

**IN THE LANDS COURT OF PITCAIRN ISLAND
HELD IN THE SCHOOL HOUSE, PULAU, PITCAIRN ISLAND**

PCLC 1/2024 – 1

B E T W E E N: **ISLAND COUNCIL (AS TRUSTEE FOR MR. LLOYD SIDNEY GOULD)**

 Applicant

AND **THE LANDS COURT**

 First Respondent

AND **MS. JACQUELINE CHRISTIAN**

 Second Respondent / Intervenor

Hearing: Wednesday 7th February 2024

Before: Mr Simon Young (Lands Court President), Ms. Suzanne Michelle O’Keefe, Ms. Melva Evans, Mr. Kevin Young, Mr. Jay Warren

Registrar: Mr. William Gordon

Representation: No appearance by or on behalf of the applicant (Island Council)
 Mr. Steve Christian for Ms. Jacqueline Christian (Second Respondent / Intervenor)
 Submissions by William Gordon, Lands Court Registrar (for matters arising out of the Court’s own motion)

Judgment: Thursday 15th February 2024

JUDGMENT (NO. 1) OF THE LANDS COURT

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The application

[1] On 31st October 2023, Mr. Lloyd Sidney Gould applied to the Island Council via the Island Secretary, Mr. William Gordon, to make an application to the Lands Court on his behalf, as a trustee, for an estate of land measuring approximately 1,500 SQM situated at “Tom’s

Block: Triangle between Ailihau & Recycling Centre Road". The nature of this application meant that the Island Council was the applicant, and not Mr. Gould.

- [2] The Court notes that this is the first application of its type to be heard.
- [3] At the Regular Council Meeting of 15th November 2023, the Island Council considered the application and granted approval to proceed to apply to the Lands Court. It was agreed that the estate of land in question was incorrectly referred to as "Tom's Block" and that it was in fact situated at Whitecowpen. It was noted at the Council Meeting, or in discussions shortly after, that the land was believed to be unregistered and vacant, but that in the past Ms. Jacqueline ("Jacqui") Beth Christian had either planted coffee there, or had attempted to plant coffee
- [4] On 16th November 2023, the Lands Registrar, Mr. Gordon, publicly displayed notice of the application to the Legal Notice Board inside the Courthouse, with a secondary notice on the Notice Board outside the General Store, advising that a period of 30-days exists to lodge any objections to the application. Further, Mr. Gordon electronically notified Ms. Jacqui Christian of the application, and that it may affect her possible interest in the land.
- [5] On 27th November 2023, Ms. Christian notified the Lands Registrar that she wished to object to the application. Her stated reason being that she thought the land was her property, as she had previously utilised for the cultivation of coffee, which has since died, and that when she moves back to Pitcairn in the future, she intends to utilise the land for the same. Ms. Jacqui Christian also advised that the land has been used by her family as gardening land for a number of years.
- [6] At the Regular Council Meeting of 10th January 2024, the Island Council decided that the date for the Lands Court to next sit should be 31st January 2024¹.
- [7] On 23rd January 2024, the Lands Court President adjourned the hearing date to 7th February 2024, as the Lands Court Registrar advised that no boundary marker information, or Environmental Impact Assessment had been received. The Lands Court Registrar

¹ s.14(5) of the Lands Court Ordinance provides that the Lands Court shall set the date of when it hears an application, although in practice this is oftentimes set by the Island Council, with consideration given to the general schedule of events happening on-island, such as Island Council meetings, public works, calling ships, etc.

considered that there was insufficient time to reasonably obtain such information in advance of the hearing date set for 31st January 2024.

- [8] Understandably, Ms. Jacqui Christian's notice of objection was received in an informal way, in the form of a letter to the Island Secretary (as both the point of contact for the Island Council (in this case the applicant) and as the Lands Court Registrar). No leave to file a formal statement of case was sought.
- [9] On 3rd January 2024, part of the floor in the Courthouse gave way during a public meeting. The Court understands that on 4th January 2024, all of the notices were removed from the Legal Notice Board inside the Courthouse, as the building had been sealed off due to it being in a dangerous condition. At all material times, a secondary condensed notice remained on the Public Notice Board outside the General Store.

The Background

- [10] The application made by the Island Council was to hold land in trust for Mr. Gould until such a point when he has been granted Permanent Residency Status by Her Excellency The Governor the Pitcairn, Henderson, Ducie and Oeno Islands (hereafter "The Governor").
- [11] Mr. Gould presented the Island Secretary a copy of his Entry Clearance from The Governor when he applied to the Island Council to apply for land on his behalf.
- [12] At all material times during these proceedings, Mr. Gould has been a resident of Pitcairn Island, by virtue of being in possession of a Settlement Visa².
- [13] Mr. Gould has attempted to acquire house land to establish himself with his own property on a number of occasions, all of which to date have failed to materialise or have been frustrated prior to an application being made to the Lands Court.

Conflicts of Interest

- [14] The Lands Court Registrar, Mr. Gordon, assessed that there are no material conflicts of interest with the composition of the Court. He accepts that Mr. Kevin Young, as a Councillor, produced GPS coordinates for the boundary markers, and that Mr. Jay Warren is

² In accordance with s.12 Immigration Control Ordinance

the Head of Biosecurity Department and is ordinarily tasked with undertaking Environmental Impact Assessments.

Evidence Heard

- [15] Mr. Gordon read out a statement of the matter in issue to the Court. This comprised of the application form and notices, as well as the particulars of the land boundary positions.
- [16] Mr. Gordon informed the Court that on 23rd January 2024, The Lands Court President had advised Mrs. Michele Christian that her employee, Mrs. Torika Christian, as Land Management Officer, should ensure that the land is marked and surveyed. Mr. Gordon also stated that he had spoken with Mrs. Michele Christian requesting the same. Mrs. Michele Christian advised that an EIA, to be undertaken by Mr. Jay Warren, would be needed too, and that both would be done. Torrential rain during the following days prevented this from happening.
- [17] Mr. Gordon informed the Court that on 1st February 2024 he received notification by email from Mrs. Michele Christian that two of the markers are approximately 1m from the main road to the recycling centre, and that she understood that boundaries must be 3m from the road. She also advised that as the land had not been cleared between the boundary markers, it was impossible to accurately measure the boundaries and that tractor clearance would be necessary to do so. She requested that Mr. Gordon advised Mrs. Torika Christian about this.
- [18] Mr. Gordon informed the Court that the boundary marker details presented to the Court were produced by Cr. Kevin Young, on behalf of the Island Council, with Mr. Gould attending him. This was done on 31st January 2024. The boundary markers were wooden stakes, sprayed with pink spray paint, along with a pink circle around the markers making them easily identifiable. GPS co-ordinates were taken, along with photographs of the five markers.
- [19] The Court heard from Mr. Gordon that:
- [a] he was satisfied that the land boundary information provided was sufficient for a Land Allocation Title to be accurately produced, although the procedural matters surrounding surveying was a matter for the Court or the Island Council;

[b] and that the Court is not obligated, as a matter of law, to require surveying to be received from the Lands Management Office. It is clear in law that the Court must simply be satisfied of the boundaries, irrespective of who produces that information³, and that it is for the Court or the Island Council to determine additional procedures.

[c] that no records exist for the land in question being allocated, at present or in the past, to either Ms. Jacqui Christian, any of her family members, or indeed anyone else. The land appears to be, and always has been, unregistered and vacant;

[e] that no notifications had been received in regards to any disputed ownership of any of the trees on land, either during the 30-day notification period, or since that period elapsed.

[20] The Court also read the Witness Statement of Mr. Gordon, in his capacity as the Lands Court Registrar, and Island Secretary (the two positions being linked by Ordinance).

[21] The Court did not have sight of an Environmental Impact Assessment.

[22] Mr. Steve Christian, representing Ms. Jacqui Christian informed the Court that:

[a] the land in question was historically considered to be family land, utilised by the Christian family and that this would have dated back to the time of Mr. Thursday October Christian (*b.* 1790, *d.* 1831). However, the Land Tenure Reform Ordinance stripped the family of this historic right;

[b] that it is known that many of the old land records have been lost over time, and that there are people on-island who are in possession or occupancy of land which they believed was registered, but without Land Allocation Titles existing;

[c] that to his knowledge, the land in question was not applied for since the suspension date in 2006;

³ s.14(3) of the Lands Court Ordinance provides that "Every notice given under the provisions of subsection (1) shall describe the boundaries of the land claimed and shall specify the name of the applicant and the entitlement claimed by him or her with respect to the land".

- [d] that there could be issues concerning Ms. Jacqui Christian's residency status – she is not a permanent resident of Pitcairn and therefore possibly not eligible to become a registered owner of the land;
- [e] that only a small corner of the land being applied for crosses over with the land which Ms. Jacqui Christian cleared for planting coffee;
- [f] that the law states only that the applicant is to provide the land boundary coordinates, and that a clearance of 3m from a roadway is the current measurement, with the old one being 10ft. He went on to inform that Court that the 1985 law book covered this, and was intended to prevent people from planting trees right up against the edge of roadways;
- [g] that he is the trustee for some pieces of Ms. Jacqui Christian's land, but not for any land at Whitecowpen;
- [g] in his considered view, the law stipulates that the applicant alone is responsible for ensuring that the Lands Court is appraised of the land boundary location information.

[23] No other evidence was heard by the Court.

[24] After hearing all of the evidence put before the Court, the Lands Court President delivered a summary of the facts and of the applicable law.

The Orders

[25] The Court has considered the validity of the application, particularly in regards to the notice of the application posted to the Public Notice Board by the Lands Court Registrar. The Court is satisfied that Mr. Gordon acted correctly and in a way which is consistent with the Lands Court Ordinance in posting it to the Legal Notice Board inside the Courthouse, with a smaller notice containing a summary of the relevant facts being posted to the Public Notice Board outside the General Store. Mr. Gordon also advised Ms. Jacqui Christian of the application, as it may have affected any interests in the land which she may have had. The primary notice was removed when the Courthouse was condemned by the Island Council on or about 10th January 2024, and the secondary notice remained. Section 14 of the Lands Court Ordinance provides that:

14.— (1) Any person seeking the grant of a Land Allocation Title under section 4 of the Land Tenure Reform Ordinance in respect of any land on Pitcairn Island may, on giving not less than 30 days' notice in writing to the Registrar of his intention to make such application, apply to the Court in accordance with the procedure prescribed in this section.

(2) On receipt of any notice given under the provisions of subsection (1), the Registrar shall cause a copy of such notice to be posted on the public notice board and to be kept so posted until such time as the application has been determined by the Court.

(3) Every notice given under the provisions of subsection (1) shall describe the boundaries of the land claimed and shall specify the name of the applicant and the entitlement claimed by him or her with respect to the land.

The Court is satisfied that Mr. Gordon acted properly, and that proper notice of the application was given. As a secondary summarised notice was posted to the Public Notice Board outside the General Store, the Court does not consider that the notice was removed in such a way so as to conflict with what is provided for in s.14(2) of the Lands Court Ordinance.

[26] Upon considering the validity of the land boundary information provided to the Court, and who should provide it, as part of this application, the Court has made reference to s.14 of the Lands Court Ordinance which provides that:

14.— (3) Every notice given under the provisions of subsection (1) shall describe the boundaries of the land claimed and shall specify the name of the applicant and the entitlement claimed by him or her with respect to the land.

Accordingly, the Court is satisfied that the land boundary marker location information being produced by Cr. Kevin Young, on behalf of the applicant is consistent with the law.

[27] The Court recognises that typically applications for land are accompanied with a survey plan produced by someone other than the applicant. This is generally produced by the Land Management Officer, since around 2009. In the past this has been done by either the applicant or some other person designated as being a surveyor. The Court is not, at the present time, concerning itself with matters of surveying procedure, and for the time being is content to leave the matter to the Lands Court Registrar and Land Management Officer to resolve.

[28] Upon hearing submissions of recorded evidence from the Lands Registrar, the Court is not satisfied that Ms. Jacqui Christian has legal title to the land at Whitecowpen at present, nor

ever had. The Court is accepting of the fact that in the past, she may have utilised it for the cultivation of coffee, and her family may have utilised the land for gardening in the more distant past, but this has not been the case for many years, and the land was utilised without clear title being held at the material times. Ms. Jacqui Christian has not submitted a competing application, nor is presently entitled to do so. The Court recognises that although Ms. Jacqui Christian has a substantive right to apply for a Land Allocation Title on Pitcairn, this is limited. Section 4 of the Land Tenure Reform Ordinance provides:

4.— (2) Subject to the provisions of this ordinance, all permanent residents and former permanent residents of the Islands and their children and grandchildren (having reached the age of 18 years), may apply to the Court for the allocation of land in any of the classifications of house land, garden land, orchard land and forestry land, provided that the applicant is resident at the time of application and fully intends to remain as a resident:

Provided that any person formerly resident in the Islands who prior to the commencement of this ordinance left the Islands to settle elsewhere indefinitely and who immediately prior to the suspension date is registered in the Register of Land Titles as the owner of the freehold interest in any land on Pitcairn, shall be deemed to be eligible to apply to the Court under this subsection and to be an existing owner for the purposes of subsection (4) of this section:

And provided that, upon the granting of a Land Allocation Title to any such non-resident applicant, he or she shall be deemed to be a landowner who has left the Islands to settle elsewhere indefinitely with effect from the date of the said grant, for the purposes of section 8 of this ordinance.

Ms. Jacqui Christian has Right of Abode on Pitcairn Island⁴, but has not been resident for some years. She is currently a resident of Saba in the Dutch West Indies. Accordingly, the Court considers Ms. Jacqui Christian to have settled elsewhere indefinitely. It would be beyond the spirit, and indeed the scope, of the Land Tenure Reform Ordinance to allow for Ms. Christian to successfully object to this application, or to apply for a Land Allocation Title for this land, or for any other land. Ms. Christian will become entitled to apply for a Land Allocation Title at such a point when she returns to Pitcairn Island to reside, and with an intention to permanently remain as a resident.

[29] Upon considering the issue of potential conflicts of interest, the Court is satisfied with Mr. Gordon's assessment in selecting the composition of the Court that there are no material conflicts of interest, particularly in regards to Mr. Simon Young, Mr. Kevin Young and Ms. Melva Evans who are also members of the Island Council. The Court is satisfied that these positions are unconnected, and that the Court members who are Councillors have, in this instance, no personal interest in the success of the Island Council's application. On the

⁴ Right of Abode Ordinance 2010

contrary, the Court recognises that the only natural person with a tied interest is Mr. Gould, who is not a party to these proceedings.

- [30] The Court is content that the Lands Court Registrar made reference to s.3(3)(b) of the Lands Court Ordinance when selecting the composition of the Lands Court to hear this matter:

3.—(3)(b) where any other member of the Court is a party to or is a witness or has any personal interest in any proceedings before the Court, he or she shall not sit as a member of the Court for the purpose of the hearing of those proceedings and the Council shall appoint such other person who is neither a party to nor a witness nor has any personal interest in such proceedings as it considers appropriate and such person so appointed shall sit as a member of the Court for the purpose of hearing those proceedings and while so sitting shall for the purpose of the hearing of those proceedings have all the powers and exercise all of the duties and functions of the member of the Court in whose place he or she is so appointed.

- [31] The Court has referred to the recently established case law in regards to the ownership of trees on Pitcairn⁵ and is cognisant that the question of tree ownership has not been brought before this Court to determine. The Court recognises that any failure to object to the ownership of any trees on the land, or the rights to collect fruit from those trees, or any associated rights of access, in accordance with Pitcairn customary law, within the 30-day notice period, does not extinguish such ownership or rights. As such, any future claims against any of the trees on the land applied for at Whitecowpen, the rights to collect the fruit from those trees, the associated rights of access to those trees must be resolved by application to this Court.

- [32] The Court is satisfied that the application as received from the Island Council as trustee for Mr. Gould was made correctly and that the substantive application should succeed. The estate of land requested at Whitecowpen should be allocated, and the Lands Registrar is directed to do so on a provisional basis, in favour of the Island Council (as Trustee for Mr. Lloyd Sidney Gould), pending the addition of any encumbrances and appurtenances, and that a Land Allocation Title should be produced to reflect the same. The Lands Registrar shall reference the land in a way which he deems appropriate.

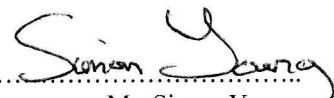
- [33] The same land shall be transferred to Mr. Gould in his own right at such a time that he is granted permanent residency by The Governor, and that this matter should come back to the

⁵ *Christian v. Lands Court & Anor [2022], Pitcairn Islands Supreme Court*

Lands Court at the time of the application to transfer the land to Mr. Gould, for final determination.

- [34] The Court shall reserve the question of encumbrances and appurtenances in connection with the findings of the Environmental Impact Assessment to be applied to the Land Allocation Title until the next available sitting of this Court following receipt of an Environmental Impact Assessment.
- [35] Upon considering the questions raised about the situation of the land boundary markers, as a consideration for any encumbrances to be added to the Land Allocation Title, the Court has found that Ms. Jacqui Christian has failed to provide sufficient evidence of any claim that there is a requirement to situate the land boundary markers at least three metres from the edge of a public roadway. The Court finds that this is not a feature of any present or previous law, nor of any extant Island Council regulation, and consequentially the land boundary marker locations presented are satisfactory.
- [36] The Court finds that the commonly held view of boundary markers being situated at least three metres from the edge of a public roadway is connected with the Island Council's rights of access over leased land for the purpose of maintenance in so far as such maintenance is for the purpose of ensuring public roadways are free of obstructions. This should be determined on a case-by-case basis, as not all land boundaries and plots of land are identical.
- [37] The Lands Court Registrar is directed to forward a copy of this judgment to the parties in this matter, along with Mr. Gould as an interested person.
- [38] The Court makes these findings unanimously.




.....
Mr. Simon Young
Lands Court President


.....
Mr. William Gordon
Lands Court Registrar

On this 15th Day of February, 2024