

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. 2014-01776

BETWEEN

RODNEY JAGLAL

DASSIE JAGLAL

Claimants

AND

JEAN HUNTE

Defendant

Before the Hon. Madam Justice C. Gobin

Date of Delivery: 10th December 2018

Appearances: -

Mr. Gerard Raphael, Attorney at Law, instructed by Lana Chunilal for the Claimants

Mr. Samuel Saunders for the Defendant

REASONS

1. The Claimants are the owners of a parcel of land, I refer to it as Lot A, which abuts a parcel of land Lot B which is occupied by the Defendant on the latter's eastern boundary. The western boundary of Lot B is on the Caroni Savannah Road. Lot A has no road frontage it is situate at the back of Lot B.
2. The Claimants claim that at all times they and their predecessors used a way or path or track which ran from their Lot A along the southern boundary of Lot B, to gain access to and from the Caroni Savannah Road. They claim it is a path 8 foot wide and that it allowed foot as well as vehicular access to their home on Lot A from the public road. The Claimants filed these proceedings because in the year 1999 the Defendant built a wall on the roadside end of the path

as well as wire-fence at the opposite end. This caused a substantial obstruction and has deprived them of access via the way since that time.

3. In 1999, the Claimant sought legal advice and correspondence was sent to the Defendant calling upon her to remove the obstructions but she refused to do so. The Claimants thereafter made use of a track leading from their home in a different direction across other lands of adjoining occupier, Ms. Elizabeth Francis, to get to the closest public road, John Peter Road. That alternative path was blocked by the owner in April of 2013. The Claimants or their servants or agents or invitees have since that time been allowed foot access over another neighbour's property, but this is causing great inconvenience.
4. When the Defendant filed her Defence it emerged that she is not the legal owner of Lot B. It belongs to the Estate of her deceased mother, Majorie Luke. She is one of the eight (8) beneficiaries. She has however lived at the property at Lot A all of her life.
5. The Defendant denied the existence of a way 8 foot wide along the southern boundary of Lot B as claimed by the Defendant. She did however, significantly, admit that her mother had allowed the first Claimants' father access or a walkway about 3 foot wide along the southern boundary to access the Caroni Savannah Road, to allow them to collect water from the stand pipe. She denied that the wire-fence erected along the southern boundary of Lot B in her mother's time some 35 years ago blocked access to the path, and that on the evidence is clear.
6. What she admitted in her Defence however, was that even after the wire fence was erected, what she described as "a pedestrian path", still allowed access to the Caroni Savannah for the Claimants family. She confirmed that the fence on the southern boundary of Lot B did not run along the boundary line. The Defendant at all times denied that vehicular access was ever allowed via the path.

7. In the area of the Defendant's Southern Boundary, a strip of land fell between that wire-fence and the wall marking the northern boundary of the adjoining occupier who is named on the plan annexed to the proceedings, as Shayam Mohammed.
8. The Defendant admitted erecting a concrete wall across that path on Caroni Savannah Road end, and extending the wire-fence on the other end. This would have had the obvious effect of blocking the Claimants access. This notwithstanding, she claims in her Defence that these structures had not restricted the Claimants access to Caroni Savannah Road. The evidence has not established how this is possible.
9. The Defendant clearly accepted the responsibility for the erection of the barriers on both ends and sort to justify her actions. It was because of an alleged bad behaviour on the part of Claimants. She felt their conduct entitled her to "revoke the licenses" to pass which she had previously extended to them, the Claimants, as children of their parents.
10. At no time did the Defendant either on her pleading or on her evidence, grant a license to the Claimants. There was therefore no question of her revoking such. The Claimants' claimed and the Defendant accepted that for about 35 years until the barriers were erected by her in 1999 they were able to access the Caroni Savannah Road. The Defendant claimed on her Defence and confirmed on the evidence, that it was her mother at the material time the legal owner, who had granted the Claimants' predecessors a right to pass over her lands from their property to the road. The erection of the southern wire fence left a path outside which allowed the Claimants access and alongside the fence. This appeared to recognise the grant of what the law treats as an easement by the mother, though as the authorities say, strictly speaking it is not.
11. In these circumstances, the legal principle of non-derogation from the grant applies. The grant by Marlene Luke imposed an obligation on her as the grantor as well as on her successors not to deprive the Claimants and their successors of the enjoyment of the benefit. I do not believe that the grant was limited to the purpose of collecting water. The location of Lot A would suggest that the grant was not so limited.

12. The issue of abandonment has not been strenuously pursued but I find that the Claimants did not by using alternative routes and abandoned it. The Claimants as well as the Defendant therefore having established the easement and the Defendant having admitted to disturbing it the Claimants are entitled to Judgment.
13. As for the issue for the dimension of the path, the Claimants' claim it is 8 feet wide and can accommodate vehicles passing along it to get to their lot. The Defendant on the otherhand says it was a 3 foot wide path. The exact dimensions have not been established, but that does not prevent me from granting relief.
14. I respectfully do not consider myself bound by the decision of Madame **Justice Warner in H.C.A. CV1497 of 1991, Heeralal Kurasingh and ors v. Stephens Osmond**. If the ruling were correct, it would mean that if the dimensions of the way claimed on the ground exceeded the measurements claimed by the Claimants, relief would also have to be refused.
15. The dimensions of the way on the ground are easily ascertainable and whatever they may be in terms of measurement, can easily be identified as the strip of land, lying between the wire-fence on the southern boundary of Lot B and the wall of the northern boundary of the property occupied by Shayam Mohammed and shown on the plan dated the 20th July 1999.
16. The Defendant has clearly indicated a motive for the deliberate blocking of the way and this establishes a significant degree of malice. Her actions resulted in the substantial interference since the year 1999, but the Claimants or persons occupying with their permission managed to cross other properties to get to the other public road. The Defendant herself accepted too, that it was only more recently when their neighbour Emelia Scott fenced her lands, that the Claimants' access problem became more acute.

17. The Defendant has at all times owned her actions and she must have recognised the effects on the Claimants' use and enjoyment of their property. There shall be Judgment for the Claimant.

- (a) The Defendant is ordered within 28 days to remove the concrete wall on her western boundary and all that portion of the wire-fence on the eastern boundary which was erected sometime in or about 1999, so as to allow a clear path running outside of the Defendant's southern boundary and up to the boundary wall of Shayam Mohammed from the Caroni Savannah Road to Lot A which is described on the Deed No. DE8552 of 1999.
- (b) The Defendant is further ordered to remove any plants or shrubs or other items deposited along the said path. In default the Claimants by themselves, their servants/agents are entitled to remove same at the expiration of 28 clear days.
- (c) The Court declares that the Defendant is not entitled to restrict, prevent, or otherwise interfere with the Claimants', their invitees', licencees', servants' or agents' use of the enjoyment of the said path to allow access whether by foot or such other convenient or means as it is reasonably permissible.
- (d) The Defendant is to pay the Claimants nominal damages for trespass assessed in the sum of twenty five thousand dollars, (\$25,000.00).
- (e) The Defendant is to pay the Claimants' costs of the action. The barriers which are to be removed are those which are reflected on the plan of 20th July 1999, marked in red.
- (f) The Defendant is to pay the Claimants' costs on the prescribed scale.

CAROL GOBIN

Judge