DIDIER GEORGES GODLEY
OF NORTH EAST POINT
APPELLANT
versus

1. LEVY AH WAN
2. GRACIA BASTIENNE
3. ANNE MAGNAN


Civil Appeal No. 26 of 1994

RULING

Mr. Valabhji has made an application to the Supreme Court to intervene in this matter at the request of a person who claims to be entitled to a share by inheritance in the estate of Jean Fereol Hoareau. This application which is to be heard in January next is misconceived since the Supreme Court is functus officio in this matter which has already been adjudicated upon by the Court and which adjudication is the subject of an appeal to this Court.

Mr. Valabhji has now filed a similar application to this Court. He fairly conceded that the Rules of Procedure do not provide for such an application to the Appellate Court but submitted that the ends of justice justify the intervention of a party who has an interest in the land under reference. Mr. Hodoul who appears for the Appellant abided by the decision of this Court but Mr. Boulle who appeared for the 1st Respondent and Mr. Lucas who appeared for the 2nd and 3rd Respondents objected to the application. They however
concede that as the applicant was not a party to the initial proceedings, she could enter fresh proceedings.

It is no doubt clear that if the applicant were minded to initiate action in separate proceedings there is a likelihood of conflicting judgments and the determination of how the land under reference should devolve would be a protracted exercise. However, we are of the view that the present application is not receivable. If the application were granted all the parties would have to plead anew and evidence may have to be adduced. This Court would thus become a Court of first instance. The application is therefore refused.

Dated the $19^{\text {u }}$ day of October, 1995.

Monde
Breardamp \& Eves
(JUSTICE OF APPEAL)
bethune
(JUSTICE OF APPEAL)

(JUSTICE OF APPEAL)

