

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E 313 OF 1999

BETWEEN	HYACINTH E. MCPHERSON-GREEN[LAWFUL DAUGHTER AND ADMINISTRATOR OF THE ESTATE OF BENOI T. MCPHERSON, DECEASED, INTESTATE]	FIRST PLAINTIFF
AND	DAVID MCPHERSON	SECOND PLAINTIFF
AND	THE REGISTRAR OF TITLES	FIRST DEFENDANT
AND	THE REFEREE	SECOND DEFENDANT
AND	THE ATTORNEY GENERAL	THIRD DEFENDANT

Mr. H. McPherson for the Plaintiffs

Miss N. Foster and Mr. John Francis instructed by the Director of State Proceedings for the Defendants.

Heard: February 2, 9, 2000

IN CHAMBERS

Ruling on Preliminary Objection

**HARRISON J**

This summons deals with an application to bring land under the operation of the Registration of Titles Act and was before me on February 2, when I reserved my ruling on a preliminary objection raised by Miss Foster.

The Summons

The Summons before me is dated the 2<sup>nd</sup> December, 1999 and was filed on behalf of the plaintiffs. It seeks the following orders:

1. That the defendants be held in contempt of Court for disobeying the Order of this Honourable Court handed down by the Honourable Ms. Justice G. Smith in Chambers on the 1<sup>st</sup> November, 1999.
2. That the defendants be further ordered to obey the aforesaid order of the Court
3. That a criminal investigation be ordered pursuant to section 178 of the Registration of Titles Law.
4. That the defendants pay the plaintiffs the costs of this application.

#### The Order of Smith J.

The learned Judge made the undermentioned ex-parte order:

"1. The Registrar of Titles and/or the Referee of Titles both of 23 ½ Charles Street, Kingston, in the parish of Kingston, is summoned to appear, within six clear days of the 15<sup>th</sup> day of November, 1999, for the hearing of the complaint of Hyacinth E. McPherson-Green [administrator (sic) of the estate of Benoi T. McPherson, deceased] to substantiate and uphold the grounds of the refusal to register or record the certificate of title in the name of Hyacinth E. McPherson [administrator(sic) of the estate of Benoi T. McPherson deceased, intestate] and David McPherson.

2. Liberty to apply."

#### Appearance

A Memorandum of Appearance was filed on behalf of the Defendants by the Director of State Proceedings in the Supreme Court Registry, on the 19<sup>th</sup> November, 1999.

#### Hearing of the summons

At the very outset, Mr. McPherson submitted that this summons ought to be placed before Smith J since she had dealt with the matter on the ex-parte application in November 1999. I ruled against this request and informed him that the summons was properly before me. Furthermore, Smith J was engaged in the Regional Gun Court for the Parish of St. James and was not available to hear the summons. I therefore proceeded to hear the objection.

Miss Foster objected to the hearing of the summons on the ground that the matter before the Court was premature. She submitted that the affidavit evidence presented by the plaintiffs failed to exhibit the statement of grounds upon which the Referee of Titles refused to grant the application. It was her contention that the grounds of refusal was a prerequisite to the summoning of the Referee of Titles to substantiate and uphold the reasons for his refusal. Furthermore, she submitted that the determination of this court as to whether the Referee was justified in refusing to issue title would depend on an examination of the statement of grounds and not on the requisitions sent by the Referee to the Registrar of Titles and which the plaintiffs exhibited.

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Miss Foster referred me to the written reasons for judgment of Bingham J, delivered in suit E 202/83 in a case that was concerned with a summons for the review of a ruling by the Referee of Tiles. The case demonstrates vividly, the necessity for the requisite fees to be paid before the Referee of Tiles issues his written reasons for refusal and the need for those reasons to form a part of the records. She also drew my attention to the work by Robinson on "Transfer of Land in Victoria". Page 430 of that book discusses the Australian Transfer of Land Act. Section 116(1) which is similar to section 156 of the Registration of Titles Act, Jamaica, deals with the summoning of the Registrar to show cause. The footnote in respect of the former section reads as follows:

"The main advantage of a summons under this section over an application for a mandamus is that where the proceeding is by way of summons the Registrar is under the section confined to the reasons given by him for rejecting the application...." (Emphasis supplied)

Mr. McPherson, on the other hand, submitted that the issue of statements and grounds for refusal were irrelevant where all the requirements of the Registration of Titles Act have been met with respect to the requisitions requested by the Referee. He further submitted that by virtue of section 178 of the Registration of Titles Act it was unnecessary for the provision of statements and grounds where all the requirements

have been met to bring the application under the Registration of Titles Act. He contended therefore that his summons was not premature.

### The Court's Ruling

I have given careful consideration to the submissions of both Counsels and am quite satisfied that there is merit in the preliminary objection raised by Miss Foster. The order of Smith J is for the Registrar of Titles and/or Referee of Titles to be summoned to this Court "to substantiate and uphold the grounds of the refusal to register or record the certificate of title in the name of Hyacinth E. McPherson [administrator (sic) of the estate of Benoi T. McPherson deceased, intestate] and David McPherson." It is therefore my considered view and I so hold, that the grounds for refusal by the Referee of Titles must form part of the records in order for the Court to determine whether or not the Referee was justified in refusing to issue title. In order for the applicant to obtain these reasons he must pay the prescribed fees as set out in the Rules made pursuant to section 173 of the Registration of Titles Act and published in The Jamaica Gazette Supplement of the 29<sup>th</sup> March 1995.

It does seem strange that Mr. McPherson has submitted that the grounds for refusal are irrelevant so far as it touches and concerns the matter before me, yet he has applied for same and has paid the prescribed fee vide receipt # 1091567 exhibited in the judge's bundle. He has placed the matter inter alia, under section 156 of the Registration of Titles Act and Smith J, in conformity with this section, has ordered that the Referee and/or Registrar of Titles "...substantiate and uphold the grounds of the refusal to register or record the certificate of title."

There is good reason for the plaintiffs obtaining and filing the grounds of refusal. The Court that deals with the matter will be in a position to examine the record and, as Robinson states (supra) "the Registrar is under the section confined to the reasons given by him for rejecting the application..."(emphasis supplied). It is my considered view therefore, that the plaintiffs must comply with the provisions of the Registration of Titles Act. The summons is indeed premature and it is hereby dismissed with costs to the defendants to be taxed if not agreed.