

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-01616

BETWEEN

JOAN BALLANTYNE

Claimant

AND

KRISHNA RAMPERSAD

Defendant

Before The Honourable Madam Justice Margaret Y. Mohammed

Dated the 26<sup>th</sup> October, 2017

**APPEARANCES:**

Ms. Angelique Bruce Attorney at law for the Claimant.

Ms. Denyse Gouveia instructed by Ms. Karen Gonzales Attorneys at law for the Defendant.

**RULING – EVIDENTIAL OBJECTIONS**

1. On the 1<sup>st</sup> September, 2017, the Defendant filed objections to certain parts of the evidence which the Claimant is seeking to adduce in support of her case. The objections were in relation to the witness statements of the Claimant, Bassari Mohammed and that of Jeewan Boodram. I permitted the Claimant to file responses to the objections since at the Pre-Trial Review, Counsel for the Claimant indicated that

she was not served with the Defendant's Notice of Evidential Objections.

2. Having considered the submissions by each party the following is my ruling on the objections.

**Witness Statement of Joan Ballantyne**

3. Paragraph 2 –
  - (a) The words "*my father*" are struck out on the basis that there is no evidence exhibited in the pleadings and in the witness statement to prove that there was a relationship of father and daughter between the Claimant and Norris Lall, the person whom is referred to in paragraph 8 of the Witness Statement.
  - (b) The words "*previously I had lived with my mother Irma Whittaker on a lot of land opposite Lot 17 among other places*" are struck out on the basis that it was not supported by the Claimant's pleaded case. Paragraph 7 of the Statement of Case only states that the Claimant and her mother vacated the land situate at No 52 Foster Road Jerningham Junction Cunupia ("Lot 17"). It did not plead where the Claimant and her mother went to live.
4. Paragraph 3 is struck out since it was not pleaded.
5. Paragraph 5 is struck out since it was not pleaded.

6. Paragraph 7 is struck out since it contradicts the last sentence of paragraph 4.
7. Paragraphs 8 and 9 the reference to "*my father*" is struck out since the Claimant has not established the relationship.
8. Paragraph 10 is struck out since it was not pleaded.
9. Paragraph 11 the words "*During all this time the Defendant was in a position to observe all that I was doing to Lot 17*" are struck out since it is the Claimant's opinion on the Defendant and it is not a statement of fact.
10. Paragraph 14 is struck out since it was not pleaded.
11. Paragraph 20 –
  - (a) The words "*I received several phone calls around 8:30 am informing me that the Defendant arrived with a Forestry Division Vehicle PCC 7505 Black Nissan together with some men who came out of the with tools. These men proceeded onto the property and started to cut down my fruits and ornamental plants which I have been growing over the years including coconut, soursop, sugarcane, cherry guava, pommarac, bananas*" are struck out on the basis of hearsay. The words contravene Part 29.5(1) of the Civil Proceedings Rules 1998; they purport to contain information or a position in the mind of other persons and which was not perceived by the maker of the Witness Statement.

- (b) The words *“A report was made to the Cunupia Police Station. I also a magisterial complaint before the Chaguanas Magistrate Court for Malicious damages to bearing fruits and plants. Sometime after this incident I was advised to erect a no trespassing sign which I did”* are struck out since this was not pleaded by the Claimant.
12. Paragraph 21 is struck out on the basis of hearsay. The words contravene Part 29.5(1) of the Civil Proceedings Rules 1998. They purport to contain information or a position in the mind of other persons and which was not perceived by the maker of the Witness Statement.
13. Paragraph 22 - the words *“My sister informed me that this strange man was very disrespectful, abusive and hostile and he bullied her”* are struck out was on the basis of hearsay. The words contravene Part 29.5(1) of the Civil Proceedings Rules 1998; they purport to contain information or a position in the mind of other persons and which was not perceived by the maker of the Witness Statement.
14. Paragraph 24- The words *“I received a phone call informing me that the Defendant was on Lot 17 with about seven cars and men”* are struck out on the basis the maker of the statement does not state the source of the information and it is not supported by paragraph 28 of the Statement of Case which refers to the 4<sup>th</sup> day of October 2015 and not the 3<sup>rd</sup> day of October 2015.
15. Paragraphs 25 and 26 are struck out on the basis of hearsay since the information contained therein was not within the personal

knowledge of the Claimant. Her evidence was that she was not present when the said events occurred.

16. Paragraph 27 is struck out on the basis that it is not relevant to the main issue to be determined by the Court in the instant matter which is the basis for the Claimant's occupation of Lot 17.
17. Paragraphs 28 and 29 are struck out since these statements were not pleaded.

**Witness Statement of Bassari Mohammed**

18. Paragraph 3 is struck out since it was not pleaded.
19. Paragraph 6 – the words *“and Lot 20 sold to Mistry Rampersad, the father of the Defendant as can be seen from a true copy of the same exhibited in the Agreed Bundle of Documents as No 13.”* are struck out since these allegations were not pleaded.
20. Paragraph 8 is struck out on the basis of hearsay. The words therein contravene Part 29.5(1) of the Civil Proceedings Rules 1998. They purport to contain information or a position in the mind of other persons and which was not perceived by the maker of the Witness Statement.
21. Paragraph 9 is struck out on the basis that it is the opinion of the witness and not factual statements. It also is speculative.

22. Paragraph 10- the words *"or the Surveyor or anyone else"* are struck out since the witness is speculating on what the Defendant did not tell to other persons. He has no direct knowledge of this.
23. Paragraph 11- the words *"As such I was in great shock and disbelief"* are struck out since it is emotion which is not relevant to the determination of the main issue in the case.
24. Paragraph 12 the words *"I knew that he was the tenant of the Deceased from my discussions with her. Likewise after his death I also knew the Claimant as being the tenant of Lot 17 and of the Deceased."* are struck out on the basis that these are not statements of facts but rather conjecture. There is no basis apart from the Claimant that the witness knew as a fact that Norris Lall was the Claimant's father; that the Claimant was the tenant and that he was aware of the testacy or intestacy of Norris Lall.
25. Paragraph 13 the words *"according to law"* are struck out since he is a layman and this is the main issue is to be determined by the Court in the instant matter.

**Witness Statement of Jeewan Boodram**

26. Paragraph 3 - the words *"This survey plan verified what we always knew that is, Lot 17 to be tenanted and Lot 20 sold to Mistry Rampersad"* are struck on the basis that this was not pleaded. It is also speculation and this is the main issue to be determined by the Court.

27. Paragraph 4 - the words "*She never indicated to me that she had sold Lot 17 to the Defendant and his parents or that the Claimant's father Norris Lall sold the Chattel house that he built on Lot 17 to the Defendant's father*" are struck out on the basis that it is speculative. The witness is asking the Court to speculate on the nature of the relationship he had with his mother and assume that because of the said relationship she would have told him certain matters.
28. Paragraph 5 - the words "*or the Surveyors or anyone else*" are struck out since the witness is speculating on what the Defendant did not tell to other persons. He has no direct knowledge of this.
29. Paragraph 7 - the words "*the Claimant's father*" are struck out since there is no basis that he knew this as a fact.
30. Paragraph 8 - the words "*leaving the Claimant entitled to possession of the Chattel house and the tenancy rights to Lot 17*" are struck out on the basis that this is not information within the witness' knowledge and he is expressing a legal opinion as a lay person.
31. Paragraph 9 the words "*I always recognized the Claimant as a tenant of the Deceased and as such*" are struck out" on the basis that this is his opinion.
32. Paragraph 11 is struck out on the basis that it was not pleaded. It is also hearsay.

33. Paragraph 14 is struck out on the basis that it is hearsay. He did not indicate that he was present to witness the events related in the said paragraph.
  
34. Paragraph 15 the words *“since up to this day I honestly believe that the Claimant is a statutory tenant in respect of Lot 17 and that Lot 17 was never sold”* are struck out on the basis that it is opinion.

**Margaret Y Mohammed**  
**Judge**