

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 2292 of 1994

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Plaintiff/Judgment Creditor

AND

1. JAMAAT AL MUSLIMEEN
2. LENNOX PHILLIP OTHERWISE CALLED YASIN ABU BAKR
3. RICHARD BRADSHAW OTHERWISE CALLED BILAAL
ABDULLAH
4. CARTON ALEXANDER OTHERWISE CALLED KWESI
ATIBA
5. ANTHONY FAULTIN OTHERWISE CALLED AHMAD ALI
6. DOMINIC BETHELMY OTHERWISE CALLED DAUD AL
JIHAD
7. EARL WILTSHIRE OTHERWISE CALLED SALIM
ABDULLAH MUWAKIL
8. LANCE SMALL OTHERWISE CALLED OLIVE
ENYAHOOMA-EL
9. FEROZE SHAH
10. ANDY THOMAS OTHERWISE CALLED ABULLAH
OMOWALE
11. EDWARD BOSLAND OTHERWISE CALLED KIBWE ATIBA
12. HYRON BEST OTHERWISE CALLED JAMAL M. SHABAZZ
13. SADIQ AL RAZI
14. RANDOLPH MILLS
15. ANDREW BYONE
16. ABDOOL ASSIM KHAN
17. HORACE PHILLIP OTHERWISE CALLED HAMZA
RAZZACK
18. REGINALD HARLEY OTHERWISE CALLED YAISH ABDUL
WAHID
19. MARCELINE WINSTON IRISH OTHERWISE CALLED
ABDUN-NUR ISHMARL-AMIN
20. BEVILLE MARSHALL OTHERWISE CALLED HASSAN
ANYABWILE
21. EARL RICHARDS OTHERWISE CALLED ABDUL HAKIM
22. JUNIOR NEPTUNE OTHERWISE CALLED ABDUL JABBAR

23. CYRIL RIVERS OTHERWISE CALLED HOMO ABDUL AZIZ
24. DERRICK JOSEPH OTHERWISE CALLED ABDEEN W. MUHAMMAD
25. NAEEM ALI
26. NAZEER KHAN
27. WILLIAM PHILLIP OTHERWISE CALLED TAALIB ABDUL WAHAB
28. TREVOR GEORGE OTHERWISE CALLED SAKIN ABDUL WAHAB
29. DAVID CALDER OTHERWISE CALLED ABU JIHAD
30. BURTON ROBINSON
31. MIKEY NEPTUNE
32. STEVE MCFARLENE OTHERWISE CALLED ABDUL KAREEM
33. KEVIN JOSEPH OTHERWISE CALLED YUSUF ALI
34. VICTOR DALY
35. GLENROY BELGRAVE
36. COLIN NELSON OTHERWISE CALLED RAKIM KAREEM
37. OLIVERIO NICHOLAS
38. BERNARD BLACHE
39. COCHISSE MICHAEL BERNARD
40. LORRIS BALLACK
41. ADRIAN WATTS OTHERWISE CALLED AKILA KAREEM
42. GASTON WILTSHIRE
43. BARRY WATSON
44. CURTIS PRESCOTT
45. KIRK WALKER OTHERWISE CALLED ABDEL HAAKEEM DHU-L-FIQAR
46. KENWYN GASTON OTHERWISE CALLED ABASS ABDULLAH
47. ANDY WILLIAMS
48. ANTHONY SMITH OTHERWISE CALLED TASIN ABU ALI
49. SELWYN ELLIS OTHERWISE CALLED MUHAMMED ABDUL WUDUD
50. ISAM ALI MAYU
51. AUSTIN PHILLIPS OTHERWISE CALLED USAMA A. PHILLIPS
52. ABDUL KABIR
53. DAVID JOHN OTHERWISE CALLED JAMEEL ABDULLAH
54. MICHAEL JOHN OTHERWISE CALLED SALEEM MICHAEL JOHN
55. JOSEPH DANIEL
56. SELWYN JUNIOR THOMPSON OTHERWISE CALLED JAMAL ABDUL MALIK
57. ROGER QUOW OTHERWISE CALLED AYYOUB YASIN
58. BRENT BUSBY

59. JACKIE CONRAD KESHWAH OTHERWISE CALLED RAYMOND FRANCIS
60. CLARANCE MISSETTE
61. RONALD MELVILLE
62. JERRY ALLEYNE
63. JOHN BERRY LONG
64. NEVILLE KEIZER
65. DARRYL JAMES
66. SHELDON MARSHALL OTHERWISE CALLED ARSHAD
67. VALMON PHILLIP OTHERWISE CALLED ABDULLA
68. PAUL GRINDLEY OTHERWISE CALLED AKEEM AMEN JAMALL
69. PATRICK SIMMONS
70. CASPAR GLASGOW OTHERWISE CALLED OMOWALE ABDULLAH BABAKA
71. BERNARD ST. JOHN OTHERWISE CALLED ADHAN AL-ADIL
72. BERTRAM GEORGE OTHERWISE CALLED ABDUL NAMI
73. COLLIN MORRIS OTHERWISE CALLED ADB JAMI
74. KELVIN STRAWN OTHERWISE CALLED BATAL ABDUL AHIM
75. ABDUL BARI
76. ABDUH MOHAMMED
77. ABDUL QUADIR
78. KELVIN GONZALES OTHERWISE CALLED SABIR ABDUR RASHEED
79. CLIVE LEWIS OTHERWISE CALLED ADIL GHANI
80. JOSEPH JOHN OTHERWISE CALLED YUSUF YAHYA
81. CLETO NICHOLAS
82. WINSTON NIKEY OTHERWISE CALLED AADUL KHALI
83. ISHMAEL ALI
84. CLYDE THOMAS OTHERWISE CALLED ISHMAEL YUSUF
85. PATRICK ROLAND
86. ALDWYN LYNCH OTHERWISE CALLED HAKIM JAMAT
87. DEANGELO GARCIA
88. NIGEL BRAXTON
89. CLINT MOSES OTHERWISE CALLED JABAL A. NUSA
90. RASHEED LATIFF
91. TONNE MITCHELL
92. MOUMOUNI SORGH
93. DAVY DE VERTEUIL OTHERWISE CALLED CHIFARI AL MUKHTA
94. TREVOR CONSTATINE OTHERWISE CALLED KALA AKIL-BUA
95. CARLYLE DAVID OTHERWISE CALLED ABDUL RADHEED

96. NAEEM RASHAD
97. ABU SULIEMAN
98. STEVE CHANICKA OTHERWISE CALLED RIAD ALI
99. MARK JACKSON OTHERWISE CALLED ABDUL QADIR MUHAMMAD
100. KENYON BISSESSAR OTHERWISE CALLED UMAR BIN MALIK
101. ABASI JAWAD
102. HENLEY TYSON OTHERWISE CALLED ABDAL KARIM
103. ARMAN ABDUL SAMAD
104. ROY OTTLEY OTHERWISE CALLED ISA NANTAMBU OR ESA MOHAMMED
105. RICHARD BRISTOL OTHERWISE CALLED ABDUL AQUIL
106. NIGEL PEMBERTON OTHERWISE CALED ZAKI AUBIDA
107. LLOYD QUAMIMIE
108. RAHEEM ALI
109. NAZIM MOHAMMED
110. KHALIQUE KHAN
111. MARTIN WILLIAMS OTHERWISE CALLED BASIL MUHAMMED
112. FAROUK ABDOOL
113. GARVIN GILLAR
114. ROGER WILLIAMS
115. DAREEN GENE

Defendants/Judgment Debtors

Before the Honourable Mr. Justice R. Narine

Appearances:

Ms. Seetahal S.C. and Mr. Harnanan for the Plaintiff/Judgment Creditor

Mr. M. Seepersad and Mr. G. Ramdeen for the Defendants/Judgment Debtors

JUDGMENT

Before me is the Plaintiff/Judgment Creditor's Summons filed on 6th February 2006 seeking an order for the sale of eleven parcels of land in order to satisfy an

assessment of damages made by Mr. Justice Tam on 15th January 2001 pursuant to a judgment taken up in default of defence on 16th September, 1996. Mr. Justice Tam assessed damages in the sum of \$15,000,000.00 with interest at the rate of 3% from 27th July, 1990 to 15th January, 2001. As at the date of assessment interest amounted to \$4,710,924.72. Interest continues to accrue at \$6,480.30 per day. The judgment debt stood at \$31,680,046.17 as at the date of the summons.

The application is supported by an affidavit of Christophe Grant filed on 6th February 2006. In opposition to the application the Defendants have filed affidavits of the Second Defendant on 8th March and 8th June 2006, and affidavits of Faizal Hosein, filed on 8th March 2006 and 12th June 2006, affidavits of Gary Phillip, Anisa Abu Bakr, Indrani Maharaj and Dulcie Bholai filed on 7th June 2001 and an affidavit of Attim Akii Bua filed on 8th June 2006. Leave was granted to cross-examine all deponents.

THE LAW

The summons is filed pursuant to section 37 of the Remedies of Creditors Act Chapter 8:09. Section 38 provides for the sale of the “sole immediate unconditional beneficial interest, legal or equitable” in the land or in “any several and ascertained portion thereof”.

Section 39 provides for the sale of “any several beneficial legal or equitable estate or interest in the land” other than “the sole immediate unconditional beneficial interest, legal or equitable” or any “present chattel interest therein”.

In either case the court is required to make the appropriate declaration of the debtor’s interest and order that the debtor’s interest be sold upon such conditions as it directs. The Registrar of the Supreme Court is empowered to execute a deed of conveyance and deliver same to the purchaser. The declaration made by the court is binding on all persons who are summoned or served with the application.

Where the title to land is taken in one name only, the presumption is that there is sole ownership in the named proprietor. Where it is taken in joint names unless the grant indicates otherwise, there is a presumption of equality of shares. The burden of proof is on the person seeking to show that the parties intended that their beneficial interests should be different from their legal interest, that is that equity should not follow the law: *Stack vs. Dowden* (2007) 2AC 432.

FINDINGS OF FACT

Having considered the affidavits of the deponents, and their evidence in cross-examination, I come to the following findings of fact:

THE FIRST PARCEL

This parcel comprises 5 acres 3 roods and 26 perches situate at La Puerta, Diego Martin. The title is vested in the second Defendant (hereinafter called “Bakr”) and his nephew Gary Phillip as tenants in common.

Bakr deposed that there are several persons in occupation of various parts of the land. In 1996 he agreed to allow his wife, Anisa, to build on his portion of the land once there was no objection from Gary Phillip. Gary Phillip consented. It was agreed that she would build her house using her own money, and that she would have exclusive possession of the portion of land on which she built. Anisa completed the house in 1997. Accordingly, Bakr considers himself not to have any claim to the beneficial interest in the lands at La Puerta.

Anisa Abu Bakr deposed that she built a house on the land with the permission of Bakr and Gary Phillip in 1996-1997. She occupied approximately 2 lots on which the house stands. In cross-examination, Anisa contradicted Bakr’s evidence. She asserted that Bakr did not tell her that she can build on his portion. In fact, he indicated that she can build on Gary Phillip’s portion. She does not know if her house stands on Bakr’s portion.

Gary Phillip indicated in cross-examination that there is a de facto partition of the land, and Anisa built her house on his portion, where she occupies two lots. In fact, he gave her permission to occupy two lots only.

Anisa asserted that she provided the funds for the construction of the house. However, she has produced no bills, receipts, bank statements or any form of documentary proof to support her contentions. Bakr claimed that he assisted in constructing the house, and the materials were bought in his name, however no receipts for these materials were provided. Anisa did not impress the court as a witness of truth. She was openly hostile and uncooperative, and gave the impression that she was intent on giving a certain version of the facts and nothing else.

Having regard to the evidence, I find on a balance of probabilities that Bakr and Gary Phillip each hold one undivided $\frac{1}{2}$ share in the parcel of land at la Puerta, Diego Martin.

Bakr, Anisa and Gary Phillip all made mention of persons in occupation of the land. However, I am unable at this time to determine their interest, if any, on the evidence before me. If in fact, there are occupiers of the land with tenancies or possessory title to portions they occupy, the purchaser will take subject to their interest.

THE SECOND PARCEL

Bakr concedes that this parcel is solely owned by him.

THE THIRD PARCEL

This is a parcel comprising 635.2 square metres situate at Dibe. The title is vested solely in Bakr. The evidence given in relation to this parcel was given by Bakr, his wife Indrani and her mother Dulcie Bholai. The evidence is riddled with inconsistencies.

The first version was given by Bakr in his first affidavit. Bakr deposed that the land was purchased by Bholai as a gift to Indrani in consideration of her impending

marriage to Bakr. Bakr was “informed” that the land was to be used to build a matrimonial home for Indrani and Bakr, who agreed that the land would not be vested in Indrani’s name. It would be vested in Bakr’s name for the purpose of raising finance to build the home. However, Bakr was unable to obtain finance. Indrani approached Bholai once more. Bholai agreed to finance the building of a matrimonial home and apartments for rent, on the understanding that the rental income would be paid to Indrani for her own use and benefit, and Bakr would have no claim on the property. Bakr agreed to these terms. Indrani supervised the construction of the building and Bholai financed it. Bakr took no part in the construction, nor did he provide any finance.

The second version of the transaction is contained in Bakr’s second affidavit. Bakr claimed that the purchase of that property together with the development on that property was undertaken by Bholai, and this was done some years prior to the transfer of the property to him. Bholai indicated that she did not want the conveyance on her name and he was asked if he would take the conveyance on his name and hold the property for her.

In her affidavit, Indrani deposed that her mother provided finance and she, Indrani, supervised the construction.

In cross-examination, surprisingly, Bakr testified that it was agreed that he would be the contractor. He bought material and obtained receipts, most of which were in his name, since he got a contractor’s discount. There were no cheques. Invoices were billed to him, since he was the contractor.

In cross-examination, Indrani testified that she and her mother spent close to one million dollars constructing the apartments. She employed small contractors. She had different people supervising. When builders were not doing their job, she changed them. Bakr supervised to an extent. If he happened to be passing, he made suggestions. His contribution was – he got the tile man, he chose tiles, “*whatever was required*”. He did not buy anything. Surprisingly, Indrani stated as well that they talked about raising

finance, after the property was purchased in his name. It follows then, that the land was not put in Bakr's name for the purpose of raising finance, since the conveyance came before this discussion.

Dulcie Bholai was cross-examined on her affidavit. She proved to be a recalcitrant witness, refusing to give direct answers to straightforward questions. She gave the distinct impression that she had come to Court to give a certain version of the facts, and was determined to give that version at all costs. She did not impress the Court with her demeanor. She was suspicious, querulous, calculating and insincere in her attitude. She testified that over a period of one year she gave her daughter cash for the construction - at one time \$500,000.00 in one go. She claimed that Bakr was the contractor. He ordered the material, and hired people to do the job. Surprisingly, she did not have any discussion with Bakr before or after the purchase of the land.

Having regard to the many contradictions and inconsistencies in the evidence on this issue, I have little difficulty in rejecting the evidence of Bholai, Indrani and Bakr as to how the title came to be vested in the sole name of Bakr. In addition, on a balance of probabilities, I reject the evidence of these witnesses with respect to the financing of the construction of the apartment building. I find on a balance of probabilities that it was Bakr who financed and constructed the building.

PARCELS FOURTH, FIFTH, SIXTH AND SEVENTH

These parcels are vested in Bakr solely. They comprise .4199 hectares, 2.4551 hectares, 2.4551 hectares and 5.0217 hectares, situate at Couva. In his first affidavit Bakr deposes that he purchased these parcels for a housing project. However, he stated that all the purchase monies for these properties were not paid. He believes that only about half of the total purchase money was paid. The Deeds were registered in 1998, 2000 and 2001.

In his second affidavit Bakr deposed that these parcels were not purchased solely by him. However, the parcels were placed in his name in order to obtain financing. He

estimated that he provided about 50% of the purchase price. He gave no details about the other purchasers. However, he undertook to provide the Court with the names and addresses of all the persons involved in the purchase.

In cross-examination Bakr stated that about twenty to twenty-one persons who were members of the Jamaat, contributed to the purchase. He issued receipts to these persons. To date, no names, addresses or receipts for monies received from these persons have been forthcoming.

On a balance of probabilities I find that the beneficial interest in these parcels vests solely in Bakr. In case I am wrong, Bakr's own evidence is that the other contributors to the purchase price are members of the First Defendant herein. Accordingly, the lands are available to be sold in order to satisfy the judgment debt, whether I accept Bakr's evidence or not.

THE EIGHTH PARCEL

This parcel is vested in the sole name of Bakr. It comprises 1,086.5 square metres situated at Marabella. It was conveyed to Bakr by Dulcie Bholai by a Deed of Conveyance dated 18th May 1994 and registered as No. 8263 of 1994. The Deed reflects a consideration of \$80,000.00. However Bholai claims she transferred the land to Bakr in order to avoid litigation with one Sat Maharaj concerning the land. In cross-examination, Bholai testified that Bakr always asked her to transfer the land back to her. This evidence was not supported by Bakr. She gave several reasons for not taking a reconveyance of the land in her name. These included that she may still be sued by Sat Maharaj, and she wishes to avoid the expenses of a conveyance.

I found the explanation given by Bholai and Bakr for the conveyance of the land into his name to be highly incredible. I can see no reason why Sat Maharaj could not institute legal proceedings against Bakr, if he so desired. In addition this land was transferred to Bakr some 14 years ago.

It seems to me to make little sense that Bholai would not take a re-conveyance to herself merely to avoid the legal expenses of such a transaction. Bholai struck me as a shrewd individual who is by no means inexperienced in dealing with commercial and land transactions.

Accordingly, on a balance of probabilities I hold that the beneficial interest in this parcel vests solely in Bakr.

THE NINTH PARCEL

Bakr concedes that this parcel is vested solely in himself.

THE TENTH PARCEL

This parcel is vested in Bakr and one Ahamad Islam Ali as joint tenants. It comprises a lot of land and a building known as No. 10 Park Avenue, Port of Spain.

It is Bakr's evidence that the property was acquired with funds donated to the Jamaat by the "World Islamic Call Society", and he and Mr. Ali hold the property as trustees for the Jamaat and the society. Bakr moved into the property with one of his wives and three children in 1992. He lives there up to now. He uses it as one of his addresses.

In November 1993, Mr. Ali brought proceedings against the Jamaat and Bakr, claiming damages for trespass and an injunction against the Defendants restraining them from entering the premises, and from preventing Ali from entering the premises. In an affidavit filed in those proceedings (annexed by Bakr to his first affidavit) Ali deposed that the property was purchased with monies of the Society, which were given to him (not to Bakr or the Jamaat) for this purpose. Bakr subsequently persuaded him to put the property into their joint names. In 1989 Ali and his family moved into the premises. In 1990 he gave Bakr permission for one of his wives and children to occupy the downstairs of the premises.

In July 1992, upon his release from prison Mr. Ali resumed residence in the upstairs portion of the premises with his family. By this time, however, the Society had been disbanded internationally, and Mr. Ali did not recommence the operations of the Society at the premises. Mr. Ali was subsequently dispossessed of the premises by Bakr and the Jamaat.

It is interesting to note that the Deed of Conveyance vesting the property in the names of Bakr and Ali, makes no mention of the World Islamic Call Society or of any trust. It vests the legal title in Bakr and Ali absolutely. While Bakr, in cross-examination promised to produce documentary evidence of the trust, none has been forthcoming to date. However, even if initially the property was acquired by the Society and placed in the names of Bakr and Ali for the purposes of the Society (which I do not find), the evidence of Ali is that the Society has been disbanded internationally. It follows that even if they initially held the beneficial interest in the property as trustees for the Society, they have ceased to do so since the beneficiary no longer exists. It follows that the beneficial interest in the property is now contained in the legal title.

Accordingly, I find on a balance of probabilities that Bakr holds one undivided half share in the property as a joint tenant with Mr. Ali.

THE ELEVENTH PARCEL

This parcel is vested in Kala Akii Bua, the 94th Defendant. It comprises 2.6299 hectares of land at Las Cuevas.

The 94th Defendant filed no affidavit. However, his son Attim Akii Bua filed an affidavit on his behalf. Attim deposed that his father directed him to share up the property among himself and his five siblings. The direction was reduced into writing dated 25th December 1999. Since 1999, Attim began construction of a concrete house which is about three quarters complete. He has also planted the land for the last 10 years. He has expended in excess of \$120,550.00 on the construction. No documentary evidence has been produced to support his expenditure.

In cross-examination Attim testified that he started construction some three years before his father directed him to distribute the land. That would be in 1996. In 1999, his father gave him permission to construct the concrete house. Before that there was the wooden house. Over time he built two houses on the land.

In paragraph 5 of his affidavit, however, he stated:

“Since the year 1999, I began constructing a house on the said property. At that time there was a wooden house already existing there. I demolished the said house and began putting up a concrete structure. The said concrete structure is about three quarters finished.”

There is no mention in the affidavit that Attim constructed two houses one in 1996 and one in 1999. In fact in 1996, his father did not own the property. His deed is dated 29th September 1999.

On the evidence, I hold that Attim has failed to discharge the burden of showing that he has acquired a beneficial interest in the land. His evidence was inconsistent and unreliable. He has produced no documentary evidence to support any expenditure on construction or in agriculture. The ninety-fourth Defendant has not sought to support Attim’s claim, nor has he since 25th December, 1999 sought to formalize his intention to transfer the land to his children, assuming that the document bearing that date is authentic.

On a balance of probabilities I hold that the beneficial interest in this parcel is vested in the ninety-fourth Defendant.

IMPERFECT TITLES

The reports on title prepared by Mr. Robin Otway, Attorney-at-Law, revealed that parcels 4, 5, and 6 are subject to a Deed of Mortgage dated 30th April, 1928 and registered

as No. 1429 of 1928. It appears that no Deed of Release was found with respect to this mortgage.

In addition, Mr. Otway reported that he found no good root of title in respect of Parcels 7, 8, and 9.

In my view, these imperfections in title do not in any way constitute a bar to the court's power to order a sale of the Defendants' interest in these lands. Steps may be taken to pay off the mortgagees or their successors, administrators or assigns, or proceedings may be taken by the purchasers to bring the lands under the provisions of the Real Property Act.

The reports on title also revealed several judgments in favour of Ramesh Lawrence Maharaj for costs in High Court Actions in which he appeared for the second Defendant. These judgments were registered on 29th July, 2003. The judgment in this action (i.e. HCA No. 2292 of 1994) was registered on 9th September, 2002. It follows that it stands in priority to the judgments in favour of Mr. Maharaj.

THE ORDER

1. The court declares that the second Defendant is the beneficial owner of one undivided half-share in the land described in the first schedule to the summons filed herein on 6th February, 2006 together with the dwelling house standing thereon now or formerly occupied by Anisa Abu Bakr.
2. The court declares that the second Defendant is the beneficial owner of the land described in the second schedule to the summons.
3. The court declares that the second Defendant is the beneficial owner of the land described in the third schedule to the summons together with the building standing thereon.
4. The court declares that the second Defendant is the beneficial owner of the lands described in the fourth, fifth, sixth, seventh, eighth and ninth schedules to the summons.

5. The court declares that the second Defendant is the beneficial owner of one undivided one-half share in the land described in the tenth schedule to the summons together with half an interest in the building standing thereon.
6. The court declares that the ninety-fourth Defendant is the beneficial owner of the land described in the eleventh schedule to the summons, together with the building standing thereon.
7. The court orders that the beneficial interest of the second defendant in the lands and buildings referred to in paragraphs 1 to 5 of this order and the beneficial interest of the ninety-fourth Defendant in the lands and building referred to in paragraph 6 of this order, be sold by public auction.
8. The Defendants will pay the costs of this application to the Plaintiff certified fit for one senior and one junior counsel.

This effectively disposes of the application before me. However, before closing, I must deal briefly with a matter which has caused me some measure of concern.

On 8th June, 2006, the second Defendant filed an affidavit comprising 62 paragraphs and 26 pages in which he set out details of meetings and conversations which he had with prominent members of the People's National Movement, notably Ms. Joan Yuille Williams, Mr. Martin Joseph and Mr. Larry Achong in the year 2002, in the months preceding the 2002 general elections.

The second Defendant also deposed to details of meetings and conversations that he held with the Prime Minister in 2002. At these meetings he claims that he came to an agreement with the Prime Minister in the following terms:

1. The remaining lands at Mucurapo would be transferred to the Jamaat. This was about 3 acres to the rear of the mosque.
2. The Mucurapo Islamic College which is located on the Jamaat compound in Mucurapo, was to be included in the concordat with the Ministry of Education and was to receive funding from the Ministry.

3. The State would not enforce the payment of damages against the Jamaat and the Jamaat would receive compensation as ordered by Mr. Justice Best in HCA No. 3982 of 1990.

In consideration of these promises, the Jamaat agreed as follows:

1. The Jamaat would work within the crime ridden areas to bring about a reduction in crime.
2. The Jamaat would work within the marginal constituencies to mobilize young persons to vote.
3. The Jamaat would publicly come out in support of the ruling party and would endorse the PNM party for re-election.
4. The Jamaat would work actively in campaigning for the PNM party in the marginal seats.
5. The Jamaat would be responsible for implementing the orderly implementation of social programmes in the targeted marginal constituencies.

The second Defendant deposed that the Jamaat carried out its side of the bargain. The second Defendant sets out in great detail the Jamaat's participation in the 2002 general elections. However, the second defendant deposed that, once re-elected, the Prime Minister failed to honour any of his obligations under the agreement, in particular his agreement not to enforce the judgment for damages against the Jamaat.

The plaintiff did not respond to the allegations of the second Defendant. Instead by Notice filed on 12th July, 2006, the plaintiff applied to strike out the affidavit in its entirety on the basis that it was wholly irrelevant, since if the allegations were true, the agreement "is unenforceable as being made for an illegal or no consideration and/or to commit a criminal offence and/or contrary to public policy".

In his written submissions, Mr. Douglas Mendes SC, on behalf of the plaintiff submitted inter alia:

- “17. The facts alleged in the Bakr affidavit constitute an admission by the second-named Defendant that he has engaged in an act contrary to section 3(2) of the Prevention of Corruption Act. In it he alleges that he by himself or in conjunction with other persons, i.e., Jamaat Al Muslimeen and its members, corruptly agreed to give to the PM, for his personal benefit and for the benefit of those other members of the PNM vying for the votes of the electorate, an advantage, namely ‘aid’ or assistance in persuading voters to vote for the PM and other members of the PNM, as an inducement to or a reward for or otherwise on account of the PM ensuring that the State forbore from demanding from the Defendants monies which they owed to the State. Equally, on the facts alleged (which are denied), the PM would have himself acted contrary to section 3(1) of the Act by agreeing to receive from the Defendants the said advantage as an inducement to or reward for or on account of his ensuring the State’s said forbearance. In essence, the agreement alleged is one whereby the PM and the Defendants agreed to defraud the State of its property each for their own personal gain. On the Defendants’ part, they were to receive the release of the debt owed to the State, while the PM was to receive assistance from the Defendants in his efforts to regain office. (underlining mine)
18. It follows therefore that the agreement alleged in the Bakr affidavit was an agreement to commit a criminal offence contrary to sections 3(1) and 3(2) of the Act. As such, the promises allegedly given by the parties thereto were illegal promises and cannot constitute consideration”.

Section 3 of the Prevention of Corruption Act No. 11 of 1987 provides:

- 3 (1) Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on

account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual, or proposed, in which the State or a public body is concerned, is guilty of an offence.

- (2) Every person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gift, loan, fee, reward, or advantage whatsoever, to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of , an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.

The matter found its way ultimately to the Judicial Committee of the Privy Council which ruled that the affidavit should be struck out for irrelevance, as the Jamaat could not rely on the illegal agreement as a defence to the application for sale of the lands.

However, in the course of his judgment Lord Carswell, who delivered the opinion of the Board, referred extensively to the contents of the affidavit. He went on to consider section 3 of the Act and concluded at paragraph 16 of the judgment:

“The essence of the agreement between the Prime Minister and Mr. Abu Bakr on behalf of the Jamaat was that certain advantages would be given to the Jamaat out of State property, in return for securing voting support for the Prime Minister’s political party. In the opinion of the Board this was corrupt within the meaning and intendment of section 3 and each party to the agreement was acting in contravention of the section. It is apparent that it was quite different in kind from the “pork-barrel” arrangement, whereby governments take actions which are proper exercises of power, but which may favour certain areas or classes of people, in the hope and expectation of electoral support. The latter may, depending on the facts, be justifiable as a legitimate public purpose. But the whole purpose of this agreement

was to obtain electoral advantage for one political party, the PNM by means of using State Property, and as such it was clearly illegal”. (underlining mine)

These are the pronouncements of the highest court in this jurisdiction. Yet as far as the court is aware, no action has been taken by the appropriate authorities to conduct a thorough investigation of these allegations.

The allegations made by the second Defendant are extremely serious. If they are true, they strike at the heart of our democratic system of government. Following the results of the 2002 general elections there were numerous complaints in the daily press that citizens in the marginal constituencies were unable to exercise their right to vote due to intimidation on the part of the Jamaat. If the allegations are true, the Prime Minister made promises of state resources to the leader of an organisation which had made an unsuccessful attempt to overthrow the duly elected government of the country, in return for the Jamaat’s leverage in the marginal constituencies.

Having regard to the extremely serious nature of the allegations, I am directing the Registrar of the Supreme Court to forward a copy of the affidavit filed by the Second Defendant on 8th June, 2006 to the Acting Commissioner of Police and the Acting Director of Public Prosecutions for their consideration.

The Court is confident that the relevant authorities will carry out their constitutional duties without fear or favour. In recent times there have been investigations and prosecutions of persons in high office. The guiding principle has been that no one is above the law, regardless of his position.

It is imperative, in the interests of preserving public confidence in our independent constitutional offices, in our criminal justice system and in our democratic system of government, that this matter should be afforded the urgency and transparency which it deserves.

In closing, I wish to emphasize that I express no view, and I make no finding with respect to the truth of the allegations contained in the affidavit. However, in my view the

allegations strike at the heart of our system of government and merit the urgent attention of the relevant authorities.

Dated this 11th day of September, 2009

Rajendra Narine
Judge