

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-00902

BETWEEN

KOOLDIP BOODOO

SAKALDIP BOODOO

PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED

(PETROTRIN)

Claimants

AND

ALEEM ALI

ANSAD SERVICES LIMITED

Defendants

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery: 29 July 2019

APPEARANCES:

Mr Roger M Kawalsingh instructed by Mr Javed Mohammed Attorneys at law for the Claimants.

Mr Sherman Mc Nicolls Jnr. Attorney at Law for the Defendants.

REASONS

1. On the 26 March 2019 at the trial of the instant action, I made the following orders (“the Order”). I dismissed the Defendant’s notice of

application filed on the 26 March 2019 (“the Notice of Application”) with no orders as to costs.

2. I granted the Claimants the following orders namely:

- (a) The Claimants are granted possession of ALL AND SINGULAR that certain piece or parcel of land comprising approximately 0.03402 hectares or 36618.82 square feet being a portion of a larger parcel of land comprising approximately 12 acres and coloured as blue on the survey plan annexed as exhibit "A" to the Statement of Case (“Parcel A”) which is owned by the Third Claimant and leased to the First and Second Claimants.
- (b) Possession of ALL AND SINGULAR that certain piece or parcel of land comprising approximately 2.2154 hectares or 23185.46 square feet being a portion of a larger parcel of land comprising approximately 0.7554 hectares or 1.839 acres and coloured partly as red and partly as blue on the aforesaid survey plan annexed as "A" to the Statement of Case (“Parcel B) which is owned by the Third Claimant.
- (c) It is declared that the Defendants nor either of them and/or their servants and/or their agents are not entitled to exclude the First and Second Claimants from entering and/or remaining upon Parcel A.
- (d) It is declared that the Defendants nor either of them and/or their servants and/or their agents are not entitled to exclude the Third Claimant from entering and/or remaining upon Parcel B.
- (e) It is declared that the Defendants nor either of them are not entitled to enter upon and/or to remain upon Parcel A and Parcel B.

- (f) It is declared that the Defendants, their servants and/or agents have by their conduct damaged the reversionary interest of the Third Claimant as it relates to Parcel A.
- (g) The Defendants do pay to the Claimants Nominal Damages for trespass in the sum of Twenty Thousand dollars (\$20,000.00).
- (h) The Defendants do pay to the Claimants damages for injury to the reversion as it relates to Parcel A in the total sum of One Hundred and Fifty Thousand dollars (\$150,000.00) with interest at one point two five percent (1.25%) per annum from the 14 January, 2016.
- (i) The Defendants do pay the Claimants cost of the claim in the prescribed sum of Thirty-Four Thousand, Five Hundred dollars (\$34,500.00). The servants and/or agents of the Third Claimant is to remove the fence erected upon Parcel A and Parcel B and the Defendants are to reimburse the Third Claimant the cost of the said removal.
- (J) Liberty to apply.

3. I also dismissed the Defendants' Counterclaim and ordered the Defendants to pay the Claimants costs in the sum of Fourteen Thousand dollars (\$14,000.00).

4. The Defendants have appealed the Order and I now set out my full reasons.

The Notice of Application

5. On the morning of the trial, the Defendants filed the Notice of Application wherein they sought the following orders:

- (i) To vacate the trial date pending the Court's determination of whether the Third Claimant had the locus standi to continue the instant proceedings; and
 - (ii) That permission be granted to the First Defendant to be called as a witness at the trial.

- 3. The Defendants separated the grounds in support of the Notice of Application under locus standi and the Defendants' evidence. The grounds with respect to the locus standi were:
 - “(1) By Miscellaneous Provisions (Heritage Petroleum, Paria Fuel Trading and Guaracara Refining Vesting) Act No. 17 of 2018 the then Petroleum Company of Trinidad and Tobago Limited (the Third Claimant) vested certain assets of the Trinidad and Tobago Oil Company Limited and Trinidad and Tobago Petroleum Company Limited in The Guaracara Refining Company Limited; and to vest Palo Seco Agricultural Enterprises Limited Lands in Heritage Petroleum Company Limited.
 - (2) These assets are relative to the exploration and production operations of PETROTRIN in Paria Fuel Trading, terminalling operations and refinery operations.
 - (3) It is now necessary for the Court to ascertain whether the subject matter of these proceedings fall within the assets which the Third Claimant has vested in the aforementioned companies.
 - (4) This determination is important in order to facilitate the fair administration of justice.”

- 6. The grounds in support of the Defendants' evidence were:

- (5) On 11 July 2018 the Claimants and Defendants applied to the court for an Order by consent that time in which witness statements were to be filed and exchanged be extended from 11 July 2019 to 7 September.
- (6) On the 9 October 2018, a notice of change of attorneys was filed on the Defendants' behalf.
- (7) When the matter came up for hearing on November 2018 the Honourable Judge denied the Defendants' request for further time to file their witness statements.
- (8) Before filing a written application for relief from sanctions and to extend time for the filing of the Defendants' witness statement, Attorney at law for the Defendants' sought to meet with the Defendants and settle the said witness statements so that further applications to extend the time going forward could be avoided. However, Attorney at law for the Defendants', despite numerous calls, requests and attempts to meet with the First Defendant, failed to meet the First Defendant and to have the witness statements settled.
- (9) Notwithstanding the above, the First Defendant on the eve of trial, indicated to this Attorney at Law that the Defendants would be willing to enter into a consent position subject to the terms put forward by the Claimants and bring the matter to an end. Later that evening, the First Defendant informed his Attorney at law that due to health reasons, he would not be able to attend the trial hearing.
- (10) In these circumstances the Defendants humbly seek the Court's indulgence in having the trial rescheduled and that permission is granted to the First Defendant to give evidence at the said trial."

7. In support of the Notice of Application was an affidavit (“the affidavit in support”) of Stefernus Martinez, clerk who repeated the grounds in the Notice of Application.
8. I dismissed the Notice of Application for the following reasons.
9. The effect of the second relief in the Notice of Application was that the Defendants were seeking permission to call the First Defendant as a witness at the trial which was in essence seeking relief from sanction under Rule 26.7 CPR.
10. Rule 26.7 CPR provides:
 - “26.7 (1) An application for relief from any sanction imposed for a failure to comply with any rule, court order or direction must be made promptly.
 - (2) An application for relief must be supported by evidence.
 - (3) The court may grant relief only if it is satisfied that-
 - (a) the failure to comply was not intentional;
 - (b) there is a good explanation for the breach; and
 - (c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
 - (4) In considering whether to grant relief, the court must have regard to –
 - (a) the interests of the administration of justice;
 - (b) whether the failure to comply was due to the party or his attorney;
 - (c) whether the failure to comply has been or can be remedied within a reasonable time; and

(d) whether the trial date or any likely trial date can still be met if relief is granted.

(5) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown."

11. I was not satisfied that the Notice of Application was filed promptly. According to the Court's records, I gave directions on the 19 March 2018 for the parties to file and serve witness statements on the 11 July 2018. I extended the time for filing the witness statements on the 12 July 2018 to the 7 September 2018. At the Pre-Trial Review on the 25 September 2018, I granted the Defendants' Attorney at law permission to cease to act for them. The First Defendant was not present and the Second Defendant was not represented at the hearing even though they were served with the application to cease to act by their then attorney at law. I adjourned the Pre-Trial Review to allow for the service of the cease to act order on the Defendants and to give them the opportunity to obtain a new attorney at law. I also ordered the Registrar to notify the Defendants of the date, time and Courtroom of the next hearing of the Pre-Trial Review. On the 13 November 2018 at the adjourned Pre-Trial Review, I was satisfied that the Defendants were notified of the order to cease to act and the adjourned date of hearing of the Pre-Trial Review. They still did not attend. I fixed the trial for the 26 March 2019. At the time I fixed the trial date the Defendants did not file any witness statements nor did they file any application for relief from sanction pursuant to rule 26.7 CPR.

12. Even if the Notice of Application was for relief from sanctions it was not made promptly since it was made 6 months after the deadline for the filing of witness statements.
13. I was not satisfied that the Defendants' failure to comply was not intentional since paragraph h of the affidavit in support stated that:

“Before filing a written application for relief from sanctions and to extend time for the filing of the Defendants' Witness Statement, Attorney a law for the Defendants sought to meet with the Defendants and settle the said witness statements so that no further applications to extend the time going forward could be avoided. However, Attorney at law for the Defendants, despite numerous calls, requests and attempts to meet with the First Defendant, failed to meet the First Defendant and to have the witness statement settled.”
14. I was of the opinion that based on the evidence in paragraph h aforesaid that it was not the Defendants intention to comply with any of the deadlines to file witness statements even after the last extension was granted.
15. I was also not satisfied that the Defendants presented any good explanation for the breach. At best the explanation was set out at paragraph I of the affidavit in support where it stated:

“Notwithstanding the above, the First Defendant and on the eve of trial indicated to this Attorney at Law that the Defendants would be willing to enter into a consent position subject to the terms put forward by the Claimant and bring the matter to an end. Later that evening, the Defendant informed his Attorney at law due to health reasons, he would not be able to attend the trial.”

16. In my opinion, the explanation by the Defendants appeared to be contrary to them obtaining any relief from sanction to file any witness statements since there was no interest or effort to do so.
17. Based on the Defendants conduct, this was not the first time they were in default of an order of the Court since they failed to comply with two previous extensions of time given to file the witness statements.
18. With respect to the factors outlined in Rule 26.7 (4) CPR, the failure to comply rested with the Defendants, there was absolutely no evidence that the Defendants were in a position to file any witness statements on the morning of the trial and the trial date would not have been met if relief was granted since it was filed on the morning of the trial.
19. I also decided not to vacate the trial pending the determination of whether the Third Defendant had locus standi to continue the instant proceedings since based on the exhibit to the affidavit in support, the Act No 17 of 2018 which the Defendants sought use of to challenge the Third Claimant's locus standi was assented to since 28 November 2018 but they took no steps between that date and 26 March 2019, the morning of the trial to raise this issue. Further, there was no evidence presented by the Defendants to demonstrate that the said Act did not permit the Third Claimant, a predecessor of the three entities in the Act to pursue the instant action.

The substantive claim

20. I proceeded with the trial and only the Claimants called witnesses to prove their case.

The Claimants' case

21. By Certificate of Title registered in Volume 1522 Folio 301 and Volume 1518 Folio 181 ("the Certificate of Title") the Third Claimant's predecessor in title, Texaco Trinidad Inc., became the owner of Parcel A and Parcel B which together comprise approximately 14 acres situated at LP21 National Mining Trace Rousillac as shown in the attached survey plan attached to the Statement of Case. By virtue of the Petrotrin Vesting Act¹ and the Textrin Vesting Act, all lands owned by Texaco Trinidad Inc. became vested in the Third Claimant.

22. The First and Second Claimants were the tenants of the Third Claimant of approximately 12 acres of land namely parcel A. They claimed that they are entitled to possession of Parcel A. The Third Claimant as the owner of Parcel B claimed that they are entitled to possession of it. Parcels A and B are referred to collectively as "the lands."

23. The Claimants contended that during the first week of January 2016 the Defendants acting by themselves and or their servants and or agents wrongfully entered upon the lands and started clearing, grubbing, excavating, stockpiling material upon it and paving it. The First and Second Claimants informed the Third Claimant through its land manager Palo Seco Agricultural Enterprises Limited (PSAEL) and sought its assistance in identifying the boundaries of the lands.

24. On 14 January 2016 PSAEL, acting on behalf of the Third Claimant began to investigate and visited the lands. Its representative indicated to the Defendants that they were on the lands which the First and Second Claimants were tenants of; that the works were being done illegally; and

¹ Chapter 62:07

called upon the Defendants to stop all works on the lands and to remove themselves. The Defendants stopped the works temporarily but resumed sometime after. Later that same day, PSAEL once again stopped the works, however the Defendants again caused the work to re-start.

25. Thereafter, the Third Claimant caused its surveyors to redefine the boundary of the lands as they were destroyed by the Defendants. On 21 January 2016, the Third Claimant's surveyors were able to re-establish the boundaries and indicated to the First Defendant that the lands they were carrying works upon was owned by the Third Claimant. The Third Claimant called upon the Defendants to stop the works. The Defendants ignored this request and continued to carry on works.
26. The Claimants contended that the Defendants accepted that they wrongfully entered upon Parcel A by paying to the First Claimant the sum of \$10,000.00 for an injury to a cow and for grass lost as a result of the illegal activity. The First Claimant requested a copy of a receipt evidencing this payment but the First Defendant failed and or refused to provide same and instead indicated that he will later use the receipt against the First Claimant.
27. By notice to cease and desist dated 22 January 2016 PSAEL called upon the Defendants to stop their illegal activities and leave Parcel B.
28. Notwithstanding the requests to stop the illegal works and remove themselves, the Defendants continued their illegal activity and fenced and paved Parcel A, and fenced part of Parcel B.

29. By letter dated 31 March 2016, the Defendants admitted that they illegally entered upon the lands. They asserted that they had purchased the lands from Harman and Earl Balgobin; they paid the First Claimant for free access to the lands (they annexed a receipt) and indicated their willingness to purchase Parcel A.
30. The Claimants' contended that the receipt annexed to the said letter and signed by the First Claimant was fraudulently altered by the Defendants who instead caused to be inserted on the document the words "full access and rights also on Parcel land is in Dispute of Boundary." The Claimants' pleaded the following particulars of fraud:
- (a) With the knowledge that the receipt was issued in relation to damage to the grass and for a calf ONLY the Defendants either by themselves or their servants and or agents deliberately altered the said receipt to include the words "full access and rights also on Parcel land is in Dispute of Boundary" with the specific intention to mislead the Third Claimant into believing that the First Claimant and the Defendants had entered into an agreement in relation to Parcel A.
 - (b) The Claimants contended that the Defendants, their servants and or agents deliberately and fraudulently altered the said receipt in order to cheat the First and Second Claimants out of their rights and entitlement to Parcel A.
 - (c) The Claimants contended that having regard to the nature of fraud committed same should be referred to the Director of Public Prosecution by the Court for further action.
 - (d) The Third Claimant as the owner of Parcel A is entitled to the reversion which is expected to be determined and revert to

the Third Claimant at any point when the Third Claimant gives notice of not less than three months in writing to the First and Second Claimants of its intention to terminate the lease agreement between the parties.

- (e) The Defendants by their action caused injury to the reversion by or through the devaluation of their reversionary interest in relation to Parcel A and has caused damage to Parcel B.

31. The Claimants pleaded the following Special Damages:

- (i) Value of soil removed from the lands \$135,000.00
- (ii) Cost of survey \$ 15,000.00

32. Based on the aforesaid facts the Claimants sought the following orders:

- (a) Possession of Parcel A.
- (b) Possession of Parcel B.
- (c) A declaration that the Defendants whether through themselves their servants and or agents deliberately altered the receipt issued by the First Defendant on 14 January 2016;
- (d) A declaration that the Defendants nor either of them and or their servants and or agents are not entitled to exclude the First and Second Claimants from entering and or remaining upon Parcel A;
- (e) A declaration that the Defendants nor either of them and or their servants and or agents are entitled to exclude the Third Claimant from entering and or remaining upon Parcel B;
- (f) A declaration that the Defendants or either of them are not entitled to enter upon and or to remain upon Parcel A and Parcel B;

- (g) A declaration that the Defendants their servants and or agents have by their conduct damaged the reversionary interest of the Third Claimant as it relates to Parcel A;
- (h) Damages for trespass;
- (i) Damages for injury to the reversion as it relates to Parcel A;
- (j) An injunction restraining the Defendants their servants and or agents from entering and or remaining upon the lands;
- (k) An injunction compelling the Defendants and or agents to break down and or remove the fence they have erected upon Parcel A and Parcel B; and
- (l) Costs.

The Defence and Counterclaim

- 33. The Defendants disputed the Claimants' entitlement to possession of the lands based on the following matters:
 - (i) On or about the 22 January 2015 Harry Rajgobin sold his rights to the lands as part of a larger transaction to the First Defendant, Shafeer Ali and Dolly Ali which lands had been under his occupation and control from the year 1981;
 - (ii) Harry Rajgobin from the year 1981 exercised exclusive custody and control of the lands, maintained the boundaries and exercised exclusive and continuous possession of the said parcels which possession was open in full view of the public, without force and without the consent of the respective Claimants' or their predecessors in title with the intention to exercise custody and control of the said parcels on his behalf and for his benefit. By virtue of same the rights, title and interest of the First, Second and or Third Claimants in the lands have been

extinguished by operation of law and the Defendants are entitled to exclusive possession of same.

34. The Defendants admitted that representatives from PSAEL visited the lands and indicated that the purpose of the visit was to identify the boundaries but they did not indicate that they were on the Third Claimant's land or that the works were illegal nor did they call upon them to stop work on the lands and remove themselves.
35. The Defendants also admitted that Mr Farouk Mohammed of PSAEL visited and he was informed of the rights of Harry Rajgobin and works on the lands did not stop.
36. The Defendants admitted that a survey was done but denied that any boundaries were marked and as a result of the failure to produce any evidence or any document or title or otherwise to contradict Harry Rajgobin's occupation, the Defendants continued works.
37. As it related to the payment of \$10,000.00, the Defendants contended that the First Claimant represented to the First Defendant that he was in occupation of a small portion of the lands occupied by the Defendants, and the former was informed of Harry Rajgobin's occupation whereupon he requested the sum of \$10,000.00 as settlement for damage to a calf and grass. To avoid any conflict the First Claimant was paid the sum by the First Defendant and the former issued a receipt. The payment was not as recognition of trespass.
38. The Defendants admitted that works commenced in mid-January 2016 but denied receiving a notice to cease and desist.

39. The Defendants contended that the lands which they fenced were occupied by Harry Rajgobin and denied illegally fencing the lands.
40. The Defendants denied that they admitted illegal entry onto the lands by letter dated 31 March 2016; and further denied that the receipt attached to letter dated 31 March 2016 was altered, and that the First Claimant issued the receipt.
41. The Defendants also denied the particulars of fraud and special damages on the basis that the Claimants' rights to Parcel A had been extinguished by Harry Rajgobin.
42. Based on the aforesaid facts the Defendants counterclaim for:
 - (i) A declaration that the First and Second and or Third Claimants' title, rights and interests in Parcel A have been extinguished by operation of law.
 - (ii) A declaration that the Third Claimant's title, rights and interests in Parcel B have been extinguished by operation of law.
 - (iii) Costs.

The Claimant's Reply and Defence to Counterclaim

43. The Claimants denied that Harry Rajgobin or any other person exercised exclusive possession of the lands, adverse to the Claimants; that their interest in the lands have been extinguished; and that the First Claimant requested the sum of \$10,000.00 from the First Defendant. They asserted that it was the First Defendant who initially offered the First Claimant the sum as compensation; the receipt was prepared by the First Defendant,

his servant and or agent and that the First Claimant was allowed to sign it but he was not given a copy of it despite requesting same.

44. The Claimants' further denied that the Defendants were entitled to any of the reliefs claimed.

The issues

45. Based on the pleadings the issues to be determined were:
- (a) Whether the Third Claimant was the owner of the lands and the First, Second and Third Claimants were entitled to possession?
 - (b) Whether the Defendants trespassed on the lands?
 - (c) If yes to (b) what loss if any did any of the Claimants suffer?

Whether the Third Claimant was the owner of the lands and the First, Second and Third Claimants were entitled to possession?

46. At the trial, the Claimants relied on the evidence of two witnesses to prove ownership of the lands namely Mr Vade Cheddie and Mr Winston Doyle.
47. Mr Cheddie testified that he was the Land Administrator at the Third Claimant. He explained that in his position as the Landman Administrator, he had dominion, custody and access to all files, records, reports and or documents issued by and contained in the Third Claimant's Land Management Section. As part of his duties as Landman Administrator, he liaised with the Third Claimant's manager of residual assets, PSAEL, regarding any issues dealing with the safety, security and integrity of these assets.

48. Mr Cheddie also stated that PSAEL was a special purpose state enterprise contracted with the obligations of managing the Third Claimant's residual assets and holdings not related to oil and gas production. According to Mr Cheddie, in July 1994, the Ministry of Finance directed PSAEL to manage and divest the agricultural and residential landholdings of Trinidad and Tobago Oil Company Limited (TRINTOC) and Trinidad and Tobago Petroleum Company Limited (TRINTOPEC). In 1993, the oil related assets of TRINTOC and TRINTOPEC were merged and vested into the Third Claimant. The merger led to PSAEL's core function becoming the provision of project management services to the Third Claimant. In January 1996, PSAEL was reconstituted and staff from the Third Claimant was seconded to PSAEL to manage the Third Claimant's residual assets. Consequently, in June 2004 PSAEL formalised a Management Contract with TRINTOC, TRINTOPEC and the Third Claimant for the provision of estate maintenance and estate management services by PSAEL for a management fee. He annexed a copy of the Land Management Service Agreement to his witness statement as A. He also stated that on 20 January 2016, the Third Claimant formalised a Land Management Service Agreement with PSAEL effective 14 September 2015. He annexed a copy of this Land Management Service Agreement to his witness statement as B.

49. According to Mr Cheddie, sometime in the first week of January 2016 he received a call from the First Claimant who indicated that he and the Second Claimant were lessees of Parcel A. He reported that as a matter of urgency, heavy equipment belonging to the Second Defendant had broken through the fencing and teak boundary at the south-eastern portion of the lands and were digging trenches and using the soil to backfill a swampy portion of an adjacent private parcel of land. He

assured the First Claimant that he would immediately investigate the matter and directed him to PSAEL.

50. Mr Cheddie testified that the records of the Third Claimant showed that by the Certificate of Title TEXACO Trinidad Inc. was seised and possessed of Parcel A and Parcel B.
51. According to Mr Cheddie, at the back of the Certificate of Title were two endorsements, the first representing the transfer of the lands from TEXACO to TRINTOC as at 1 March 1985 by virtue of the Textrin Vesting Order 1989 and the other representing a transfer of the lands from TRINTOC to PETROTRIN as at 1 October 1993 by virtue of the PETROTRIN Vesting Act 1993. The lands were therefore at all times vested in the Third Claimant. He annexed a copy of the Certificate of Title to his witness statement as exhibit C.
52. Mr Cheddie stated that the records of the Land and Surveys Department contained a copy of the lease agreement ("the Lease") dated 30 April 1964 between TEXACO Trinidad Inc. and one Boodoo of Fyzabad for the lease of 12 acres of land in what was known as the John Philip Mitchell block, for agricultural purposes. According to Mr Cheddie, the records also contained a Will prepared by Boodoo which purported to transfer his interest in the Lease to the First and Second Claimant. This was the record to demonstrate that Parcel A was leased to the First and Second Claimants' father. He annexed a copy of the Lease and the Will to his witness statement as exhibit D.

53. Mr Cheddie testified that after this conversation with the First Claimant, he contacted PSAEL headquarters and spoke to Mr Farouk Mohammed, the Estate Supervisor at the time.

54. On 18 January 2016, Mr Cheddie stated that he was notified by Mr Farouk Mohammed that his investigations revealed that the Second Defendant had allegedly purchased the rights to a parcel of land adjoining the east of the lands and that there appeared to be a potential trespass by the Second Defendant's workers but that PSAEL could not confirm the extent of the trespass until the boundaries of the lands were redefined. Mr Mohammed also indicated to Mr Cheddie that large amounts of soil were being removed from the said lands to backfill parts of the private lands. He took photographs and forwarded copies of them to him. Mr Cheddie annexed the copies of the photographs to his witness statement as exhibit E.

55. Mr Cheddie testified that he made an internal request to Jamal Sookoor, acting Manager Land and Surveys, Land Management Section of the Third Claimant, to have a survey of the lands conducted, to have the boundaries redefined and marked and to have a survey plan of the lands and adjoining lands prepared.

56. According to Mr Cheddie, on 21 January 2016 Mr Winston Doyle reported to him that he and other members of the Land and Surveys Department visited the lands and conducted a survey and redefined the boundaries. Mr Doyle confirmed that there was trespass upon a portion of the lands by the Defendants and that he would prepare a survey plan showing the boundaries and the area of the trespass. He also confirmed that large amounts of soil had been removed from part of the lands onto private

lands and that the entire area of the lands upon which works were being conducted was being levelled.

57. Mr Cheddie testified that on 12 February 2016 he received a copy of the said survey plan prepared by Mr Doyle which illustrated the extent of the trespass. He thereafter forwarded a copy to the Third Claimant's legal department. He annexed a copy of the survey plan to his witness statement as exhibit F.
58. According to Mr Cheddie, sometime later he received an urgent call from Mr Farouk Mohammed who indicated that the Second Defendant had begun to fence the private lands as well as part of the lands and also another piece of land owned by the Third Claimant. Mr Farouk Mohammed requested that another survey be conducted. He immediately made this request to the Land Surveys Section of the Third Claimant. On 17 February 2016, Mr Cheddie stated that he received a copy of this survey plan which showed that the Second Defendant had fenced around parts of the lands as well as another parcel of land to the south of the said lands. He forwarded a copy of this survey plan to Mr Farouk Mohammed.
59. Mr Cheddie testified that according to the records of the Land Management Section of the Third Claimant, a formal cease and desist letter was sent on 4 March 2016 from the Third Claimant's external attorneys to the First Defendant. He annexed a copy of the said letter to his witness statement as I.
60. He said that no response was received and instructions were given to commence legal proceedings. Sometime after this letter was sent he

received a copy of a response from the First Defendant addressed to the Third Claimant in which he indicated he had purchased the rights and access to the lands from the First Claimant and annexed a copy of what he alleged to be a receipt. In the said letter, the First Defendant admitted that it had come to his attention that he was trespassing on a part of the said lands and he requested to purchase it from the Third Claimant. He annexed a copy of the said letter to his witness statement as J.

61. According to Mr Cheddie, after he perused the said letter he contacted the First Claimant to enquire whether he had sold his rights and access to the lands as shown in the receipt annexed to the said letter and the First Claimant informed him that he did not do so.
62. A letter dated 25 April 2016 was sent in response on the Third Claimant's behalf to the Second Defendant indicating that the Third Claimant was not prepared to sell the lands and again called upon them to cease and desist their illegal occupation. He annexed a copy of the said letter to his witness statement as K.
63. According to Mr Cheddie at the time of his witness statement in September 2018, the said lands were used for the storage of a few shipping containers but both areas remained fenced which prevented the Third Claimant's employees and their lessees from having access.
64. In cross-examination Mr Cheddie stated that he was employed with the Third Defendant from 1 April 2009. He admitted that before he gave instructions to have the survey done after the complaint from the First Claimant, he had seen the title documents, which vested the said lands in the Third Defendant.

65. Mr Winston Doyle was the Chief Surveyor at the Survey Section of the Land Management Section at the Third Claimant at the time the First Claimant made the complaint of the trespass by the Defendants to the lands. He stated that he received instructions to survey the lands and redefine the boundaries on 18 January 2016. He was furnished with a copy of the Certificate of Title to the lands and the Lease.
66. On the 21 January 2016, Mr Doyle stated that he visited the lands and observed heavy clearing and backfilling works being conducted by the Second Defendant. He also observed the soil was being removed from the portion of the said lands and was being used to backfill the lower lying private lands to the east. According to Mr Doyle, the natural contours of the lands were also simultaneously being levelled to the height of the backfilled area.
67. According to Mr Doyle, at the site he met Mr Farouk Mohammed of PSAEL, the First Defendant and the First Claimant. Mr Farouk Mohammed explained to him that the First Defendant had bought a piece of private lands to the east of the lands and that he claimed the boundaries extended to an area situated to the south east of the lands.
68. Mr Doyle stated that he and his team searched the area and located some of the original pickets and using some of the information available to them, they redefined the boundaries of the lands and marked same with steel poles and pickets which were flagged with tape. He also pointed out the boundaries to both the First Defendant and the First Claimant and informed the First Defendant that some of the works being conducted was trespassing upon the lands which were owned by the Third Claimant.

69. Mr Doyle testified that upon his return to the office, he spoke to Mr Cheddie and indicated his observations. He also prepared a survey plan illustrating the redefined boundaries of Parcel A of the lands as well as the area upon which works were being conducted upon illegally by the Defendants. He said that he forwarded it to Mr Jamal Sookoor for onward transmission and further action by the Land Management Section of the Third Claimant.
70. According to Mr Doyle, sometime after his survey plan was forwarded to Mr Sookoor, he received another request from him to prepare a new survey plan of the lands, as well as a portion of lands situated to the south of the lands which were owned by the Third Claimant, as he had received information that suggested the Defendants had illegally fenced part of same.
71. Mr Doyle said that on 17 February 2016 he went to the lands and conducted another survey inclusive of the areas that the Defendants had illegally fenced. Upon completion, he prepared a plan showing the boundaries of Parcels A and B and the areas upon which the Defendants had illegally fenced. He testified that the cost to complete the two surveys, the redefinition of the boundaries and prepare the survey plans was estimated in the sum of \$15,000.00.
72. Mr Doyle also testified that the natural contours of the lands had been graded down and in other areas, had been backfilled and compacted with gravel. Based upon his calculations, the average value of the soil that had been removed was about \$135,000.00.
73. Counsel for the Defendants did not cross-examine Mr Doyle.

74. In the oral submission, Counsel for the Defendants conceded that there was no evidence that the lands were owned by Mr Rajgobin as asserted by the Defendants in their Defence and Counterclaim.
75. I concluded based on the evidence that the Third Claimant had proven based on the contemporaneous documents that it was the owner of the said lands by virtue of the Certificate of Title. I was also satisfied that from the Lease Parcel A was leased by the Third Claimant's predecessor in title to the father of the First and Second Claimants. I also concluded that the First and Second Claimants continued to be the lessees of Parcel A by virtue of the Will and the Third Claimant continued to treat with them as the lessees who were holding over. There was no evidence presented that the lands were owned by Mr Rajgobin as asserted by the Defendants. There was also no evidence that the Third Claimant's title to the lands were extinguished by Mr Rajgobin.

Whether the Defendants trespassed on the lands?

76. The authors of **Clerk & Lindsell on Torts**² at paragraph 19.01 described a trespass to land as an unjustifiable intrusion by one person upon land in the possession of another. Trespass is a direct entry on the land of another and is actionable per se and the slightest cross of the boundary is sufficient.
77. The unchallenged evidence of Mr Doyle was that:
- (a) On the 21 January 2016, he observed heavy clearing and backfilling works being conducted by the Second Defendant on the land.

² 22nd Ed (2017)

- (b) He also observed the soil was being removed from the portion of the lands and was being used to backfill the lower lying private lands to the east.
- (c) The natural contours of the lands were also simultaneously being levelled to the height of the backfilled area.
- (d) He and his team searched the area and located some of the original pickets and using some of the information available to them, they redefined the boundaries of the lands and marked same with steel poles and pickets which were flagged with tape.
- (e) He also pointed out the boundaries to both the First Defendant and the First Claimant and informed the First Defendant that some of the works being conducted was trespassing upon the lands which were owned by the Third Claimant.
- (f) He prepared a survey plan illustrating the redefined boundaries of Parcel A of the lands as well as the area upon which works were being conducted upon illegally by the Defendants.
- (g) On the 17 February 2016, he went to the lands and conducted another survey inclusive of the areas that the Defendants had illegally fenced. Upon completion, he prepared a plan showing the boundaries of Parcels A and B and the areas upon which the Defendants had illegally fenced.

78. Based on the unchallenged evidence of Mr Doyle, I concluded that the Defendants had trespassed on the lands.

If yes, what loss if any did any of the Claimants suffer?

79. Mr Doyle's evidence was that when he visited the lands on the 21 January 2016, he observed heavy clearing and backfilling works being conducted by the Second Defendant. He also observed the soil was being removed from the portion of the lands and was being used to backfill the lower lying private lands to the east. According to Mr Doyle, the natural contours of the lands were also simultaneously being levelled to the height of the backfilled area. He estimated that the loss to the lands was \$135,000.00. This evidence was unchallenged in cross-examination.
80. I accepted Mr Doyle's evidence on the extent of the loss and I ordered damages in the sum of \$135,000.00 for injury to the reversion with respect to Parcel A based on his evidence and his surveys plans.
81. Having concluded that there was a trespass to the land I awarded damages for the said trespass. However, in determining the quantum of the loss there was a paucity of evidence from the Claimants. In awarding to sum of \$20,000.00 nominal damages I considered the following authorities:
- (a) **Gillian Thomson & Or v. Gunbridge Enterprises Limited**³. Rajkumar J. (as he then was), accepted the Claimant's evidence as that certain of their personal goods were damaged, some were stolen and some were detained. The Court held that it was difficult to arrive at a value for each such category of items and in the absence of evidence as to the value of those items, nominal damages in the sum of \$15,000.00 was awarded on 5 April, 2011.

³ CV2009-02823

- (b) **Winston Adams v Steve Waldron**⁴ on the 29 October 2012 Rahim J ordered \$10,000.00 as nominal damages for trespass.
- (c) **Mano Sakal v. Dinesh Kelvin**⁵ on 22 March 2016, Donaldson-Honeywell J awarded \$30,000.00 in nominal damages since the Claimant established loss but the value was not adequately quantified.
- (d) **Mahabir v Edwards**⁶ Kokaram J on the 20 April 2018 awarded nominal damages in the sum of \$15,000.00 since there was no evidence on the current value of the land.
- (e) **Ann Edwards v Neomi Hinds**⁷ on the 16 November 2018 I awarded \$30,000.00 nominal damages on the basis that the Claimants had established slope instability which was a result of the trespass.
- (f) **Hassinah Hosein v Salisha Hosein**⁸ on the 30 November 2018 I awarded nominal damages for trespass in the sum of \$10,000.00 since there was no value of the said property or the value of the Claimant's loss by the Defendant's use and occupation of the said property.

82. In the instant case, there was no value of the lands or the loss due to the inability to use the land due to the trespass. For these reasons, I awarded nominal damages in the sum of \$20,000.00.

⁴ CV2010-03625

⁵ CV 2015-00748

⁶ CV 2016 – 02033

⁷ CV 2017-02552

⁸ CV 2017-03229

Costs

- 83. Although the Claimants were successful in having the Notice of Application dismissed I did not award any costs since Counsel for the Claimants had stated that he was only served with the Notice of Application a few minutes before the scheduled time for the hearing of the trial.

- 84. With respect to the costs of the trial, the Claimants having been successful I ordered that the Defendants were to pay the Claimants their costs. I assessed costs on the prescribed basis pursuant to Rule 67.5(1) CPR on the sum of \$150,000.00 which was quantified in the sum of \$34,500.00.

Other matters

- 85. The Claimants having been successful in their claim, I ordered the servants and or agents of the Third Claimant to remove the fence which was erected on Parcel A and Parcel B and for the Defendants to reimburse the Third Claimant the costs for the said removal since this was a reasonable and appropriate remedy in light of the substantive orders sought by the Claimants and the conduct by the Defendants.

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Margaret Y Mohammed
Judge