

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction
(Bird J)

Civil Case No. 575 of 2022

BETWEEN: THOMAS LEONG Claimant
AND: THERESE LEONG DJOKOVIC & JEMMA EMMETT First Defendants
AND: COMMISSIONER OF LANDS Second Defendant
AND: REGISTRAR OF TITLES Third Defendant

Date of Hearing: 21st & 22nd July and 20th August 2025
Date of Decision: 16th September 2025

Mr Desmond Nimepo for the Claimant
Mr Andrew Radclyffe for the First Defendants
Mr Howard B Lapo for the Second & Third Defendants

JUDGMENT AFTER TRIAL

Bird PJ:

1. The Claimant, Mr Thomas Leong filed this proceeding seeking relief for rectification of title over parcel number 191-025-9, a quashing order and a mandatory order together with interest and cost. The Fixed-Term Estate in P/N 191-025-9 (the land) was initially registered in the name of John Leong (now deceased). The Claimant is one of the deceased's sons.
2. Ms Therese Leong Djokovic and Ms Lily Emmet, the 1st Defendants are two of the deceased's daughters. The Attorney General represents the Commissioner of Lands and Registrar of Titles.
3. It is undisputed that subsequent to the late John Leong's death, letters of administration was granted by this court in favour of the deceased's wife, one Josian Ataburu Leong on the 11th November 2019. Mrs Leong died intestate on the 26th April 2021.
4. On the 6th November 2020 and before her demise, Mrs Leong as administrator of the late John Leong's estate executed a transfer instrument of the land in favour of the First Defendants. The application for registration of transmission was also signed on the 6th

November 2020. The FTE of the land was registered in the joint names of the First Defendants on the 15th February 2021. The Claimant has a registered caveat over the land.

Issue

5. There is no agreed facts and issues filed by the parties in this proceeding. The Claimant's claim is for rectification of the land register under section 229 of the Land and Titles Act (LTA) upon allegations of fraud and mistake. The issue that the court must therefore determine is whether or not the transfer of the FTE over the land from the administrator to the first Defendants was occasioned with fraud and or mistake.

Discussion

6. The Claimant filed his claim on the 13th December 2022. He seeks rectification of the land register. From the claim and the various sworn statements filed in support of his allegations, one aspect of his intention is evident. It is obvious that the Claimant wants the property to be his own apart from all his other siblings. He claimed to be the only person authorised by his late father to deal with the property. He even filed an objection to his late mother's application for letters of administration in CC25 of 2019. His objection was overruled by the court as there was no legal basis to support his objection. He now comes to court alleging fraud and mistake against the First, Second and Third Defendants. Such is the action of the Claimant.
7. The Claimant alleges that the First Defendants have exercise in influence and control on their late mother to obtain title in their joint names. He claims that their late mother lacks the mental capacity to deal with the property.
8. Apart from making the allegation on the exercise of influence and control over their late mother, the Claimant has not put any admissible evidence before this court on the issue. The first named First Defendant was called to give oral evidence in court. The Claimant through counsel have not raised any questions in cross-examination on the allegation of influence and control. I have also noted that apart from stating that their late mother lacks the mental capacity to deal with the property, the Claimant has not produced any medical evidence as proof. I have perused the courts ruling in CC25/19 on pages 16 and 17 of the trial book and noted that the court in that case stated inter alia that the objector was unable to show that the applicant was incapable of administering the estate of the late John Leong.
9. The allegation against the Second and Third Defendants basically is about the registration of transmission and the transfer of the FTE on the same date being the 15th February 2021. I have perused the title register in respect of the land and it is undisputed that both transactions were done on the same day. Having said that there is no evidence to say that the transactions were occasioned with fraud and or mistake.
10. The former Registrar of Titles gave evidence in court during trial. He also confirmed the transactions were done on the same day. In cross-examination, he stated that there is nothing in that process that amounts to fraud or mistake. He further stated that this court by order dated the 11th November 2019 had given authority to the late Mrs Leong to administer the estate of the late John Leong. The transmission process which was done on the 15th February 2021 is to formalise the court order. The Registrar of Titles by virtue of his powers under section 7 and section 203 of the LTA had discharged the duties and responsibilities placed upon him.

11. On the other hand, the First Defendants' intention is clear. They do not hold the land as their own personal property. In paragraph 3 of their defence, they said that they hold the FTE over the land in trust for themselves and the other beneficiaries. The beneficiaries included the Claimant. That intention is also evident in paragraph 4 of Mrs Djokovic's sworn statement on page 91 of the trial book. They have no ill motive in their intention.
12. Upon the above basis, I am not satisfied that the Claimants have given any admissible evidence to prove the allegations of fraud and or mistake against the First, Second and Third Defendants. I can therefore determine that the transfer of the FTE over the land from the administrator to the First Defendants was not occasioned with fraud and or mistake. The process that was done by the Second and Third Defendants was so carried out by virtue of sections 7 and 203 of the LTA.
13. The Claimant also seek a quashing order in respect of the Registrar's decision to have the FTE on the land transferred in the joint names of the First Defendants. A quashing order is covered under rule 15.3 of the Solomon Islands Courts (Civil Procedure) Rules 2007 (CPR). Under the rules, a quashing order can only be obtained upon filing a claim for Judicial Review. Pursuant to rule 15.3.8, a claim for judicial review must be filed within 6 months of the decision. The registration of the FTE in favour of the First Defendants was done on the 15th February 2021. The Category C claim was filed on the 13th December 2022, more than 20 months after the registration. The claimant did not seek leave of the court under rule 15.3.9 to extend time for the filing of a claim for a quashing order.
14. Apart from the above, is the provision of section 233 of the LTA which provides inter alia that an aggrieved person may file an appeal against the decision of the Registrar within 6 months of the decision. The Claimant was the aggrieved person. He could have opted to lodge an appeal to this court challenging the Registrar's decision to register the FTE in favour of the First Defendants. He had failed to exercise that right. In that regard, I hereby rely on the decisions of the Court of Appeal in the cases of of Vikasi -v- Vunagi (2016) SBCA 26 and Duko -v- Kile (2019) SBCA 12 which held that any appeal filed out of time under the provisions of the LTA is invalid and deprives the appellate court having jurisdiction over the matter. By those authorities, the Claimant's relief for a quashing order is statute barred pursuant to section 233 of the LTA.
15. In light of my determination on the reliefs sought in paragraphs 1 and 2 of the claim, I hereby refuse the orders sought in paragraphs 3 and 4 therein. In view of the state of the evidence adduced by the parties at trial, the Claimant does not wish to pursue paragraph 5 of the reliefs sought.

The First Defendants Counter-Claim

16. The first Defendants counter-claimed that the property has not been rented out since November 2021. There was no income derived as a result. The property was badly damaged by fire in about 2024. The Claimant and his family are still living in it. He has refused to co-operate with the First Defendants in trying to sort out issues about the property. He has a registered caveat in place.

17. The first Defendants seek orders to have the caveat removed. That the property be sold by tender with vacant possession. They seek leave of the court to facilitate their intention. They further seek orders to have the Claimant and his family vacate the property and be restrained from re-entering it. The proceed of the sale is to be divided amongst the beneficiaries who are entitled to it. They also seek an order for cost.
18. It is obvious during trial that the Claimant has been in occupation of the property even before the death of their parents. He wants the property to be his own. He disputed his late mother's application for letters of administration. He does not want his sisters to deal with the property. He and his family still reside on the property even after it was substantially damaged by fire in 2024. He operates gambling within the property. He is unemployed. He does not want the property to be sold but he does not have any positive plans on how to re-develop it. He has no funds to carry out any re-development on the property.
19. From the above state of affairs, the Claimant does not put to heart the interests of his other siblings who are beneficiaries to the estate. He is of the mistaken belief that his interests over the property is paramount over the rest of his siblings.
20. Having discussed the First and Second Defendants counter-claim and the position of the Claimant, I am inclined to grant the orders sought therein. The orders sought in paragraph 11 of the First Defendants counter-claim are hereby granted. The orders of the court therefore are as follows:-
1. The Claimant's claim is dismissed.
 2. The orders sought in the First Defendant's counter-claim are granted viz:
 - i) The Claimant's caveat registered on the 26th July 2022 is to be removed forthwith;
 - ii) That the property in P/N 191-025-9 is to be sold by tender with vacant possession;
 - iii) The court is to grant leave for the sale of the property;
 - iv) The Claimant, his family members and all other people residing in the property shall vacate the property within 30 days from the date of this order;
 - v) The Claimant, his family members and all other persons currently residing in the property are hereby restrained from re-entering the said property;
 - vi) The net proceed of the sale shall be divided amongst the entitled beneficiaries to the estate;
 - vii) Cost is against the Claimant.

THE COURT



Justice Maelyn Bird
Puisne Judge