

The Republic of Trinidad & Tobago

In the High Court of Justice

Claim No. CV2008-01297

BETWEEN

- (1) AHMAD MOHAMMED**
- (2) ALI MOHAMMED RAHAMAN**
- (3) RAMRAJIE MOHAMMED**
- (4) SHYIRA RAHAMAN**
- (5) SHAHREEFA HALIMA MOHAMMED**
- (6) SALADIN RASUL MOHAMMED**

Claimants

And

- (1) AMEER MOHAMMED**
- (2) AMCOWELD ENGINEERING SERVICES LTD**

Defendants

Before the Honourable Mr Justice James C. Aboud

Dated: 16 October 2014

Representation:

- For the claimants, Mr. Ramesh L. Maharaj SC leading Mr. Alvin D. Ramroop, Instructed by Ms Vijaya Maharaj.
- For the defendants, Mr. Kemrajh Harrikissoon, instructed by Ms. Soraya Nanani.

JUDGMENT

1. The claimants have brought a claim in private nuisance against the defendants Ameer Mohammed and his limited liability company, AMCOWELD Engineering Services Limited. The claimants are owners of several parcels of land that form part of a neighbourhood that they informally call “Ali Rahaman Road”. The neighbourhood is situated off Calcutta No. 2 Main Road in Freeport. All the lots in the neighbourhood form part of two larger parcels of land out of which they were created. The developer of this neighbourhood, Mr Ali Mohammed Rahaman, is the second claimant. He is the

grandfather of the first defendant. The road leading into the neighbourhood off Calcutta No. 2 Main Road is named after him, and, it seems, the neighbourhood takes its name from the name of the road. The claimants either own land or have constructed dwelling houses in the neighbourhood, and in particular, on Ali Rahaman Road itself. The parties in this action are all related. The second defendant, a limited liability company, is owned and operated by the first defendant. The nub of the claim is that the defendants' use of their property for industrial activities creates disturbance and discomfort for the claimants that amount to nuisance. The claimants are seeking: (a) a declaration that the defendants by themselves, their servants and/or workmen or otherwise howsoever are not entitled to use or permit or invite any persons to use Ali Rahaman Road otherwise than for the passage of light motor vehicles to get to their dwelling house; (b) an injunction restraining the defendants whether by themselves, their servants and or agents and or workmen from using Ali Rahaman Road otherwise than for the passage of light motor vehicles to get to their dwelling house; (c) an injunction restraining the defendants from continuing their acts of nuisance against the claimant; and (d) damages and costs.

The claimants' pleaded case

2. The claimants allege that they all live along Ali Rahaman Road, a private road situate on a parcel of land owned by the second claimant and constructed solely for the use of the second claimant and his immediate family and their assigns. This road was constructed sometime in or around the year 1958, measuring about 15 feet wide. The amended statement of case contains a number of other allegations.
3. By deed dated 5 November, 1962 and registered as No. 13888 of 1962 Mr Ali Mohammed Rahaman, the second claimant, acquired parcel of land situate in Freeport comprising One and One Third Acres. By deed registered as No. DE200601532615 the second claimant conveyed 1232.2 square metres or 13,262 square feet of the said parcel of land to himself, his wife, the third claimant, and his children, the fourth, fifth and sixth claimants. By deed No. 11018 of 1983 the second and third claimants became

owners of a second parcel of land which borders Ali Rahaman Road. By deed registered as No. 2509 of 1994 the second claimant conveyed a portion of the land to his grandson, the first defendant and he subsequently conveyed a second parcel to him.

4. Some of the claimants constructed their dwelling houses prior to and during the 1990s with approval from the Town and Country Planning Division of the Ministry of Planning and Development (“TCP”). The first defendant built his house in the late 1990’s without obtaining the requisite approval. Sometime in April 2006 the first defendant without approval began construction of a building on the second parcel of land to carry on an industrial business: metal welding, steel fabrication, industrial tank repairs, sandblasting, spray painting, auto and diesel repairs and other related work. In the course of time since 2006 the defendants acquired four other parcels in the neighbourhood.
5. Sometime in June 2007 the first defendant, although he had no approval for an industrial building, was granted a Certificate of Environmental Clearance by the Environmental Management Authority. The CEC required that the defendants consult with and seek the approval of the Couva/Tabaquite/Talparo Regional Corporation with regard to the establishment and design of an approved access road to the defendants’ parcel of land via Ramkalia Road. Ramkalia Road adjoins the second defendant’s premises in the neighbourhood. The second defendant is said to have breached the CEC since it has failed to consult with and seek the approval for the alternate access road. The defendants use the Ali Rahaman Road as a private road for the commercial purposes of their business. As a result since April 2006 the claimants say they have experienced considerable inconvenience, loss and damage by the passage of the defendants’ equipment and the activities being carried out.
6. The continuous use of the Ali Rahaman Road by the defendants for their industrial purposes is said to have caused wear and tear and potholes to develop on the road and also caused damage to the claimants’ buildings, including their fences. The passage of

the defendants' heavy vehicles and equipment along the road is said to have caused the claimants' dwelling houses to shake and vibrate. The defendants are also said to cause their heavy vehicles and equipment to be parked along the said road thereby preventing the claimants from leaving or gaining access to their homes.

7. From and since April 2006 the defendants are alleged to have wrongfully caused the emission, from their heavy vehicles and equipment, quantities of noxious smoke, fumes, vapours and gases which spread and diffuse themselves into and upon the dwelling house and property of the claimants and pollute the air. Prior to and after the issuance of the CEC, and in breach of it, the defendants openly carry on sandblasting activities contiguous to and upwind of the dwelling houses and property of the claimants.
8. The defendants are also alleged to carry on spray painting activities outside of the spray painting room as a result of which spray painting emissions spread and diffuse themselves into and over and upon the claimants' dwelling houses and property. The claimants' say that their dwelling houses and property have been rendered unhealthy and uncomfortable to live in and that they and their families have suffered great discomfort, inconvenience, disturbance and upset and have suffered loss and damage.
9. It is alleged that the defendants are in breach of the CEC having failed to enclose and utilise sound and noise reducing apparatus in all their noise generating equipment. They have also failed to ensure that cleared areas and stockpiled areas are watered regularly at least three times per day so as to alleviate the impact of dust on the air quality and public health of the claimants.
10. The activities of the defendants are said to gravely affect the claimants' health and enjoyment of their premises and unless restrained by an injunction the defendants will continue to and threaten to continue their acts of nuisance against the claimants.

The defendants' pleaded case

11. The defendants filed a defence and counterclaim. The defendants contend that the business was incorporated for the purposes of providing general contracting services such as welding, fabricating, general plant construction, maintenance and equipment rentals. The premises situate at Ali Rahaman Road are for servicing of the defendants' vehicles and as a storage area. It is their contention on the pleadings that most of their work is conducted outside their premises.
12. The defendants claim that Ali Rahaman Road was not constructed solely for the use of the second claimant and his family, noting that there are 14 non-family members who use it. In or about 1958 it was a dirt road but as a result of improvements recently made and paid for by the defendants 80% of the road is now 24 feet wide thereby allowing two vehicles to pass at any given time. The defendants claim that the first defendant owns six parcels of land in the neighbourhood which are currently occupied by the defendants, and that Ali Rahaman Road is the only reserved road to these six parcels of land.
13. The defendants further contend that repairs for industrial tanks and sandblasting are rarely conducted by the defendants and, when needed, they are conducted at the construction sites of their clients. The mobile compressors, diesel welding plants and lighting units are not used on the premises of the second defendant as these items of equipment are rented to clients and used on off-site projects. It is alleged that 90% of the heavy equipment is leased out on long-term projects and they are all serviced and maintained at their respective job sites.
14. The defendants say that in or about August 2009 investigations made by the Environmental Management Authority of alleged breaches of the CEC were dismissed. Consultations were made with the Couva/Tabaquite/Talparo Regional Corporation and by letter dated 9 June 2011 from the corporation it was indicated that Ramkalia Road can only be used if infrastructural works were done with the permission of the Regional Corporation. Further, the defendants contend that the entrance of Ramkalia Road is too

narrow for the defendants' trucks to enter and exit and it was not feasible to use Ramkalia Trace alone because the offices as well as work areas of the defendants are situate along Ali Rahaman Road.

15. It is the defendants' case that the only vehicles which pass along Ali Rahaman Road are trucks. They deny that their presence causes damage to the road and the buildings of the claimants and their fences. The dwelling house and offices of the first and second defendants are located on Ali Rahaman Road and none of these buildings are said to suffer from any vibration when the defendants' vehicles pass along the road.
16. The defendants' counterclaim seeks the following reliefs: (a) injunctions restraining the claimants whether by themselves or their agents from preventing or hindering the operation of the defendants business and preventing them from going onto their property; (b) damages for trespass to the defendants' properties on or about January 2008; (c) all necessary and consequential accounts, directions and enquiries and costs.
17. On 7 July 2008 the parties entered a consent order before Tiwary-Reddy J, which effectively brought the interim injunction proceedings to an end. The order provided as follows:
 - (a) The defendants undertake not to conduct any sandblasting or spray-painting at LP 52, Ali Rahaman Road, Calcutta No. 2, Freeport (the said premises).
 - (b) The defendants undertake not to conduct any welding or fabricating work at the said premises after 6:00 pm.
 - (c) The defendants undertake not to use the external lighting system after 7:00 pm.

- (d) The defendants undertake not to use heavy motor vehicles along Ali Rahaman Road after 7:00 pm.

Since this order the defendants say that their operations have declined as a result of which loaders are never used and forklifts are rarely used on the work areas. The claimants nonetheless maintain that the undertakings were breached throughout the proceedings.

18. During the trial a plan was entered by consent into evidence. It shows the entire neighbourhood and the location within it of the defendants' various operations, as well as the road network. It is attached to this judgment as Appendix A.

Evidence: the claimants

19. Seven witnesses were called to give evidence for the claimants, inclusive of the claimants themselves. Generally, all of the claimants' witnesses stood up to the scrutiny of cross examination.

a) Ahmad Mohammed:

- This witness, the uncle of the first defendant, testified in his witness statement that he lives directly opposite a structure on the defendants' lands from which they operate an industrial type business and carry out activities such as sandblasting, steel fabrication and other discomfoting activities. He has lived on this parcel of land since 1990 with his wife and their two sons. He says that the first structure was constructed in 2006 without approval and the activities complained of are conducted approximately 35 feet away from his house.
- He further testified that since 2006 the defendants, their servants and or agents have operated heavy vehicles and equipment like trucks, bulldozers and forklifts over Ali Rahaman Road at all hours of the day and night. The

defendants have caused offensive, noxious, unwholesome smoke, fumes, vapours and gases to interfere with his enjoyment of his property. This witness adduced photographs taken by him to show the activities complained of, which includes heavy vehicle and industrial equipment being driven on Ali Rahaman Road.

- He gave direct and believable testimony of severe discomfort caused by the operations of the defendants.

Cross examination

- This witness's testimony was not severely affected in cross examination. It was reiterated by the witness that his complaint was not only about the heavy equipment, but also the fumes and noise that were produced by these diesel powered engines, motors and vehicles, which often created cloud like conditions in close proximity to his home.
- The defence sought to diminish this witness's testimony by positing that the acts which he complained of were not entirely true because, though he had presented photographs, there were none which captured the sandblasting and the fumes which were cloud like in nature. The cross-examination of this witness was conducted to highlight the contention that no expert evidence was produced to support the claimants' case of excessive noise, fumes and vibrations.

b) Ali Mohammed Rahaman:

- This witness testified that he and his wife, the third claimant, live along Ali Rahaman Road in the house which the claimants described as the family home. He said that the road is a narrow residential road built for the use of light motor vehicles. The activities of the defendant, his grandson, result in extremely loud noise and emits all sorts of offensive and noxious fumes, smokes, vapours and gases.

- This witness, now retired, is at home the majority of his time, and noted that the noise, fumes and noxious gases that emanate from the defendants' activities even during the hours permitted by the consent order greatly affects him. This makes it very difficult to relax at his home. This witness gave direct evidence of his discomfort. He was a credible witness.

Cross examination

- The defence's cross examination of this witness was geared principally to the restrictions on use of the land as provided for in the defendants' deeds. There is only one restrictive covenant in all the original deeds for the neighbourhood. It is that the purchaser shall not rear swine. There is no restrictive covenant barring the carrying out of any business or industrial activities. Defence counsel asked this witness whether he had informed the first defendant upon the sale of the first lot that he could not open any business or drive any trucks along Ali Rahaman Road. He said "no". He further questioned the witness whether he had informed any other purchaser of lands that they could not open any business and again he said "no".

c) Ramrajie Mohammed

- This witness, the first defendant's grandmother, testified that she also lives in the family house with her husband, the second claimant. The defendants' premises are located some 150 feet away from her family home. Since 2006 she has suffered from cancer and in or about 2010 she had to have her leg amputated. She is not very mobile and as a result she spends the majority of her time at the family home.
- This witness further testified that a great deal of noise, fumes, dust, vapours, noxious gases, smoke and other matter was emitted from the

activities of the defendants, and from the passage and re-passage of the defendants' vehicles and equipment over Ali Rahaman Road. The sandblasting activities which the defendants' carry out produces dust which enters the family home and this in turn irritates her eyes and nose. This witness testified further that the family home has to be frequently cleaned because dust would cover the furniture and keeping the windows closed only has a limited effect on minimizing the dust and noise. She gave credible evidence of discomfort as a result of the defendants' operations.

Cross examination

- This witness's testimony remained unshaken during cross examination. She maintained that the defendants use their land to "make plenty noise and send down dust and smoke and all kind of nasty smelling thing down my side" and that "this has happened every day for years now [sic]."
- The defence sought to establish two things *via* this witness: (1) that the claimants themselves had engaged in a business which produced noises and (2) the health effects which she complained of were not substantiated by any medical evidence. This witness was asked by counsel how she was able to recognise the grinding sound which she spoke of that came from the defendants premises, to which she responded that she had heard grinding done before. By and large, this aged woman gave believable evidence, and was forthright and plain spoken:

Q. What do you mean by vapours madam?

A. Smoke coming out.

Q. What do you mean by noxious gases?

A. Nasty smelling, bad smelling.

Q. All these things got you sick?

A. Yes I got sick in 2009 and had to be hospitalised because I could not breathe properly. When I was hospitalised an x-ray was taken of my chest and it was sort of cloudy and the doctors asked me if I does smoke and I said no, I don't smoke.

Q. You did not provide any medical certificate to say this?

A. Yes sir, that is a short-fall on my part.

d) Shyira Rahaman:

- This witness testified in chief that she lives with her parents the second and third claimants in the family home. She is the owner of a parcel of land along Ali Rahaman Road which was conveyed to her by her father for her to construct a dwelling house. She has not yet constructed the house. She testified further that she runs a parlour near the family home and she looks after her mother. She made the same complaint about noise, fumes, dust and other emissions from the activities of the defendants and its heavy trucks along Ali Rahaman Road.
- This witness says that she used to plant and reap crops and fruits on the parcel of land which her father gave to her. Since the defendants began their activities, she has stopped tending to her land because the noise, dust and fumes emanating from the defendants' premises makes it unbearable and uncomfortable to visit and work the lands. Her evidence of being severely discomforted by these activities, whether visiting her parcel of land or living at the family home, was credible.

Cross examination

- This witness's testimony remained intact under cross examination. She maintained that the defendants created a nuisance on their premises from the noise and emission of fumes gases, that would often leave her feeling nauseous. Counsel questioned her as to whether she visited any doctor for

treatment but she indicated that there was no need to because once she moved away from the fumes and noise she would feel better.

- Counsel further questioned her as to the damage caused by the defendants' vehicles and equipment on Ali Rahaman Road. This witness noted that there is a sink on the road and it is the only damage which has been caused by the defendants' vehicles and equipment.

e) Shahreefa Halim Mohammed:

- This witness testified that she left the family home in 2005 and moved in with her husband in Chaguanas. She is also the owner of a parcel of land which her father conveyed to her for her to build a dwelling house. She continues to visit the family home on a daily basis as her sister and parents assist her in looking after her son whilst she is at work. She also visits on weekends.
- She noted that during her visits to the family home she has experienced loud ear ringing noises arising from the defendants' repair and testing of the vehicles on Ali Rahaman Road and that she has seen trucks, container trucks and excavators owned by the defendants blocking Ali Rahaman Road and the access to the family home. She has seen flood lighting at the defendants' business which faces directly into the home of her brother; she has felt the walls of the family home shake and vibrate with the passage and re-passage by the defendants' heavy equipment and vehicles.
- This witness testified that she has put her plans to construct her home on hold pending the outcome of these proceedings because of the current activities conducted by the defendants makes Ali Rahaman Road and/or the neighbourhood an undesirable place to live.
- This witness's evidence remained unshaken in cross examination.

f) Saladin Rasul Mohammed

- This witness testified in chief that at the time the proceedings were filed in 2008 he resided at the family home with his wife, but since February 2011 he and his wife have been in the United Kingdom and expect to return home this year. He is also the owner of a parcel of land conveyed to him by his father, the second claimant.
- He says that the noise, fumes vapours, gases and noxious and other matters emitted from the activities complained of can be smelt and heard from the family home. This makes it difficult to sleep, relax or even talk to other family members. He was unable to enjoy living in the family home due to these disturbances. He too has delayed building his home on the parcel given to him.
- This witness's testimony remained unshaken in cross examination.

g) Videsh Loutan

- This witness testified that he is an owner and resident of lands along Ali Rahaman Road. He said the defendants use large grinders to grind iron and that the noise level was extremely loud and occurred at all hours throughout the day. Grinding in conjunction with the electricity generator caused excessive noise which emanated west and south of his property so that he could not even speak on the telephone. He would have to shut his windows and doors to get some form of relief.
- He further testified that the defendants carry on sandblasting activities behind his home. He said that one day his wife hung laundry outside and returned to see it covered in dust. On the south of his land the defendants conduct spray painting. The fumes, scent and noise from the generator affected him. When the defendants' test heavy equipment such as heavy

steamrollers it would cause his entire house to vibrate and shake. Since the consent order the defendant has continued to conduct noisy operations during the weekends and also congest Ali Rahaman Road with their heavy vehicles and equipment.

Cross examination

- This witness's evidence in cross examination was consistent with his evidence in chief. When asked by counsel to tell the court how the fumes, scent and noise affected him he said; "During that time, the generators were adjacent to my fence, approximately 20 feet away from my home. Looking at about 3 generators at a time in operation. So the noise from all three generators was intolerable. You could hardly hear yourself speak especially if you are carrying a conversation on the telephone. You also had the noise emanating from the large cranes and steel beams. The fumes from the diesel generators would come into my house as well. They made me and my family nauseous. We had to go to the eastern side of our home to get open air."

Evidence: The Defendants

20. Five witnesses inclusive of the first defendant gave evidence in support of the defendants' case. The defendants and their witnesses did not dispute that they conduct most of the impugned industrial activities at their premises, save for sandblasting, which they contend is done off-site. The defendants' witnesses all testified that the defendants have caused repairs and maintenance works to be carried out on Ali Rahaman Road. I take this part of the evidence to be aimed at showing that the defendants are compassionate and caring neighbours who maintain the road for the benefit of the other residents.

a) Ameer Mohammed:

- In paragraph 9 of their defence the defendants admit that the shed opposite the first claimant's home was constructed for welding and fabrication

works, automotive repairs and as a storage area. The defendants however deny that repairs of industrial tanks and sandblasting are ever done at their premises and assert that no sandblasting activities have been conducted on the premises since the entry of the 2008 consent order.

- At the start of the trial, counsel for the defendants indicated that his clients were not disputing that they carried out some of the activities complained of.
- This witness testified in his witness statement that in 2001 the second defendant was incorporated for the purpose of providing general contracting services such as welding, steel fabricating and plumbing. He said that the second defendant operates from Monday to Friday from 7:00 am to 5:30pm and on Saturdays from 7:00 am to 12:00 pm. The second defendant's premises situate at Ali Rahaman Road is used for the servicing and repair of the second defendant's vehicles and as a storage area for industrial materials.
- This witness further testified that repairs of industrial tanks and sandblasting are never done on the premises of the second defendant. All mobile compressors and lighting units are not used on the premises of the second defendant as this equipment is rented to clients on offsite projects. The electrical tools and welding machines which are used on the premises of the second defendant are powered by a Caterpillar Olympian diesel generating unit that was purchased for the purpose of noise reduction.
- It is his evidence that loaders and forklifts are not used along the Ali Rahaman Road because they are slow moving vehicles and are only used on the premises of the second defendant and on off-site projects. The first defendant said that he made improvements to Ali Rahaman Road for the benefit not only of himself and family but also for the residents of Ali

Rahaman Road. Due to the terrible condition of Ali Rahaman Road, which originally was a dirt road, it was impassable especially during the rainy season.

- He said that he widened Ali Rahaman Road and constructed an asphalt paved road. In 1998 he had his then employers (Super Industrial Services Ltd or “SIS”) pave Ali Rahaman Road which cost \$85, 833.64. He testified that it was deducted from his salary by monthly instalments over a period of 30 months. He further testified that in 2001 when the second defendant was incorporated they embarked on a second phase of work on Ali Rahaman Road, where asphalt was applied thereby covering 50% of the road.

Cross examination

- The first defendant in cross examination admitted that save for the sandblasting, the defendants conduct the industrial activities complained of. He admitted that before he constructed Shed No. 1 to conduct business he had not applied for approval from TCP to change the use from residential/agricultural to commercial/industrial. He further said that when he built the shed in 2001 he wasn't aware that he had to apply for permission. This witness says that where his existing house is standing he had applied for change of use, but he admitted to the claimants' senior counsel that he never produced the permission to the court. He also admitted that his evidence that TCP intended to change the use of the land from agricultural to commercial was not proven by any documentation.
- During further cross examination senior counsel questioned this witness about his application to the EMA, more specifically the differences between the activities and location of activities put on the application form on the one hand, and the actual activities and location of activities on the other hand. There were several discrepancies pointed out by the claimants'

senior counsel. Nonetheless, despite these discrepancies, the first defendant maintained that there was no deceit in the EMA application. He was further asked whether he had TCP approval to carry on spray painting at Ali Rahaman Road to which he responded “no”. Counsel further pressed him asking whether he was obligated to supply documentation regarding the approval for spray painting. He then said: “The approval is not granted as yet.” Further, the witness was unable to dispute the part of the report of the visit of the EMA which senior counsel put to him. It read: “...upon arriving at the site there was cutting and grinding which ceased after noticing the EMA vehicle.”

- This witness also conceded that the weld shop was intended to be permanent. Although it was established that the EMA referred to it as a temporary shed, the first defendant has never written to the EMA to say that he wants a permanent welding shop at that or any location. Further cross-examination of this witness established that the testing of air compressors is done on the compound and a fair amount of noise may emanate. He admitted to the court that the testing of compressors, and the activities of welding and steel fabricating may be conducted at the same time at different locations on the compound.

b) Sherard Mohammed:

- This witness testified that he has been a resident of Ali Rahaman Road for over 14 years. He said he is the neighbour of the first defendant and his house is near to the boundary of the workshop and one of the ‘lay down’ areas of the second defendant. Before the second defendant began operations the lands surrounding his house were lonely and there were no security lights. He further testified that he and his family have not been affected by the day-to-day operations of the defendants.

Cross examination

- In cross examination the witness confirmed that the lands along Ali Rahaman Road are designated as agricultural/residential by TCP and that the first defendant is the only person who operates an industrial business along Ali Rahaman Road or Ali Rahaman Extension Road.

c) Indira Jawahir:

- This witness testified in chief that she lives on Ali Rahaman Road. She too said that before the second defendant began operations, the area surrounding her house was poorly lit and lonely. Since operations began the defendants have maintained the area. She further testified that the daily operations of the defendants have not hindered her activities.

Cross examination

- This witness said in cross examination that she was approached by the first defendant who asked her to give a statement. Her initial belief was that it was sought in relation an incident involving her right to drive her motor vehicle along Ali Rahaman Road. She further testified that in 2005 Ali Rahaman Road was damaged but she did not know what caused the damage, though she lived there and stayed home every day. In light of the admitted industrial activities and the passage of heavy vehicles I find this evidence to be unbelievable.

d) Farisha Mohammed:

- This witness is the first defendant's sister. She is employed as a supervisor in the second defendant's business. She testified in chief that the first claimant once owned an automobile repair shop at his home along Ali Rahaman Road. He would do auto body works, mechanical repairs, spray painting, fabrication and welding.

- She further testified that the first defendant had the support of all the family members including the claimants when he began his industrial business in the neighbourhood.

Cross examination

- This witness admitted under cross-examination that the defendants conduct welding, painting and fabricating. She admitted that in welding a grinding machine is used and in fabricating you are required to knock the metal.
- This witness maintained however that sandblasting activities are never carried out on-site; rather, these works were contracted out.
- She said that the noise which came from the defendants' business is normal noise for any environment. She said further that she wasn't aware of any heavy vehicles, "only normal trucks, and they make normal noise." This witness noted that the Company's sandblasting jobs are given to a subcontractor known as RINKS and that she would have invoices to show this. She conceded however that these records were not put into evidence.

e) Imtiaz Ali

- This witness is the brother-in-law of the first defendant and he is employed by the second defendant as a mechanical and civil superintendent. He testified in chief that when the second defendant is hired for a job the necessary tools and equipment are taken to the various sites, and when it is completed these machines and equipment are taken to other project sites.

Cross examination

- Under cross examination this witness admitted that he worked off site. Nonetheless he was aware that the second defendant repairs small tools, small equipment and occasionally vehicles at the Ali Rahaman Road site. He admitted that some of the small equipment is “light in weight and some are more heavy.” He further admitted to counsel that all steel fabrication works are conducted at the compound at Ali Rahaman Road.

Submissions

21. The claimants submitted that Ali Rahaman road is not a public road but rather a private road constructed on lands owned by the second claimant. The second claimant developed his land as a residential development and sold and/or transferred lots to his family and other persons of his choice for residential development. He also granted these persons a right of way over the road to access their residential plots to and from Calcutta No. 2 Main Road. It is not disputed that the first defendant acquired an easement by prescription of the said right of way having used same for in excess of 16 years to access his residential lot. The claimant relied on the case of *Gopichan Singh v The Incorporated Trustees of the Tackveeyatul Islamic Association of Trinidad H.C.A No. 878 of 1998*. This case sets out the law regarding rights of ways, more particularly the rights which are created in relation to dominant and servient tenements.
22. The claimants further relied on the case of *Shairoon Abdool v B& L Insurance Company Limited H.C.A NO. 434 OF 2001* on the law of adverse inferences. It is their contention that the defendants have failed to produce relevant documentation and witnesses in respect of the first defendant’s contention that he took a loan in 1999 to pave Ali Rahaman Road. Additionally it was submitted that the defendants caused a nuisance along the road by the noise and smell generated by their vehicles and equipment which pass and re-pass over it. The defendants by their heavy equipment also cause obstruction.
23. The defendants submitted that when the second claimant sold his lands to the first defendant and other purchasers, he inserted a covenant prohibiting the rearing of pigs.

This insertion, they contend, demonstrates that he had knowledge of the need to insert a covenant to have restrictions as to the user of premises. Hence there were no covenants restraining a purchaser from conducting any business on their premises. Likewise there was no restriction on the use of heavy vehicles on Ali Rahaman Road.

24. The defendants submit that in the absence of any covenants as to the type of vehicles using the roadway and use of the land, the claimants cannot now seek to restrict the same. Further, the maintenance of the roadway was and is that of the defendants who kept same in good repair and condition. They further submitted that, as regards the nuisance, the claimants did not produce any expert evidence to support their claim of excess noise, fumes and vibrations. The defendants have favourable reports from the fire service department and the environmental department. The noise levels were found to be of a tolerable level.
25. The defendants also contended in their submissions that the fifth claimant did not live on Ali Rahaman Road and consequently there is no cause of action disclosed by her as against the defendants.

Issues to be determined

26. The following issues need to be determined:
 - a) Whether the defendants' use of their lands on Ali Rahaman Road for industrial purposes has interfered with the claimants' use or enjoyment of their land, thereby amounting to a nuisance.
 - b) Whether Ali Rahaman Road is a private road; and
 - c) Whether the defendants' use of vehicles and equipment for industrial purposes along Ali Rahaman Road amounts to a private nuisance.

Law

27. According to Clerk and Lindell on Torts, 20th ed., a private nuisance may be and usually is caused by a person doing, on his own land, something which he is lawfully

entitled to do. His conduct only becomes a nuisance when the consequences of his acts are not confined to his own land but extend to the land of his neighbour by:

- 1) Causing an encroachment on his neighbour's land, when it closely resembles trespass;
 - 2) Causing physical damage to his neighbour's land or building or works or vegetation upon it; or
 - 3) Unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land.
28. The case before me falls into the third category of nuisance. This form of nuisance involves interference with the enjoyment of land. The authors describe this category as, "the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves."
29. The authors of Winfield and Jolowicz on Tort, 18th ed. have written:
- "Generally the essence of a nuisance is a state of affairs that is either continuous or recurrent, a condition or activity which unduly interferes with the use or enjoyment of land. It is not necessary that there be any physical emanation from the defendant's premises. Noises and smells can be nuisances, but so, it seems can be otherwise inoffensive businesses. The mere presence of a business is not, however, a nuisance. Not every slight annoyance is actionable. Stenches, smoke, the escape of effluent and a multitude of different things may amount to a nuisance in fact but whether they constitute an actionable nuisance will depend on a variety of considerations, especially the character of the defendant's conduct, and a balancing of conflicting interests."

30. As mentioned earlier there is no absolute standard to be applied. It is always a question of degree whether the interference with comfort or convenience is sufficiently serious to constitute a nuisance. The acts complained of as constituting the nuisance, such as noises, smells or vibration, will usually be lawful acts which only become wrongful from the circumstances under which they are performed, such as time, place, extent or the manner of performance. The ordinary domestic use of premises cannot therefore constitute a nuisance, even though interference with the enjoyment of neighbouring premises is caused, if that interference results solely from construction defects for which the defendant is not responsible. It is the responsibility of the court to strike a balance between the right of the defendant to use his property for his own lawful enjoyment and the right of the claimant to the undisturbed enjoyment of his property.
31. In determining whether an act constitutes a nuisance the circumstances of the case ought to be considered. This would include the time of the commission of the acts complained of, the place of its commission, the manner of committing it and the effects of its commission. The authors of Clerk and Lindell, *supra*, at para 20-11, p. 280 say:
- “The discomfort must be substantial not merely with reference to the claimant; it must be of such a degree that it would be substantial to any person occupying the claimant’s premises, irrespective of his position in life, age or state of health; it must be an inconvenience materially interfering with the ordinary comfort, physically, of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people.”
32. The character of the neighbourhood is vital in considering the standard of comfort or convenience or living of the average man. In the landmark case of *Sturges v Bridgman* (1879) LR 11 Ch D 852 Thesiger LJ reasoned that what constitutes reasonable use of one's property depends on the character of the locality and that it is no

defence that the plaintiff came to the locality and met the nuisance. If the locality has been traditionally used for a particular purpose not amounting to public nuisance, then an action in private nuisance would likely fail. Thesiger LJ said:

“Whether anything is a nuisance or not is a question to be determined, not merely by an abstract consideration of the thing itself, but by reference to its circumstances; what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsley; and where a locality is devoted to a particular trade or manufacture carried on by the traders or manufacturers in a particular and established manner not constituting a public nuisance, Judges and juries would be justified in finding, and may be trusted to find, that the trade or manufacture so carried on in that locality is not a private or actionable wrong.”

33. The cases of *Wood v Conway Corporation* (1914) 2 CH 47 and *Halsey v Esso Petroleum Co Ltd* (1961) 2 ALL ER 145 are instructive on the issue of actionable nuisance.
 - a. *Wood v Conway Corporation*: the English Court of Appeal upheld the High Court’s decision restraining the defendants from carrying on works because it amounted to a nuisance. The defendants were owners of a gasworks undertaking for the supply of gas. In 1912, the defendant extended its operations. The defendant, in execution of its statutory powers, discharged noxious fumes and smells over the plaintiff’s land. The plaintiff applied to the court for an injunction to restrain the defendants from carrying on or permitting to be carried on upon their gasworks the business or undertaking of manufacturers of gas so as or in such a manner as by the discharge of noxious or offensive fumes or vapours to cause a nuisance or injury to the plaintiff’s property or to the plaintiff or his family. The court agreed that the gasworks discharged over the plaintiff’s property caused a serious, growing and permanent injury to

the plaintiff's premises; that the injury being of a continuous nature it was impossible to measure the damage thereby occasioned with any certainty; and the plaintiff was therefore entitled to the injunction he asked for.

- b. *Halsey v Esso Petroleum Co Ltd*: the plaintiff occupied a house in an area zoned for residential purposes. The defendant operated an oil distributing depot at adjoining premises which were situated in an area zoned for industrial purposes. The defendants' depot dealt with fuel oil in its light, medium and heavy grades, the oil being pumped from river tankers on to the depot and from the depot into road tankers. The plaintiff complained that the defendant's chimneys emitted acid smuts containing sulphate which damaged the paint work of his car and his clothes when he hung them out to dry. The depot emitted a pungent and nauseating smell which went beyond a background smell and was more than would affect a sensitive person, but the plaintiff had not suffered any injury to health from the smell. During the night there was noise from the boilers which at its peak caused windows and doors in the plaintiff's house to vibrate and prevented the plaintiff from sleeping. The defendants had attempted to reduce this noise by soundproofing the walls of the boiler house but it remained and it was more than trivial. Further during the night shift from 10:00 pm to 6:00am there was noise from road tankers which arrived and left the depot at points close to the plaintiff's house. The noise from the tankers was made partly on the public highway and partly in the depot itself. The court found that the defendants were liable to the plaintiff for (1) emission of acid smuts, (ii) in respect of nuisance by smell because the smell emanating from the defendant's premises amounted to a private nuisance, notwithstanding that there was no proof of injury to the plaintiff's health, for injury to health was not a necessary ingredient in the cause of action for nuisance by smell, (iii) in respect of private nuisance by noise from boilers and the road tankers when in the depot, in either

instance at night, because the noise was an inconvenience which materially interfered with the ordinary physical comfort of human existence according to plain, sober and simple notions among ordinary people, such as the plaintiff living in that particular part of Fulham, (iv) for the noise from road tankers at night on the public highway (a) as a public nuisance since the concentration of moving vehicles in a small area of the public highway caused special damage to the plaintiff whom it affected more than the ordinary members of the public (b) as a private nuisance, since the noise was directly related to the operation of the depot and it was not a prerequisite of private nuisance that the matter complained of emanated from the defendant's land so long as it affected the plaintiff's property and in the present case the noise from the highway materially interfered with the plaintiff's enjoyment of his house.

Resolution of issues and findings

- (a) Whether the use of the defendants' lands on the Ali Rahaman Road for industrial purposes has interfered with the claimants' use or enjoyment of their land, thereby amounting to a nuisance.

34. As pointed out earlier, this is a case of nuisance whereby one party is alleged to be unduly interfering with the comfortable and convenient enjoyment of his neighbour's land. The claimants have presented a claim that the defendants engage in the following activities:

- 1) Industrial activities on the defendants' lands along Ali Rahaman Road;
- 2) The passage and re-passage of heavy vehicles and equipment which generate noise, noxious fumes, vibration and cause damage to Ali Rahaman Road and discomfort to the home owners.
- 3) The obstruction of Ali Rahaman Road by the parking of heavy trucks and equipment and the cars of employees and customers.

These activities were said to have interfered with the claimants' use and enjoyment of the land in the following ways:

- a) These activities emitted offensive, noxious smoke, fumes, vapours and gases which polluted the air. They also produced noxious, dirty or sooty matter which spread and diffused itself over the dwelling houses and lands of the claimants;
- b) They caused excessive noise from the said activities which were made by the cranes, trucks, forklifts, welding plants, generators and compressors which were used for steel fabrication and for spray painting;
- c) They produced intensive lighting which was maintained by the defendants on their premises during the nights. This resulted in the surrounding areas of the claimants' homes to be brightly lit which adversely affected their sleep, studies and family life.

35. The defendants have not disputed that they are conducting industrial activities on their lands along Ali Rahaman Road. The cross examination of the first defendant and his witnesses proves that the defendants have established an industrial business and, save for sandblasting (which was halted as a result of the 2009 consent order), do in fact conduct the activities complained of. I cannot agree with the proposition that, because it does not emanate from the defendants' land, the nuisance created by the passage and re-passage of heavy vehicles and equipment along the Ali Rahaman Road cannot in law be attributed to them. In *Halsey v Esso Petroleum Co Ltd, supra*, the court found that the noise generated by trucks as they entered and left a depot amounted to a nuisance, even when the trucks were driving along a nearby public road. Knight Bruce VC quoted Devlin J in the case of *Southport Corporation v Esso Petroleum Co [1954] EWCA Civ 5*:

"It is clear that to give a cause of action for private nuisance the matter complained of must affect the property of the plaintiffs. But I know of no

principle that it must emanate from the land belonging to the defendant...I can see no reason why, if land or water belonging to the public or waste land is misused by the defendant, or if the defendant as a licensee or trespasser misuses someone else's land, he should not be liable for nuisance in the same way as an adjoining occupier would be."

36. The claimants' evidence of noise and vibrations generated by the defendants' on their lands along Ali Rahaman Road and in the passage and re-passage of their vehicles over the said road, supports a finding by this court of an actionable nuisance. Before the first defendant built Shed No. 1 in 2001 for welding, fabrication and automotive repairs, he obtained no approval. The first defendant in cross examination indicated that he was aware that he needed to apply to the TCP for permission to change the use of land from residential/agricultural to commercial/industrial. It seems to me that he knew that his conduct would lead to the discomfort of his neighbours and he was also aware, despite his evidence on this point (which I did not consider credible), that he needed planning permission for a change of use from the TCP.
37. The defendants' witness, Farisha Mohammed, conceded that, save for sandblasting, the impugned activities are carried out on the site. She further admitted in cross examination that in welding a grinding machine is used and in steel fabricating the metal must be knocked. The second defendant is a company involved in substantial industrial activities and large scale projects. The noise (grinding and knocking of metal) and fumes (whether generated by the spray painting or the repair of vehicles, or the operation of generators) is continuous and more than barely tolerable. I accept the evidence of the claimants' witnesses on this point.
38. The claimants have given evidence that the vibrations, noises and noxious fumes have adversely affected their use and enjoyment of their property, both inside and out. I accept the evidence of their discomfort and do not require their evidence to be corroborated by an expert's report. The activities have not been denied. It is self-evident that heavy vehicles and equipment will generate fumes and that welding and steel fabrication will generate noise, especially when the proximity of the activities to

the claimants' home is taken into account. Even if it was not self-evident I would still have believed the claimants' witnesses. They provided direct testimony of the injurious extent of the noise and fumes. The evidence of the claimants' witnesses was convincing, credible and was not disturbed in cross-examination. I do not feel any assurance that the report obtained by the defendants (which suggests that the noise level is tolerable) is a sufficient ground, by itself, to disbelieve the claimants' sworn testimony. The writers of the report were not summoned by the defendants and questions have arisen (in the very report relied upon by the defendants) as to whether the equipment was operational when they visited.

39. The character of the neighbourhood comprised in the Ali Rahaman lands, is, save for the defendants' parcels, a wholly residential development. While it is true that outside of this neighbourhood there are two commercial or industrial businesses, none are on the massive scale of the defendants' undertakings and none are as proximate. It appears that the defendants have attempted to turn a quiet residential neighbourhood into a busy industrial park. They have done so with a view, it seems to me, of achieving financial success regardless of the consequences to the other residents. I should add that this is my impression based upon the evidence as a whole, and is not a finding *per se*.
40. I have addressed my mind to the time the acts complained of are committed, the locality of its commission, the manner in which it is committed and the effects on the claimants. I believe that to carry on such activities in the neighbourhood along Ali Rahaman Road clearly amounts to a nuisance. They amount to a substantial interference with the claimants' rights. This is an interference that would be injurious to any citizen of Trinidad and Tobago, living in such a neighbourhood, and the court has been careful to apply plain and sober standards in assessing the quality of the injury. Following *Halsey v Esso Petroleum Co. Ltd* I have accepted the claimant's evidence of noxious fumes without the need for medical reports.
41. I have also accepted the evidence of the blockages created by the parking of vehicles along the road, particularly as testified to by the fifth claimant.

(b) Whether Ali Rahaman Road is a private road

42. The claimants contend that Ali Rahaman Road is a private road that was constructed on lands owned by the second claimant. The claimants say that it was maintained by the second claimant and it was only due to complaints from residents as to damage caused by the traversing of heavy vehicles and equipment, that the defendants fixed it. The defendants contend that the claimants have no right to enforce against the defendants any restrictions on the use of the road.
43. Ali Rahaman Road is not a public road. According to the Road Ordinance, Chapter 16 No. 1 “public road includes any highway by land dedicated whether by user or by grant express or implied or by proclamation of the Governor to the public use, and whether for wheeled, bridle, or foot traffic....”
44. The Ordinance defines a public road as a highway dedicated to the public use and in so doing sets out four ways which a ‘way’ can be dedicated to the public use. These are: (1) by user, (2) by express grant, (3) by implied grant and (iv) by or under statute by proclamation of the Governor. It appears clear that by the terms of the Road Ordinance the road must be dedicated to the public use by one of the ways contemplated. This was not the case with the road in question.
45. Adopting the principle laid down by Ventour J in the case of *Gopichand Singh v The Incorporated Trustees of the Tackveeyatul Islamic Association of Trinidad* (supra) it seems to me that the defendants have acquired a right of way over Ali Rahaman Road since the first defendants’ parcel of land may be deemed the dominant tenement. This does not mean that he ought to use the ‘way’ in whatever manner he deems fit. The learning of James LJ in the case of *Wimbeldon and Putney Common Conservators v Dixon* 24 WR 466 is instructive on this. James LJ noted:

“...I am quite satisfied that the true principle is... that you cannot from the evidence of user of property in its original state infer a right to use it whatever for which or for whatever purpose that the property may be changed. That is to say, if there be a right of way however general or for

whatever purpose to a field, the person who is the owner of the field cannot from that say: ‘I have a right to turn that field into a manufactory or into a town or tan yard and then use the right of way for the purpose of the manufactory or town so built...’”

46. I therefore cannot agree with the defendants’ submission that since the user of Ali Rahaman Road included the use by trucks to transport building materials for the homes along the road it ought to be open to them to use this road as a constant passage of heavy vehicles and equipment for the industrial purposes to which they have now put the land. The defendants have unilaterally changed the use of the land, thereby increasing the burden on the right of way.

(c) Whether the use by the defendants’ vehicles and equipment for industrial purposes along the Ali Rahaman road amounts to a private nuisance.

47. There is conflicting evidence as it relates to the defendants’ vehicles that traverse the Ali Rahaman Road. The claimants gave evidence that heavy vehicle and equipment would pass along the road way but the defendants contended that only trucks pass along the Ali Rahaman Road. It is their evidence that bulldozers and excavators cannot be used on the paved road as they will damage it and that forklifts are only used on the work areas of the second defendant. They deny that they caused damage to the road.
48. In assessing any conflict of evidence I must have regard to the learning laid down by the Privy Council in *Reid v Charles Appeal No. 36 of 1987*. There it was noted that “...the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses; it is important for him to check that impression against contemporary documents, where they exist against the pleaded case and against the inherent probability or improbability of the rival contentions...”
49. The second claimant adduced photographs depicting heavy equipment and vehicles stationed at the defendants’ property. There was one photograph in particular which showed a diesel engine being cleaned. When senior counsel questioned the first

defendant as to whether he operated diesel welding equipment on the compound he said no. There was also photographic evidence showing steel beams in position for sandblasting, but the first defendant insisted during cross examination that that was in 2000/2001 when sandblasting was done on the compound. No corroborative evidence was adduced by the defendants to support this contention. I do not doubt that the operations at the defendants' property causes loud noises and fumes to affect the claimants. I also do not doubt, and I hold that the claimants have satisfactorily proven that the heavy vehicles which the claimants say traverse Ali Rahaman Road do in fact do so and cause consequential damage to the road and discomfort to the claimants.

50. An evaluation of the evidence of the witnesses must necessarily involve an appraisal of their truthfulness and credibility. I was particularly disappointed by the evidence of the first defendant. He seemed to me to be generally indifferent to the discomfort that his activities created, and instead (if the questions posed by his counsel to the claimants form part of his instructions) attribute their legal action to envy of his financial success. I certainly did not get that impression from the evidence of the claimants and their witnesses. The first defendant gave sworn testimony that he personally took a loan to fix Ali Rahaman Road and that the sum was deducted from his salary at SIS for over thirty months. This story completely fell apart during his cross examination. The documents he produced were irrelevant to road repair and disturbing issues arose as to the authenticity of a letter from his previous employer on which he relied. The issue of authenticity was raised by his former employer. His evidence on this aspect of the case was wholly unbelievable. It was untruthful, in my opinion. In general terms, this witness lacked credibility and there was little by way of documentation to reverse my adverse impression of his demeanour or credibility.
51. The defendants have counterclaimed for injunctions to prevent the claimants from going onto their lands or interfering with their activities. Evidence in support of this counterclaim was completely inadequate and does not appear to me to have been actively pursued.

52. During case management the Court convened at Ali Rahaman Road on the invitation of the parties. I made observations about the scale of the industrial capabilities of the various sites, although on the day in question most of the activities were, unsurprisingly, not being carried out. It appeared to me from my observations that the defendants inserted into a quiet residential neighbourhood a large scale industrial enterprise that entirely altered the character and peacefulness of the neighbourhood. This is no mere small scale operation. It is a massive undertaking, covering thousands of square feet in plant, work and storage yards, and offices. The fact that it is there is not in dispute. Its mere presence does not by itself create a nuisance. The question is whether the activities carried out from the premises amount to a nuisance and whether the vehicles that pass to and from the defendants' premises create a nuisance. In my view they do.
53. During the site visit the court examined the alternate access road at Ramkalia Road. The EMA had, as one of its conditions, designated that this road be used as an alternate access point. The condition was never fulfilled. The defendants' contention at the trial was that the entrance to Ramkalia Road off of Calcutta No. 2 Road (the main road) was too narrow for heavy equipment to turn into. The defendants however never produced any engineering evidence to support their contention that the entrance was inadequate or incapable of being altered. I can only assume that in formulating its recommendation for an alternate access road the EMA technicians would have considered it as attainable. For my own part I do not see the Ramkalia Road entrance as posing such an engineering impossibility as the defendants would have me believe. Of course, I am not an engineer. It would have been useful for the defendants to produce such engineering evidence. They adduced no engineering evidence to explain why the alternate roadway was an impossibility. In this day and age, when mountains can be moved, I do not see why a road cannot be widened, or why, with care, vehicles cannot slow down and enter an existing two-lane roadway. In short, as I see it, the defendants have the option of an alternate access to their premises that they have either refused or are unwilling to genuinely explore.

Damages

54. Damages by themselves are not a sufficient or adequate remedy as it is not possible with any degree of certainty to mathematically measure them. This is a case in which an award of both damages and an injunction is necessary: *Wood v Conway (1912) WLR 2644*. Damages are to be assessed by reference to the loss of utility or amenity: *The Law of Nuisance*, John Murphy, p 22, para 6.2. In arriving at a proper assessment of damages I have had regard to the judgments in *Rasheed Ali v SIS, CV2006-02256*, Rahim J; *Suresh Churan v Shiva Durgasingh, CV2009-01794*, Gobin J; and *Cargo Consolidators Agency Ltd v Tarmac Construction, HCA No.s889 of 1996*, Stollmeyer J. I have also taken into account that the defendants conduct their industrial activities on lands which are plainly designated for agricultural/residential use and that all other lands along Ali Rahaman Road are used by their owners for residential and/or agricultural use. The evidence is clear that the defendants have pursued large scale industrial activity within this neighbourhood without sufficient or any consideration or compassion for the comfort or enjoyment of the claimants, some of them quite aged. Among the six claimants, all live on Ali Rahaman Road except the fifth claimant who owns land there but moved to Chaguanas in 2005 (before the action was filed) and the sixth claimant who migrated to the United Kingdom in 2011 (three years after the action was filed). I was today informed that the third claimant had died on 14 May 2014.

Disposition

55. In the circumstances, and in light of my findings, I make the following orders:
- (a) Judgment for the claimants against the defendants on the claim.
 - (b) A declaration that the defendants by themselves, their servants and/or workmen or otherwise howsoever are not entitled to use or invite any person to use Ali Rahaman Road otherwise than for the passage of light motor vehicles, but this declaration does not prevent the defendants' use of heavy motor vehicles along Ramkalia Road to enter their premises at Lay

Down Yard No. 2 and to drive directly across Ali Rahaman Road using the defendants' private road to get to Lay Down Yard No. 3, and the shed, and store areas as shown and marked with a dotted line in appendix B to this judgment;

- (c) An injunction restraining the defendants whether by themselves, their servants and or agents and or workmen from using Ali Rahaman Road otherwise than for the passage of light motor vehicles, but this injunction does not prevent the defendants' use of heavy motor vehicles along Ramkalia Road to enter their premises at Lay Down Yard No. 2 and to drive directly across Ali Rahaman Road using the defendants' private road to get to Lay Down Yard No. 3 and the shed, and store areas as shown and marked with a dotted line in appendix B to this judgment;
- (d) An injunction restraining the defendants, whether by themselves, their servants and or agents and/or workmen or otherwise howsoever from continuing their acts of nuisance namely:
 - (i) Conducting any sandblasting or spray painting, welding or steel fabricating at their premises;
 - (ii) Using any flood lighting at any of the defendants' premises that illuminate or shine on any of the claimants' premises;
 - (iii) Using any equipment, machines, motors or engines that generate noise in excess of the standards applied by the EMA for residential neighbourhoods or which produce noxious or foul smelling smoke, fumes or dust.
- (e) The declaration and injunctions shall be suspended for a period of six months from the date of this order.
- (f) During the suspended period the defendants are prohibited from (i) conducting any sandblasting or spray-painting whatsoever; (ii) Undertaking any welding or steel fabricating work except during the hours of 8:00 am to 4:00 pm on weekdays; (iii) using external lighting that illuminates the claimants' premises after 6:30 am; and (iv) using, whether by themselves, their servants or agents, any heavy motor vehicles or other heavy equipment along Ali Rahaman Road except during the hours of 8:00 am to 4:00 pm on weekdays.

- (g) The defendants shall pay damages for nuisance to the first, second, third and fourth claimants, assessed in the sum of \$60,000.00 per claimant and to the sixth claimant assessed in the sum \$40,000.00.
- (h) The counterclaim is dismissed with costs.

56. I will now hear counsel on the quantification of costs of the claim, the counterclaim and the earlier application for interim injunctive relief.

James Christopher Aboud
Judge