

**IN THE SUPREME COURT OF THE PITCAIRN ISLANDS
HELD IN ADAMSTOWN, PITCAIRN ISLANDS**

**SC 3/2021
[2023] PNSC 5**

IN THE MATTER OF THE ESTATE OF LEN CARLYLE BROWN

AND

IN THE MATTER OF an application for relief under the Probate and Administration Ordinance 2000, section 8 of the Lands Court Ordinance, section 13 of the Land Tenure Reform Ordinance and an application for declaratory relief under the Constitution and the inherent jurisdiction of the Court

BETWEEN OLIVE FAYE CHRISTIAN

Applicant

AND LANDS COURT

First Respondent

AND ATTORNEY-GENERAL

Second Respondent/Intervenor

Hearing: (on the papers)

Counsel: G M Illingworth KC for Applicant
No appearance by or on behalf of Lands Court
D E Kelly and A R Longdill for Attorney-General
E T Fletcher, *amicus curiae*

Judgment: 26 June 2023 (Pitcairn)
27 June 2023 (NZ)

JUDGMENT (NO. 3) OF HEATH CJ

Introduction

[1] Ms Olive Christian (Olive) in her capacity as personal representative of the estate of her late father, Mr Len Brown (Len), issued this proceeding to obtain a ruling on whether her late father's will operated to pass his "house and house land" to another daughter, Clarice. The application was necessary to determine the impact of changes to the land tenure system on Pitcairn enacted in 2000 (the 2000 reforms). The hearing was divided into two parts: the first dealt with private law issues, and the second public law. I issued judgments dealing with the private and public law issues in August 2022 and May 2023 respectively.¹

[2] After dealing with public law issues, I identified points on which I would require further submissions to enable final disposition of the proceeding. In doing so, I made provision for *amicus curiae*, Mr Fletcher, to speak to the four potentially affected persons previously identified to ensure any issues affecting them were resolved. Relevantly, I said:²

[141] The proceeding is adjourned to a date to be fixed by the Registrar to deal with all questions of relief. These will include:

- (a) Final disposition of Olive's application for Letters of Administration with Will Annexed, Blackie CJ's order of 20 December 2019 having been revoked by my Stage 1 judgment. This includes any orders required to reappoint Olive as Len's personal representative and the collection of any information relating to the extent of estate assets.
- (b) Relief sought in consequence of my finding that the constraint imposed on the right of a landowner to leave house land by will amounted to a breach of s 21 of the Constitution. The relief sought will be limited to that required to meet the nature of the breach.
- (c) Any other questions of relief (whether costs or otherwise) that counsel wish to raise, including any orders that might be required in relation to the Lands Court.

[142] The Registrar is directed to forward a copy of this judgment to Mr Fletcher, as *amicus curiae*. The Registrar shall ask Mr Fletcher to speak to the four potentially affected persons (and any others whom he considers might be affected by this judgment) to ascertain whether any of them wish to be heard on

¹ *Christian v Lands Court* [2022] PNSC 1 and *Christian v Lands Court* [2023] PNSC 2. The nature of the 2000 reforms is explained in *Christian v Lands Court* [2022] PNSC 1, at para [3]. They were introduced by the Lands Tenure Reform Ordinance, the Lands Court Ordinance and the Probate and Administration Ordinance.

² *Christian v Lands Court* [2023] PNSC 2 at paras [141]–[142].

questions of relief. If so, a memorandum shall be filed and served in accordance with the directions below.

(Footnotes omitted)

[3] By memoranda dated 2 and 9 June 2023, Mr Fletcher informed me that he had spoken to all four potentially affected persons. None of them wish to be heard on the precise form of relief to be granted in this proceeding. Following receipt of Mr Fletcher’s memoranda, counsel for Ms Christian and the Attorney-General conferred and, together with Mr Fletcher, have submitted draft consent orders for my consideration. Having reviewed the draft orders, I am satisfied that orders to their effect should be made. For the reasons given in this judgment, I make the necessary orders on the papers.

The orders

(a) The probate order

[4] Len was born on Pitcairn Island on 30 March 1926. His last will was made in 1991. Len died on 1 November 2019, after enactment of the 2000 reforms. On 20 December 2019, Blackie CJ made a qualified order in favour of Olive for the issue of Letters of Administration with Will Annexed. The probate order was qualified by excluding from the grant all references to “land, trees and buildings”, on the basis that those were for the Lands Court to determine.³

[5] In my first judgment, I revoked that order. I said:⁴

[102] I make an order, under s 6 of the Probate and Administration Ordinance that the Supreme Court’s grant of Letters of Administration with Will Annexed to Olive on 20 December 2019 be revoked on the basis that the grant ought not to have been qualified by removing Olive’s power to deal with any interest in land that had passed under Len’s will. I am not prepared, until the issue involving “house land” has been finally determined, to make any further grant in favour of Olive. The Supreme Court will assume responsibility for administering Len’s estate until such time as this proceeding has been completed.

[6] As contemplated by para [102] of my first judgment, I now make a grant of Letters of Administration with Will Annexed in favour of Olive on an unqualified basis. This will enable Olive to deal with all outstanding issues involving house land, trees, buildings and moveable property.

³ The order is set out in *Christian v Lands Court* [2022] PNSC 1, at para [20].

⁴ *Christian v Lands Court* [2022] PNSC 1, at para [102].

(b) *Len’s “house land”*

[7] Section 25 of the Constitution provides a mechanism by which the constitutionality of a statutory provision can be considered and (in appropriate cases) redress ordered. In particular, section 25(1) and (2) of the Constitution provides:

25.—(1) If any person alleges that any of the provisions of this Part has been, is being or is likely to be breached in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a breach in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it considers appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Part.

...

[8] The “house land” is comprised in section 100 of the Land Register. In my first judgment, I held that the language employed in s 5(1) of the Land Tenure Reform Ordinance prevented “house land” from passing by will to a named beneficiary.⁵ Having considered public law issues, I took the view that the 2000 reforms operated to remove a testator’s legal ability to leave house land by will and that this constituted an unlawful deprivation for the purposes of section 21 of the Pitcairn Constitution.⁶

[9] Had Len’s legal right to leave his land to Clarice not been removed by the 2000 reforms, the Land Allocation Title for the house land that was registered in Len’s name would (subject to the requirements of s 8 of the Land Tenure Reform Ordinance and Part V of the Lands Court Ordinance) have been transferred to Clarice without the need for the Lands Court to consider any competing applications or interests. In order to achieve that outcome, I make an order under section 25(2) of the Constitution directing the Lands Court to register the house land in

⁵ *Christian v Lands Court* [2022] PNSC 1, at para [95]. See also *Christian v Lands Court* [2023] PNSC 2, at paras [27] and [129].

⁶ *Christian v Lands Court* [2023] PNSC 2, at paras [138], [139] and [140](d). Article 21 of the Constitution is set out at para [91] of that judgment.

Clarice's name, with Shawn being shown as trustee. The latter notation is required as Clarice is, currently, a non-resident and s 8 applies. Section 8(a) states:

8. If any person holding an interest in land by virtue of a Land Allocation Title shall leave the Islands to settle elsewhere indefinitely, the said interest in land shall become subject to the following provisions –
- (a) house land— (i) the land shall be held in trust for the owner, provided that the dwelling is maintained in a habitable state and the land is kept clear;
 - (ii) Annual Land Tax shall be payable by the owner in accordance with the standard rate with effect from the date of departure from the Islands and shall be paid to the Registrar of the Court by 31 December in each year;
 - (iii) the Court shall review each trusteeship annually to decide whether the dwelling has been kept habitable and the land kept clear and upon the Court reaching a decision that the said condition has not been met, the estate of the owner shall revert to the Island Council pending further allocation by the Court.

...

[10] My order is that the Lands Court shall issue a Land Allocation Title under s 4 of the Land Tenure Reform Ordinance to Clarice, in a form consistent with para [9] above. This order is made under section 25(2) of the Constitution to provide redress for the violation of Len's constitutional right to leave the house land to a person of his choice.

(c) *Other land interests in Len's name*

[11] The probate order made by Blackie CJ excluded from the grant interests in "trees" as discussed in my first judgment, the ownership and use of trees on Pitcairn is governed by custom.⁷ As part of my review of directions made by the Lands Court on 18 March 2022, I made a further declaration:⁸

[103] I make a declaration under s 3 of the Probate and Administration Ordinance that the trees to which the Lands Court's report of 18 March 2022 refers (save for the Miro tree on Brown's Hui that is to be regarded as Jay's property) form part of Len's estate and may be dealt with on that basis. If any further direction is required pending a formal grant of Letters of Administration in favour of Olive, leave to apply is reserved for the Court to make such direction as may be necessary.

⁷ *Christian v Lands Court* [2022] PNSC 1, at paras [23] and [24].

⁸ *Ibid*, at para [103].

[12] There is no longer any need for the “leave to apply” part of that order to remain. It will be revoked. Any outstanding questions relating to the ownership or use of trees (or their fruit) will be for the Lands Court to determine on separate application made to it for that purpose.

[13] It is agreed that any dispute about access to and the use of fruit from trees situated on the lands known and identified as Sections 6, 11, 16, 45 and 68 in the Lands Register must be resolved by the Lands Court. To the extent that any claims are made on behalf of Len’s estate, they may be made by Olive, as executrix of his will.

[14] At the time of the 2000 reforms, Len was shown as having an interest in a number of properties, summarised in a letter sent from the Governor’s office to him on 7 November 2006.⁹ The interests were recorded as follows:

The details of the land in which you have an interest are as follows:

Owner of:

Section 113 (area 541m). No application has yet been made for this section.

Section 100 (area 1234m). Registered in the names of you and Thelma. No application has yet been made for this section.

Section 68 (area 3959m). Registered in the names of you and Thelma. An application has been made by David Brown for this section.

Section 59 (area 246m). No application has yet been made for this section.

Section 45 (area 694m). An application has been made by David Brown for this section.

Section 16 (area 496m). Registered in the names of you and Thelma. An application has been made by Dave Brown for this section.

Section 11 (area 632m). An application has been made by Dave Brown for this section.

Section 6 (area 2918). Registered in the names of you and Thelma. An application has been made by Dave Brown for this section.

Trustee of:

Section 107 (area 529m). Owned by Laura Christian. No application has yet been made for this section.

[15] It is agreed that any dispute about access to and the use of fruit from trees situated on the lands known and identified as Sections 6, 11, 16, 45 and 68 in the Lands Register must be resolved by the Lands Court. To the extent that any claims are made on behalf of Len’s estate, they may be made by Olive, as executrix of his will.

⁹ *Christian v Lands Court* [2022] PNSC 1, at paras [17] and [18].

[16] I am told that there remains a dispute over the land in Adamstown known and identified as Section 102, and that distinct claims are made in respect of Sections 101 and 107. Olive, as executrix of Len's will, does not make any claim to those Sections. Accordingly, it will be for those persons who make claims to apply to the Lands Court to have them resolved. The Lands Court shall hear and determine any such applications without any further order from this Court.

[17] It is agreed that the Land Allocation Titles issued in respect of Sections 6, 11, 16, 45 and 68 shall remain in their current ownership as recorded in the Lands Register, subject to any future order that the Lands Court may make.

[18] It is acknowledged that some conflicts may arise in relation to the role of current members of the Lands Court in dealing with any applications arising out of these orders. I note that if conflicts were to arise, it would be necessary for the Island Council to exercise powers under s 3(3) of the Lands Court Ordinance to remedy any conflict.

(d) Costs

[19] Counsel anticipate that it will be possible for all questions of costs to be resolved by agreement. I expect that to be done. However, I grant leave to any party to apply for an order in the event that consensual resolution is not possible. Any application may be made by memorandum, on receipt of which I will make any directions for the determination of costs.

(e) Vacation of relief hearing

[20] The hearing scheduled for 20 July 2023 is vacated and appearances are excused.

[21] I thank counsel for their assistance.

Paul Heath
Chief Justice