

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE****CIVIL JURISDICTION****BETWEEN:**

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

-and-

In the matter of Blocks lettered 3 (three), 7 (seven), 10 (ten) and 12 (twelve) being portions of the south half of Plantation La Jeanette, situate on the right bank of the Mahaica River, in the county of Demerara and Republic of Guyana, the said Blocks lettered 3 (three), 7 (seven), 10 (ten) and 12 (twelve) containing AN AREA OF 5,490 (five decimal four nine nought), 16.731 (sixteen decimal seven three one), 4,217 (four decimal two one seven) and 17,802 (seventeen decimal eight nought two) acres, respectively, together with and subject to a right-of-way running along the northern.

-and-

In the matter of an application by LAWRENCE RUTHERFORD also known as LAURENCE CORNELIUS RUTHERFORD and LYNN NOELEY RUTHERFORD, for a Declaration of Title in their names, jointly.

**Mr. R.N. Poonai for Petitioner**

**Mr. Somersall for opposer DERRICK POMPEY.**

## DECISION

The applicant Lawrence Rutherford filed a petition for Declaration of title for Blocks 3,7,10, and 12 of Plantation La Jeanette, Mahaica River, shown on a plan by L.W. Cox, SLS, plan no. 28156 dated 18/06/1998.

The petitioner claims that his ancestors were in occupation since 1887 and that he went into occupation in 1970 and that in 1969 he got married to the 2<sup>nd</sup> named petitioner.

An opposition was filed by Derrick Pompey who claims he is the owner by Transport no. 739/1996 of the South half of Plantation La Jeanette, Mahaica River comprising 7 undivided 64<sup>th</sup> parts in Plantation La Jeanette.

There was also an opposition filed by one Dennis Pompey who claims to be in occupation and possession of Block 3 shown on plan no. 28156 by L.W. Cox, S.L.S. He said his father occupied Block 3 for over 25 years and that he has been in occupation since 1986.

Plan no. 28156 shows the petitioner Lawrence Rutherford as being in occupation and possession of Blocks 3,7,10 and 12.

Plan no. 28156 was executed pursuant to a court order of the Land Court in an application by Lancelot Argyle under Petition no. 2619/1992 for a declaration of title to plantation La Jeanette, Mahaica River.

The Petition by Lancelot Argyle was at that time opposed by Derrick Pompey, and Laurence Rutherford, the opposer and Petitioner herein.

The learned Land court Judge made the order in 1998 that the land in issue be surveyed and a plan prepared to show the respective occupations of the parties to the South half of Plantation La Jeanette.

The petitioner Lawrence Rutherford is relying on this plan in his present petition. However, Derrick Pompey who had made no objection to the allocation by

occupation of the respective parties, is now opposing the Petitioners application despite that the plan shows that the Petitioner is in occupation of Blocks 3,7,10 and 12 and that Derrick Pompey is in occupation of Blocks 1,2,4,5,9 and 11.

It is therefore to be noted that Derrick Pompey by not objecting to the allocations made by L.W. Cox, S.L.S on the said plan, has thereby admitted that he is not in occupation and possession of Blocks 3,7,10 and 12.

Therefore, Derrick Pompey would be estopped from opposing this petition and his opposition would be an abuse of the court's process. The issue had already been determined in petition no. 2619 of 1992 and would be res judicata.

A judgement of a court of concurrent jurisdiction is conclusive between the same parties upon the same subject matter.

The oppose admits that he has always been in occupation of Blocks 1,2,4,6,9 and 11 from 1987 to the present day and is also contending that Lawrence Rutherford the Petitioner herein was not in occupation of Blocks 3,7,10 and 12 since his petition no 5114/1995 was dismissed by the Honourable Justice Madam George.

In Petition no. 5114/1995 Lawrence Rutherford had claimed that he was in occupation of S ½ Plantation La Jeanette, Mahaica. In this petition Lawrence Rutherford had not claimed Blocks 3,7,10 and 12 but had in fact claimed the whole S ½ Plantation La Jeanette.

The Learned Judge found that Lawrence Rutherford was in occupation of Land within the S ½ Plantation La Jeantte as well as the opposer Derrick Pompey. The Learned Judge did not accept that Lawrence Rutherford was the sole surviving heir of Providence Argyle and therefore he could not be entitled to the whole of the S ½ Plantation La Jeanette. The Learned Judge said the Petitioner had to prove specifically what portion he is in possession of.

Since Lawrence Rutherford had not applied for the specific portions that he occupied, the Judge dismissed his petition.

In that case the Judge found that neither Lawrence Rutherford nor Derrick Pompey was in occupation and possession of the whole S ½ of Plantation La Jeanette but she found that they did occupy portions.

In plan no. 28156 ordered by the Land Court both Lawrence Rutherford and Derrick Pompey agreed with the allocations.

In my opinion the decision by Justice George does not affect the validity of the plan no. 28156. In that case Lawrence Rutherford was applying for a declaration to the whole S ½ La Jeanette, which the plan clearly shows he does not occupy.

And the Judge rightly said that Lawrence Rutherford should have indicated specifically the portions he occupied by reference to a plan.

I am therefore of the view that the plan no. 28156 shows the true occupation of the parties who requested the survey. The opposers cannot now go back and seek to negate the survey to which they agreed and seek to oppose the rightful occupation of the Petitioner Lawrence Rutherford according to the plan.

The court therefore upholds the submissions made by counsel for the Petitioner and find that the opposer is estopped from pursuing his opposition.

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Diana F. Insanally

Dated this 9<sup>th</sup> day of November, 2011