

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CIVIL APPEAL NO COA2020PCCV00010

APPLICATION NO COA2020APP00173

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE FRASER JA**

**BETWEEN CHRISTOPHER ROBINSON APPELLANT
AND RODNEY GARVEY RESPONDENT**

Mrs Rita C Allen-Brown for the appellant

Mr Delroy Johnson for the respondent

12 and 13 October, and 13 November 2020

BROOKS JA

[1] In this appeal, Mr Christopher Robinson seeks to overturn a decision of the learned Judge of the Parish Court for the parishes of Kingston and Saint Andrew, in which she ordered recovery of possession against him in favour of the respondent, Mr Rodney Garvey. The property in dispute is registered land (the land) situated at Cypress Hall in that parish.

[2] We heard the appeal on 12 and 13 October 2020, considered the submissions of counsel and made the following orders:

"1. The appeal is allowed;

2. The judgment and orders of the learned Parish Court Judge delivered on 8 August 2018 are set aside;
3. Costs to the appellant both in this court and the court below are to be agreed or taxed.”

At that time, we promised to put our reasons in writing. We now fulfil that promise.

Background

[3] Mr Garvey and his grandmother, Laura Dalhouse, are the registered owners of the land, which they had brought under the operation of the Registration of Titles Act in May 2015. In November 2015, Mr Garvey filed a claim in the Parish Court for recovery of possession against Mr Robinson and another person. This claim was filed pursuant to section 89 of the then Judicature (Resident Magistrates) Act, which, by the time of the trial in 2018, was the Judicature (Parish Courts) Act (JPCA).

[4] Mr Robinson resides and works on a portion of the land. He claims ownership of that portion. He states that he has been living there for over 40 years and pays property tax for it. He filed a special defence to Mr Garvey’s claim. In that special defence he said:

“That the Plaintiff or his predecessor in Title has been out of possession for a period in excess of Twelve (12) years prior to the commencement of the action.”

[5] After the learned Judge of the Parish Court had handed down her decision, Mr Robinson’s then attorney-at-law filed a claim in the Supreme Court for the revocation of Mr Garvey’s title, on the ground that it had been fraudulently obtained (the Supreme Court claim).

[6] Mr Robinson also sought and obtained permission to appeal from the learned Judge of the Parish Court's decision.

The application to admit fresh evidence

[7] In this appeal, Mrs Rita Allen-Brown, on behalf of Mr Robinson, applied for several documents to be admitted as fresh evidence. She argued that the evidence was not available to the court below, and it proves that the certificate of title was fraudulently obtained. Notably, she advanced that to receive some of the documents, an order from the Supreme Court was required. That order was only available as part of the Supreme Court claim. She further argued that these documents would have impacted the decision of the Parish Court.

[8] Counsel for Mr Garvey, Mr Delroy Johnson, resisted the application. Mr Johnson submitted that the application should not be granted as some of the evidence counsel sought to adduce is not fresh evidence. He contended that at the trial, Mr Robinson's attorney-at-law suggested that he was in possession of some of the documents. Mr Johnson argued that in deciding whether to accept the evidence, this court should consider whether the evidence would have had any impact on the case. He argued that the evidence would not have impacted the learned Judge of the Parish Court's decision as a certificate of title can only be impeached where there is fraud, and there is no documentation proving fraud. He added that even if Mr Robinson could prove that Mr Garvey had fraudulently obtained the certificate of title, that would have to be done in, and determined by, another court. He relied, in part, on **McMartin v The Queen** [1964] SCR 484.

[9] We granted, in part, the application to admit the fresh evidence. The documents which were admitted into evidence are:

- a. a certified copy of the death certificate of the grandmother of Ms Laura Dalhouse;
- b. copies of the defence and amended defences of Mr Garvey filed in the Supreme Court claim;
- c. copies of the court orders issued by the Supreme Court in the Supreme Court Claim;
- d. a copy of the application to bring the land under the operation of the Registration of Titles Law and its supporting documentation.

Those documents featured in the hearing of the appeal.

The appeal

[10] Mrs Allen-Brown advanced the following grounds of appeal:

“Ground of Appeal 1

The learned Senior Parish Judge erred in law and misdirected herself in making an order for recovery of possession under section 89 of the Judicature (Parish Court) Act (‘the Act[’] when there was a clear dispute of title which would cause the case to [evolve] to section 96 of the Act.”

“Ground of Appeal 2

The learned Senior Parish Judge fell into error in continuing the trial in the absence of [Mr Robinson’s] Attorney-at-Law. Given the seriousness and complexity of the case [Mr Robinson] could not adequately [represent] himself and did not receive a fair trial which was prejudicial to him.”

“Ground of Appeal 3

The learned Senior Parish Judge erred in law and misdirected herself in holding that only the evidence given in the case can demonstrate whether there is a genuine dispute in title.”

“Ground of Appeal 4

The learned Senior Parish Judge fell into material error, misquoted the evidence and misdirected herself on her findings that:

- a) [Mr Robinson] is not a witness of truth, and showed no history of his occupation of the subject land; and
- b) [Mr Garvey] is a witness of truth”

[11] The following issues arise from the above grounds:

- a. Whether the pleadings or the evidence demonstrated that there was a dispute as to title, thereby requiring the learned Judge of the Parish Court to consider the applicability of section 96 of the JPCA (grounds 1 and 3)
- b. Whether the trial should have proceeded in the absence of Mr Robinson’s attorney-at-law (ground 2)
- c. Did the learned Judge of the Parish Court arrive at correct findings of fact? (ground 4)

The submissions

[12] Mrs Allen-Brown submitted that the learned Judge of the Parish Court erred when she considered the matter pursuant to section 89 of the JPCA. Learned counsel

argued that, although Mr Robinson did not plead fraud in his written defence, the deficiency was not fatal to his case, as the Parish Court is not a court of record.¹ Notwithstanding the absence of that written pleading, she argued that the learned Judge of the Parish Court did recognise that Mr Robinson, in his defence, was advancing that Mr Garvey had fraudulently obtained the certificate of title. Accordingly, she submitted, the learned Judge of the Parish Court should not have heard the matter as she could not properly consider issues of fraud, as that is the remit of a judge of the Supreme Court.

[13] Learned counsel also contended that, given that the annual value of the land exceeded the statutory limit of \$500,000.00, which the learned Judge of the Parish Court was aware of from the tax receipts tendered into evidence, she should have considered the matter pursuant to section 96 of the JPCA. The learned Judge of the Parish Court, she submitted, would consequently have declined to hear the matter as it exceeded her jurisdiction.

[14] Mrs Allen-Brown also argued that Mr Robinson has a right to legal representation, yet the trial proceeded in the absence of his counsel. She recognised that the learned Judge of the Parish Court had the jurisdiction to continue the trial in the absence of Mr Robinson's attorney-at-law. She contended however, that, in light of

¹ The submission as to the status of the Parish Court is erroneous as section 10 of the JPCA stipulates that the court is a court of record.

the seriousness and complexity of the matter, the learned Judge of the Parish Court should have assessed that Mr Robinson was unable to properly represent himself and adjourn the matter so that he could obtain legal representation. The failure of the learned Judge of the Parish Court to allow Mr Robinson to seek counsel, she submitted, resulted in an unfair trial.

[15] In addition, Mrs Allen-Brown submitted that the learned Judge of the Parish Court erred when she ruled that she could only consider evidence when determining whether there was a genuine dispute of title. She argued that the learned Judge of the Parish Court was entitled to consider Mr Robinson's defence as well as the evidence. She relied, in part, on section 184 of the JPCA and **Harold Francis and Another v Dorrett Graham** [2017] JMCA Civ 39. She submitted that Mr Robinson's defence was adverse possession and fraud which raised a dispute as to title. This would provide the basis for the learned Judge of the Parish Court to consider the matter pursuant to section 96 of the JPCA.

[16] Learned counsel argued that the learned Judge of the Parish Court erred when she found that Mr Robinson was not a credible witness as the learned Judge of the Parish Court misinterpreted and misquoted the evidence. She also took issue with the learned Judge of the Parish Court's finding that Mr Garvey was a witness of truth. She contended that Mr Garvey's evidence was riddled with false statements, which constituted fraud, and was an attempt to mislead the court. She invited this court to

review the evidence and make the relevant inferences. She relied on **Chin v Chin** [2001] UKPC 7, in part, for this position.

[17] Mr Johnson submitted, cumulatively, that the learned Judge of the Parish Court was correct to consider the matter pursuant to section 89 of the JPCA. He argued that the value of the portion of the land that Mr Robinson occupies is within the learned Judge of the Parish Court's jurisdiction. He contended that although Mr Robinson alleged fraud, he did not prove that allegation. If fraud was proved, he asserted, the matter would have to have been tried in the Supreme Court. Accordingly, he submitted that there was no evidence of dispute of title to evolve the matter to section 96 of the JPCA. He argued that Mr Garvey testified clearly as to the history of the land and the learned Judge of the Parish Court assessed the demeanour of the witnesses and the evidence and rightly found in favour of Mr Garvey.

[18] The court did not require Mr Johnson to address the issue of the learned Judge of the Parish Court proceeding in the absence of Mr Robinson's legal counsel.

Discussion and Analysis

- (a) *Whether the pleadings or the evidence demonstrated that there was a dispute as to title, thereby requiring the learned Judge of the Parish Court to consider the applicability of section 96 of the JPCA (grounds 1 and 3)*

[19] The parties disagree on whether the learned Judge of the Parish Court should have considered the matter pursuant to section 89 or section 96 of the JPCA. An examination of these sections is therefore necessary. Section 89 provides:

"When any person shall be in possession of any lands or tenements without any title thereto from the Crown, or from

any reputed owner, or any right of possession, prescriptive or otherwise, the person legally or equitably entitled to the said lands or tenements may lodge a plaint in the Court for the recovery of the same and thereupon a summons shall issue to such first mentioned person; and if the defendant shall not, at the time named in the summons, show good cause to the contrary, then on proof of his still neglecting or refusing to deliver up possession of the premises, and on proof of the title of the plaintiff, and of the service of the summons, if the defendant shall not appear thereto, the Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the Magistrate shall think fit to name; and if such land be not given up, the Clerk of the Courts, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorizing and requiring the Bailiff of the Court to give possession of such premises to the plaintiff."

[20] Section 96 states:

"Whenever a dispute shall arise respecting the title to land or tenements, possessory or otherwise, the annual value whereof does not exceed five hundred 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 thereupon a summons shall issue to the person in actual possession of such land or tenements, and if such person be a lessee, then a summons shall also issue to the lessor under whom he holds; 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 plaintiff's 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..."

[21] Both sections address recovery of possession but they have distinctive differences. Section 89 is relevant where the defendant does not claim a right to title of

the land. Where, however, there is a dispute as to title, section 96 is applicable. This distinction was explained by Morrison JA, as he then was, in **Danny McNamee v Shields Enterprises Ltd** [2010] JMCA Civ 37 at paragraphs [35] to [37]. This court, in **Ivan Brown v Perris Bailey** (1974) 21 WIR 394, distilled the point that, a dispute as to title arises where “the evidence is of such a nature as to call in question the title, valid and recognisable in law or in equity, of someone to the subject matter in dispute”.

[22] To establish a dispute as to title as envisioned by section 96 of the JPCA, the dispute must “raise a real and substantial doubt as to whom the property belonged” (see paragraph [121] of **Harold Francis and Another v Dorrett Graham**).

[23] The existence of a registered title is an important feature in determining whether a genuine dispute as to title exists. Section 68 of the Registration of Titles Act as well as authorities such as **James Clinton Chisholm v James Hall** [1959] AC 719 establish that once a certificate of title is produced to the court, it is indefeasible, and must be accepted as representing title to the land, and the registered proprietor accepted as being the owner.

[24] In cases where there is a dispute as to title in the Parish Court, the plaintiff must plead and prove that the annual value of the disputed property is within the statutory limit of the jurisdiction of that court. This is outlined at order VI rule 4 of the Parish Court Rules (PCR), which states:

“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, and of the rent,

if there be any, fixed or paid in respect thereof.” (Emphasis supplied)

[25] This court has addressed this point on numerous occasions, including in the case of **Claude Jenine (Duly appointed Attorney of Vernis Parchment, owner of land part of Hopewell, in the parish of St Elizabeth) v Cynthia Blair** [2018] JMCA Civ 31 at paragraph [2]). In **Shawn Marie Smith v Winston Pinnock** [2016] JMCA Civ 37, at paragraph [86], Edwards JA (Ag), as she then was, with whom the other members of the panel agreed, found that the annual value must be pleaded or there must be evidence that the annual value does not exceed the statutory limit. Failure to satisfy those requirements will deprive the Judge of the Parish Court of jurisdiction to consider the case. Edwards JA (Ag) stated:

“[86] The cases dealing with [section 96 of the JCPA] state that in order to establish the jurisdiction of the court the annual value must be pleaded or there must be evidence that the annual value is not in excess of the statutory amount, presently, \$500,000.00. **Therefore, if this was not stated or there is any question the Resident Magistrate must decline to exercise jurisdiction in the matter....**” (Emphasis supplied)

[26] In **Melvin Clarke v Lenive Mullings-Clarke** [2016] JMCA Civ 60, McDonald-Bishop JA also pointed out that, in a claim for recovery of possession, where there is a dispute as to title, the absence of a statement or evidence of the annual value of the subject property, deprives the Judge of the Parish Court of jurisdiction in the matter. 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....”

[27] The term “annual value” has not been defined in the JPCA, or in the PCR, but it has been variously defined in other legislative instruments. Those definitions are crafted for the purposes of the particular legislation, and it is unnecessary to quote them here.

[28] A more general definition has been provided in Stroud’s Judicial Dictionary, 5th edition, volume 1. It is noted, however, that, the definition is also rooted in legislation.

The learned editors state, in part, at page 131:

“Annual Value. (1) ...it may be laid down that the general prima facie meaning of ‘annual value’ of property is that provided for ‘net annual value’ by Parochial Assessments Act 1836 (c. 96), s. 1, the history of which is traced by Grantham J., *Walker v Brisley, infra, viz.* ‘The rent at which the same might reasonably be expected to let from year to year free of all usual tenants’ rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain them in a state to command such rent’; and to that definition it may now be added that in estimating such lettable value regard is to be had to the worth of the premises as used for the purposes for which, or in the manner in which, they are, for the time being, occupied...”

[29] Cools-Lartigue J in delivering a judgment of the former Court of Appeal, in **Francis v Allen** (1957) 7 JLR 100, considered the predecessor to section 96 of the JCPA. He relied on a similar definition of annual value, which was contained in the 1st edition of Stroud’s Judicial Dictionary. The court, in that case, also ruled that the

Resident Magistrate has no authority to do a calculation, based on his own knowledge or assessment, in order to arrive at a figure for the annual value of property.

[30] It may be helpful for the rules committee to provide a precise definition, for the purposes of the JPCA and PCR.

[31] In the instant case, although the learned Judge of the Parish Court had the powerful evidence of a recently created certificate of title, that could have undermined Mr Robinson's claim to a possessory title, this court has the benefit of the fresh evidence, which was not before her. From that fresh evidence, it appears that there are matters to be investigated, which may affect the validity of that title. Those matters concern the application for the registration of the land. It would be inappropriate to consider them in any detail in this judgment, since they are to be considered elsewhere.

[32] The fresh evidence, therefore, allows for a consideration of Mr Robinson's claim to a possessory title. That claim creates a dispute as to title. It is indisputable that Mr Garvey did not plead the annual value of the land. There were tax receipts tendered into evidence which indicated that the value of the land, comprised in Mr Garvey's registered title, was \$1,600,000.00. That value is the unimproved value (see the schedule to the Property Tax Act). There, however, was no evidence of the annual value as is required by order VI rule 4 of the PCR.

[33] As a result, and based on the decisions of **Shawn Marie Smith v Winston Pinnock** and **Melvin Clarke v Lenive Mullings-Clarke**, the learned Judge of the Parish Court had no jurisdiction to adjudicate on the dispute as to title.

[34] This ground, therefore, succeeds.

(b) *Whether the trial should have proceeded in the absence of Mr Robinson's attorney-at-law (ground 2)*

[35] For the first two days of the trial, Mr Robinson was represented by counsel, who cross-examined Mr Garvey, who was unrepresented. Mr Robinson's attorney-at-law thereafter informed the learned Judge of the Parish Court that he had documentary evidence that Mr Garvey's title was fraudulent, among other things. He requested, and was granted, time to produce the documentary evidence. However, on the date set for the continuation of the trial, counsel, without explanation or notice, did not appear (see pages 66 and 71 of the record of proceedings). The learned Judge of the Parish Court, exercised her discretion to continue the matter in the absence of counsel.

[36] The parameters of this court to review the exercise of a judge's discretion are well established (see **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 2). This court can only review the exercise of a judge's discretion where the judge was plainly wrong.

[37] Contrary to Mrs Allen-Brown's assertion, a litigant does not have a right to legal representation in civil proceedings (see **Henry Butcher International Ltd v KG Engineering (A Partnership)** [2004] EWCA Civ 1597). Where a litigant is unrepresented, the court is to balance the circumstances of the case to determine what course to take in the interests of justice, which includes the state of the court's list.

[38] In **Henry Butcher International v KG Engineering**, the Court of Appeal of England and Wales ruled that a judge was wrong to refuse an adjournment, requested by one of the parties, who wished to secure legal representation. The case was both factually and procedurally complicated. In addressing the issues that a trial judge should have in mind in considering an application for an adjournment, Arden LJ, as she then was, said, in part:

“[28] Thus the judge must determine what is the fair result on the application, bearing in mind in particular that the result has to be fair to both parties, and that, so far as practical, there is to be a level playing field between the parties to the litigation. As respects the latter point, the judge must as a general rule be satisfied that there is no significant prejudice to any party opposing the adjournment if he decides to grant the adjournment and that the party seeking the adjournment can effectively participate in the proceedings if he decides to refuse the adjournment. Moreover, the court, in deciding what is a fair result, must consider whether court resources are unnecessarily wasted. Obviously if there is any adjournment more court time has to be allocated to the case and that may mean that other litigants have to wait longer for their cases to be heard and determined. In addition, the result must be proportionate. The aim to be achieved by the adjournment must be in proportion to the effect of adjourning the case.

[29] Those principles must inevitably mean that if a judge is satisfied that the unrepresented party does not need assistance the judge is entitled to exercise his discretion against an adjournment. The judge may also take the view that there is no point in an adjournment because there is no prospect of success in the unrepresented party's case. This may be a case more often occurring where an appellate court is faced with an application for an adjournment (as in this case) because the points open to be taken on an appeal are generally fewer and more refined than those that can be taken at first instance. Even so, a judge needs to be circumspect in this situation, because he would have had

only a brief opportunity to consider the case and would not have heard all the parties' submissions.”

[39] The considerations in respect of representation by counsel in a criminal case are wholly different, in that the liberty of the subject is the overarching feature. Even in criminal cases, however, there is no absolute right to representation by counsel (see **Beres Douglas v R** [2015] JMCA Crim 20, at paragraph [30]).

[40] In this case, Mr Robinson, in an affidavit presented to this court, did not assert that he applied for an adjournment for his attorney-at-law to be present. The learned Judge of the Parish Court did not state, in the record, that Mr Robinson requested an adjournment, nor did she give an explanation for continuing the trial in the absence of his counsel.

[41] On the evidence that was before her, however, this was not a complicated case. Mr Garvey had a newly issued certificate of title, in his name, which, ordinarily (based on section 68 of the Registration of Titles Act), would not admit of a credible dispute as to title, especially arising from a claim for adverse possession. She was bound to recognise such a title.

[42] There is, however, a troubling aspect to the matter of the representation by counsel. It concerns the learned Judge of the Parish Court's approach to the case, having made the decision to proceed without Mr Robinson's counsel. Mr Robinson deposed in his affidavit that he was prejudiced by counsel's absence. He said, in part, at paragraph 8 of his affidavit:

“...I made every effort to explain myself but could not adequately defend myself as the learned Senior Parish Judge did not take any documentary evidence which I tried to show her, she told me that she could only take them through my Attorney.”

[43] Assuming that Mr Robinson’s evidence is true (this court did not request a response from the learned Judge of the Parish Court), it is curious, that having decided to continue the case without Mr Robinson’s counsel, the learned Judge of the Parish Court did not seek to assist Mr Robinson by looking at the documents that Mr Robinson sought to bring to her attention. This is particularly because counsel’s parting shot was that he had several documents to support Mr Robinson’s case. No definitive position can be taken in this regard in the absence of a response from the learned Judge of the Parish Court. In light of the finding in respect of the dispute as to title, nothing further need be said on this aspect of the matter.

[44] In conclusion on this ground, it must be said that the learned Judge of the Parish Court was not plainly wrong in proceeding with the trial. Courts should not be hamstrung by counsel who fail or refuse to attend, without notice or explanation, when cases are set for hearing. Having decided to continue the case without counsel, it was, however, incumbent on the learned Judge of the Parish Court to assist Mr Robinson, as much as she properly could, especially in light of his counsel’s indication that there was important documentation that supported Mr Robinson’s case.

[45] This ground fails.

(c) *Did the Learned Judge of the Parish Court arrive at correct findings of fact?
(ground 4)*

[46] Given the finding in respect of the issue of jurisdiction, it is unnecessary and, inadvisable to enter into an analysis of the learned Judge of the Parish Court's findings of fact. It is settled that this court does not lightly disturb a trial judge's findings of fact.

[47] It is necessary to explain, however, that in light of the fresh evidence adduced in the instant case, it is evident that there are some substantial factual issues in dispute. Their Lordships, at paragraph [14] of **Chin v Chin** advise that, in circumstances where the factual findings have not been made in the court below, this court is not to undertake a "fact finding mission", instead, the matter is to be remitted to the court below for a rehearing.

[48] Given the circumstances of this case, not only was the fresh evidence not available to the learned Judge of the Parish Court, it would be an exercise in futility to return the case to that court, in light of the fact that there is a dispute as to title and the parties are already before the Supreme Court in respect of that dispute. The Supreme Court is the appropriate forum to allow them to resolve their dispute.

Conclusion

[49] Based on the fresh evidence adduced in this court, there is sufficient evidence of a dispute as to title, meriting a consideration of whether the requirements of section 96 of the JPCA were satisfied. There was no evidence before the learned Judge of the Parish Court of the annual value of the land. Accordingly, it was not established that she had the jurisdiction to hear this matter. In view of the factual issues in dispute and

existence of a claim in that regard in the Supreme Court, it is apparent that that is the appropriate forum to resolve the dispute.

[50] It is for these reasons that we made the orders outlined at paragraph [2] above.

EDWARDS JA

[51] I have read, in draft, the reasons for judgment of my learned brother Brooks JA. I agree with his reasoning and conclusion and have nothing further to add.

FRASER JA

[52] I too have read the judgment of Brooks JA, and agree with his reasoning and conclusion. I have nothing further that I can usefully add.