REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2014-04164**

BETWEEN

SAMUEL RAGOONANAN

Claimant

AND

THE COMMISSIONER OF STATE LANDS

First Defendant

THE CHAIRMAN, ALDERMAN, COUNCILLORS AND ELECTORS OF THE REGION OF PENAL / DEBE

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Tuesday 10 December, 2019
Appearances:
Mr. Rennie Gosine instructed by Ms. Renisa Ramlogan, Attorneys at Law for the Claimant
Mr. Andrew Lamont instructed by Ms. Kendra Mark, Rene Simmons, Attorneys at Law for the First Defendant
Ms. Lauren Stacy Ramtahal instructed by Ms. Keiva Arjoonsingh, Attorneys at Law for the Second Defendant

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JUDGMENT

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1. A long time ago in the 19th and early 20th century "sugar was king". Large acreages of land in this country were devoted solely to the cultivation of cane for the production of sugar. Caroni (1975) Limited (Caroni Limited) eventually remained the main company charged with the responsibility of monetising this precious agricultural product and many persons devoted their entire lives to the cultivation and reaping of this crop. It was a common sight in the dry season to see the horizon ablaze in golden orange and the thick smoke of the fires in the Caroni cane fields as farmers burnt the cane. The burnt stalks heaped upon rail carts slowly

traversed the intricate railroad system networking over low lying hills and open fields.[1]

2. "King sugar" has long been dethroned. Caroni Limited has closed its doors. The rail road system abandoned. The Caroni cane lands carved up and some tenanted to farmers or their families. The responsibility for these Caroni lands were eventually transferred to the Commissioner of State Lands (the Commissioner) who now carries the responsibility for monitoring these agricultural leases pursuant to the Agricultural Small Holdings Tenure Act Chapter 59:53 ('The Act') such as the one in question in this case. The problem in this case is whether the tenancy for the landholding in question the subjects lands exists at all?

3. This lies at the heart of Mr. Samuel Ragoonanan's claim for damages for trespass. He contends that the Penal/Debe Regional Corporation[2] (the Corporation) unlawfully entered his lands and destroyed his crops. The Corporation contends that it obtained the permission of the Estate Management and Business Development Company Ltd (EMBD) to use the subject lands for an ongoing project. Both Defendants put Mr. Ragoonanan to prove his title to the subject lands. Mr Ragoonanan's right of occupancy is based upon a tenancy agreement he claims to have entered with Caroni Limited in 1994. At the trial only a copy of this agreement was produced and the location of the original is unknown. Mr. Ragoonanan, from his account, comes from a family of farmers and although he is recognised by the Commissioner as a tenant together with his brother of 15.17 acres of Caroni lands, he is not recognised as a tenant of the subject lands. The Commissioner has asserted that such an agreement simply does not exist or at least it has no record of it.

4. The subject lands are described on the tenancy agreement as:

> "All that parcel of land comprising 0.82 acres (section 4 Loading Station) and parts situate in the Ward of Naparima and bounded on the North by a Trace and Kennedy Park, on the East by the Train Line, on the South by a Road to Harripaul Village and on the West by lands of Caroni (1975)."[3]

[1] See the Book of Trinidad
[2] The Second Defendant, The Chairman, Alderman, Councilors And Electors Of The Region Of Penal / Debe
[3] Agreement dated 7th February 1994

5. At one stage it was the position of the Defendants that these boundaries would refer to the lands that are probably within their existing records and if so would not be anywhere close to where Mr. Ragoonanan claims the subject lands is located. The Court's first task was therefore to ascertain where exactly was this parcel of subject lands located.

6. By order dated 13th November 2015 and varied on 5th February 2016 the Court ordered that the subject lands be surveyed and that the parties be bound by the results of the survey. The Court also ordered the filing of a survey report.[4] There was some delay in obtaining the report and the proceedings were stayed. Eventually in 2018 a survey plan prepared by the Ministry of Agriculture, Land and Fisheries, Survey and Mapping Division was submitted to the Court on 24th January, 2019. The survey plan which was produced raised more questions than answers but fortunately the surveyor attended the trial to clarify this survey. I will deal with this aspect of expert evidence in some detail as it demonstrates the importance and care to

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[4] Order dated 15th November, 2015:

IT IS HEREBY ORDERED that:

1. Permission is granted to the First Defendant to file and serve its amended defence on or before 20th November, 2015.
2. Permission is granted to the Claimant to file and serve his reply to the First Defendant on or before 6th January, 2015.
3. The parties agree to the appointment of a land surveyor of the First Defendant to conduct a survey of the subject property.
4. The parties to issue joint instructions to the said surveyor.
5. The parties and/or representatives shall be present when the survey is being conducted.
6. The said surveyor to provide seven (7) days notice to the parties of the conduct of the survey.
7. The parties are to be bound by the survey report.
8. The cost of the survey is to be borne by the First Defendant.
9. The said survey report is to be filed and served by the First Defendant on or before 29th January, 2016.
10. The Case Management Conference is adjourned to 5th February, 2016 at 10:00am in Court Room SF03, Supreme Court, Harris Street, San Fernando.

Order dated 5th February 2016

"**IT IS HEREBY ORDERED** that:

1. The order dated 13th November, 2015 is varied by making the following provisions:
   (i) The parties agree to the said survey being conducted by the Director of Lands and Surveys.
   (ii) The Director of Lands and Surveys do carry out the said survey pursuant to the Court's order dated 13th November, 2015.
   (iii) The Director of Lands and Surveys is hereby appointed as a Part 33 expert and shall comply with his obligations to the Court pursuant to Part 33 of the Civil Proceeding Rules.
   (iv) The Case Management Conference is adjourned to 8th April, 2016 at 11:30am in Court Room SF07, Supreme Court, Harris Street, San Fernando."

be attended to the appointment and filing of reports by single experts.

7. The short point to be decided, provided the Court is satisfied with the clarification given by the surveyor, is whether Mr. Ragoonanan was indeed issued a tenancy agreement in relation to the subject lands by Caroni Limited.

8. On a balance of probabilities I am not of the view that Mr. Ragoonanan was issued a tenancy agreement for the subject lands. I say so for the reason that there are far too many questions surrounding the alleged tenancy which Mr. Ragoonanan has not satisfactorily explained when he was aware before the proceedings commenced that the main issue is his documentary evidence of ownership.

9. There are just too many questions left unanswered by Mr. Ragoonanan. While Caroni Limited has acknowledged he is a tenant with several parcels of land and did not produce the agreements for those parcels, their records reveal conceivably only one tenant's parcel in the Raghoo Village area but that is tenanted to Mr. Ragoonanan's mother. While Mr. Russell Boland accepts that some records were destroyed, even to assume that this alleged agreement exists raises too many unanswered questions to hold the view that any valid tenancy agreement was ever entered into between the parties. In short, the Claimant is asserting that because some of Caroni files were destroyed must mean that his file in relation to this specific agreement was destroyed or that the master register relied upon by Caroni Limited is fraught with too many errors to be reliable. That, in my view, would lead this Court into an unacceptable level of speculation when what is required on a serious matter of landholding under the Act is proof by the Claimant on a balance of probabilities.

10. In this judgment I examine the two main issues:

    (i) Whether the parcel of land described in the tenancy agreement is the parcel upon which the Corporation entered into occupation in 2013.

    (ii) Whether Mr. Ragoonanan was issued a tenancy agreement by Caroni Limited for this parcel of land and whether he was in occupation of it.

11. In determining these issues I will examine the expert evidence and the evidence of the

parties. Before I do so I also acknowledge that the parties were in negotiations with a view to resolving the claim. For this reason, I propose in this judgment to offer to the parties' one final opportunity to resolve this claim after considering my view on the legal consequences of the evidence that has been adduced before me on this issue of Mr. Ragoonanan's entitlement to occupy the subject lands. Even if he could have successfully asserted his right to occupy by virtue of a tenancy it comes with other serious implications for him such as: the tenancy agreement has long expired and the main purpose is no longer being fulfilled. There was obviously no claim made nor could have been mounted for adverse possession and the owner can still legitimately terminate his tenancy. I have also found in the judgment that the Corporation had breached the terms of its own licence with the State when it entered the subject lands. There may yet then be room for the parties to find a workable solution in light of my judgment.

The Caroni Lands

12. The lands in question are in an area known as Harripaul Village in Debe. There are some important landmarks in the area near to this parcel. There is a recreation ground known as the Kennedy Recreation Ground. There is a road to Harripaul Village and a road known as Papourie Road. To the South of Papourie Road is an area known as Raghoo village and Monkey Town. On cadastral sheets it is shown where a government railway line and train line criss cross the general area of Raghoo Village and Harripaul Village.

13. It is not in dispute that the subject lands are State lands. The Commissioner of State Lands in its letter dated 9th July 2014 identified a parcel as "C comprising .6287 as unallocated lands situate in the vicinity of Kennedy Park." Permission was granted by the Commissioner to the Corporation to use it for establishing a stockpile. This permission or licence to use parcel C included the clear mandate and condition that the Corporation's "activities must be confined to the area specified in the relevant approvals". If it did enter unto lands outside of plot C and in particular plot A, their licence is liable to be determined. Plot A is located in the general area which is being claimed by Mr. Ragoonanan as his lands described in the tenancy agreement. The question is whether those lands comprised lands which was formerly tenanted by Caroni Limited to Mr. Ragoonanan.

14. After 2003, all lands formerly owned or leased by Caroni Limited were transferred to the State. The lands were regularized and advice was sought on the boundaries for the lands from persons who were employed at Caroni Limited whose duties included the management of Caroni Lands. One such person was Mr. Russell Boland, Team Leader (Lands) at Caroni Limited. He testified that he is familiar with most lands owned or leased by Caroni Limited including the subject lands in this matter. His records show that Mr. Ragoonanan's tenancy comprises several plots of land totalling 15.17 acres under tenant number 46491. However, the records do not show a tenancy for Mr. Ragoonanan for the subject lands in that area. Rather the records show in the Raghoo Village area a Ms. Dolly Ragoonanan (the Claimant's mother) was a tenant of one parcel of land totalling 0.42 acres which is on the Southern side of Papourie Road and West of Wellington Road. This Raghoo Village parcel is on the opposite side of the subject lands. This is the only parcel of land in the records which are leased to "Mr. Ragoonanan in the Harrypaul Village/Raghoo Village area".

15. Mr. Ragoonanan contends that from 1967 he and his family have been in occupation of the subject lands and cultivated a portion of it with various crops including coconut trees, orange trees, plantain trees, sugar apple plants, mango trees, pineapple plants, pumpkin, peas, dasheen and other small plants. A portion of the subject lands was used to store agricultural equipment including tasker trailors, trucks and tractors. A portion of the subject lands was also used by Caroni Limited to stock and transfer cane to the Ste. Madeleine Factory.

16. In 1993 he claims he was successful in negotiating with Caroni Limited to sell their cane directly to the factory. In February 1994, he alleges the subject lands were leased to him by Caroni Ltd by agreement dated 7th February 1994. Pursuant to that agreement Mr. Ragoonanan had to pay rent in the sum of $5.00 and the purpose of the tenancy was to cultivate, store cranes and other equipment and to stock and transfer canes to Caroni Limited. The tenancy was for a term of 5 years. The tenancy was subject to the provisions of the Act. He contends, however, that he has been in continuous occupation of the said lands since 1967.

17. Mr. Ragoonanan contends that in February 2013, the Corporation entered onto a portion of the subject lands and graded it. In doing so it destroyed his crops. They also deposited

materials onto the subject lands even though he made several requests asking them to refrain from entering onto the lands. The Corporation contends that the subject lands were unoccupied when they entered unto those lands and if they did it was not to stockpile material but to park derelict vehicles.

18. By letter dated 12th April, 2013, Mr. Ragoonanan's attorneys wrote to the Corporation indicating his interest in the subject lands. The Corporation responded by letter dated 15th April 2013 and requested documentary evidence of his ownership/tenancy/lease of the subject lands. On 15th May 2013 he received a notice from the Commissioner to deliver up possession of the subject lands. By letter dated 22nd May 2013, his attorneys wrote to the Corporation and the Commissioner indicating that he continues to be a tenant of the subject lands. There was no response to this letter.

19. Since February 2013, he claims he has been denied access to the subject lands.

20. In their Defence the Defendants simply put the Claimant to strict proof that he was issued the lease and that he was in occupation of the subject lands. The Commissioner contends that only one parcel of land is tenanted to Mr. Ragoonanan in the Raghoo Village area and it does not correspond to the lands being claimed by him. While the agreement states the tenant number as 46491, that is Mr. Ragoonanan's valid tenancy number but it is attributed to other tenanted lands which Mr. Ragoonanan has possession of which and he is a recognised tenant.

21. The Corporation also contends that the area of land pleaded by Mr. Ragoonanan is not the land the Corporation occupies. Rather, they provide a survey plan indicating that they occupy the lands on the North and East of Kennedy Park marked as Plots A and C. Further, they contend that Mr. Ragoonanan's tenancy was for five years commencing 10th January 1994 and that Mr. Ragoonanan has failed to provide evidence that the tenancy was renewed and rent paid for the period of the tenancy. They state that the EMBD was deemed to be custodian of all lands owned by Caroni Limited after the latter became defunct. While materials were deposited on plots A and C, they deny this was the subject lands Mr. Ragoonanan alleges he occupied. They further denied that there were any crops on the lands.

I turn to consider the exact location of the parcel of land described in the alleged tenancy agreement.

The Survey of The Caroni Lands

22. A survey was conducted of the subject lands pursuant to two orders. The first by order dated 15th November, 2015 the parties agreed to the appointment of a land surveyor of the First Defendant to conduct a survey of the subject property. The parties were to issue joint instructions to the said surveyor. The parties and/or representatives were ordered to be present when the survey was being conducted. The said surveyor was ordered to provide seven (7) days notice to the parties of the conduct of the survey and **the parties were to be bound by the survey report.** The cost of the survey was to be borne by the First Defendant.

23. This order was subsequently varied by order dated 5th February 2016 whereby the parties agreed to the said survey being conducted by the Director of Lands and Surveys.

> "The Director of Lands and Surveys is hereby appointed as a Part 33 expert and shall comply with his obligations to the Court pursuant to Part 33 of the Civil Proceeding Rules."

24. Unfortunately, what followed proved ultimately to be the undoing for both parties as a survey plan was filed which raised more questions than answers and at one stage this Court was quite prepared to disregard it. However, after considering the judgment of the Court of Appeal in **Kelsick v Kuruvilla and others** Civil Appeal No P277 of 2012 it would have been remiss of any Court to simply disregard the survey documented by an independent surveyor without having the benefit of the expert himself explain his findings. I must note, however, that in this case the parties failed to comply with the Order in not attending on site with the surveyor and in the surveyor not preparing a proper Part 33 report setting out his findings results, his modalities, his resources, his source materials and reasons for ascribing the boundaries in the manner in which he actually did. Similarly, the parties failed to put any questions to the expert or to make any application to issue questions to the surveyor to clarify his report pursuant to Rule 33.6 of the Civil Proceeding Rules 1998 (CPR). All of this should have been achieved before the trial.

Expert Evidence

25. The Court's power to appoint a single expert is set out in Rule 33.6 CPR which provides:

> **"Court's power to appoint a single expert**
>
> **33.6** (1) Where the court gives permission to call an expert witness or put into evidence an expert's report, it may direct that evidence is to be given by a single expert appointed—
>
> *(a)* jointly by the parties;
>
> *(b)* by the court;
>
> *(c)* by the court from a list prepared by the parties; or
>
> *(d)* in such manner as the court may direct.
>
> (2) If the court gives such a direction the parties must, so far as is practicable, agree—
>
> *(a)* the questions to be submitted to the expert;
>
> *(b)* the instructions to be given to him; and
>
> *(c)* arrangements for—
>
> (i) the payment of the expert's fees and expenses; and
>
> (ii) any inspection, examination or experiments which the expert wishes to carry out.
>
> (3) If the parties cannot agree these matters any party may apply to the court to decide them.
>
> (4) A single expert may be appointed by the court—
>
> *(a)* instead of the parties instructing their own experts;
>
> *(b)* to replace experts instructed by the parties;
>
> *(c)* in addition to experts instructed by them; or
>
> *(d)* to assess the evidence to be given by experts instructed by them."

26. The general rule is that parties must give instructions to a single expert (Rule 33.7 CPR). Rule 33.10 CPR sets out the contents of the expert report:

> "**Contents of report**
>
> **33.10** (1) An expert's report must—
>
> *(a)* give details of the expert's qualifications;

(b) give details of any literature or other material which the expert has used in making his report;

(c) say who carried out any test or experiment which the expert has used for the report;

(d) give details of the qualifications of the person who carried out any such test or experiment; and

(e) where there is a range of opinion on the matters dealt with in the report—

(i) summarise the range of opinion; and

(ii) give reasons for his opinion.

(2) At the end of an expert's report there must be a statement that—

(a) the expert understands his duty to the court as set out in rules 33.1 and 33.2;

(b) he has complied with that duty;

(c) his report includes all matters within his knowledge and area of expertise relevant to the issue on which his expert evidence is given; and

(d) he has given details in his report of any matters which to his knowledge might affect the validity of his report.

(3) There must be also attached to an expert's report copies of—

(a) all written instructions given to the expert;

(b) any supplemental instructions given to the expert since the original instructions were given; and

(c) a note of any oral instructions given to the expert, and the expert must certify that no other instructions than those disclosed have been received by him from the party instructing him, his attorney-at-law or any other person acting on behalf of the party.

(4) Where expert evidence refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports."

27. In **The Ikarian Reefer** [1993] F.S.R 563 Justice Cresswell set out the duties and responsibilities of expert witnesses as follows:

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation: see *Whitehouse v Jordan* ((1981) 1 WLR 246, 256) per Lord Wilberforce.

2. Independent assistance should be provided to the court by way of objective unbiased opinion regarding matters within the expertise of the expert witness; see *Polivitte Ltd v Commercial Union Assurance Co plc* ((1987) 1 Lloyd's Rep 379, 386) per Mr Justice Garland, and Re J ((1990) FCR 193) per Mr Justice Cazalet. An expert witness in the High Court should never assume the role of advocate.

3. Facts or assumptions upon which the opinion was based should be stated together with material facts which could detract from the concluded opinion.

4. An expert witness should make it clear when a question or issue fell outside his expertise.

5. If the opinion was not properly researched because it was considered that insufficient data was available then that had to be stated with an indication that the opinion was provisional (see Re J). If the witness could not assert that the report contained the truth, the whole truth and nothing but the truth then that qualification should be stated on the report: see *Derby & Co Ltd and Others v Weldon and Others (No 9)* (*The Times*, November 9, 1990) per Lord Justice Staughton.

6. If, after exchange of reports, an expert witness changed his mind on a material matter then the change of view should be communicated to the other side through legal representatives without delay and, when appropriate, to the court.

7. Photographs, plans, survey reports and other documents referred to in the expert evidence had to be provided to the other side at the same time as the exchange of reports."

28. Expert evidence which lacks the qualities of cogency, usefulness and impartiality are poor resources to assist the Court's determination of fact. In **Kelsick v Kuruvilla and others** Civil

Appeal No P277 of 2012 Jamadar JA judgment represents our settled law on the utility of expert evidence. Jamadar JA provided the governing principles in the case of expert evidence by the Court in granting an application under Part 33 Civil Proceeding Rules 1998 as amended (CPR).

> "8. In determining whether permission should be granted to use expert evidence and what expert evidence is reasonably required to resolve the issues that arise for determination, a court ought to weigh in the balance the likelihood of the following (assuming admissibility):
>
> (i) How cogent the proposed expert evidence will be; and
>
> (ii) How useful or helpful it will be to resolving the issues that arise for determination.
>
> (iii) In determining whether this evidence is reasonably required to resolve the proceedings justly, the following factors that allow one to assess proportionality should also be weighed in the balance:
>
> (iv) The cost, time and resources involved in obtaining that evidence, proportionate to the quantum involved, the importance of the case, the complexity of the issues, the financial position of each party involved in the litigation, and the court resources likely to be allocated to the matter (in the context of the court's other obligations);
>
> (v) Depending on the particular circumstances of each case additional factors may also be relevant, as such:
>
> (vi) Fairness;
>
> (vii) Prejudice;
>
> (viii) Bona fides; and
>
> (ix) The due administration of justice.

9. Under cogency, the objectivity, impartiality, and independence of the proposed expert, together with the qualifications and experience of the proposed expert, in relation to both the specific subject under consideration and the particular issues to be resolved, are material considerations. At this stage of the proceedings a trial judge is simply required to assess how cogent the expert evidence is likely to be. That is, how convincing and compelling it is likely to be based on the stated considerations. Under usefulness or helpfulness, the technical nature of the evidence to be reconciled and the focus of the issues to be determined, as well as the familiarity of the expert with the areas under scrutiny, are material considerations, especially when that expertise is relevant for necessary fact and/or inferential findings. As with cogency, at this stage of the proceedings the trial judge is only required to assess the likelihood of usefulness or helpfulness.

10. These two factors (of cogency and usefulness/helpfulness) contain some commonalities and there will often be overlap in what one considers under these two heads. Proportionality involves a comparative assessment of the multiple considerations stated in the Overriding Objective (Part 1.1 CPR). These considerations are not exhaustive and only serve to assist the court in determining what is required to deal with a case justly.

11. In summary, for expert evidence to be appropriate in light of the CPR, and for permission to be granted to use it, that evidence ought to be relevant to matters in dispute, reasonably required to resolve the proceedings and the proposed expert must be impartial and independent and have expertise and experience which is relevant to the issues to be decided. In addition, the use of expert evidence must also be proportionate in light of the factors set out in Part 1.1 CPR. Economic considerations, fairness, prejudice, bona fides and the due administration of justice are always matters that may have to be considered depending on the circumstances of each case."

29. The appointment of a single expert in this matter gave effect to the overriding objective of the CPR. It was proportionate to the nature of the issues to be determined, saved the parties expense and allowed for a simple exercise one would hope without any controversy.

30. In **Blackstone's Civil Practice 2016**, the learned authors observed at paragraph 54.26:

> "Single joint experts owe an equal duty to all parties and must maintain independence, impartiality and transparency at all times (Guidance for experts 2014 para 43.) They should keep all instructing parties informed of the material steps they may take by copying correspondence to all parties."

31. The expert's overriding duty is to the Court, to "help the Court impartially on the matters relevant to his expertise." His duty to the Court "overrides any obligations to the persons from whom he has received instructions." See Rule 33.1 CPR.

32. However, Mr. Asim Ali's survey did not strictly conform to the full description of the subject lands. This highlights a problem in practice with the appointment of a single expert. A Court must always be astute to critically examine any expert's findings to ascertain that its cogency and logic sufficiently supports the expert's opinion. A confident expert may not be a reliable one if his findings are opened to justified criticism. **Blackstone's Civil Practice** has a useful note on the occasions where a single expert report can be challenged by way of further expert evidence:

> "54.21 Where a single joint expert has been agreed by the parties and the court has directed that expert to report, a party who is unhappy with that expert's conclusions will not be permitted to call further expert evidence by way of their own expert unless it would be unjust pursuant to the overriding objective not to all that evidence (*Daniels v Walker* [2001] 1 WLR 1382). *Daniels v Walker* also held that refusing an additional expert after a direction for a single joint expert did not infringe the European Convention on Human Rights, art. 6(1), in the Human Rights Act 1998, sch. 1. In considering whether it would be unjust not to allow an additional expert, *Peet v Mid-Kent Healthcare Trust* [2001] EWCA Civ 1703, [2002] 1 WLR 210, held that good, not fanciful, reasons are required. A preliminary requirement if further expert evidence is to be allowed is whether there is any rational criticism of the joint expert's report. A significant discrepancy between the valuation of evidence of a single joint expert and a second expert instructed by one of the parties may be a sufficient basis for allowing the second expert's evidence

(*Marston v Lewis* [2004] EWHC 2833 (Ch), LTL 4/11/2004). There are cases where a pivotal issue depends on expert evidence and the jointly instructed expert's view is not easily capable of challenge in the absence of other expert opinion. If so, justice may require permission to be granted to seek a second opinion (*W v Oldham Metropolitan Borough Council* [2005] EWCA Civ 1247, *The Times,* 7 November 2005, a family law case).

Factors bearing on the exercise of the discretion to allow additional expert evidence after a jointly instructed expert has reported include the reasons for seeking another report, the nature of the case and the amount at stake, the effect of allowing another expert to report and its impact on delay and the trial (*Cosgrove v Pattison* [2001] CPLR 177). See also 54.38 for cross-examination of a joint expert.

If there is no basis for rational criticism of a joint expert's report, and if the joint report totally undermines one side's case, the court may enter summary judgment. Thus, in *Smith v Peter North and Partner*s [2001] EWCA CAIV 1553 [2002] PNLR 12, a joint expert reported in a claim for damages against a surveyor that the value of the property was the same with and without the defects. Summary judgment was entered for the defendant because there was no prospect of the claimant persuading the court that the cost of repairs was the correct measure of damages. Contrast *Layland v Fairview New Homes plc* [2002] EWHC 1350 (Ch), LTL 10/7/2002, in which, after considering various criticisms of a singly jointly instructed valuation expert's report (which concluded the claimants had suffered no loss), Neuberger J allowed the claim to go to trial as there was material which could fruitfully be exploited in cross-examination."

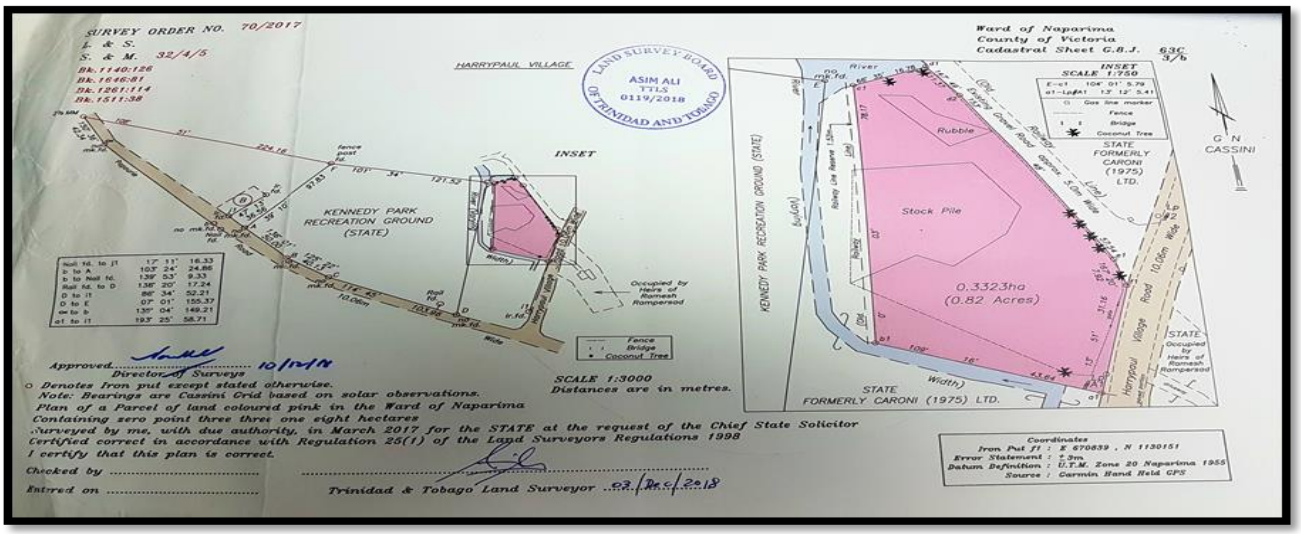
33. I am however satisfied that, despite the shortcomings of the survey that Mr. Ali demonstrated to me under cross examination his bona fides and his independence. There is no evidence to impeach the methodology applied to conduct the survey. There was absolutely no interference from the parties with his work. It was an independent and objective assessment and interpretation by him of the subject lands. He can be criticised for not complying with Part 33 in failing to file a report, however, he simply complied with a land survey order issued to him by the Lands and Surveys Department to produce a survey. No party provided any instructions to him.

Describing the Caroni lands

34. Ultimately, the survey mapped the boundaries for .82 acres of land.

35. It was admitted openly by the surveyor that the boundaries in the tenancy agreement do not accurately correspond with the portions of land that he identified. Comparing the boundaries in the agreement with his survey the discrepancies are obvious: The Northern boundary on the agreement is Kennedy Park but the Northern boundary on the survey is not Kennedy Park but a river. Further North of the river is State land. I confirmed with Mr. Ali that the Northern Boundary of Kennedy Park actually stops at the line E-F to the left or West of the subject lands.

36. The Eastern Boundary on the agreement is a Train Line, but on the survey plan it is partly by existing gravel road and partly South East by Harrypaul Village Road. A train line is shown further West after the gravel road. The Southern boundary on the agreement is by a road to Harrypaul Village on the tenancy agreement but on the survey it is State lands (formerly Caroni 1975 Ltd). The agreement has lands of Caroni Limited as the Western boundary but on the survey there is a train line and further West is Caroni Lands and Kennedy Park. If Mr. Ali had to define the boundaries he openly stated he would have done it differently. Yet he insisted that from his interpretation of the boundaries and the agreement and the supporting documentation he is confident that the parcel described in the agreement refers to the parcel he identified in the survey.



37. There are admittedly some main features of his survey which correspond with the tenancy agreement and the intention of the agreement. It is noted that "it is impossible to take too much care in describing the property to be conveyed, and it is not always advisable to take the description of the parcels from that in the abstract."[5]

38. The agreement itself granted permission not only to cultivate crops but to "store cranes and other equipment and to stock and transfer canes to Caroni (1975) Ltd and other agricultural purposes" The lease was described as for 0.82 (Section 4 Loading Station). It is entirely plausible that the method of transferring canes would be by use of the old railway lines. Indeed, the use of canes in the tenancy agreement would be referable to the cranes used to load the cane unto the railway carts.

39. I have no difficulty in accepting, therefore, that the surveyed lands proximity to old railway lines is a reliable marker to determine the location of these lands. I also note that no railway line runs South of Papourie Road. Also noteworthy is that the road to Harripaul Village lies to the South East of the lands but there is no Southern boundary of Papourie Road which was in existence on the old survey plans. This plot therefore had to be further North of Papourie Road and next to a railway line. I accept Mr. Ali's best interpretation was to place the land in this location although the only boundary which appears to be entirely inconsistent is the Northern Boundary. But even so the subject land could not be South of Papourie Road as contended by the Defendants as then the Northern Boundary would be Papourie Road and not Kennedy Park.

40. On the tenancy agreement there are other key landmarks which also help to identify the location of this parcel of land. A railway line must be the Eastern boundary. It must be near Kennedy Park with the Park lying to the North of the land. It must be near to a road leading to Harripaul Village so that it is the Southern boundary. I agree with the surveyor that doing the best he could by his interpretation it is probably where he located it. In the end result admittedly his plan shows Kennedy Park lying to the East and the road to Harripaul Village to the South East. There is a river to the North and South but it is uncertain when that came into

[5] Gibson's on Conveyancing 21st Edition pg. 223

existence. Admittedly, it is not the ideal description of this parcel of land and perhaps this might explain why no formal lease is on the records. However, looking at the other cadastral sheets the railway line that is near to Kennedy Park stops at Papourie Road. There is a railway line to the East of Kennedy Park and it is possible that the land could be located further to the East near the government railway. At that point the Kennedy Park would be to the North of the plot but the road to Harripaul Village would not be anywhere near this parcel of land. If the subject lands are South of Papourie Road as the Defendants contend, then conceptually Kennedy Park would be to the North but so too would be the train line and the road to Harripaul Village. I also note that the surveyor has picked up on his survey the cultivation of coconut trees which is consistent with Mr. Ragoonanan's evidence of planting coconut trees on his plot. Strangely, however, these trees appear on the boundary of this very irregular and odd shaped plot and there is no evidence to suggest that these trees were planted there to establish any boundaries.

41. The surveyor's boundaries are perhaps the best that could be done with the very poor description of the land on the agreement.

The Grant of a Lease For The Caroni Lands

42. Mr. Russel Boland is the Team Leader (Lands) Caroni (1975) Ltd. He contends that he checked his records and it shows that the Mr. Ragoonanan's tenancy comprises several plots of land leased by the former Caroni Limited totalling 15.17 acres under tenant number 46491. However, the records do not show a tenancy for the subject lands pleaded by Mr. Ragoonanan. He was unshaken in cross-examination as to his knowledge of the Caroni lands. Apart from institutional memory his records extend to the master plan annexed to his witness statement which is "the bible" to ascertain the tenancy of Caroni lands. Mr. Ragoonanan's tenancy for the subject lands is simply not on the plan. It is perhaps an incomplete agreement if in fact it was issued to Mr. Ragoonanan.

43. I accept that Mr. Boland's evidence is not without criticism. He has admitted that some records have been destroyed. He has not produced any field reports nor other tenancy agreements for Mr. Ragoonanan. He has not explained how the data is recorded on the

master register. He recognises the signatures on the tenancy agreement. However, he notes that the agreement has no plot number and there is no record of it on the master register.

44. The legal burden of proof that the tenancy agreement exists lies on the Claimant. Neither he nor anyone else has accounted for the original. In **Phipson on Evidence,** the learned authors had this to say on the weight of secondary evidence at paragraph 41:31

> "There are no rules by which to determine the weight of secondary evidence. However, it seems sensible now that the original document rule has fallen by the wayside to view the recognised exceptions detailed above as reasonable grounds for the non-production of the original document. When none of these reasons exists, the court might (in the absence of any applicable statutory provision) decide that the evidence is not deserving of any weight and the court should, in a civil case, use its powers under the Civil Procedure Rules to exclude the document. This is perhaps the best explanation of the judgment in *Random House UK Ltd v Allason* where a written declaration of trust was required for compliance with s51(1)(b) of the Law Property Act 1025. It was held in the High Court that in absence of the original document, the trustees had to satisfy the court that "the original document existed or had existed, that it had been lost or destroyed and that a reasonable explanation of this had been given" before they could rely on a copy of the declaration of trust. In a criminal trial, exclusion may be possible, if the evidence is adduced for a hearsay purpose, under the Criminal Justice Act 2003 s.126."

45. There were too many shortcomings in the evidence of the Claimant who bears the legal burden of proof. He belatedly drew to the Commissioner's attention that he was a tenant. His first assertion in his pre-action letter was that he was in occupation of the subject lands for a long period of time[6]. There is no explanation from Mr. Ragoonanan as to whether the original of the document was retained by Caroni Limited or himself or lost. The tenancy agreement bears a description of a parcel clause which now appears from the expert's evidence to be imprecise, vague and capable of better identification. The tenancy number on

[6] Letter dated 12th April, 2013 from the Claimant's attorney to the Chief Executive Officer Penal/Debe Regional Corporation.

the agreement does not correspond with the tenancy number on the only two rent receipts produced by Mr. Ragoonanan[7]. Oddly the only two receipts for rent paid by Mr. Ragoonanan are receipts in 10th May 2013 and 14th May 2014 which were paid after the alleged trespass and after the Corporation asked him to "prove title". There is no receipt produced for the payment of rent at the time of the rental of the land or indeed the first term of the rental of five years from 1994. There is no evidence by him of any attempt made to renew the lease which was for a specific term of five years from 1994. The alleged tenancy is for an acreage of land less than one acre which is inconsistent with the provisions of the Act.

46. Further and most troubling is that the rent receipt in 2013 is for "land rent for section 30/46491 paid up to 30th June 2006". There is no rent paid beyond 2006 nor any reason why rent was paid only for this period. Furthermore, the sum paid in rent was $6371.10 at $1061.90 per acre. Doing the maths this would equate to the payment of rent for 5.9 acres of land and not for the alleged .82 acres of land which is the subject of the alleged tenancy agreement. Even doing such process of division is speculative as Mr. Ragoonanan failed to explain how many acres of land these receipts referred to. Further, the second receipt is only for the sum of $1,061.90 this would according to the receipt correspond to rent payable for <u>one acre</u> of land. Even if this rent covered the alleged .82 acres of land was there an additional .19 acre of land tenanted to him?

47. His cross examination revealed several inconsistencies such as his address and his years of occupation. He admitted that he no longer cultivates cane. His documentary evidence is conflicting such as his rent receipts discussed above as well as the description of the parcel of land in his tenancy agreement. There is no evidence from Mr. Ragoonanan as to how he obtained this lease save for his bald statement in paragraph 6 of his witness statement. He mainly relied upon his occupation of the parcel in support of his claim and his evidence as to the existence of a tenancy agreement is vague and speculative.

<u>The Occupation of the Caroni Lands</u>

48. Mr. Ragoonanan paid rent up to 2008 and he and his brother were also tenants of six (6) other

[7] The receipts indicate that rent was being paid for Sect: 30/46491

parcels of land. Mr. Ragoonanan did not have any corroborating evidence for his occupation of the subject lands. The only features of his occupation which is corroborated is the coconut trees mapped on the survey plan but no questions were asked of the surveyor of this. It was entirely a matter for the Claimant to prove his occupation of the subject lands but there are no receipts for farming materials, no exhibits of any documentary evidence or photographs to corroborate his story. The only evidence are the land receipts which equally do not identify the subject lands and are themselves suspect as explained earlier. From his own testimony he left Raghoo village in 1998 and it is entirely plausible that if there was any occupation of the land it fell into disuse from 1998 until the Corporation deposited material on the land in 2013.

49. I am also satisfied that the Corporation did enter on the subject lands. It was admitted both in the cross examination and the examination in chief of Mr. Ramesh Roopnarine and from the findings on the survey. I do not accept that the Corporation had any permission from the Commissioner to do so. I say so mainly because its evidence of having possession to occupy Plot C is vague and uncertain when it was within their power to provide documentary evidence and proper particulars of such permission. Further, the Commissioner's evidence is silent about giving the Corporation any permission to occupy Plot C. The Corporation's licence to occupy only relates to Plot A.

Conclusion

50. My conclusions have already been stated at the beginning of the judgment. In my view, the Claimant failed to discharge the burden of proving his right to occupy the subject lands by virtue of the tenancy agreement dated 1994. I should also add that equally the Corporation has no permission from the Commissioner to enter that parcel and in continuing to do so, renders them in breach of their licence from the Commissioner.

51. The Claim will be dismissed with one half of the prescribed costs to be paid by the Claimant to the Defendants.

Vasheist Kokaram
Judge