

12. 2. 2004



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2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3
4 CAUSE 362/2002

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7 BETWEEN: CECIL RAYMOND BARNES APPELLANT
8
9 AND: DAVE ROCKETT RESPONDENT
10 REGISTRAR OF LANDS CO-RESPONDENT
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12

13 **Appearances:**

14 Mr. Ramon Alberga QC instructed by Mr. Neville Levy of Neville Levy & Co. for the
15 appellant.

16 Mr. Keith Collins (absent) for the 1st Respondent.

17 The 2nd Respondent absent and without representation.
18

19 **Before: Justice Smith (Ag.)**

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21 Heard: 12th February 2004
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23
24 **RULING**
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26 The unchallenged affidavit evidence of the appellant supported by documentary evidence
27 discloses the following background.

28 Parcel 86 Block 14CJ, George Town Central was registered in the name of Orma Sadie
29 Barnes, the mother of the appellant and the grandmother of the first respondent. The total
30 area of Parcel 86 was 2.5. acres.

31 In 1979 Parcel 86 was subdivided into six (6) equals parcels – 127, 128, 129, 130, 131,
32 and 132 and Parcel 133, a 20 foot wide vehicular right of way giving access to the six
33 parcels.

34 In May 1979 the subdivision of Parcel 86 was formally approved by the Land Registry.

35 Each of the six parcels consists of 0.38 acre and parcel 133 of 0.20 acre.

1 Over a period of time Mrs. Orma Barnes transferred the six parcels to her six children—
2 one to each.

3 She kept parcel 133, the access road. Parcel 129 was given to her daughter Mrs. Pamela
4 Barnes-Rockett who on January 9th, 1981 transferred her title in that parcel to her son, the
5 first respondent.

6 To the appellant she gave parcel 128 and he became the registered owner on January
7 22nd, 1981.

8 In January 1998 Mrs. Barnes transferred parcel 133 (the 20 foot wide right-of-way) to
9 the appellant.

10 A fixed boundary survey was done in respect of parcels 130, 131 and 132. A straight line
11 formed the boundary between these three parcels and that of the right-of-way – parcel
12 133.

13 The neighbouring owners including the first respondent were notified of the fixed
14 boundary survey. No objections were made to the boundary marks. No fixed boundary
15 survey was done in respect of parcels 128, 129 and 133.

16 In 2000 the appellant engaged the services of surveyors with a view to carrying out a
17 fixed boundary survey of parcels 128 and 133.

18 Notices were sent to the neighbouring land owners including, of course, the first
19 respondent, informing them that the survey would be done on the 27th November 2000.

20 In the process of preparing to fix the boundaries for parcels 128 and 133 the surveyors
21 discovered that part of a high concrete wall built around parcel 129 encroached upon
22 parcel 133.

1 The surveyors found that the concrete wall constituted an encroachment of sixteen (16)
2 feet into parcel 133, thereby reducing the width of the right-of-way at that point to four
3 (4) feet.

4 The first respondent, it is alleged, told the surveyors that he had built the wall using as his
5 guide, markers which he thought indicated the boundary between the road and his land.
6 He admitted that he did not employ a surveyor and agreed to remove the offending wall.

7 The surveyors completed the survey and prepared a diagram, a copy of which was
8 exhibited by the appellant. However on the 27th November 2000, the day set for the
9 fixing of the boundary of parcels 128 and 133, the first respondent disputed the findings
10 of the surveyors.

11 This dispute was taken before the second respondent who found that the wall did not
12 constitute on an encroachment upon parcel 133 – the right-of-way.

13

14 The Appeal

15 The decision of the second respondent is the subject of this appeal. The appeal is brought
16 pursuant to section 147 (1) of the Registered Land Law and Order 55 rules 2 and 3. It is
17 by way of rehearing – Order 55 Rule 3 (1).

18 Two grounds of appeal were filed. In his written submissions Mr. Alberga Q.C, for the
19 appellant, dealt with these grounds together. The burden of his contention was that the
20 decision of the second respondent was illegal, irrational and unreasonable.

21 In relation to the illegality point learned counsel referred to section 5 of the Registration
22 (Land) Law (1996 Revision) which provides:

1 “5. Registration for a period of five years shall be deemed a good title against all
2 complaints whatsoever”.

3
4 He submitted that the decision of the Registrar (the second respondent) was contrary to
5 law as the title to parcel 133 as well as the fixed boundaries thereof as shown on the
6 original subdivision plan had existed for well over five years.

7 Although I have not had the benefit of argument by counsel on behalf of the respondents
8 I am inclined to agree with counsel for the appellant that the title to parcel 133 which was
9 created in 1979 by a subdivision of what was then parcel 86 cannot now, in the absence
10 of fraud, be challenged or altered as it is by virtue of section 5 (supra) deemed a good
11 title against all complaints whatsoever. The effect of the decision of the second
12 respondent “would be to narrow parcel 133 vis-a-vis a prior registered survey do the east
13 to an unusable width” – see page 2 of the Judge’s Bundle. This, in my view, is plainly
14 wrong.

15 This conclusion would be sufficient to dispose of this appeal. However, I am constrained
16 to confess my inability to understand how, in the light of the documentary evidence, the
17 second respondent could find that the eastern boundary of parcels 128 and 129 which is
18 the common boundary line between these two parcels and parcel 133, should be in the
19 position shown in Exhibit CRB1 running from point A16 to A13.1 instead of from A16 to
20 A14 (See p.17 of Bundle).

21 The second respondent gave the following as the reason for his decision:

22 “Whilst there is much to be said for practical and a pragmatic approach, logic
23 alone is insufficient to win the case. I heard evidence from the Respondent in
24 person who testified to the fact that he had built the wall himself around parcel
25 129 but within the boundary beacons.

1 Further, the Respondents attorney by way of his surveyor witness, was able to
2 demonstrate that the north/south position of this wall was collinear with the
3 western boundary of parcel 133 in the north/south direction. It was also pointed
4 out by the surveyor witness for the Respondent that the north/south boundary on
5 the western side of parcel 133 was represented on General Boundary plan 1015 as
6 a straight line, whereas the proposal shown on Fixed Boundary Survey Plan
7 02/767 introduced a “kink” or deviation from a straight line.

8 On a balance of probabilities therefore I prefer the evidence of the Respondent
9 supported by his surveyor witness, that he did not build his wall as an
10 encroachment into parcel 133 but rather respected the legal position of his
11 perimeter”.

12
13 I agree with Mr. Alberga that the decision is not only illegal but irrational and
14 unreasonable. As Counsel contended such a finding would involve increasing the area of
15 parcel 129 owned by the first respondent and consequently reducing the area of parcel
16 133. Indeed it would involve reducing the width of that part of the roadway which is
17 contiguous to the western boundary lines of parcels 128 and 129 to four feet at certain
18 points whilst the 20 foot width at parcel 127 remains intact. The registered title of the
19 first respondent (parcel 129) speaks of a 20 foot vehicular right-of-way and not one
20 which gradually narrows down to 4 feet.

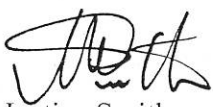
21 For the above reasons the appeal is allowed and the order of the second respondent set
22 aside.

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24 Order

- 25 1. Appeal allowed. Order made by Registrar of Lands set aside.
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27 2. It is hereby declared that the boundary line between parcels 129 and 133 is as
28 shown on the Original Subdivision Plan of parcel 86 and is as shown on Exhibit
29 CRB1 running from point A16 to A14 and comprises a width of 20 feet.
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- 3. The 1st Respondent Dave Rockett is hereby ordered to remove the wall which he had constructed on parcel 133 and any obstruction to parcel 133 which had been created by him within 30 days of the date hereof.
- 4. The Respondents are to pay the costs of the appellant as agreed or taxed.



Justice Smith
Judge of the Grand Court
Dated this 12th day of February 2004

