

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Appeals Division

2023/APP/sts/00030

BETWEEN

SHANTISHA SWEETING

Appellant

AND

BETTY SWEETING

Respondent

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Ryszard Humes for the Appellant
Quintin Percentie for the Respondent

Hearing date(s): 25 January 2024

JUDGMENT

WINDER CJ

[1.] This is an appeal decision of Senior Magistrate Mr Samuel McKinney dated 15 November 2023 where he gave judgment for the Plaintiff/Respondent (Betty) evicting the Appellant/Defendant (Shantisha) from premises situated at Apache Alley on the island of New Providence (the Property).

[2.] The trial before the learned Magistrate was a one-sided affair in that only Betty and her son Franklyn Sweeting gave evidence. The evidence before the Magistrate therefore was largely uncontested.

[3.] The facts may therefore be stated shortly.

[4.] The unchallenged evidence of Betty and her witnesses is that the Property was owned by the late Wealthy Sweeting also known as Doris Wealthy Sweeting (Dorris) who died on 11 May 2005.

[5.] The dwelling house on the Property was damaged by fire sometime in 2012/2013. Thereafter, Betty approached government's the Urban Renew Revitalization program to repair the dwelling house. The government demolished the premises and caused a new structure to be built at Betty's direction. Shantisha at some point entered into occupation of Betty's new home.

[6.] At the completion of the trial, the learned Magistrate found that Shantisha was a trespasser and ordered that she vacate the Property.

[7.] Shantisha has not claimed ownership or a title to the Property. She nonetheless appeals for an order that the vacant possession be set aside. The grounds for the appeal are the following:

- (1) That Respondent failed to establish that Betty Sweeting or the Estate of Wealthy Sweeting was the owner or landlord of the premises and she has failed to show that the premises were legally a part of the estate of Betty Sweeting from whom she was the executrix. This made the matter a dispute over the title of land which was which was not pleaded by the Plaintiff nor did the Learned Magistrate have jurisdiction to hear such a matter pursuant to Section 52 of Magistrate Act.

- (2) There was no conveyance or any other document provided which proved Betty Sweeting or estate of Wealthy Sweeting had any legal authority to evict the Applicant.

[8.] In relation to the substantive trial issue, Shantisha relies on sections 15 and 52 of the Magistrates Court Act (MCA) and argues that:

- (1) The Respondent produced Letters of Administration which does not amount to ownership of the said property.
- (2) When questioned by counsel about whether there was a conveyance in the name of Wealthy Sweeting, the Respondent could not produce one. She stated that a survey and quieting action were to be done in the future.
- (3) The Court placed reliance on the use of a government agency as a basis for the Respondent having ownership and title to the said property.
- (4) What is more, the claim is only for vacant possession not that any declaration or finding regarding title to be made in favor of the Estate of Wealthy Sweeting.

[9.] Section 15 and 52 of the MCA provides:

15. In addition to the original jurisdiction conferred upon a stipendiary and circuit magistrate by this or any other Act, a stipendiary and circuit magistrate shall also have jurisdiction and authority to try summarily any case in which the title to land is involved where the value of the land in dispute shall not exceed two hundred dollars and nothing contained in sections 52 and 53 of this Act shall be deemed to apply to a stipendiary and circuit magistrate exercising jurisdiction under this section.

52. Subject to the provisions of section 15 and section 23 of this Act, a magisterial court shall have no jurisdiction to try summarily any case in which title to land or any interest therein is directly or incidentally in dispute: Provided that this section shall not apply to the following cases —

- (1) where the claim to such title is impossible in law;
- (2) where, in the opinion of the court, the claim to such title is not set up in good faith;
- (3) where, in the opinion of the court, the act complained of was not done in assertion of the title claimed;
- (4) where the main point at issue is a dispute as to the correct position of the boundary line of the land in respect of which the action is brought.

[10.] The learned magistrate held that:

“The defendant has not asserted any claim of ownership or interest in the property. Therefore this defendant’s presence on No. 4 Kemp Road, Apache Alley, makes her a trespasser having been asked by the plaintiff, the owner of the property, to vacate the Property, and is refusing to do so.

...

On the preponderance of the evidence and the balance of probabilities, the court finds for the plaintiff and judgment is entered for the plaintiff for vacant possession of No. 4 Kemp

Road, Apache Alley. The Defendant is to give up vacant possession to the Plaintiff on or before November 30, 2023 from date of judgment.”

[11.] Betty is the Administrator of the Estate of Doris by virtue of a Grant of Letters of Administration made by the Supreme Court on 25 November 2021. Doris was Betty’s mother (albeit incorrectly stated in the judgment as her father). The Grant of Administration cites that Doris died intestate. Notwithstanding Franklyn indicates that the Property was left to him by Doris, the Grant of Administration to Betty means in law that all of the property of Doris (including the Property) vests in her until she is able to distribute in accordance with the law.

[12.] I am satisfied that the Magistrate’s reasoning cannot be faulted, having found, on balance, that there was no claim being asserted to any claim of ownership or interest in the Property by Shantisha. It cannot therefore be properly said to be a case or a dispute over the title or ownership of the Property in any way. The grounds of the appeal therefore have no merit. In any event it was open to the learned Magistrate to form the opinion that the act complained of (the trespass of Shantisha) was not done in assertion of any title by her. (See proviso (3) to section 52.)

[13.] There was sufficient (and unchallenged) evidence of Bettys right, through the estate, over the Property for the Magistrate to find that any person not asserting a title or ownership right to the Property to be a trespasser as against Betty’s interest.

[14.] The appeal is therefore dismissed with costs. I assess such costs at \$5,000.

[15.] Shantisha is to vacate the Property by 30 December 2024.

[16.] I cannot leave this decision without expressing my regret and apology for the delay in delivering this decision, it truly fell through the cracks.

Dated this 9th day of December 2024

A handwritten signature in black ink, appearing to read 'I. Winder', with a stylized flourish at the end.

Sir Ian R. Winder

Chief Justice