

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2000/CLE/qui/00042

IN THE MATTER OF ALL that piece parcel or lots of land comprising 18,650 square feet and being lot 136 and portions of lots 135 and 137 of the Crown Allotments situate at Dunmore Town, Harbour Island, one of the islands of the Commonwealth of The Bahamas.

AND IN THE MATTER of the Quieting Titles Act, 1959

AND IN THE MATTER of the Petition of Ian Cookie Ross

Before Hon. Mr. Justice Ian R. Winder

Appearances: Richard Lightbourne for the Petitioner
 Sidney Dorsett for the Adverse Claimant Rosita Roberts

8 November 2019, 20 January 2020 and 4 March 2020 and 22 January 2021

RULING

WINDER J

This is the application of the Adverse Claimant Rosita Roberts for the dismissal of the Petition for abuse of process and want of prosecution.

1. This petition was lodged on 22 November 2000 by Frederick Ross seeking the investigation into his title to certain property situated at Harbour Island. Directions were issued by this Court on 1 December 2000 as to the publication of the Notice of Petition and service of the notice on adjoining property owners.
2. One such adjoining property owner was Rosita Roberts, who along with Stephanie Roberts, filed an Adverse Claim on 21 June 2001, having been served on 9 May 2001.
3. The Adverse Claimants filed a Plan on 14 June 2004. By the adverse claim, the adverse claimants claimed to be the owners of a portion of the property being investigated, in particular the adverse claimants claim to be the owners of the entirety of Lot 137. They do not claim to own any of Lot 135 or 136. Rosita Roberts and Stephanie Roberts (now deceased) claimed the property as joint tenants.
4. On 10 September 2003 Frederick Ross applied unsuccessfully to strike out the Adverse Claim alleging a failure to file the "required pleadings in support of [the] adverse claim". On 15 June 2004 **Lyons J** dismissed the application notwithstanding the Defendants incomplete Adverse Claim.
5. On 9 July 2004 Richard Lightbourne filed an affidavit of compliance showing due compliance with the directions order in the publication of the orders and the service of the persons and entities identified in that directions order. The matter was ready for trial but nothing further took place until 12 November 2007 when the Dispute Resolution Conference was held by **Lyons J**. The note on the file indicates simply

that the conference was held and the matter was unresolved. The matter at that point was to proceed for trial.

6. Frederick Ross died on 13 January 2012 and was replaced as Petitioner on 9 March 2019 with his son Ian Cookie Ross. Stephanie Roberts died during 2013.
7. Notices of Intent to Proceed were filed in 2010 and 2016 by the attorneys for the Petitioner.
8. The surviving Adverse Claimant, Rosita Roberts took out a Summons on 26 September 2018 seeking the dismissal of the action on the ground of want of prosecution. The Summons was subsequently amended on 4 March 2020 to include the ground of abuse of process.
9. The application is supported by the several affidavits of Rosita Roberts and the affidavits of Tony Roberts, Patricia Jarrett and Alexis Sarah Ross. Ian Cookie Ross relies on his several affidavits.
10. The Applicant complains that there has been an inordinate delay in the prosecution of the claim and that the delay has been prejudicial to her case. She refers to the death of her mother Stephanie Roberts, the advancing age of her father Tony William Roberts and a fire to her lawyer's chambers in 2011.
11. Ross' case is that he inherited the interest of his father in the property upon his father's death. He asserts that prior to the death of the father, his health has deteriorated making it difficult to instruct his attorneys. He also asserts that there was delay in obtaining title to the disputed property as he had to compel (by court action) the Executor, one Patricia Cash, to transfer the property to him.
12. I have given careful and anxious consideration of this matter and remind myself that:
 - (1) Much of the Applicant's complaints go to her claim to the property rather than the claim for dismissal.

- (2) The disputed portion of the land is concerned only with a portion of Lot 137 upon which a portion of the Petitioner's building is situated. The Applicant has no interest in Lots 135 and 136 which make up roughly 75% of the property the subject to the Petition.
- (3) Whilst the loss of Stephanie Roberts is regrettable, her former husband, who swore an affidavit in support of this application, remains alive and with us.
- (4) Dismissal of the Petition upon the application would affect property, the majority of which, the Applicant would not be interested in.
- (5) This is a title investigation which could result in the grant of a certificate to either of the parties hereto or both of them. It is therefore incumbent upon all of them, as they are both interested, to see to the due prosecution of the action.
- (6) The claim of the Petitioner is that their structure, built, they say, since 1968 was built on a portion of Lot 137 upon the mistaken belief that the properties lay at an angle rather than straight. The Petitioner claims that this mistaken belief was shared by the adjoining land owners including the family of the Applicant.
- (7) The dismissal of the claim, summarily, without hearing it on the merits and making a determination as to the respective interests in the property does not resolve the dispute as to the respective interests of the parties.

13. In all the circumstances I am not prepared to dismiss the action but propose to put it on a fast track for resolution. I will fix the trial for 27 and 28 May 2021. The evidence would be taken remotely which should accommodate the parties not resident in New Providence. I expect the parties to submit an agreed directions schedule for the trial by 21st February 2021.

14. I order that costs of the application be costs in the cause.

Dated this 11th day of February 2021.



Ian R. Winder

Justice