

1/10/08

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO. 14/08

BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)

BETWEEN	TRACY TAYLOR	APPELLANT
AND	RUDOLPH MELLIPHANT	RESPONDENT

Debayo Adedipe for the Appellant.

Sean Clarke instructed by Clarke and Gammon, for the Respondent.

21st October and 12th December, 2008

HARRISON, J.A.:

1. This is an appeal from a judgment of Her Honour Mrs. S. Bertram-Linton, Resident Magistrate, Manchester, in an action for recovery of possession of land. The learned Resident Magistrate awarded judgment on behalf of the plaintiff/respondent and ordered the defendant/appellant to give up possession of the premises. The Court allowed the appeal on October 1, 2008 when the matter came up for hearing and promised then to put its reasons in writing. This is a fulfilment of that promise.

2. The particulars of claim allege inter alia, that the defendant was a tenant at will and his tenancy had expired having been terminated by notice to quit on the 26th June 2007.

3. A special Defence was filed pursuant to sections 150 and 151 of the Judicature (Resident Magistrate's) Act ("the Act") in the Mandeville Court's Office on the 26th June 2007 and was served on the Attorneys at Law for and on behalf of the respondent on the said date.
4. When the case came up for hearing on July 6, 2007, (the return day) Mr. Sean Clarke, Attorney at Law for the plaintiff, was present. Counsel held however, for Mr. Adedipe who was unavoidably absent. The records reveal that when the matter was mentioned, Mr. Clarke sought to have judgment awarded to the plaintiff. The Resident Magistrate asked him for the plaintiff's registered title. She examined it and thereafter proceeded to make the order for possession of the land.
5. Notice and Grounds of appeal were filed on the 9th July 2007 and an order staying execution of the judgment was made by the Magistrate on July 17, 2007. The grounds of appeal which were filed, state as follows:

Ground 1.

The Resident Magistrate erred in law in entering judgment against the defendant/appellant without a trial and without hearing or receiving any evidence and without there being an admission on the part of the defendant.

Ground 2

The judgment ... is a nullity because issue had been joined between the parties upon the defendant/appellant filing a special defence pursuant to the provision of the Judicature (Resident Magistrates) Act and the Resident Magistrate failed to hold a trial but instead entered judgment without hearing or receiving any evidence.

6. In her reasons for judgment, the learned Resident Magistrate stated as follows:

- (a) No special defence or defence before the court.
- (b) The court took into account provisions under section 161 of the Registration of Titles Act – none of the exceptions were raised so the court was of the view that the plaintiff was entitled to judgment.
- (c) No pleadings were brought to the attention of the court at time matter was before the court.
- (d) The court took into account the Privy Council decision of **Pottinger v Raffone** delivered April 2007.
- (e) No trial was conducted on April 18, 2008.

7. The substantial ground argued in the appeal was that the Magistrate adopted the wrong procedure in disposing of the matter on the return day. Mr. Adedipe, Counsel on behalf of the appellant, submitted that the learned Magistrate had taken an unusual course on the civil return day. He said that no statement of defence was invited by the Magistrate or made by the defence, yet the learned Magistrate proceeded to make an order for possession without hearing or receiving any evidence. He submitted that in the circumstances, the judgment was a nullity in view of section 184 of the Act.

8. Mr. Adedipe further submitted that because issue had been joined between the parties upon the appellant filing a special defence, the learned Magistrate was obliged to hold a trial. The defence he said, raised the following issues:

- (a) The defendant is one of the grandchildren of Nathaniel Faulknor who died on the 25th January 1962.
- (b) At the time of death of Faulknor he was seised in fee simple of the land registered at Vol. 953 Folio 250 of the Register Book of Titles.
- (c) Faulknor died testate and Probate dated 3rd September 1981 was granted.

- (d) Faulknor's daughter (Cathleen Faulknor) is sole executrix of the will.
- (e) The defendant is in continuous and undisturbed possession of part of the land to the exclusion of the plaintiff and Cathleen Faulknor for upwards of 15 years. A shop is built thereon.
- (f) The defendant by adverse possession bars the title of plaintiff's predecessor in title by virtue of the Limitation of Actions Act.

9. Mr. Sean Clarke, Attorney at Law for the respondent submitted initially that the judgment should be upheld but after he realized that he faced an uphill task he graciously conceded.

10. The appeal raises an important procedural issue so far as it relates to the powers of the Resident Magistrate on the civil return day. It is for this reason why the Court decided to give written reasons for its decision

11. The definition of 'Return Day' in the Resident Magistrates' Court Rules means not only the day appointed in the summons for the appearance of the defendant, but also any other day fixed for the trial of the action. See **Ferguson v Sewell** (1952) 6 JLR 100.

12. Since the Resident Magistrate is a creature of statute he therefore enjoys no greater power in the exercise of his duties other than what is expressly or impliedly granted by statute. The courts over which he presides are inferior courts without any inherent jurisdiction and with only such jurisdiction as is conferred upon them by Statute. See **Lindo v Hay** Clarke's Reports 118.

13. Resident Magistrates must therefore act in accordance with the procedures laid down in the statute and not otherwise. Sections 181 to 201, of the Act, set out the

provisions in connection with “Trial of Causes”. Section 184 in particular, governs the procedure in relation to the determination of civil matters and provides as follows:

“184. On the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to answer by stating shortly his defence to such plaint; and on answer being so made in Court, the Magistrate shall proceed in a summary way to try the cause, and shall give judgment without further pleading, or formal joinder of issue”. (emphasis supplied)

14. In **Nehemiah Sterling v Portland Parish Council** (1968) 11 JLR 13 Fox J. A said at page 14:

‘The section seems to contemplate that the plaintiff will be given an opportunity to prove his claim and be allowed to fail by way of this effort, and not otherwise; and that this may be so even though the magistrate and the defendant consider the stated defence unanswerable’. (emphasis supplied)

15. It is abundantly clear to me that the words, “in a summary way to try the cause”, referred to section 184 of the Act, must be construed to mean that the Magistrate must carry out an examination upon oath of witnesses as envisaged by section 183 of the Act and will thereafter give judgment without further pleading or formal joinder of issue.

Section 183 reads as follows:

“183 On the hearing of any action, or in any other proceeding, civil or criminal, before a Court, all persons adduced as witnesses may be examined upon oath, or, in those cases in which persons are allowed by law to make affirmation instead of taking an oath, on solemn affirmation”.

16. The words in section 184 would also apply to situations where a statutory defence such as the Limitation of Actions Act is raised as a defence to the action. Even though that defence may inevitably lead to judgment for the defendant, the Magistrate is obliged to try the cause in a summary manner before he pronounces judgment for the defendant.

17. Where the claim is admitted section 187 of the Act authorises the magistrate to enter up a judgment for the plaintiff when the defendant appears at the hearing and admits the claim. Where the admission does not relate to the whole of a plaintiff's claim, judgment cannot be entered upon such admission. In **Cyrus v Archer** RMCA 26/67 delivered on February 2, 1968 (un-reported) it was decided that where there is a partial admission, the Magistrate must "proceed in a summary way to try the cause".

18. We are therefore of the view that there was merit in the submissions of Mr, Adedipe. The learned Magistrate had ignored the provisions of section 184 of the Act. The statute did not give her the power expressly or by implication to declare final judgment where she has not proceeded "in a summary way to try the cause". In the circumstances, it was our view that the appellant was not justly treated and was deprived of her right to have the "real question in controversy" determined by the Magistrate.

19. It was for these reasons that the Court allowed the appeal and set aside the judgment entered in favour of the respondent. The Court recommended a re-hearing of the matter and this should take place before a different Magistrate. Costs of the appeal are fixed at \$15,000.00 in favour of the appellant.

MORRISON, J.A.:

I agree

DUKHARAN, J.A.:

I agree

HARRISON, J.A.

ORDER

The appeal is allowed. The judgment in the court below is set aside. The court recommends a re-hearing of the matter before a different Magistrate. Costs of the appeal are fixed at \$15000 in favour of the appellant.