

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No: CV2017-00165**

**Between**

**NEIL MURRAY**

**CLAIMANT**

**And**

**GOVIN HEERAMAN**

**DEFENDANT**

**Before the Honourable Madame Justice Margaret Y Mohammed**

**Date of delivery March 22, 2019**

**APPEARANCES:**

Mr. Dale Scobie Attorney at Law for the Claimant.

Ms. Leandra Ramcharan Attorney at Law for the Defendant.

**JUDGMENT**

1. The Timital River may not be known to persons outside of Sangre Grande but it is important to this matter since it divides a certain parcel of land which the Claimant and his predecessors in title have been occupying for over 45 years before this action and the only access which they have to said land has been by using a right of way over the Defendant's land.

Therefore, it would not be surprising that the Timital River frequently appears in this judgment.

2. According to the Claimant, he and his successors in title are entitled to a right of way from the parcel of land occupied by him<sup>1</sup> (“the dominant parcel of land”), over the parcel of land owned and/or occupied by the Defendant<sup>2</sup> (“the servient parcel of land”) to a road reserve 50 links wide on the western side of the servient parcel of land and on the said road reserve to the Timital Trace (“the said right of way”).
3. It was not in dispute that the dominant parcel of land and the servient parcel of land are contiguous to each other and that the Timital River divides the dominant parcel of land into two portions<sup>3</sup>.
4. The Claimant contends that he had been using the said right of way with his vehicle over the servient parcel of land for the last 12 years more or less commencing in the year 2004 when he began to cultivate the dominant parcel of land with his predecessor, one Ramnarine Roopnarine (“Mr. Roopnarine”). Mr. Roopnarine had been cultivating the dominant parcel of land and using the said right of way continuously since in or about the year 1970. The said right of way had been used by the public as their

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<sup>1</sup> Comprising All and Singular that certain piece or parcel of land comprising approximately 2.40 hectares or 6 acres, more or less known as Lot #16 Timital Trace, Melajo, Vega de Oropouche, and situate at Timital Trace, Melajo, Vega de Oropouche, County St. Andrew/ St. David, Sangre Grande in the Ward of Manzanilla, in the Island of Trinidad and bounded on the North by State Lands, on the south by the Oropouche River, on the East by lands of Jose M. Carera, and on the West by lands formerly of S. Granado, now occupied by the Defendant

<sup>2</sup> Comprising FOUR (4) Acres TWO (2) ROODS AND SEVENTEEN (17) PERCHES be the same more or less delineated and coloured pink in the plan attached to and described in the Crown Grant in Volume 1150 Folio 17 and described therein as bounded on the North by a road reserve fifty links wide on the South by a reserve forty-five links wide along Oropouche River and on the West by a road reserved fifty links wide and on the East by lands occupied by the Claimant

<sup>3</sup> See the Agreed Statement of Facts filed on the 22 March 2018.

only access to the Oropouche River for vehicular traffic for several years prior to the commencement of Mr. Roopnarine's use. The Claimant acquired possession of the dominant parcel of land when he purchased it from Mr. Roopnarine in 2009.

5. The Claimant contends that the Defendant began to obstruct the said right of way by digging a trench over the Western Portion of the Road Reserve from Timital Trace in 2014. In March, 2015 the Defendant entered upon the dominant parcel of land and cut down several mature banana trees belonging to the Claimant. In May, 2015 the Defendant blocked the path of the Claimant with his vehicle and placed a steel pole across the said right of way obstructing the Claimant's exit. The Claimant called the police for assistance in order to leave the dominant parcel of land.
  
6. From 11 May, 2015 until the present time the Claimant has not returned to the dominant parcel of land due to the aggressive and unpredictable conduct of the Defendant and his desire to keep the peace. The Claimant estimated the loss he sustained from not being able to reap his produce and the destruction of his crops by the Defendant to be in excess of \$27,082.27. He continues to sustain annual loss due to his inability to reap crops from the dominant parcel of land. As such the Claimant seeks the following orders against the Defendant:
  - (a) A Declaration that the Claimant and his successors in title are entitled to and there exists the said right of way.
  - (b) An injunction restraining the Defendants whether by themselves their servants or agents or any other person whatsoever from blocking or in any manner obstructing the free use of the said right of way by the Claimants their agents, servants, heirs or assigns.

- (c) An Order that the Defendants do remove forthwith all and any barriers, fences barricades, gates or any obstruction to the free use of the said right of way placed by the Defendants or any of them whether by themselves their servants and or agents.
- (d) Damages in trespass.
- (e) Costs.

7. The Defendant's answer to the Claimant's case is puzzling to say the least. The Defendant both denied and admitted the Claimant's possession of the dominant parcel of land. He admitted the occupation and cultivation of the dominant parcel of land by the Claimant's predecessor Mr. Roopnarine. He claimed that in 2009 Mr. Roopnarine transferred ownership of the dominant parcel of land to the Defendant's father Roopnarine Heeraman ("the Deceased"). He denied his own possession of the servient parcel of land but he admitted that he occupied it with the Deceased.
8. The Defendant's case was that the Claimant's predecessor accessed the dominant parcel of land: through the servient parcel of land with the consent of the Deceased; by a boat; and by wooden bridge over the Timal River.
9. The Defendant counterclaimed against the Claimant seeking the following orders:
  - (a) Possession of the servient parcel of land including the portion with the said right of way;
  - (b) Damages for trespass;
  - (c) Mesne profits;

- (d) An Order that the Claimant be restrained by himself, his servants or agents from planting, spraying and cleaning the servient parcel of land;
- (e) An Order that the Claimant be restrained by himself, his servants or agents from building, renovating or construction of any kind whatsoever on the servient parcel of land;
- (f) Costs.

10. Based on the pleadings there are three issues to be determined namely:
- (a) Is the Claimant entitled to access of the said right of way?
  - (b) Did the Defendant wrongfully obstruct the Claimant?
  - (c) Is the Defendant liable to the Claimant for any loss and if so, the quantum?
11. At the conclusion of the trial, the Court gave the parties the opportunity to put their closing addresses in writing. Both parties consented and obtained an extension of time to do so. However, only the Claimant met the extended deadline. After hearing both parties, the Court gave another extension of time to give the Defendant the opportunity to file his closing submissions. However, the Defendant failed to meet the second extension of time and no reason was advanced for failing to do so. The Court then informed the parties that it would proceed to deliver the judgment without the Defendant's submissions.

**IS THE CLAIMANT ENTITLED TO ACCESS OF THE SAID RIGHT OF WAY?**

12. **Gale on Easements**<sup>4</sup> provides the essential character of easements as follows:

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<sup>4</sup> 14 Edition at Page 7

- (a) There must be a dominant and servient tenement.
- (b) An easement must accommodate the dominant tenement.
- (c) Dominant and servient owners must be different persons.
- (d) The right over land cannot amount to an easement, unless it is capable of forming the subject matter of a grant

13. Section 2 of the **Prescription Ordinance**<sup>5</sup> provides that:

“Where any claim shall be made to any right of common or pasture, or other pasture, or other profit or benefit, except rent and services, or to any way or other easement, or to any watercourse or the use of water, to be taken or enjoyed or derived upon, over or from any land or water of the State or any body corporate or person and such right of common or matter as hereinbefore mentioned shall have been actually enjoyed by any person, claiming right thereto without interruption for the full period of sixteen years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.”

14. In **Errol Johnson and Anor v Sheldon Elwin and Anor**<sup>6</sup> the Court adopted the learning found in **Gale on Easements 19<sup>th</sup> Edition (2011) at 9-03** under the rubric “Extent of Rights of Way Acquired by User” and stated the following:

“Where a right of way is acquired by user, since user is not continuous and may vary, there may be difficulty in determining the

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<sup>5</sup> Chapter 5 No 8

<sup>6</sup> CV 2012-00926

scope of the right acquired. The general rule is that, where a right of way is acquired by user, the extent of the right must be measured by the extent of the user.”

15. In order for the Claimant to succeed with his assertion that there has been the said right of way over the servient parcel of land and it has been used to access the dominant parcel of land, the onus was on him to show that all four factors as set out aforesaid existed, namely: (a) there is a dominant and a servient tenement; (b) the dominant and servient owners are different persons; (c) the said right of way accommodated the dominant tenement; and (d) the said right of way is well defined and can be the subject matter of a grant.
16. It was not in dispute that the dominant parcel of land and the servient parcel of land are contiguous to each other and that the Timital River divides the dominant parcel of land into two portions. As such the first condition, that there is a dominant and a servient tenement is satisfied.
17. The basis for the Defendant’s challenge to the Claimant’s case was that (a) there is no dominant and servient tenement; (b) the dominant parcel of land and the servient parcel of land were not owned by different persons; (c) the said right of way did not accommodate the dominant parcel of land; and (d) there is an alternative access to the dominant parcel of land.

**Dominant and servient tenement**

18. The Claimant described the dominant parcel of land as divided into two portions by the Timital River. The northern portion being to the north-east of the Timital River, and the southern portion being to the south-west of the Timital River.

19. According to the Claimant, the Defendant and his father have been in possession of the servient parcel of land which lies to the west of the dominant parcel of land since about 2004. The servient parcel of land is bounded on the North by the Timital River, on the South by the Oropouche River, on the East by the dominant parcel of land and on the West by a road reserve which runs northward to Timital Trace and southward to the Oropouche River. He stated that the dominant parcel of land has been well cultivated while the servient parcel of land is completely uncultivated.
20. The Claimant's evidence on the dominant parcel of land and the servient parcel of land was corroborated by Mr. Roopnarine, his predecessor in title. Mr. Roopnarine testified that the dominant parcel of land comprises 2.40 hectares or 6 acres and it is divided into 2 parts. The northern portion lies at the north-east of the Timital River and is inaccessible by roadway.
21. The evidence on behalf of the Claimant was consistent with the undated Diagram/ Cadastral sheet in the Agreed Bundle of Documents which showed the layout and location of the dominant parcel of land and the servient parcel of land.
22. The evidence on behalf of the Claimant was unchallenged and he was able to satisfy the Court of the first limb.

**Ownership of the dominant parcel of land and the servient parcel of land**

23. The Claimant's case and his evidence in support was that in 2004 he began cultivating the dominant parcel of land with Mr. Roopnarine. In 2009 he purchased Mr. Roopnarine's interest in the dominant parcel of land and since 2009 he has been cultivating the southern portion of the dominant



parcel of land. He stated that his predecessor Mr. Roopnarine had been in possession of the dominant parcel of land and he had been cultivating it since in or about 1970 up until 2009 when he sold his interest in it to the Claimant.

24. The Claimant's evidence in cross-examination on his use and occupation of the dominant parcel of land was unshaken. He testified that he started to occupy the dominant parcel of land with Mr. Roopnarine in 2004. He did most of the cleaning and did some planting as well as he cleared some of the servient parcel of land and he was aware that the Defendant was the owner of it. He said that he paid Mr. Roopnarine approximately \$55,000.00 for the dominant parcel of land.
25. In cross-examination, the Claimant was referred to the statutory declaration where Mr. Roopnarine requested that his interest in the dominant parcel of land be transferred to the Claimant. The Claimant stated that a signature was missing and he said he remembered another document with Mr. Roopnarine and his son's signature with the same contents. He agreed with the definition of "the land" in the said statutory declaration. He stated that the process of the transfer of Mr. Roopnarine's interest in the dominant parcel of land had progressed to a point where officers from the State were coming to visit the dominant parcel of land, but the process was stalled because the Defendant had blocked access to the dominant parcel of land by blocking the right of way.
26. The Claimant's witness, Mr. Roopnarine testified that in 1970 he started to cultivate the dominant parcel of land. In 1973 he applied to the Ministry of Agriculture to lease the dominant parcel of land and later in that year he signed a probationary Tenancy Agreement for it. He stated that he paid

taxes and rent for the dominant parcel of land until 2009 and he annexed a copy of the probationary tenancy agreement to his witness statement.

27. Mr. Roopnarine also testified that he cultivated the dominant parcel of land with crops such as coconut, mango, citrus, breadfruit, melon and other short crops without any obstruction from anyone. In 2003 he received a Letter of Offer from the State to be granted a Standard Agricultural Lease for the dominant parcel of land and he annexed a copy of the letter to his witness statement.
28. Mr. Roopnarine stated that in 2004, the Claimant began assisting him in cultivating the dominant parcel of land and in 2009; he gave his interest in the dominant parcel of land to the Claimant.
29. According to Mr. Roopnarine, when he began cultivating the dominant parcel of land, the servient parcel of land was owned by one Vialva and that the Defendant and his father, the Deceased came unto the servient parcel of land more than 20 years after. Mr. Roopnarine also stated that two years after he and the Claimant were cultivating the dominant parcel of land in 2004, the Deceased approached him to take full possession and control of the dominant parcel of land but he never followed up.
30. In cross-examination, Mr. Roopnarine agreed that the boundaries in the probationary tenancy agreement was that for the dominant parcel of land. He testified that he met the Deceased twice and that on one occasion the latter indicated that he wanted to buy the dominant parcel of land but it could not have been transferred because of lack of proper documentation. He said that the Deceased never assisted him in cultivating the dominant parcel of land.

31. The evidence from the Claimant which was corroborated by his witness Mr. Roopnarine and which was consistent with the Claimant's case was that the Claimant and previous to him, Mr. Roopnarine have been in possession and or owned the dominant parcel of land since 1970 and that the servient parcel of land was owned by the Defendant's predecessor, the Deceased.
32. At paragraph 6 of the Defence, the Defendant asserted that in 2007 Mr. Roopnarine passed possession of the dominant parcel of land to the Deceased. He repeated this assertion in his witness statement where he stated that the Deceased became possessed of the dominant parcel of land and the servient parcel of land for a period of time. This was totally denied by Mr. Roopnarine who confirmed the ownership of the Claimant.
33. However, the credibility of the Defendant's assertion that the dominant parcel of land and the servient parcel of land were owned by the Deceased was undermined by his own Defence since at paragraph 12 he stated that the Deceased allowed the Claimant to access the dominant parcel of land and in cross-examination he admitted that the Claimant occupied the dominant parcel of land on diverse occasions from 2009 to 2015.
34. In my opinion, the conduct of the Deceased was that the dominant parcel of land was not owned or occupied by him but by the Claimant and his predecessor which was consistent with the Claimant's case.
35. Therefore, the weight of the evidence supported the Claimant's position that the dominant parcel of land was previously owned by Mr. Roopnarine who sold his interest in it to the Claimant in 2009 and the servient parcel of land was owned by the Deceased and in the 1970's by one Vialva.

**The said right of way accommodated the dominant tenement**

36. The Claimant testified that his predecessor, Mr. Roopnarine told him that he has used and enjoyed the said right of way over the servient parcel of land from the dominant parcel of land to access the public roadway, Timal Trace without permission, consent or authority from anyone.
37. According to the Claimant, he and Mr. Roopnarine used the right of way to transport garden produce by vehicles from the dominant parcel of land through the servient parcel of land unto the public roadway, the said Timal Trace. He also stated that members of the public have used the said right of way preceding he and Mr. Roopnarine's joint occupation of the dominant parcel of land to take their boats, donkey carts and vehicles to the Oropouche River and to transport produce from the surrounding lands to Timal Trace.
38. The Claimant testified that apart from the said right of way, he has no other access to the dominant parcel of land as there is no bridge over the section of the Timal River which passes through the dominant parcel of land, nor is there any bridge along the Timal Trace where the Timal River passes through the servient parcel of land. The Claimant stated that when he came onto the dominant parcel of land in 2009 the servient parcel of land was uncultivated save for the right of way.
39. The Claimant testified in cross-examination that he was told and shown by Mr. Roopnarine and the villagers that the said right of way was used to access the dominant parcel of land and the Oropouche River. He admitted that he did not consult with the Deceased before he cleaned the said right of way because he was not around and on one occasion, the Deceased had

told him that he cannot give him permission but he cannot deny him access to the right of way. The Claimant was adamant that Mr. Roopnarine could not have accessed the northern side of the dominant parcel of land by way of a bridge.

40. Mr. Roopnarine testified that in 1970 when he started to cultivate the dominant parcel of land, he accessed it using the said right of way which was running through the servient parcel of land and which was occupied by the Defendant's predecessor. He stated that the said right of way was used by the Claimant to access the dominant parcel of land and that he was never obstructed by anyone claiming to be the owners of the servient parcel of land. He also testified that no one visited the servient parcel of land while he cultivated the dominant parcel of land for several years and the said right of way was also used by members of the public.
41. Mr. Roopnarine also stated that during the earlier part of his occupation of the dominant parcel of land, he accessed a section of it using a tree which fell and which formed a bridge over the Timital River. However, he was adamant that there is no access to the northern part of the dominant parcel of land since there is no bridge and the log which was once used has rotted away. Mr. Roopnarine explained in cross-examination that there is another tree almost to the Oropouche River which can be used to access the dominant land now.
42. According to Mr. Roopnarine, the Defendant and his father came unto the servient parcel of land more than 20 years after he first began to pass over the said right of way. He said that he never had any conversation with them about using the said right of way. According to Mr. Roopnarine, the villagers always used the said right of way and boats were left on the

Oropouche River on the dominant parcel of land. He said that donkey carts and vehicles used the said right of way to get to and from the river and other lands over the river.

43. Mr. Roopnarine also testified that in 2015 while visiting the dominant parcel of land with the Claimant, the Defendant asked him for the first time about the said right of way passing through the servient parcel of land. He told the Defendant that he had been living in the area for more than 46 years and the said right of way has always been the only access to get to the dominant parcel of land.
44. The Claimant relied on the undated Cadastral Sheet in the Agreed Bundle of documents to support his case that the only means to access the dominant parcel of land was using the said right of way over the servient parcel of land. The Cadastral Sheet indicated that the Timital River cut across both the dominant parcel of land and the servient parcel of land providing no point on the dominant parcel of land for a bridge or boat and possibility of access to the dominant parcel of land to the north where the Timital River flows.
45. Therefore, the consistent evidence of the Claimant which was corroborated by his witness Mr. Roopnarine and supported by the documentary evidence was that the said right of way has been used by the Claimant, his predecessor, Mr. Roopnarine and other villagers to access the dominant parcel of land from at least 1973.
46. The Defendant stated in both his Defence and his witness statement that the Claimant's predecessor accessed the dominant parcel of land by boat, a wooden bridge over the Timital River and sometimes by foot with the

consent of the Deceased over the servient parcel of land. The Defendant testified that the villagers did not use the said right of way. The Defendant also testified that there are established access routes to the dominant parcel of land off the Vega de Oropouche Main Road, along the Timital River Reserve and also along Timital Trace to the Oropouche River reserve and along the Timital Trace over the Timital River and along the undeveloped Timital Trace.

47. However, the assertions made by the Defendant were undermined by his admissions and evidence in cross-examination. Under cross-examination the Defendant admitted that: there was no bridge over the Timital River; he first visited the servient parcel of land in 2004; he was unaware of what happened prior to 2004; he did not know how the Claimant accessed the dominant parcel of land which Mr. Roopnarine cultivated because he never saw him physically traverse to the servient parcel of land yet he had observed the Claimant using the said right of way over the servient parcel of land to get unto the dominant parcel of land; and he had no basis for stating that Mr. Roopnarine accessed the dominant parcel of land by boat.
48. In my view, the admissions by the Defendant demonstrated that he was fully aware that the Claimant and Mr. Roopnarine used the said right of way over the servient parcel of land in order to access the dominant parcel of land despite his assertions to the contrary.

**The said right of way is well defined and can be the subject matter of a grant.**

49. The evidence before the Court was that the said right of way claimed has been used for vehicular traffic for the duration of its use.

50. The Claimant stated that the right of way runs about 175 feet in a southerly direction from the Timital Trace along a Road Reserve alongside the western boundary of the servient parcel of land then onto the servient parcel of land diagonally for about 600 feet towards the dominant parcel of land and through the dominant parcel of land to the Oropouche River.
51. The Claimant exhibited to his witness statement copies of photographs of the said right of way to corroborate his evidence. Only the photograph exhibited as "C" and two photographs exhibited in the bundle as "E" were clear coloured copies which showed a driveway. However, I did not attach any weight to these photographs since they were undated and there was no evidence indicating who took the photographs.
52. According to Mr. Roopnarine, he had been using the right of way over the servient parcel of land for over 40 years; he maintained same which was wide enough for a vehicle to pass through and that the said right of way is a developed pathway along the servient parcel of land.
53. There was no evidence from the Defendant to challenge the evidence from the Claimant and more particularly Mr. Roopnarine that the said right of way over the servient parcel of land for at least 45 years was wide enough to permit a vehicle to pass.
54. Therefore, the weight of the evidence supported the Claimant's assertion that the said right of way is a developed pathway along the servient parcel of land from the Timital Trace to the dominant parcel of land and its width was that it accommodated vehicles.



55. I am therefore satisfied that the Claimant has met all the conditions to prove that there is the said right of way. In my opinion, the said right of way over the servient parcel of land has been used since 1973 to access the dominant parcel of land. The width of the said right of way permitted vehicular access. The said right of way is the only means to access the dominant parcel of land. It is well defined and it is capable of being the subject of a grant by prescription.

**DID THE DEFENDANT WRONGFULLY OBSTRUCT THE CLAIMANT?**

56. The Claimant testified that in 2013 the Defendant and the Deceased began to clean the servient parcel of land with heavy equipment and he was informed for the first time that he would have to get an alternative route to access the dominant parcel of land. In the same year, the Defendant erected steel poles along the western boundary of the servient parcel of land with the Road Reserve. In the next year, the Defendant dug a trench along the western portion of the Road Reserve from about the Timital Trace along the Road Reserve and across the Road Reserve to the South unto the servient parcel of land, which prevented any use of the Road Reserve as access to the Oropouche River.
57. The Claimant also testified that in or about 8 February 2015 he was driving along the said right of way on the road reserve on the west of the servient parcel of land and while he was in the process of entering the portion of the said right of way on the servient parcel of land he observed for the first time a chain barrier across the said right of way which prevented him from entering the servient parcel of land and thereby denying him access to the dominant parcel of land.

58. The Claimant stated that a few days after, his attorney at law wrote to the Deceased complaining about the said barrier and requesting that it be moved. Letters were also sent to the Superintendent of Police of the Sangre Grande Police Station and to the Commissioner of State Lands.
59. According to the Claimant, three months after, the Defendant attempted to physically block his path with his vehicle but the Claimant was able to get through. Later that day the Defendant dragged a steel pole across the said right of way thereby obstructing the Claimant's exit along the said right of way. The Claimant was only able to exit from the dominant parcel of land by calling the police who visited and ordered the Defendant to remove the obstruction.
60. The Claimant stated that in or about one year later, the Defendant erected a barrier across the road reserve on the western side of the servient parcel of land about 20 feet from Timital Trace thereby obstructing the use of the said right of way. The Claimant also stated that on or about April 2016, the Defendant erected a gate denying the Claimant entrance from the road reserve onto the servient parcel of land and obstructing the free access along the said right of way.
61. In cross-examination the Claimant stated that in 2015 the Deceased stopped him from using the access. He agreed that the Defendant was within his right to develop the servient parcel of land, but he stated that the Defendant was not right to erect a gate on the servient parcel of land which denied him access to the dominant parcel of land.
62. The Defendant's witness statement was silent on his actions in blocking the Claimant from accessing the dominant parcel of land using the said

right of way. However, in cross-examination he admitted that he blocked the Claimant's access along the said right of way and he put up a chain across it but he denied that a trench was dug along the southern end beyond the entrance the Claimant used. He also denied that he graded on the servient parcel of land around 2015. Instead, he said that the grading took place between 2012-2013.

63. Having found that the Claimant has made out his case for use of the said right of way, and given the admission in cross-examination by the Defendant that he put up a chain across the said right away, it follows that by the Defendant's actions of placing the chain across the said right of way, he obstructed the Claimant from accessing the dominant parcel of land.

**DID THE CLAIMANT SUFFER ANY LOSS AND IF SO THE QUANTUM**

64. The Claimant pleaded and he testified that as a result of the obstruction, he sustained loss of fruits and crops bearing throughout the period of the obstruction by the Defendant and that damage to his crops by the Defendant was in a total value of \$27,082.27. He annexed copies of undated photographs<sup>7</sup> to his witness statement purporting to show destroyed banana trees and other fruit trees. He also annexed to his witness statement<sup>8</sup> a copy of a valuation prepared by Ms. Zilda Pariag who according to the Claimant prepared this report based on his instructions. I have attached no weight to the photographs and the report by Ms. Pariag since in the case of the photographs they were undated and there was no evidence indicating who took the said photographs. With respect to the report by Ms. Pariag, no hearsay notice was filed by the Claimant to admit

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<sup>7</sup> Exhibit E to the Claimant's witness statement

<sup>8</sup> See exhibit "J" of the report of Zilda Pariag dated the 16 September 2016

it into evidence and although a witness statement was filed for Ms. Pariag, she did not attend Court at the trial to give evidence.

65. The Claimant also stated that in January, 2016 a party of officials from the office of the Commissioner of State Lands were scheduled to inspect the dominant parcel of land to observe the land utilisation in pursuance of the Claimant's application for a Standard Agricultural lease. This had to be rescheduled due to the Claimant being unable to cultivate and maintain the dominant parcel of land which would have allowed the Commissioner of State Lands to make a determination on the granting of an agricultural lease to the Claimant.
66. In cross-examination, the Claimant testified that the process of transfer of the dominant parcel of land from Mr. Roopnarine to him had progressed to a point where officers were coming to see how developed the dominant parcel of land was, but the process was stalled because the Defendant had blocked the said right of way.
67. The Defendant denied in cross-examination that he entered onto the dominant parcel of land and cut down trees and crops in 2015. However, he agreed that he and his father blocked the Claimant from passing on the said right of way.
68. It was submitted on behalf of the Claimant that the evidence presented on behalf of the Claimant to support his claim for damages ought to be accepted by the Court since the Claimant has itemized the crops lost and the Defendant has not provided any contradictory evidence and he did not seek to challenge it in Court. To support this assertion Counsel for the Claimant relied on the learning enunciated by the Court of Appeal in the

Consolidated appeal cases of **Ramnarine Singh, Ganesh Roopnarine, The Great Northern Insurance Company Limited v Johnson Ansola**<sup>9</sup> and **The Great Northern Insurance Company Limited & Ors v Johnson Ansola**<sup>10</sup> where at paragraph 93 the Court referred to the words of Bernard CJ in **Uris Grant v Motilal Moonan Ltd and Frank Rampersad**<sup>11</sup> who stated that:

“By the production of the list of chattels destroyed together with the costs of their replacement, the appellant had established a prima facie case both of the fact of loss of those articles and of the costs of their replacement value at that time. Her special damages had to be established on a balance of probabilities. The Respondent called no evidence in rebuttal. In the event, the Master, in my view, either had to accept the appellant’s claim in full or, if for whatever reason she had reservations she should have approached the matter along the lines in Radcliffe’s Case by applying her mind judiciously to each item and the cost thereof in the list....”

69. In **Ramnarine Singh** Mendonça JA after examining the approach by the Court of Appeal in matters for proof of loss as special damages stated at paragraph 97:

“From these cases it seems clear that the absence of evidence to support a plaintiff’s viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff’s claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be

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<sup>9</sup> Civ Appeal No 169 of 2008

<sup>10</sup> Civ Appeal No 121 of 2008

<sup>11</sup> Civ Appeal 162 of 1985

slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason”.

70. The only evidence of the extent of the Claimant’s loss was from him since the documents he sought to rely on were inadmissible in the case of Ms. Pariag’s report and unreliable in the case of the photographs. However, despite these shortcomings, the Defendant’s evidence was that he had seen the Claimant cultivating the dominant parcel of land and he admitted that he and the Deceased had blocked the Claimant from using the said right of way to access the dominant parcel of land. Based on the Claimant’s evidence this occurred in February 2015. Therefore, it was more probable that the Claimant cultivated the dominant parcel of land between 2009 and 2015, which he asserted, and he suffered the loss which he claimed as a result of the Defendant’s action of preventing him from accessing the dominant parcel of land to reap his fruits and crops. Therefore, I am satisfied that the Claimant suffered loss as a result of the Defendant blocking the said right of way.
71. With respect to the quantum of the loss, there was no evidence from the Defendant to challenge the sum claimed. As such there is no cogent reason for rejecting the sum claimed by the Claimant as his loss for special damages and for these reasons I award the sum of \$ 27,082.27.

### **CONCLUSION**

72. I am satisfied that the Claimant has successfully proven all aspects of his case.

73. The Claimant has proven that there was a dominant and servient tenement. According to the corroborated evidence of the Claimant, the Defendant and his father have been in possession of the servient parcel of land which lies to the west of the dominant parcel of land since about 2004 and previous to them one Vialva was in possession. This evidence on behalf of the Claimant was unchallenged.
74. The Claimant also proved that the said right of way over the servient parcel of land accommodated the dominant parcel of land. The consistent evidence of the Claimant which was corroborated by his witness Mr. Roopnarine and supported by the documentary evidence was that the said right of way has been used by the Claimant, his predecessor, Mr. Roopnarine and other villagers to access the dominant parcel of land from at least 1973. The admissions by the Defendant demonstrated that he was fully aware that the Claimant and Mr. Roopnarine used the said right of way over the servient parcel of land in order to access the dominant parcel of land despite his assertions to the contrary.
75. I am therefore satisfied that the Claimant has met all the conditions to prove the said right of way. In my opinion, the said right of way over the servient parcel of land has been used since 1973 to access the dominant parcel of land. The width of the said right of way permitted vehicular access. The said right of way is the only means to access the dominant parcel of land. It is well defined and it is capable of being the subject of a grant by prescription.
76. Having found that the Claimant has made out his case for the use of the said right of way, and given the admission in cross-examination by the Defendant that he put up a chain across the said right away, it follows that

by the Defendant's actions, he obstructed the Claimant from accessing the dominant parcel of land.

77. With respect to the quantum of the loss, there was no evidence from the Defendant to challenge the sum claimed. Despite shortcomings in the Claimant's evidence, the Defendant's evidence was that he had seen the Claimant cultivating the dominant parcel of land and he admitted that he and the Deceased had blocked the Claimant from using the said right of way to access the dominant parcel of land. As such there is no cogent reason for rejecting the sum claimed by the Claimant.

**ORDER**

78. Judgment for the Claimant namely:
- (a) It is declared that the Claimant and his successors in title are entitled to and that there exists a right of way from the parcel of land occupied by the Claimant, comprising All and Singular that certain piece or parcel of land comprising approximately 2.40 hectares or 6 acres, more or less known as Lot #16 Timital Trace, Melajo, Vega de Oropouche, County St. Andrew/St. David, Sangre Grande in the Ward of Manzanilla, in the Island of Trinidad and bounded on the North by State Lands, on the south by the Oropouche River, on the East by lands of Jose R. Carera, and on the West by lands formerly of S. Granado, now occupied by the Defendant, over the parcel of land owned and/or occupied by the Defendant comprising FOUR (4) Acres TWO (2) ROODS AND SEVENTEEN (17) PERCHES be the same more or less delineated and coloured pink in the plan attached and described in the Re-Grant of forfeited lands Volume 511 Folio 401 Instrument No. 149 and is bounded on the North by



a road reserve fifty links wide on the South by a reserve forty-five links wide along Oropouche River and on the West by a road reserved fifty links wide and on the East by lands occupied by the Claimant to the said road reserve 50 links wide on the western side of the servient parcel of land and on the said road reserve to the Timital Trace.

- (b) The Defendant whether by himself, his servants or agents or any other person whatsoever is restrained from blocking or in any manner obstructing the free use of the said right of way by the Claimant, his agents, servants, heirs or assigns.
- (c) The Defendant shall remove forthwith all and any barriers, fences barricades, gates or any obstruction to the free use of the said right of way placed there by the Defendant whether by himself, his servants or agents or any other person.
- (d) The Defendant to pay the Claimant damages assessed in the sum of \$27,082.27.

79. The Defendant's counterclaim is dismissed.

80. The Defendant to pay the Claimant costs of the claim in the sum of \$14,000.00 and the counterclaim in the sum of \$14,000.00.

**Margaret Y Mohammed**

**Judge**