

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

DERYCK RUTHERFORD represented
by his duly constituted Attorney *LEON
LESLIE RUTHERFORD* agreeably with
Power of Attorney executed on the 2nd
day of June, 1978 and registered in the
Deeds Registry on the 13th day of June,
1978 and No. 715 of 1978.

Plaintiff

-and-

1. ROY LAWRENCE
2. ZABEEDA FEROUZ
3. SHAFEEK MOHAMED FEROUZ
4. THE REGISTRAR OF DEEDS

Defendants

Jointly & Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Linden Amsterdam with Ms. Sedella Ferrell for the Plaintiff

Mr. Parmanand Mohanlal for the First, Second and Third Named Defendants

There was no appearance by or for the Fourth Named Defendant

Heard April 27th, June 22nd, September 26th and October 28th 2016

Ruling delivered November 11th 2016

RULING

BACKGROUND

The Plaintiff, Deryck Rutherford, and his wife, Diana Rutherford, are the registered owners by Transport numbered 1133 of 1987 of a portion of land known as lot 44

A being a portion of Block C, Plantation Providence on the East Bank of the Demerara River.

On August 4th, 2014, the First Named Defendant purported to sell the said property to the Second and Third Named Defendants as is evidence by a written agreement of sale and purchase.

The Plaintiff became aware of this purported sale and filed this action before paper title (transport) was conveyed to the Second and Third Named Defendants.

The First Named Defendant through the pleadings claim to have obtained ownership of the said property through two High Court Actions, to wit, HCA 1297 of 1985 (Demerara) by Order of Court dated January 9th, 1989 and HCA 95 of 1997 (Demerara) by Order of Court dated January 31st, 2008.

It is the First Named Defendant's defence that the Plaintiff and his wife were and are fully aware of these High Court Actions and so they know that the Transport that they hold is no longer valid or of any value by which to claim ownership of the land.

It is the Plaintiff's claim that he nor his wife were never party to or aware of any of the High Court Actions that are pleaded to by the First Named Defendant and therefore the Court Orders that the First Named Defendant claims he obtained in those actions are either fraudulent or obtained by perpetuating fraud upon the High Court.

An examination of the evidence is therefore required to determine whether the Orders of Court relied on by the Defence are genuine and/ or were obtained by fraud.

The Plaintiff testified that he and his wife left the Republic of Guyana in 1978 to go and live in the Republic of Trinidad and Tobago and they have never returned to reside in Guyana.

He testified that at the time that he was leaving Guyana he appointed his brother, Leon Rutherford, his duly constituted attorney in Guyana evidenced by Power of

Attorney numbered 715 of 1978 [**Exhibit “A1 - A3”**]. His brother was supposed to sell his property South Ruimveldt and purchase “*a piece of land*” with the money.

His brother did this and the land that he purchased is lot 44 A, the subject matter of this action. He did not come to Guyana since his brother did all that was necessary on his behalf using the Power of Attorney, however, his wife did come to Guyana to sign the documents necessary to effect the conveyance since the property was conveyed to him and his wife jointly as is evidenced by County of Demerara Transport numbered 1133 of 1987 [**Exhibit “B1 - B2”**].

The Plaintiff testified that he was never served with any documents pertaining to HCA 1297 of 1985 (Demerara) or HCA 95 of 1997 (Demerara) and that he never signed any “Terms of Settlement” in HCA 1297 of 1985 dated January 9th, 1989 [**Exhibit “C1 - C2”**]. The Plaintiff testified that he was not in Guyana on that date and produced his passports, which the Court examined, to substantiate that.

The relevant pages of his passports were tendered, the court having examined both passports in their entirety to ensure that no relevant page/s were omitted [**Exhibits “E1 - E7” and “F1 - F3”**].

He further testified that he never met nor does he know the Defendants.

Diana Rutherford testified that she had come to Guyana in 1987 to sign documents for the Transport to lot 44 A to be conveyed to her and the Plaintiff. She testified that she was not in Guyana on January 9th, 1989 and further that she did not have a valid passport on that date since her passport had expired in June 1988 and a new passport was not issued to her until January 19th, 1989.

The relevant pages of her passports were tendered, the court having examined both passports in their entirety to ensure that no relevant page/s were omitted [**Exhibits “K1 - K8”, “L1 - L4” and “M1 - M3”**].

The Third Named Defendant testified on behalf of the Defence and really was unable to testify about anything regarding HCA 1297 of 1985 (Demerara) or HCA 95 of 1997 (Demerara) or any Orders of Court purportedly obtained therein.

ISSUE I

Is the Order of Court purportedly obtained in HCA 1297 of 1985 (Demerara) dated January 9th, 1989 fraudulent or fraudulently obtained?

ANALYSIS

The Order of Court in question [**Exhibit “D1 - D2”**] was purportedly issued in HCA 1297 of 1985, an action in which Roy Lawrence (Plaintiff) filed suit against Claudette Hazel Lawrence (Defendant).

The Order of Court made “Terms of Settlement” dated January 9th, 1987 [**Exhibit “C1 - C2”**] an Order of the Court in the said HCA.

Upon examination of [**Exhibit “C1 - C2”**] the Court immediately observed that there was a startling similarity of the signature Diana Rutherford therein and the signature of Diana Rutherford on County of Demerara Transport numbered 1133 of 1987 [**Exhibit “B1 - B2”**]. It is almost impossible for an individual to sign the identical way on two different occasions. The signatures are identical in every respect, even to where the various lines cross.

Further when her signature on her passports are examined it is seen that there are slight variations between those signatures [**Exhibits “K2”, “L2” and “M1”**] and also the one on the Transport.

Upon further examination of [**Exhibit “C1 - C2”**] the Court observed that there was also a startling similarity of the signature Deryck Rutherford therein and the signature of Deryck Rutherford on Power of Attorney numbered 715 of 1978 [**Exhibit “A1 - A3”**]. The signatures were similarly identical in every respect.

And similarly when his signature on his passports are examined it is seen that there are slight variations between those signatures [**Exhibits “E2” and “F2”**] and also the one on the Power of Attorney.

The Court finds beyond doubt that the signatures of Deryck Rutherford and Diana Rutherford found on the “Terms of Settlement” [**Exhibit “C1 - C2”**] are forgeries.

This finding is further corroborated by the fact that the evidence of Deryck Rutherford and Diana Rutherford that they were not in Guyana on the date that the “Terms of Settlement” was purportedly signed was not in any way discredited.

HCA 1297 of 1985 was filed on April 15th, 1985 [**Exhibit “P1 - P2”**] and the Order of Court made on January 9th, 1989 [**Exhibit “N1 - N2”**]. It is mind boggling that Roy Lawrence having battled through the Courts for almost four years then does nothing to have the property transferred into his name.

According to the Order of Court he, Roy Lawrence, had pay all of the expenses to facilitate the transfer and there is absolutely no evidence that he did so or attempted to so do.

It is also noted that according to **Exhibit “P2”** the parties were present in Court when the “Terms of Settlement” were made an Order of Court. There is no record of Deryck or Diana Rutherford being present which raises the issue as to whether the Court could have properly ordered Deryck or Diana Rutherford to transfer their property when they were not even parties to the Action.

It is trite law that the Court could not have ordered Deryck or Diana Rutherford, who were not parties to the Action, to do anything especially an act which results in the loss of their property without giving them a hearing.

CONCLUSION

The Order of Court purportedly obtained in HCA 1297 of 1985 (Demerara) dated January 9th, 1989, is based on a fraudulent document, to wit, “Terms of Settlement” dated January 9th, 1989 and therefore was obtained fraudulently.

In any event the said Order of Court ha no force or validity as against Deryck or Diana Rutherford.

Order of Court dated January 9th, 1989 purportedly obtained in HCA 1297 of 1985 (Demerara) must be set aside.

ISSUE II

What is the effect of Order of Court dated January 31st, 2008 purportedly obtained in HCA 95 of 1997?

ANALYSIS

Roy Lawrence, having supposedly obtained this Order of Court in his favour does not nothing to give effect to it until 8 years later on January 8th, 1997, when he files suit against Claudette Lawrence, Deryck Rutherford and Diana Rutherford, quite astonishingly, to be declared the sole owner of the said lot 44 A and for the Registrar of Deeds to pass Transport to him.

This is astonishing since, indeed all that was required was enforcement of the Order of Court in HCA 1287 of 1985. It is the Court's settled finding that Roy Lawrence in fact caused this HCA (No. 95 of 1997) to be instituted because of the fraudulent nature of the Order of Court in HCA 1287 of 1985.

Both Deryck and Diana Rutherford testified that they were not in Guyana on January 23rd, 1997, when service was supposedly effected according to what is purported to be the Cause Book entries for the said Action [**Exhibit "R1 - R2"**] and this evidence was not discredited. There is absolutely no proof or evidence led to show that HCA 95 of 1997 was ever served on Deryck Rutherford and/ or Diana Rutherford and in fact the entry on **Exhibit "R1"** shows "*Service effected on defendant*" [singular defendant].

Upon examination of **Exhibit "R2"** it is observed that during what appears to be an ex-parte trial/ hearing the purported Order of Court obtained in HCA 1287 of 1985 was never tendered into the evidence.

The Court did not recall or set aside Transport numbered 1133 of 1987, a transport that still exists even though the Court Order refers to the said Transport.

Taking into account;

1. There is no proof of service on Deryck or Diana Rutherford of this Action (HCA 95 of 1997), especially considering that their evidence that have been residing in the Republic of Trinidad and Tobago since 1978.

- II. The entries on **Exhibit “R1”** of “*Notices sent*” could not be referable to either Deryck Rutherford or Diana Rutherford since it is undisputed that they were living in Trinidad at that time.
- III. Order of Court obtained in HCA 1287 of 1985 was never tendered into the evidence at the ex-parte hearing of HCA 95 of 1997.
- IV. The Court did not recall or set aside Transport numbered 1133 of 1987 in HCA 95 of 1997.
- V. What appears to have been tendered into the evidence at the ex-parte hearing of HCA 95 of 1997 [as recorded in **Exhibit “R2”**] is an Agreement of Sale and Purchase and Receipts of Sale; unless this was an agreement of sale between the Rutherfords and Roy Lawrence, it could not serve to give sole ownership of the property to Roy Lawrence.
- VI. The fact that the Order of Court purportedly made in HCA 95 of 1997 tendered into this Court is a copy [**Exhibit “Q”**] and though stamped “*CERTIFIED A TRUE COPY OF THE ORIGINAL*”, the Supreme Court Legal Clerk, Selwyn Jones, who tendered the document admitted that he had never seen the original Order of Court or for that matter the Court file relating to the matter.
- VII. It is clear on the face of it that **Exhibit “Q”** is a reconstructed document. This being the case, the Court is indeed bewildered as to how the document could have been stamped “*CERTIFIED A TRUE COPY OF THE ORIGINAL*”.
- VIII. In fact, Supreme Court Legal Clerk, Selwyn Jones, who tendered **Exhibits “N1 - N2”, “P1 - P2”, “Q”** and “**R1 - R2**” testified that he had never seen the originals of any of these documents. Considering what obtained in **VI** above , it is difficult for the Court to place reliability on these documents.
- IX. The fact that Roy Lawrence never attended this current trial or testified, despite lengthy adjournments to facilitate his attendance and the fact that he had the option of testifying via audio - visual link but did not avail himself to this

facility and this Court having found that Roy Lawrence did obtain the Order of Court in HCA 1287 of 1985 by perpetuating a fraud upon the Court.

- X. The fact that once again having waited a further 11 years for yet another judgment in his favour, Roy Lawrence then takes another 3 1/2 years to have the Judgment Order entered.

Counsel for the First, Second and Third Named Defendants submits that the Order appears to be in the nature of an Order for specific performance, particularly since according to **Exhibit "R2"** an agreement of sale was tendered at the hearing.

This can only make sense if an agreement of sale showing that the Rutherfords sold to Roy Lawrence was what was tendered, however, at no time was it ever suggested to Deryck Rutherford or Diana Rutherford that they sold the property to Roy Lawrence and if it was an agreement of sale between Hazel Lawrence and Roy Lawrence, it is difficult to see how the Rutherfords could be ordered to specifically perform such agreement.

The Court is not convinced on a balance of probabilities that the Order of Court [**Exhibit "Q"**] is either legitimate or was properly and lawfully obtained, in fact the Court finds that neither Deryck Rutherford nor Diana Rutherford were served or had notice of HCA 95 of 1997.

CONCLUSION

Order of Court dated January 31st, 2008 purportedly obtained in HCA 95 of 1997 must be set aside.

Consequently, since Roy Lawrence had no lawful right or authority to sell property situate at lot 44 A more fully described in Transport numbered 1133 of 1987, the Agreement of Sale and Purchase entered into between Roy Lawrence and Zabeeda and Shafeek Ferouz and dated August 4th, 2014 is void and of no legal effect with respect to sale of the said property.

The Court does not find that the Second and/ or Third Named Defendants were aware of the fraudulent actions of the First Named Defendant in obtaining the various Orders of Court.

In the circumstances the Court makes the following Orders:

- A. The Defendants Counterclaim is dismissed in its entirety.
- B. Order of Court dated January 9th, 1989 purportedly obtained in HCA 1297 of 1985 (Demerara) is set aside.
- C. Order of Court dated January 31st, 2008 purportedly obtained in HCA 95 of 1997 is set aside.
- D. Agreement of Sale and Purchase entered into between Roy Lawrence and Zabeeda and Shafeek Ferouz and dated August 4th, 2014 is declared void and of no legal effect with respect to sale of the said property.
- E. Transport numbered 1133 of 1987 (County of Demerara) is declared valid and in force and therefore the Plaintiffs are declared the recognised legal owners of the property described therein.
- F. Damages are awarded to the Plaintiffs against the First Named Defendant in the sum of \$1,000,000.00 for fraud.
- G. A permanent injunction is hereby granted restraining the First, Second and Third Named Defendants whether by themselves and/ or agents from entering upon or remaining on the said lot 44 A more fully described in Transport 1133 of 1987.
- H. Conveyances currently lodged with the Fourth Named Defendant which was advertised to convey transport of the said property to the First Named Defendant and then to the Second and Third Named Defendants are hereby set aside and quashed.

- i. Costs to the Plaintiffs against the First, Second and Third Named Defendants in the sum of \$100,000.00

Justice N. A. Singh