

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2015/CLE/qui/00366

IN THE MATTER of all that piece parcel or Lot of land containing 188.22 acres situate on the Island of Rum Cay one of the Islands of the Commonwealth of the Bahamas situate on the Eastern Coast of Rum Cay bounded on the North by Crown Land and running thereon Two Thousand Four Hundred Seventeen and Ninety-nine Hundredths (2417.99) feet and on the East by the sea and running thereon Three Thousand Two Hundred Thirty-three and Seventy-one Hundredths (3233.71) feet bounded on the South by Crown Grant to John Storr and running therein Two Thousand Six Hundred and Sixty-three and Fifty-five Hundredths (2663.55) feet bounded on the West by Crown Land and running thereon two Thousand Nine Hundred Thirteen and Thirty-Seven Hundredths (2113.37) feet and which said piece parcel or Lot of Land has such position shape marks boundaries and dimensions are shown on the diagram or plan filed in this matter being recorded as Fifty-two (52) Rum Cay at the Department of Land and Survey.

AND

IN THE MATTER of the Quieting Titles Act, 1959 Ch. 393

AND

IN THE MATTER of the Petition of Rosamund A. Sandbrook

Before Hon. Mr. Justice Ian R. Winder

Appearances: Raymond Rolle for the Petitioner

Richard Lightbourne for the Adverse Claimants Sue and Oscar Davis

26 July 2021

DECISION

WINDER, J

[1.] This is my brief decision on the application by the plaintiff (Sandbrook) for leave to appeal the decision of this Court on costs dated 3 November 2020. In that written ruling this court found that the appropriate order was that there should be no order as to costs.

[2.] The application for costs arose following the completion of quieting proceedings. Paragraphs 2, 3, 4 and 5 of the written ruling provided as follows:

[2.] On 3 December 2018 I gave an interim decision ([2018] 1 BHS J. No. 201) effectively finding that Susan and Oscar Davis had not satisfied me in their claim to a certificate of title. At paragraph 8 of the Interim decision I found:

8 The Adverse Claimants live in New Mexico in the United States and are long time seasonal residents to Rum Cay. They would reside elsewhere (not on the Property) at their family home when they are on the Island. They did not engage in any activity on the property save for the erecting of a no-trespassing sign and a gate along one of the tracks leading to the Property. No part of the property was subject to any enclosure or any structure constructed or any agricultural pursuits conducted. They made a payment of real property tax onto the property. This in my view is clearly insufficient to ground factual possession of 183 acre tract of land.

[3.] On the material, as it stood at the interim hearing, I was also not prepared to grant a certificate to the Petitioner, whom I found did not have a documentary title in her name and had not returned to The Bahamas since 1975. I was not satisfied that the Petitioner had made out a claim for a title, at that interim stage, based upon matters which arose during the course of the investigation. Had the matter not progressed to permit the issue of a section 7(i) Notice to the Estate of the late Herbert McKinney, I would have been compelled, on the material before me at the interim hearing, not to issue any certificate to any party in accordance with the decision of the Privy Council in *Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd* [2018] UKPC 27.

[4.] Subsequently, following the intervention of Robin Symonette in her capacity as Trustee for the Estate of Sheila MacTaggart the Court considered new material. The Court then made the determination to grant a certificate for a portion of the land to the Petitioner and for another portion to the Estate of Sheila MacTaggart.

[5.] These Adverse Claimants, Susan and Oscar Davis, did not participate in the proceedings beyond the interim hearing and in all the circumstances I am not prepared to condemn them in costs. I therefore make no order for costs against the Adverse Claimants.

[3.] Sandbrook challenges the decision, she says, on several grounds:

- a) The Court did not exercise its jurisdiction judicially;
- b) The Court took into consideration matters that it ought not to have;
- c) The Court failed to consider matters that it ought to have; and,
- d) The decision of the Court is plainly wrong.

[4.] The test for granting leave to appeal was succinctly expressed in the Court of Appeal decision of *Rt. Hon Perry G. Christie and others v The Queen; The Coalition to Protect Clifton Bay and others*. According to *Isaacs JA*, giving the decision of the Court:

The Court has considered this issue of leave to appeal before. The principles involved ought not to be controversial. An applicant seeking leave to appeal must show that he has a "realistic prospect of succeeding on the appeal.... the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient." (Per Lord Woolfe MR) in *Smith v. Cosworth Casting Processes Ltd.* [1997] 4 All ER 840.

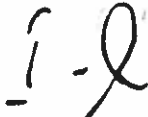
[5.] I have read and heard the submissions of Sandbrook and the Adverse Claimants on the leave application. Respectfully, I remain unable to discern the true nature of the grounds intended to be advanced by Sandbrook in her proposed appeal. They appear to be holding grounds which, without more, do not aid in assessing the merits or demerits of an appeal. The test, as expressed by *Isaacs JA*, provides that I should grant leave where Sandbrook persuades me that her proposed arguments in the appeal are not fanciful or unrealistic.

[6.] It must be borne in mind that this action was an investigation launched by Sandbrook, seeking the Court to investigate her title to the subject property and for the grant of a Certificate of Title. The proceedings were not the usual adversarial contest but an investigation by the Court under section 3 of the Quieting Titles Act. It cannot be said that the Adverse Claimants brought Sandbrook to Court or that their actions were the basis for this action. The investigation was therefore necessary despite the Adverse Claimants' claim to the property or their participation in the process.

[7.] More importantly however, at the heart of the appeal is a challenge to the decision of the court in the exercise of its discretion as to costs. This was an exercise which was clearly based upon an assessment of all of the facts of the case. It is well known that Appellate Courts are indeed slow to interfere in such matters without good reason. In my view, Sandbrook has not provided any such good reason.

[8.] In the circumstances therefore, I remain unsatisfied that there is a realistic prospect of succeeding on the appeal and leave to Appeal is refused. Sandbrook is well aware of the opportunity to seek leave directly from the Court of Appeal.

Dated the 29th day of July 2021

A handwritten signature in black ink, appearing to read 'I. Winder', with a stylized flourish at the end.

Ian Winder

Justice