[2017] JMCA Civ 10

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 19/2015

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA

BETWEEN	**IMEBET RICKETTS**	**1ST APPELLANT**
	SAMUEL DIXON	**2ND APPELLANT**
	CONDOLLIN DOBSON	**3RD APPELLANT**
AND	**LESGAR MILLER**	**RESPONDENT**
	By Power of Attorney for Mark S Steinberg and Richard H Steinberg	

Ms Debby-Ann Samuels instructed by Debby-Ann Samuels & Co for the appellant Imebet Ricketts

Ronald Paris instructed by Paris & Co for the appellant Samuel Dixon

Albert Morgan instructed by Albert S Morgan & Co for the appellant Condollin Dobson

Patrick Thompson and Ms Bridgette Townsend instructed by Clark Robb & Company for the respondent

23 March 2017

BROOKS JA

[1] The appellants, Mr Imebet Ricketts, Mr Samuel Dixon and Ms Condollin Dobson, were squatters on land known as Lot 30 Barrett Hall and Greenwood in the parish of Saint James. The land is comprised in the certificate of title registered at Volume 993 Folio 454 of the Register Book of Titles. It will be referred to hereafter as "Lot 30".

[2] Mr Lesgar Miller is the agent for the registered proprietors of Lot 30, Messrs Mark and Richard Steinberg. Mr Miller was given his authority to act on their behalf by a duly stamped power of attorney.

[3] On 1 February 2013, Mr Miller filed plaints against the three appellants, as well as a fourth person, Ms Pamela Brown, for recovery of possession of Lot 30 from them. The plaint was by virtue of section 89 of the Judicature (Resident Magistrates) Act.

[4] The appellants each filed a special defence claiming that, by virtue of section 3 of the Limitation of Actions Act, they were entitled to retain possession of Lot 30. They based their position on their assertion that they had been in open, undisturbed possession of Lot 30 for a period in excess of 12 years. They said that they had been doing so without any permission from the registered proprietors or anyone on behalf of the registered proprietors.

[5] The case came on for hearing before Her Honour Mrs Lawrence-Grainger, Resident Magistrate (as the judicial officer was then known) for the parish of Saint James. On 30 July 2014, the learned Resident Magistrate gave judgment for Mr Miller

and ordered the appellants to vacate Lot 30 on or before 30 November 2014. She also ordered costs against the appellants.

[6] At the beginning of the trial, the appellants opposed the learned Resident Magistrate hearing all the cases jointly. She however rejected their objection. It will be shown below that she did so quite properly.

[7] The main issue before the learned Resident Magistrate was a question of fact as to the period for which the appellants had been occupying Lot 30. Having heard the witnesses for all the parties, except Ms Brown who did not appear at the trial, the learned Resident Magistrate, stated in her written reasons for judgment, that she believed, Mr Carlton Buchanan, the main witness for Mr Miller. It was Mr Buchanan's testimony that Lot 30, in 2006, was "in bushes, underutilized and no one was there...when I went to evict [occupants of adjoining lands]" and at least one of the appellants, Mr Dixon had apparently been one of the persons occupying the adjoining land up to November 2006. It was after he, Mr Buchanan, had had Mr Dixon and other squatters ejected from the adjoining land, that he saw Mr Dixon occupying Lot 30.

[8] The learned Resident Magistrate also gave reasons why she rejected evidence, to the contrary, that was proffered on behalf of the appellants.

The appeal

[9] The appellants filed a notice of appeal dated 11 August 2014. The grounds of appeal are:

"a) The Learned Resident Magistrate erred when she held that the Defendants' witness, CHRISTOPHER DAVIS could not be believed because he would have been age 15 years at the time each Defendant claimed that he/she went into possession of the land as well as the fact that he referred to the land as 'Sea Breeze Beach' instead of that being a named event.

b) The learned Resident Magistrate erred in trying the matters together instead of proceeding as set out in Order VIII Rule 7 of the Resident Magistrate's Court Rules."

[10] Before us, learned counsel for the appellants sought leave to amend the grounds of appeal in order to add an additional ground. The essence of the proposed ground was a complaint that the learned Resident Magistrate erred in allowing the case to be tried with Mr Miller as the plaintiff when he was not the registered proprietor of Lot 30.

[11] The applications were refused on two bases. Firstly, on the basis that the plaint note and the particulars of claim, in each case, clearly identified the capacity in which Mr Miller acted. The heading of the plaint note, identified him thus:

"LESGAR MILLER PLAINTIFF
By Power of Attorney for
Mark S. Steinberg and Richard H. Steinberg
4 Market Street
Montego Bay
St. James"

[12] The heading of the particulars of claim identified him in identical terms as set out above. In addition, paragraph 1 of the particulars of claim gave a further indication of Mr Miller's standing. It stated:

"The Plaintiff was at all material times acting under Power of Attorney from the proprietors of property situate at Lot 30

> Barnett Hall and Greenwood, in the parish of St. James registered at Volume 993 Folio 454 of the Register Book of Titles."

[13] Further, the appellants had sought the production of the power of attorney, and this was done. It was put into evidence as an exhibit during the trial. The Steinbergs, by virtue of the document, gave Mr Miller "powers and authority":

> "To take action including the institution of legal proceedings for recovery of possession of [Lot 30] from all illegal occupiers."

[14] The second basis for the refusal is just as important as the first basis. It must be pointed out that there was no objection before the learned Resident Magistrate as to the standing of Mr Miller. The special defence filed by each of the appellants spoke to the Limitation of Actions Act only. There was also an oral defence which relied on the special defence and stressed the intention of the appellants to dispossess the legal owner of Lot 30.

[15] There could, therefore, have been no confusion as to the capacity in which Mr Miller had brought the plaints.

Submissions

[16] Before us, Ms Samuels, on behalf of Mr Ricketts, Mr Paris, on behalf of Mr Dixon, and Mr Morgan, on behalf of Ms Dobson, all submitted that Mr Buchanan ought not to have been believed because there were so many things wrong with his evidence.

[17] Ms Samuels stressed that Mr Christopher Davis' evidence was wrongly rejected because of his age (15 years old) at the time that he said he saw the appellants move onto Lot 30. Learned counsel submitted that it was an unreasonable basis to reject the testimony.

[18] Mr Paris sought to poke holes in Mr Buchanan's testimony by asking questions, which he said demonstrated that the learned Resident Magistrate had erred in relying on Mr Buchanan's testimony. Mr Paris stressed that there was no reason for Mr Buchanan, in 2006, to have concerned himself with Lot 30 and to have noted anything about it. Mr Buchanan's instructions at the time, learned counsel submitted, concerned lots 26 to 29 and therefore his evidence about Lot 30 ought not to have been believed.

[19] The court brought to Mr Paris' attention a portion of Mr Buchanan's testimony, which suggested that he did have reason to take notice of Lot 30. This is set out in the last paragraph of page 28 of the record, namely:

> "...In 2006 when I went to do the eviction, 5 lots were pegged out, lots 26 to 30...."

[20] Mr Paris responded by submitting that Mr Buchanan had, at an earlier stage of the record, given contrasting testimony as to his involvement with the lots. Learned counsel pointed to the first paragraph of page 28 where Mr Buchanan is recorded as saying:

> "I recall November 2006. I was a member of an eviction team that went to Barrett [sic] Hall Greenwood in St. James to evict some squatters. It was premises numbering lot 26 to

> 29, Barrett [sic] Hall, Green Wood [sic]. Its [sic] lots 26, 27, 28, and 29, 4 lots. The team carried out the evictions."

[21] Mr Morgan adopted the submissions of both Ms Samuels and Mr Paris on this ground. He also argued that the learned Resident Magistrate did not seem to have taken into account that both Messrs Miller and Buchanan were retired police officers, who were trained and accustomed to giving sworn testimony to a court, while the appellants were not so privileged or experienced.

[22] Neither Ms Samuels nor Mr Paris made any submissions in respect of ground (b). Mr Morgan did, however, make brief submissions explaining why he was abandoning the ground on behalf of Ms Dobson. Mr Paris also very candidly, thereafter, abandoned the ground in respect of Mr Dixon. Ms Samuels did not join them in that stance.

[23] In response, Mr Thompson, on behalf of Mr Miller argued, firstly, that on questions of fact, as arose in this case, this court has consistently held that it will not lightly disturb the findings of the tribunal in the court below. He cited a number of cases in support of his submission, including **Watt (or Thomas) v Thomas** [1947] AC 484; [1947] 1 All ER 582.

[24] In addressing Mr Buchanan's evidence, Mr Thompson stressed the point in Mr Buchanan's testimony where he explained his ability to speak about Lot 30. This evidence is recorded at page 29 of the record:

> "In 2006 when I carried out the eviction Mr. Dixon was not on lot 30. No structure was there. I used a title when I went

> there to identify all the lots. All of these lots would be lots 26, 27, 28, 29, and 30."

[25] Learned counsel argued that the learned Resident Magistrate was entitled to reject the evidence of Mr Davis, who testified on behalf of the appellants, and accept the evidence of Mr Buchanan. She did so on a reasoned basis, he submitted, and her findings ought not to be disturbed.

[26] Mr Thompson also relied on his written submissions filed in respect of ground (b). These submissions will be addressed when that ground is assessed below.

Analysis

[27] In this court, findings of fact in the court below, are not disturbed unless they were plainly made in error. In other words, the tribunal of fact must be shown to have misunderstood or ignored evidence placed before it, or was otherwise in error or the facts (see **Industrial Chemical Co (Ja) Limited v Owen Ellis** (1986) 23 JLR 35 and **Beacon Insurance Company Limited. v Maharaj Bookstore Limited** [2014] UKPC 21).

[28] In this case, there was no real dispute as to law. It was common ground between the parties, at the trial, that the paper title holders were properly represented by Mr Miller and that the appellants were in open and undisturbed possession without any consent from the holders of the paper title. The only issue was the question of time. Even a brief skirmish as to whether Lot 30 was the land to which the paper title

of the Steinbergs referred, was quickly and clearly dealt with by the learned Resident Magistrate. She said that there had been acceptance by the appellants that that was so.

[29] As was mentioned above, Mr Paris posed some questions during his submissions. Those were questions which could only have been properly posed at the time of the trial. The answers to those questions were not before the learned Resident Magistrate. She could only have dealt with evidence that was before her at the time.

[30] It will be sufficient to observe that Mr Buchanan's evidence set out a clear timeline that the learned Resident Magistrate could follow. That timeline demonstrated that Lot 30 was not occupied in 2006 when Mr Buchanan ejected Mr Dixon and others from the adjoining lots. The timeline also showed that some weeks afterward, Mr Buchanan saw two structures on Lot 30 which was "empty land" at the time of the eviction. Some two years later is when Mr Buchanan saw and spoke to Mr Dixon concerning his occupation of Lot 30.

[31] The learned Resident Magistrate gave reasons for rejecting evidence to the contrary that was proffered on behalf of the appellants. As far as Mr Davis' evidence is concerned, the learned Resident Magistrate stated, among her reasons for rejecting his testimony, that he had contradicted the evidence of the appellants as to the time that they started conducting business on Lot 30.

[32] In respect of Mr Morgan's point about the disparity in the experience of the various witnesses, as witnesses, it must be pointed out that that scenario would have been almost a daily experience for the learned Resident Magistrate. The evidence of

police officers and expert witnesses are often pitted against that of inexperienced lay people. It is for the tribunal of fact to say who is to be believed.

[33] The learned Resident Magistrate cannot be faulted for failing to say that she recognized that these were experienced, retired policemen. It was in evidence before her, and she referred to the fact that Messrs Miller and Buchanan were friends.

[34] This is not a basis to reject her finding that Mr Buchanan was a credible witness.

[35] The learned Resident Magistrate's finding of fact cannot be faulted. There is no objective evidence that falsifies her findings. She is the person who saw and heard the witnesses. She determined who was to be believed based on her perception of the demeanour of each witness, as well as by what they said. She found the appellants to be shifty and Mr Davis to be insincere, whereas she found Mr Buchanan impressive, honest, forthright and truthful. She made no special mention of Mr Miller in this regard.

[36] She was entitled to find as she did that the appellants had only been on Lot 30 since 2006. There was evidence before her that Mr Buchanan knew where Lot 30 was in 2006 and that he recognised that it was overgrown and unoccupied, with no structure thereon.

[37] Based on that finding the special defence was properly rejected and judgment appropriately granted to Mr Miller. Ground a), of the grounds of appeal, fails.

The issue of the joint trial

[38] The grounds of appeal complained that the learned Resident Magistrate ought not to have tried the cases together. Learned counsel for Mr Dixon and Ms Dobson, quite properly, abandoned this ground. The basis of the ground was that Order VIII rule 7 of the Resident Magistrates Court Rules precluded such a joinder.

[39] Order VIII rule 7 stipulates as follows:

> "**Where several actions of contract shall be brought by the same plaintiff against several defendants** in the same Court, and the event of the said actions depends on the finding of the Court on some question common to all the said actions, the Judge may at any time select one of such actions for trial and stay the proceedings in all the other actions until the judgment in the action so selected shall have been given; but unless after judgment in such selected action the plaintiff and defendants in the other actions or any of them shall submit to have judgment passed and entered therein in accordance with the judgment in the action so selected, the other actions shall proceed in the same manner as if they had not been stayed, and the Officer shall appoint days for the trial of every such action, and shall issue a notice thereof to any plaintiff or defendant applying, together with as many sealed copies as there are parties to be served, and such plaintiff or defendant shall eight clear days before the day fixed for the trial serve the same upon all the other parties to the action." (Emphasis supplied)

[40] Mr Thompson quite properly pointed out that the ground is ill-conceived because Order VIII rule 7 is concerned with cases dealing with contracts, of which the present case was not one. In addition, Mr Thompson pointed out that a proper use of the court's time and resources justified the joint trial. He argued that Order VIII rule 4 would have been the relevant rule in this case. That rules states:

> "Upon the hearing of any application for consolidation of actions or for stay of proceedings, the Judge shall have power to impose such terms and conditions and make such order in the matter as may be just".

[41] Mr Thompson is correct on those points. He is also correct in his submissions that the learned Resident Magistrate correctly exercised her discretion to hold a consolidated trial on the following bases:

> "(a) The Respondent was the only and the same plaintiff in all actions;
>
> (b) The cause of action against all the Appellants was for the Recovery of Possession of the property;
>
> (c) The property was owned by one and the same person;
>
> (d) The Appellants were in unauthorized and unlawful possession and occupation of the property;
>
> (e) The Appellants relied on the special defence of Adverse Possession;
>
> (f) The Appellants would have to establish their equitable right to the property and this would necessitate the court deciding a common question of fact;
>
> (g) The determination of the matters required similar issues of fact and law to be considered;
>
> (h) The Appellants were desirous of the same relief and the Respondent sought the said relief against the Appellants." (paragraph 39 of Mr Thompson's written submissions)

Mr Morgan quite candidly conceded that none of the appellants were prejudiced by the joint trial.

[42] It was in the interests of justice for the matters to have been consolidated and it was convenient for that to have been done. The learned Resident Magistrate's exercise of her discretion was therefore conducted on a firm basis and should not be disturbed.

[43] Ground b) of the grounds of appeal also, therefore, fails.

Order

(a) The appeal is dismissed.

(b) The judgment and orders of the learned Resident Magistrate handed down on 30 July 2014 are affirmed.

(c) Costs of the appeal to the respondent to be agreed or taxed.