

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2017-01747**

**BETWEEN**

**FAROUK MOHAMMED**

**Claimant**

**AND**

**PALO SECO AGRICULTURAL ENTERPRISES LIMITED**

**Defendant**

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

**Dated the 9<sup>th</sup> November 2017**

**APPEARANCES:**

Mr. Nizam Mohammed, Ms. Jenieve Thompson and Ms. Mosi James Attorney-at-Laws for the Claimant.

Mr. Kerwyn Garcia instructed by Ms. Andrea Orié Attorney-at-Laws for the Defendant.

**RULING - INTERIM RELIEF**

1. The Claimant applied by Notice of Application filed on the 12<sup>th</sup> May 2017 (“the Application”) for the following interim relief:
  1. *The Proceedings be certified as urgent and/or requiring prompt attention;*
  2. *Permission be granted to the Claimant to issue and serve the Claim Form without the Claimant’s Statement of Case;*
  3. *The Claimant be granted permission to file a Statement of Case within twenty-eight (28) days from the date of issuing the claim;*
  4. *An injunction restraining the Defendant, whether by itself its servants and /or agents and/or any other person or body acting for and/or on its behalf from entering remaining upon, taking possession, disposing of or in any*

*other way restricting and/or interfering with the Claimant's quiet use and enjoyment of the dwelling house located at No. 16 Road Palo Seco ("the house") and the approximately two and a half (2 ½) lots of land ("the property") on which it stands pending the hearing or earlier determination of this action;*

5. *Pursuant to rule 17.7 of the CPR 1998 that the proceedings be fixed for an early trial;*
6. *A Declaration that:*
  - a) *The Claimant has acquired an equitable interest in the house;*
  - b) *The Claimant has acquired an equitable interest in the property;*
  - c) *The Claimant is entitled to a licence and/or a lease to the property on which the house stands;*
  - d) *The promise/agreement by the Defendant to sell the house to the Claimant and secure a lease for the property on which the house stands is binding upon the Defendant;*
7. *Specific Performance of:*
  - a) *The agreement by the Defendant to sell the house to the Claimant;*
  - b) *The agreement to secure a lease for the property.*
8. *Damages for breach of agreement;*
9. *That the Cost of this application be reserved; and*
10. *Such further and/or other relief as the Court deems fit in the circumstances.*

2. In support the Claimant filed an affidavit deposed to by the Claimant ("the Claimant's affidavit") and an affidavit deposed to by his wife, Hamida Mohammed.

3. At the first hearing of the Application, the Defendant gave an undertaking for the interim relief in paragraph 4 aforesaid of the Application. The Court gave directions for the Defendant to file and serve affidavits in response and the Defendant filed the affidavits of Loret Hope-Mc Donald the Chief Executive Officer of the Defendant on the 31<sup>st</sup> May, 2017 and Laura Williams-Pran Estates Supervisor on the 17<sup>th</sup> July, 2017. Subsequently,

the Defendant agreed to extend the undertaking it had given on two occasions. After to the filing of the Application, the Claimant filed its Statement of Case on the 20<sup>th</sup> June 2017 and the Defendant filed its Defence and Counterclaim on the 21<sup>st</sup> September 2017.

4. The Defendant also filed and serve skeletal submissions on the 27<sup>th</sup> July 2017 and on the 26<sup>th</sup> October 2017.
5. The Defendant has opposed the granting of the interim reliefs sought on three basis namely: (a) the interim reliefs sought are unobtainable since they are in the nature of final orders; (b) the Claimant's substantive claims in estoppel and for breach of contract are hopeless and the inadequacy of damages as a remedy for the Claimant does not create an arguable case in his favour; and (c) the Claimant's "no-win" substantive claim tilts the balance of justice in refusing the injunction sought.

**Are the interim reliefs in the nature of final orders?**

6. In the substantive claim the orders which the Claimant seeks are: a declaration that he has acquired an equitable interest in the house situated on the property; and a declaration that he has acquired an equitable interest in the property. The Claimant also seeks an order that he is entitled to a license and/or lease for the property; a declaration that the promise/agreement by the Defendant to sell the house to the Claimant and to secure a lease for the property is binding on the Defendant; specific performance of the agreement by the Defendant to sell the house to the Claimant; specific performance of the agreement by the Defendant to secure a lease of the property to the Claimant; and damages for breach of contract.
7. I agree with the submission by Counsel for the Defendant that the reliefs which the Claimant seek with respect to the declarations, specific performance and damages for breach of contract are not properly interim relief since the Claimant are seeking at the interim stage to obtain orders for matters which would bring the substantive matter to an end. In my opinion the only interim relief which can be properly addressed is with respect

to the injunction. The other matters at paragraphs 1, 2, 3 in the Application have already been dealt with and there is consensus with the Court fixing an early trial in the matter.

### **The law and principles for injunctive relief**

8. The granting of an interlocutory injunction is a matter of discretion and depends on the facts of the case which consists of the untested affidavit evidence presented. The applicable principles were set out by Lord Diplock in the landmark case of **American Cyanamid Co v Ethicon Limited**<sup>1</sup>. When an application for an interlocutory injunction is made, in the exercise of the court's discretion, the initial question which falls for consideration is: (a) whether there is a serious issue to be tried. If the answer to that question is yes, then a further question arises: (b) would damages be an adequate remedy for the party injured by the Court's grant of, or failure to grant, an injunction? If there is doubt as to whether damages would not be an adequate remedy: (c) where does the balance of convenience lie?
  
9. In the local case of **Venture Production (Trinidad) Limited v Atlantic LNG Company of Trinidad and Tobago**<sup>2</sup> Archie J (as he then was) cited the principles in **American Cyanamid** at paragraph 17 of his judgment and stated as follows:

*“The law in Trinidad and Tobago has been established by the decisions of the Court of Appeal in Jetpak Services Limited v. BWIA International Airways Ltd (1998) 55 W.I.R. 362 and East Coast Drilling v. Petrotrin (2000) 58 W.I.R. 351. The plaintiff must first establish that there is a serious issue to be tried. It used to be thought that the inquiry then proceeded sequentially through a consideration of whether the plaintiff could be adequately compensated by an award of damages; whether the defendant would be able to pay; whether, if the plaintiff ultimately fails, the defendant would be adequately compensated under the plaintiff's undertaking; whether the plaintiff would be in a position to pay and finally an assessment of the balance of convenience. See American Cyanamid v. Ethicon Limited [1975] A.C. 396.”*

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<sup>1</sup> [1975] AC 396

<sup>2</sup> HCA 1947 of 2003,

*[18] The new approach requires a simultaneous consideration of all relevant factors and a degree of interplay between various factors. The plaintiff is not necessarily denied relief by the consideration of any single factor in isolation. The question, which must be posed, is where does the balance of justice lie?*

*[19] An assessment of the balance of justice requires a comparative assessment of (i) the quantum of the risk involved in granting or refusing the injunction; and (ii) the severity of the consequences that will flow from following either course. East Coast Drilling, op. cit, page 368, per de la Bastide, C.J.” (emphasis supplied).*

10. In considering whether or not to grant an interlocutory injunction, the Court has to consider the purpose for which the injunction is sought. According to Diplock LJ in **American Cyanamid** at page 406:

*“My Lords when an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff’s legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action....*

*..The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff’s need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff’s undertaking in damages if the uncertainty were resolved in the defendant’s favour at the trial. The Court must weigh one need against another and determine where “the balance of convenience” lies.”*

11. The object of the injunction requested by the Claimant is to prevent the Defendant from removing him and his family from the house and the property. The Claimant contends

that if he is removed by the Defendant before the trial it will be in violation of his asserted legal right that he has an equitable interest in the house and his contractual rights to purchase the house and to obtain a lease of the property. In order to secure an injunction to protect that asserted legal right the Claimant must first establish that there is a serious issue.

**Is there a serious issue to be tried?**

12. The Claimant has asserted that he has a legal right to the house and the property since he acquired an equitable interest in both and that he entered into an agreement with the Defendant to acquire both.
13. In the Claimant's affidavit and in his Statement of Case the Claimant stated that during the period of his occupation of the house and the property he was given certain assurances by officers of the Defendant that he would be sold the house and that he would acquire a lease for the property and it was based on those assurances he spent his money on repairs and renovations to the house. In my opinion the Claimant is therefore asserting an equitable interest based on the doctrine of in proprietary estoppel. The equitable doctrine of proprietary estoppel was re-stated by Rajkumar J (as he then was) in **Fulchan v Fulchan**<sup>3</sup> as:

*“If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation.” Taylor Fashions Ltd v Liverpool Victoria Trustee Co. Ltd Per Oliver cited in Snell's Principles of Equity 31<sup>st</sup> Ed. Para 10-16”*

14. In order for the Claimant to have an arguable case at this early stage of the proceedings on the basis of proprietary estoppel he must place before the Court credible evidence that the Defendant gave him assurances that he would eventually own the house and acquire

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<sup>3</sup> CV 2010-03575

a lease for the property and it was based on these assurances he expended funds on repairs and renovations to his detriment.

15. According to the Claimant's affidavit he entered into occupation of the house and the property in or around 1978 when he was employed as a Dairy Superintendent with the Defendant (then known as Trinidad Tesoro Agricultural Company Limited). As part of his contract, the house and the property was provided for his use at a nominal rent which would be determined from time to time.
16. The Claimant was employed with the Defendant until the 31<sup>st</sup> December, 2005 when the Defendant ceased its agricultural operations. The Claimant was presented with two options for compensation packages, neither of which included continued occupation and/or purchase of the house and a lease of the property. However, the Claimant continued in occupation and he was re-employed with the Defendant in 2012 as an Estates Supervisor.
17. The Claimant deposed that over the years he communicated his willingness to purchase the house and the Defendant communicated its willingness to sell it and lease the property to him. The Claimant claimed that from 2001 onwards, various employees of the Defendant, the Defendant's former General Manager, Andre Gayadeen; its former Chief Executive Officer, Francis Bertrand, its former Chairman, Ashmead Ghany and its former Deputy Chairman, Simon Ferreira, all represented or assured him that the house would be sold to him and that the property would be leased to him. He alleged that he relied on these representations/assurances to carry out various repairs to the house and the property over the years. He also alleged that in or around 2014, one Nicola Panday of the Defendant's legal department showed him a letter stating that he would be allowed to occupy the house and the property until the year 2023 without paying the \$1000.00 licence fee.
18. The Claimant claimed that he wrote to the Defendant several times to indicate his willingness to purchase the house and lease the property or for them to be treated as part

payment of his ex-gratia payment. To support his assertion he annexed to the Claimant's affidavit a letter dated 16<sup>th</sup> June 2003 and a letter dated 27<sup>th</sup> July 2006<sup>4</sup>.

19. In response, on the 9<sup>th</sup> November 2009, the Defendant wrote to the Claimant informing him of the Government's approval having been given to the Defendant to enter into a Licence Agreement with him for the occupation of the property pending a valuation of it<sup>5</sup>. In January 2010, the Manager, Legal and Estates Services of the Defendant held a meeting with the Claimant at which the terms and conditions of the proposed Licence were explained to him. The Claimant was informed that the payment of the Licence fee would be \$1,000.00 per month and it would be retroactive from the date the Claimant exited the Defendant. The retroactive payment was calculated at \$29,000.00.
20. Ms Loret Hope-Mc Donald at paragraph 12 of her affidavit deposed that all previous repairs conducted by the Claimant were done without the permission/ consent of the Defendant and were therefore conducted at the Claimant's own risk and expense. However, the Chief Executive Officer of the Defendant approved a waiver of the sum of \$29,000.00 having regard to the repairs conducted by the Claimant on the house.
21. On the 31<sup>st</sup> March, 2010, the parties executed a Licence Agreement to take effect from the 1<sup>st</sup> April, 2010, in which it was expressly agreed that the Claimant was not a tenant; that the Licence was revocable at any time by the Defendant (Article 2.1.1); that the Licence did not confer or vest in the Licensee/Claimant any proprietary or other interest in the house or the property (Article 2.2) and that the Licensee/Claimant shall not claim from the Defendant any compensation or allowance in respect of any improvement or things done by the Licensee/Claimant or under his order whereby the value of the house or the property is increased unless it was done with the Defendant's consent in writing. The Licensee/Claimant also covenanted not to make/permit/suffer to be made any alterations or additions to the Premises without the prior consent in writing of the Defendant (Article 6.1.3) and to peaceably vacate the house and the property leaving the

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<sup>4</sup> exhibit "F.M.3"

<sup>5</sup> exhibit "F.M.4" to the Claimant's affidavit



same in a good and clean condition within the time allotted by the Defendant on termination of the Licence Agreement.

22. On the 13<sup>th</sup> June, 2016, the Claimant was given one months' notice that his contract of employment was being terminated. On the 1<sup>st</sup> November, 2016, the Claimant was given notice of the termination of the Licence Agreement in accordance with Article 2. He was given six months to vacate the house and the property on or before the 30<sup>th</sup> April, 2017 in accordance with the Licence Agreement. According to the Defendant, this was done in accordance with Article 2.1.1 of the Licence Agreement and no reasons were required to be given for the revocation.
23. It was argued on behalf of the Defendant that there is no serious issue to be tried in relation to the Claimant's asserted equitable right since the Claimant's documentary evidence did not demonstrate that the persons whom he said made the assurances to him did so with the authority of the Defendant and that due to the position the Claimant held at the Defendant he knew so. The Defendant also submitted that the Claimant could not have credibly developed any expectation that the house would be sold to him since he knew that after his separation from the Defendant his occupation of the house terminated and his continued occupation did not form any part of his severance package. Further the Claimant having executed the Licence Agreement he had no contractual right to occupy the property and no reasonable expectation that he would do so. The power to lease and/or sell the Defendant's assets lies with Cabinet and the Ministry of Finance, a fact which the Defendant contends was known by the Claimant from his role as Estates Supervisor from 2012-2016.
24. Counsel for the Claimant did not dispute the effect of the letters which the Claimant exhibited to the Claimant's affidavit. Counsel submitted that the case before the Court was one where the Claimant is being politically victimized since he ran for the position of Councilor for the Palo Seco district on behalf of the United National Congress in the local government election held in or around the year 2013. Indeed this submission mirrored the statement which the Claimant had deposed in paragraph 34 of the Claimant's affidavit that:

*“34. I believe that I am being victimized by the new board of the Defendant as a result of my political affiliation since I ran for the position of Councilor for Palo Seco district on behalf of the United National Congress (U.N.C.) in the local government election held in and around the year 2013.”*

25. In my opinion Counsel’s submission that the case was one of political victimization did not accord with the facts in his pleaded case since in my opinion the facts set out a claim of the Claimant having an equitable interest in the house and a right to be sold the property based on a contract which he said he entered into with the Defendant. In this regard I did not see any merit with this submission.

26. Has the Claimant satisfied the Court that he has an arguable case based on proprietary estoppel? In my opinion on the Claimant has failed to demonstrate that he has an arguable case at this stage of the proceedings. In particular, I have attached significant weight to the contemporaneous documents which are unchallenged by the Defendant. I will now examine the contents of the contemporaneous documents.

27. In the Claimant’s letter of employment dated the 6<sup>th</sup> April 1978 the Claimant was provided with unfurnished housing accommodation at a nominal rental which will be determined from time to time. In the Claimant’s letter dated the 18<sup>th</sup> April 2001 which is some 23 years after the Claimant’s letter of employment he stated:

*“I will like to purchase the managers house in which I reside for the past twenty three (23) years and lease the land in which it stands.*

*If my request is given consideration I will be happy to meet with someone from your Civil Engineering Department to look at the building with a view to arrive at a value price. I will also like to meet with someone from the Lands Department to discuss a lease arrangement for the land.”*

28. In this letter the Claimant was obviously aware that in 2001, long after his occupation of the house he had no proprietary interest in it and that his occupation of it and the property was consistent with his terms of employment as set out in the 1978 letter.

29. The Claimant stated in the Claimant's affidavit that in response to his request the then General Manager of the Defendant, Mr Andre Gayadeen verbally informed and assured him that the house would be sold to him at a price not exceeding \$40,000.00 since it was old and the Claimant had occupied it for some time. The Claimant stated that it was based on this assurance he repaired and did construction works on the lower level of the house and constructed a garage at his own expense. While the Claimant's affidavit is silent on the sum he spent, at paragraph 5 of the Statement of Case he averred that he spent approximately \$63,000.00 on the said repairs. The Claimant also stated in both the Claimant's affidavit and Statement of Case that he secured a loan of \$40,000.00 for payment of the house. According to the Claimant after the construction/repairs were completed Mr Gayadeen informed him that the house would not be sold to him at that time. I pause here to note that there was no evidence from the Claimant that he wrote to Mr Gayadeen protesting the decision not to sell him the house at that time. I find this lack of action by the Claimant to be more than unusual since according to the Claimant he had at that time recently spent \$63,000.00 on the house.
30. The next letter which the Claimant relied on to support his claim that he was given assurances that he would be sold the house were letters written by him dated the 16<sup>th</sup> June 2003 and 27<sup>th</sup> July 2006. In his letter dated 16<sup>th</sup> June 2003 the Claimant repeated his request to purchase the house and to lease the property. He set out the reasons he would like to purchase the house and how he proposed to finance the purchase. He also referred to promises made to him with respect to obtaining a piece of land from the Defendant which was never materialized. Notably absent from this letter was any promises which the Claimant stated in his affidavit that Mr Gayadeen had made to him and that he expended funds on the house in the sum of \$63,000.00 based on Mr Gayadeen's promise. In my view this omission is material. If the Claimant knew that that Mr Gayadeen had made this promise to him and that he acted on this promise by spending a significant sum of money on the house he would have included this information in his letter in June 2003 since this would have bolstered his request to purchase the house and to lease the property.

31. Three years later, on the 27<sup>th</sup> July 2006 the Claimant again wrote to Mr Francis Bertrand, the CEO of the Defendant applying for the opportunity to purchase the house since he was due to retire soon and he wanted to continue living in the Palo Seco area. In this letter the Claimant again failed to refer to any assurances made by Mr Gayadeen to him. He also did not indicate that he spent moneys on the repairs and renovations to the house. In my opinion this letter undermines the credibility of the Claimant's assertion that such assurances were made and that he acted on to his detriment.
32. In response to the Claimant's letter the Defendant wrote to him on the 9<sup>th</sup> June 2008 indicating that it was formulating a land use plan and upon completion it would advise him accordingly. The Claimant did not respond to the Defendant's 2008 letter challenging its response and outlining that he was made promises that the house and property would be his and that the Defendant should take this into account in formulating its land use plan. Again the Claimant's inaction at that time in 2008 undermines the Claimant's evidence of such promises.
33. Therefore the contemporaneous documents which the Claimant annexed to the Claimant's affidavit which he wrote for the period 2001 to 2006 did not indicate to the Defendant that certain of its officers had given assurances to the Claimant that he would eventually own the house and acquire a lease in the property and that it was based on the said assurances he spent significant sums on repairs and renovations.
34. The next correspondence the Claimant relied on in support of his equitable claim is a letter dated the 5<sup>th</sup> November 2009 where the Defendant advised him that it had obtained the approval from the Government of Trinidad and Tobago to enter into a Licence Agreement with him for his occupation of the house. There was no correspondence from the Claimant in response to this letter whereby he referred to the assurances which were given by Mr Gayadeen and other officers of the Defendant that he would be able to purchase the house and he would acquire a lease of the property. He also did not write to the Defendant indicating that he had spent significant sums on repairs and renovations to the house.

35. The Licence Agreement was executed on the 31<sup>st</sup> March 2010. In my opinion the terms of the Licence Agreement which the Claimant accepted undermine his assertion that he was given assurances that he would own the house and acquire a lease the property since he accepted the following terms which were contained in the Licence Agreement.
36. The Claimant accepted that: he was not a tenant and there was no landlord and tenant relationship between he and the Defendant; the licence is revocable at any time with 6 months' notice to the Claimant; the licence did not grant any proprietary interest to the Claimant; the Claimant cannot claim from the Defendant any compensation or allowance in respect of any improvement to the house and the property unless it was done with the Defendant's written consent. In my opinion, even if the Claimant had acquired any equitable interest in the house and the property before the Licence Agreement which I have not been so persuaded, the Claimant accepted that he had no equitable interest in the house and the property since 2010, some 7 years before the institution of the instant action.
37. But that was not all. Subsequent to the execution of the Licence Agreement the Claimant accepted that his relationship from 2010 with the Defendant was not based on any claim he had in equity. He knew that he had agreed that the Licence Agreement governed his relationship with the Defendant with respect to the house and the property since by letter dated the 5<sup>th</sup> November 2012 the Claimant stated that he had a licence for the house and the property at a monthly fee of \$1,000.00 and that the house was in need of repairs which he reported to the Defendant on two occasions. He received no response. He gave the Defendant 4 options to make the house more habitable namely:
- (i) Sell the house to him at half the market value.
  - (ii) Allow him to use the monthly rent to upgrade the house.
  - (iii) Allow him to get an estimate for the repairs and forward to the Defendant for approval (which may lower the costs).
  - (iv) Re-negotiate the present agreement and lower the rent that he pay so that he can use the excess to carry out repairs and maintenance to the house.

38. At the end of the letter the Claimant acknowledged that if the house was not sold to him and the necessary repairs were effected consideration should be given that when he left the house it would be returned to the Defendant. In my opinion the Claimant acknowledged in this letter that by November 2012 he had no equitable interest in the house and the property and notably absent is any reference of previous assurances which he asserted he acted upon before he expended funds to conduct repairs.
39. On the 19<sup>th</sup> February 2013 the Claimant again wrote to the Defendant requesting that the house be sold to him since he was living in it and it required urgent repairs. His options were:
- (a) Sell him the house at half the marked value and lease him the land.
  - (b) Let him repair the house at a reasonable cost and compensate him when the repairs are completed (he attached an estimate).
  - (c) Permit him to live in the house free of charge allowing him to repair it as he saw fit and for the Defendant to take it back when he and his wife passes away.
40. Again the Claimant did not refer to any equitable interest he may have acquired in the house and the property because he knew that in the Licence Agreement which he signed he acknowledged that he did not have such an interest.
41. The Claimant acknowledged that on the 18<sup>th</sup> June 2013 he was given permission to repair the house at his own expense which he undertook at a costs of \$120,000.00. He also acknowledged that the Defendant waived the monthly licence fee for 119 months effective from the 1<sup>st</sup> January 2013.
42. Therefore while the Claimant has asserted an equitable right in the house and the property based on estoppel in the Claimant's affidavit and in his Statement of Case, his contemporaneous documents which he has attached did not support his assertion and by failing to do so it seriously undermined the credibility of his assertions.
43. Did the Claimant satisfy the Court that he has an arguable claim for breach of contract?

44. The Claimant deposed that the Defendant agreed in a letter dated 27<sup>th</sup> August, 2015<sup>6</sup> to sell to him the house and it offered him a licence for the property for a period of three years pending Cabinet approval of the lease. The Claimant also deposed at paragraph 17 of the Claimant's affidavit that:

*"17. In August 2015, I was also verbally informed by both the then Chairman of the Board of the Defendant Mr. Ashmead Ghany and the then Deputy Chairman Mr. Simon Ferreira that the Board had agreed to sell the said Dwelling House to me. However, sometime afterward the Board was removed and replaced with new members after the General Elections of 2015."*

45. The Claimant further deposed at paragraphs 32 and 33 of the Claimant's affidavit that:

*"32. I was also always prepared to conduct the survey of the lands upon which the said Dwelling House stand at my own cost as requested by the Defendant in their aforementioned letter of 27<sup>th</sup> August 2015. However, despite my being in constant contact with the Legal and Estate Services Department, that department advised me to delay the requested survey until it settled certain issues with respect to the said land.*

*33. Before the Legal and Estate Services Department could come to a decision as to whether I should go ahead with the survey, the General Elections of 2015 took place and the Board of Directors was replaced with new members who ultimately took the decisions to terminate my contract of employment and give me notice to leave the said Dwelling House".*

46. The Defendant admitted the letter dated 27<sup>th</sup> August 2015 but its position was that in the said letter, written by the then Manager of Legal and Estates Services, the Defendant made it clear that the lease of the property and the grant of the licence were subject to Cabinet approval and that the letter also stated the requirement that the Claimant conduct a survey of the lands, the cost to be borne by him and that it has never since been communicated to the Claimant that approval has been or was obtained nor has the Claimant caused a survey of the property to be done.

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<sup>6</sup> Part of exhibit "F.M.7" to the Claimant's affidavit

47. Laura Williams-Pran of the Defendant deposed at paragraph 7 of her affidavit that:
- “7. For clarification, I am informed and verily believe that by Internal Memorandum dated 8<sup>th</sup> June 2015, the Claimant wrote to the then Chief Executive Officer of the Defendant making an offer to purchase the House for the sum of twenty thousand dollars (\$20,000.00) and requesting a lease of the land on which it stood. In response, by letter dated the 27<sup>th</sup> August 2015, the Claimant was informed that the Defendant has agreed to the sale of the House. The letter did not specify the terms and conditions of any such sale nor did it state that the Defendant was willing to accept his proposed offer of twenty thousand dollars (\$20,000.00). In any event, the sale or lease of land is subject to Cabinet approval. The Defendant considers that value of \$20,000.00 for the said property to be grossly undervalued and unreasonable.”*
48. Counsel for the Claimant submitted that the Defendant’s letter dated the 27<sup>th</sup> August 2015 was in response to the Claimant’s letter dated the 8<sup>th</sup> June 2015 where the Claimant requested to purchase the house and lease the property. In the 27<sup>th</sup> August 2015 the Defendant accepted the Claimant’s offer when it agreed to sell the Claimant the house and to lease the property to the Claimant. He argued that the 27<sup>th</sup> August 2015 letter did not state that a contract would be drawn up.
49. Counsel for the Defendant argued that while the 27<sup>th</sup> August 2015 letter did not refer to the 8<sup>th</sup> June 2015 letter, even if the Court accepts that it did, it was an incomplete contract since there were no terms to the alleged agreement. Counsel argued that at its highest the Claimant was a tenant at will. In support of its contention that there was no agreement between the Claimant and the Defendant for the sale of the house and the lease of the property to the Defendant, Counsel for the Defendant referred the Court to the English Court of Appeal judgment of **Javad v Mohammed Aquil**<sup>7</sup>.
50. In that case the plaintiff, the landlord of business premises, allowed the defendant tenant into occupation of premises on payment by the tenant of £2,500 expressed in a receipt signed by the landlord to be “rent for three months in advance.” The arrangement was

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<sup>7</sup> (1991) 1 WLR at page 1007



made in anticipation of the parties ultimately being able to agree the terms of a lease. A draft lease was thereafter prepared by the landlord's then solicitors which formed the basis of negotiations between the parties. The draft provided for a term of 10 years. At a rent of £10,000 per year, payable quarterly in advance. The tenant was to pay on completion, inter alia, a deposit of £2,500 in respect of potential damage to the property and arrears. Meanwhile the tenant remained in possession, apart from a brief period during which he absented himself on account of differences with the landlord, and on a further two occasions he paid rent on a quarterly basis. The parties failed to reach agreement on the question of the deposit, the negotiations eventually broke down, and the landlord commenced proceedings in the county court for possession, asserting that the tenant was in occupation as a tenant at will. The judge held that it was not possible to infer the creation of a periodic tenancy because there were too many outstanding differences between the parties when the tenant went into possession, and he gave judgment for the landlord.

51. The tenant appealed and the Court of Appeal dismissed the appeal. The Court of Appeal held that the tenant's possession with the landlord's consent, coupled with payment and acceptance of rent by reference to a quarterly period, did not raise a presumption of a periodic tenancy, since the inference sensibly and reasonably to be drawn as to the nature of the tenant's interest depended on a fair consideration of all the circumstances, of which payment of rent on a periodic basis was, though important, only one; that the fact that when the tenant had been allowed into possession in anticipation of a lease, the parties had not agreed terms of the proposed lease was a factor to be taken into account when ascertaining their intention; and that, accordingly, the judge had properly decided that in the circumstances the creation of a periodic tenancy could not be inferred and the tenant was a tenant at will.
52. In my opinion there is a dispute between the parties on whether on the interpretation of the 8<sup>th</sup> June 2015 letter and the 27<sup>th</sup> August 2015 letter, the Defendant agreed to sell the house and to lease the property to the Claimant. However at this early stage of the proceedings, applying the learning in **Javad v Mohammed Aquil** to the facts it is

difficult to construe the letter dated 27<sup>th</sup> August, 2015 written by the Defendant's then Manager of Legal and Estate Services, as an agreement for the sale of the house and the lease of the property to the Claimant.

53. With respect to the house, the terms are incomplete. While the Claimant may argue that the Defendant agreed to sell the house for the sum of \$20,000.00 which he offered in the 8<sup>th</sup> June 2015 letter, even if this was so there was no agreement when the said sum would be paid, if a deposit was required and how the sum would be paid. With respect to the lease of the property, there was no agreed terms such as the period of the lease, the payment of any deposit, or rent. Further, the conditions precedent for the lease of the property namely a survey to be conducted by the Claimant and Cabinet approval were not complied with. Therefore at best based on the construction of the 8<sup>th</sup> June 2015 letter and the 27<sup>th</sup> August 2015 letter the Claimant is a tenant at will in which case the Defendant can still remove the Claimant from the house and the property.
54. At this stage of the proceedings I have not been satisfied that the Claimant chances of succeeding at trial on his claim for breach of contract with respect to the sale of the house and the lease of the property.
55. The Claimant also deposed that the Defendant's Board has in practice or as a policy, sold or given houses to employees/former employees of the Defendant and that he is aware of several persons who over the years whom have benefitted from this policy, some of whom live in close proximity to him. He stated that this caused him to have a legitimate expectation that he would have been afforded the same benefit.
56. The Defendant denied such a policy exists and disputed the Claimant's assertion. Laura Williams-Pran deposed at paragraph 9 of her affidavit that:

*"I am informed and verily believe that another individual has been in occupation of a similar building and surrounding land. Palo Seco Enterprises Limited has since initiated legal proceedings against this individual in an attempt to remove said person from the property. This is evident of the Defendant and its Board of*

*Directors having no personal vendetta or dislike of the Claimant; instead it is strictly a matter of real estate and financial management of the Defendant.”*

57. The Defendant did not state the names of the said employees who were similarly circumstanced as him and whom have benefited from this alleged policy he referred to. He also failed to provide any corroborating evidence to persuade the Court that at this stage of the proceedings that there is indeed merit for the Court to be persuaded by his assertion.
58. I have therefore concluded that the Claimant failed to demonstrate that there is a serious issue to be tried with respect to his claim for an equitable interest in the house and that he has a contract to purchase the house and to acquire a lease in the property.
59. The Claimant having failed to satisfy the first limb in the test set out in **American Cyanamid** I can dismiss the Application at this juncture. However I will still examine if there is any merit under the other limbs.

**Can damages adequately compensate the Claimant if he is not permitted to stay on the property and where does the greater risk of injustice lie?**

60. In the local Court of Appeal decision **Jet Pak Services Ltd v BWIA**<sup>8</sup>, de la Bastide C.J. held that focusing exclusively on whether damages were adequate and quantifiable, was too narrow an approach in determining whether to grant an injunction. He held at page 368:

*“It is a truism that facts are infinitely variable, and it is dangerous to prescribe or apply a single formula for determining whether an interlocutory injunction should be granted in all cases, unless it is expressed in very broad terms. I would consider the rule that an injunction ought never to be granted if damages can provide an adequate remedy to be one which is too narrow to be applicable in every case. It is more obviously so if by ‘damages’ is meant the damages which are legally recoverable in the action, and if by ‘adequate’ is meant quantifiable.”*

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<sup>8</sup> [1995] 55 WIR 362

61. According to de la Bastide C.J., the real question for the Court is “Wherein lies the greater risk of injustice in granting or in refusing the injunction?” To arrive at an answer to this question the Court is required to make an assessment of the merits of the Claimant’s case and his chances of succeeding at the trial.
62. The Claimant’s position is that damages cannot adequately compensate him if he is removed from the house and the property before the trial. The Claimant deposed at paragraph 35 of the Claimant’s affidavit that:  
*“35. I am now 66 years old with health issues and since my contract was terminated by the Defendant it has been difficult for me to earn a living and because of my age I also cannot secure a loan/mortgage to purchase a home”.*
63. On the other hand, the Defendant’s Estates Supervisor, Laura Williams-Pran deposed in her affidavit that the Defendant has suffered and continues to suffer financial losses, hardship, loss of reputation and business from the Claimant’s continued occupation of the house and the property as the Defendant has been unable to use the house and the property.
64. She also deposed that the Defendant has received at least twelve proposals for agricultural usage of all of its lands over the last few years and the Defendant has been unable to act or engage in these proposals because the house and the property forms part of the lands. The rental rate of the lands is valued at approximately \$2,600.00 per acre per annum. She also stated that on the lands, there are farm buildings which the Defendant seeks to operate as rentals for revenue. Ms. Williams-Pran deposed that the Defendant will be losing \$121,200.00 in rental fees yearly if the Claimant stays in occupation of the property. As a result, the Defendant will be severely and irreparably prejudiced and disadvantaged if the property continues to be occupied by the Claimant.
65. The Defendant submitted that the issue of the adequacy of damages is one element to be considered in deciding whether to grant an injunction and where as in this case the claim is hopeless the inadequacy of damages cannot create an arguable case.

66. Having found that the Claimant does not have an arguable case on his claims of equitable interest in the house and breach of contract for the sale of the house and lease of the property to him, at this stage of the proceedings I have great doubt that the Claimant can succeed at trial. Having acknowledged this limitation with the Claimant's case I cannot ignore the evidence put forward by the Defendant that it has and will continue to suffer from the Claimant's continued occupation of the property.
67. In my opinion, given the circumstances of this case at this stage of the proceedings it cannot be in the interest of justice to permit the Claimant to remain on the property where he has failed to demonstrate that he has an arguable case in any of his claims.

**Order**

68. The injunctive relief sought in the Notice of Application filed on the 12<sup>th</sup> May 2017 is refused.
69. The Claimant to pay the Defendant its cost for the Notice of Application. The costs is to be assessed by this Court in default of agreement.

**Margaret Y. Mohammed  
Judge**