

2017

No. 228-P

Berbice

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION
(DECLARATION OF TITLE)

In the matter of Plot 'R' containing an area of 0.103 of an acre being a portion of Lot 1 (South of the Public Road) Pln. Litchfield, situate on the West Coast of Berbice and Co-operative Republic of Guyana, the said Plot being shown and defined on a plan by R. T. John, Sworn Land Surveyor, dated 6th day of March, 2017 deposited at the Lands and Surveys Commission on the 10th day of March, 2017, and recorded as Plan No. 66095.

-and-

In the matter of the Title to Land (Prescription and Limitation) Act, Chapter 60:02

-and-

In the matter of a Petition for a Declaration of Title by **JULIET ROBERTSON** and **EZRA McPHERSON**, jointly.

Before: Nicola Pierre, Commissioner of Title

Appearances: Mr. Kumar Doraisammi for the Petitioners
Mr. L. Ceasar for the Opposer

Hearing dates: April 10, July 23, June 17, July 30, 2019

Decision of Nicola Pierre, Commissioner of Title

1. Juliet Robertson and Ezra Mc Pherson ('the petitioners') filed the petition dated July 24, 2017, in which they claimed to have acquired possessory title to Plot 'R' of Lot 1, Pln. Litchfield, on the west coast of Berbice ('the property'). Debra Brand on October 11, 2017, filed an opposition alleging that the petitioners are her tenants.
2. The petition came on for hearing before the Honourable Ms. M. Robertson, Commissioner of Title and Judge of the Land Court in Berbice, on June 21, October 29, 2018, January 18, February 8, 2019.
3. On February 8, 2019, the Honourable Commissioner recused herself when she learnt that Ezra Brand, one of the petitioners, had written to the Honourable Chancellor requesting that the Chancellor "prevent the Honourable Commissioner from trying this matter".
4. Ms. Brand's complaint in that letter was that the Honourable Commissioner on January 18, 2019 was insisting that the matter be tried on that date, or stand dismissed, and that her lawyer had to intervene to secure an adjournment which was then granted in terms of a "peremptory trial on February 8, 2019". She was not happy with the February peremptory trial date because the Honourable Commissioner was to retire in July, and "in case the decision is given against me then she will not be around to write her Memorandum of reasons for her decision. As such a great injustice will be done to

me.” She added that she was also not happy that Ms. Roberston was hearing the matter because she had “made some inquiries in her village of Litchfield and found out that the Honourable Commissioner is related to Debra Brand”.

5. The matter was assigned to me and came on for hearing before me on March 15, 2019. The opposer and her attorney were present. The petitioners and their attorney-at-law did not appear. The matter was adjourned to April 10, 2019 and notices sent.
6. On April 10, 2019 the opposer and her attorney were present. The petitioners and their attorney-at-Law were again absent. The matter was adjourned to July 23, 2019.
7. On July 23, 2019, the opposer and her attorney were present. The petitioners were present but not their attorney. Because of the absence of their attorney-at-law we could not settle on and fix a trial date. The matter was adjourned to June 17, 2019.
8. On June 17, 2019, the opposer and her attorney were present. The petitioners were absent but their attorney-at-Law Mr. K. Doraisami was present. With the participation and agreement of both attorneys-at-law a date for trial convenient to all parties was chosen. Mr. Ceasar requested that the trial be had in Georgetown because the opposer lives in Georgetown. Mr. Doraisami requested that the trial be had in Berbice because the petitioners and the property were in Berbice. The petition was set down for trial on July 30, 2019, at 9 o’clock in the morning, at Berbice Land Court.

9. On July 30, 2019, the trial date, the opposer and her attorney appeared. The petitioners were present but their attorney-at-law was not. I was informed by the petitioners that “My lawyer at the hospital for a check-up. He didn’t inform us whether he would make it to come.” Mr. Walters, clerk of the Berbice Land Court informed me that he had received a letter from Mr. Doraisami dated July 29, 2019 (the day before the trial date) , informing that he would be seeking an adjournment because he had a “follow up visit to the Caribbean Heart Institute tomorrow July 30, 2019.” Mr. Lester Ceasar, attorney-at-law for the petitioner said that he had no notice of Mr. Doraisami’s intended absence and that both the opposer and he had traveled from Georgetown to Berbice for the trial of the matter on that day.

10. On July 30, 2019, I dismissed the petition for want of prosecution because:

- i. The petition was fixed for trial on July 30, 2019 and the petitioners did not lead their case; and
- ii. The trial date was set in the presence of and with the agreement of the petitioners’ attorney-at-law; and
- iii. The matter had been adjourned by me 3 times for fixture for trial to secure the attendance of the petitioners and/or their counsel so that they could participate in choosing a trial date; and
- iv. After choosing the place and date of trial, the attorney-at-law for the petitioner failed to give any notice to the Attorney-at-Law for the Opposer, and any adequate notice to the Court, and that he intended to seek an adjournment of the trial; and

v. The petitioners had previously failed to prosecute the petition on January 18, 2019 when it came on for trial before the Honourable Ms. Robertson Commissioner of Title.

11. I held those acts and omissions in aggregate to constitute a failure to prosecute the petition.

12. I ordered that the petitioners pay to the opposer costs in the sum of \$100,000.

A handwritten signature in blue ink, appearing to read "N. Pierre", is centered on the page. The signature is written in a cursive style with a large initial "N" and a long, sweeping underline.

28 August, 2019.

Nicola Pierre, Commissioner of Title.