IN THE COURT OF APPEAL OF BELIZE A.D. 2024
CIVIL APPEAL NO. 23 OF 2019

BETWEEN:

NAIROBI RANCHARAN

Appellant

and

NADIA CLARKE
(Executrix of the Will of Erolita Rancharan)

Respondent

Before:

Honourable Mme. Marguerite Woodstock Riley	Justice of Appeal
Honourable Mr. Arif Bulkan	Justice of Appeal
Honourable Mme. Michelle Arana	Justice of Appeal

Appearances:

Ms. Audrey Matura of Matura & Co. Ltd. for the Appellant
Mr. Kevin Arthurs for the Respondent

2023: June 7
2024: December 18

JUDGMENT

[1] **Arana, J.A.:** This is an Appeal against the decision of Young J. who found in favour of one sibling over another in this dispute which arose over the right to possession of property contained in their mother's Will. Ms. Erolita Rancharan, the Testatrix died on October 11, 2013, leaving a Will. Her daughter Nadia Clarke, the Respondent, was the Executrix of her estate. The sole beneficiary under the Will was Rafael Rancharan, the Testatrix's youngest son. Nairobi Rancharan, the Appellant, was another son of the Testatrix who by the terms of the Will was granted permission to live on his mother's property for ten years from January 1, 2013, until December 31, 2023. Ms. Nadia Clarke was granted probate of her mother's Will after Ms. Erolita Rancharan died. The property was mortgaged to the bank and mortgage payments fell into arrears. Ms. Clarke said that since the Appellant failed

to pay rent, which was to cover mortgage payments, the bank advertised the property for sale.

[2] The Appellant, challenged the validity of the Will. He said that the Testatrix lived with him until she died, and he worked and provided for her financially as he was her eldest son. He testified that he relied on his mother's promise that he would live on his mother's property rent-free for the rest of his life and that this property would become his when his mother passed. He dedicated his life to his mother and took care of all her medical expenses by himself. The Appellant also cosigned with his mother on different mortgages which he used to improve the property, transforming the original building from a basic wooden structure to a 3-bedroom, 2-bathroom cement structure. Based on evidence in the court below, the learned Trial Judge found that there existed a promissory estoppel in the Appellant's favour.

[3] The judge then went on to find that the Appellant's interest in the property (based on promissory estoppel) was subject to the mortgage that he had taken out with his mother. The judge found that the Appellant had relied on his late mother's promise to him that when she died, her property would belong to him and he had acted to his detriment by investing substantially in the improvement of his mother's property instead of investing in a separate property of his own. He failed to meet mortgage payments that were due, he took no steps to enforce his rights (as a tenant for ten years from 2013 to 2023) under the terms of the Will and he made no effort to relinquish possession of the property even after he was served with notice to quit.

[4] The judge found that Ms. Nadia Clarke, the Respondent was well within her right as the Executrix of the Will to sell the property and pay off the mortgage, as the mortgage could not just be left unpaid in arrears and accumulating interest. However, the judge found that the Will was not valid and proceeded to set the Will aside on the basis that the late Mrs. Erolita Rancharan primarily spoke Spanish

and there was no evidence that the Will had been read over to her in Spanish. The judge found that there was, therefore, no proof that the Testatrix understood the contents of the Will that she had signed since the Will had been written in English. The judge also determined that the Appellant had no right to possession since his interest did not amount to a proprietary right but amounted instead to a right arising from promissory estoppel to go to court to have his equitable interest in the property declared and valued. The judge then decided to give effect to the Appellant's interest by awarding him as damages the balance remaining from the proceeds of the sale of the property after the mortgage and legitimate expenses have been deducted. Ms. Clarke was therefore ordered to render a true account of the property which she was bound to administer as Executrix of the estate.

[5] It is against this order that the Appellant has brought this appeal on the following grounds:

1. The learned Trial Judge erred in law and fact when she, without evidence, determined that there was an agreement for sale over the property as there was no evidence before the court evidencing that such sale was entered into or even registered at the Lands Registry.

2. That the learned Trial Judge erred in law when she treated the purported buyer of the property as a bona fide purchaser and innocent third party, having no evidence to determine anything about this buyer in order to make such a determination.

3. The learned Trial Judge erred in law and in fact in finding that the Defendant/Appellant is to give up possession, having found that the Will was not valid and the grant was revoked, making said decision without an account from the Claimant to even prove monies were obtained from a sale, or that a sale was registered at the Lands Registry passing an interest to a third party.

4. That the learned Trial Judge went beyond the issues before her and as such arrived at a decision regarding a sale, which was not supported by any evidence before the court and which was not an issue before the court.

[6] At this juncture, I wish to urge counsel to utilize more care in the preparation of their submissions at the appellate level. Missing words, misspelt legal terms, incorrect references to the parties as Claimant and Defendant instead of Appellant and Respondent, referring to the Appellant, Nairobi Rancharan, as "she" and to the Respondent, Ms. Clarke, as "he" instead of vice versa, incomplete sentences in the form of fragments, and convoluted sentences are but a few of the challenges which obfuscated rather than illuminated these submissions which were purportedly prepared to assist the court in resolving the issues before it. Having found that Grounds 1 and 2 are closely related, I will first address the Appellant's Submissions on Grounds 1 and 2, the Respondent's submissions on Grounds 1 and 2 and then give my ruling on these two grounds before proceeding to consider Ground 3.

Appellant's Submissions on Ground 1

1. ***The learned Trial Judge erred in law and fact when she, without evidence, determined that there was an agreement for sale over the property as there was no evidence before the court evidencing that such sale was entered into or even registered at the Lands Registry.***

[7] Ms. Matura contends on behalf of the Appellant, Nairobi Rancharan, that the learned Trial Judge erred in law and in fact in finding that there was an Agreement for Sale over the property when there was no evidence before the court that such a sale had been entered into or registered at the Lands Registry.

[8] The Defendant/Appellant in his defence in paragraphs 40 and 44 questioned the validity of any contract for sale and stated he was never informed that the property was sold and that he had only known since this case that the Claimant intends to move him out of the property and sell it to Yousef Emilio Ahmad, who had already given a down payment to Nadia Clarke and was assisting her with legal cost to get him out of the property.

[9] Mr. Nairobi Rancharan never accepted that there was a contract for sale and even did a search at the Lands Department per paragraph 83 of his Witness Statement. The said search revealed that the property was not sold and remained in the name of the executor. Thus, the issue that there was a valid sale and there being no contract of sale displayed, could not be taken as a given that there was indeed a contract for sale upon which to base a decision by the learned Trial Judge that said evidence must be taken as proven.

[10] The claim by the Respondent, Nadia Clarke, in the court below, was not that she had already sold the property and was seeking to give possession to the new owner with vacant possession. Rather her claim was that as the Executor under the Will of her mother, she was asking for mesne profits, claiming that the Appellant Nairobi Rancharan was a tenant and relying on a clause in the disputed Will. At paragraphs 7 to 8 of her Affidavit in Support of the claim, the Claimant/Respondent stated as follows:

> *"7. That Nairobi Rancharan was permitted to live at the said property as a tenant for the period of ten years with effect from January 1, 2013 to December 31, 2023, if he were to vacate before such time clause three of the Will provided that his tenancy would be terminated.*
>
> *8. That the property was mortgaged to Scotia Bank (Belize) Ltd. and the Defendant failed to pay rent or meet the mortgage payment."*

[11] There was never any claim nor proof that the house was sold, thus the pre-trial memos never asked the court to find if there was already a sale upon which the

Claimant was acting. This is important because in the decision of the learned Trial Judge at page 25 of her judgment at points 6 and 7 where she lays out her order it states as follows:

> *"6. Nadia Beatrice Clarke is to render a true account of the administration of the estate of Erolita Clarke by September 11, 2019.*
>
> *7. Any sums found to be a credit to the estate from the proceeds of sale of the property after payment of the mortgage and legitimate expense of the estate is awarded to Nairobi Rancharan as damages."*

[12] This fact about a sale of the property should have been pleaded so that the Defendant/Appellant could have countered any such claim and sought strict proof, since under the Will, if it was even valid, he would not have had to be evicted. The Claimant/Respondent as the Executor, failed to ever inform him, of the details of what transpired with the land and what, if any monies, he owed.

Appellant's Submissions on Ground 2

> ***2. That the Trial Judge erred in law when she treated the purported buyer of the property as a bona fide purchaser, and an innocent third party having no evidence to determine anything about this buyer in order to make such a determination.***

[13] Ms. Matura submits that it is unfortunate that without any evidence that there was a purported legitimate sale of the property, that the judge treated the issues to be determined in a manner that made her decision appear to conclude that there was a valid sale. In so doing, it appears from the ruling that she treated the purported buyer as a bona fide purchaser and innocent third party when she ordered that the

> "*Defendant, Nairobi Rancharan is to give up possession to the Claimant by December 29, 2019*."

Relying on the arguments above, again, it is noted that in the ruling at 7, the learned Trial Judge stated:

> "*Any sums found to be a credit to the estate from the proceeds of sale of the property after payment of the mortgage and legitimate expense of the estate is awarded to Nairobi Rancharan as damages.*"

This speaks to the fact that the judge accepted there was a valid sale when no such evidence was presented and that was not an issue to be tried in the case. However, having made such a determination, the ruling that followed from that conclusion resulted in the error of fact and an error of law that the defendant had to give up possession.

[14] This is erroneous and can be seen as erroneously stated in the pre-trial memo of the Claimant at page 186 of the bundle, specifically point 6 where it states as follows:

> *"The bank was exercising foreclosure proceedings and the bank allowed the Executor to identify a private purchaser to whom the property was sold and monies paid.*"

[15] However, this was never pleaded and worse yet, there was no evidence to this effect and the pre-trial memo cannot be used as the place to put new evidence or what is contained therein is not evidence. Per Rule 8.7 at Part 8 of the Supreme (Civil Procedure) Rules 2005, it is unequivocally stated what needs to be in a claim form where it states:

> *"8.7(1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies."*

[16] It appears that the learned Trial Judge was misled by this assertion made as part of the *"Concise Statements of the Nature of the Case"* by the Claimant/Respondent's attorney at law. However, this very point was clearly dealt with by the Defendant/Appellant in his pre-trial memo, under *"Factual and legal contentions"* where at page 191 of the bundle at clause 14(c) the Defendant stated that:

> *"The statement of case said nothing of how the foreclosure was dealt with, or of any purchase and as such it was not pleaded and thus the Defendant contends that it cannot form part of the evidence to be considered."*

[17] Even more erroneously is the "Statement of Admission" found in the pre-trial memo of the Claimant, who states, wrongfully, that:

> *"11. The Defendant admits that the house has been sold to Yousef Emilio Ahmad.*
>
> *12. The Defendant admits that the debt to the Bank as (sic) paid by way of the sale to Yousef Emilio Ahmad."*

There is no such admission, nor no such evidence to support such claims and admission. However, from the ensuing ruling, it appears that the learned Trial Judge took these facts as proven or given and thus made a ruling as if a valid sale had taken place. Thus, in finding for the Defendant on his counterclaim, she was unable to keep him in possession having determined that there was [a] valid sale, albeit, without any evidence to that effect.

Respondent's Submissions on Ground 1 and Ground 2

[18] In response to the Appellant's contention that the learned Trial Judge erred in finding that there had been a sale when there was no evidence of a sale, Mr. Arthurs, attorney at law for the Respondent, submits that there was never any issue as to whether or not there had been a sale of the property. He refers to the Pleadings at paragraph 40 where the Appellant, Nairobi Rancharan, admits the sale but complains that he was not told of this sale by the Bank. In paragraph 38 of the Defendant/Appellant's Amended Defence, he says:

> *"That the Claimant did not make any move against him nor inform him she was the Executor of the purported Will. Thus, he became alarmed when on November 9, 2016, a police officer visited his home to deliver a letter of eviction signed by the Claimant and telling him she had sold the house to Yousef Ahmad. See a copy of the eviction letter marked Annex-7."*

The fact of the sale was never a contentious issue between the parties, even if the final registration of the sale had not been completed. Mr. Arthurs submits the evidence of all the parties, including that of the Appellant, the fact of the sale, monies paid, and the performance of a sale agreement which extinguished the mortgage obligations.

[19] Mr. Arthurs refers to the evidence of the Appellant when being re-examined by Ms Matura at lines 3-5 on page 688 of 764 of the transcript as follows:

> *" Ms. Matura: "I will restate it*
> *Q. Do you know if the house was sold to Mr. Yousef Ahmad by the bank?*
> *A. Yes because they approached me at my gate."*

Mr. Arthurs therefore contends that it was always accepted as a fact by the Appellant that the property had been sold.

Ruling on Grounds 1 and 2

[20] This trial was heard on April 2 and 3, 2019. The learned Trial Judge gave her decision on June 10, 2019, and the order was finalized on September 26, 2019. Looking at the transcript of the proceedings in the court below, I agree with the submission of the Appellant that the judge did not have evidence of the sale of this property before her at trial. When this matter came before us on appeal on June 7, 2023, pursuant to our powers under Rule 206 of the Senior Courts Act, we ordered the Respondent to produce by June 30, 2023, an affidavit with a true account of the Administration of Estate of Erolita Rancharan with evidence as to when rendered, and any Agreement of Sale as well as evidence of a Land Transfer Certificate and extract from the Land Register regarding the property in question, situate at #55 Santa Rita Road. In response to that order, the Respondent, Nadia Clarke filed an affidavit on June 12, 2023, with the following documents attached: Agreement for Sale marked Exhibit "NC1" dated August 25, 2016, between Nadia Clarke as

Executrix and Yousef Ahmad and Gladys Ahmad, Land Certificate of Title dated January 17, 2017 marked Exhibit "NC2" issued to Nadia Clarke as Executrix of the Estate of Erolita Rancharan by the Government of Belize, Statement of Account in the Estate of Erolita Rancharan dated December 12, 2019 marked Exhibit "NC3", Transfer of Land Certificate marked Exhibit "NC4" showing transfer of title from the Executrix Nadia Clarke to Gladys Ahmad and Yousef Ahmad("the Ahmads") jointly on October 3, 2016, Extract of Land Register marked Exhibit "NC5" showing Registration of Title of the property issued to the Ahmads on May 27, 2020 and Land Certificate of Title marked Exhibit "NC6" issued to Yousef Ahmad and Gladys Ahmad on May 27, 2020.

[21] This additional documentary evidence provided by the Respondent on this Appeal establishes that the disputed property was in fact sold to the Ahmads by Ms. Clarke as the Executor of the estate on October 16, 2016. I see no reason to interfere with the finding of the Trial Judge that the Will was invalid. I also uphold the sale of the property by Nadia Clarke to the Ahmads pursuant to Section 44 of the Administration of Estates Act which protects the validity of actions taken by an Executor, even after a Grant has been set aside as invalid:

> *"44. (1) All transfers of any interest in real or personal estate made to a purchaser either before or after the commencement of this Act by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.*
>
> *(2) This section takes effect without prejudice to any order of the court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement."*

[22] Having found that the Trial Judge did not have the requisite evidence before her at trial to make the findings that the property had in fact been sold, and consequential orders that she gave, I uphold ground one of the Appeal: that the learned Trial Judge erred in law and fact when she, without evidence, determined that there was an

agreement for sale over the property as there was no evidence before the court evidencing that such sale was entered into or even registered at the Lands Registry.

[23] In relation to Ground 2, whether the learned Trial Judge erred in finding that the buyer of the property was an innocent third party and a bona fide purchaser for value without notice, I find that the Trial Judge did not err. I agree with the Trial Judge's finding that Yousef and Gladys Ahmad, the purchasers of the disputed property, bought the land as innocent third parties. I find no evidence that the Respondent, Nadia Clarke or the purchasers, the Ahmads were operating in bad faith or fraud in regard to the sale of this property. Section 44 of the Administration of Estates Act protects the sale of property by the Executor of an estate even where, as in this case, the Grant of Probate is later set aside by the court as invalid.

Appellants Submissions on Ground 3

> **3. The learned Trial Judge erred in law and fact in finding that the Defendant/Appellant is to give up possession, having found that the Will was not valid and the grant was revoked, making said decision without an account from the Claimant to even prove monies were obtained from a sale, or that a sale was registered at the Lands Registry passing an interest to a third party.**

[22] Ms. Matura contends on behalf of the Appellant, Nairobi Rancharan that the decision is contradictory, in that the Court went beyond what was pleaded and sought as a remedy in the case. Looking at the pleadings of the Claimant, it was unequivocal, that as the executor of the estate she was seeking possession of the property, but not because there was some sale. Rather, she was exercising her power as executor under the Will, which was found to be invalid, rightfully so. Per Rule 11.7 and 11.23 of Part 11 of the Supreme Court (Civil Procedure) Rules 2005 [TAB-2], the Rules make it clear what must be included in an application, how orders are sought and the consequences of not asking for said order. It states that:

"11.7(1) An application must state:

[1] *what order the applicant is seeking; and*

(b) briefly, the grounds on which the applicant is seeking the order.

....

11.13 An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission."

[23] However, having found that the Will was invalid and having ordered that *"the grant of probate issued to Nadia Beatrice Clarke on the 26th day of November 2013 is revoked forthwith",* the learned Trial Judge failed to make any pronouncement regarding the power of Nadia Clarke to now seek to have the Defendant give up possession. The decision seemed very contradictory since the Will was found invalid, yet the Judge at paragraphs 75 to 76 of her decision proceeded to relay matters not in evidence nor proven as evidence and never formed part of the claim. Such factual assertions were key to the final decision and the Defendant should have sight of that purported evidence which was seemingly accepted as a fact.

Respondent's Submissions on Ground 3

[24] Mr. Arthurs submits on behalf of Ms. Clarke in answer to the third Ground that this criticism of the learned Trial Judge is unwarranted because the Amended Defence and Counterclaim of the Appellant in the court below at page 42 of the Record of Appeal include a prayer for recovery of his development and investment in the property and at prayer 7, he asks *"IN THE ALTERNATIVE –that the Defendant is owed. The monies commensurate with the investment he has made to improve the property from what it was before he began to develop it."*

[25] These prayers are unequivocal calls for the award of damages which appears to be the general basis on which the Court rested its judgment. At paragraph 76 of the Trial Judge's dictum, the Court found that:

> *"Nairobi's proprietary estoppel will be given effect by awarding him as damages the proceeds of sale after the mortgage and legitimate expenses have been deducted. There has been no application for any interim protection or for any sale to be set aside."*

Possession could not be an available remedy as the Court had weighed the evidence by concluding to the fact that the property had been sold to satisfy the mortgage.

Ruling on Ground 3

[26] I agree with Mr. Arthurs' submissions on Ground 3. The learned Trial Judge, having found that the property had been sold to pay off the mortgage that the Appellant, Mr. Nairobi Rancharan, had been unable to pay, no longer had the option to allow him to remain on the property. However, in recognition of the fact that he had invested a significant amount of time, energy and resources in developing the property, she recognized that he was entitled to compensation arising from promissory estoppel. In seeking to do justice and give effect to this equitable remedy in these circumstances, the judge awarded the Appellant damages from proceeds of sale to be paid to him by Ms. Clarke as damages after the mortgage had been cleared and legitimate expenses had been deducted. I see nothing contradictory in this course of action taken by the Trial Judge, especially since as Mr. Arthurs had rightly submitted, the Appellant had specifically sought an award of damages as an alternative remedy in the court below. Unfortunately, the Statement of Account dated December 12, 2019, rendered by the Respondent, Ms. Nadia Clarke shows that after the property was sold for BZ$100,000, the debts of the Deceased including the mortgage of $52,337.38, legal fees and property tax among others totalled $79,552.88. Administrative Expenses paid to the Respondent as per section 53 of the Administration of Estates Act totalled $6,500 was deducted from the Sale Price leaving a balance of $13,947.12 which was distributed to the beneficiaries of the Estate of Erolita Rancharan. Since I have upheld the findings of the Trial Judge that the sale was valid and that the Ahmads were innocent third parties, the amount of damages to be awarded to Nairobi Rancharan is the balance of the sale price after

the mortgage has been deducted. In this case, the Statement of Account shows that the land was sold to the Ahmads for BZ$100,000. The Bank of Nova Scotia was paid approximately BZ$55,000 which cleared the mortgage debt in full, and the debts of the estate (including the mortgage, legal fees, estate taxes and property taxes) totalled $79,552.88. From that balance, the administrative fees of $6,500 were paid, and the balance of $13,947.12 remaining was paid out to the beneficiaries of the estate. No money remains from the sale of the land.

[27] There is a Valuation by Building Technician and Appraiser, Walter Flowers, who produced in the Appellant's documents the value of the disputed property at 44 Santa Rita Hill Corozal Town at $248,785 on January 26, 2018. This is approximately one and a half times the price at which the property was sold by Ms. Clarke and such a gross undervalue of this property might appear to be *prima facie* evidence of fraud. However, the fact that the property was sold at a gross undervalue does not, without more, amount to fraud or bad faith, nor does it by itself impact the validity of the sale to the Ahmads. Proving fraud in relation to the sale of this property requires a heavy burden of proof which was not satisfied in this case. Apart from this valuation saying that the property is worth over $200,000 and it was sold for $100, 000, I see no evidence that Nadia Clarke as the Executrix did anything other than sell the property at a greatly reduced value. Attached to Ms. Clarke's affidavit dated June 9, 2023, there is a letter dated August 29, 2016, whereby the Scotiabank Manager gave the Respondent, Ms Clarke a specific deadline of September 16, 2016 (one month from the date of the letter) to sell the property, and stated that if she failed to sell the land by that date, the bank would proceed to auction it off. In reaching this conclusion, I bear in mind the fact that this sale was done at a time of urgency to pay off the mortgage which had remained unpaid for several months and therefore appears to be more of a forced sale to allow the bank to be paid in full within a very short period of time. It is against that background that Ms, Clarke entered into an Agreement for Sale with the Ahmads on August 25, 2016, and a letter dated August 28, 2019, from the Branch Manager of Scotiabank, acknowledges receipt of the full mortgage payment on October 13, 2016. In these

circumstances, where fraud was never pleaded in the proceedings below, an appellate court would be slow to overturn primary findings of fact by a Trial Judge.

Final Disposition of Appeal

[28] Having decided this appeal on the first three grounds of appeal argued before us, I find no need to address the fourth ground which appears to me to be a repetition of Ground 1.

[29] Ground 1 of the Appeal states *that "the learned Trial Judge erred in law and fact when she, without evidence, determined that there was an agreement for sale over the property as there was no evidence before the court evidencing that such sale was entered into or even registered at the Lands Registry*" is upheld.

[30] Ground 2 states *that" the Trial Judge erred in law when she treated the purported buyer of the property as a bona fide purchaser, and an innocent third party having no evidence to determine anything about this buyer in order to make such determination*" is dismissed.

[31] Ground 3 states "*that the learned Trial Judge erred in law and fact in finding that the Defendant/Appellant is to give up possession, having found that the Will was not valid and the grant was revoked, making said decision without an account from the Claimant to even prove monies were obtained from a sale, or that a sale was registered at the Lands Registry passing an interest to a third party***"** is dismissed**.**

[32] The Order of this Court is as follows:

1. The Respondent Nadia Clarke is to pay the Appellant as compensation for the breach of his rights arising from promissory estoppel the sum of $13,947.12 as the balance remaining after the

payment of the mortgage, debts and fees owed by the estate of Erolita Rancharan.

Considering the specific circumstances of this case, which is essentially a family dispute between siblings, each party will bear its own costs.

Michelle Arana
Justice of Appeal

[33] I concur.

Marguerite Woodstock Riley KC
Justice of Appeal

[34] I concur.

Arif Bulkan
Justice of Appeal