

Judgment 51/2003

**Smith v Helmot and Helmot
Court of Appeal
(Civil Appeal 237)
25th September, 2003**

Land – boundary dispute – appeal dismissed by Court of Appeal in 1998 – Application for leave to appeal to the Judicial Committee of the Privy Council – must be made within a reasonable time.

IN THE COURT OF APPEAL OF GUERNSEY

Civil Division

The 25th day of September, 2003 before Richard Charles Southwell, Q.C., Presiding, Hon Michael Jacob Beloff, Q. C., and Peter David Smith, Q. C.

KATHLEEN EDNA SMITH

Appellant

V

VINCENT ROGER HELMOT
and
SONIA ELIZABETH HELMOT

Respondents

On the application of the Appellant for leave to appeal to the Judicial Committee of the Privy Council against the decision of the Court of Appeal dated 15th October, 1998;

THE COURT, having heard the Appellant in person, and Advocate D. G. Le Marquand for the Respondents, thereon, GAVE JUDGMENT in the terms attached hereto, REFUSED the application and AWARDED COSTS to the Respondents on the normal recoverable basis.

K. H. TOUGH
Registrar of the Court of Appeal

OFFICIAL TRANSCRIPT

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Finalised 18.11.03

THURSDAY 25TH SEPTEMBER 2003

THE COURT OF APPEAL OF GUERNSEY

Before

Richard Charles Southwell, Esq., QC; presiding
Hon. Michael Jacob Beloff, Esq., QC
Peter David Smith, Esq., QC

KATHLEEN EDNA SMITH v. VINCENT ROGER HELMOT &
SONIA ELIZABETH HELMOT
(Civil Appeal No. 237)

Judgment delivered by the Hon. Michael Jacob Beloff, Esq., MA QC

1. This is an Application for leave to appeal by the Appellant, Kathleen Edna Smith, to the Judicial Committee of the Privy Council against the judgment of the Court of Appeal on 15th October 1998. It arises out of a regrettable and long-standing boundary dispute between neighbours.
2. On 30th April 1997 the Royal Court resolved the dispute in favour of the Respondents.
3. On 15th October 1998 this Court dismissed Miss Smith's appeal. The Court there held:

“The net result in our analysis of the Appellant's case is that there were instances of surprise, mis-direction, the irregular admission of evidence and other irregularities at the trial. However, to enable us to order a new trial on the grounds of surprise the Appellant must demonstrate that a substantial miscarriage of justice has occurred. Similarly, in relation to misdirection and the irregular admission of evidence the rules require that the court must be of the opinion that some substantial wrong or miscarriage of justice has been occasioned. “Some substantial wrong or miscarriage” means that the Appellant has lost a chance of success that was fairly open to him. Having anxiously considered the test we have identified we satisfied that the Appellant was not deprived of a chance of success which was fairly open to her. The crucial aspect of the trial was what the Jurats saw or did not see when they visited the properties on the vues de justice.

We are satisfied that had they observed blackthorns or other features there suggestive of a boundary line consistent with the Appellant's case they would not have been deflected from making a finding in her favour.

Irrespective of what happened or did not happen in Court, we are satisfied that the element of surprise did not go to the essence of the matter and overall we are persuaded that the trial was a fair one and that the verdict should stand.”

4. It is from that judgment that the Appellant seeks leave to appeal.

5. The material law is set out in the judgment which we have already handed down in the earlier case of the Appellant and Gordon Lawson Slawther [Civil Appeal 220] to which reference can be made. We there explain that any application in this Court for leave to appeal to the Privy Council must be made within a reasonable time.
6. The Appellant's application is supported by an affidavit sworn on 16th July 2003. Her affidavit neither explains nor justifies the delay, but she has again explained orally her difficulties as a litigant in person, fighting on the three fronts simultaneously and without the benefit of legal assistance. It is a feature of this case, as it is of the earlier one, that her inability to obtain legal aid stems from the fact that she cannot find an Advocate prepared to accept or endorse her own views of the merits. Moreover, there is again clear prejudice to the Respondents in re-opening the matter now when they have inevitably conducted themselves for so long a time on the basis that the case was closed.
7. Furthermore although we have not delved into the merits, I note that the Appellant's case has failed at both levels on the facts.
8. In my view there is, for these reasons, no basis for an extension of time. There must and should be finality in litigation. This application is dismissed.

SMITH, JA: I agree and I have nothing to add.

SOUTHWELL, JA: I also agree.

ADVOCATE LE MARQUAND: Sir, I would seek costs on the normal recoverable basis.

SOUTHWELL, JA: Miss Smith?

MISS SMITH: There's no way I'm going to give up, no way, because no Advocate should be dishonest before this Court and both of those have been dishonest, and no, I will be having a word with Mr. Tough on this matter.

SOUTHWELL, JA: Thank you very much.

MISS SMITH: I see what you mean, sir.

SOUTHWELL, JA: We grant the Respondent the costs of this application.

MISS SMITH: They're crooked to the core.

ADVOCATE LE MARQUAND: I'm obliged sir.

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I, Suzanne Margaret O'Neill hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill
Tuesday 18th November 2003