**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No**. T 20 of 1992**

BETWEEN

**EMMANUEL WILLIAMS**

Applicant/Defendant

AND

**RITA JAMES**

Respondent/Plaintiff

Before the **Honourable Madame Justice Mira Dean-Armorer**

**Appearances:**
Ms. Cherisse Bengochea holding for Mr. Vashiest Maharaj, Attorney-at-law for the Respondent/Claimant
Mr. Rondell Donawa, Attorney-at-law for the Applicant/Defendant

## REASONS

1. By summons filed on September 20, 2012, under the Rules of the Supreme Court 1975, the Defendant, Emmanuel Williams applied for a variation of a final order which had been made in these proceedings on March 30, 1993, by Justice Permanand (as she then was).
2. On June 13, 2013, I granted the order as sought pursuant to the "slip rule" at Order 20, Rule 11, ***Rules Supreme Court 1975***. My reasons for so doing are set out below.

***Facts***

1. In 1992, Rita James instituted these proceedings against the Defendant, Emmanuel James. She sought damages for wrongful entry on lands situate in the Parish of St. Patrick at Tyson Hall in Tobago,
2. Later that year, the Defendant filed a Defence and a Counterclaim. By his counterclaim (as amended), the Defendant sought a declaration that he had acquired a possessory title to the subject land, situate at Bon Accord, in the Parish of St. Patrick, as well as a permanent injunction restraining the Plaintiff from entering or trespassing on the Defendant's land.
3. The Trial was heard by Permanand J (as she then was) on March 19, 1993 and the learned Judge reserved judgment to March 30, 1993.
4. On March 30, 1993, Permanand, J, dismissed the claim and gave judgment on the Counterclaim. The learned Judge made these orders:

> *" The Court Doth Order that the Plaintiff's claim do stand dismissed out of this Court and that the injunction granted on the 30th day of January, 1992 be and the same is hereby discharged.*
>
> *And on the Counterclaim this Court doth Declare that the Defendant has acquired a possessory title to the Western portion of land situate at Bon Accord in the Parish of St. Patrick in the Island of Tobago bounded on the North by lands of Henry Cooke, on the South by land of B Potts on the East by lands of Matthew Wills and on the West by Fourth Street*
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> *AND IT IS ALSO ADJUDGED AND DIRECTED that an* ***INJUNCTION*** *be and is hereby granted restraining the Plaintiff by herself servants or agents from entering and trespassing on the Defendant's part of the land or interfering with the Defendant's use and enjoyment of the said lands.*
>
> *AND IT IS FURTHER ORDERED that the Plaintiff do pay the Defendant his costs on the Claim and Counterclaim certified fit for Advocate Attorney*

*AND the parties are to be at liberty to apply"*

5. In 2012, the Defendant filed a Summons seeking a variation of the order of Justice Permanand to reflect a change in the description of the land. The Defendant sought the following change in the description of the land:

> *"the western portion of land situate at Bon Accord in the parish of St. Patrick in the Island of Tobago measuring 75 x 100 feet bounded on the North by lands of Henry Cooke, on the South by Village Street, on the East by lands of Matthew Wills and the West by lands of Rawl Benoit and Carlton Gray."*

6. In support of the application was the affidavit of the Defendant, Emmanuel Williams. Mr. Williams deposed that the boundaries, as stated in the Order of the learned Justice Permanand were incorrect and that he had since then retained a land surveyor to conduct an up to date survey of the lands. The cadastral sheet was annexed to his affidavit as ***"E.W.2"***. The adjoining lands to the South and to the West were, according to Mr. Williams, incorrectly stated in the Order.

7. The hearing of the Summons was first listed for November 29, 2012, when I gave directions for the filing of written submissions. On January 15, 2013, attorney-at-law for the Defendant filed written submissions. However, learned attorney-at-law for the Claimant, Mr. Maharaj failed to comply with the Court's order for written submissions. At the hearing of March 28, 2013, Mr. Maharaj indicated that no written submissions would be filed and attempted to make oral submissions, saying that he was relying on the authorities cited by Mr. Donawa. I refused the application to make oral submissions. It was my view that it would have been unfair to allow one party to make oral submissions, when the opposing party had complied with the order for written submissions. It was my view that to do so would have been to create an uneven playing field. I ordered the plaintiff to pay to the Defendant, costs in the sum of $1500.00 as a sanction imposed for refusal to comply with the Court's order. The matter was adjourned to the 13th June, 2013, for decision.

8. At the hearing of the June 13, 2013, the following order was made:

*" 1) Leave to the Defendant/ Applicant to amend the summons filed on the 20/09/12 by inserting in the last line of the main paragraph the words "more particularly show in the exhibit "E.W.2" annexed to the Affidavit of Emmanuel Williams filed herein on the 20/09/12.*

*2)Order in terms of the summons filed on the 20/09/12 and amended pursuant to the order of Madam Justice Dean Armorer made on the 13/06/13.*

*3)Amended summons to be filed and served in proper form on or before 17/06/13*

*4) Liberty to Apply*

*5)Court confirms order of the payment of costs of $1,500.00 made on the 28/03/13. No further order as to costs.*

***Submissions and Law***

9. In support of the Defendant's application for variation, learned attorney-at-law, Mr. Donawa relied on Order 20, rule 11 of the ***Rules of the Supreme Court 1975*** which provides:

   *"Clerical mistakes in judgments or order arising herein from any accidental slip or omission, may at any time be corrected by the court on motion or summons without an appeal".*

10. In this regard, Mr. Donawa relied on the case ***Royal Bank of Trinidad and Tobago v. Wears[1],*** in which Justice of Appeal Corbin considered an application under Order 20, Rule 11 ***Rules of the Supreme Court 1975***, for variation of a consent order. Justice of Appeal Corbin noted that the applicant for the variation, had conceded that the order as drawn up by the Registrar of the Supreme Court, accurately reflected what was agreed. The learned Justice of Appeal, considered the opposing argument that Order 20, Rule 11 only empowered the Court to correct an order inaccurately drawn up. Corbin JA disagreed with the opposing argument and referring to earlier authorities, had this to say:

[1] (1980) Court of Appeal Civil Appeal No 119 of 1969

*" The decision in these cases make it clear that on an application under Order 20, Rule 11, the Court may exercise its inherent jurisdiction to vary or amend an order to free it for any ambiguity and make its meaning clear when it is not".*[2]

11. Justice of Appeal Corbin, cited and relied on ***Thynne v. Thynne***[3], in the course of his Judgment. In that case, the Court held that there was an inherent jurisdiction to amend an order of the Court after it had been drawn up and entered, so as to make the position under it clear and free from ambiguity. In the course of the judgment Lord Justice Singleton applied this dictum of Lord Penzance in ***Lawrie v. Lees***[4]:

*" I cannot doubt that under the original powers of the Court, quite independent of any order that is made under the Judicature Act, every Court has the power to vary its own orders which are drawn up mechanically in the registry or in the office of the Court - to vary them in such a way as to carry out its own meaning, and where language has been used which is doubtful, to make it plain"*[5]

12. Justice of Appeal Corbin referred as well as ***Hatton v. Harris***[6] where the Court of Appeal considered an application for the variation of the date of marriage, as stated on a written up decree nisi and decree absolute. The written up orders accurately reflected the order of dissolution. However, the Petitioner filed a Summons to correct the date of marriage which had been wrongly stated in the Petition. Significantly, the Summons was not heard by the Judge who granted the decree nisi. The Summons was refused and the Petitioner appealed. Lord Watson had this to say:

*"When an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the judge obviously meant to pronounce. The*

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[2] (1980) Court of Appeal Civil Appeal No 119 of 1969 at page 7 of the judgment
[3] (1955) 3 All ER 129
[4] (1881) 7 App. Case 19.34
[5] Lawrie v. Lees (1881) 7 App.Cas. 19 Pages 34 and 35 quoted by Singleton LJ in Thynne v. Thynne at page [1955] 3 All ER 129 at 138A
[6] (1892) App Cas. 547

*correction ought to be made upon motion to that effect, and is not matter either for appeal or for rehearing"*[7]

Ultimately, it was held:

*"(ii) (Hodson LJ dissenting): the court had power under its inherent jurisdiction to amend an order of the court after it had been drawn up and entered, so as to make the position under it clear and free from ambiguity, although that power did not extend so far as to allow the court to amend an effective part of its order, eg, it would not enable the court to amend a decree of divorce in relation to a question of status or proof of a matrimonial offence (Hampson v Hampson ([1908] P 355) approved; dictum of Lord Penzance in Lawrie v Lees (1881) (7 App Cas at p 34) applied); accordingly in the present case, the court being satisfied that the lawful marriage between the petitioner and the respondent was solemnised on 8 October 1926, the decrees nisi and absolute would be amended".*

***Decision***

13. I considered the Summons of September 20, 2012, and the supporting affidavit of Emmanuel Williams. I was satisfied that the variation as sought, was not one of substance, but was required only to correct the names of adjoining land owners to the South and to the West. I considered that the order for variation, if granted, would have no effect on the land area of the subject land and would therefore have no effect on the rights of the respective parties. The single purpose of the variation was to correct the order to reflect the correct names of adjoining landowners on two boundaries.
14. I was guided by the words of Lord Watson in ***Hatton v. Harris*** and held the view that the correction ought properly to be upon a summons and that an appeal or a rehearing would have been inappropriate, since no change of substance was being sought.

[7] Hatton v. Harris ( [1892] A.C. 547 Page 560

15. I also held the view that there was no evidence of any intervening factor which would have rendered it inexpedient or inequitable to correct the errors as to the adjoining land owners. ***See Hatton v. Harris*** per Lord Watson at p.560.

16. Accordingly, I granted the variation as sought. Having awarded costs against the Plaintiff in the sum of $1500.00 for failure to comply with the Court's direction, I did not make any further order as to costs.

Date of Delivery: April 25, 2019

Justice Mira Dean-Armorer