25 years, he lived in open, undisturbed and undisputed possession, adverse to the claim of the registered owner, Eulalee Dandy or any other person or persons claiming through her or otherwise.

4. Based on the information submitted, however, the Referee of Titles by letter dated November 29, 1999 refused to entertain Mr. Dandy's application as being premature on two grounds:

(a) It should have been based on 30 years continuous and undisputed possession, and

(b) Taxes have been paid on the name of an acknowledged relative of the registered proprietor during the alleged period of possession.

5. Despite the request of his Attorney at Law, in correspondence dated December 20, 1999 addressed to the Registrar of Titles for the decision to be reconsidered, Mr. Dandy's entreaties fell on deaf ears. In his letter of January 17, 2000 addressed to the Registrar of Titles, the Referee of Titles, Mr. George Alfred Brown in responding to Mr. Samuel's objections pointed out that there were "substantive questions as to the date/time when the possession relied on by the applicant actually commenced", which needed to be addressed. These included inter alia;-

(a) the similarity in surnames of the registered proprietor and the applicant which suggested

kinship and the probability that the applicant entered into occupation of the land as caretaker in the absence overseas of the registered proprietor.

- (b) the reliance of the applicant on a Certificate of Payment of Taxes in the name of YuQuill Dandy in support of his application for registration would appear to be an acknowledgement of the claim to ownership by YuQuill Dandy.
- (c) the lack of any evidence as to when YuQuill Dandy was first registered on the Tax Roll as owner of the said property.
- (d) the apparent acquiescence by the applicant when YuQuill Dandy's name was placed on the Tax Roll as owner and the continued payment of taxes in her name raises the question as to when the applicant first asserted a claim or right to the land.

The Referee of Titles concluded that "Until the above questions are resolved to my satisfaction, I hold to the line of utmost allowance of time in favour of the lawful claimants of the registered proprietor as provided by Law."

These questions were never addressed nor answered by the Claimant.

6. Instead, on the 28th July, 2000, Sterling Dandy filed an Originating Summons against the Registrar of Titles seeking determination of the following questions and for consequential Orders in terms outlined below;

- (a) Whether the period to be re-registered as the proprietor of the subject property is based on a thirty year period of continuous possession or under a Twelve (12) year period of continuous possession under the Limitation of Actions Act.
- (b) Whether the similarity of the names of the Applicant and the registered proprietor of the subject premises ought to oust the relevant provisions of the Limitation of Actions Act in respect to Section 85 of the Registration of Titles Act.
- (c) Whether the opinion of the Referee of Titles not founded upon the facts presented to him in the Application and supporting documents can displace the facts stated by the Applicant and supported by relevant Statutory Declarations in an Application under Section 85 of the Registration of Titles Act.

- (d) Whether Certificate of Payment of Taxes... albeit showing that taxes have been paid up to the material time is relevant to oust the operation of Section 85 of the Registration of Titles Act and the relevant provisions of the Limitation of Actions Act in the Application under Section 85 of the Registration of Titles merely because of the similarity in the names of the Applicant and that on the said Certificate of Payment of Taxes.
- (e) Whether the Registrar of Titles ought not to be Ordered to give the proper effect to Section 85 of the Registration of Titles Act and the Limitation of Actions Act and to give Approval to the Application under review.

- 7. This Originating Summons was struck out on the application of the Registrar of Titles as disclosing no reasonable cause of action and being an abuse of the process of the Court on the 8th November, 2000. No representative appeared on behalf of Mr. Dandy at the hearing.
- 8. Mr. Dandy's explanation for his failure to attend Court when his Originating Summons was struck out was that the Registrar of Titles, by letter dated July 4, 2000, had suggested that certain amendments be made to his

application, additional fees be paid and undertook that once those requisitions were complied with, his application would be resubmitted to the Referee of Titles. He contended that he complied with the requisitions, incurred further costs in the sum of \$100,000.00 and did not pursue the proceedings filed in Court as a consequence of the promise and undertaking of the Registrar of Titles, which led him to believe that his application would be favourably considered.

9. He alleged that in breach of the undertaking given, the Registrar of Titles resubmitted his application, not to the original Referee of Titles who first considered it, but instead to the Deputy Registrar of Titles. By letter dated October 10, 2002, addressed to Mr. Dandy's Attorney at Law, the Deputy Registrar advised that the Summons brought by Sterling Dandy against the Registrar of Titles had been struck out by the Court and he therefore ought to make a fresh application supported by depositions in proof of his claim for adverse possession. The Deputy Registrar also outlined the areas in which proof was required as being:

- (a) Cogent proof of possession as Sterling Dandy's last deposition indicated that he was resident in the United Kingdom.
- (b) A declaration from Dandy Yuquill explaining how his name came to be on the Tax Poll as owner of the said property.
- (c) The present place of abode and address of the registered proprietor Eulalee Dandy must be furnished as the land is bona vacantia and vests in the Crown based on assertions in the depositions that the registered owner abandoned the land. Adverse possession against the Crown must run for 60 years.

10. Once again Sterling Dandy's Attorney at Law objected to the position taken, this time by the Deputy Registrar of Titles and requested that his client's application be submitted to the Referee of Titles who originally considered same. He also maintained that the Court proceedings filed on behalf of Sterling Dandy were not struck out on the merits but were dismissed for want of prosecution. By letter dated April 7, 2003, the Referee of Titles who initially heard the application agreed with the position taken by the Deputy Registrar and indicated the

"need for a new application in the manner and subject to the requisitions specified by the Deputy Registrar."

11. In light of the position taken by the Registrar of Titles to his application to be registered as proprietor of land by way of adverse possession, Sterling Dandy on the 23rd May, 2003 filed a claim seeking leave to apply for Judicial Review to obtain an Order of Mandamus to have the Registrar of Titles approve his application pursuant to the Registration of Titles Act and the Limitation of Actions Act.
12. Rule 56.1 of the Civil Procedure Rules outlines the provisions relating to applications for Judicial Review. Subsection (3) (c) of that Rule indicates that Judicial Review includes the remedy of mandamus, "for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case."
13. Counsel for Sterling Dandy, Mr. Norman Samuels in referring to Rule 56.1 (3)(c) also relied on Order 53 rule 1 - 14/4 of the English Supreme Court Practice 1982 which reads:-

"An Order of mandamus is an order requiring an act to be done; and it may be made where an inferior tribunal or body of persons is charged with a public duty to do an act, and has failed upon demand to do it..."

He argued that the reasons given by the Referee and Deputy Registrar of Titles for the refusal of his client's application to be registered as proprietor of land by way of adverse possession were wrong in Law.

14. Counsel maintained that the law is clear that twelve (12) years continuous possession of land by his client adverse to the interest of the registered owner entitled him to be registered as proprietor of the said land. He further maintained that any request by the Referee or Deputy Registrar of Titles that a 30 or 60 year period is the appropriate time frame is a complete misapplication of the law. In those circumstances, this Court is being asked to instruct the Registrar of Titles by way of an Order of Mandamus to approve the application of Sterling Dandy.
15. Alternatively, Counsel Mr. Samuels contended that once the Registrar of Titles did not hear and determine the

application of his client according to law, the statutory authority prescribed by law to consider such an application, has not in fact heard it. In such a case as the present, he argued, this Court ought, by way of an order of mandamus to send this application back to the Registrar of Titles to hear and determine it according to law. It is the duty of the Court, Counsel submitted "to get the Registrar of Titles back on the right road".

16. Additionally, Mr. Samuels relied on Sections 85 and 86 of the Registration of Titles Act in support of his client's application for Judicial Review, the relevant portions of which read as follows -

S.85 'Any person who claims that he has acquired a title by possession to land which is under the operation of this Act may apply to the Registrar to be registered as the proprietor of such land in fee simple or for such estate as such person may claim.'

S.86 (1) Every application under section 85 shall -

(a)

(b) be accompanied by

- (i) the evidence upon which the applicant relies in support of his application;
 - (ii) an affidavit containing such particulars as may be prescribed;
 - (iii) the fees set forth in the Eighteenth schedule as payable on an application to bring land under the operation of this Act;
 - (iv) a certificate from the proper officer that all quit rents and property tax affecting the land have been paid up to the date of the application.
- (2) The provisions of sections 31 to 36 (both inclusive) and sections 43 to 46 (both inclusive) shall apply, mutatis mutandis in relation to an application under section 85 as they apply in relation to an application to have land brought under the operation of this Act."

17. Under Section 31, where the Registrar of Titles has submitted a party's application to be registered as owner of land together with supporting documentation to one of the Referees of Titles for his direction, if the said Referee

after a consideration of material submitted is of the opinion that the applicant: -

- (i) is a person entitled to make application under the Registration of Titles Act, and
- (ii) is in possession by himself or a tenant of the land identified in the application, and
- (iii) would be entitled to maintain and defend such possession against any other person claiming the said land or any part thereof,

the Referee shall provisionally approve the registration of the title of the applicant as an absolute title to the said land.

18. That section goes on to indicate that the Referee is empowered to provisionally approve the registration of title of the applicant even where he is not satisfied that the applicant would be entitled to maintain and defend his possession against another party in certain specified instances. In those circumstances however, the provisional approval of the registration of the title of the applicant is limited to a qualified title to land with the Referee being

obliged to specify the nature of the qualified title to land as well as the qualification to which the title is to be subject.

19. Mr. Samuels therefore argued that once the three (3) conditions outlined in section 31 have been satisfied, the Referee of Titles is obliged to give his provisional approval for the Applicant to have an absolute title to the land. He further argued that even where the land is insufficiently described or identified, or where the land may be subject to liabilities, rights or interests which need not be entered on the Certificate of Title as encumbrances, the Referee is still empowered to provisionally approve the registration of the title of the Applicant as a qualified title to land. Counsel submitted that the mere fact of Dandy Yuquill's name appearing as owner on the tax roll for the said land is not a valid basis for the refusal of his client's application.

20. Counsel Mr. Cochrane in addressing the issue of Section 86 of the Registration of Titles Act, forcefully maintained that the Register is under a duty to carefully consider any such application the effect of which, if granted, would rescind the title to land of a citizen of this country. He submitted

that the Registrar of Titles was obliged to make whatever queries he thought necessary in order to be certain of the bona fides of the applicant before depriving a registered proprietor of ownership of property.

21. Mr. Cochrane asked the Court not to countenance any impression that the role of the Registrar, in an application for title by way of adverse possession, was merely to accept documents at face value and thereafter approve the application without more. He urged the Court to accept that the Registrar was duty bound to make such enquires as he thought fit in this matter in order to be satisfied that the application ought to be granted.

22. It must be noted that the functions and duties of the Registrar and Referee of Titles and statutorily prescribed. Section 4 of the Registration of Titles Act empowers the Governor General to appoint a fit and proper person to be the Registrar of Titles to investigate and deal with applications for bringing land under the operation of the Act and for the other purposes mentioned in that legislation. By virtue of Sections 85, 86 and 31 of the

Registration of Titles Act, the Registrar is authorized to submit any application to be registered as proprietor of land acquired by adverse possession to one of the Referees of Titles for his direction. If based on the deeds, documents or other evidence before him, the Referee of Titles is of the opinion that the applicant has cleared the threshold required by law, provisional approval of the application would be granted.

23. I am of the view that the enquires raised by the Referee of Titles were reasonable ones, necessary for the due and proper consideration of the application before him, in order to be convinced that the requirements of Section 31 had been met. The questions posed go directly to the issues as to whether "the applicant is a person entitled to make application under this Act," as well as that of possession. The failure of the Claimant to reply to those queries naturally would have been a source of some concern leading to a refusal of the application. I find that the Referee of Titles acted properly in making the enquiries in accordance with and in fulfillment of the duties imposed on him by statute.

24. Counsel for the Defendant, Mr. Cochrane asserted that Section 156 of the Registration of Titles Act makes provision for an Applicant who is aggrieved by the decision of the Registrar of Titles or a Referee, in circumstances such as the present, to summon the Registrar or Referee to appear before a Judge to substantiate and uphold the grounds of the refusal. This step he stated was taken by the Applicant when he filed the Originating Summons on the 28th July, 2000. He further stated that as that Originating Summons was struck out on the 8th November, 2000, if the Claimant intended to pursue an application for relief, it ought to be in the Court of Appeal and not before this Court.

25. In the alternative, Counsel submitted that Judicial Review was not open to the Claimant where an alternative form of redress existed. He relied on the dicta of **Taylor LJ** in the English Court of Appeal case of **R vs. Birmingham City Council, ex parte Ferrero Ltd** 1993 1 AER 530 at page 537 where the learned Law Lord opined after referring to authorities cited:-

"These are very strong dicta, both in this court and in the House of Lords as cited, emphasising that where there is an alternative remedy and especially where Parliament has provided a statutory appeal procedure it is only exceptionally that judicial review should be granted."

In his written submissions, Mr. Cochrane contended that on the refusal of the Registrar to approve Mr. Dandy's application to be registered as proprietor of the land in question, Mr. Dandy was not left without a remedy under the Act. He could have proceeded pursuant to the statutory appeal procedures provided by Section 156. Mr. Cochrane further contended that the Claimant has not utilized this provision as he has not requested grounds for the refusal of his application, nor has he summoned the Registrar or Referee to appear before a Judge as provided for by the section. Therefore he argued Mr. Dandy should not be allowed the remedy of Mandamus by way of Judicial Review, as an alternative remedy was still open to him.

26. In dealing with this complaint by Mr. Cochrane, Mr. Samuels maintained that the application before the Court for

Judicial Review for an Order of Mandamus was in fact made pursuant to Section 156 of the Registration of Titles Act. A perusal of the relevant portion of that section as set out hereunder lays bare the weakness of that contention.

Section 156 -

"If, upon the application of any owner or proprietor to have land brought under the operation of this Act,... or to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar, the Registrar shall refuse to accede to such application,... it shall be lawful for such owner or proprietor to require the Registrar or Referee,... to set forth in writing, under his hand, the grounds of his refusal,... and such owner or proprietor may, if he think fit, at his own costs, summon the Registrar or Referee ... to appear before a Judge to substantiate and uphold the grounds of his refusal...;

Upon such hearing the Registrar or Referee or his Counsel shall have the right to reply, and the said Judge may, if any question of fact be involved, direct an issue to be tried to decide such fact..."

27. An application for Judicial Review for an Order of Mandamus cannot be made pursuant to this section of the Registration of Titles Act. Section 156 provides the

procedures for the airing of a complaint consequent on the decision of the Registrar and the trial of such issues of fact as the Court deems fit. Part 56 of the Civil Procedure Rules clearly outlines the process to be followed by an applicant seeking to apply for Judicial Review. The two processes are different and I find Mr. Samuel's contention that the application for Judicial Review has been brought under and by virtue of section 156, to be without merit.

28. I am satisfied however on the evidence before the Court that Mr. Dandy utilised the provisions of Section 156 aforesaid, when he filed his Originating Summons challenging the Registrar's grounds for the refusal of his application. The provision that a request be made of the Registrar or Referee of Titles to set out the grounds of his refusal is for the benefit of the Applicant. It is not a precondition to the utilization of the process that the Applicant must firstly require of the Registrar the grounds for refusal, if he is already aware or is in possession of the said grounds, On the application being struck out, Mr. Dandy ought to have either applied to have the matter restored or exercised the right of appeal open to him, by way of appeal

to the Court of Appeal. This he failed to do. To seek to further litigate this matter by way of Judicial Review is an abuse of the process of the Court.

29. Mr. Cochrane in his written submissions further argued that "where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a particular way." **Halsbury's Laws of England, 4th Edition, Volume 1, paragraph 90.** The Registration of Titles Act imposes a duty on the Registrar of Titles to hear and determine an application to be registered as proprietor of land by way of adverse possession. He has a discretion to exercise, based on the facts presented, as to whether or not to grant the application.

30. Learned Counsel for the Claimant, when asked by the Court at the start of this trial whether he was seeking an Order of Mandamus for the Registrar of Titles to approve his client's application, answered in the affirmative. In his later submissions, Mr. Samuels urged the Court to order the

Registrar to hear and determine the application according to law. Both Order 53 rule 1 - 14/4 of the 1982 Supreme Court Practice, Volume 1, cited by Mr. Samuels and Rule 56.1 of the Civil Procedure Rules, make it clear that the remedy sought is appropriate when an inferior body fails to carry out its public duty when called upon to do so.

31. In the case before the Court, I am satisfied that there was no refusal by the Registrar of Titles to carry out the duties imposed on him by the Act. The application together with the supporting documentation was considered by the Referee of Titles as provided for by the Registration of Titles Act and refused based on certain deficiencies identified. Mandamus will not be ordered to compel a tribunal to adjudicate in a particular way. See; **R v. The Licensing Justices of Kingston-on-Thames (ex-parte Davey) (1901-1902) 18 TLR 477**. Although a complaint was raised by the Claimant that the Referee and Deputy Registrar of Titles failed to apply the correct principles of law in coming to their decision to refuse his request to be registered as owner of the land, no application was made for an Order of Certiorari to quash that decision.

32. As the application by the Claimant was heard and determined by the Registrar as provided by Law, there is no basis on which Mandamus could be granted in this matter, and I so order. In any event, even if the Court were to find a refusal on the part of the Registrar or Referee of Titles to hear the application, which it does not, it still could not, nor would it order the Registrar of Titles to approve the Application of Sterling Dandy to be registered as proprietor of the said land by adverse possession.

33. In light of these findings, the application for an Order of Mandamus is refused.

