

LAMBRIS HARALAMBOUS PAPA LOIZOU,  
*Appellant,*  
AND  
KORNELIA THEMISTOKLEOUS,  
*Respondent.*  
(Civil Appeal No. 4222).

1957  
June 27,  
Oct. 19  
LAMBRIS  
HARALAMBOUS  
PAPA LOIZOU  
v.  
KORNELIA  
THEMISTO-  
KLEOUS.

*Immovable Property—Mistake in Land Registry records—Prescription—Rectification of mistake—Application to Director of Land Registration in first instance—Court's jurisdiction only by way of appeal from Director's decision—Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, Sections 56, 59 and 75.*

The appellant originally applied to the Director of Land Registration and Surveys to determine the boundaries of his land under the provisions of section 56 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, and the Director fixed the boundaries according to the plan. The respondent did not appeal against the Director's decision nor did he apply, under section 59 of the Law, for the rectification of any title-deed on the ground of an alleged error in the Land Registry records.

The appellant then brought an action in the District Court claiming an injunction restraining the respondent from interfering with his land, and the respondent filed a counter-claim for an order directing the registration of the land in dispute in his name and the amendment of any previous registration, on the ground that he had acquired it by prescription and that the Land Registry Office had, by mistake, failed to include it in his registration.

The Magistrate found that the respondent did not possess the land in dispute for the full prescriptive period and gave judgment in appellant's favour. The President of the District Court, on appeal, reversed the Magistrate's decision on the ground that there was a mistake in the Land Registry plan, and he ordered the rectification of the respective registrations.

*Held:* (1) that, when a mistake in the Land Registry records or plans was alleged, the combined effect of sections 75 and 59 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, was that the matter should, in the first instance, be referred to the Director of Land Registration and Surveys for his decision; and that, unless and until the Director decided one way or the other, the matter could not be pursued before the District Court, and then only by way of appeal under the provisions of section 75;

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(2) that neither the Magistrate nor the President of the District Court, on appeal, was empowered to entertain the question of mistake in the Land Registry records unless the matter was brought before the Court by way of appeal from the Director's decision.

*Decision of the Magistrate restored.*

Case referred to :

*Ibrahim v. Suleyman* (1953) 19 C.L.R. 237.

**Appeal** against the decision, dated 15th March, 1957, of the President of the District Court of Paphos (Zenon P.D.C.) who reversed the Magistrate's decision in Action No. 102/56.

*L. Olerides* for the appellant.

*M. Triantafyllides* for the respondent.

The judgment of the Court was delivered by :

**ZEKIA J.** : This is an appeal from the decision of the learned President of the District Court, Paphos, who has given leave to appeal to this Court holding the point of law involved to be a very interesting one. The subject-matter relates to the ownership of a triangular strip of land with 8 feet base and 148 feet long, worth one or two pounds.

The learned Magistrate decided in favour of the plaintiff, finding that the defendant herself did not, independently of her transferor, possess the disputed portion for a prescriptive period until 1.9.1946, when the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231 came into force. The learned President reversed the decision of the Magistrate on the ground that the real issue was not what had been decided by the Trial Court but it was whether there was a mistake on the part of the Land Registration authorities in including the disputed portion of land in the plot covered by the title-deed of the plaintiff, and, as there was strong evidence indicating a mistake in the L.R.O. books, the Trial Court ought to have ordered the correction so that the disputed land be subtracted from the title of the plaintiff and added into that of the defendant.

The situation of the 'Ohto' between the properties of the litigants suggested strongly that the strip of land in dispute was being possessed all along with the undisputed property of the defendant and it appears from the evidence that it was likely, taking into account the age of the 'Ohto' that at some time or other an error was committed in the Land Registers which shows the disputed portion as part of plaintiff's land. The learned President, finding that there was a mistake in the L.R.O. plan and relying on the

case of *Sherife Mustafa Mulla Ibrahim v. Mehmed Salih Suleyman* (1953) 19 C.L.R. 237, ordered the correction to be made so that the disputed portion be excluded from the title-deed of the plaintiff and included in that of the defendant. While the learned Magistrate, in finding that prescriptive title was not acquired by the defendant, was right, it could not be said that the learned President was wrong either in inferring from the evidence on the record that there was an error in the books of the Land Registration authorities. But could the Court entertain such a proceeding or adjudicate on such an issue without and before the Director of the Land Registry is called upon to exercise his power to correct his books as provided under section 59 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231? Section 59 reads:

“59 (1) The Director may correct any error or omission in the Land Register or in any book of the Land Registry Office, or in any certificate of registration, and every such Register, book or certificate of registration so corrected shall have the like validity and effect as if such error or omission had not been made.

(2) No amendment shall be made under the provisions of sub-section (1) of this section, unless thirty days' previous notice is given by the Director to any person who might be affected thereby, and any person may, within the period of thirty days from the date of the giving of such notice, lodge an objection with the Director who shall thereupon investigate the same and give notice of his decision thereon to the objector.”

Section 75 of the same Law prohibits courts from entertaining any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of the said Law. We quote section 75:

“75. Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the Court may make such order thereon as may be just but, save by way of appeal as provided in this section, *no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law:*

Provided that the Court may, if satisfied that owing to the absence from the Colony, sickness or other reasonable cause the person aggrieved was prevented from appealing within the period of thirty days, extend the time within which an appeal may be made under such terms and conditions as it may think fit.”

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The amendment or cancellation of a title-deed on the ground that the property or part thereof, covered by such title-deed, has been acquired on account of undisputed possession by somebody else than the title holder normally assumes that there is no mistake or error, at any rate originally, in the registration and in the records of the L.R.O. When, however, a mistake in the survey or other records of the Land Registry is contended the combined effect of sections 75 and 59 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, is that such cases in the first instance should be referred to the Director of the Land Registry and his decision should be sought. Unless and until the Director decides one way or the other the matter cannot be pursued before a Court of Law, and then only under section 75 just quoted. In this case there was an application to the L.R.O. for fixing of boundaries and the L.R.O. clerk fixed the boundaries according to the plan. The Director was not told and was not required to make any rectification or cancellation of title-deed on the ground of an alleged error or mistake in his books. The case was brought to the Court and it was fought almost on one issue, namely, whether the defendant was entitled to the disputed land by virtue of possessing the same for a prescriptive period. In our view, neither the Trial Court nor the President of the District Court, sitting as an appellate court, was entitled to go into the issue of mistake in the Land Registry books unless the matter was brought before them on appeal from the decision of the Director. The object of the said Law touching this point, seems to be twofold: (a) The Land Registry Authorities should have the opportunity to examine the case and, if satisfied that there is a mistake in their records, to make the necessary correction; after giving of course notice to the party whose interests are affected. (b) To avoid unnecessary litigation in minor disputes. In cases where the disputed land involved does not exceed £25 in value the Magistrate's decision on the point is final and not appealable. The present case, as we said, relates to a property of a value of £1 to £2 and if the sole or main object of this litigation was to correct an error in the Land Registers this case could not have gone beyond the Paphos Magistrate Court even if the parties were not willing to agree with the decision of the Director whether an error was made in the Land Registry books or not.

For these reasons we think that the appeal should be allowed and the decision of the Magistrate should be restored. The costs of this appeal to be paid by the respondent-defendant.

*Appeal allowed.*