

Privy Council Appeals Nos. 3 & 4 of 1979

Ellis Skelton - - - - - - - - - *Appellant*

v.

Richard Hogarth Maduro (Junior) and 2 Others - - *Respondents*

and

Ellis Skelton - - - - - - - - - *Appellant*

v.

Richard Hogarth Maduro (Junior) and 13 Others - - *Respondents*

(Consolidated Appeals and Cross-appeals)

FROM

**THE COURT OF APPEAL OF THE WEST INDIES
ASSOCIATED STATES SUPREME COURT (VIRGIN ISLANDS)**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JANUARY 1981**

Present at the Hearing:

LORD FRASER OF TULLYBELTON

LORD RUSSELL OF KILLOWEN

LORD BRIDGE OF HARWICH

[*Delivered by* LORD RUSSELL OF KILLOWEN]

These appeals concern disputes as to beneficial entitlement to an area of 53 acres in an area known as Fish Bay Farm on Fish Bay Estate in the island of Tortola in the colony of the Virgin Islands. The dispute originated in claims made before the Land Adjudication Officer under the provisions of the Land Adjudication Ordinance. There were cross-appeals from his decision to the Court of Appeal of the West Indies Associated States Supreme Court. From the judgment of that Court the appellant Ellis Skelton appealed to Her Majesty in Council. The respondents sought leave from their Lordships' Board to enter and prosecute a cross-appeal, and it was after argument indicated that their Lordships would humbly advise Her Majesty that special leave be granted to the respondents to cross-appeal.

Their Lordships do not find very satisfactory the course which proceedings followed below, and propose not to dwell upon matters which were unsatisfactory so much as to state what in their opinion is the correct solution to the problems raised. It is however only fair to say that some matters of difficulty do not now arise. It is no longer contended that their Lordships need concern themselves with an area of 2 acres coloured purple on plan B: nor with another area of 2 acres the subject of a deed 79/43 at the south east

corner. Further it is no longer contended that Parcel B plus a further 2 acres (to the north of the road in Parcel A) were ever part of the trust lands hereinafter referred to: they belong to Ellis Skelton by conveyance by Joseph Skelton to him of the latter's own property. This was a total of 14 acres known as the Baylot, the award of which by the Adjudication Officer to Ellis Skelton was upheld by the Court of Appeal. Further it is not sought to say that three areas of the trust lands allotted at some time by Joseph Skelton to three of the beneficiaries under the trust deed next mentioned, and enclosed by them, should be disturbed, though as will be seen they are relevant to the entitlement to the unallotted area of 53 acres (Parcel A minus two acres in the Baylot). These enclosed areas are 8 acres to Emma Skelton (coloured orange on plan B): 5½ acres to John James Maduro (coloured green): and 7 acres to Richard Hogarth Maduro (coloured blue).

In 1906 Joseph Skelton bought land which was conveyed to him but to be held by him upon trusts for seven named people, all children of one Roceita Maduro, viz: John James Maduro, Richard Maduro, Ellen Maduro, Ann Maduro, Claudius Skelton, Emma Skelton and Alice Skelton, the last three being illegitimate children of Joseph Skelton, in the proportions of 4 acres, 6 acres, 6 acres, 4 acres, 8 acres, 7 acres and 7 acres, in that order. Thus they were beneficial tenants in common of the land known as Fish Bay Estate. But there was a provision for defeasance in the event of any one dying unmarried or without issue. In such event the share of the child so dying was divisible between the survivors or survivor of the children, one half to Maduro survivors share and share alike, the other half to Skelton survivors share and share alike. It was common ground that issue meant legitimate issue, and that when a fraction of a share accrued to another child on defeasance that accruing fraction was not itself subject to defeasance. It was further common ground that survivors meant those children surviving the deceased child.

John Maduro whose proportion was expressed as 4 acres in the 1906 deed was allotted by Joseph Skelton an area coloured green on plan B which in fact is 5½ acres. Richard Maduro (expressed proportion 6) was similarly allotted the blue area which in fact is 7 acres. Emma Skelton (expressed proportion 7 acres) was similarly allotted the orange area which in fact is 8 acres. What right Joseph Skelton had to allot these specific portions to 3 of the tenants in common is uncertain but nobody seeks to challenge their validity.

The 1906 trust deed, which allotted a total of 42 acre proportions, in fact referred to the land conveyed as being 43 acres. This discrepancy does not really matter. The fact is that the area conveyed was much more than 42 or 43 acres. Including the blue, green and orange areas (but excluding as all agree the two 2 acre lots already mentioned) the land conveyed in 1906 amounted to 73½ acres. The land now in question is therefore the 53 acres not included in the three coloured lots.

Since the 1906 deed spoke, though in acres, of proportions, it is necessary to "uplift" the tenancies in common to deal with that situation. It was agreed that the appropriate "uplift" of the acreages stated in the 1906 deed was a fraction which need not be stated here. The result was as follows:—

- (1) John Maduro, uplifted from 4 to 7
- (2) Ann Maduro, uplifted from 4 to 7
- (3) Alice Skelton, uplifted from 7 to 12½
- (4) Claudius Skelton, uplifted from 8 to 14
- (5) Richard Maduro, uplifted from 6 to 10½
- (6) Ellen Maduro, uplifted from 6 to 10½
- (7) Emma Skelton, uplifted from 7 to 12½

This totals $73\frac{1}{4}$ acres: but it must be remembered that numbers (1), (5) and (7) have already had the above-mentioned (coloured) acreages, so to speak, on account.

Ellis Skelton, though a son (illegitimate) of Joseph Skelton by Ellen Maduro, was not a beneficiary under the 1906 conveyance. His concern in the land conveyed arises from conveyances to him either on sale or by gift from (1) Ann Maduro in July 1949, (2) Alice Skelton in August 1949, (3) Ellen Skelton (his mother) in December 1951, and (4) Claudius Skelton in November 1955. Each referred to the interest of the transferor in respect of the acreage proportion under the 1906 document. Deeds (2) and (4) above also expressly embraced accruing fractions. The other two did not.

The cross-appeal which as indicated their Lordships are advising should be admitted relates to the defeasance and accruer provisions. These were only marginally referred to below: but if the correct conclusion is to be reached on the impact of the trusts on the unallocated 53 acres it is necessary to embrace those provisions.

At this stage their Lordships arrive at a conclusion as to the interests in the unallocated trust lands of 53 acres in Parcel A, postponing (and temporarily ignoring) the claim of Ellis Skelton to a possessory title.

For this purpose it is convenient to list the sequence of events in order of deaths and to number (for brevity) the seven children mentioned in the 1906 deed, as follows. (1) John Maduro (2) Ann Maduro (3) Alice Skelton (4) Claudius Skelton (5) Richard Maduro (6) Ellen Maduro (7) Emma Skelton.

- (1) *John Maduro* died 1937. His uplifted area was 7 acres. He had no legitimate issue. His green land of $5\frac{1}{4}$ acres is not to be disturbed. The balance of $1\frac{3}{4}$ of his uplifted entitlement accrues as follows, $\frac{7}{24}$ to each of (2) to (7).
- (2) *Ann Maduro* died 1949. No legitimate issue. Uplifted area 7. The 7 acres share accrued as follows:—
 $\frac{3}{4}$ to (5): $1\frac{3}{4}$ to (6): $1\frac{1}{8}$ to (3): $1\frac{1}{8}$ to (4): $1\frac{1}{6}$ to (7).
 Their Lordships are prepared to assume that Ann's $\frac{7}{24}$ which accrued from (1) passes to Ellis Skelton under the 1949 conveyance from her to him.
- (3) *Alice Skelton*. Died 1962. She had legitimate issue. Her conveyance to Ellis Skelton passed her uplifted $12\frac{1}{8} + \frac{7}{24}$ accrued from (1) + $1\frac{1}{6}$ accrued from (2) = total $13\frac{14}{24}$ to Ellis Skelton under the 1949 conveyance.
- (4) *Claudius Skelton*. Died 1967. No legitimate issue. His uplifted area was 14. That accrued $3\frac{1}{2}$ to (5): $3\frac{1}{2}$ to (6): 7 to (7). There passed to Ellis Skelton under the conveyance to him by Claudius $\frac{7}{24}$ accrued from (1): $1\frac{1}{6}$ accrued from (2) = total to Ellis Skelton $1\frac{11}{24}$.
- (5) *Richard Maduro*. Died 1972. He had legitimate issue. His uplifted area was $10\frac{1}{2}$ minus 7 (blue land). Balance area $3\frac{1}{2} + \frac{7}{24}$ accrued from (1) and $1\frac{3}{4}$ accrued from (2) + $3\frac{1}{2}$ accrued from (4) = $9\frac{1}{24}$.
- (6) *Ellen Maduro*. Died 1974. No legitimate issue. Uplifted area $10\frac{1}{2}$ of which $5\frac{1}{4}$ accrues to (7). She had therefore $5\frac{1}{4} + \frac{7}{24}$ accrued from (1) — $1\frac{3}{4}$ accrued from (2) and $3\frac{1}{2}$ accrued from (4) = total $10\frac{19}{24}$ which goes to Ellis Skelton either under the deed of gift already mentioned or on her intestacy to him as his only (albeit illegitimate) successor, as was admitted.
- (7) *Emma Skelton*. Died 1975. She had legitimate issue. Her uplifted area was $12\frac{1}{3}$ but minus 8 (orange land) = $4\frac{1}{3} + \frac{7}{24}$ accrued from (1) + $1\frac{1}{8}$ accrued from (2) + 7 accrued from (4) + $5\frac{1}{4}$ accrued from (6). Total $17\frac{20}{24}$.

In summary therefore the proportionate interests in the 53 acres as beneficial tenants in common are as follows:—

<i>Ellis Skelton</i>	$\frac{7}{24}$ from (2) by Deed
	$13\frac{14}{24}$ from (3) by Deed
	$1\frac{11}{24}$ from (4) by Deed
	$10\frac{19}{24}$ from (6) by Deed

Total $26\frac{3}{24}$

Richard Maduro $9\frac{1}{24}$

Emma Skelton $17\frac{20}{24}$

Total 53 acres, the area now in dispute.

As has been stated it is the question of accruer that was raised under the petition for special leave to cross-appeal by the respondents.

There remains outstanding the claim of the appellant to a possessory title to the 53 acres. This was but marginally touched upon below, the main battle concerning the 14 acre Baylot, a battle won by the appellant, Ellis Skelton. The Land Adjudication Officer for some reason found that Ellis Skelton became trustee of the trust lands after his father's death: he held (erroneously) that therefore he could not buy interests from beneficiaries. The Court of Appeal found that he was not a trustee, and that is not disputed. The Court of Appeal did not address its attention to whether he could acquire a possessory title by adverse possession.

It would in their Lordships' opinion

- (a) be quite wrong on the exiguous evidence to find that a possessory title had been established to the 53 acres or any part of it, and
- (b) be lamentable in this protracted litigation to refer the matter back to the Land Adjudication Officer for a further hearing on this point.

There are moreover matters which might well in law prohibit such a claim. One is the fact that in respect of accruer claims the adverse possession claimed would be in respect of future interests. Another might relate to section 9 of the Limitation Ordinance. As to these their Lordships say no more.

In summary therefore their Lordships are of opinion that the 53 acres of Parcel A on plan B (i.e. 55 acres less the 2 acres at the south which are part of the Baylot 14 acres) are beneficially owned as tenants in common by the following people in the following proportions:—

Ellis Skelton	$26\frac{3}{24}$
The representatives of the Estate of Richard Hogarth Maduro	$9\frac{1}{24}$
The representatives of the Estate of Emma Skelton	$17\frac{20}{24}$

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Their Lordships refer back to the Court of Appeal of the West Indies Associated States Supreme Court the question of the proper method of giving effect to those interests, whether by partition (and if so whether on the basis of proportionate areas or proportionate values of areas) or by sale and division of the proceeds in the above proportions. That of course will only be necessary if the parties interested cannot agree. Their Lordships do not approve of the suggestion made below that Ellis Skelton would be an appropriate person to decide upon the division.

By Order in Council made on 17th December 1980 the respondents were granted special leave to cross-appeal, following their Lordships' advice to Her Majesty at the conclusion of the hearing.

In the circumstances their Lordships will humbly advise Her Majesty as follows:—

1. That the 53 acres of Parcel A on plan B belong beneficially to Ellis Skelton, the representatives of the Estate of Richard Hogarth Maduro (Senior), and the representatives of the Estate of Emma Skelton in the proportions of $26\frac{3}{4}$, $9\frac{1}{4}$ and $17\frac{2}{4}$ respectively as tenants in common.
2. That the Court of Appeal of the West Indies Associated States Supreme Court be directed to give effect to that last-mentioned opinion as may appear just and expedient failing agreement by the interested parties.
3. That Ellis Skelton has failed to establish a possessory title to any part of the 53 acres.
4. That the decisions of the Land Adjudication Officer and the Court of Appeal be varied so as to conform with this opinion where necessary.
5. That there be no order as to the costs in this appeal and cross-appeal.

In the Privy Council

ELLIS SKELTON

v.

RICHARD HOGARTH MADURO

(Junior) and 2 Others

and

ELLIS SKELTON

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(Junior) and 13 Others

DELIVERED BY

LORD RUSSELL OF KILLOWEN

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