

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
APPEAL DIVISION

2018/APP/Mag/00007

BETWEEN:

**MIZPAH PINTARD MUNROE**

**Appellant**

**AND**

**FRANKLYN WILLIAMS**

**Respondent**

**Before: The Honourable Mr. Justice Keith H. Thompson**

**Appearances:** Mr. Franklyn Williams Pro se  
Mrs. Clarita Lockhart of Counsel for the Respondent

**Hearing Dates:** 15<sup>th</sup> March, 2019  
22<sup>nd</sup> March, 2019

## **J U D G M E N T**

[1] This is an appeal from the decision of the Learned Magistrate His Honor Samuel McKinney which was delivered on the 28<sup>th</sup> day of February, A.D., 2018.

[2] The judgment which was entered against the Appellant was;

**“Vacant possession of No. 5 Boiling Brook Road,  
Blue Hill Estates on or before 16<sup>th</sup> March, 2018.”**

[3] The grounds of Appeal are;

1. That the Learned Magistrate erred in law and in fact by ruling in the matter having not taken sworn evidence by the parties.
2. That the Learned Magistrate erred in law by ordering vacant possession of the said premises, and,
3. That the Learned Magistrate erred in law and in fact by only giving the Appellant two (2) weeks to vacate the said premises.

**CASE OF THE APPELLANT:**

[4] The Appellant argues that the appeal is from the oral judgment of His Honor Samuel McKinney wherein the Plaintiff/Respondent sought relief in his personal capacity for vacant possession.

[5] It is further put by the Appellant that her matter had been previously adjourned but the matter was called prior to her attorney appearing.

[6] The Appellant says she was not sworn and neither was she called on to agree or disagree with the sparse particulars set out in the summons. She further claims that she was not able to defend herself. According to the Appellant, no documents were presented when the Appellant was fully prepared with her documents, which would have shown her financial interest in the subject property.

[7] It is perhaps proper at this time to make it clear that initially the Respondent/Plaintiff was claiming \$5,000.00 inclusive of costs below. The Plaintiff/Respondent, realizing that it may not have been wise to include a claim for a sum of money dropped the claim for costs.

[8] In this regard, the Respondent is relying on Section 54 (1) of the Magistrates Act, Chapter 54 which states;

**“S. 54 (1) –**

**An appeal shall lie from the decision of a magistrate given the exercise of his summary jurisdiction, whether matrimonial or civil, in the following cases ONLY (our emphasis), that is to say –**

**(a) In civil proceedings, when the sum claimed exceeds one dollar exclusive of costs;**

[9] The arguments for the Appellant are all centered around title to land or an interest therein. The action below was for vacant possession only.

[10] The Appellant cites Part IV, Section 52 of the Magistrate’s Court Act Chapter 54, which states;

**“.....a magisterial court shall have no jurisdiction to try summarily any case in which title to land or any interest therein is directly or incidentally in dispute.”**

**Provided that this section shall not apply to the following cases;**

**(1) Where the claim to such title is impossible in law;**

**(2) Where in the opinion of the court, the claim to such title is not set up in good faith;**

**(3) Where, in the opinion of the court, the act complained of was not done in assertion of the title claimed.**

**(4) Where the main point at issue is a dispute as to the correct position of the boundary line of the land in respect of which the action is brought.”**

[11] Counsel for the Appellant goes on to cite Part III, Section 53 (1) of the Magistrate's Court Act, however, we do not see its applicability in the instant case. We take this position due to the fact that the claim below was one of vacant possession only.

[12] It is the further argument of the Respondent that the Appellant is also in breach of Section 57 of the Magistrate's Act Chapter 54 which states;

**"The Appellant SHALL (our emphases) within three days after the day on which he served notice of his intention to appeal, enter into a recognisance before a magistrate, with or without sureties as the magistrate may direct, conditioned to prosecute the appeal to judgment and to abide the judgment thereon of the court to pay such costs as may be awarded by it, or, if the magistrate thinks it expedient, he may instead of entering into recognisances give such other security by deposit of money with the magistrate or otherwise as the magistrate deems sufficient."**

[13] In this regard no evidence was produced by the Appellant showing compliance with S. 57 of the Magistrate's Act Chapter 54.

[14] In light of the foregoing and in all the circumstances of the instant appeal, we dismiss the appeal and award costs to the Respondent to be taxed if not agreed.

Dated this 5<sup>th</sup> day of April, A.D., 2019.

Keith H. Thompson  
Justice