[2014] JMCA App 10

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NOS 171/2013 AND 14/2014

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE MANGATAL JA (Ag)

BETWEEN	**RASTAFARI NATION PINNACLE FOUNDATION 1ST ORDER OF NYAH BINGIE THEOCRACY**	**1ST APPLICANT**
AND	**L P HOWELL FOUNDATION**	**2ND APPLICANT**
AND	**CATHERINE M HOWELL**	**3RD APPLICANT**
AND	**SAINT JAGO HILLS DEVELOPMENT COMPANY LIMITED**	**RESPONDENT**

Mrs Hannah Harris-Barrington for the applicants

M Maurice Manning and Miss K Michelle Reid instructed by Nunes Scholefield DeLeon and Co for the respondent

19 and 28 March 2014

PANTON P

[1] I have read, in draft, the judgment of my brother Brooks JA. I agree with his reasoning and conclusion and have nothing to add.

BROOKS JA

[2] On 13 November 2013, Her Honour Ms Chatoor gave judgment for the respondent, Saint Jago Hills Development Company Limited (the Company), in its claim for recovery of possession of land against Rastafari Nation, Pinnacle Foundation, Leonard Howell Foundation, Ras Howie and Catherine Howell. The order was in respect of "premises known as lot 198 Saint Jago Hill St Catherine". The premises will be referred to hereafter as "lot 198" or "the land". The learned Resident Magistrate also ordered costs in favour of the Company.

[3] Ras Howie has, unfortunately, died. The remaining applicants (the applicants), being dissatisfied with the order for possession, seek to have it overturned. They, however, did not file the requisite notice of appeal within the 14 days stipulated by the Judicature (Resident Magistrates) Act. They, therefore, have lost their right to appeal, unless they are granted by this court, an extension of time in which to file the required notice. That application, they filed on 18 December 2013. A subsequent application seeking the identical relief was filed on 31 January 2014. The applications will be treated hereafter as a single application.

[4] The Company has, objected to the application and this judgment considers whether the application ought to be granted. Before assessing the application it is necessary to outline some of the background facts.

Background facts

[5] Lot 198 is part of lands which were first registered in 1932. The first title for the parent lands was registered at volume 277 folio 52 of the register book of titles. The Company became the registered proprietor of the parent lands in 2002. By that time, however, the original parent title had been replaced by a title registered at volume 1258 folio 331. The Company secured a splinter title to lot 198 in January 2006. That splinter title is registered at volume 1396 folio 446 of the register book of titles. The Company filed its plaint for recovery of possession on 12 October 2006. This court was not provided with a copy of the plaint.

[6] The applicants and Ras Howie resisted the claim for possession. The learned Resident Magistrate recorded their filed defence in the court below to be:

> "The Defendant [sic] [the applicants] deny that the Plaintiff [the Company] is entitled to possession Of [sic] premises registered at volume 239 folio 445 [sic] as is alleged Or [sic] at all and say that they and/or their predecessors have been in Long [sic], continuous, peaceful and undisturbed possession of the said land For [sic] over 50 years and is [sic] regarded as the fee simple owners by all Members [sic] of the community."

The volume and folio numbers appearing in that defence have not been explained in this court. The learned Resident Magistrate also stated the defence of Ms Catherine Howell, as delivered from the "Well of the court", as follows:

> "the defendants' [sic] have acquired a prescriptive right to the said property And [sic] as such the legal and equitable estate vests with the defendants' [sic]."

[7] Mrs Harris-Barrington, who advanced the application before this court, informed the court that the applicants contend that the owners of lot 198 are estate L P Howell (deceased) and the Rastafari Nation. Learned counsel stated that although Mr Howell has died and there is no personal representative in place for his estate, the applicant L P Howell Foundation is a registered company. She further stated that the applicant Rastafari Nation is another name for Nyah Bingie Reign Coptic Church, which, she said, was incorporated by an Act of Parliament in 1981. ("Nyah Bingie" is also spelt "Nyabinghi" by some persons. Both spellings will be used in this judgment, according to the context.)

[8] Mrs Harris-Barrington has, however, despite a request so to do, not provided either a certificate of incorporation for the L P Howell Foundation, or a copy of the relevant Act of Parliament concerning Nyah Bingie Reign Coptic Church. In respect of the latter, she provided a copy of The Jamaica Gazette dated 3 December 1981 in which notice of a Bill for the enactment of, "The Haile I Selassie I Jahrastafari Royal Ethiopian Judah Coptic Church (Incorporation and Vesting) Act, 1981", was published. There is no indication that that Bill was ever passed into legislation.

[9] The legal status of these entities, and their entitlement to claim an interest in the land, may well be of importance, but that issue was not raised in this application.

[10] The applicants' case is that this land, also known as "Pinnacle", was the home of the late Leonard Howell, who is said to be the founder of the Rastafari movement in Jamaica. They state that Mr Howell was in peaceful, open occupation of the land from

before 1940 and that the land was used for the purposes of the Rastafari religion since that time. The applicants assert that Mr Howell and the Rastafari Nation have, by virtue of that occupation, acquired a possessory title to the land. The evidence before the learned Resident Magistrate was that although Mr Howell died in 1981, the land has continued to be occupied and used by members of the Rastafari religion.

The decisions in the court below

[11] Three of the rulings made by the learned Resident Magistrate, in the proceedings before her, are relevant to this application. The first was made in respect of a preliminary point taken by defence counsel in that court, that the claim fell outside the jurisdiction of the Resident Magistrates' Court and that it should have been transferred to the Supreme Court. The second was made when defence counsel sought, during the trial, to adduce evidence as to the value of the land. The third was the judgment delivered on 13 November 2013, as mentioned above.

[12] In respect of the first, the learned Resident Magistrate, after hearing submissions, refused the application for transfer. She stated, in a written judgement, that the challenge to jurisdiction was based on the principle that, as there was a dispute as to title, the value of the land took the claim outside of the jurisdiction of the Resident Magistrates' Court. She stated that the Company had asserted that the value of the land was $30,000.00, being a value within the jurisdiction of the court, but that the applicants had not adduced any evidence as to value. She found that there was no evidence that the value of the land exceeded the value of the jurisdiction of that court

in such matters. As a result, she refused the application to transfer the matter to the Supreme Court.

[13] The second of the rulings mentioned above is noted in the learned Resident Magistrate's reasons for her decision on the claim. In reviewing the evidence adduced by the applicants, the learned Resident Magistrate noted the following:

> "Defense [sic] counsel revisited the issue of Jurisdiction, the Court upheld its ruling, the matter proceeded"

[14] Ms K Michelle Reid, in an affidavit filed in this court on 31 January 2014, stated at paragraphs 15 and 16 thereof, that defence counsel made an application during the trial to adduce evidence, through a real estate valuator, as to the value of the land. Ms Reid deposed that the application was resisted by the Company's counsel and after receiving and considering written submissions from both sides the learned Resident Magistrate refused the application.

[15] The final ruling by the learned Resident Magistrate is set out in the last three paragraphs of her written judgment. After a comprehensive review of the evidence and the relevant law, she said:

> "Given the above the Defendants have not established that they are the fee simple owners of premises registered at Vol. 1396 folio 446 either by way of prescriptive right or adverse possession, their counter claim at paragraphs [sic] 2 (i) (ii) (iii) is denied.
>
> The Judgment of this Court is that the plaintiff has established under section 89, that they [sic] are entitled to recovery of possession of all premises known as lot 198 Saint Jago Hill St Catherine.

Costs to be taxed if not agreed."

This court has not been provided with a copy of the counter-claim and so its contents are not known.

The submissions in outline

[16] Mrs Harris-Barrington, after guidance from the court, made her submissions along two major lines, namely, the reason for the delay and the merits of the appeal.

[17] Learned counsel argued that the reasons that the applicants did not file their notice of appeal in time were, firstly, that defence counsel in the court below was ill and secondly, that counsel who was initially approached to conduct the appeal had difficulty securing instructions. That difficulty, she informed the court, was due to the fact that "some of the parties, namely Monty Howell, of the Leonard Howell Foundation reside overseas and was not able to come to Jamaica" to provide those instructions.

[18] On the question of the merits of the proposed appeal, learned counsel submitted that the learned Resident Magistrate had erred in refusing to transfer the claim to the Supreme Court as the applicants had repeatedly requested. Mrs Harris-Barrington submitted that the issues involved in this claim are very complex. She stated that they concern large areas of land as well as a number of national and international issues. Among the national issues, she stated, is the fact that the lands have been declared a national monument under the Jamaica National Heritage Act. The international issues, learned counsel submitted, included that of the United Nations Declaration on the

Rights of Indigenous Peoples, as it affects Rastafari. All those issues, learned counsel argued, the applicants wanted to be dealt with by a judge of the High Court.

[19] She accepted, however, that those national and international issues, mentioned above, were not advanced or argued before the learned Resident Magistrate.

[20] In arguing that the learned Resident Magistrate erred in refusing to transfer the claim, learned counsel pointed to section 197 of the Judicature (Resident Magistrates) Act (hereafter referred to as "the Act"). She argued that the learned Resident Magistrate should have heeded the mandate of that section and accordingly transferred the claim as the applicants had requested.

[21] When asked how section 253 of the Act, restricting appeals on the issue of jurisdiction, affected her application, learned counsel argued that section 197 was a complete answer to the impact of section 253. She agreed with the use of the term "overrides" in respect of that answer.

[22] Learned counsel submitted that this was an appropriate case in which to grant an extension of time so that the important issues raised by the case may be determined by the proper court.

[23] Mr Manning, on behalf of the Company, argued that the applicants have provided no good reason for the failure to file their application in time and that, in any event, their proposed appeal had no merit. He submitted that the several issues that the applicants have included in their proposed grounds of appeal were never placed in

issue before the learned Resident Magistrate and, therefore, were not properly the subject of an appeal against her decision.

[24] On the issue of the delay, Mr Manning argued that, although there was an assertion that counsel for the applicants in the court below was ill, that assertion has not been particularised or supported by an affidavit by that individual. According to Mr Manning, the applicants' counsel in the court below, over the course of the seven years that the trial took to be completed, never once indicated an inability to proceed because of ill health. There was also nothing by way of evidence, Mr Manning submitted, to show that ill health had prevented the applicants' counsel from filing the notice of appeal within the prescribed time.

[25] Learned counsel also submitted that, not only was there no explanation for a presence in the island by the persons to whom Mrs Harris-Barrington referred, but that the person who describes himself as the "administrator of the Pinnacle site", Mr Clinel Robinson, also known as Ras Lion, was apparently available, but no explanation has been given for his inability to give the required instructions.

[26] On the issue of merit, Mr Manning submitted that section 197 of the Act was not relevant to the issue of recovery of possession because that section speaks to the "equitable jurisdiction" of the court. He endorsed the learned Resident Magistrate's reasoning that, having ruled on the preliminary point, concerning the absence of a value for the land, she was not entitled to re-visit that decision. Mr Manning submitted that the applicants had placed nothing before the court to show that the learned

Resident Magistrate was wrong in her treatment of the evidence that had been placed before her.

[27] He stressed the fact that the correspondence that the Company had placed before the learned Resident Magistrate, did not point to the applicants having a proprietary interest in the land. The correspondence, he submitted, showed that the applicants not only acknowledged that they were not the owners of the land, but sought permission to use it.

[28] Mr Manning submitted that the learned Resident Magistrate was right in finding that the applications for permission were fatal to the applicants' case that they had a possessory title to the land. Mr Manning, contrary to Mrs Harris-Barrington's submission on the point, argued that those letters could not be considered as having been written for the purposes of neighbourly etiquette, that is, being mere notice that a function was to be held on the land.

[29] Learned counsel also stressed the fact that the applicants had filed no documents in the court below and yet were seeking to raise new issues and rely on extensive documentation in respect of those issues. This, he said, should not be allowed. He cited the case of **Ladd v Marshall** [1954] 1 WLR 1489 in support of his submissions and stated that the applicants had made no effort to show that they could satisfy the requirements of that case. He disagreed that the principle of the overriding objective had overturned **Ladd v Marshall**.

[30] Mr Manning submitted that on those bases, the application ought to be refused.

The analysis

[31] It is not in doubt that this court is permitted to extend the time within which a notice of appeal may be filed (see section 266 of the Act as well as section 12 of the Judicature (Appellate Jurisdiction) Act. Section 266 states as follows:

> "266. The provisions of this Act conferring **a right of appeal in civil causes and matters shall be construed liberally in favour of such right**; and in case any of the formalities prescribed by this Act shall have been inadvertently, or from ignorance or necessity omitted to be observed **it shall be lawful for the Court of Appeal, if it appear that such omission has arisen from, inadvertence, ignorance, or necessity, and if the justice of the case shall appear to so require, with or without terms, to admit the appellant to impeach the judgment**, order or proceedings appealed from." (Emphasis supplied)

[32] The question is whether the time should be extended, having regard to the provisions of section 266 and to the principles established by the case law on the point. One of the cases that has analysed those principles is **Leymon Strachan v Gleaner Company Ltd and Dudley Stokes** Motion No 12/1999 – judgment delivered 6 December 1999. Panton JA (as he then was) stated the relevant principles at page 20 of the judgment in that case. He said:

> "The legal position may therefore be summarised thus:
>
> (1) Rules of court providing a time-table for the conduct of litigation must, prima facie, be obeyed.

(2) Where there has been a non-compliance with a timetable, the Court has a discretion to extend time.

(3) In exercising its discretion, the Court will consider-

(i) the length of the delay;

(ii) the reasons for the delay;

(iii) whether there is an arguable case for an appeal and;

(iv) the degree of prejudice to the other parties if time is extended.

(4) Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time, as the overriding principle is that justice has to be done."

The present application shall be assessed along these lines.

a. The length of the delay

[33] Mr Manning did not contend that the delay in making this application was inordinate. No issue will, therefore, be made of this aspect of the matter.

b. The reasons for the delay

[34] We agree with Mr Manning that no good reason has been advanced for the delay. It has not been specifically stated that the illness of counsel prevented the application from being filed within the prescribed time. Nor has it been explained why it was necessary for Mr Monty Howell to be present in the island to give instructions to

counsel who was first approached to conduct the appeal. The absence of a good explanation is however not fatal to the application.

c. The merits of the appeal

[35] It is in this arena that the applicants have a severe difficulty. Their major complaint, as Mrs Harris-Barrington has passionately advocated, is that the case was tried in the wrong forum. The applicants argue that the case ought to have been tried in the Supreme Court and they seek an opportunity to demonstrate the validity of that point in an appeal to this court. That point, however, is squarely addressed by section 253 of the Act. The section states that that is not an appealable point. It does so in these terms:

> "253. No appeal shall lie in respect of the decision of a Court given upon any question as to the value of any real or personal property for the purpose of determining the question of the jurisdiction of the Court under this Act, nor shall any appeal lie against the decision of a Court on the ground that the proceedings might or should have been taken in some other Court."

The side note to the section states, "Matters to which no appeal lies".

[36] The terms of the section seem, therefore, to bar any appeal along the lines that the applicants wish to pursue. It is necessary, however, to examine Mrs Harris-Barrington's submission that the provisions of section 253 cannot apply in the face of the breach, by the learned Resident Magistrate, of section 197. Section 197, as mentioned above, speaks to the duty of the Resident Magistrate to transfer a claim which is outside the jurisdiction of the court. The relevant portion of the section states:

> "197. If, during the progress of any suit or matter **within the equitable jurisdiction of the Court**, it shall be made to appear to the Magistrate that the subject matter exceeds the limit, in point of amount, to which the jurisdiction of the Courts is limited, it shall not affect the validity of any order or decree already made, but **it shall be the duty of the Magistrate to direct the said suit or matter to be transferred to the Supreme Court**, and thereupon the said suit or matter shall proceed in the Supreme Court, and the said Court shall have power to regulate the whole of the procedure in the said suit or matter when so transferred:" (Emphasis supplied)

[37] Two main points demonstrate that Mrs Harris-Barrington's submission in this aspect of the application is flawed. The first is that the claim was not within the equitable jurisdiction of the Resident Magistrate's Court and the second is that sections 197 and 253 address two different points in the progress of a claim.

[38] In respect of the jurisdiction point, it is beyond dispute that this was a claim for recovery of possession of land. The structure of the Act separates the Resident Magistrates' Courts' civil jurisdiction into specific segments, namely, common law, interpleader, replevin, land, equity, and probate and administration. Sections 82 through 104 deal with the jurisdiction in respect of land while sections 105 through 107 deal with the jurisdiction in equity.

[39] Whereas, section 107 does speak to proceedings "for the recovery, partition or sale of any lands", it does so in the context of proceedings in equity. Those proceedings are extensively set out in section 105 and do not extend to circumstances as exist in the present case.

[40] On the contrary, section 89 specifically addresses the Company's claim against the applicants. The learned Resident Magistrate was of the view that this section was the basis of the Company's claim. She said on the final page of her written judgment in her first ruling:

> "It is the findings [sic] of this Court that the plaint, as filed **being a Section 89 application**, and the annual value without more, being stated as 30,000.00 places it within the jurisdiction of these courts." (Emphasis supplied)

She re-stated that position on the second page of her final written judgment:

> "The Court ruled that the matter proceed pursuant to section 89"

[41] Section 89 speaks to the recovery of possession by a person claiming entitlement to land. It states, in part:

> "89. When any person shall be in possession of any lands or tenements without any title thereto from the Crown, or from any reputed owner, or any right of possession, prescriptive or otherwise, the person legally or equitably entitled to the said lands or tenements may lodge a plaint in the Court for the recovery of the same and thereupon a summons shall issue to such first mentioned person;… the Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the Magistrate shall think fit to name…"

[42] In addition to that distinction, it is section 130 of the Act that speaks generally to the removal of cases into the Supreme Court. That section states:

> "130. No action commenced in any Court under this Act shall be removed from the said Court into the Supreme Court by any writ or process, unless the debt or damage claimed shall

> exceed twelve thousand five hundred dollars; and then only by leave of the Magistrate of the Court in which such action shall have been commenced, in any case which shall appear to the said Magistrate fit to be tried in the Supreme Court, and subject to any order of the Supreme Court upon such terms as he shall think fit."

Those provisions are not helpful to the applicants as they do not mandate the transfer to the Supreme Court but, rather, leave the matter to the discretion of the Resident Magistrate.

[43] Those sections amply demonstrate that this was not a claim falling within the ambit of section 197 of the Act, but even if that section did apply, it cannot override the provisions of section 253. Section 197 speaks to procedure that should obtain within the course of a trial, while section 253 speaks to what aspects of a trial are not appealable. Parliament having barred appeals against the rulings about which the applicants complain, this court cannot seek to circumvent that directive.

[44] It must also be stated that the learned Resident Magistrate's interpretation of the correspondence, highlighted by Mr Manning, was correct. That correspondence revealed that the applicants had, on occasion, sought permission to have functions on the land. The relevant documents that were exhibits before the learned Resident Magistrate were:

> a. An undated letter from the Order of Nyabinghi, signed by three persons, including Ras Ire Lion, seeking from Island Homes "**permission** to have a flag raising ceremony at Pinnacle" on 16 June 1998. The permission was sought on the basis that it had "come to the attention" of the Order of Nyabinghi, that Island Homes

was "the owner of Pinnacle in Saint Catherine". (page 54 of the Company's bundle of documents)

b. A letter dated 5 April 2002 from the Office of the Public Defender, signed by the then holder of that office, Mr Howard Hamilton QC, seeking from Island Homes Limited, on behalf of the Rastafarian Community, "**permission** to erect a Monument at a spot described as Pinnacle, as a memorial to their founder and former deacon, Mr Leonard Howell". He identified that site "on the diagram in your sub-division at St. Jago Hills as lot 198". (page 55 of the Company's bundle of documents)

c. A letter dated 8 May 2006, from L P Howell Foundation, signed by Catherine M Howell, "the daughter of Dr. Leonard Percial [sic] Howell (Founding Father of the Rasta Movement in Jamaica – now globally – worldwide)", "**requesting**" from Island Homes Limited, the site at Pinnacle "June 15th to June 19th (21th [sic] – for cleaning up)" for the celebration of her father's birthday. (page 53 of the Company's bundle of documents) (Emphasis supplied)

The learned Resident Magistrate, in her written reasons for judgment, stated that Island Homes Limited was the agent for the Company. These were not neighbourly notices of functions to be held so as to prevent disturbance or annoyance and avoid aggravation as Mrs Harris-Barrington had submitted.

[45] These requests for permission to use the land would be inconsistent with, and fatal to a claim for a possessory title. The learned Resident Magistrate was correct in so finding.

[46] The consequence of that analysis is that it would be futile to grant permission to extend the time in which to file an appeal. The application to extend that time should,

therefore, be refused. With that being the ultimate result of the application, there is no need to consider the issues of prejudice and the justice of the case.

Summary

[47] The applicants' complaint against the proceedings and result in the court below is that the learned Resident Magistrate erred in retaining conduct of the claim rather than transferring it to the Supreme Court. Such a complaint is barred, by section 253 of the Act, from being a ground of appeal. The application ought therefore to be refused with costs to the Company.

MANGATAL JA (Ag)

[48] I too have read, in draft, the judgment of Brooks JA. I agree with his reasoning and conclusion and have nothing to add.

PANTON P

ORDER

1. The applications for extension of time in which to file a notice of appeal are refused.
2. Costs to the respondent in the sum of $15,000.00.