REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SUB-REGISTRY-SAN FERNANDO

Claim No. CV2017-01944

BETWEEN

SATNARINE SINGH

CLAIMANT

AND

PATRICIA SINASWEE-MANWARING

FIRST DEFENDANT

MYCKEL MANWARING

SECOND DEFENDANT

MARGARET SINASWEE

THIRD DEFENDANT

ANGELA SINASWEE GERVAIS

FOURTH DEFENANT

ROBYN ANYA GERVAIS

FIFTH DEFENDANT

RAISA AMII GERVAIS

SIXTH DEFENDANT

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery October 21, 2019

Appearances:

Mr Narad Harrikissoon instructed by Mr Cheika Anthony Attorneys at law for the Claimant.

Ms Veena Badrie Maharaj instructed by Ms Reshma Seetahal Attorneys at law for the Defendants.

JUDGMENT

1. The main issue in the instant action is whether the Claimant has extinguished the title of the Defendants to 8 ¾ acres of land situate in the Ward of Carapichaima[1] ("the lands") under section 22 of the **Real Property Limitation Act**[2] ("the Limitation Act") by being in adverse possession of it for the requisite period of at least 16 years.

THE CLAIMANT'S CASE

2. The Claimant in his pleadings alleged that in or around 1960, his father, Mr Ramsaran Singh ("Mr Singh") went into occupation of the lands. Mr Singh used the lands for agricultural purposes by cultivating the lands with short-term crops such as peas, corn, sweet potatoes, cassava, rice and sugar cane and tended cattle. Mr Singh paid rent in the sum of $83.00 to Mr Irish Sinaswee on 23 April 1960 ("the 1960 receipt") and thereafter on 30 June 1985 ("the 1985 receipt") to Mr Silbert Sinaswee ("Mr Sinaswee") in the amount of $330.00. After 1985, neither Mr Singh nor his agents and or servants paid any rent to Mr Sinaswee or anyone else claiming entitlement to the lands.

3. On 28 February 1990, Mr Sinaswee filed in the Petty Civil Court Couva, Civil Action No. 22 of 1990 against Mr Singh to recover possession of the lands ("the first matter"). This first matter was determined on 20 July 1992 in favour of Mr Singh. However, an error, the recording of the judgment stated that it was disposed of in favour of Mr Sinaswee. By Petty Civil Court Action No. 37 of 1994 ("the second matter) Mr Sinaswee filed proceedings against Mr Singh for possession of the lands on the same grounds as the first

[1] All and Singular that larger parcel of land situate in the Ward of Carapachaima comprising 8.75 acres more or less being portion of a larger parcel of land comprising 10 acres and bounded on the North by lands of Naipaul Gosine and Lutchman, on the South by lands of Kleinworth and Sons and Co., on the East by lands of James Black, and on the West by lands of Kleinworth and Sons and Co., described in the Fourth Schedule to Deed registered as No. 6039 of 1956.

[2] Chapter 56:03

matter. On 22 April 1997, Mr Singh filed his defence and on 26 June 1997, Mr Sinaswee discontinued the second matter.

4. On 4 July 1997, Mr Sinaswee caused a Warrant of Possession ("the Warrant") to be issued against Mr Singh claiming that he obtained judgment in the first matter. Mr Singh filed Civil Proceeding No. 856 of 1997 ("the third matter"), being an application for judicial review against Mr Kent Barran, Clerk of the Peace, and Mr Ashton Foster, Bailiff I, both then employed at the Couva Magistrate's Court for the illegal issuance and subsequent execution of the Warrant. Mr Singh died on 1 August 1998 appointing the Claimant as his sole executor under his Will. The Claimant was substituted in place of Mr Singh in the third matter, which was settled by consent on 20 January 2000 in favour of the Claimant.

5. On 20 February 1999, the Claimant noticed Mr Sinaswee and a Mr Harrylal Dipnarine (also known as Terry) upon the lands. They destroyed several of the Claimant's crops, dug trenches and laid building materials upon the lands. On 21 February 1999, the Claimant noticed that concrete casting had been placed in the trenches. He confronted Mr Sinaswee and Mr Dipnarine and requested that they cease their trespass and remove the materials. Mr Dipnarine then informed the Claimant that he had purchased a portion of the lands from Mr Sinaswee.

6. On 22 February 1999 the Claimant's then attorneys at law, Messrs Roopnarine and Company wrote to Mr Sinaswee and Mr Dipnarine requesting that they cease their trespass and remove the material. The Claimant filed Civil Proceeding No. 163 of 1999 on 23 February 1999 ("the fourth matter") against Mr Sinaswee and Mr Dipnarine as a result of their trespass. The matter was determined in favour of the Claimant on 1 March 2001.

7. The Claimant contended that in August 2014, the First Defendant, by herself and/ or as agent and or servant of the Third Defendant, her mother, unlawfully entered upon the lands, damaged several of the Claimant's crops and hired a backhoe to destroy his

perimeter surrounding the lands. By letter dated 7 October 2014 ("the October 2014 letter") the Claimant's then attorneys at law, Mr Prem Persad-Maharaj and Company wrote (in response to a letter dated 1 October 2014 sent to the Claimant by the Third Defendant's attorney at law), requesting that she cease her trespass upon the lands. The First Defendant whether by herself and or as agent of the Third Defendant failed and or refused to accede to the Claimant's request and in June 2015, attempted to have the lands surveyed by Isaac's Survey Control and requested that the Claimant vacate the lands.

8. By letter dated 10 June 2015 ("the June 2015 letter"), the Claimant's attorneys at law, Messrs Harrikissoon and Company, wrote to the Third Defendant calling upon her to cease and desist from entering, remaining, and trespassing upon the lands. However, at the end of the last quarter of 2015, the First Defendant attempted to enter the lands with a land surveyor and placed 9 pegs on the lands, which the Claimant later removed.

9. On 12 April 2017, while tending his cattle on the lands, the Claimant noticed the Second Defendant on the lands attempting to survey same and to install pickets. The Claimant called his son via his cell phone to take pictures of the persons trespassing on the lands. The Second Defendant then threatened the Claimant with a cutlass, forcing him to grab hold of same.

10. On the 13 April 2017, the Claimant went onto the lands when he encountered two pieces of pipe across the pathway, constructed by Mr Singh and which he used to access to the lands. The agents and or servants of the First Defendant, and the Second Defendant himself, refused to remove the pipes, and told the Claimant to pass somewhere else. The Claimant reported the incident to the police who returned to the lands that day, and the First Defendant's agents and or servants removed the pipes. One week thereafter, the Claimant removed the post erected by the First Defendant, her servants and or agents.

11. On 8 May 2017 ("the 8 May 2017 letter"), the Claimant received a letter from the First Defendant's attorneys at law indicating that she had retained the services of a Bailiff, who would inter alia, remove his livestock on 22 May 2017, should he refuse to vacate the lands. On 23 May 2017 ("the 23 May 2017 letter"), the Claimant attended the office of his attorneys at law to prepare a response. However, the First Defendant via her agents and or servants who purported to be a bailiff and police officers unlawfully trespassed upon the lands seeking to remove his livestock and materials. A letter dated 23 May 2017, was sent to the First Defendant's attorneys at law to immediately cease and desist from entering, remaining, and trespassing upon the lands and further to cease and desist from obstructing, harassing and or molesting the Claimant on the basis that she failed and or refused to prove any right or interest.

12. The Claimant asserted that he became aware that the lands were distributed amongst the Defendants by the virtue of numerous Deeds disclosed in the instant proceedings.

13. Based on the aforesaid facts, the Claimant contended that any entitlement or claim to the lands by the Defendants, have since been extinguished due to the Claimant's and his predecessors continued possession of the lands. As such the Claimant has sought to obtain the following orders:

    (i) A declaration that the Claimant is entitled to possession of the lands.

    (ii) A declaration that the Defendants have no legal right and or interest and or estate in the lands;

    (iii) A declaration that the Defendants have no legal right to occupy and or attempt to occupy the lands;

    (iv) A declaration that the Defendants are not entitled to possession, entry and use and or enjoyment of the lands;

    (v) An injunction restraining the Defendants, whether by themselves or their agents and or agents or howsoever otherwise from damaging and or

destroying and or demolishing and or altering any part of the lands occupied by the Claimant and or any structures erected and or affixed thereon.

(vi) An injunction restraining the Defendants whether by themselves or their servants and or agents from entering and or remaining and or trespassing and or attempting to occupy the lands;

(vii) An injunction restraining the Defendants whether by themselves or their servants and or agents from excluding and or attempting to exclude the Claimant from entering and or remaining and or occupying the lands;

(viii) An injunction restraining the Defendants whether by themselves or their servants and or agents from harassing and or annoying and or interfering with the Claimant's right to the quiet and peaceful enjoyment of the lands;

(ix) An injunction restraining the Defendants whether by themselves and or their agents from harassing, molesting and or interfering with the Claimant and his servants and or agents;

(x) Damages for trespass;

(xi) Damages for assault;

(xii) Costs and interest.

THE DEFENCE AND COUNTERCLAIM

14. The Defendants asserted that they are the legal owners of the lands. They alleged that Mr Singh was put into possession in 1968 under the **Agricultural Small Holding Tenure Act**[3] ("the Agricultural Act") and that the tenancy at most endured for 50 years. The Defendants also asserted that since 1997 the Claimant has failed to use the lands for the purpose for which they were let. As such the Claimant has not been in adverse possession of the lands for the requisite 16 years as prescribed by the Limitation Act. Instead the Claimant has been in actual possession of only 3 lots of the lands upon which he has stored derelict vehicle parts and other materials.

[3] Chapter 59:53

15. The Defendants denied that the Claimant and his predecessor in title, Mr Singh failed to pay rent after 1985. Instead they asserted that in 1998 ("the 1998 receipt") the Claimant paid rent to Mr Sinaswee by money order. As such they denied that the Claimant and his predecessors in title have been in undisturbed possession of the lands since or before 1985. The Defendants stated that they were not in a position to accept or deny the Claimant's allegation with respect to the first matter, the second matter, the third matter and the fourth matter since they were awaiting receipt of copies of the documents in those matters.

16. The Defendants admitted that they were aware of the October 2014 letter from Messrs Prem Persad Maharaj and Co and a letter dated 10 October 2015 ("the October 2015 letter") from Messrs Harrikisson and Co that a surveyor placed iron and posts on the lands.

17. The Defendants denied any act of entry on the part of the Second Defendant on 12 April 2017. Instead they asserted that on the 16 April 2017 both the First and Second Defendants were on the lands putting down fence posts when the Claimant approached them and made claims of ownership to it. They contended that none of the pipes obstructed the Claimant's entry. The Claimant left and returned with a police officer who upon being shown title documents of the First Defendant warned the Claimant not to disrupt the erection of the fence posts. On 27 April 2017, the Second Defendant observed that most of the posts had been removed and made a report to the Freeport Police Station.

18. The Defendants denied that the Second Defendant threatened the Claimant and contended that it was the Claimant, armed with a cutlass, who threatened the Second Defendant with violence. The Defendants also denied that they committed any acts of trespass. Based on the aforesaid facts the Defendants counterclaimed for:

    (a) A declaration that they are entitled to possession of the lands as described in Deed No. 201202523279 ("the 2012 Deed");

(b) Damages for trespass;

(c) Costs

THE CLAIMANT'S DEFENCE TO COUNTERCLAIM

19. The Claimant contended that the Counterclaim disclosed no grounds and or cause of action for bringing it against him. He admitted the Defendants are the paper title owners of the lands but put them to strict proof of Title and or of a good root of title since the First Defendant failed to disclose her interest in the lands.

20. The Claimant admitted that he has been in possession of 3 lots of the lands and has used the lands to rear his 15 cattle and plant short term crops. The Claimant asserted that he purchased a banker and a rotavator to carry out his agricultural work and maintenance on the lands.

21. The Claimant denied that his use of the lands commenced in 1968; that his tenancy can endure at most for 50 years; that since 1997 he has failed to use the lands for the purpose leased; and that he has not been in adverse possession for the requisite 16 years. As such the Claimant denied that the First Defendant is entitled to the reliefs claimed.

THE UNDISPUTED FACTS

22. It is always useful in matters concerning a claim grounded in adverse possession to ascertain the facts which are not in dispute. Based on the pleadings, it was not in dispute that the Claimant and his predecessor in title, Mr Singh, have been occupation of the land as a tenant of Mr Sinaswee; rent was paid by Mr Singh at least until 1985; and that the Claimant has continued to occupy 3 lots of the lands.

THE ISSUES

23. The issues which arise from the pleadings are:

(a) Whether the Claimant has acquired title to the lands by virtue of adverse possession.

(b) Whether the Defendants are liable to the Claimant for damages for assault.

(c) Whether any party is liable to the other for damages for trespass.

WHETHER THE CLAIMANT HAS ACQUIRED TITLE TO THE LANDS BY VIRTUE OF ADVERSE POSSESSION

24. The law on adverse possession is settled and both parties referred the Court to similar learning on it. Sections 3, 4(a) and 22 of the Limitation Act provide:

"3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such rights shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same."

4. The right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as is hereinafter mentioned, that is to say –

(a) when the person claiming such land or rent or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits or rent were or was so received…"

…

22. At the determination of the period limited by the Act to any person for making any entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period shall be extinguished."

25. The Court of Appeal in this jurisdiction held in **Latmore Smith v. Benjamin**[4] that the position decision in **JA Pye (Oxford) Ltd v Graham**[5] on the law relating to adverse possession is applicable in this jurisdiction. The Court stated:

"[a]s was stated in the Pye case, and to which I have already made mention, for there to be possession under the Limitation Act there must be the absence of consent of the paper title owner or where relevant his predecessor in title, factual possession and an intention to possess."

26. Lord Browne-Wilkinson stated at paragraphs 36 and 40 in **Pye** that:

"36… The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner."

…

"40… To be pedantic, the problem could be avoided by saying there are two elements necessary for legal possession:

1. a sufficient degree of physical custody and control ("factual possession");

2. an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess")."

[4] [2009] 78 WIR 421
[5] [2002]3ALL ER 865

27. Lord Browne-Wilkinson further opined at paragraphs 41 and 43, that:

> "41. In Powell's case Slade J said, at pp. 470-471:
>
> "(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed . . . Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no- one else has done so."
>
> ….
>
> 43. Slade J reformulated the requirement (to my mind correctly) as requiring "an intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.""

28. Lord Browne Wilkinson further opined at paragraph 45, that:

> "… The suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong. It reflects an attempt to revive the pre-1833 concept of adverse possession requiring inconsistent user. Bramwell LJ's heresy led directly to the heresy in the Wallis's Cayton Bay line of cases to which I have referred, which heresy was abolished by statute. It has been suggested that the heresy of Bramwell LJ survived this statutory reversal but in the Moran case the Court of Appeal rightly held that

however one formulated the proposition of Bramwell LJ as a proposition of law it was wrong. The highest it can be put is that, if the squatter is aware of a special purpose for which the paper uses or intends to use the land and the use made by the squatter does not conflict with that use, that may provide some support for a finding as a question of fact that the squatter had not intention to possess the land in the ordinary sense but only an intention to occupy it until needed by the paper owner. For myself I think that there will be few occasions in which such inference could be properly drawn in cases where the true owner has been physically excluded from the land. But it remains a possible, if improbable, inference in some cases."

29. The onus was on the Claimant to prove that he and/or his predecessor were in undisturbed possession of the lands continuously for 16 years from the date upon which the adverse possession, not merely possession, started without the consent of the paper title owner. Therefore, the date the alleged adverse possession commenced is important.

WHEN DID THE ALLEGED ADVERSE POSSESSION COMMENCE?

30. Counsel for the Defendants argued that the Claimant failed to establish with certainty one date and/or period when his or his predecessor's possession to the lands actually commenced. Counsel for the Defendants argued that in the fourth matter Mr Singh's defence was that Mr Sinaswee could not get possession of the lands since the tenancy fell within the scope of the Agricultural Act. Therefore, Mr Singh commenced occupation of the lands as a tenant and upon the Agricultural Act coming into force all tenancies whether oral or written fell within its scope as such his claim in adverse possession failed.

31. It was submitted by the Claimant that Mr Singh was a tenant of Mr Sinaswee from 1960 to 1985 and that Mr Singh's possession of the lands without the paper title owner's consent commenced in 1985 after Mr Sinaswee served a notice to quit on Mr Singh which effectively ended the tenancy. It was also submitted on behalf of the Claimant that the

tenancy between Mr Singh and Mr Sinaswee were not subject to the provisions of the Agricultural Act and it was not renewed after 1985.Therefore there was no basis for the Court finding that there was any such tenancy in existence beyond 1985.

32. The Claimant's pleaded case and his documents in support indicated 4 different dates from which Mr Singh came into possession of the lands namely: in 1939[6]; 1947[7]; 1960[8]; and 1968[9].

33. The Claimant testified in his evidence in chief that he was born in 1955 and in 1960 Mr Singh went into occupation of the lands. He attached the 1960 receipt[10]which showed that Mr Singh paid rent in the sum of $83.00 to Mr Irish Sinaswee on 23 April 1960 and the 1985 receipt which showed that Mr Singh paid rent to Mr Sinaswee in the sum of $330.00.

34. In cross-examination the Claimant was unable to indicate when Mr Singh went into possession of the lands and he admitted that Mr Singh was the best person to indicate so. The different dates which the Claimant stated Mr Singh went into possession of the lands were pointed out to the Claimant in cross-examination. The Claimant was asked whether he agreed with the information stated in his Claim and he indicated that "probably the lawyer didn't understand the dates".

35. The Claimant's witness, Mr Motee Madoo testified that he was born in 1957 and he knew that Mr Singh was in occupation of a larger parcel of land which was about 9 acres. He said he lived 5 minutes walking distance away from the lands and he often visited the

[6] In the October 2014 letter the Claimant's instructions were that Mr Singh commenced occupation of the lands in 1939.
[7] In the second matter Mr Singh stated that he had been in occupation for upwards of 50 years before 1997
[8] The Claimant pleaded at paragraph 1 of the Statement of Case.
[9] In the first matter Mr Singh asserted that he went into occupation in 1968.
[10] Exhibited as "S.S1" which was tendered into evidence by a hearsay notice and for which there was no counter notice.

lands since he was about 8 or 10 years old. He recalled Mr Singh cultivating the lands with crops such as peas, corn, sweet potatoes, dasheen bush, cassava, rice and sugar cane. He also recalled that Mr Singh also had cattle on the lands.

36. Mr Madoo also testified that as a child he assisted in cutting any overgrown grass and helping Mr Singh and his family planting and reaping crops, and helping tend to cattle. He remembered being on the lands with the Claimant and his family planting rice and cane, cutting cane, carting cane and loading it onto a trailer, making a fire trace and lighting fire to various patches of the cane.

37. Mr Madoo was unable to recall when the Claimant's parents passed away but he stated that he was aware that the Claimant continued to use the lands to plant crops and rear cattle, up to the present and that there are about 20 cattle.

38. In cross-examination, Mr Madoo admitted that he did not know how Mr Singh came into possession of the lands; he did not know who owned the lands and he was unaware if Mr Singh was renting.

39. The Claimant's other witness Mr Cunilal Peack testified that he was 76 years having been born in 1942. He stated that he has been residing at his current address at No 6 Gosine Street Carapichaima since 1964 and at that time the Claimant was 10 years old. He testified that he saw the Claimant and other members of his family going unto the lands.

40. According to Mr Peack, Mr Singh and his family planted various crops on the lands including rice, corn, peas, sugar cane, coconut trees, dasheen bush and peppers. Mr Singh also reared cattle on the lands. He said he saw the Claimant and his brother harvesting sugar cane on the lands with a tractor.

41. In cross-examination, Mr Peack was unable to remember when the Claimant's parents passed away but he knew that the Claimant continued to use the lands to plant crops and rear his cattle to present. However, he admitted that he did not know how Mr Singh came unto the lands.

42. The Defendants pleaded that the Claimant's father, Mr Singh came into possession of the lands in 1968.

43. The First Defendant testified that Mr Sinaswee became the owner of the lands in 1956 which he rented to Mr Singh. The rent was first paid to her aunt Irish Sinaswee for a parcel of 4.5 acres of the lands and thereafter rent was paid by Mr Singh to Mr Sinaswee until 1985 when the latter gave the former a notice to leave in 1985. She admitted in cross-examination that Mr Sinaswee did not have a written lease with Mr Singh and that a notice to quit was given to Mr Singh in 1985.

44. There were 3 sets of contemporaneous documents which the parties relied on to support their respective case namely: receipts for the payment of rent; copies of court proceedings and correspondence written by the attorneys at law for the respective parties.

45. There were three receipts. The 1960 receipt and the 1985 receipt were relied on by the Claimant as proof of payment of rent by Mr Singh and they were not disputed by the Defendants. They were adduced into evidence by a hearsay notice and the Defendants did not file any counter-notice. I have therefore attached significant weight to the 1960 receipt and the 1985 receipt.

46. The Defendants sought to rely on a receipt dated in 1998[11] which was a receipt by money order and which was disputed by the Claimant. In cross-examination the First Defendant

[11] Paragraph 5 of the First Defendant's witness statement

was unable to identify from whom the money order was received. She accepted that the 1998 receipt did not state by whom it was paid nor for what it was paid. A perusal of the 1998 receipt provided no particulars of who made the payment, to whom it was made and the purpose of the payment. For these reasons, I have attached no weight to the 1998 receipt.

47. Therefore, on a balance of probabilities the 1960 receipt and the 1985 receipt supported the Claimant's case that Mr Singh rented the lands from Mr Sinaswee in 1960 and rent was last paid in 1985.

48. The Claimant annexed copies of 4 court proceedings. The first matter was between Mr Sinaswee and Mr Singh. The documents in the first matter were a transcript of the submissions of the attorneys for Mr Sinaswee and Mr Singh and the Decision of the Magistrate granting judgment in favour of Mr Singh with a 28 days stay of execution as requested by the Plaintiff. There were no reasons for the decisions rendered. Notably in the oral submissions, the Attorney at law for Mr Singh submitted that the latter went into possession in 1968.

49. The second matter was between Mr Sinaswee and Mr Singh. The notice of discontinuance filed on the 26 June 1997 was the only document filed in the second matter.

50. The third matter was a judicial review application filed by Mr Singh against the Clerk of the Peace and the Bailiff of the Petty Civil Court Couva to review the decision to issue the Warrant. The documents filed in the third matter were the Statement and the Order dated the 17 September 1999 ("the 1999 Order"). The effect of the 1999 Order was to quash the Warrant.

51. The fourth matter was between the Claimant as administrator of Mr Singh's estate against Mr Sinaswee and Mr Dipnarine. The only document annexed was the Order dated 10

March 2001 of Ventour J ("the Ventour Order"). The effect of the Ventour Order was to restrain Mr Sinaswee his servants and or agents from entering upon 3 lots of the lands.

52. There were 4 letters which were written by the Attorneys at law of the respective parties. The first letter was the October 2014 letter which indicated that the Claimant and his predecessor in title have been in occupation of the lands since 1939 for agricultural purposes; they were previously tenants of Mr Sinaswee; rent was last paid in 1983; since 1984 the Claimant and his predecessor in title have been in exclusive and/or undisturbed possession of the lands; in August 2014 the First Defendant requested the Claimant to vacate the lands; the Claimant objected to vacating; and the Claimant, without prejudice to his rights to the lands requested the First Defendant to sell him 2 acres of the lands subject to a joint valuation being conducted to ascertain the current market value and that he was prepared to deliver up possession of the remainder of the lands.

53. In the June 2015 letter the Claimant stated that Mr Singh was in possession of the lands around 1960 and that he used it for agricultural purposes; rent in the sum of $83.00 was paid to Irish Sinaswee on 23 April 1960 and on 30 June 1985 Mr Singh paid Mr Sinaswee rent in the sum of $330.00 for the use of the lands. The June 2015 letter also set out the details concerning the first matter, the second matter, third matter and the fourth matter. The June 2015 letter referred to the letter from Messrs Prem Persad Maharaj and asserted the Claimant's right based on his continuous undisturbed possession of the lands since 1985.

54. The 8 May 2017 letter was from the attorney at law for the Defendants. It referred to the October 2014 letter and informed the Claimant that she had retained a licensed bailiff to impound any animals and to remove materials from the lands.

55. The Claimant sent a letter dated 23 May 2017 ("the 23 May 2017 letter") in response to the letter dated 8 May 2017. In it, he repeated matters concerning the occupation of the

lands by Mr Singh since in or around 1960, the first matter, the second matter, the third matter and the fourth matter, the previous correspondence and he asserted his right to ownership of the lands based on his continuous undisturbed possession since 1985.

56. The Agricultural Act took effect on the 1 March 1966. Its purpose was to provide for better security of tenure for farmers of small agricultural holdings, to restrict the right to recover possession of such holdings and to apply the loan provisions of the Agricultural Development Bank Act to certain tenancies.

57. Section 2 defines a " contract of tenancy" as " any contract express or implied that creates a tenancy in respect of agricultural land or any transaction that creates a licence to cultivate any agricultural land, but does not include an agricultural contract as defined in the Agricultural Contract Act when the terms and conditions of such contracts are in writing and signed by the parties thereto." Landlord is defined as " any person for the time being entitled to receive rents and profits of any land"; "tenant" is defined as " the holder of any land under a contract of tenancy and includes the personal representative , executors, administrators, assigns, committee in lunacy or trustee in bankruptcy or a tenant or either person deriving title from a tenant" and a " small holding" is defined as "a parcel of agricultural land held under a contract of tenancy for agricultural purposes and that consist or not less than one acre nor more than fifty acres whether with or without buildings."

58. Section 3 of the Agricultural Act provides:

> 3. (1) Notwithstanding any law or agreement to the contrary but subject to this Act, a contract of tenancy of a small holding, whether written or oral, shall-
>
> (a) in the case of a small holding of cane land, be deemed to be a contract of tenancy for a term of five years;
>
> (b) in the case of a small holding of banana land, be deemed to be a contract of tenancy for a term of three years;

(c) in the case of a small holding of rice land, be deemed to be a contract of tenancy for a term of three years;

(d) in the case of a small holding of market garden land, be deemed to be a contract of tenancy for a term of ten years.

(2) For the purposes of subsection (1) the term of years therein limited for a contract of tenancy shall be computed from the date the contract of tenancy was entered into or extended or renewed, as the case may be.

(3) This section applies in respect of any land of the kind mentioned in subsection (1) that is deemed to be a small holding under section 2(2).

59. Section 5 of the Agricultural Act provides:

"s. 5(1) A contract of tenancy shall be evidenced by an instrument in writing called, in this Act, the tenancy instrument.

(2) The tenancy instrument shall contain the names and addresses of the parties, the rent provided for, and the place at which the rent is to be paid, the purpose of the tenancy, the term of the contract of tenancy and such other particulars as may be prescribed.

(3) The tenancy instrument shall be in such form as may be prescribed and shall be signed by the parties thereto and attested before a justice of the peace.

(4) This section does not apply to a contract of tenancy of a small holding that was entered into before the commencement of this Act."

60. Section 8 of the Agricultural Act states:

8. (1) A contract of tenancy of a small holding may be extended or renewed from time to time.

(2) A tenant of a small holding who, for the term of his contract of tenancy-

(a) has cultivated the small holding in a manner consistent with the practice of food husbandry; and

(b) has committed no breach of the contract of tenancy,

Is, subject to the provisions of this Act relating to the termination of a contract of tenancy, entitled at the end of the terms of the contract of tenancy to an extension of the contract of tenancy for a like term, and similarly at the end of that term or any subsequent extended term of the contract of tenancy.

(3) The aggregate of the original period of a contract of tenancy and the periods of extension thereof shall not, except with the consent in writing of the landlord, exceed twenty-five years.

61. Section 8A of the Agricultural Act provides:

8A. (1) Where a tenant requires consent in writing of a landlord under section 8(3), the tenant shall, not less than three months before the expiry of the period of twenty-five years, serve notice in writing upon the landlord of his intention to further renew the contract of tenancy for such period as may be applicable to the type of small holdings held by the tenant under section 3(1).

(2) Where a tenant serves a landlord with notice under subsection (1) of the tenant's intention to further renew the contract of tenancy, the landlord may not less than thirty days before the date of expiry of the contract of tenancy under section 8(3), wither give or withhold his consent by notice in writing served on the tenant.

(3) Where the tenant does not, before the expiry of the thirty-day period referred to in subsection (2), receive any notice in writing from the landlord, the landlord shall be deemed to have assented to the renewal of the contract of tenancy.

(4) Sections 3 and 8 of this Act apply to a contract of tenancy renewed under subsection (2) or subsection (3) as they apply to an original contract of tenancy, so however that the aggregate of the original period of a contract of tenancy and the periods of extension thereof, shall not exceed fifty years.

62. There was no direct evidence of when Mr Singh entered into possession of the lands. Despite the various dates asserted by the Claimant in his pleading and supporting documents it was more probable based on the 1960 receipt that Mr Singh went into occupation of the land in 1960 when he first paid rent; that the tenancy was for agricultural purposes and it was not in writing. Despite the Defendants pleading, there was no credible evidence from any of the witnesses that Mr Singh became a tenant of Mr Sinaswee in 1968.

63. In my opinion, the oral tenancy for the lands between Mr Sinaswee and Mr Singh, although entered into in 1960, was still protected by the Agricultural Act since section 3 stated the provisions of the Agricultural Act were applicable to all oral and written tenancies in existence before it came into force in 1966.

64. The evidence was that in 1960 and 1985 Mr Singh paid rent to Mr Sinaswee. In my opinion, it is reasonable to conclude that such actions by Mr Singh and Mr Sinaswee were because they both treated their relationship during this period as one of landlord and tenant for the 25 year period. The evidence from both the Claimant and the First Defendant was that in 1985 Mr Sinaswee served Mr Singh a notice to quit the lands. Therefore, section 8Aof the Agricultural Act was not applicable and Mr Singh was no longer a tenant of Mr Sinaswee.

65. Section 4 of the Limitation Act provides that time starts to run after dispossession or discontinuance of possession or at the last time at which any such profits or rents were or was received. The last time rent was paid by Mr Singh to Mr Sinaswee was in 1985 and the notice to quit was issued. In my opinion the Claimant established that in 1985 the tenancy ended and that Mr Singh's possession of the lands after 1985 was without the consent of Mr Sinaswee and that it was from 1985 that the time of the alleged adverse possession started to run against the paper title holders.

FACTUAL POSSESSION BY THE CLAIMANT AND ACTS OF RE-ENTRY BY THE DEFENDANTS

66. The Defendants case was the Claimant and his predecessor were not in possession of the lands from 1985 and that they and their predecessors in title took steps from 1990 to 2017 to have the Claimant and his predecessors removed from the lands.

67. The Claimant testified that after 1985 neither Mr Singh nor his nor his agents and or servants paid any rent to Mr Sinaswee or anyone else claiming entitlement to the lands. He stated that in on 28 February 1990, Mr Sinaswee filed the first matter against Mr Singh to recover possession of the lands and that it was determined on 20 July 1992 in favour of Mr Singh. However, an error in the recording of the judgment stated that it was disposed in favour of Mr Sinaswee.

68. According to the Claimant, Mr Sinaswee filed the second matter against Mr Singh for possession of the lands on the same grounds as the first matter. On 22 April 1997 Mr Singh filed his defence and on 26 June 1997, Mr Sinaswee discontinued the second matter. He also testified that on 4 July 1997, Mr Sinaswee cased the Warrant to be issued against Mr Singh claiming that he obtained judgment in the first matter. Mr Singh filed the third matter for the illegal issuance and subsequent execution of the Warrant. Mr Singh died on 1 August 1998 appointing the Claimant as his sole executor under his Will. The Claimant was substituted in place of Mr Singh in the third matter, which was settled by consent on 20 January 2000 in favour of the Claimant.

69. According to the Claimant, he continued to cultivate crops and rear cattle on the lands. On 20 February 1999, he noticed Mr Sinaswee and a Mr Harrylal Dipnarine (also known as Terry) upon the lands. They destroyed several of the Claimant's crops and dug trenches and laid building materials upon the lands[12]. On 21 February 1999, the Claimant noticed that concrete casting had been placed in the said trenches. He confronted Mr Sinaswee and Mr Dipnarine and requested that they cease their trespass and remove the materials.

[12] This was also pleaded at paragraph 9 of the Statement of Case

Mr Dipnarine then informed the Claimant that he had purchased a portion of the lands from Mr Sinaswee.

70. On 22 February 1999 the Claimant's attorneys at law, Roopnarine and Company wrote to Mr Sinaswee and Mr Dipnarine requesting that they cease their trespass and remove the material. The Claimant filed the fourth matter against Mr Sinaswee and Mr Dipnarine as a result of their trespass. The matter was determined in favour of the Claimant by the Ventour Order.

71. The Claimant also testified that in August 2014, the First Defendant, by herself and or as agent and or servant of the Third Defendant, her mother, unlawfully entered upon the lands, damaged several of his crops and hired a backhoe to destroy his perimeter surrounding the lands. In the October 2014 letter the Claimant's then attorneys at law, Prem Persad-Maharaj and Company wrote in response to the letter dated 1 October 2014 sent to the Claimant by the Third Defendant's attorney at law, requesting that she cease her trespass upon the lands. The First Defendant whether by herself and or as agent of the Third Defendant failed and or refused to accede to the Claimant's request and in June 2015, attempted to have the lands surveyed by Isaac's Survey Control and further requesting that the Claimant vacate the lands which he never did.

72. In the June 2015 letter, the Claimant's attorneys at law, Harrikissoon and Company, wrote to the Third Defendant calling upon her to cease and desist from entering, remaining, and trespassing upon the said lands. However, at the end of the last quarter of 2015, the First Defendant attempted to enter the lands in the company of a surveyor, and placed 9 pegs on the lands, which the Claimant later removed.

73. According to the Claimant, on 12 April 2017, while tending his cattle on the lands, he noticed the Second Defendant on the lands attempting to survey and to place pickets on the lands. The Claimant called his son via his cell phone to take pictures of what was

occurring and of the persons trespassing. The Second Defendant then threatened the Claimant with a cutlass, forcing him to grab hold of same.

74. The Claimant also testified that on the 13 April 2017, the Claimant went onto the lands when he encountered two pieces of pipe across the pathway, constructed by Mr Singh, that he used to get access to the lands. The agents and or servants of the First Defendant, and the Second Defendant himself, refused to remove the pipes, and told the Claimant to pass somewhere else. The Claimant reported the incident to the police who returned to the said lands that day, and the First Defendant's agents and or servants removed the pipes. One week after, the Claimant removed the post erected by the First Defendant, her servants and or agents.

75. According to the Claimant by the 8 May 2017 letter, the First Defendant's attorneys at law indicated that she had retained the services of a bailiff, who would inter alia, remove his livestock on 22 May 2017, should he refuse to vacate the lands. On 23 May 2017, the Claimant attended the office of his attorneys at law to prepare a response. However, the First Defendant via her agents and or servants who purported to be a Bailiff and Police officers unlawfully trespassed upon the said lands seeking to remove his livestock and materials. A letter dated 23 May 2017, was sent to the First Defendant's attorneys at law to immediately cease and desist from entering, remaining, and trespassing upon the lands and further to cease and desist from obstructing, harassing and or molesting the Claimant on the basis that she failed and or refused to prove any right or interest.

76. On 25 May 2017, a neighbour informed him of something occurring on the said lands. When he went, he saw several persons there including the First Defendant, leaving. He spoke to one of the persons who he knew as Wally Achong.

77. In cross-examination, the Claimant admitted that the first matter and the second matter concerned his father, Mr Singh and not him. He denied that he brought an action against

Mr Sinaswee for 3 ½ lots of the lands and instead he said it was all the lands but that the Sinaswees had destroyed his cane crop on 3 ½ lots of the lands. He disagreed that he was unaware of the survey of the lands in 2011 since he was not on it.

78. According to the Claimant, he knew the size of the lands which he occupied from the rent receipts which Mr Sinaswee gave Mr Singh when he paid rent. He testified that he was a cane farmer over 30 years and he was registered for over 15 years as a farmer. He testified that he employed villagers to cut and bundle cane. He also purchased equipment which he used on the lands and which remained there. He was referred to receipts from Massy Machinery, which showed Gewan Boodan as receiving the equipment and he explained they are farmers and they lent each other equipment.

79. The Claimant agreed in cross-examination that none of the photographs which he annexed to his witness statement showed that he had 15 cows or crops planted on the lands.

80. Mr Madoo testified that he could not recall when the Claimant's parents passed away but that he was aware that the Claimant continued to use the lands to plant crops and rear cattle until present. According to Mr Madoo the Claimant has about 20 heads of cattle and 4 tractors. In cross-examination Mr Madoo stated that the lands did not have crops at present but there were cows and bulls on the lands. He admitted that he was not present on the lands everyday and that he did not see when the lands were surveyed. He also admitted that he could not deny that the Sinaswees visited the lands.

81. Mr Peack testified that he did not know when Mr Singh passed away but that he knew that the Claimant has continued to use the lands by planting crops and rearing cattle to present. In cross-examination, Mr Peack admitted that he visited the lands occasionally. He testified that Mr Singh and the Claimant stopped growing cane on the lands when Caroni Ltd was closed down. He testified that in recent times the lands had been planted with crops; the Claimant also reared cattle on the lands and that there was a shed and a

place where the Claimant milked the cows on the lands. According to Mr Peack apart from Mr Singh and the Claimant, he saw other persons whom he did not know on the lands.

82. The First Defendant testified that from 1990 until 2001 Mr Sinaswee was involved in several court matters with respect to the lands with Mr Singh. She stated that sometime in the late 1990's a man who worked at the Couva Court visited their home and gave Mr Sinaswee some pieces of earth. Mr Sinaswee explained that it meant the lands were clear of all encumbrances. In 1999, Mr Sinaswee sold a parcel of the lands to a Ms. C. Sookraj. Mr Sinaswee died in 2001 while there were court matters still pending. She stated she asked to have the matters deferred while they dealt with administrative issues

83. According to the First Defendant, after 2001, the Claimant approached her on more than one occasion to sell him 2 acres of the lands. On one occasion when she visited the lands, the Claimant appeared and asked her to purchase a piece of the lands. He said he wanted the worst piece, identifying a swampy area. She stated that when the Grant for Mr Sinaswee's estate was obtained in 2002 her family set about the process of regularising ownership and preparing documents with respect to the lands. Her family continued visiting the lands and seeking advice on the best way to move forward with respect to developing the lands. She stated that land taxes have been paid up until the year 2009.

84. According to the First Defendant, from 2002 to 2017 her family continued to take steps to develop the lands and survey/re-survey/allocate parcels to their children for their use. The First Defendant testified that she received a letter dated 23 July 2011 from the Claimant's then lawyer Mr Roopnarine & Co stating that he was prepared to vacate the lands on the condition that she sell him 2 acres of the lands. In 2011, when the lands were surveyed there were no crops on it but a couple cows. The surveyor and his team told her that they had been approached by the Claimant who asked them to ask her about selling him a parcel of the lands. The survey was completed without incident, around this time the Claimant also asked her to sell him a parcel of the lands.

85. The First Defendant stated that in May-June 2014, she had a portion of the lands graded and cleared. The Claimant came onto the lands seeking to stop the works and verbally abused her. She made a report to the Freeport Police Station. She received the October 2014 letter from the Claimant's then lawyer, Messrs. Prem Persad-Maharaj & Company, which asked that she sell the Claimant 2 acres of lands and that the Claimant would deliver up possession of the remainder of the lands. She stated that from 2014 the Claimant has become increasingly aggressive towards them.

86. According to the First Defendant, in May 2015, she visited the lands and discovered that a number of survey markers had been removed. The internal markers were removed but the ones on the boundary with Gosine Street were left. The Claimant admitted to removing them. The First Defendant testified that on 24 November 2016 she was on the lands with one of her agents, Cedric Connor when the Claimant appeared and threatened them. A report was made to the Freeport Police Station. In April 2017 a surveyor was retained to re-establish the markers. On 12 April 2017 while the survey was being conducted the Claimant armed with a cutlass and his son appeared on the lands and threatened her agents. The Second Defendant sought to restrain the Claimant by grabbing the cutlass.

87. The First Defendant stated that she was advised that on 16 April 2017 that her agents including the Second Defendant were on the lands to erect fence posts when the Claimant came and made claims about ownership of the lands. She stated that no pipes were placed which obstructed the Claimant from entering the lands. The Claimant left and returned with 2 police officers. Her agents explained to the police officers that they had documents for the lands and were erecting fence posts. The police officers warned the Claimant not to disrupt her agents. The Claimant then entered the lands on his tractor which had a blue barrel on it and proceeded to tend his cattle. The police left and her agents continued erecting the fence posts and then he left.

88. According to the First Defendant, she was advised that on 20 April 2017, the Second Defendant went to check the lands and he saw that everything was in order. He returned on the 27 April 2017, and realised that most of the fence posts had been pulled down and dragged away from where they had been placed. A report was made to the Freeport Police Station stating that the fence posts were missing/stolen. In May 2017 the Claimant filed an application for injunction against her and her family. Despite the injunction, the Claimant has continued to lobby persons with some knowledge of the lands to have her sell him a parcel of the lands. She said at first he requested 2 acres of the lands and she counter proposed with 1 acre, to which he seemed to agree. She then sought to obtain names of land valuators to start discussions.

89. In cross-examination, the First Defendant testified that the lands are situated less than 1 mile from her home and that she has to pass the lands to get to her home. She stated that the Third Defendant applied for the estate of Mr Sinaswee after he died and that the Grant was obtained in 2002, the Deed of Assent was done in 2012 and the other Deeds were done in 2015. According to the First Defendant, between 2002 to 2017 she tried to decide what to do with the lands. During this time, they also visited the lands, applied to Town and Country on several occasions including 2002, 2005, 2015, and reapplied in 2017. She accepted that she did not attach any of the applications and approvals to her witness statement. She also agreed that she did not attach any documents about Town and Country applications to her Defence and none of the Defendants witnesses stated what they were on the lands from 2002.

90. The First Defendant also testified in cross-examination that when she obtained the documents in the first matter, second matter, third matter and fourth matter referred to in her witness statement she gave them to her attorneys at law. She stated that she could only speak about matters concerning the land after Mr Sinaswee died. She stated that the Claimant may have been successful in the Court matters but he did not own it as they did not sell it to him.

91. The First Defendant also stated in cross-examination that she did not believe that her mother, the Third Defendant served any notice on the Claimant to vacate the lands. She also confirmed that she did not serve any notice on him in 2011 or when she became an owner of the lands and she did not file any High Court action to have the Claimant removed from the lands. She said that in 2014 the Defendants wrote the Claimant a letter informing him to remove his cows and other things from the lands but she did not attach a copy of the letter to her pleadings.

92. The Second Defendant testified that in 2014, he accompanied the First Defendant she was going to have the lands graded and cleared as they were overgrown with grass. While on the lands, the Claimant approached them and indicated that he wanted to buy piece of lands and he was very abusive and aggressive. The Claimant left and the First Defendant made a police report.

93. According to the Second Defendant, at this time, the lands were overgrown and there were 2 or 3 cows grazing in the eastern/north eastern part and the purpose of clearing it was in preparation for sub-division of it. He testified that in early 2015 the lands were surveyed and markers/pickets placed at the northern part near Gosine Street. In April/May 2015, it was discovered that the interior markers were removed and the First Defendant made a police report. He testified that on almost every occasion he went unto the lands he was verbally abused by the Claimant.

94. The Second Defendant also testified that in early 2017 he accompanied a surveyor and others to place markers for the portion of the lands which was in his Deed No. DE201502938242. The Claimant approached from a track at the end of Persad Street and he claimed that he was in possession of the lands and he had to get first preference if they were selling and to ask the First Defendant to sell him the swampy piece of the lands.

95. According to the Second Defendant in April 2017, he and others acting on behalf of the First Defendant went unto the lands to cast fence posts. The Claimant came along a track and accused them of blocking him when they were placing the posts on the boundary. He returned with police officers and after a brief discussion, the Claimant was advised by the officers not to disturb the survey and the construction of the fence. They completed installing the remaining posts. On the 20 April 2017, the Second Defendant went to check on the posts and everything was in order. Around 27 April 2017, the Second Defendant went to check on the lands and realised that all the posts on the eastern side as well as the posts on the interior of the sub-division had been removed. A police report was made that day.

96. The Second Defendant testified that when he returned to the lands later that week, the Claimant admitted that he had removed the posts, and also on the previous occasion. The Claimant again asked that the First Defendant to sell him a piece of the lands stating that once she sells him piece he would stop disrupting them.

97. The Second Defendant testified in cross-examination that he lived with the First Defendant in 2014 and continues to do so and in 2014 they were doing surveys to organise for subdivision of the lands, which would have included a piece to him. He stated that he when he visited the lands, he saw bush, some trees and a galvanised shed on the eastern section. He stated that after the survey in 2014 the shed was outside the lands and he had seen 1 or 2 cows on the north-eastern side close to the boundary.

98. According to the Second Defendant in cross-examination, he walked the entire lands for a subsequent survey. He stated that the lands on the Gosein Street boundary was open with just bush which was taller than him. He used Persad Street access to the lands and it is around that area he saw cows. He stated that depending on where a person is standing all of the lands were visible from the road. He said he reported to the police about the

Claimant taking out the markers placed by the surveyor but he could not recall if he reported him for being abusive or aggressive.

99. The Defendants also relied on the evidence of Mr Cedric Connor to support their case, Mr Connor testified that he was retained by the First Defendant around the period 1 November 2014 to 31 May 2015 to construct a perimeter fence on the lands.

100. According to Mr Connor, his first visit to the lands with the First Defendant on 24 November 2014, he observed cows tethered within the northern side of the lands, a galvanised shed in the northeast quadrant, and several pieces of scrap metal in the bushes south of Persad Street. During this visit, the Claimant approached them from Persad Street, and in a very loud voice started enquiring from the First Defendant when she would decide to sell him the swampy section of the lands. The First Defendant responded that she had already told him that she was not interested in selling any portion of the lands. The Claimant said that he was willing to pay for the swampy piece of the lands.

101. According to Mr Connor, as they moved away, the Claimant began following their movements. Mr Connor informed the Claimant that he formed the view that the Claimant's conduct amounted to a threat and he made a report to the Freeport Police Station.

102. Mr Connor testified that he subsequently had 2 further interactions with the Claimant. In the first instance, he parked his vehicle on Persad Street, and the Claimant came and repeated statements which he had made during the first meeting. The Claimant requested he make representations to the First Defendant on his behalf to be sold the portion of lands he wanted. In the second instance, he and 2 gentlemen were parked on Gosine Street and the Claimant and a young man approached them and began making threats. The Claimant indicated that in previous attempts to survey the lands by the First Defendant, he frustrated the process by removing the iron markers. Mr Connor reminded

the Claimant about police reports against his behaviour. The Claimant and the young man left and returned approximately 15 minutes later and started taking photographs. At this time, the owner of the heavy equipment scheduled for the works advised that he was unwilling to commence any work until he was assured that the Claimant had vacated the lands. Mr Connor testified that the project has been cancelled despite $14,504.21 already being spent on materials.

103. Mr Connor testified in cross-examination that he has been in construction for 10 years and he worked at his own company which he incorporated in 2012. He said he first entered the lands on the 24 November 2014 since he was asked to construct a perimeter fence. He entered the lands on the southern boundary looking towards the north. He recalled that there was an old galvanise shed to the right hand side of the lands; 2-3 cows directly north; the left hand portion of the lands along Gosine Trace was unoccupied, and the rest of the lands had grass. Mr Connor stated that the pieces of scrap metal were in the area north of the galvanise shed and he did not take any photographs.

104. According to Mr Connor in cross-examination, when they went onto the lands on the 24 November 2014 the Claimant approached him and identified himself. He came from the direction of the galvanise shed on foot. He asked the First Defendant when she was going to sell him a piece of the lands to which she responded that she was not going to entertain that. He said he had rights to the lands and they then had a heated discussion for about 5 to 10 minutes. He said that the Claimant did not make any physical threats at that time but subsequently, the Claimant made some statements which he took as threats. He disagreed that the Claimant never branded a cutlass, threatened him or used abusive language. He denied telling the Claimant he could have been an officer of the Court to intimidate him and denied that it was used as a threat the Claimant.

105. Mr Connor also stated in cross-examination that his estimate for the works he was supposed to do was in the sum of $32,000.00. He said he was paid for the purchase of the

fence posts which was the only work he was able to do. He denied that it was in his best interest to get the Claimant off the lands so he could get paid. On 24 November 2014 he made a police report against the Claimant's behaviour against him and it was the only police report he has made. He visited the lands at least 4 times after this occasion and he met the Claimant on 2 of the 4 occasions.

106. In order for the Claimant to succeed he had to prove that he had been in undisturbed exclusive possession of the lands from 1985 until 2001 and if such possession was disturbed he was in undisturbed possession for another continuous 16 year period of undisturbed exclusive possession without the paper title's consent.

107. The Defendants position was that the Claimant's adverse possession was interrupted on several occasion between 1985 and 2017 and that on each occasion time stopped running.

108. In my opinion, the Claimant was able to prove on a balance of probabilities that he remained in factual, undisturbed and exclusive possession of the lands for the period 1985 to 2017 for the following reasons.

109. First, the Claimant was in physical possession of the lands from 1985 to 2017. **In Thompson and Jahi v The Incorporated Trustees of the Ethiopian Church of Trinidad and Tobago & Ors**[13] Aboud J quoted with approval the following learning from **Powell v MacFarlane** on the test for physical possession:

> "… In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not

[13] CV 2007-02417

subject to variation according to the resources or status of the Claimants": West Bank Estates Ltd v. Arthur[[1967] AC 665, 678, 679; [1966] 3 WLR 750, PC], per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession…. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor had been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else had done so."

110. Mr Singh's physical possession of the lands started in 1960 as a tenant and ended in 1985. The evidence of the Claimant was that after 1985 until present he has continued to cultivate short-term crops and rear cattle on the lands. He also testified that there was a shed on one portion of the lands where he kept the cattle when they were not grazing and where he milked the cattle.

111. Both witnesses for the Claimant, Mr Madoo and Mr Peack corroborated the Claimant's evidence on his use and occupation of the lands. Mr Madoo testified that the Claimant planted various short term crops namely can, rice, cassava, peas and corn up to the present. In cross-examination Mr Madoo stated that the Claimant had approximately "twenty or twenty-one" "cow and bull and thing" and that he, Mr Madoo assisted I planting coconut, fig and pommecythere. Mr Madoo also stated in cross-examination that the Claimant had "tractor, backhoe and thing" on the lands.

112. Mr Peack's evidence also corroborated the Claimant's evidence on his use and occupation of the lands.

113. Even the Defendants' witness, Mr Connor provided evidence which corroborated the Claimant's evidence on his use and occupation of the lands. Mr Connor testified that when he visited the lands he saw a galvanise shed on it and that he saw pieces of scrap metal on the lands.

114. Both the First and Second Defendants testified that when they visited the lands they observed that they were overgrown with bush and they did not see any crops. However, there was no evidence from the Defendants that they visited the lands prior to 2001. The First Defendant testified that she visited the lands in 2001, 2014, 2015 and 2017. The Second Defendant testified that he visited the lands from 2014. Therefore, the Defendants were unable to dispute the Claimant and his predecessor's occupation and use of the lands during the period 1985 to 2001. Further, the First Defendant admitted in cross-examination that on her visit in 2017 after a confrontation with the Claimant, the latter proceeded to tend his cattle which demonstrated that she knew that the Claimant was using the lands to rear cattle. In any event both the First and Second Defendants testified that on nearly every occasion they visited the lands the Claimant appeared and protested against them being on the lands. In my opinion, this conduct by the Claimant was equivalent to him treating the lands as he was the owner.

115. Second, the actions of the Defendants were not sufficient to stop time from running. The Defendants case was that their re-entry on the lands was sufficient to cease the Claimant's adverse possession of the lands. In the Court of Appeal decision of **Ian Roach and Anor. v Hugh Jack and Ors** [14]Bereaux JA quoted with approval the Court of Appeal of England and Wales in **Markfield Investments Ltd v. Evans[15]** at paragraph 23 which stated:

[14] Civ Appeal 132 of 2009
[15] [2001] 1 WLR 1321

"The dictum of Simon Brown LJ, who delivered the judgment of the court, bears extensive review, not only for its cogency but also for the authorities cited therein. He said at page 241 – 243:

….

"12. … the true owners' cause of action accrues once his land is in adverse possession, and continues to be treated as accrued unless and until the land ceases to be in adverse possession. Adverse possession may cease (a) by the occupier vacating the premises, (b) by the occupier giving a written acknowledgment of the true owner's title (see ss 29 and 30 of the Act) (in Trinidad and Tobago section 15), (c) by the true owner's grant of a tenancy or licence to the occupier (even a unilateral licence (see BP Properties Ltd v. Buckler (1987) 55 P & CR 337), or (d) by the true owner physically re-entering upon the land. Once, however, the land has been in continuous adverse possession for 12 years, the owner is barred by s 15 [section 3 of our Real Property Limitation Act] from bringing an action to recover it and, indeed, his title to the land (assuming, as here, that it is registered) becomes held in trust for the adverse possessor who may himself apply to have the title registered in his own name…."

…

15. In support of this argument Mr. Treener relies upon a passage in Cheshire and Burn's Modern Law of Real Property (16th edn, 2000) p. 987:

…

"Time which has begun to run under the Act is stopped either when the owner asserts his right or when his right is admitted by the adverse possessor."

A. Assertion of owner's right

Assertion of right occurs when the owner takes legal proceedings or makes an effective entry onto the land.""

116. In the English Court of Appeal decision of **Zarb and Anor v Parry and anor**[16] the Court examined what acts of re-entry are adequate to stop time from running in adverse possession. In **Zarb** prior to instituting the action, the Claimants went onto the disputed strip of land where they claimed the boundary to lie and uprooted the existing fence, put fence posts along the boundary they sought, cut down a tree and marked out the boundary that they sought with surveyor's tape. Having concluded that the Court was not referred to any binding authority as to the requirements for the successful interruption of adverse possession, and having regard to the events which transpired and the learning of the Court of Appeal in **Markfield** Arden LJ stated at paragraphs 35, 38 and 40:

> "35. So the question on this issue is whether the acts of the Zarbs were sufficient to bring the Parrys' possession of the strip to an end. The primary evidence on this point is important. The Zarbs did not retake exclusive possession of the strip as they intended to do by banging in posts and starting to erect a wire fence. They decided to withdraw part way through that exercise, because of the protests from the Parrys. The mere erection of a surveyor's tape is not sufficient to enclose the land where it is laid out merely for the temporary purpose of measuring the line at which a fence is to go. However, it was clear that the Zarbs intended that they should recover possession. That intention was made clear through words and deed. They were the paper title owners. Assuming for this purpose that they can meet the defence raised against them based on paragraph 5(4), they had a better right to possession of the land than the Parrys. The strip was not a home or building. It can, therefore forcefully be said that the law ought to look favourably on a paper title owner who intends to make a peaceable re-entry of the land of this nature and makes manifest that intention by incontrovertible words. It can also be said that it should not matter that the paper title owner's statement of intention was accompanied by only preliminary acts.
>
> …

[16] [2012] 1 WLR 1240

38. Thus an adverse possessor has to show he has exclusive possession in the sense of exclusive physical control. If he loses exclusive physical control, his adverse possession is interrupted and comes to an end. Time begins to run again. In this case, the Zarbs had banged fence posts into the ground so that it might be said that the Parrys lost exclusive control of the limited area affected by those posts. However, the area occupied by each post would have been small and could not justify a conclusion that adverse possession of the whole strip had been interrupted.

…

40. The adverse possessor is, therefore at risk of losing possession for a brief period of time, perhaps while he is out taking a walk or doing some shopping. The fact that the paper title owner can interrupt his possession in this way lends support to the view that the act of interruption should be effective to bring the adverse possessor's exclusive possession to an end. It would potentially be unfair if a paper title owner could interrupt adverse possession by the simple act of erecting a notice on the property, saying for example, "Private Property – Keep Out", so that the period of adverse possession will start all over again." (Emphasis added)

117. Arden LJ concluded at paragraph 44 that:

"44. For all the reasons given above, the Zarbs clearly did not, in my judgment, retake possession in any meaningful sense. It was not enough that the Zarbs planted stakes or took other steps symbolic of taking possession of the whole of the strip."

118. Lord Neuberger MR stated at paragraph 71 of **Zarb** that:

"71. However, the decision in Bligh v Martin is valuable for present purposes in that Pennycuick J gave some guidance of general application, when he said at p 812 that "in the ordinary case of adverse possession… one must find that the [paper

title] owner took possession in the ordinary sense of that word, to the exclusion of the [person claiming adverse possession]". Given the fact-specific and nebulous nature of possession, I consider that, in so far as general guidance can be given in relation to the task of deciding whether, on particular facts, the paper title owner has retaken possession at any time during the period of alleged adverse possession, that is probably as good as it can get."

119. The Claimant stated that Mr Sinaswee and Mr Dipnarine dug trenches in 1999 and laid materials on the lands. The Defendants stated that in 2009 they paid Land and Building taxes; in 2011 the lands were surveyed; in 2014 the Defendants had a portion of the lands graded and cleared; in April 2017 a survey was again conducted and fence posts were erected. The First Defendant also admitted that on all occasions when she or any of the other Defendants entered the lands, the Claimant was aggressive and hostile to them asserting his right of ownership to the lands and that he removed the markers placed by the surveyors and the fence posts which were erected.

120. In my opinion, the actions by the Defendants periodically from 1999 to 2017 which were met by protest by the Claimant on each occasion resulted in the Defendants, their servants and or agents abandoning their attempts to retake possession and to effectively disrupt the Claimant's exclusive possession of the lands which would have stopped time from running under the Limitation Act.

121. Third, the court matters also did not stop time from running since there was no determination of the rights between Mr Singh and Mr Sinaswee on the lands. In **Markfield,** Simon LJ stated at paragraphs 20 and 21 the following on the effect of court actions on attempts at taking possession:

"20… For the purposes of any particular action, <u>the issue of a writ in earlier proceedings is no more relevant than a demand for possession. In Mount Carmel Investments Ltd v. Peter Thurlow Ltd such a demand was held not to</u>

start time running afresh; no more would the service (still less the mere issue) of some earlier writ. Were it otherwise, as the defendant points out, all the true owner would have to do to avoid adverse possession claims is issue (and perhaps serve) a writ every 12 years without more."

21. In summary, there is no question of the issue of a writ "stopping time from running" … The issue of a writ, for the purposes of the action which it begins, prevents the true owner from being time barred under section 15 providing 12 years adverse possession have not already accrued. It serves no other purpose." (Emphasis added)

122. In the local Court of Appeal decision of **Hindaye Pooran v Kenneth Roop**[17] Mendonca JA considered the effects of previous litigation between the parties on the question of adverse possession. The Court considered the House of Lords decision in Ofulue **v Bossert**[18] where Lord Neuberger considered St**. Marylebone Property Co. Ltd. v Fairweather**[19] . Mendoca JA stated at paragraph 31:

"The effect of abortive proceedings for possession on the running of time under s15 was considered by the Court of Appeal in **Markfield Investments Ltd. v Evans**…. In that case, the paper title owners had brought a claim for possession against the occupier of the land, and those proceedings were dismissed for want of prosecution. They then brought a fresh claim, and the occupier contended that the claim was barred under s 15. The plaintiff paper title owners argued that the time did not run under s 15 while the first set of proceedings was on foot. That argument was rejected, in my view rightly. As Simon Brown, LJ said (at para 21) 'there is no question of the issue of a writ "stopping time from running" against the plaintiffs, although, of course, it would have had that effect if it had led to a judgment which expressly or impliedly confirmed their title.

[17] Civ App No 223 of 2010
[18] [2009] UKHL 16
[19] [1963] AC 510, 535

123. At paragraph 32 in **Hindaye Pooran** Mendonca JA stated that:

> "Where therefore, the earlier action leads to a judgment that establishes and vindicates or confirms, either expressly or impliedly, the landowner's title, even though he may not have succeeded in recovering possession of the lands, that action would stop time from running."

124. In my opinion, the first action did not involve any determination of any right over the lands since it only held that the Petty Civil Court had no jurisdiction to deal with the matter.

125. There was also no determination of the rights between the parties with respect of the lands in the second matter since the action was discontinued by Mr Sinaswee, the Defendant's predecessor in title. As such the second matter did not stop time from running under the Limitation Act.

126. The third matter concerned an application for judicial review for the wrongful issue of the Warrant. It did not determine any interest of the Claimant or Defendants in the lands. Therefore, it did not stop time from running under the Limitation Act.

127. The fourth matter concerned and issue of the lands between the Claimant and Mr Sinaswee and Mr Dipnarine. The Ventour Order was in relation to the three lots of the lands which Mr Dipnarine and M Sinaswee entered upon and that it was an interim order. However in the absence of In the absence of any of the pleadings or transcripts in the fourth matter, there was no evidence that there was any determination of the substantive rights of the parties in the fourth matter. Therefore the fourth matter did not have the effect of stopping time from running.

128. Therefore, the Defendants failed to demonstrate that they obtained an order in the any of the court matters which established and vindicated or confirmed, either expressly or impliedly their or their predecessor's title.

129. Fourth, there was no credible evidence that the Claimant acknowledged the Defendants title to the lands after 1985.

130. There was no evidence from the Claimant that he approached the First Defendant and offered to purchase a portion of the lands.

131. The First Defendant testified that after 2001 the Claimant approached her a few occasion requested that she sell him a portion on the lands. She stated that he made this request in a letter dated 23 July 2011 from the Claimant's then attorney at law Messrs Roopnarine and Co; in 2011 the surveyor told her that the Claimant asked the surveyor to ask her to purchase a parcel of the lands; in the October 2014 letter the Claimant again asked her to purchase a portion of the lands; and after 2017 the Claimant has continued to lobby persons with knowledge of the lands to have her sell him a portion of the lands. She said at first the Claimant requested 2 acres and she counter proposed 1 acre and she sought to obtain names of valuators to start discussions. Both the Second Defendant and Mr Connor corroborated the First Defendant's evidence about the Claimant's request to purchase a parcel of the lands in 2014.

132. The First Defendant did not attach the letter dated 23 July 2011 from Messrs Roopnarine and Co to her witness statement. However the October 2014 letter was attached to the Claimant's witness statement. In cross-examination the First Defendant accepted that the Claimant's offer in the October 2014 letter was without prejudice to his rights.

133. In **Arima Door Centre Holding Company Limited v Sassy Garcia**[20] Rampersad J at paragraph 45 quoted with approval the decision of **Edginton v Clark**[21] where Upton LJ stated at paragraph 377 that "it is not possible to lay down any general rule as to what constitutes an acknowledgment".

134. Smith JA in **Felix Monsegue v First Citizens Bank Limited** provided guidance on what constitutes sufficient acknowledgement of title in matters under the Limitation Act. At page 39 he stated:

> "I am of the view that this receipt is not such an acknowledgment of title. I say so for the following three reasons:
>
> Firstly, to be effective, an acknowledgment must be signed by the person in possession….
>
> It has been decided in cases where there is a limitation which is the same as or very similar to section 15 of the RPL Act, that the acknowledgment of title must be signed by the person in possession and therefore, the signature by an agent is not a sufficient acknowledgment of title."

135. In my opinion, the October 2014 letter was not a sufficient acknowledgment of title to defeat the Claimant's claim in adverse possession for the following reasons. It was an offer to buy a portion of the lands without prejudice to his rights. In **Sassy Garcia** the Court quoted with approval the decisions of **Mayor and Burgesses of the London Borough of Tower Hamlets v. Barrett & Anor**[22] and **Ofulue and Anor. v Bossert & Anor**[23] that:

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[20] CV 2012-02005
[21] [1954] 1 QB 367
[22] [2005]EWCA Civ 923
[23] [2009] 3 All ER 93

"However, the House of Lords ruled by a majority in favour of the respondent and found that a statement in without prejudice negotiations should not be admissible in evidence, other than in exceptional circumstances."

136. There were no evidence of any exceptional circumstances for the Court to consider the contents of this alleged offer in considering this issue.

137. Secondly, the October 2014 letter was not signed by the Claimant but by his agent and the acknowledgement by the agent cannot be substituted for the Claimant.

138. Thirdly, a literal interpretation of the letter would be that notwithstanding the rights which the Claimant asserted to the lands, he was willing to purchase piece and/or part of same.

139. Fourthly, at best the October 2014 letter could be seen as bargaining despite the rights asserted by the Claimant to the lands. In **Sassy Garcia** the Court quoted at paragraph 44 with approval paragraph 16-57 of **Jourdan's on Adverse Possession** wherein which the learned author stated that "[n]or will negotiations amount to an acknowledgment if it is mere bargaining which never eventuates in recognition of the owner's title, as in the Australian case of Bree v. Scott."

140. In any event, the First Defendant's evidence that the Claimant asked to purchase a portion of the lands was only corroborated by the Second Defendant and Mr Connor with respect to the request in 2014 and not in 2001. In the absence of any corroborating evidence of the request in 2001 I do not attach any weight to this request. In my opinion, even if the request in 2014 was a credible request, it still did not stop time for the Claimant's adverse possession from running since by 2014 the Claimant was already in continuous undisturbed possession for 29 years.

WHETHER THE DEFENDANTS ARE LIABLE TO THE CLAIMANT FOR DAMAGES FOR ASSAULT

141. The definition of an assault was stated in **Andrew Lee Kit v Carol Charles**[24], by Stollmeyer J (as he then was) as:

> "The long standing definition of assault is an overt act by word or deed indicating an immediate intention to commit a battery, together with the capacity to carry the threat into action, or to put a plaintiff in fear of an immediate assault. It is an intentional act. There is an assault if there is a menace of violence with a present ability to commit it, but there will be no assault if the threat cannot be put into effect."

142. According to the Claimant, on 12 April 2017, while tending his cattle on the lands, he noticed the Second Defendant on the lands attempting to survey same and to place pickets on the lands. The Claimant called his son via his cell phone to take pictures of what was occurring and of the persons trespassing. The Second Defendant then threatened the Claimant with a cutlass, forcing him to grab hold of same. The Claimant repeated in cross-examination that the Second Defendant threatened him with a cutlass and that he had photographs of this incident. He was then shown a photograph annexed to his witness statement which he stated depicted he and the Second Defendant were holding a cutlass. He still disagreed that he threatened the Second Defendant with a cutlass.

143. The Second Defendant testified that in early 2017, the Claimant and another person arrived on Persad Street in a black van and armed with a cutlass he began threatening to disrupt the survey. He became very aggressive. The Second Defendant stated that he tried to restrain the Claimant by grabbing hold of the cutlass and told him that they had documents for the lands. The Claimant then left. In cross-examination the Second Defendant denied that he went unto the lands with a cutlass and that he threatened the

[24] CV 3870 of 1995

Claimant. He testified that the Claimant had the cutlass and that he, the Second Defendant was holding 3 pickets to assist the surveyors.

144. The First Defendant corroborated the Second Defendant's evidence that on the 12 April 2017 while the survey was being conducted the Claimant armed with a cutlass and his son appeared on the lands, threatened her agents and the Second Defendants sought to restrain the Claimant by grabbing hold of the cutlass.

145. In my opinion, the Second Defendant's version is more credible since the photograph which the Claimant annexed to his witness statement was consistent with the Second Defendant's evidence. Further, the First defendant corroborated the Second Defendant's version of the incident and there was no evidence from the Claimant to corroborate his version of the alleged assault. He did not even call his son whom he said took the photograph as a witness to support his case.

146. For these reasons, I have concluded that the Second Defendant is not liable for any assault of the Claimant.

WHETHER ANY PARTY IS LIABLE FOR DAMAGES FOR TRESPASS

147. The authors of **Clerk & Lindsell on Torts**[25] at paragraph 19.01 described a trespass to land as an unjustifiable intrusion by one person upon land in the possession of another. Trespass is a direct entry on the land of another and is actionable per se and the slightest cross of the boundary is sufficient.

148. The Claimant was in possession of the lands from 1985 until 2017. The Defendants were aware of the Claimant's possession since there were the 4 court matters between 1990 and 1999, and 4 letters which passed the parties between 2014 and 2017 concerning the rights to the lands. The Defendants also admitted in cross-examination that after 2002

[25] 22nd Ed (2017)

when the First and Second Defendants their servants and or agents visited the lands the Claimant always appeared and asserted his rights to the lands.

149. The evidence on behalf of the Defendants was that in 2011 they had the lands surveyed; in 2014 they had a portion of the lands graded and cleared; in 2015 they erected fence posts. The Defendants evidence was also that the Claimant removed the markers and pickets placed during the survey and he pulled down and dragged the fence posts.

150. In my opinion, the Defendants committed a trespass to the lands since the Claimant was in possession.

151. **Halsbury's Laws of England on Remedies for Trespass**[26] states:

> "In a claim of trespass, if the Claimant proves the trespass, he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the Claimant actual damage, he is entitled to receive such amount as will compensate him for his loss."

152. The only evidence of any loss which the Claimant suffered as a result of the trespass was that he testified that on the 13 April 2017 he went unto the lands when he encountered 2 pieces of pipe across the pathway constructed by his father, Mr Singh which he used to access the lands. He testified that the agents and or servants of the First and Second Defendants refused to move the pipes. He reported this incident to the police who returned to the lands and the servants and agents of the First and Second Defendants moved the pipes. In my opinion, this evidence does not assist the Court in determining the quantum of damages to be awarded to the Claimant for his loss as a result of the trespass. In the circumstances, I am minded to award nominal damages for the trespass.

[26] Tort Vol 97 (2015) 591

153. In **Mano Sakal v Dinesh Kelvin**[27] on 22 March 2016, Donaldson-Honeywell J awarded $30,000.00 in nominal damages since the Claimant established loss but the value was not adequately quantified.

154. In **Ann Edwards v Neomi Hinds**[28] on the 16 November 2018 the Claimants had established that they have suffered loss as a result of the water, which was emitted from the pipes, which were laid by the Defendant. They had established that the nature of the loss was slope instability. An award of nominal damages in the sum of $30,000.00 was awarded. In **Rodney Jaglal and anor v Jean Hunte**[29] the Court awarded $25,000.00 in December 2018 as nominal damages for trespass.

155. There was no evidence presented with respect to the value of the lands and the diminution in value as a result of the acts of trespass by the Defendant. This paucity of evidence from the Claimant on his loss has caused me to award the Claimant nominal damages in the sum of $10,000.00.

ORDER

156. Judgment for the Claimant.

157. It is declared that the Claimant is entitled to possession of the lands.

158. It is declared that the Defendants have no legal right and or interest and or estate in the lands.

159. It is declared that the Defendants have no legal right to occupy and or attempt to occupy the lands.

[27] CV 2015-00748
[28] CV 2017-02552
[29] CV 2014-01776

160. It is declared that the Defendants are not entitled to possession, entry and use and or enjoyment of the lands.

161. The Defendants whether by themselves or their agents and or agents or howsoever otherwise are restrained from damaging and or destroying and or demolishing and or altering any part of the lands occupied by the Claimant and or any structures erected and or affixed thereon.

162. The Defendants whether by themselves or their servants and or agents are restrained from entering and or remaining and or trespassing and or attempting to occupy the lands.

163. The Defendants whether by themselves or their servants and or agents are restrained from excluding and or attempting to exclude the Claimant from entering and or remaining and or occupying the lands.

164. The Defendants whether by themselves or their servants and or agents are restrained from harassing and or annoying and or interfering with the Claimant's right to the quiet and peaceful enjoyment of the lands.

165. The Defendants whether by themselves and or their agents are restrained from harassing, molesting and or interfering with the Claimant and his servants and or agents.

166. The Defendants are not liable to the Claimant for damages for assault.

167. The Defendants are to pay the Claimant nominal damages in the sum of $10,000.00 as damages for trespass.

168. The Counterclaim is dismissed.

169. The Defendants to pay the Claimant's 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