

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2010-05116

BETWEEN

**WILLIAM DAVIS JR.
BRIAN DAVIS
URSULA DAVIS**

Claimants

AND

**EUGENIA IRIS GRAY
BASON SMITH**

Defendants

Before The Hon. Madam Justice C. Gobin

Appearances:

Ms. M. King instructed by Ms. I Soyinka for the Claimants

Mr. A. Manwah for the Defendants

JUDGMENT

1. This is a claim for possession and damages for trespass to lands in respect of which the claimants say they are, and their predecessors have been in possession for well over 50 years. The claimants are siblings and the children of William Davis Snr, who died in September 1990 at the age of 83.

2. A plan of the parcel they claim to own through their possession was drawn by land surveyor Mr. Rawle Derrick and produced in evidence. It measures 4.9 hectares which is approximately 12 acres (the 12 acre parcel). It is important to note that this is the only real evidence which defines the area claimed.

The Claimants' case

3. The claimants' case is that they are the owners of the 12 acre parcel through their own as well as their father's continuous and undisturbed possession of it during his lifetime. Their father was the owner of a five acre parcel of land. This is reflected on the assessment roll for Tobago, since 1948. William Snr's five acre parcel is included in the "12 acre parcel" shown in Mr. Derrick's plan but has not been distinctly identified nor outlined.

4. The claimants' case is that their father occupied not only his five acre parcel but an adjoining parcel which measured 11 acres and which is similarly reflected on the roll since the year 1948. This was owned by one James Davis. Their father treated the James Davis parcel as one with his own. Their ancestral home was built on it, they were all born there. The house was destroyed by hurricane Flora in 1963 but rebuilt. Their father occupied it until his death. The house is still standing. Only the second named claimant Brian remained living in it permanently after the other siblings left and he has done some renovations to it.

5. Insofar as the rest of the lands is concerned, the acts of possession included, going to all parts of the land which were mainly 'pasture lands', minding animals. Their father reared pigs, goats, sheep and cows. In addition the claimants' family engaged in subsistence farming growing pigeon peas, corn, dasheen, coconuts etc. After the death of the father in 1990, Brian remained on the land, minding chickens

and other livestock and doing some farming, growing ‘subsistence crops’. The rates and taxes for both parcels had always been paid by them.

6. This action arose soon after the claimants sought to regularise their title to the lands. They engaged the services of Land Surveyor, Mr. Rawle Derrick, to survey the lands which their father occupied, that is the 5 acre parcel and the 11 acre parcels combined. This was in preparation for an application to bring the lands under the RPO.

7. On the 29th October, 2010 while Mr. Derrick and Brian were on the lands they met Mr. Smith (the second named defendant) with a surveyor of his own, Mr. Seymore Alfred. They appeared to be carrying out a survey as well. Brian protested their presence on the land. There was some exchange and police officers arrived. Mr. Smith and his surveyor left, only to return the next day with police officers. After some further exchange they left again.

8. Following this encounter, the claimants had their attorneys despatch a letter asking the defendants to cease their unlawful activities on the lands. The defendants’ attorneys responded that Mrs. Eugenia Gray, the first defendant, was the executrix of the will of Olga Job and that a certain 5 acre parcel of land (which is what they were attempting to survey) formed part of the estate she was required to administer. She therefore claimed a right to enter that 5 acre parcel which formed a portion of James Davis’ estate. Her surveyor and her agent Mr. Smith

were authorised to do so. For the avoidance of confusion this five acre parcel will be called “Samuel’s 5 acres”.

9. The claimants alleged that on the 9th November 2010, Mr. Smith returned with a backhoe and began to cut a road on a piece of their lands. His surveying team returned and continued their work. As a result they brought these proceedings seeking injunctive relief to stop any further disturbance with their possession. The defendants are strangers to them. They have no connection with the lands or the area.

The Defences

10. In her defence, the 1st Defendant essentially alleges a claim of right to enter “Samuel’s 5 acres” as executrix of the estate of her mother Olga Job. Mr. Smith was appointed her duly authorised agent, as she resides outside of Trinidad. Mrs. Gray claimed that out of the lands (i.e. the 11 acre parcel) which had been owned by James Davis, “Samuel’s 5 acres” had been left by his will to his son Samuel Davis. It’s boundaries of the 5 acre parcel were defined in the will. Samuel Davis left his five acres” to Alvina Davis and Valentine Davis. The executrix of the will was his niece and her (Mrs. Gray’s) mother, Olga Job. In an attempt to begin taking steps to administer the estate and to regularise the title to it, she had authorised Mr. Smith to act.

11. Mrs. Gray claimed further, that the beneficiaries upon the deaths of James Davis and Samuel, moved into occupation of their respective portions. She denied the claimants had been in occupation of James' 11 acre parcel, but said that if they had been on any part of it at all, there was a family understanding which William Davis acknowledged that "Samuel's five acres" was not to be interfered with.

12. As far as the 2nd Defendant's defence was concerned, his case was that the claimants' father never occupied or entered possession of the entire parcel of land shown on Mr. Derrick's plan. At all times his father-in-law Valentine Davis and Alvina Davis had inherited "Samuels' five acres" under Samuel's will. The boundaries had been defined in the will of James Davis.

13. Very much of his defence too was founded on an alleged family understanding that William Davis Snr could use the 5 acre piece for pasture provided that no trees were cut down, or no buildings built. He denied too that the claimants farmed the 11 acre parcel of James Davis' land.

14. Mr. Smith and his wife Shayphan, with Mrs. Gray's authority decided to make an application to bring the lands under the RPO. They hired Mr. Alfred of Antoine and Associates to produce a survey plan. They served Brian Davis as an adjoining occupier. While they were there on the first day of the survey, there was the encounter with Brian and Mr. Derrick.

The Issues on the pleadings

15. The claimants' case is for possession of a specific parcel of land shown in Mr. Derrick's plan and which should comprise 11 acres of lands formerly owned by James Davis and 5 acres owned by their father. They do not have a paper title. While there is no issue as to ownership of William Snr's 5 acre parcel, no title deed has been produced. If as they have alleged, they have been in possession of the area shown and the defendants have disturbed their possession as alleged, by entering to conduct a survey, cutting a road and indeed by claiming to be entitled to a portion, then as I understand it, their possession is sufficient title to entitle them to relief, even in the absence of a paper title.

16. The defendants too, have no paper title. They claim through the will of James Davis, which left Samuel his five acres and who in turn left it to Olga Job. Samuel's and Olga's estates have been left unadministered and there has been no vesting of title in any beneficiaries.

17. The defendants case is that Eugenia Gray knew where the lands were, and that Valentine Davis visited it from time to time to make sure there were no squatters, and to keep the tracts clear. The lands were forested, overgrown and abandoned. They challenge the claimants' evidence that they were in exclusive possession of the entire 11 acre parcel of lands of James Davis. They say these James Davis' lands and William Davis Snr always recognised that their predecessors were entitled to Samuel's five acres and that he kept cler of it. The

persons entitled made periodic visits from time to time. Because of the character of the land, since it was forested and overgrown, in part and there was some pasture portion, it was not developed. There was therefore nothing more to be done, to retain their ownership or claim. They had not been dispossessed because no one had entered into possession of it or challenged their entitlement to it.

The Issues

18. The issues for determination are as follow:

- (1) I have first and foremost to decide whether the claimants and their father have been in occupation and possession of the lands shown on the Derrick plan in the manner that they described and whether the plan shows William Snr's five acres and James Davis eleven acres or some part of both.
- (2) I have to decide whether "Samuels five acres" mentioned in the will of James Davis is located on the lands shown on the plan.
- (3) I therefore have to determine whether the alleged acts of trespass i.e., the entry by Mr. Smith and the surveying team, the cutting of a road, occurred on any part of the lands shown in Mr. Derrick's plan.
- (4) A further issue has been raised by the defendant as to whether the 1st and 3rd claimants can maintain these claims since it is accepted that Ursula migrated to the USA in or about 1976 and that William Jnr, a police officer has not lived on the lands for many years, since he joined the police service. I can conveniently indicate here that I have considered this and find that it is a claim to family lands by joint claimants who as among themselves have a joint interest. Brian's alleged continued occupation is recognised by them as part of a family arrangement. In the circumstances I do not consider the lack of a continuous physical presence on the part of William Jnr and Ursula to be fatal to their joint claim.

- (5) Counsel for the defendant submitted too, that if I were to grant the claimants relief I would effectively be allowing them to circumvent the provisions of the RPO. A decision in this case if it were to go in the claimants' favour would not grant a title to the claimants. Any determination I make in this case will be binding on the parties to this case on the issues raised, only.

Evidence and Findings

19. It is perhaps convenient to begin with my findings on the case for the defendants. I start with the observation that the defendants failed to adduce evidence of the location of "Samuel's five acres" in which they have their alleged interest. The 1913 will of James Davis did identify the boundaries of what they claim was his parcel. This is the parcel that the defendants were attempting to survey when the confrontation with Brian occurred. That is what led to these proceedings. At the close of the case I had no evidence as to its location.

20. When the action began as early as at the injunction stage, the claimants produced Mr. Derrick's plan in evidence. The defendants made no attempt to indicate by imposing an outline even on that plan, where "Samuels 5 acre parcel" was to be found. When he filed his defence in the case, Mr. Smith indicated that his survey was concluded on the 4th November 2010. Indeed at paragraph (5) of that defence there is a clear reference to a survey plan showing Samuel's 5 acre parcel. The omission to produce what I consider to be an important piece of evidence has left me at a great disadvantage.

21. While I accept that Mrs. Gray knew the general location of James Davis' 11 acre parcel, there is no evidence on which I can find that she knew where the 5 acre parcel was located. It is clear both from her defence and from her evidence that Mrs. Gray knew little of the activities of the claimants' father and candidly accepted that she had not visited the lands for many years. She did pass there on her way to visit her mother. She resides out of the country and appointed Mr. Smith, Valentine's son-in-law, her agent to survey the lands in order for her to complete the administration.

22. Very much of Mr. Smith's evidence as to the history of the lands was not within his personal knowledge. I do believe that like his wife, he visited the general area of the James Davis lands, but these visits were not frequent or regular. He described his father-in-law as being "lackadaisical" about things and in the context in which he gave this answer I concluded that Valentine showed little or no interest in the land or getting title to it. Shayphan may have gone with her father to Tobago, and to visit relatives, and no doubt knew of the general area on which stood "Samuel's 5 acre parcel", but I do not believe that boundaries were ever defined or known by any of them. I do not accept that Valentine did any cleaning or clearing or tracts. I do accept however that however infrequent their visits, the lands they saw were overgrown and forested and that no one was in occupation.

23. The defendant's case raised the family relationship between the parties and my finding on this issue has impacted my general assessment of credibility of the

parties. I accept, as Mrs. Gray said, that she had a close relationship with William Jnr and Brian through their family connections. I believe that she did discuss the business of “Samuel’s 5 acre parcel” with them. The existence of a family relationship is not just a peripheral issue. It explains the approach of the parties to the claims to the lands and explains perhaps, why there may have been no issue during the lifetime of William Davis Snr. It lends credibility to the defendants’ claims that “Samuel’s five acres” was out of bounds for William Snr.

24. I have not been impressed with the attempt by Brian and William Jnr and some of their witnesses to persuade me that Mrs. Gray was a complete stranger and someone they had never seen until she appeared in Court. Given the family connection I have found, and the fact that her mother Ms. Belle lived in the area, not so far away from the lands, I find it hard to believe they did not know her. Indeed one of the claimants’ witnesses, Clinton Job, said he knew Mrs. Gray for over 50 years. Mr. Derrick too knew her. In my assessment, the claimants adopted this position only conveniently, in order to support their claim that the defendants were strangers who had never had any connection with the lands and who were not known by neighbours. I accept that in an effort to regularise the title to “Samuel’s 5 acre parcel”, Mrs. Gray sought for the first time to identify the precise boundaries. Mr. Smith caused a notice to be served on Brian.

25. At the end of the day, in the absence of the plan or any real nexus between the area claimed by the Defendants and that shown on Mr. Derrick’s plan, I can

only say that the defendants entered a parcel of land and the claimants objected. At most I can find that both parties claim lands that originally belonged to James Davis, part of an 11 acre block. The defendants have not shown me a plan or identified the location of it on the Derrick plan. The difficulty is compounded because the claimants' case is that the lands shown on the plan are the combined areas of a 5 acre parcel in respect of which their father was the owner and an 11 acre parcel in respect of which James Davis was the owner. If I accept that some part of what is shown on the Derrick plan is the James Davis' 11 acre parcel I still have no indication of where the alleged trespass occurred. I don't know where "Samuel's five acres" is located with reference to the only plan in evidence.

26. As to the area claimed by the claimants, their case is that they always treated two pieces as one and they occupied the combined area in its entirety. An immediate question which affects the credibility of this assertion is why then does the plan measure only 12 acres and not sixteen acres. This was not explained. Is the missing 4 acre parcel that which is wholly or in part claimed by the defendants and perhaps not shown on the plan.

27. When Mr. Derrick was cross-examined, the basis on which he produced his plan was successfully challenged. It emerged that he did not look at the assessment rolls or warden's records. He was unable to say whether in fact what he surveyed and represented on the plan was an amalgamation of the 5 acre parcel owned by William Snr and the 11 acre parcel originally owned by James Davis,

which was how the claimants' defined the parcel they occupied. Since these were distinct parcels according to the warden's records, Mr. Derrick's answers caused me to question the usefulness of his evidence. This was an important part of the claimants' case. Mr. Derrick's only mention of James Davis in his witness statement is in relation to the defendants' claim to have inherited under James Davis' will. This is quite startling from a surveyor whose client was claiming occupation of 11 acres of James Davis' lands.

28. If followed, as he was forced to admit, that he could not say which was William Snr's 5 acre piece and which was the James Davis 11 acre piece. In the end he said he surveyed what the claimants said they had been occupying and demarcated the parcel using boundaries identified by the claimants. Mr. Derrick did not identify on his plan, the area where the defendants had wrongfully entered and conducted the survey or where the road had allegedly been cut. These omissions I considered to be significant especially since he said he was present when the first alleged act of trespass took place. I have concluded that no road was cut by the defendants on any lands shown on the Derrick plan.

29. The claimants' case is that their surveyor on the first day of his surveying encountered the defendants' surveyor on the first day he began to work. On their account two surveys coincidentally began on the same day. I find it highly implausible that lands which had been left with no formal title since at least 1948 (in the case of James Davis) were entered by two separate parties for separate

surveys on the 28th September 2010, when both were beginning efforts to regularise their title. I do not believe the meeting was coincidental. I believe that Brian was served with notice of the defendant's survey and caused Mr. Derrick to attend. I do not believe that Mr. Derrick had until then been hired to survey.

30. I find that the claimants' plan was produced very shortly afterward and in time for the litigation. It is not surprising in those circumstances that as I have found, Mr. Derrick was not able to properly trace the history and boundaries of the two parcels of land through the warden's records. Mr. Derrick has not himself indicated even the general location of the alleged entry although he was present where this entry took place. There is no cogent evidence on which I can find that Mr. Smith and his surveyor entered on the parcel shown on the plan. The failure to establish a nexus between what is shown on the Derrick plan and any portion of the 11 acre James Davis parcel has left me inclined to dismiss the claimants' claim without more. If, however it can be inferred from anything said or done by the parties that these are rival claims to some unidentified portion of the lands shown on Mr. Derrick's plan, then I shall proceed to indicate my further findings. I suppose it can be said that at the end of the day both are claiming a right to James Davis' estate in particular part of his 11 acre parcel.

31. I place little reliance on the evidence of Mr. Derrick. Mr. Derrick did not disclose in his witness statement that he was closely related to the claimants. His failure to make this disclosure caused me to question his professionalism in

producing the plans for the claimants. If indeed he was simply surveying what was pointed out to him as lands that had been occupied by the claimants, the need for him to call elderly persons residing in the US as he said he did as part of his research would have been unnecessary.

32. In answer to the Court, Mr. Derrick indicated he knew the lands very well, he visited his uncle William Douglas Snr as a young boy. Of his personal knowledge he knew of Senior's activities on the land. He knew he grew sugar canes on part of the land. On the evidence it is entirely possible that these activities may have been taking place on William Snr's 5 acre parcel. His personal relationship and the extent of what he eventually described from alleged actual knowledge, far from impressing me, caused me to question the reliability of his evidence. At all times, even from the injunction stage, he had been held out as a professional and an expert. The belated disclosure was sufficient to persuade me that he was not as independent as had been made out.

33. I find that the claimants rush to survey was indeed a reaction to the defendants' indication of their intention. While they (the claimants) may have intended at some point to regularise their title to what they wished to claim, it was the defendants' interest that kickstarted the process. Most significantly, I do believe that until the 29th September 2010, the area on which the defendants were entering for their survey was of no interest to the claimants. I find as the defendants claimed that on the 17th July 2010, Mr. Smith and Shayphan did visit

and meet with William Junior outside Police Headquarters, Tobago and they informed him of their intention to survey Mrs. Gray's 5 acres. I find that William Jnr did tell them that he was not interested in that land. These proceedings came about because for some reason the claimants changed their position.

34. My finding that that conversation took place has seriously impacted my assessment of William Jnr's credibility. He insisted he did not know the Smiths or Mrs. Gray. He repeated this up to his witness statement. He never mentioned this meeting of July 2010 in the injunction proceedings, nor in his statement of case, nor in his witness statement. It is only under cross-examination that he admitted it and said he told the Smiths he would not discuss personal business at his work place.

35. If William Jnr's account of that meeting were to be preferred, I would have to accept that here were persons, whom he had not known at all, indicating they were going to survey part of his family lands that they had been occupying as owners for well over 50 years and that this conversation did not evoke any response other than his refusal to discuss such a matter at work. He did not strenuously protest. It did not put him on notice that a claim was being made. He did not visit his lawyers immediately to give instructions to object. On the evidence he did not even try to find out on what basis the defendants could presume to claim his family lands. This is simply not credible.

36. His conduct is only explicable if as the defendants claimed, he indicated categorically he was not interested in their lands. These visitors could not have been strangers to him. He must have known them and known that they had some interest in a parcel of James Davis' lands and he recognised that interest as I believe his family including his father would have recognised it. On the one hand he sought to give the impression that the first time the defendants indicated a claim was being made was at the survey. His eventual acceptance, under cross examination of the meeting in July 2010 is significantly inconsistent. In the circumstances I prefer the defendants' account as to what transpired on that occasion.

37. In support of the allegation that they were in continuous occupation and possession of the parcel shown on Mr. Derrick's plan, the claimants called several witnesses. Having assessed their evidence, I reject their case that they were in possession of the entirety of the parcel shown in Mr. Derrick's plan, or any parcel of land approximating the size shown on it.

38. Of the witnesses called I considered Catherine Sealey to be the most truthful. She is the mother of the 1st Claimant. While she like all others claimed in her evidence in chief that the parcel William Snr controlled was about 15 acres, I attach no weight to this assessment of the size of the parcel. In any case she testified and I believe her that what William Snr occupied and cultivated was an area close to the house. She described most of the land as abandoned and very

candidly said you could not plant the whole thing. I accept that out of what William Snr actually occupied he did permit her until the 90's to plant an area.

39. She described the activity involving animals as "William minding a little stock". She candidly described Brian's activities as his planting a little peas and "growing dasheen". At the end of the evidence of Ms. Sealey, what emerged was a different picture of limited activity on a portion of land near the area of the house and closer to the roadside. Her evidence that most of the land was abandoned is more consistent with the defendant's description of the state of the James Davis lands. This limited area may well have been William Snr's own five acre portion.

40. As for the witness, Ray St. Hillaire, I was not at all impressed with him. He sought to give the impression that he lived on the parcel of land opposite the lands claimed by the claimants, and he was able to see and had intimate knowledge of the activities. It soon became clear during the cross-examination that he had never lived there. His own family (ancestors) had some lands in the area he visited them from time to time. He observed the lands on those visits. I assessed him to be a witness of convenience. The production of such a witness is always damaging to a party's case. The Court asks itself why the need for this at all, if credible evidence is available.

41. I believe that he was a little more truthful after he had been confronted with that misleading statement. He confirmed then that most of the lands are abandoned

and that Brian's farming even now, takes place closer to the roadside. The limits to the area of Brian's farming closer to the roadside was confirmed by Clinton Job. He did add that William Davis Snr planted different portions of the land but this was not sufficient to persuade me that the lands were not mainly abandoned or forested. What was significant about Mr. Job's evidence is that he confirmed he knew Eugenia Gray for over fifty years. He knew her mother, Ms. Belle.

42. As for the evidence of Brian Davis, I find that he has exaggerated the scope and extent of his activities on the lands. His occupation and activities are more limited as his own witnesses described. Indeed one of them said if you were to go there (at the date of the hearing) you would see no animals. I accept that he has remained on what may have been the spot in which the family lived and that he carries on some small subsistence farming. But the major part of the lands claimed are abandoned, under bush and unused as they had been since the time of his father.

43. Perhaps in preparation for steps to bring the lands under the RPO, he paid the taxes for the period 1989-2008 only in the year 2008. He sought to give the impression this was something he had been doing consistently since the death of his father. I was not impressed. As to the payment of taxes it is not in dispute that William Snr paid the taxes in respect of both parcels. In the circumstances of my other findings I do not think that is so significant.

44. Insofar as Mr. Davis Jr is concerned, I have already indicated that my findings of his credibility were based mainly on the meeting he refused to mention at which he was notified of the defendant's intention. His response to them and subsequent conduct or failure to act, are more realistically explained by a recognition that they were entitled to claim ownership of something in which he and his siblings had no interest. If, indeed it turns out that what they claimed falls within Mr. Derrick's plan, then I have another reason to reject his evidence as to the activities of his father and his siblings on that area of the land. The claimants in this case have established only that they occupied an area of land close to the roadside and including an area of undefined measurements in the immediate vicinity of the original family home.

Disposition

45. In the circumstances the claimants' case is dismissed. The claimants will pay the defendants' prescribed costs in the sum of \$14,000.00 and costs of the injunction assessed in the sum of \$12,000.00.

Dated this 26th day of June 2013

CAROL GOBIN

JUDGE