IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE
-APPELLATE JURISDICTION-

Civil Appeal No. 97 of 2014

Between:

Plot 'a' being a portion of Lot 40 'B' and Lot 39 Section 'B' Pln. Carnarvon or Lot No. 68, situate on the Corentyne Coast, in the County of Berbice, Republic of Guyana, the said plot being shown on a Plan by L.W. Cox, Sworn land Surveyor dated 13th day of June, 2000 and deposited in the Department of Lands and Surveys on 30th June, 2000 as Plan No. 30205.

-and-

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

-and-

In the matter of the Rules of the Supreme Court (Declaration of Title)

-and-

In the matter of a Petition by **SHANTA SINGH,** of Lot 40 Section 'B' No. 68 Village, Corentyne, Berbice.

Appellant/Petitioner

In the matter of an Opposition by **RAMANAND SHIWPRASHAD** and **RAJWATTIE BISHNAUTH** represented herein by their duly constituted attorney SHOAN agreeably with Power of Attorney No. 624 of 1999 (Berbice).

Respondent/Opposer

Before: **Mm'e Justice Dawn Gregory - Justice of Appeal**
Mr. Justice Rishi Persaud - Justice of Appeal
Mr. Justice Rafiq T. Khan - Justice of Appeal

Appearances
Mr. Adrian Annamayah for Appellant.
Mr. Ryan Crawford for the Respondent.

Dates:
23rd April, 2018
28th May, 2018

Decision of Khan JA (ag)

[1] On the 25th July 2000, the Applicant petitioned the Commissioner of Title for the county of Berbice pursuant to the Title to Land (Prescription and

Limitation) Act Cap. 60:02 for a declaration of title in her favour in respect of a portion of land known as

> "Plot 'a' being a portion of Lot 40 'B' and Lot 39 Section 'B' Plantation. Carnarvon or Lot No. 68, situate on the Corentyne Coast, in the County of Berbice, Republic of Guyana, the said plot being shown on a Plan by L.W. Cox, Sworn land Surveyor dated 13th day of June, 2000 and deposited in the Department of Lands and Surveys on 30th June, 2000 as Plan No. 30205.

[2] The Petitioner claimed to have acquired that parcel of land by the sole and undisturbed possession and user or enjoyment thereof since 1983.

[3] On or about the 29th September, 2000, the Respondents filed an opposition to the Appellant's Petition claiming that the Petitioner was a tenant of theirs.

[4] On the date fixed for the hearing of the Petition, a preliminary point was taken before the Commissioner of Title on behalf of the Respondents that the Petitioner had been originally represented by the then Attorney-at-Law Mr. Joseph Anamayah and there was no new authority in favour of Mr. Adrian Anamayah Attorney-at-Law who then claimed to represent the Petitioner.

[5] It was then submitted by way of preliminary submission on behalf of the Appellant that there was no authority in favour of Mr. Ryan Crawford Attorney-at-Law as the by then late Mr. Marcel Crawford SC was duly authorised and on record as appearing for the Respondents.

[6] It was further submitted in limine on behalf of the Respondents that the Petition was bad in law in that:

(a) contrary to Rule 3(3) of the Rules of the High Court (Declaration of Title) no plan had been filed with the Petition;

(b) the description of the boundaries did not comply with the requirements of Collymore's case or Khedaroo's case and were contrary to Rule 3(2) of the aforesaid Rules;

(c) these Rules were mandatory and could not be cured by amendment.

[7] After considering the written submissions on behalf of the Appellant, the Commissioner of Title upheld the preliminary submissions made on behalf of the Respondents and dismissed the Petition.

The Appeal

[8] The Appellants then appealed to this Court against the ruling of the Commissioner of Title on the preliminary submissions, contending that:

(a) the decision was unreasonable and cannot be supported having regard to the evidence and the law;

(b) the Commissioner of title took extraneous matters into consideration in arriving at her conclusion;

(c) the Commissioner of title did not exercise her discretion Judiciary;

(d) the Commissioner of Title erred in law and applied the wrong principles;

(e) The Commissioner of Title failed to hear and determine pending interlocutory proceedings (Summons dated the 20th May 2014) before dealing with substantive petition. This Summons concerned an application on behalf of the Petitioner to amend the boundaries and rubric stated in the petition.

[9] At the initial hearing of the Appeal the Court raised the issue as to whether, having regard to the provisions of Section 6 (2) (a) (i) of the Court of Appeal Act Cap. 3:01, the order appealed from was indeed a final one and not made in a summary proceeding.

[10] The Court invited written submissions on this aspect. Only Counsel of Appellant put written submissions before the Court.

[11] However, in the course of our deliberations, it became apparent that the issue was really whether the order made by the Commissioner was a final one under Section 6 (2) (a) of the Court of Appeal Act. If we resolved that the order was not a final one then that would bring the appeal to an end without us having to go further to determine the issue as to whether or not the proceeding in which the order was made was a summary one. We are cognisant of the fact that we invited submissions only on the questions of whether the proceeding in which the order was made under a summary one and not whether the order was a final one. The issue goes however, to our jurisdiction and as the West Indian Court of Appeal emphasized in **Dhanjoo v. Thom [1939] LRBG 262 per Richards C.J.**

> **"it is the first duty for every Court whether of first instance or on appeal to satisfy itself on its jurisdiction and if the Court is of the opinion that it does not possess jurisdiction in whatever manner in any given cause that may be brought before it, it is the duty of the Court, whether the question of jurisdiction is the subject of a formal appeal or not, of its own motion, to pronounce accordingly"**

Discussion

[12] Section 6 (2) (a) of the Court of Appeal Act Cap 3:02 is to be found in Part II of that Act which deals with Civil Appeals. In so far as is relevant to this judgment, it enacts:

> "(2) Subject as otherwise provided in this section, an appeal shall lie to the Court of Appeal in any cause or matter from any order of the Full Court or a Judge of the High Court (whether made before or after the date on which this Act comes into force) where such order is
>
> (a) "final..."

[13] Section 4 (2) of the Title to Land (Prescription and Limitation) Act 60:02 states:

> **"A Commissioner of Title may hear and determine such matters in respect of which a judge of the High Court has power to exercise jurisdiction under this**

Act as may be assigned to him by the Chief Justice, and for that purpose shall be vested with any and may exercise the powers of a Judge of the High Court."

[14] Section 4 (3) of the Title to Land (Prescription and Limitation) Act further enacts:

> **"Any order of a Commissioner of Title made in pursuance of the jurisdiction conferred on him by Subsection (2) shall be deemed to have been made by a judge of the High Court" (emphasis mine).**

[15] This Court in **Anthony Collymore v. Brian La Fleur Civil Appeal No. 26 of 2007** while frowning on the common practice of describing a Commissioner of Title as a judge of the High Court, acknowledged that Section 4 (3) of the Title to Land (Prescription and Limitation) Act equated the status of an Order of a Commissioner of Title to that of a High Court judge without actually elevating a Commissioner of Title to the position of a High Court Judge. (See per Ramson JA at p. 11).

[16] Nonetheless an order of a Commissioner of Title is deemed to have been made by a judge of the High Court.

[17] There is no separate provision in the Title to Land (Prescription and Limitation) Act Cap 60:02 or in the Rules of the High Court (Declaration of Title) which specifies to where appeals from orders of a Commissioner of Title lie and the manner in which appeals from orders of Commissioner of Title, exercising the jurisdiction granted to him or her by Section 4 (2) of that Act are regulated. But since the jurisdiction of a Commissioner of Title under Section 4 (2) of the Title to Land (Prescription and Limitation) Act is in reality a delegated jurisdiction of the High Court itself and the order of the Commissioner of Title so made, is statutorily deemed by Section 4 (3) of that Act to be an order of a judge of the High Court, it follows that those statutory provisions and procedures which governs appeals from orders of a Judge of the High Court would apply ***mutatis mutandis*** to orders of a Commissioner of Title exercising the delegated jurisdiction granted to him or her by Section 4 (2) of the Title to Land (Prescription and Limitation) Act. On the other hand, appeals from orders of a Commissioner of Title acting under and pursuant to the Provisions of the Land Registry Act Cap 5:02 are in the absence of any contrary provision, appealable under Section

146 of the Land Registry Act to the Full Court. In the case at Bar, the Petition filed on behalf of the Appellant was filed pursuant to the provisions of the Title to Land (Prescription and Limitation) Act Cap 60:02 and the Rules of the High Court (Declaration of Title) Cap 3:02 and not the Land Registry Act 5:02 which would have no application to these proceedings.

[18] Therefore for the purposes of Section 6 (2) (a) of the Court of Appeal Act, and as a matter of logic the reference therein to appeals from any order of a judge of the High Court would include appeals from a orders made by a Commissioner of Title.

[19] Explaining the meaning of Section 6 (2) (a) of the Court of Appeal Act, in **Michael Gayadin et al v. Republic Bank (Guyana) Ltd [2014] CCJ 13 (AJ)**, the Caribbean Court of Justice at paragraph (8) stated:

> **"Sub-section (2) confers on an aggrieved litigant a right of appeal to the Court of Appeal from an order made by the Full Court or a Judge of the High Court under the four conditions laid out in sub-section 2 (a) (b) (c) and (d). If the order appealed from is final (as opposed to being interlocutory) but it falls under (a) (i) (ii) (iii) or (iv) no right of appeal is given by the sub-section". (Emphasis mine).**

[20] So we ask ourselves whether the order of the Commissioner of Title dismissing the Petition was a final one within the meaning of Section 6 (2) (a) of the Court of Appeal Act Cap: 3:01.

[21] As this Court recently pointed out in **Shir Affran Nabi et al v. Ashmidphiraque Sheermohamed et al** Civil Appeals Nos. 25 of 2016 and 41 of 2015

> "In the course of legal history, the question of whether an order is final or interlocutory has been discussed in a number of decided cases. Two tests have emerged. The first may be described as the "nature of the order test". The nature of the order test involves the answer to the question, "does this judgment or order as made finally dispose of the right of the parties?" If it does, then it is a final order. If it does not, it is an interlocutory order. [See Lord Alverton CJ in **Bozon v. Altrincham NDC** [1903] 1 KB 547.
>
> The second test may be described as the "nature of the proceedings test". The "nature of the proceedings

test" as articulated in Salman v. Warner (1981) 1 QB 734 is that the Court should consider the nature of the application or proceedings to determine whether it finally disposes of the matter in dispute. If it does not, then the order ought to be treated as interlocutory.

When the issue confronted this Court in Re: **Williams and Salsbury [1978] 26 WIR 133** Massiah JA did not express any preference of one test over the other. After considering the relevant authorities, he applied both tests to the case before him concluding that the order was interlocutory.

After reviewing the cases both local and English, Cummings-Edwards JA, as she then was, in **Alfred Chung and Ingrid Campbell v. AIC Battery and Automotive Services Co. Ltd** (in receivership) Civil Appeal No. 3 of 2005, concluded:

> **"In our jurisdiction, the tradition of our Court appears not to adopt one test in favour of the other"**

[22] If this Court approaches the question applying the "nature of the order test" it is quite clear that though the order resulted in a dismissal of the petition, it certainly did not conclusively dispose of the rights of either party who still await final resolution. The petition was dismissed on the basis that there was a failure to comply with what was perceived to be mandatory provisions of the Rules of the High Court (Declaration of Title) which required a plan to be filed with the petition and boundaries to be described in a particular manner. The dismissal had nothing to do with the substantive issues between the parties as to whether or not the Petitioner was entitled to the declaration she sought having regard to the Opposers claims. On that basis the order would be interlocutory and not final.

[23] Further if the Court examines the nature of the application in which the order was obtained, it is easy to discern that the order was obtained and based upon preliminary submissions. The ruling itself is entitled "Ruling on Preliminary Point". There was no evidence led, no examination or cross-examination of witnesses, no trial on the merits. In such proceedings again, the rights and claims of the respective parties were never conclusively determined.

[24] So applying either test, the Court is led to the inescapable conclusion that the order appealed from was interlocutory and not final. For these reasons, the first hurdle in section 6 (2) (a) of the Court of Appeal Act Cap. 3:01 has not been overcome. That therefore disposes of the appeal.

Disposal

[25] The Appellant's appeal to the Court of Appeal is therefore be dismissed on the ground that the Court of Appeal has no jurisdiction under section 6 (2) (a) of the Court of Appeal Act Cap 3:01 as the order appealed from is not a final order. The appeal ought properly to have been brought in the first instance to the Full Court. There will be no order as to costs.

Dated the 30th day of July 2018.

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RAFIQ T. KHAN SC
Justice of Appeal (ag)