

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CIVIL APPEAL NO COA2019PCC00003

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MISS JUSTICE SIMMONS JA (AG)**

**BETWEEN NORMA PRINGLE APPELLANT
AND ALDYTH MORGAN RESPONDENT**

Craig Carter instructed by A McBean & Company for the appellant

Ernest Smith instructed by Ernest Smith & Co for the respondent

31 October and 15 November 2019

BROOKS JA

[1] This appeal concerns a complaint that the learned Parish Court Judge for the parish of Manchester erred when he gave judgment for the plaintiff in a case for recovery of possession of land, in which there was a dispute as to title, but no evidence concerning the annual value of that land.

[2] After hearing arguments from both counsel in the matter we made the following orders:

1. The appeal is allowed and the orders of the learned Parish Court Judge are set aside.

2. The claim is remitted to the parish court for the parish of Manchester to be re-tried before another Parish Court Judge.
3. Costs of the appeal, and of the hearing before the learned Parish Court Judge, are awarded to the appellant in the sum of \$100,000.00.

We promised, at that time, to put our reasons in writing. We do so now.

[3] The dispute concerns unregistered land and a building thereon (the premises) at Hanson's Run in the parish of Manchester. Ms Aldyth Morgan sued to recover possession of the premises from her sister Mrs Norma Pringle and Mrs Pringle's then husband, Windell Pringle. Mr Pringle has since died. Ms Morgan asserted in her particulars of claim that the Pringles were trespassers and that they had remained in possession of the premises, despite a notice to quit having been served on them.

[4] When the claim came on for hearing in the parish of Manchester, the court was called the Resident Magistrates' Court and the judicial officer presiding over the court was called a Resident Magistrate. By the time the case was decided, the name of the court had been changed to the parish court and the judicial officer is now called a Parish Court Judge. For convenience, all references shall be to the parish court and the Parish Court Judge.

[5] At the time that the case started, the Pringles stated their defence. They asserted that:

- a. the premises did not belong to Ms Morgan but rather to the estate of Ms Morgan's mother, Quebeth Morgan, deceased, who is also Mrs Pringle's mother; and
- b. they are entitled to benefit from the principle of proprietary estoppel, as they had, to Ms Morgan's knowledge and without any objection from her, refurbished the house on the premises.

[6] The claim was tried over the course of eight years, and for a large portion of that time, it was in limbo after it had been referred to a surveyor. During the course of the trial, it arose on Ms Morgan's case that Ms Pringle was asserting that the premises belonged to their mother. Ms Pringle cross-examined Ms Morgan and suggested to her that the premises belonged to their mother. Ms Morgan denied the suggestion and asserted that the premises belonged to her. Ms Morgan accepted that it was Ms Quebeth Morgan who had signed the agreement to purchase the premises from the previous owner. The money to finance the purchase, Ms Morgan asserted, was provided by her and that her mother was carrying out the transaction on her behalf.

[7] From those assertions in the defence and during the trial, it is clear that there was a dispute as to title. Mrs Pringle was not asserting her own title to the premises, but was denying Ms Morgan's title.

[8] Based on that set of circumstances this case fell within the ambit of section 96 of the Judicature (Parish Court) Act (hereafter called "the Act"). The section establishes a monetary limit to the value of property over which the Parish Court can exercise jurisdiction. Section 96 states, in part:

"Whenever a dispute shall arise respecting the title to land or tenements, possessory or otherwise, the annual value whereof does not exceed seventy-five thousand dollars, any person claiming to be legally or equitably entitled to the possession thereof may lodge a plaint in the Court, setting forth the nature and extent of his claim ... and if the Defendant or the Defendants, or either of them, shall not, on a day to be named in such summons, show cause to the contrary, then on proof of the plaintiffs title and of the service of the summons on the defendant or the defendants, as the case may be, the Magistrate may order that possession of the lands or tenements mentioned in the said plaint be given to the plaintiff..." (Emphasis supplied)

This claim was started in 2009 when the monetary limit was \$75,000.00. The limit was increased in 2013 to \$500,000.00. The change is not material to this case.

[9] The section has been the subject of fairly recent judgments in this court. In **Danny McNamee v Shields Enterprises Ltd** [2010] JMCA Civ 37, Morrison JA (as he then was), in his judgment, with which the other members of the panel agreed, gave clear guidance on the point. He found that in order for the Parish Court to have jurisdiction in cases involving disputes as to title, there must be an indication on the record that the premises were within the stipulated value. He said, in part, at paragraph [40] of his judgment:

"...there is absolutely no indication on the record that the property in this case did not exceed the statutory limit and it therefore seems to me that the resident magistrate's

jurisdiction to make the order that she made under section 96 had not been established.”

[10] Morrison JA also pointed out that the plaintiff in that case had failed to comply with one of the relevant rules in the Parish Court Rules (the Rules). Order VI rule 4 of the Rules stipulates, in part, that in all actions for the recovery of land “the particulars shall contain a full description of the property sought to be recovered, and of the annual value thereof...”. He held that that rule was applicable to claims falling within the ambit of section 96 of the Act.

[11] The decision in **Danny McNamee v Shields Enterprises Ltd** was followed in **Melvin Clarke v Lenive Mullings-Clarke** [2016] JMCA Civ 60. In another careful judgment, McDonald-Bishop JA pointed out that the authorities required that a dispute as to title should be disclosed before the provisions of section 96 of the Act could be invoked. She went on to hold that once the dispute had been disclosed then regard should be had to the provisions of both order VI rule 4 of the Rules and section 96 of the Act. The learned judge of appeal concluded that in the absence of a statement or evidence of the value of the subject property the Parish Court Judge would have no jurisdiction to make any order on the claim. She said at paragraph [40] of her judgment (with which the rest of the panel agreed):

“...there being no statement and/or evidence of the annual value of the property in question, then it meant that the basis for the learned Resident Magistrate to exercise her jurisdiction in making an order for recovery of possession was not established.”

[12] The guidance provided by those cases is gratefully accepted as being applicable to this case.

[13] As happened in those cases, Ms Morgan neither complied with order VI rule 4 of the Rules, nor gave evidence as to the value of the premises in order to invoke the jurisdiction of section 96 of the Act. Accordingly, this court decided that the learned Parish Court Judge did not have the jurisdiction to give judgment for Ms Morgan or order Ms Pringle to deliver up possession of the premises. It is for those reasons that I agreed with my learned sisters that we should make the orders that have been set out in paragraph [2] above.

EDWARDS JA

[14] I have read in draft the reasons for judgment penned by my brother Brooks JA. His reasons reflect the basis on which I agreed to the orders made in this appeal.

SIMMONS JA (AG)

[15] I too have read the draft reasons for judgment written by Brooks JA. I agree that the reasons that he has expressed reflect my own reasons for agreeing to the decision handed down.