

Partitioning Land in Jamaica



By Robert Collie (with assistance from Lori-Ann Green, Alecia Johns and Amelia Ziadie)

As an attorney specializing in land law or what the traditionalists among us call conveyancers, one is often faced with that most implacable of clientele, the man who wants his share of what his forefathers left him. Take the following scenario as an example. Four (4) brothers and sisters are left property by their dear departed father under a will as tenants-in-common; let us say 4 acres of land in Clarendon. As with many properties in Jamaica of what is popularly known as 'dead lef'

(or what is legally known as the estate of the testator) there is some acrimony between the siblings.

Under the terms of the will they are treated as co-owners of those 4 acres of land with a distinct but **undivided** share of the whole property. However each of them desires that they should each get an individual acre of land, or in other words they would like to have a distinct and divided share in the property.

What is the solution that is available to them you ask? Simple, they would have to seek a partitioning of the land.

Partitioning is the process of dividing land which is held under a single title by more than one person into separate titles for each sub-divided parcel of land. In Jamaica there are two forms of partitioning:

1. Voluntary Partition;
2. Compulsory Partition.

Under a voluntary partition each party agrees that the land as it stands shall be divided between them according to a deed of partition prepared by an attorney. Normally a survey plan would be prepared by a land surveyor which would demarcate on ground the new boundaries for the separate parcels of land. Then sub-division approval will have to be sought from the Parish Council for the division of the property between the parties. Once they get the approval and the survey plan along with the Parish Council approval is properly submitted to the Registrar of Titles then an attorney would make the requisite application to the Registrar of Titles for the surrender of the title and the splintering of said title into separate titles for each parcel of land.

A compulsory partition is by way of a court order where a co-owner may apply independent of his other co-owners and despite their disapproval or dissent to have the

property physically divided. This area of the law of partitioning is governed by the Partition Act of 1873 which makes provision for the petitioning to the court for such an order.

In addition the court is not limited to granting merely an order for physical partition but a petition maybe made before the court for the sale of the property in lieu of physical division. The court is therefore empowered where the circumstances warrant to order the sale of the property along the following lines even in the face of any disapproval or dissent from the other co-owner(s) of the property:

- 1) The court **may** on the application of a person holding less than a half interest in the property against the wishes of the persons holding the greater portion(s) order a sale if in all the circumstances it is reasonable to do so;
- 2) If the court finds that the parties entitled to a moiety (half, loosely) or upwards desire a sale the court **must** order it unless some good reason is shown to the contrary; or
- 3) A co-owner objecting to a sale may offer to purchase the shares of the parties desiring a sale in which case the court has discretion to authorize the sale to him.

In scenario 1) above in making this determination the court will take into account the following factors:

- The nature of the property – for instance, if the property is too small to be reasonably sub-divided or if it is unlikely that the Parish Council would give sub-division approval for it. Further it maybe that the physical shape of the property and any buildings thereon would have to be taken into account.
- The number of parties interested or presumptively interested – if there are ten persons entitled to the property as opposed to just three the court is likely to order that the property simply be sold as being the most just and equitable decision that can be made.
- The absence or disability of some of the interested parties
- Any other circumstances

Going back to our example above of the acrimonious brothers and sisters we can see that they effectively have four options open to them:

1. Voluntary physical partitioning – They can share the expenses of paying the professionals involved (the land surveyor and the attorney) equally and the various government taxes and fees which would be involved;
2. Voluntary sale – The only expenses which would be incurred are the attorney's fees on the conveyance and the various government taxes and fees;
3. Seeking a court order for a compulsory physical partitioning – One (or more) of them could apply to the court to seek an order that the land be sub-divided according to their entitlement. In this scenario they would

- each likely have to bear lawyer fees to litigate the matter and would have to await the delays in our court system which may result in them waiting upwards of 2 or more years for them to get a successful order;
4. Seeking a court order for the compulsory sale of the property – The court may if the scenario calls for it order a sale of the land and a division of the proceeds of sale according to the co-owners entitlement. Again this adds additional expense to the process as in addition to the expensive lawyer fees for the litigation and the attendant delays in the court system, the property would likely have to be put to auction based on a valuation and an auctioneer's and valuator's fees paid in addition to further attorney's fees for handling the conveyance of the matter.

Scenario 1 or 2 above is always the preferable route as they are the least contentious and expensive for the parties involved.

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