

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2014 – 00564**

**Between**

**Cheryl Lawrence**

**Rose Pierre**

**Sonia Paul**

**Claimants**

**And**

**Edan K Properties Ltd**

**Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Mr F. Scoon for the First and Second Claimants

The Third Claimant in Person

Mr F. Hosein instructed by Mr R. Thomas for the Defendant

Date: 11 May 2016

## **REASONS (Edited Oral Judgment)**

1. These claims concern lands located at South Oropouche, which, from the evidence, has attracted a large number of squatters over the years. These lands were originally the Providence Estate and Belle View Estate. Over time, both merged and Providence came to be considered as part of Belle View. This determination is reflected in the Court of Appeal judgment of De la Bastide CJ in **Selwyn Bibby and Others v Sumintra Partap and Others, Civil Appeal No. 87 of 1994**, delivered 14 February 1997, which is referred to later. The Defendant is the title holder to a part of the land which forms part of the Belle Vue Estate, that part having been sold to them. The claimants are squatters on the land.
  
2. These claims were brought together. They are, however, in reality, three different or distinct claims. Each claimant says she has been occupying a different plot for over 16 years and that whoever is the title owner cannot move them because the time has run out for so doing. The common thread is the defendant. But the claimants' cases have had to be considered differently.
  
3. The claimants have also suggested that the lands could be State lands. I categorically reject that as there is no credible evidence to support that contention. The clear evidence is that the land is owned by the defendant. It was purchased for value. The defendant is the paper title holder to the lands.
  
4. The claim started with an injunction application in February 2014. The court granted an ex parte injunction. At the return date the injunction was discharged in respect of the second and third claimants. A trial was set for December 2014.

5. The third claimant was ill on that day and had a disagreement with the conduct of her case by her attorney, Mr Scoon. After some discussions, Mr Scoon was relieved of her brief. Since the other parties were ready with their claims, her case was extricated from the first and second claimant. It was tried separately in June 2015. It is convenient, however, to include the reasons together in one judgment.
6. I will consider the first and second claimants' claims and then go on to consider the claim of the third claimant.

### **CHERYL LAWRENCE, THE FIRST CLAIMANT**

7. This claimant says she has occupied the same premises since "in or about 1981". She said her parents had occupied it before.
8. She had a wooden hut on the premises. Later, she planted it up, developed the land and expanded her house. Standing on it now is a solid concrete structure.
9. The critical issue is has she been in continuous, uninterrupted, exclusive possession for over 16 years? Was this done in a manner that she dealt with the land as her own?
10. On this issue, Ms Myrtle Partap and Mr Godfrey Alexis were the critical witnesses for the defendant.

11. Ms Partap and her sisters were the owners of the 33 acre plot of land which was sold to the defendant.
12. She gave the recent history which was that the land had been occupied by various squatters over time. In 1992 they brought a claim against certain squatters Selwyn Bibby and Kennedy Cornwall. There was an order of the Privy Council in 1994. Additional squatters then began occupying the land.
13. In 1995 notices to quit were served on all squatters. In 1997 an order for possession was made in favour of the Partaps. This was upheld by De la Bastide CJ in an important and definitive judgment concerning the land.
14. All houses on the lands were demolished except that this claimant's house was not removed for the reason referred to below.
15. The first claimant started a claim for possession in 2000. The proceedings were dismissed by Jamadar J. on 15 December 2000 for the failure to file a statement of claim and other documents.
16. The Partaps' attorney sent a letter to the first claimant to stop construction on the lands and to vacate possession in 2005.
17. What emerges from a careful examination of Ms Partap's evidence is that the first claimant was on the lands in 2000. It is likely she was also there before.

18. Ms Partap's evidence is she knew the claimant and her mother being on the lands. Her parents were tenants. There was an attempt to remove her in the late 1990s. It was 1998 she thought. The first claimant came with her mother and promised she would break her house and relocate it to the lands which were tenanted by the first claimant's mother. However, she did not do so. She said in effect the first claimant scammed her. She let her stay.
19. Accepting this evidence, it is clear that the first claimant was in possession of the lands from before 1998. How long before, is uncertain. It clearly is not from 1981 as she says.
20. But what emerges is that whether the first claimant promised to move or not, the fact is she did not move. She remained steadfast in her use of the land and further developed her house as time passed.
21. She has therefore been in occupation of the plot for over 16 years. She has since developed her property and constructed a concrete house. She has not been interrupted and she has dealt with the plot of land on which her house stands as if it were her own.
22. What, however, is not proved is the extent of the occupation that she claims.
23. In her 2000 claim she said she was in possession of 1 ½ lots. She says she is in possession of roughly two lots now. The most she can properly claim for now is 1 and a 1/2 lots since the time has not run for a larger plot.

24. From the cross examination by Mr Hosein it is clear that she has exaggerated her occupation. The planting and existence of numerous fruit trees claimed by her is not supported by the evidence. At best there seems to be a couple coconut trees close to the house.
25. The claimant also did not adduce a survey plan showing the extent of her occupation.
26. I also had the evidence of the first claimant saying her house was excavated around to the extent that it stands precariously on the edge of a precipice. This was contested by Mr Alexis, the land manager of the lands. The available photographs and the evidence do not bear this out.
27. The time has passed for the paper title holder to bring a claim to remove her.
28. There is therefore judgment for the first claimant against the defendant as to part of her claim. There is judgment for the defendant against to first claimant as to part of its claim. The counterclaim partially succeeds as to part of the lands being claimed by the claimant.
29. Accordingly, I would order that the first claimant is entitled to remain in occupation and possession of the house spot she occupies. This is to be defined by a land surveyor to be agreed between the parties and to be paid for by the first claimant to consist of one lot of land, that is 5,000 sq feet more or less, inclusive of her house spot and the area immediately around her house spot. The necessity for a surveyor being engaged is that this claimant did not do this before and it a consequential order of the court's findings. This is an expense she would have had to advance her claim. It is only fair that she should bear the cost of it.

30. Should the claimant not take steps to have the lot of land defined by a land surveyor by 29 February 2016, the defendant shall be at liberty to proceed to have this done and to retake possession of the remaining lands except for the said one lot of land inclusive of the house spot.

31. On the issue of costs, both the first claimant and defendant have partially succeeded. The claimant had claimed 9,000 square feet of land. She succeeds as to 5,000 square feet. She had also failed to have a surveyor define her occupation. There were attempts to negotiate a settlement of this matter. It was for the claimant to prove her case. She has not proved it in its entirety. I will therefore order the first claimant and the defendant to bear their own costs.

#### **ROSE PIERRE, THE SECOND CLAIMANT**

32. The second claimant says she has occupied the spot she is claiming since 1986. She said she and her husband moved into the area having purchased another property on Paltoo Trace in 1985. She said she had a falling out with her husband and moved into a property with her sister Ivy Allum. She and another sister, Louise, then decided to go onto the spot, cleared it and measured 60 feet by 100 ft. They constructed a wooden house about 1988. Her sister got married in 1989 and moved to Marabella and she has continued in occupation since then.

33. In about 2012 she upgraded the house. She has put in a photograph which showed a ply board painted structure with electricity connections wired.

34. She claims an “exposure” of \$200,000.00 invested in the property. Over the years she claimed she planted a variety of fruit trees and vegetables.
35. The property is located across from the property owned by herself and her husband.
36. The defendant’s witnesses have disputed her claims. Ms Partap said this claimant purchased a house from the daughter of the former owner, Bertie Callender, on Ms Partap’s rented land. She said she was always a bad pay tenant.
37. Mr Alexis said the plot was unoccupied. In September 2013, Rose Pierre started building on the plot. He said that plot was previously occupied by one Jason Marcano who had exercised the option to relocate provided by the defendant when they got the land with a view to development of it.
38. He said the approach of the company was to relocate squatters and regularise them as proper tenants instead of them continuing to remain as squatters. He said she lived on another plot of land in a house which she owns.
39. I categorically disbelieved this claimant and rejected her evidence. I do not accept she has lived there all this time. Her name is on a deed as a tenant of another plot of land. The tenancy is in respect of lands near to the house she claims.
40. I find she moved on to the land claimed in September 2013 as given in evidence by Mr Alexis and Ms Partap.



41. I also find that she had been a tenant of Ms Partap and she would not pay regularly.

42. The land was sold to the defendant subject to the tenancy of the second defendant.

43. This is no more than a naked attempt to grab the defendant's land.

44. She called one witness who has in cross-examination undermined her case in significant respects. This was the evidence of Keith Baird who claims to be a businessman at the Oropouche junction Bar.

45. He said he knew Rose Pierre to be living with her husband always. They used to have their "lil break up".

46. Sometimes she would move in and out and go with Louise, her sister. She would be "backwards and forwards".

47. He says Louise and the second claimant built the house about 1986/87/88 and that Rose Pierre would go there when she had disagreements with her husband. This is in contradiction to the second claimant who said she lived there continuously.

48. He also claimed they planted all kinds of crops on the land which he assisted with. On cross examination, however, his story unwound.

49. Further, there are several persons who could have supported her story who have not come forward. Her son, who lives nearby, would have known of her occupation as would her other children. Her sister Louise would have known.
50. In cross examination she at first said she was not the Rose Pierre mentioned in the deed. Then she said she was. Then, that it was her husband's tenancy. Yet her name appears on the records and the deed. I found her to be untruthful and trying to deceive the court. I find her recollections of planting the land shaky and vague. She shifted her evidence.
51. I find she put up the structure with a view to making a claim given the approach being adopted by the defendant to regularise and /or compensate squatters regardless of how long they were there for.
52. I also find it incredible that she would be living for 28 years without lights and water, she being a public servant with a regular job. Further, given that her son lived a short distance away in a concrete house, I find it incredible that she does not know the arrangements regarding her son's occupation of land he lives on.
53. All in all, her evidence was a fabrication in material respects.
54. I found her evidence of her exposure of \$200,000.00 to be a naked untruth. An examination of her own photographs depicting the house confirms this to be untrue. It is a complete exaggeration and this evidence undermines her credibility.

55. The second claimant has not proved on a balance of probabilities that she was in continuous occupation of the land being claimed for 16 years.
56. Her claim is dismissed. The defendant succeeds on their counterclaim. They are granted vacant possession of the lands.
57. The second claimant has occupied the land causing tremendous inconvenience and loss to the defendant as indicated in the evidence of Mr Khan. She must pay nominal damages in the sum of \$10,000.00 to the defendant. She is to remove her structure and vacate the land on or before 31 January 2016. In default mesne profits will run at the rate of \$100.00 per day payable to the defendant.
58. She must pay the costs of the claim in the sum of \$14,000.00 and the costs of the counterclaim also in the sum of \$14,000.00.

### **SONIA PAUL, THE THIRD CLAIMANT**

59. This claimant filed her claim along with the other claimants. She however had disagreements with her lawyer, Mr Scoon. I allowed her time to get a new attorney. She got Mr Winston Seenath. He then indicated that there would be a conflict in him representing her. She then got Mrs Mohanie Mohan-Maharaj. She advanced her case filing certain applications. The claimant did not pay her fee and the attorney withdrew. After giving her another opportunity, she had no legal representation. She then represented herself. The trial had to be adjourned on more than one occasion due to her illness.

60. This claimant sought to re-litigate matters which were part of the previous litigation involving Bibby and Cornwall and which had been taken through the court system. I declined to allow her to add evidence to her original witness statement on the issue of the ownership of the lands, but she did so nevertheless in cross-examination of witnesses. The court granted some leeway to her, given this was a litigant in person. However, this aspect of the case was not pleaded (rightly in my view) and had been put to rest previously in the judgment of De la Bastide CJ.

61. In any event, she hinged one plank of her case on an assertion that these were State lands. Reference was made to a search clerk's note but this did not take her case any further nor is it suggestive of that the lands were State Lands. It is also noteworthy that Town and Country planning approval has been granted to the defendant and there has been no assertion by the State to ownership of the lands.

62. In her witness statement this claimant says she came to live on the land in 1997. She said the plot was occupied by one Handel Webster. She had a relationship with him. She would leave and come back. She said she could not remember the number of times she left and came back. She said finally in 2009 they agreed he would abandon the property to her on payment of \$6,000.00.

63. In cross examination this witness showed herself to be somewhat erratic with her recollections. She said she lived in the house from 1997. She lived there until some time that she could not remember.

64. She noted she had lived with one Mr Webster. She said it was her house because it was his. It was hers automatically. She would leave and come back to see him with other women occupying the place. Sometimes he would have women there. There were

falling outs. I found it to be implausible that she could consider herself as continuing to occupy the premises when she would go and come as she said especially in the context that he would have other women there with him.

65. She sought in cross examination to make it seem that she would leave for a day or two at a time. She never said this in her affidavit filed in support of the injunction application, in her claim nor in her witness statement. This was a material omission in my view.

66. She was unable to locate any receipts for which she said she spent money on the property.

67. Myrtle Partap was called in her case and cross examined. She noted the estate was close to 600 acres. Part was shared among relatives.

68. She did not know the third claimant as occupying the plot. In her witness statement she said up until the lands were sold the third claimant was not an occupier. I found Ms Partap to be a hands-on landowner who knew the persons on her land and who would make checks and monitor squatters and bona fide tenants on the lands whether herself or through her employees. She would have employed a land manager whose duties included checking the lands, which had many land tenants.

69. The third claimant got an electricity connection to the premises. I did not think the third claimant getting an electricity connection in 2012 signified anything about her occupation of the land or the ownership. It was represented that the lands were State lands. This connection was recommended by the Member of Parliament. A Member of Parliament may recommend an electricity connection for any number of reasons, including political.

If he knew about the lands being State lands, he could have been summoned by the claimant to prove this.

70. This claimant's evidence was not supported. As far as she says, Mr Webster is still around. Why is he not here to support her case? There is no good explanation. There are no villagers who support her case.

71. She presented an insect vector card with entries from 1998. There is nothing to indicate on it that it was for the plot being claimed.

72. There is no evidence of pictures to support that the structure existed before 2009 at the earliest.

73. She told us her age was 33/34. If she started a common law relationship in 1997, this means that it was started when she was 15 or 16 years, which is remotely possible but unlikely. Mr Webster was allegedly over 20 years her senior.

74. She said in cross examination she paid Webster for his interest in the house around 2009. In cross examination she said it was 2005, then 2011 so. When pointed to her witness statement she said somewhere there in 2009. These were material inconsistencies.

75. She said she completely reconstructed the house in 2011. In this context she says she conservatively stands to lose \$300,000.00. Where she would have obtained this to invest, the claimant does not say. I have looked at the photographs she has tendered. It is obvious to see that the structure there could not be valued at even one quarter of that sum.

We also have no evidence of the value of the land in that specific area, which is a low income area. I find this assertion to be a naked falsehood.

76. Having listened to this witness' evidence and considered it in the round and having observed her, I find it difficult not to conclude that Mr Webster is a figment of the imagination of this claimant. He is an invention. And that she has fabricated this story to seek to gain a plot of land from the defendants. And that she joined the first claimant's bandwagon.

77. I accepted the evidence of Mr Alexis that she came later onto the land about 2011. I accepted that he knew the lands. He says a Mr Fabian had occupied the house before on the same parcel of land the third claimant claims. I also accept that this house was broken down. I also accepted Ms Partap's evidence. I found them both to be credible witnesses.

78. This is particularly the case in the context of how the defendant company was operating according to Mr Nyal Khan and Mr Alexis. They were developing the lands. They would ask persons occupying to purchase or remove. Those who left would be compensated or relocated. Many persons took the offers. This was a managed process. I find their evidence to be credible and reasonable.

79. I have no hesitation in rejecting her claim. It is not proved on a balance of probabilities.

80. The third claimant's claim is dismissed. There is judgment for the defendant on the counterclaim. The defendants have been deprived of the use of their lands since the date of purchase. They have been put to considerable expense and their development plans

have been affected by the bringing of this claim. The claimant must pay nominal damages to the defendant in the sum of \$10,000.00. She is to vacate the land and remove her structure on or before 31 January 2016.

81. In the event the claimant does not remove her structure and vacate the lands by the 31 January 2016, mesne profits will apply after 31 January 2016 at the rate of \$100.00 per day.

82. The claimant must pay the costs of this claim to the defendant in the sum of \$14,000.00 and costs of the counterclaim in the sum of \$14,000.00.

### **Comment**

83. Squatting has become quite prevalent in this country. While the State can choose to regulate its land use and make whatever arrangements it wishes to make with respect to the lands of the State, it is equally the case that private citizens are entitled to enjoy the benefit of their ownership of their lands. It is entirely legitimate for low income citizens to want to aspire to land ownership or to have a place to live with a secure arrangement for the occupation of the land on which their homes stand. Nothing is wrong with that and this must be supported and encouraged.

84. In this case, however, it is clear that both the previous owners and the present owner were willing to offer tenancies of the lands to persons so that they could properly and securely occupy a plot of land and construct their homes and enjoy the benefits of a secure arrangement for those lands. Some persons chose instead to unlawfully occupy the lands and have refused reasonable offers to be relocated or to accept tenancies.



85. As much as the court will acknowledge the status of legitimate tenants or occupiers and will give effect to properly proved claims of adverse possession, equally, it is the court's role to uphold the rights of landowners when the facts require this. I say this to make it clear that the court is not against the plight of poor persons who strive for a place of their own to live, but it must give effect to the law and apply the law to the proven facts of cases before it, wherever the chips may fall.

Ronnie Boodoosingh

Judge