

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-04424

BETWEEN

Franklyn Richards

Claimant

AND

Basdeo Sudama

(Also called Basdeo Soodamath)

Defendant

Before The Hon. Madame Justice B.A. Lambert Peterson

Appearances:

Mrs. Mohanie Maharaj-Mohan for the Claimant

Mr. Navindra Ramnanan for the Defendant

RULING

BACKGROUND

- 1) By Fixed Date Claim Form and affidavit in support both filed on the 7th December 2017 the Claimant is seeking the following reliefs:
 - a) A Declaration that the Claimant is a statutory tenant under the Land Tenants (Security of Tenure) Act Chapter 59:54 of one house lot at Sudama Alley, Siparia Erin Road, Siparia ('the said parcel of land');
 - b) An Order that the Defendant trespassed on the subject lands and destroyed the Claimant's dwelling house;

- c) An injunction restraining the Defendant, his servants, agents and/or servants from entering and interfering with the said parcel of land;
- d) An Order that the Defendant pay the Claimant damages for demolishing the dwelling house located on the said parcel of land;
- e) Mesne profits for the prevention and use of the said parcel of land from 2nd January 2002 to date and continuing;
- f) An Order that the Defendant breached the Order of Honourable Mr. Justice Best dated 4th November 1999 by refusing to accept the payments tendered by the Claimant;
- g) Interest; and
- h) Costs.

NOTICE OF APPLICATION FOR DETERMINATION

- 2) By Application filed on the 21st November 2018, the Defendant seeks to have the Claim struck out because:
 - a) the Claimant has failed to comply with Part 8.1(4) of the Civil Proceedings Rules 1998 (hereinafter referred to as 'the C.P.R.')
 - b) the Claimant has failed to comply with Part 8.2(1) by issuing an affidavit instead of a Statement of Case; and
 - c) Part 68 of the C.P.R. is not applicable to these proceedings.

DEFENDANT'S SUBMISSIONS

- 3) On 7th July 2019, the Defendant filed his submissions in support of his application of 21st November 2018. Citing Part 8 of the C.P.R. he outlines that the reliefs sought by the Claimant do not fall within any of the categories listed in Part 8.1(4). He relied on dicta in the case of **Haniff Khan and Others v. Zanifa Ibrahim and Others and Anand Singh and Others** CV2011-03068. He then submitted that a Claim Form may only be served without a Statement of Case in specified situations, and none of these situations obtained in this case. The Defendant's Attorney-at-Law cited the case of **Medical Professionals Association of Trinidad and Tobago v. Fidel Rampersad and Others** Civil Appeal number P 337/2014 as authority that the Court should not pursuant to Part 26.8 of the C.P.R. exercise its discretion to correct any procedural error as had been done at first instance.

CLAIMANT'S SUBMISSIONS

- 4) On 19th November 2019, the Claimant replied to the Defendant's submissions. It was submitted on the Claimant's behalf that the Fixed Date Claim Form was the correct format for the claim. The Claimant's Attorney-at-Law submitted that all the cases referred to by the Defendant's Attorney-at-Law can be distinguished from this case.

ANALYSIS

- 5) Part 8.1(4) of the C.P.R. provides that a "*Form 2 (fixed date claim) must be used –*

(a) in proceedings for possession of premises which are -

(i) occupied in whole or in part for residential purposes; or

(ii) subject to any statutory restrictions on the claimant's right to possession;

(b) in claims arising out of hire-purchase or credit card sale agreements;

(c) whenever its use is required by a rule or practice direction; and

(d) where by any enactment proceedings are to be commenced by originating summons or motion."

I make a finding that this claim does not fall within any of the categories listed in Part 8.1(4) of the C.P.R. A claim such as this cannot be initiated by fixed date claim form.

- 6) The Court, however, has a general power to rectify matters where there has been an error of procedure. It is appropriate for me in order to deal with this case justly to exercise my discretion pursuant to Part 26.8 of the C.P.R. and give directions.

- 7) In the case of **Antonio Webster v. The Attorney General of Trinidad and Tobago** [2011] UKPC 22, Lord Wilson at paragraphs 13 and 14 opined:

"[13] It is clear that the appellant made his claim in Form 1. He should have made it in Form 2, as a fixed date claim

[14] But the appellant's error in that regard was, of itself, likely to be of no consequence. So far as is material, Rule 26.8 provides as follows:

'(3) Whether there has been an error of procedure or failure to comply with a rule, practice direction court order or direction, the court may make an order to put matters right.'

*Had it been appropriate for the claim for declarations to remain as part of the appellant's claim, **Rule 26.8(3) would**, albeit probably on terms of costs, **surely have rescued him from his error.**" [emphasis mine]*

- 8) There is no merit in the second ground in support of the application of 21st November 2018. The C.P.R. provides additional guidance on the Form 2: Fixed Date Claim Form at pages 575-577. At page 576 it is stated that a statement of case or an affidavit giving full details of the claimant's claim should be served on the Defendant together with the Fixed Date claim form.
- 9) In light of paragraph 6 above, there is no need to address the issue of relevance of Part 68 of the C.P.R..

ORDER

10. THIS COURT ORDERS THAT

- i. The Defendant's Application filed on 21st November 2018 is dismissed with no order as to costs;
- ii. The Claimant shall AMEND the Fixed Date Claim Form filed herein in accordance with Form 1 to the Civil Proceedings Rules 1998 as amended; and file and serve the Claim Form and Statement of Case on or before 3:00p.m. on 9th December 2019;
- iii. The timeframe for all further pleadings herein shall be in accordance with the Civil Proceedings Rules 1998 as amended;
- iv. In default of the filing of the Claim Form and Statement of Case as ordered in clause iii) above, the Fixed Date Claim Form filed 7th December 2017 shall be Dismissed as of 3:00 p.m. on 9th December 2019.
- v. This matter is adjourned to 5th March 2020 at 9:30a.m.

BETSY ANN LAMBERT PETERSON
HIGH COURT JUDGE
November 22, 2019