

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO. 14/2009

BEFORE: THE HON. MR JUSTICE PANTON, P.  
THE HON. MR JUSTICE HARRISON, J.A.  
THE HON. MR JUSTICE MORRISON, J.A.

BETWEEN	DORRETT THOMPSON	1 <sup>ST</sup> APPELLANT
AND	CARMELETA COLE	2 <sup>ND</sup> APPELLANT
AND	GIFFORD STONE	3 <sup>RD</sup> APPELLANT
AND	WILMOTT CAMPBELL	RESPONDENT

Ernest Smith instructed by Ernest A Smith & Co for the appellants

Dorrel Wilcott for the respondent

23 March 2010

ORAL JUDGMENT

PANTON, P.

[1] In this appeal, which involves three claims that were filed against the appellants, the respondent sought recovery of possession of land in the parish of Clarendon.

[2] The learned Resident Magistrate gave judgment in favour of the respondent indicating that no evidence had been given by the

appellants to show that they had a better right to possession than the respondent.

[3] The factual situation is that the respondent is claiming entitlement to possession on the basis of being a beneficiary of his father's estate, the father having died in 1981. The respondent is also claiming that the Will has been probated, and that that Will, made by his father in 1970, gave him rights to the property on which the appellants reside. The property is supposed to be in acreage, approximately 3 ½. It does not say where exactly in Clarendon this property is located.

[4] At the trial, no evidence was produced by the respondent so far as the contents of the Will and the probating of it are concerned. At the end of the case for the respondent, the appellants rested and so the Resident Magistrate was left with insufficient evidence from either side to warrant the giving of judgment. However, as said earlier, judgment was given in favour of the respondent. Section 181 of the Judicature (Resident Magistrates') Act states:

"181 -The Magistrate shall have power to non suit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court."

This was a situation in which the appellants were in possession. In order for their possession to be ousted, it was incumbent on the respondent to

produce evidence showing that he was entitled to possession and had a better right to such possession than the appellants. This was not forthcoming. That which was presented fell far short of what would have been required not only in fact but also in law.

[5] In the circumstances, we find ourselves constrained, there being no evidence presented by the appellants to satisfy their defence that they are purchasers for value, to rule that this was an ideal case for the Resident Magistrate to non suit the respondent. That is what we do at this stage by non suiting the respondent in the matter and awarding costs to the appellants. Costs of the appeal set at \$15,000.00.