

THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

Claim No. CV2016-02661

BETWEEN

NICHOLE LEZAMA-CUPID also called YOLANDE LEZAMA-CUPID

CARMELITA PATRICIA LEZAMA

Claimants

AND

EUGENIA LEZAMA

RICARDO CLARK

KENDALL LEZAMA

Defendants

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: November 22, 2018

Appearances:

Mr. Lemuel Murphy instructed by Ms. Stacey Mc Sween for the Claimant

Mr. Colin Selvon instructed by Mr. Shervon Noriega for the Defendant

Ruling on Evidential Objections

[1] On 12th January, 2018, the Claimants filed objections to certain parts of the evidence which the Defendants are seeking to adduce in support of their case. The objections were in relation to the witness statements of Joanne Lezama-Persad and Eugenia Lezama.

On 23rd March, 2018, the Defendant filed objections to certain parts of the witness statement of Nichole Lezama-Cupid filed on behalf of the Claimants.

[2] Having considered the submissions of the Claimants and the Defendants, the following is my ruling on the objections.

CLAIMANTS' EVIDENTIAL OBJECTIONS

Witness Statement of Joanne Lezama-Persad

Paragraph 4

[1] The words "*I was very afraid of my father and I recall he was very abusive towards my mother and my other siblings especially my brothers*" are struck out on the basis that it is not relevant to the main issue to be determined by the Court. This evidence is also scandalous and oppressive, as well as, prejudicial of and to the Claimants' case. No opportunity is now presented for rebuttal of such evidence.

Paragraph 10

[2] Paragraph 10 in its entirety is permissible. The witness is entitled to give evidence as to why she left the family home, which is the subject of the dispute before the Court.

Witness Statement of Eugenia Lezama

Paragraph 7

[3] The words "*My father was very physically abusive towards my mother and all the children.*" are struck out on the basis that these words are irrelevant to the main issue to be determined by the Court. This evidence is also scandalous and oppressive, as well as, prejudicial of and to the Claimants' case. No opportunity is now presented to rebut such evidence.

Paragraph 11

[4] The words "*My father never assisted in maintaining my mother and Joanne after he left the matrimonial home.*" are struck out. It is not relevant to the main issue to be determined by the Court.

Paragraph 12

[5] The words “*A copy of that invitation is annexed hereto and marked E.L.I.*” are struck out. This exhibit is not a document disclosed in the Defendants’ List of Documents. Furthermore, the Defendants did not file a Supplemental List of Documents to include this document. Full and frank disclosure within the time specified is of fundamental importance to the effective functioning of this new system of civil justice. Each party must know what case it has to meet without being taken by surprise at this late stage when there is no opportunity to address any new document now being presented.

Paragraph 20

[6] The words “*I am also aware that it was both my father and my mother who built the matrimonial home together*” are struck out on the basis that this is not within the personal knowledge of the witness. The witness was only four months old at the time that her parents moved to the disputed property. This knowledge, therefore, would have had to be obtained from some other person or source. Since the proper foundation was not laid for this evidence, that is, the belief in the truth and the source of the information not alluded to, these words objected to constitute inadmissible hearsay evidence.

[7] The words “*My mother would have contributed to the building of the matrimonial home including renovations and extensions to same after my father left in 1975 by casting the floor of the living room which was previously wooden, by paying of rent.*” are permissible. The witness is entitled to give evidence of the renovations that were done to the family home. She was present during these acts, therefore, it is within her personal knowledge.

[8] The words “*She would have used her pension to do certain of these renovations.*” are struck out. This is not a statement of fact; it is conjecture which ought not to be admissible.

Paragraph 21

[9] The words “*In fact as the children became adults and started working they too would over the years contributed (sic) towards the repair and/or extension of the matrimonial home.*”

border on speculation by virtue of a lack of foundation and a dearth of evidence to support this contention. Nonetheless, the Court shall overrule the objection as I am of the opinion that this aspect of the evidence can be effectively dealt with under cross-examination. The words objected to will not be struck out.

Paragraph 30

[10] The words “*and abandoning his wife and children in 1975*” are struck out. This is not relevant to the main fact in issue to be determined by the Court. These words are also scandalous.

DEFENDANTS’ EVIDENTIAL OBJECTIONS

Witness Statement of Nichole Lezama-Cupid

Paragraph 4

[11] This paragraph is objected to on the basis that the statement therein contains matters which are in the opinion of the witness. The Court is of the view that this paragraph seeks to establish the Claimants as the owners of the two-storey house and as statutory tenants of the land on which the house stands. Later in her witness statement, more particularly, paragraphs 15 to 19, the witness gives the evidence upon which she relies to establish title to the property which she said was vested in herself and her mother, the second Claimant. This evidence is therefore necessary if the Claimants wish to be entitled to possession as claimed in the amended Fixed Date Claim. **The objection is therefore overruled.**

Paragraph 9

[12] Paragraph 9 in its entirety is struck out. This evidence could not have been within the personal knowledge of the witness. She would not have been alive when these acts were done, therefore, she cannot speak first-hand of this information. This evidence is therefore hearsay and since the proper foundation has not been laid, this evidence ought not to be admissible.

Paragraph 14

[13] Paragraph 14 in its entirety is struck out since the information contained therein could not have been within the personal knowledge of the witness. The witness was not alive when her grandparents began occupation of the house. Accordingly, she cannot speak first-hand of this information. This paragraph contains evidence which is hearsay and inadmissible, the proper foundation not having been laid for this evidence to be admitted.

Paragraph 20

[14] The words “*the upstairs of the said property is in a dilapidated condition and a state of disrepair.*” are permissible. The witness is entitled to give information on the observations she made about the upstairs portion of the disputed property.

[15] The words “*I renovated the downstairs portion of the house and rewired it.*” are permissible. The witness is entitled to give evidence on the acts of renovation that she had done to the house on the disputed property. She can speak first-hand of this information.

[16] The words “*The upstairs of the house is not fit for human habitation and pose a health hazard.*” are permissible. This is an opinion which any average, lay witness can give. It does not require one to be an expert in this field in order to express this opinion about the condition of the house.

[17] The words “*there is also no electricity in same and the Defendants have not done any renovation and/or work to same.*” are permissible. The witness is entitled to give information on the observations that she made about the upstairs portion of the disputed property.

Paragraph 24

[18] The words “*The Defendants are not and were never tenants of the said Property and now occupy same without a license.*” are permissible. Though this is a main issue the Court has to determine, this is the evidence which the Claimants must lead in order to support their case for summary possession under Part 68. They must establish that the Defendants are not tenants nor do they have a licence to be on the property.

[19] The remainder of the paragraph is permissible. The delivery of the pre-action protocol letters and notices to quit are matters within the personal knowledge of the witness. Thus, she is entitled to give such evidence.

[20] Accordingly, the Court therefore Orders as follows:

ORDER:

CLAIMANTS’ EVIDENTIAL OBJECTIONS

Witness Statement of Joanne Lezama-Cupid

- i. **The Claimants’ evidential objection to the words “*I was very afraid of my father and I recall he was very abusive towards my mother and my other siblings especially my brothers*” in paragraph 4 is upheld. Those words will be struck out.**
- ii. **The Claimant’s evidential objection to paragraph 10 is overruled.**

Witness Statement of Eugenia Lezama

- i. **The Claimants’ evidential objection to the words “*My father was very physically abusive towards my mother and all the children.*” in paragraph 7 is upheld. Those words will be struck out.**
- ii. **The Claimants’ evidential objection to the words “*My father never assisted in maintaining my mother and Joanne after he left the matrimonial home.*” in paragraph 11 is upheld. Those words will be struck out.**
- iii. **The Claimants’ evidential objection to the words “*A copy of that invitation is annexed hereto and marked E.L.I.*” in paragraph 12 is upheld. Those words including the exhibit will be struck out.**
- iv. **The Claimants’ evidential objection to the words “*I am also aware that it was both my father and my mother who built the matrimonial home together*” in paragraph 20 is upheld. Those words will be struck out.**
- v. **The Claimants’ evidential objection to the words “*My mother would have contributed to the building of the matrimonial home including renovations and extensions to same after my father left in 1975 by casting the floor of the living room which was previously wooden, by paying of rent.*” in paragraph 20 is overruled. These words are permissible.**
- vi. **The Claimants’ evidential objection to the words “*She would have used her pension to do certain of these renovations.*” in paragraph 20 is upheld. Those words will be struck out.**

- vii. **The Claimants’ evidential objection to the words “*In fact as the children became adults and started working they too would over the years contributed towards the repair and/or extension of the matrimonial home.*” in paragraph 21 is overruled.**
- viii. **The Claimants’ evidential objection to the words “*and abandoning his wife and children in 1975*” in paragraph 30 is upheld. Those words will be struck out.**

DEFENDANTS’ EVIDENTIAL OBJECTIONS

Witness Statement of Nichole Lezama-Cupid

- i. **The Defendants’ evidential objection to paragraph 4 is overruled. That paragraph will be permitted.**
- ii. **The Defendants’ evidential objection to paragraph 9 is upheld. That paragraph will be struck out.**
- iii. **The Defendants’ evidential objection to paragraph 14 is upheld. That paragraph will be struck out.**
- iv. **The Defendants’ evidential objection to the words “*the upstairs of the said property is in a dilapidated condition and a state of disrepair.*” in paragraph 20 is overruled. Those words will be permitted.**
- v. **The Defendants’ evidential objection to the words “*I renovated the downstairs portion of the house and rewired it*” in paragraph 20 is overruled. Those words will be permitted.**
- vi. **The Defendants’ evidential objection to the words “*The upstairs of the house is not fit for human habitation and pose a health hazard.*” in paragraph 20 is overruled. Those words will be permitted.**

- vii. **The Defendants’ evidential objection to the words “*there is also no electricity in same and the Defendants have not done any renovation and/or work to same*” in paragraph 20 is overruled. Those words will be permitted.**
- viii. **The Defendants’ evidential objection to the words “*The Defendants are not and were never tenants of the said Property and now occupy same without a license.*” in paragraph 24 is overruled. Those words will be permitted.**
- ix. **The Defendants’ evidential objection to the remainder of paragraph 24 is overruled.**

Robin N. Mohammed
Judge