

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2007- 01224**

**BETWEEN**

**CLARENCE ASHBY**

**CLINTON ASHBY**

**WAYNE ASHBY**

**LYNTON ASHBY**

**CLAIMANTS**

**AND**

**STEPHEN MOSES**

**(LEGAL PERSONAL REPRESENTATIVE OF THE ESTATE OF RUTH BURKE, DECEASED) DEFENDANT**

**BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH**

**APPEARANCES:**

**MR MARTIN GEORGE FOR THE CLAIMANTS**

**MR RONNIE BISSESSAR AND MS JESSICA MAICOO FOR THE DEFENDANT**

**DATED: 27 March 2013**

## JUDGMENT

1. Clarence Ashby says he bought a house standing on a plot of land of about 7,500 square feet in 1966 from one Stanley Burke. He paid the sum of \$3,500.00. This plot was part of a larger parcel of about 3 acres. He began living in the house which he says he has lived in since then. His three sons lived with him. They are the other claimants. He erected another structure within the plot and gave permission to two of his sons to occupy it. They are Wayne and Lynton.
2. He paid land rent to Stanley Burke until Burke's death in 1975. Then he never paid rent again. He continued to occupy the plot of land. In 2005, he received a letter from an attorney at law acting for the defendant offering to sell the plot of land on which the two structures stood for the price of \$112,000.00 since the defendant said this was half the market value of the property.
3. The claimants say that from Saturday 7 April to Monday 9 April 2007, the defendant brought men with cutlasses and sledge hammers and demolished the structures on the land, which were concrete. This was the claimants' homes. The men also destroyed furniture and let loose about 4 dozen common fowl which the claimants were rearing on

the land. The defendant then fenced the area and erected no trespassing signs. The claimants brought this claim for possession and damages.

4. The defendant is executor of the estate of Ruth Burke, who was his grandmother and who was married to Stanley Burke.
  
5. The defendant says when Stanley Burke died he became half owner of the parcel of land. He says when he became executor of the estate in 1989 he went to the occupiers and introduced himself as the new owner. There were 13 tenants on the land. The first claimant, he says, did not live on the land. The first time he met the first claimant was in 1999. As far as he knew the first claimant lived at Jerningham Junction, Cunupia.
  
6. He said he received information and documents from his mother which showed the claimants were not tenants on the land. He said the claimant erected a second structure on the land. He did not give him permission to do so. He sent a letter to the first claimant dated 10 May 2006 asking him to break the second house. He sent another letter asking him to leave the house within 90 days. When the claimant refused, he decided to remove him from the second house.

7. The defendant employed a Kurt Prudhomme, a licensed bailiff, to take possession of both houses. On 7 April 2007, he was present about 12:45 pm when he saw Prudhomme and 11 workers there with 2 police officers. He said Prudhomme and the workers assisted persons to bring items out of the houses. A truck came and transported the claimants' belongings away. It was driven by a PC Smith who is the brother of the fourth claimant's wife, who was also present.
  
8. The defendant said the second house was demolished and there were no items damaged or destroyed. Everything had been brought out before from the houses. A fence was afterwards erected.
  
9. The claimants called witnesses. The defendant gave evidence. He called his mother, Christianna Burke, Stanley Burke's daughter, to give evidence.
  
10. Three witnesses called by the claimants bear special mention. One was Mr Omar Ali, a secondary school principal, who said he knows the first claimant and knew him occupying the land in question from 1966. Mr Imran Mohammed, a building contractor, knew the claimant and knew him to be living in the house opposite him for over 35 years. He knew that the first claimant built a second house on the land. These were of wall construction and each was a 3 bedroom structure with modern amenities. PC

Adrian Smith said he was present on the scene and asked the bailiff to show him the eviction notice and he showed him none. He also said he did not remove any items from the premises and there was no lorry to move things away.

11. The first issue to be decided was whether the first claimant had purchased the house from Stanley Burke in 1966. He produced no receipt. The defendant gave no evidence other than hearsay assertions to the contrary. I accepted the claimants' evidence on this matter on a balance of probabilities. In cross examination, the first claimant said he had paid \$5,000.00 for the house. He was pointed to his pleadings and other documents that he had asserted \$3,500.00 before. I accepted his explanation that he made a mistake on this matter. Further, I accepted his evidence that he made improvements to the house. It is also not unrealistic to assume that he would not have kept the receipt for so long. He always occupied the house. His neighbour knew him to be living there for over 35 years. So did Mr Ali. Both of these witnesses can be seen to be independent. It would be odd if he was occupying this house for so long and no one sought to demand rent from him for the house or sought to remove him until the defendant did if he had not purchased it as he says. I did not find the first claimant was undermined on cross examination on this point. His evidence was clear and categorical. Christianna Burke did not know much about the land. She didn't even know there were 2 structures on the land. The defendant knew even less.

12. The next issue concerned the land and whether the land was rented from Staley Burke and if the claimant stopped paying rent in 1975. I again accepted the claimants' evidence on this matter on a balance of probabilities. The defendant's evidence was to deny he was a tenant. But at one time he thought he was a tenant. As late as 24 November 2006, the defendant had written to the first claimant about outstanding rent and the unauthorised structure on the land. His mother gave no evidence in her witness statement on that issue except to say the claimant was not one of the registered tenants. In any event, it is clear that the first claimant was in occupation of the plot of land since before 1975. If he had stopped paying rent he would either have become a tenant holding over or if no rent had been collected for over 16 years and no issue taken with his undisturbed occupation, he would have been entitled to say that the owner's title had been extinguished.

13. I find, however, that he was a tenant and had stopped paying rent after Stanley Burke died in 1975.

14. The next issue concerned the defendant's entitlement to enter upon the lands and to take it forcibly in the manner in which he did. I have already determined that the first claimant had purchased the house from Stanley Burke. I also accepted his evidence which was supported by other evidence that he erected or gave permission to his sons

for a second dwelling to be built within the area of the 7500 square feet of land that he occupied.

15. I preferred the evidence of the claimants on a balance of probabilities of how the agents of the defendant came onto the land and took possession of it. The defendant's evidence was evasive, inconsistent, incredible, and completely unbelievable. I considered Mr Ali, Mr Mohammed and Ms Jennifer Ashby to be believable and reasonable witnesses and I accepted their testimony which was generally supportive of the claimants' version.

16. The defendant spoke of wanting the houses disabled so the claimants could not live there. What the photographs showed was the demolition of two substantial concrete structures in such a manner that no one could occupy them afterwards.

17. The defendant trespassed onto the claimant's house and the house he had built on the land for his sons. He made those houses uninhabitable and destroyed them for all intents and purposes. He was not justified in so doing. He also chose to use self help rather than seeking an order of the court.

18. The next issue then concerns what level of compensation should be awarded to the claimants. Now, the claimants were put out of possession of the premises on the weekend of 7 April in 2007. A fence was erected by the Tuesday. One consequence of this would have been the difficulty of getting someone to value the destroyed items. There is also some evidence that some items were salvaged and taken away and that not all of the items were destroyed. This came from two witnesses for the claimants, Jennifer Ashby and Adrian Smith, whom I accepted as truthful witnesses. Smith spoke of items being moved in a yellow truck which can be seen in one of the photographs.

19. Each claimant can be said to have put in his witness statement an estimate of items lost with values attached to the items. This had to be looked at with some circumspection especially after they were tested in cross examination. The Raymond and Pierre valuation ascribed a value to the lands but curiously omitted to place a value on what was expressed to be a vandalised dwelling and an annex on the land. The first claimant made a claim for \$300,000.00 and \$350,000.00 respectively for the structures in their amended statement of case. However, no evidence from a valuator was brought concerning what value could be attributed to dwellings of the type in question. The first claimant said the structures were concrete, 3 bedrooms with living, kitchen and dining spaces as well as washroom facilities.



20. The court must adopt a practical approach to these matters. This is a case where the defendant came like a thief in the day. There was no notice as such. There was as far as the witnesses testified and as the photographs show a full and substantial demolition of two substantial structures that formed the dwelling of the claimants. They would have had no way of preparing for this to happen. At the same time, the claimants (and their previous attorneys; not the present attorney who came into the matter at the trial and was handicapped by what was not done) could have advanced evidence from an appropriate valuator to give the court a good idea of what would be the replacement costs for homes such as these. The court has to do the best it can in the circumstances taking account that these were concrete structures with all living amenities.

21. For the demolition of the houses I would order that the defendant pay the first claimant the sum of \$100,000.00 in the round. The photographs tell a story and show extensive demolition of the homes. The defendant himself said his purpose was to “disable” the houses; in effect, to make them uninhabitable. In the context of the damage done, this is a very conservative award while not nominal in the circumstances.

### **Other Orders**

22. The first claimant is entitled to a declaration that he was a tenant of the subject lands comprising approximately 7500 square feet as described in the statement of case.

23. This demolition was done in as high handed a manner as could have happened. A bailiff was employed to dispossess the claimants and destroy their homes. No court order was obtained. The defendant was engaging the services of an attorney-at-law, Mr Lloyd Vincent, beforehand. Happily for Mr Vincent, the defendant said the action taken was not consistent with any advice given by his attorney to him. Armed police officers were brought in. This was done in the presence of minor children of the homes. Mr Mohammed, the next door neighbour, said the demolition to him was disgraceful to look at. Having brought in a valuator, it appears the defendant had plans for the land. This is an appropriate case for the award of exemplary damages. Considering the authorities submitted by the claimant, in my view a reasonable award is the sum of \$50,000.00. The actions of the defendant were high handed and oppressive.

24. Wayne Ashby gave an estimate of \$54,325.00 in lost items. Lyndon Ashby's estimate was \$64,340.00. Clinton Ashby's estimate was \$33,450.00.

25. These witnesses were cross-examined. It was clear from the cross examination there was both guess work and exaggeration of the claims made. The items appeared to be a

mix of personal and household items and work related items. For example, Lyndon made a claim for 8 microwaves, which he had for parts or to repair. There was also evidence that some items were taken away from the premises. It is impossible to say which items were left and which were taken away. But looking at the matter sensibly it is also clear that there were items which would have been lost or destroyed. Further, I find that the claimants lived on the premises. They were also working. Wayne lived with his wife and children. They would obviously have items incidental to running a home such as food, clothing, appliances, and conveniences. Their evidence is that most of these were destroyed or damaged and were unsalvageable. To that extent I accepted these witnesses in their evidence.

26. The best the court can do in all the circumstances is to make an award of nominal damages in respect of these items. But nominal damages must be seen in the context of the overall claim. I will award claimants 2, 3 and 4 the sum of \$20,000.00 each. The counterclaim is dismissed.

27. Before concluding I would be remiss if I did not make a comment about the events of that weekend when the claimants were dispossessed of their home. The evidence is that armed police officers were present witnessing and overseeing the demolition. Unfortunately, neither the officers involved nor the State were made parties to this claim. A bailiff was acting in concert with police officers to forcibly exclude an elderly

gentleman, his adult sons and their children and spouses. There was no court order. This was a clear case of 'self help' being used. The police allowed themselves to be involved in what was a private dispute without a court order to remove the occupants. This is both dangerous and unacceptable. It does nothing for the confidence that ordinary citizens should have in those who are entrusted to uphold law and order and keep the peace. Police officers must be more circumspect and discerning in the manner in which they seek to intervene in disputes of this nature between citizens.

28. Interest is to run on the award of damages for trespass (\$100,000.00 for the first claimant and \$20,000.00 each for the other claimants) at the rate of 3 percent per annum from the date of the incident on 7 April 2007 to date of judgment. The defendant must pay each of the claimants their costs of this claim on the prescribed scale.

Ronnie Boodoosingh

Judge