

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(Sub-Registry San Fernando)**

Claim No: CV: 2012-04700

**Between  
AYUB HOSEIN**

Claimant

And

**WATER & SEWERAGE AUTHORITY**

First Defendant

**THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO**

Second Defendant

**Before Her Honour Madam Justice Eleanor J. Donaldson-Honeywell**

**Appearances:**

Mr Chateram Sinanan and Mr. Sunil Rishi Nowbutt Attorneys at Law for the Claimant

Mr Keston McQuilkin and Mr. Ramnarine Mungroo Attorneys at Law for the Defendants

**Delivered on November 20, 2017**

**Judgment**

**I. Introduction**

1. Ayub Hosein [“the Claimant”] and his wife Sylvie Hosein lost their home at No 36 Realize Junction Road, Princess Town [“the home” or “the property”]

when it collapsed in 2012 and became uninhabitable. The Claimant alleges that the cause of the collapse of the home he owned since 1989 was the Negligence of the Water and Sewerage Authority [“the Defendant”] in failing to repair in a timely manner a broken water main in front of his said property. He seeks to recover damages for money spent trying to protect the home before it collapsed and for his current alternate accommodation. He also seeks to be awarded the money required to re-construct the home.

## **II. Procedural History and background facts**

2. In a Claim Form and Statement of Case filed on 16 November, 2012, the Claimant alleges that his home was built by his brother in or around 1986, with a strong piled foundation. There was also extensive drainage around the home, on the roof and in the road to the front of the home. The Claimant lived in his home, just as his brother had built it, for many years and then from 2007 to 2011 did some renovations.
3. In or around June 2011 the Claimant discovered clear water surfacing in his backyard and under the stairway of his home. Upon investigation he later discovered, at a time not specifically stated in his pleading, that the source of the water emanated from a leak on the First Defendant’s main line. He contacted the Defendant’s complaints hotline to inform them of the leak but they failed to respond.
4. The Claimant alleges further that he noticed cracks developing throughout the foundation of his home as well as the walls. After numerous calls were made, on or about 16 September, 2011 the servants and/or agents of the Defendant visited the leaking main in front of his home and attempted to repair the leak. He alleges that after digging up, the road attempts were stalled as a great volume of water was discovered under the surface. It had to be pumped out before fixing the leak.
5. Approximately one (1) week later the Claimant alleges the main line ruptured again and the servants and/or agents of the Defendant returned to the area and repaired it. The following week the leak appeared again and the servants and/or

agents of the First Defendant returned to the area and removed and replaced the main line.

6. The Claimant makes no further pleading in his Statement of Case about repairs but goes on to indicate that during an unspecified time his property was gravely affected by water-logging, causing the property to cave and erode from its original position. He pleads that money was spent to try to shore up the building and to protect the remains of the home, but this proved futile. Receipts for expenditure on those efforts are attached to the Statement of Case. Eventually, the Claimant's family had to vacate the home and seek alternate accommodation.
7. The Claimant avers further that he retained the services of Mr. Fyzoal Ali, a Valuator to conduct an appraisal of his property. The appraisal attached to his pleadings, indicated that the property was as at 15 February, 2012, without residential or any other purpose due to a landslide. The home was described as having moved from where it was originally built and the fence, land and driveway were moving downhill. The land was valued at \$1.5 Million.
8. The Claimant also retained the services of the Consulting Civil and Structural Engineering firm, KS & P Ltd to prepare a Structural Evaluation of his property as well as the Chartered Quantity Surveyors firm of Welch, Morris and Associates Limited to prepare a report and determine the cost of reconstruction. The Structural Evaluation report dated July 25, 2012 took into consideration inter alia:
  - The prior satisfactory performance of the building for 28 years,
  - That a trigger mechanism was therefore required to compromise its foundation,
  - That there was no recorded significant cause other than the leaking water line, and
  - That streaming water would have resulted in loss of sheer strength of soil and/or heave in areas as there is a predominant presence of swelling clays in the general area.

9. The Report concluded that the failure and collapse of the home was “*best explained by a broken water line which resulted in the alteration of the engineering properties of the governing subsoil....Future construction on the site would likely require enhanced foundation requirements, as determined by a Geotechnical Investigation*”. The author of the Report was Mr. Kenneth Sirju, M.Sc. (Eng.), M.A.P.E. The Quantity Surveyors report prepared by Candice Welch BSc. (Hons). I.C.I.O.B, M.O.S.T.T. estimated the cost to reconstruct the home at \$1,112,000.00.

10. As a result of the foregoing, the Claimant claims special damages in the sum of \$1,196,291.95 as follows;

Cost of Structural Evaluation Report	\$4,000.00
Cost of Valuation Report	\$1,000.00
Cost of Estimate from Welch, Morris & Associates	\$4,000.00
Costs of Photographs	\$500.00
Rental accommodation \$2500.00 per month	\$25,000.00
<b>From January 2012 to present</b>	
Costs of reinforcement works	\$49,791.95
Estimated cost of re-construction	\$1,112,000.00

11. The Defendant by way of a Defence filed on 6th February 2013 pleaded that it denies;

(a) that it received a report of a water leak of its 4” main along Realize Junction Road, Princess Town in or around June 2011 and failed and/or refused and/or neglected to respond to same;

(b) that on 16 September, 2011 its servants and/or agents visited the said Realize Junction Road, Princess Town pursuant to numerous phone calls to its hotline from the Claimant and attempted to repair a water leak of its 4” main;

(c) that the water leak of the said 4” main along the said Realize Junction Road, Princess Town or any water logging caused by same which the Claimant may prove was responsible for the erosion of the soil beneath the Claimant’s house which led to its eventually collapse;

(d) that the bills and receipts for material and labour attached to the Statement of Case were expended in the repair of the Claimant’s home since the 1<sup>st</sup> Defendant had not seen the original of those documents and wished to cross-examine the makers of same and puts the Claimant to strict proof thereof and

(e) in a general pleading at paragraph 14 the Defence does not admit the expenditures on rental alleged in the Claim. There is no denial however, that as stated by the claimant, his family had to vacate their home and seek alternate accommodation.

12. Having denied receiving a report or conducting repairs from June 2011 to September 2011, the Defendant averred in its Defence that, it conducted repair works to its 4” main along Realize Junction Road, Princess Town on 20 December, 2011. The Defendant said it received a complaint of a leak along the Realize Junction Road, Princess Town Area on 5 January, 2012 and immediately responded to the complaint and repaired the leak on 6 January, 2012. Further repair works were conducted and completed on the said 4” main on 27 and 28 February, 2012.

13. The Defendant further pleaded that its engineering technicians visited the Claimant’s property to determine whether the Defendant was culpable for its damage. Reports prepared by technicians Konata Antoine and Khalil Hosein, employees of the Defendant, were attached to the Defence. According to the Defendant, it was noted in their reports that:

- the soil within the Realize Junction Area where the Claimant’s House is located is known as “Zapate” or swelling clay/silt which is prone to slippage and land movement;
- soil movement was apparent upon inspection of the adjoining properties;

- there is no road drainage and therefore all the surface water from the road flows directly unto the Claimant's land which could over a period of time lead to the movement of the soil; and in conclusion,
- poor drainage, poor construction and land movement based on the history of the soil in that area led to the collapse of the Claimant's house. Further, that the land movement also damaged the Defendant's main in the said area.

14. The Claimant objected to these Reports when the Defendant sought to rely on the makers as expert witnesses. The objections were on the basis that findings were based on hearsay and that the Defendant's employees were not experts in soil science or engineering such that their findings could be considered in the Court's determination. Eventually, after a hearing by the Court of Appeal the above mentioned findings in Reports on soil quality being the cause of the damage to the home as pleaded in the Defence were struck out.

15. Another aspect of the Defendant's pleaded case is the contention that the Claimant contributed wholly or in part to the damage to his home by his own negligence in that he:-

*“(a) failed to construct his house upon piled foundation since he knew or ought to have known that the soil along the Realize Junction Road was prone to land movement;*

*(b) failed to construct a proper box drain which would facilitate the run off of surface water away from his land since he knew or ought to have known that the soil along the Realize Junction Road was prone to land movement;*

*(c) Failed to act within time or at all to implement and/or utilize piles at the foundation of his house upon the realization that there was land movement and damage to his house. “*

16. The Claimant filed a Reply on 21 November, 2013 addressing inter alia the new information concerning repairs the Defendant had done to the water main after September 2011. Those repair dates had been omitted from the Statement of Case. The Claimant agreed to the timing of the leaks observed and repairs done

in December and thereafter, as set out in the Defence. It was explained that the December leak was not reported directly to the Defendant by the Claimant or his wife. Instead it was reported to their Councillor for the area, Mr. Raffie Mohammed, who lodged the complaint with the Defendant.

17. After a lengthy period of case management, during which several notices of application were determined and the parties were encouraged to consider a settlement, the Trial commenced with evidence being heard on 29 June, 2017. This included consideration of Witness Statements filed by the Claimant, his wife, his engineering and quantity survey experts and cross-examination thereon. The witnesses for the Defendant were its two aforementioned Engineering Technicians who were also cross-examined.
18. There was no expert evidence admitted for the Defendant. This was so despite the fact that on 22 December, 2016 the Defendant applied for and was granted permission to file a supplemental expert's report. The time granted for filing expired on 14 February, 2017. A belated application by the Defendant to rely on the reports of its two employees Antoine and Hosein as well as on a loss adjustor's report that had been the basis for denial of liability since 24 May, 2012, was denied at the Pre-Trial Review hearing. Hearsay evidence concerning records from the defendant's database system known as STORMS intended to prove that repair was first scheduled on 4 January, 2012, was also struck out.
19. After hearing of the evidence at Trial, Parties were permitted to make closing submissions in writing. Extensions of time were granted and the final deadline for the close of submissions was 13 October, 2017.
20. The main thrust of the Defendant's submissions was to attempt to prove, by highlighting purported inconsistencies that the evidence of the Claimant and his wife was untruthful as it relates to the time when the leak was reported. The Defendant also sought to discredit the Claimant's expert evidence by arguing that it was deficient in proving that the leak caused the damage, since other causes, such as poor soil quality or even earthquake were not ruled out.

21. Counsel for the Defendant cited **Harvey Nichols & Co Ltd. V Thames Water Utilities Ltd [1999] All Er (D) 1272** and commended “the extent of expert evidence utilised in that case” as the type of evidence that this Court should require of the Claimant in order to find that failure to repair the leak caused the damage.
22. The submissions filed by the Claimant focussed on the strength of his testimony and that of his witnesses. He underscored the absence of any evidence put forward by the Defendant to prove that the damage to the home was caused by poor construction, lack of drainage and poor quality soil as alleged. Aspects of the Claimant’s case that were actually supported by the Defendant’s witnesses were also highlighted.
23. These included agreement that the property sloped downwards from the road where the main line leak repair was conducted, as well as an admission that the Defendants records as to when repairs were done were not conclusive. In other words, the fact that the Defendant did not have on file a written “STORM Report” on a call made sometime in September 2011 and repairs attempted then, did not mean that there could not have been such a Report.

### **III. Issues**

24. The issues arising from the submissions were issues of fact as follows:
  - i. Did the claimant prove, on a balance of probabilities, that the Defendant’s negligence in failing to repair the admitted leak in its line was the cause of the damage to the home and to what extent did the Claimant’s expert report provide sufficient evidence to support such a finding?
  - ii. If the damage was due to the leak, was there undue delay by the Claimant in reporting it and/or mitigating his loss by reinforcing the home, such that the loss was caused wholly or partly by his own Negligence?
  - iii. Is there any evidence to establish, as alleged by the Defendant, that the damage to the home was due to causes other than the leak?



25. Is there sufficient evidence to support the Special Damages claims?

**IV. Consideration of Submissions on Law**

26. With regard to the expert evidence, the present case is distinguishable from the **Harvey Nichols** case for several reasons. The Defendant relies on that decision as an indication of the extent of expert evidence required. However, it is to be noted that at paragraph [9] of that decision, the Court observed that the volume of expert evidence presented was unusually large for such a small case.

27. Further, one of the main reasons identified by the Court at paragraph [10] for so much expert evidence being adduced in that case was that, unlike the present situation, there was a lack of direct evidence as to the origins of the water. That is not the case here at all as there was an admitted leak of significant proportions of water.

28. The expert's evidence in the instant case is not the only evidence that water and in particular the leak caused the damage. There is also the Claimant and his wife's testimony about seeing water in the cracks and that the persons that came to repair had to pump out water. Also, the evidence of the location of the main and that the land sloped down to the Claimant's house supports the inference that any water would percolate or flow underground to reach the backyard. Lastly, there is evidence from the Claimant about drains around the house and about the fact that the house stood for over 25 years prior to the leak without damage.

29. Part 33.2 CPR sets out the impartial duty of the expert as:

- (1) *“Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of the litigation.*
- (2) *An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise.*
- (3) *An expert witness must state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded view.*

- (4) *An expert witness must make it clear if a particular matter or issue falls outside his expertise.*
- (5) *If an expert's opinion is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.*
- (6) *If the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.*
- (7) *If after exchange of reports an expert changes his view on a material matter such change of view must be communicated to the other party."*

30. In **Dayal Moonsammy v Rolly Ramdhanie and anor CA 62/2003**, Kangaloo JA who delivered the decision of the Court of Appeal had the following to say on the duty of an expert when giving his opinion before the Court:

*"11. It is important to observe that Dr Bedeysie gives no factual basis nor scientific criteria for his opinion that the appellant would have to retire in about five years' time. It is not apparent from the report that Dr Bedeysie was aware of the occupation of the appellant nor what his job entailed. Dr Bedeysie has not said that he is aware that the appellant was not already doing light duties or engaging in a job which required him not to lift more than ten pounds. It cannot be assumed that Dr Bedeysie was aware of the requirements of the job of the appellant.*

*12. It should be noted that the case of Gerard Martinez & or v Harrilal Ramdeen & Or HCA 2372 of 1979 Best J cited the well known case of Davies v Edinburgh Magistrates 1953SC 34 which was approved and applied by our Court of Appeal in Edmund & Ors v Ralph Morris Mag. App 5 of 1973 unreported on the duty of expert witnesses. "Their duty is to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of those criteria of the facts proven in evidence."*

## **V. Analysis of Pleadings and Evidence**

31. As it relates to Issue #1 regarding proof that negligence in repair of the leak caused the damage, my findings are premised on the fact that there was no dispute that there was in fact a leak in the Defendant's main in front of the

Claimant's home. The evidence that the leak caused the damage is overwhelming when the testimony of all the witnesses is taken into account. Even the Defendant's witnesses admitted that the Claimant's property slopes down from the vicinity of the main that was leaking and had to be repaired.

32. I do not find that there is merit in the Defendant's submissions that the Claimant's expert witness, Mr. Sirju, does not express any criteria, scientific or otherwise, as to how he arrived at his conclusions. The said criteria and factual basis, including reports from the Claimant and his wife, were clearly set out in his report and reinforced under cross-examination. I accept his evidence as an expert to be of sufficient weight to support the Claimant's case. My acceptance is based on his qualifications and experience, including having evaluated structural damage due to water in previous assignments. The submission made by Counsel for the Claimant at paragraph 18 and 19 of the Closing submissions filed on September 29, 2017 is adopted as part of my findings.

33. The submission was as follows:

*“18. The other expert on behalf of the Claimant is Mr. Kenneth Sirju. He is a registered Civil Structural Engineer with the Board of Engineers of Trinidad and Tobago, with some 40 years of engineering experience behind him. The statement and CV speaks for itself. He withstood the cross examination of the defense who in their cross examination attempted to say that in his CV he did not specify that he was an expert in water damages. His answer was clear that he has done water damages report, and he would determine whether water damage was done or not on the site. When one looks at his CV one would determine that he is an expert in the relevant area and he has in fact prepared this report with photographs. In his report he referred to Trigger Mechanism being required to compromise the foundation elements which was the eventual cause for the collapse of the building and he also made it clear that there was no recorded earthquakes that can be attributed to the damages. It was also his observation that while the site drainage was compromised at the front of the property at the time of the visit, it is understood that up until the time of the initial cracking,*

*the site was adequately drained. He stated that the structure had to be demolished and rebuilt and that the perimeter fence wall required reconstruction and that a geo technical investigation is essential and it is likely that longer piles and retaining wall would be required.*

*19. For over 30 years there was no need for retaining walls or longer piling. This became a necessity due to the damages done as a result to the busted water line of the Defendant in front of the subject property. I recommend this report.”*

34. A central plank of the Defendant’s case relates to *Issue #2* in that it denies the Claimant’s initial report of the leak was as early as September 2011. It admits that reports were made but says the first report was made in December 2011. There was no evidence before the Court, tendered by the Defendant, as to the impact such a delay would have had regarding the extent to which the home was damaged. Instead the focus in cross-examination and in submissions was simply to point out perceived inconsistencies in the Claimant and his wife’s evidence, to show that they were untruthful about noticing surfacing water since June 2011, reporting it in early September and receiving a repair visit from the Defendants employees on 16 September, 2011.

35. The Claimant struck me as a forthright and honest witness. He appeared somewhat dejected and weary as the last stages of his case unfolded after many years had elapsed. His memory with regard to dates was quite reliable despite the lapse of time. At times his patience appeared to wain as he was probed in cross-examination as to whether he truthfully asked his wife to report the leak when he first suspected it was from the Defendant’s line. However, he remained calm and courteous throughout his lengthy cross-examination.

36. The Claimant’s wife presented as a more confident witness as she was the person who was personally involved in reporting the leak to the Defendant and the area Councillor. She had also taken pictures of the damage to the home from the time cracks were observed.

37. It is my finding, on a review of the submissions and evidence, that neither the Claimant nor his wife were discredited.
38. Under a heading “Discovery of the Leak” in the Defendant’s submissions, the attempt to establish that the Claimant’s evidence was discredited commences by pointing out that it was admitted, that on the initial discovery of surfacing water, none was seen at the front of the home. It is my finding that this does not adversely affect the Claimant’s case, as throughout there was evidence to support that water would have percolated underground from the water main above the sloping land to the point in the back yard where it surfaced.
39. The Defendant goes on to suggest that the photographs of the cracks taken by the Claimant’s wife do not show water in any of the cracks. It is my finding that it was impossible to detect from the pictures, whether water was in the cracks or not as the area in the depths of the cracks was dark and shady. I accept the Claimant and his wife as unshaken witnesses of truth that they saw the water. In any event it is not in dispute that there was a leak in the Defendant’s main. On a balance of probabilities I find as a fact that there was water in the cracks.
40. Paragraph 19 of the Defendant’s closing submissions seeks, by setting out an incorrect representation of the Claimant’s case, to suggest that Mr. and Mrs Hosein assumed from the time they first saw the cracks as early as July 2011 that “the cause of the leak” was the Defendant’s main. In their evidence in chief however the Claimant and his wife made clear that it was only when in July to August 2011 they saw cracks and bulges **in the road** that they concluded that the leak was in the Defendant’s main.
41. They were both quite clear under cross-examination that prior to that, when from as early as June they saw water surfacing in the home and in the weeks thereafter observed cracks **in the home** they did not yet assume that a leak from the Defendant’s line was the cause. In the circumstances, I do not accept that this evidence discredits the Claimant by showing that he and his wife were either untruthful about their discoveries or tardy in reporting the leak.

42. As it relates to the dates when repairs were conducted, the Defendant seeks to discredit that repairs commenced as early as September 2011, so as to shed doubt on whether the Claimant reported the leak in time to mitigate his losses. The submission in this regard is as follows:

*“Repairs*

21. *The Claimant’s case on the repairs conducted by the First Defendant is contradictory or inconsistent. The Claimant’s evidence is that the Defendant conducted the first set of repairs to the leaking water main in September 2011 then again in early October 2011, 30th December 2011 and then on 4th and 6th January 2012.*

22. *The Claimant’s Statement of Case at paragraph 7 refers to a different sequence of events. The Claimant avers therein that the First Defendant visited the site and attempted repairs on 16 September 2011, then approximately one week later and then the following week. From the sequence of events the Claimant’s Statement of Case suggest that the First Defendant conducted or attempted to conduct **three sets of repairs between September 2011 and October 2011**. The Claimant’s pleaded case is therefore inconsistent with his evidence.*

23. *Further contradictions appear in the Claimant’s Reply, wherein, he avers that the repairs were conducted by the First Defendant on 30th December 2011, 4th and 6th January 2012 and 28th February 2012. However, the Claimant does not mention in his witness statement the repairs done on 28th February 2012.*

24. *The Claimant’s inconsistent evidence relative to the repairs conducted by the First Defendant should we say respectfully affect the veracity of his evidence when this Honourable Court is considering same.”*

43. On a review of the evidence, it is my finding that there is no compelling inconsistency with regard to the Claimant’s version of the timing of repair visits. It was not essential to their case alleging the Defendant’s leak as the cause of damage to their home, to set out every repair visit made by the Defendants. Accordingly, the fact that only the three first visits around September 2011,

made in response to their initial call for help, were pleaded in the Statement of Case does not establish that they are unreliable witnesses.

44. The late December 2011 to February 2012 visits were more important to the Defendant's case as they are contending that they only received a report on the leak in December. Accordingly, these dates were included in their Defence.
45. In a Reply filed early in the proceedings, the Claimant candidly admitted these latter visits took place. He and his wife gave written and oral testimony at Trial that was consistent throughout with no denial that repairs were done from September 2011 to February 2012. There was also evidence that the latter repair visits differed from the earlier ones in that they came about after the Claimant's wife complained to her Councillor who was in the area in late December. It was the Councillor and not the Claimant who got the Defendant to come and do repairs on that occasion.
46. There was a minor discrepancy in that, in the witness statements, the Claimant and his wife spoke of two repair visits over the period September to October 2011. This was in my view, an insignificant oversight or result of a memory lapse. It did not present a basis for finding that they were untruthful about reporting the leak in September 2011.
47. The Defendant's own witness admitted that there could have been repairs done without it being reflected in a STORM Report. This undermined the case being made out by the Defendant that because there was no September 2011 STORM Report in their records the Claimant was untruthful about the report and repairs done then. It is my finding of fact that the Claimant had the leak reported by his wife in early September 2011 as soon as he became aware of it.
48. I also accept as factual that when he discovered in July to August 2011 that the home was cracking, he immediately took action to try to safeguard it by installing augmented piles, digging trenches to the rear of the property and demolishing the garage and porch to the front of the house. This was to no avail but I accept that by the receipts attached to the Claim \$49,791.95 was spent

from around September 2011 to January 2012. The said documents corroborate that steps were taken to mitigate the damage without undue delay.

49. There was a suggestion to the Claimant that one of the receipts could not be relied upon since it was dated 23-1-11, a date preceding the discovery of the leak. I accept the evidence of the Claimant however, that the receipt was for work done in January 2012 and the writer of the receipt made a typical error people make at the beginning of each year by writing 2011.
50. As it relates to *Issue #3* there was no admissible expert evidence presented by the Defendant, to establish as alleged, that the damage to the home was due to causes other than the leak namely, poor quality soil, poor construction, land movement, delayed reporting or earthquake. The Defendant's reliance on a candid comment by the Claimant under cross-examination, that he believed the Councillor was seen walking in his area in December 2011 because another person lost his house, cannot be the basis for a finding that there was a cause other than the Defendant's leak for the loss of the Claimant's house. Accordingly, I make no finding in favour of the Defendant on this issue.
51. Finally, regarding *Issue #4*, having considered the evidence presented by the Claimant as to special damages, which was clear, consistent, documented, corroborated by his wife's testimony and logical, I find as a fact that the expenditure incurred was in fact spent (for repairs prior to the collapse and for expert reports and rental thereafter) and to be spent (to rebuild the home) to mitigate and compensate for losses caused by the Defendant's negligence regarding the leak.
52. The Defendant's submission, which sought to establish that the Claimant would have paid no rent for alternative accommodation for the five years since his home collapsed, defied logic. Instead, I accept as true that after the Claimant and his wife fled the collapsing home and found refuge at the nearby property owned by his brother, they had to pay him the rental due for such accommodation.



53. It matters not that in the pre-action protocol letter such rental was not specified. It was properly set out in the Claim and supported by receipts. The absence of receipts for some months up to the current time during which alternate accommodation had to be used does not mean that the Claimant is not to be compensated for same. I accept him as a truthful witness based on his own testimony that alternate accommodation was required.
54. It is logical that if the home was uninhabitable, accommodation had to be found elsewhere and there would be an inherent cost. The rental receipts merely confirm and put a price to the cost of the alternate accommodation. Even if there had been no receipts a reasonable quantum based on market rates for renting accommodation could have been considered.
55. The cost of re-construction was also questioned by counsel for the Defendant who sought to discredit the expert evidence of the Quantity Surveyor by pointing out that she admitted she had not estimated the value of the property prior to its collapse. Instead, her report gives an estimate as to the cost to re-construct the home. Further, she admits that this cost includes the addition of a retaining wall that was not there before.
56. I see no basis for not relying on this estimate as the measure of damages since there is no evidence that it would be unreasonable for the home to be rebuilt on the valuable land the Claimant still owned. The court in **Haresh Balkaran v National Gas Company of Trinidad and Tobago CV2008-00383** at [13], summarised briefly the law on damages in relation to property as follows:  
*“Where property is damaged, the normal measure for assessing damages is the amount by which its value has diminished as at the time and place of the destruction<sup>1</sup>. This is normally ascertained by reference to the cost of repairs; see Bacon v Cooper (Metals) Ltd<sup>2</sup>. The same is true where land and buildings are concerned; see Harbutts “Plasticine” Ltd v Wayne Tank and Pump Co Ltd<sup>3</sup>.*

---

<sup>1</sup> Winfield and Jolowicz on Tort 13th edition Sweet and Maxwell pages 629-630

<sup>2</sup> Bacon v Cooper (Metals) Ltd [1982] 1 All ER 397

<sup>3</sup> Harbutts “Plasticine” Ltd v Wayne Tank and Pump Co Ltd [1970] 1 QB 447

*As regards the measure of damages to be awarded when land or building is damaged due to the negligence of another, the principles to follow are not fundamentally different from those governing damage to chattels. However, when assessing damages to lands and buildings, the different character of the land and/or building is to be taken into account<sup>4</sup>. The governing issue is the reasonableness of the proposed expenditure.”*

57. In that case the type of damage done was in essence tantamount to the house being destroyed and it was held that the evidence clearly and uncontrovertibly supported replacement rather than repair and therefore the measure of damages in that case was the replacement cost.

58. There is no expert evidence put forward by the Defendant in this case that after the home sustained destruction by water due to the Defendant’s leaking main, a retaining wall would not, as stated by the Claimant’s expert be required for such re-construction.

## **VI. Decision**

59. The Claimant’s home was constructed more than 25 years before the events leading to its collapse in 2012. There was no prior sign of land movements, cracks in the building or the road until water was seen in June 2011. The water came from the Defendant’s leaking main in front of the Claimant’s house and water logged the clay soils at the location. The Claimant reported the leak in a timely manner and took steps to mitigate the loss.

60. There was merit in the closing submission by Counsel for the Claimant that *“the only reasonable conclusion to make is that WASA was negligent in the manner the repairs were conducted. The lines continued to leak until February 2012 by which time the Claimant’s home was completely destroyed.”* The Claimant has proven, by his own cogent and compelling testimony supported by his wife and his expert witnesses, every aspect of the Claim.

---

<sup>4</sup> Winfield and Jolowicz on Tort 13th edition Sweet and Maxwell pages 633-634

61. The case for the Defendant was not supported by any evidence that could tip the balance of probabilities in its favour. Accordingly, Judgment is awarded for the Claimant in this matter.

**VII. Order**

62. The First Defendant is to pay to the Claimant damages in the amounts claimed, as follows:

a) Cost of Structural Evaluation Report	\$4,000.00
b) Cost of Valuation Report	\$1,000.0
c) Cost of Estimate from Welch, Morris & Associates	\$4,000.00
d) Costs of Photographs	\$500.00
e) Costs of reinforcement works	\$49,791.95
f) Rental accommodation \$2500.00 per month	\$25,000.00
From January 2012 to 16 November 2012	
g) Estimated cost of re-construction	\$1,112,000.00
h) TOTAL AWARD	\$1,196,291.95

63. The First Defendant is to pay interest on the amounts listed at a) to g) above at the rate of 2.5% from February 4, 2012 to the date of judgment.

64. The First Defendant is to pay the Claimant's costs of the Claim on the prescribed basis.

65. Stay of Execution is for 28 days.

**Delivered on November 20, 2017**

.....  
**Eleanor Joye Donaldson-Honeywell**  
**Judge.**

**Assisted by: Christie Borely JRC I**