

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

IN CHAMBERS

SUIT NO. E202/83

In the matter of the Registration of Titles Act

AND

In the matter of an Application No. 83849 to bring part of Mount Industry in the Parish of Saint Andrew under the operation of the Registration of Titles Act.

AND

A summons for review of a ruling by a Referee of Titles under the provisions of section 156 of the said Act.

R.N. Lewin for the Applicant.

R. Langrin, Senior Assistant Attorney General, for the Referee of Titles.

Reasons for Judgment

Bingham J:

On 12th March, 1984 I dismissed a Summons taken out by R.N. Lewin, Attorney-at-Law whereby he sought a review by virtue of section 156 of the Registration of Titles Act (hereinafter referred to as the Act) of an order made by Mr. George Brown, Attorney-at-Law acting in his capacity as a Referee of Titles, refusing to provisionally approve an application made on behalf of one Louise Dunbar to bring certain lands situated at Mount Industry in the Parish of Saint Andrew under the said Act.

The long delay experienced in putting my reasons into writing which is regretted has been due in no small measure to extreme pressure of work between the completion of the hearing and my proceeding on long vacation leave in mid July. The fact of the matter is that these written reasons are now being done while my vacation still has some period left to run has come about out of a desire to dispose of what is in effect a simple issue but also what now seems to be becoming a recurring practice.

It may be convenient at this stage to set out the facts giving rise to the summons which are not in dispute. In this regard reference may be made to the affidavit of Mr. Lewin in support sworn to on 26th October, 1983. From this affidavit it appears that the applicant Louise Dunbar is the fee simple owner of a parcel of land at Mount Industry in the Parish of Saint Andrew. An application was filed on her behalf by Mr. Lewin to have the land brought under the provisions of the Act.

The effect of this would have been to make the applicant a registered proprietor thereof. (Vide section 24 of the Act).

All the necessary documents in support of the application were duly filed and the provisions of the Act, on the face of it, seemed to have been duly complied with.

The applicant, however, was desirous of having the land which had been "sub-divided" into three lots transferred to her son, daughter and herself respectively. The direction clause in the application sought to direct the Registrar of Titles once registration was effected to issue three Certificates of Title to the two nominees as well as herself as the fee simple owners of the respective lots. An approved sub-division plan was among the documents lodged with the application.

The application and the documents in support was duly lodged with the Registrar of Titles who referred it to a Referee of Titles, in this case Mr. Brown, for his inspection. This was in accordance with the provisions as laid down by section 31 of the Act.

The Referee ruled that, "it is not permissible to transfer various portions of land to various transferees pursuant to a single application under the Act. Each transaction must be the subject of a separate and distinct application for registration. The Direction Clause in favour of third parties should be deleted." The effect of this ruling had it been in favour of the applicant would have meant that the applicant and her nominees, provided the documents were in order, that the Referee would have in due course provisionally approved the application by giving the necessary directions as is required under section 31 of the Act for a provisional approval of the application. Further, as there was only one instrument filed with the application (the application itself), there was only one document requiring the payment of stamp duty. No transfers had been lodged to ground the direction clause insofar as it required the issuance of separate titles to the two nominees.

Mr. Lewin objected to the Referees ruling and sought a review of the Referee's decision in accordance with section 156 of the Act.

The requisite fee having been paid the Referee submitted his written reasons for his refusal of the application. In those reasons, which form part of the Record filed with this application, the Referee inter alia was of the view that section 37 of the Act insofar as it empowers the Registrar of Titles to issue a Certificate of Title envisages a single application and the issuance of one Certificate of Title to the applicant or his/her nominee.

The Referee's refusal has support from Jessups Forms and Practice of the Land Titles Office of South Australia (5th Edition) at page 185 note 13 to which he referred and which formed the very basis of his ruling. As the Australian practice is based upon the Torrens System of registration, which is the same system followed in Jamaica the reference in Jessup is of persuasive effect.

Mr. Lewin in his submissions before me has relied on Vances, "The Examination of Title" page 100 as his authority permitting the registration of two or more persons in one application. Insofar as the Learned Author so states that statement is certainly not in conflict with the authority referred to by Mr. Brown or indeed with the scheme of the Act. Sections 64 and 65 which deal with a co-ownership situation does permit a title to be issued in the name of more than one person. Section 65 provides for the issuance of separate certificates of titles in "all cases where two or more persons are registered as tenants in common or as co-owners of any land." In which event "one certificate of title for the entirety or separate certificates for the undivided shares may be issued. "

This is not the situation here as what is being sought is the issuance of three separate certificates of title to three persons as fee simple owners in a single application. (Mr. Langrin's argument).

The crucial issue therefore is whether the procedure as set out in the Act, or the scheme of the Act allows for such a course as that sought by Mr. Lewin.

On the face of it, insofar as it appears to be a convenient method of effecting the registration of the land as well as the process of

sub-dividing it into separate lots with the resulting issuance of separate titles to the various nominees as well as the applicant there would seem to be no objection. However, when the true intent behind the application is examined, especially in the light of the absence of any application for transfer being lodged to ground the direction clause insofar as it sought to have separate certificates of title issued to the two nominees, when the whole circumstances are looked at what is revealed is a very ingenious device or method being resorted to which has as its main purpose the circumventing of the provisions of section 37 when read together with section 174 of the Act.

It may be convenient at this stage to set out in extenso these two sections:

Section 37

"If at the expiration of the time limited in the notice aforesaid for lodging a caveat the Registrar shall not have received a caveat forbidding the bringing of the land in question under the operation of this Act, he shall bring such land under this Act, in accordance with the directions of the Referee, in manner hereinafter mentioned, by registering the title of the applicant or of the person in whose name he may have directed the certificate of title to be issued thereto (in manner hereinafter provided) as an absolute or qualified title as may have been determined by the Referee, and with such description or identification of the land as may have been approved of by the Referee.

Where an applicant has directed a certificate of title to be issued in the name of a nominee the Registrar shall at the direction of the applicant and with the consent of the nominee issue the certificate of title to such person as shall be named in such direction and consent which direction and consent shall be liable to the stamp duties provided by section 174."

Section 174 (1)

"On every application to bring land under the operation of this Act or to re-register land with a plan wherein or in respect of which the applicant shall direct the certificate of title to issue in the name of any other person there shall be chargeable and paid the following stamp duty-

- (a) where the direction operates or is intended to operate as a transfer upon the sale of the land for valuable consideration one third of the ad valorem duty payable under the heading "Conveyances" in the Schedule to the Stamp Duty Act;

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- (b) "where the direction operates or is intended to operate as a transfer of the land whether voluntarily or gratuitously or for good or valuable consideration other than a bona fide pecuniary consideration upon a sale one-third of the ad valorem duty payable under the heading "Settlements" in the Schedule to the Stamp Duty Act:

Provided, however, that in any case where the application is refused any stamp duty paid under this section shall be refunded.

- (2) On every such application it shall be the duty of the Registrar to enquire into the nature of the transaction in order to ascertain the proper duty (if any) payable in respect thereof, and he may require evidence to be produced to his satisfaction for this purpose; and the Registrar shall not submit any such application to a Referee of Titles unless and until the duty hereby imposed shall have been paid and duly impressed on such application."

The word transfer is not defined in the Act. The Act, however, defines "instrument" to include "a conveyance assignment, transfer, lease, mortgage charge and also the creation of an easement."

A transfer is used to describe "the instrument by which one person conveys to another an estate or interest in land." Great West Permanent Loan Co. vs Friesen [1925] A.C. 208 at 220, 221.

An application for registration is under the Act subject to a $\frac{1}{3}$ advalorem stamp duty on the consideration price before the applicant or his nominee can be registered as a proprietor of the land. The direction clause insofar as it sought to direct that certificates of title be issued to each of the two nominees named sought to operate as transfers to these persons of fee simple estates carved out of the parcel of land to be brought under the provisions of the Act without the existence of the very instruments to ground that direction.

Mr. Lewin's contention that it is for the Registrar of Titles to determine the stamp duty payable on each application is therefore not relevant as there was no such application for transfers to the two nominees in existence upon which stamp duty could have been charged. A direction to transfer cannot ipso facto in my opinion operate as an

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application to transfer. Moreover, the only instrument lodged with the documents for which stamp duty was chargeable and paid was the application to register Mrs. Dunbar as the registered owner.

The direction clause insofar as it sought to operate as a transfer of fee simple interests to the two nominees would therefore be caught by section 176 of the Act and be subject to the payment of stamp duty.

Section 174(2) further stipulates that "no application shall be submitted to a Referee of Titles until the duty imposed shall have been paid."

On the basis of the documents lodged therefore and the stamp duty paid the direction clause had of necessity to be limited to one directing title to be issued in the name of the applicant Louise Dunbar or her nominee and in my opinion the ruling of the learned Referee of Titles was therefore correct.

D.O. Bingham
Puisne Judge