

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A.: 1280 of 2003

Between

**ARJIM SAMMY
a.k.a. ANN ARJUM SAMMY**

PLAINTIFF

and

CATHERINE EARLE

DEFENDANT

Appearances:

Mr. Premchand Dass for the Plaintiff

Mrs. Melanie A. Abdullah-Devenish for the Defendant

Before The Honourable Mr. Justice Devindra Rampersad

JUDGMENT

Delivered on: Tuesday June 30th, 2009

1. On **8 May 2003**, the Plaintiff commenced this action in her capacity as the legal personal representative of John Mankee. She claims as the daughter and executrix of the will of the said John Mankee that, prior to his death on 25 November 1978, he was the tenant of a lot of land measuring 156 feet on its northern boundary, 149 feet along its southern boundary, 50 feet along its eastern boundary and 49.4 feet along its western boundary which is situated at Maracas Royal Road, Lluengo Village, Maracas in the Ward of Tacarigua from one Jose Fernandez at an annual rent of \$34.60. Upon this land, Mr. Mankee had a two-bedroom house and on 6 April 2003, the Plaintiff claims that the Defendant wrongfully entered on the said lands and destroyed the said house causing loss

and damage to the estate of the late John Mankee. The Plaintiff claimed special damages in the sum of \$15,000.00 for the destruction of the house, damages for trespass and an injunction restraining the Defendant by herself her servant her agent or howsoever otherwise from entering or remaining on the said lot of land. She also sought the costs of the action and the standard catch all relief clause for such further or other relief which the court may seem just.

2. In the defence, the Defendant claimed that the late John Mankee was a tenant at will of Jose Fernandez and David Hernandez and that the tenancy was terminated by notice dated 1 January 1976. On the pleadings, the Defendant admits the area of the tenanted lot and that it had a two-bedroom house on it and also accepts that the Plaintiff was in the process of obtaining a grant of probate of John Mankee's will at the time of the filing of the statement of claim. However, the Defendant alleges on the pleadings that in or about 1985 the subject property was deemed unfit for human habitation and, being unoccupied for many years thereafter fell into complete ruin. The Defendant goes on to say that the tenancy was terminated prior to the death of John Mankee and or by operation of law or alternatively was surrendered or abandoned prior to 1981. The Defendant goes on to deny that she wrongfully entered the said lands on or about 6th of April 2003 and destroyed the dwelling house thereon causing damage to the estate of John Mankee. The Defendant says further in her defence that in or about 1994 she was granted a tenancy for the subject lands pursuant to the Land Tenants [Security of Tenure] Act 1981 and that in or about 1999 by virtue of deed dated 11 August 1999 and registered as No. 19292 of 1999, she purchased the reversion in the subject lands and demolished the dilapidated building on the lands which she says had been deemed unfit for human habitation since about 1985.

3. The issues:

This court has to consider the following issues arising:-

- 3.1. Was John Mankee a tenant at will of the said lands? If not, was he a tenant at all and, if so, what type of tenant was he?
- 3.2. Was his tenancy determined by a notice to quit?

- 3.3. Was the tenancy surrendered or abandoned prior to 1981 or at anytime thereafter?
 - 3.4. Was the dwelling house on the said lands deemed unfit for human habitation since about 1985?
 - 3.5. Was the landlord entitled in law to grant the Defendant a tenancy pursuant to the Land Tenants [Security of Tenure] Act 1981 in or about 1994?
 - 3.6. Was there a merger of the tenancy and the reversion when the Defendant purchased the land in or about 1999?
 - 3.7. Was the Defendant entitled to demolish the dwelling house on the said lands?
 - 3.8. If not, what is the measure of damages which is applicable?
 - 3.9. Did the Plaintiff have the necessary *locus standi* to bring this action when she did?
4. The evidence:
 5. There were 2 witnesses for the Plaintiff [including the Plaintiff herself] and 3 witnesses for the Defendant [including the Defendant herself].
 - 5.1. The Plaintiff:
 - 5.1.1. In her witness statement, the Plaintiff stated that she was the legal personal representative of the late John Mankee and that before he died in 1978, he published his will wherein he left the house and the tenancy on the said lands to the Plaintiff and her mother. She said that after the father's death, her mother remained in occupation of the house and land until her death in 1997. In cross examination, she went on to say that she also lived in the house up to 1982 which was something which she accepted she did not say in her witness statement. She went on to say in her witness statement that one Urban Mathura lived in the said house as a tenant with his family whilst her mother was living there and that after her mother died [in 1997] she

terminated the tenancy of Urban Mathura to renovate the building. She says that after the tenant left, she employed one Lewis Hernandez to maintain the premises until the Defendant wrongfully entered the premises and destroyed the house. In her witness statement, **she does not say when the house was destroyed or when the Defendant entered the premises.** No independent, cogent or professionally valued evidence of the value of the house which was allegedly destroyed by the Defendant was presented by or on behalf of the Plaintiff.

- 5.1.2. She was allowed to amplify her statement by giving evidence that she was never told about nor shown a notice to quit served on her father.
- 5.1.3. In cross examination, the Plaintiff was not seriously discredited or shaken. She said in cross examination that she paid rent for the lands up to the year 2008 to one José Fernandez Junior but those receipts, which she said she had given her attorney, were never produced and José Fernandez Junior was never called as a witness in this matter. She went on in cross examination to refer to Lewis Hernandez who she said she paid to take care and clean the premises and who she says lives in the area. She did go on to say however that if she knew it was significant she would have brought him as a witness but she did not. No evidence of any payment to Mr. Hernandez was produced.
- 5.1.4. She was shown the photographs which were put in by consent as exhibit number 16 and she admitted that those pictures showed a dilapidated house which is why she said she gave the notice to quit to the tenant to allow her to do renovations after her mother died.
- 5.1.5. She admitted knowing the Defendant and that the Defendant occupied the parcel of land next door.

5.1.6. It is important to note that the Plaintiff was not the executrix of the will of John Mankee but was a beneficiary thereunder. The sole executrix was her mother – Doolarie Mankee – who died without proving the will. The Plaintiff was really the administrator appointed by the court by reason of her application for letters of administration with will annexed which was granted on the 15th August 2003 – **3 months after the issue of the Writ in these proceedings.**

5.2. Urban Mathura:

5.2.1. He was the only other witness for the Plaintiff. Mr. Mathura impressed this court as a witness of truth who had come to state exactly what had happened in the manner in which it happened.

5.2.2. It is clear from his evidence that he rented the house belonging to the Mankee family in 1977 on the said lands paying a monthly rent of \$100.00 and he remained in possession of the house until about May 1998. He also said that in 1978, after John Mankee died, John Mankee's wife [who was Mr. Mathura's cousin] and her daughter [the Plaintiff] came to live in the house.

5.2.3. Even though his rent receipts were not produced for the court, his manner and demeanor in the witness box impressed the court as being credible.

5.2.4. The court accepts his evidence especially since material parts of it were corroborated by the Defendant and her witness.

5.2.5. As such, the court accepts that he remained in possession of the house until about May of 1998.

5.3. The Defendant:

5.3.1. In her witness statement, the Defendant says that she had been living in the area from as far back as 1972 at the home of her

mother but that she did not know John Mankee to be living in the next door lot which is the subject of these proceedings in the 1970s even though she resided in the area from 1972 to 1976. From 1976 she went to live in San Fernando. In 1982 she got married and continued living in San Fernando although she regularly visited her mother in the area. She said that after her husband retired in 1990, she returned to the village to take care of her mother and lived next door to her home.

5.3.2. She said that all through the years her mother complained about the nuisance created by the neighbors [presumably the persons in occupation of the lot which is in question] because they never kept the property in a proper manner and they refused to do anything to control the wastewater flowing from their lot across to her yard. This clearly shows that there were persons in occupation of the subject lot over the years.

5.3.3. She went on to say in her witness statement that the house had been unoccupied or abandoned for something like nearly 20 years. This statement was dated 20 February 2008 so that 20 years from that date would be the year 1988. What is very interesting is that in cross examination, she admitted that she knew Urban Mathura and that he had lived in the house until he left sometime in 1998. This is in stark contradiction to her assertion that the house was not occupied since around 1988 -- a discrepancy of about 10 years. It is also noteworthy that the Defendant did not mention Mr. Mathura living in the property at all in her witness statement even though she readily admitted that he did in cross examination. She also said that she knew John Mankee was the owner of the house.

5.3.4. In her witness statement, the Defendant gave no evidence about the grant of a tenancy to her in 1994 as pleaded in the defence.

- 5.3.5. She says she approached Ruby Fernandez, who was appointed as the agent to conduct all business relative to the said lands, in or about 1999 and that she entered into an agreement with her to rent the lands as she wanted to build a house on that spot and that in fact she bought the lands under the terms of the Land Tenants [Security of Tenure] Act. This is one of the clearest indications that there was a tenancy existing on the operative date of the relevant act -- 1 June 1981 -- which the landlord/landowner and the Defendant acknowledged. She said that shortly before she got the deed, she found out that building taxes have not been paid in the house since 1984 and that she paid the building taxes from 1985 to the date of the conveyance. This therefore suggests that up to 1984 building taxes were paid by someone in respect of the house that clearly was in existence on the operative date of 1 June 1981.
- 5.3.6. In paragraph 7 of her witness statement, the Defendant admits that some time after the year 2002, she employed a building contractor in the area to demolish the building on the land and that prior to the demolition of the building, she took some digital photographs and those are the photographs which were put in by consent as exhibit number 16. Therefore, by her own admission, the Defendant admits to having demolished the house which was standing on the subject lot and therefore provides evidence of the Plaintiff's claim.
- 5.3.7. In cross examination she admitted that the Plaintiff's mother -- Doolarie -- lived in the house until she died in 1997 and that she -- Doolarie - had an option to purchase the lot which she never took up. This is clear evidence that the Defendant was aware of an existing tenancy in relation to the Mankees since that could be the only way that such an option to purchase could have arisen in law. It also clearly shows an acknowledgment by the

Defendant that at least until 1997, there was a recognized tenant for the lands and that those lands were occupied up until 1998 as mentioned above. Even further, she was aware of the Plaintiff from her own mother and she was even given the Plaintiff's telephone number by the landlord's agent. She went on to say that she spoke to the Plaintiff after she purchased the lands but did not try to contact her before she purchased. No reason was given for this delay and one could only assume the reason.

5.3.8. Very importantly, she admitted that the whole estate was populated with tenants and that they had stopped paying rent for many years and that they had all been given the option to purchase their lots.

5.4. Francis Lezama:

5.4.1. He says that he lived next door to the subject lands for his entire life and he gave a history of how the house was built and who occupied it over the years which was not challenged in cross examination. He confirmed that one Juan Rosales had been in occupation of the lands and this seems to be the same person referred to in the receipts put in by consent as exhibits 1 and 2 in relation to the purchase of the dwelling house on the subject lands by John Mankee in 1966.

5.4.2. The Defendant is apparently his niece as he said at paragraph 3 that his sister's name was Antonia – the same name given by the Defendant for her mother – and he said that Antonia lived next door to the subject lands and that she complained over the years about the nuisance created by the occupiers of the house on the subject lands which corroborates the Defendant's evidence.

- 5.4.3. Strangely, and word for word almost, he said in his witness statement that it was easily 20 years since the house was abandoned yet, in cross examination, he said that that he could not contradict the allegation that Urban Mathura left in 1998. Like the Defendant there was a discrepancy of 10 years from the date when he said in his witness statement that the house was abandoned -- that is 1988 -- and the date when it was suggested to him that Mr. Mathura actually left the property which was something that he said that he could not contradict. Further, in cross examination, he accepted that he knew that John Mankee was renting that lot.
- 5.4.4. All in all, Mr. Lezama confirmed that the lot next door was tenanted to Mr. John Mankee and that it was occupied up to 1998.

5.5. Ruby Hernandez:

- 5.5.1. She was the most unimpressive witness who clearly showed that she had something that she wanted to hide. She was cagey, hesitant and incredible in the witness box.
- 5.5.2. In her witness statement she asserts that she was appointed by David Constantine Hernandez to act as agent for the lands by virtue of deed number to 20994 of 1983. That deed was a power of attorney from David Constantine Hernandez to Ruby Hernandez to "*manage or superintend the management of all the estate and hereditaments of whatsoever tenure of or to which I am now seized and possessed respectively situate at Maracas, St. Joseph in the Ward of Tacarigua in Trinidad.*" There was the attendant power to collect rents and to sell land to the tenants. According to her and to the deed which was produced and put into evidence by consent, David Constantine Hernandez is now the owner of the lands after the death of

Francisco Antonio Hernandez in 1968 and José Hernandez in 1980. She acknowledges that up to José Hernandez' death in 1980, he was the one who cared for and managed the property - presumably the entire estate. After his death, David appointed her to look after the estate by the said power of attorney.

5.5.3. She is the only witness who referred to the notice to quit dated 1 January 1976 but it was incumbent upon the Defendant to prove that the notice was in fact served on Mr. John Mankee and this was never done by any of the witnesses.

5.5.4. Her evidence with respect to the occupation of the lands was very questionable and was quite unacceptable. In her witness statement at paragraph 5 she said:

"I am aware that the said John Mankee died in the latter half of 1977 and do not know if anybody lived in the old house after his death as I only visited Santa Rita Estate occasionally."

In cross examination she said that she visited the lands every 2 to 3 months and that she never saw anyone living in that house. She said she first went to the lands in 1983 and never so anyone living in the house and she went on to say in cross examination that she even had tenant's meetings and no one ever came from there. She then further went on to say that she wrote to the Mankees to purchase the lands and that she was offering the lands to people who were occupying the lands. Why would she offer the lands to the Mankees to purchase if, as she alleges, she was offering the lands to people who occupying the lands? It had to mean that she recognized the Mankee family to be in occupation of the lands and this could be the only reason why the Defendant said that she received the Plaintiff's telephone number from Ruby Hernandez. In fact, the Defendant and the other witness Mr. Lezama both acknowledged that Mr. Mathura and his family were in the property up until 1998. In those

circumstances, I do not believe Ruby Hernandez to be truthful when she says that she did not know if anybody was in occupation of the old house. I find that she was being deliberately untruthful in failing to recognize whilst in the witness box that the house was occupied up to Mr. John Mankee's death and even after he died and that when she said in cross examination that she never so anyone living on the premises, that could not have been so. The deed which she signed under the power of attorney on behalf of landowner in favour of the Defendant in 1999 specifically recognized that the lands were subject to the provisions of the Land Tenants [Security of Tenure] Act 1981 and that only could have arisen if there was an existing tenancy on 1 June 1981. That tenancy could not have been the Defendant's since there was no allegation that the Defendant was a tenant since 1981 or prior thereto so that it had to have been the tenancy of John Mankee and his estate, after his death, since that was the only person who allegedly was a tenant in relation to that subject parcel on the operative date.

The law:

6. The Wills and Probate Ordinance [which was assented to on 1 September 1959] provides as follows :-

6.1. At section 2 –

“law of England” means the law of England as in force on the 16th of May 1921;

6.2. At section 4:

“In so far as any Act or Ordinance and rules and orders of Court do not extend, the Court shall be guided in the exercise of its jurisdiction under this Act by the jurisprudence and practice for the time being of the

Probate Division of the High Court of Justice in England so far as the same may be applicable.”

6.3. At section **12**:

“Where a person appointed executor by a Will—

(a) survives the testator but dies without having taken out probate of the Will; or

(b) is cited to take out probate of the Will and does not appear to the citation; or

(c) renounces probate of the Will,

his rights in respect of the executorship shall wholly cease and the representation to the testator and the administration of his estate shall devolve and be committed in like manner as if that person had not been appointed executor.”

[This is the same as in Section 5 of the Administration of Estates Act, 1925 of England]

7. In **Whitmore and Another v Lambert** [1955] 2 All ER 147, [1955] 1 WLR 495, 165 EG 353, [1955] EGD 314, it was said as follows :-

“Section 5 of the Administration of Estates Act, 1925, provides:

"Where a person appointed executor by a will-(i) survives the testator but dies without having taken out probate of the will ... his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor."

Although that section was not in operation when Mr Ingram died, it reproduces the terms of the Court of Probate Act, 1857, s 79, and the Court of Probate Act, 1858, s 16. The new point raised by counsel for the Defendant in this court challenges the validity of the judge's conclusion, particularly his view that s 5 of the Administration of Estates Act, 1925, or its predecessor, the Court of Probate Act, 1858, s 16, afforded an answer to the point. Although the point is new, the present is a Rent Act case and in any event counsel for the Plaintiffs has conceded that counsel for the Defendant ought to be entitled to submit his argument in this court whether or not it was involved in the court below.

.....

Counsel for the Plaintiffs referred us to s 60 of the County Courts Act, 1934, and s

150 of the Supreme Court of Judicature (Consolidation) Act, 1925, and claimed that to admit the evidence in the present case would involve the county court exercising a probate jurisdiction as a matter of procedure which it was not entitled, and did not intend, in any way to do. I do not think that that broad proposition can be sustained in its wide form. It is no doubt perfectly true that you cannot finally make good your title to any property, formerly belonging to a deceased person, by virtue of his testamentary disposition unless that disposition has been admitted to probate. In my judgment, it is no less clear that a person appointed executor or executrix by will can justifiably do a number of things in regard to the property that was in the possession of the deceased, by virtue of the will before that will is proved, even though, because the executor or executrix dies, it never in fact is proved or capable of being proved by virtue of s 5 of the Administration of Estates Act, 1925. For example, he may enter on property which was in the ownership and occupation, or in the occupation only, of the deceased. In support of that a reference may be usefully made to Williams On Executors and Administrators (11th Edn), vol. 1, at p 213, which is as follows:

"Upon the principles stated in the course of the preceding section, it has been held that the executor, before he proves the will, may do almost all the acts which are incident to his office, except only some of those which relate to suits. Thus, he may seize and take into his hands any of the testator's effects, and he may enter peaceably into the house of the heir, for that purpose, and to take specialities and other securities for the debts due to the deceased. He may pay, or take release of, debts owing from the estate; and he may receive or release debts which are owing to it; and distrain for rent due to the testator ... So he may sell, give away, or otherwise dispose, at his discretion, of the goods and chattels of the testator before probate; he may assent to, or pay, legacies; he may enter on the testator's term for years ... "

*Those general propositions represented the state of the law when Mr Ingram died and have not been qualified by the subsequent changes in the law. We were also referred by counsel for the Plaintiffs to a passage from **the judgment of the Judicial Committee of the Privy Council delivered by Lord Parker Of Waddington in Meyappa Chetty v Supramanian Chetty**. The facts of that case are not material for present purposes but in the course of the judgment Lord Parker said ([1916] 1 AC at p 608):*

"It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the court, he is allowed to prove his title."

As regards s 5 of the Administration of Estates Act, 1925, it will be observed that, in the case of a sole executor dying before he has taken out probate, that executor's personal representatives cannot take out probate of the original will so as to relate their title back to the death. In that event, they would have to apply for a grant of letters of administration."

[Emphasis mine]

8. In **Williams and Mortimer**, "Executors, Administrators and Probate", published in 1970 at page 235 the authors say:

"An administrator is a person to whom representation of the deceased is committed by the court in default of an executor. His office resembles that of an executor but, since he has not been selected by the deceased, he is, in general, obliged to give a bond with sureties for the due performance of his duties."

9. Because an executor has been appointed by the testator, the law recognizes him/her as the person trusted by the testator to conduct his/her affairs upon his/her death. As such, that executor stands in the shoes of the testator from the testator's death. However, an administrator is one who is appointed by the Court to fulfill the duties of an executor and is not necessarily a person in whom the testator or deceased (in the case of intestacy) would have reposed such trust and so the process of obtaining letters of administration, with its safeguards of advertisements, the caveat process, etc, provides an opportunity for the appointment of the best available person to carry out that role in the absence of an executor. In such circumstances, the Court does the best it can in the circumstances – bearing in mind the established rules of appointment and those relating to next of kin, etc. and the entire non-contentious probate procedure – to appoint someone to carry on the matters of the deceased. It is only when those Letters of Administration are granted after the procedure designed to safeguard the estate and beneficiaries has been complied with that the administrator gets the power to deal with the estate.
10. In **Walcott v Alleyne** (1990.12.19) H.C.T.92/1985 Hamel-Smith J., after dealing with the issue in relation to an executor as to the executor's right to commence an

action prior to the grant of probate, quite conclusively said that an administrator's right is different from that of an executor's and that the administrator's right is derived from the grant of letters of administration whereas the executor's right is derived from the will itself but requires the obtaining of the grant of probate to establish and sustain title issues [hence his decision to stay the proceedings in that matter to allow the issue of a grant of probate].

11. In **INGALL v MORAN** [1944] KB 160 – The Plaintiff in the action was held to be incompetent at the date of its inception in respect of the issue of the writ, and that the doctrine of the relation back of an administrator's title, on obtaining a grant of letters of administration, to the date of the intestate's death could not be invoked so as to render the action competent.

12. The issue was considered further and confirmed by Singleton LJ in the case of **Finnegan v Cementation Co Ltd** [1953] 1 QB 688 where he also described this approach as a 'blot upon the administration of the law'.

13. In the Privy Council case of **Alexandrine Austin and others v Gene Hart** [1983] 2 AC 640, the law lords, in considering a case from the local Court of Appeal in relation to the Compensation for Injuries Act observed, obiter, that:

"In Ingall v. Moran [1944] K.B. 160, 169 Luxmoore L.J. could not help "feeling some regret." In Hilton v. Sutton Steam Laundry [1946] K.B. 65, 73 Lord Greene M.R., was not "averse to discovering any proper distinction which would enable this unfortunate slip to be corrected." In Finnegan v. Cementation Co. Ltd. [1953] 1 Q.B. 688, 699 Singleton L.J. lamented "that these technicalities are a blot on the administration of the law, and everyone except the successful party dislikes them." Accepting, without approving, the decisions of the Court of Appeal which have been cited, their Lordships see no reason to encourage any extension of their ambit."

Their Lordships said nothing, however, to derogate from the practice referred to.

14. Steps have been taken under the CPR to do away with this technicality. Sadly, however, the rules of the Supreme Court remain unaltered in this regard and this

court is still left with this unfortunate state of affairs in relation to actions commenced by administrators prior to the grant of letters of administration.

15. In these circumstances, it seems that this plaintiff would not have had the capacity to have brought this action on the date when the writ was issued and, in light of the fact that there is no principle of relating back with respect to the grant of letters of administration, it would mean that the plaintiff's claim as the legal personal representative of the deceased cannot stand.
16. Further, however, the court has considered the relevant provisions of the **Land Tenants [Security of Tenure] Act** 1981 and has also looked at the case of **Ghany Investments Ltd v Minelva Ward** [unreported] CA No. 5 of 1989 - see page 3 which defines "chattel house" and the meaning of "tenant" which specifies that the interest of such person could be acquired by original agreement or by assignment or by operation of law or otherwise and includes a tenant at will and a tenant at sufferance.
17. The court has also considered what the Privy Council had to say in **Harripersad Ramlogan v Chaitlal Ramlogan & Others** PC No 54 of 1987 in respect of tenants at will:-

"It may, however, first be helpful to recall the manner in which a tenancy at will is created. This is succinctly described in The Law of Real Property by Megarry and Wade, 5th edition (1984) at page 654:-

"A tenancy at will arises whenever a tenant, with the consent of the owner, occupies land as tenant (and not merely as a servant or agent) on the terms that either party may determine the tenancy at any time. This kind of tenancy may be created either expressly or by implication. Common examples are where a tenant whose lease has expired holds over with the landlord's permission, without having yet paid rent on a periodic basis; where a tenant takes possession under a void lease, or under a mere agreement for a lease, and has not yet paid rent; where a person is allowed to occupy a house rent free and for an indefinite period; and (usually) where a purchaser has been let into possession pending completion. Unless the parties agree that the tenancy shall be rent free, or the tenant has some other right to rent free occupation, the landlord is entitled to compensation for the 'use and occupation' of the land. But if rent is agreed upon, it may be distrained for as such in the usual way."

18. The court has, finally, also considered the decision in **Sugrim Kumar v Namdeo Ramcharitar** (HCA No. 3924 /89) per Archie J at pages 8, 12, 13 & 14 which is quite illuminating in respect of the abandonment of tenancies under the **Land Tenants [Security of Tenure] Act**.
19. Having reviewed these matters, it seems clear to this court that, especially in the light of the evidence led before this court, that on 1 June 1981 there was an existing tenancy in the estate of the deceased which created a statutory tenancy under the Act and which statutory tenancy was recognized by all the relevant parties. As a result, the court has made the findings set out hereafter.

Findings:

As a result of the evidence referred to above and bearing in mind the law as referred to above, the court finds as follows:-

20. John Mankee purchased the house on the subject lands from Juan Rosales in 1966. This evidence was unchallenged and is so accepted by this court.
21. John Mankee was a contractual yearly tenant and not a tenant at will up to the year 1977 at least as set out in the receipt exhibited as number 3. This is so especially in light of the statement of the Privy Council referred to in **Harripersad Ramlogan v Chaitlal Ramlogan & Others** *supra*. The elements of a tenancy at will were never proven and that the burden was on the defendant to have proven that tenancy at will. As such, in light of the previous tenancy receipts provided by the plaintiff, it has to be that the said John Mankee was a contractual tenant.
22. That tenancy was never determined as it was never proven that the notice to quit [which in itself is defective] was in fact served.
23. As a result, and even after the death of John Mankee, his estate was entitled to the benefit and burden of this contractual yearly tenancy in the absence of an

- effective Notice to Quit – [see the case of **Wirral Borough Council v Smith & or** 43 P&CR 312, 80 LGR 628, 262 EG 1298, 4 HLR 81, [1982] EGD 522]
24. On the 1st June 1981, that tenancy was converted to a statutory tenancy by virtue of the Land Tenants [Security of Tenure] Act 1981 as acknowledged by the landowner and referred to in the Deed of Conveyance to the Defendant.
 25. The property was not abandoned since 1985. In fact, despite the Defendant's plea in her defence, the house remained occupied past 1985 and up until 1988 and was never deemed unfit for human habitation and there was no evidence that the house ever fell into complete ruin.
 26. The house was empty since May of 1998. It was suggested to the Plaintiff in cross examination that what she was saying about Lewis Hernandez was not true but the alleged abandonment from 1988 was never established on a balance of probabilities.
 27. There is no evidence of any surrender of the tenancy – express or implied [see **Brown v Brash and Ambrose** [1948] 2 KB 247. The absence from the property was not “sufficiently prolonged or unintermittent to compel the inference, prima facie, of a cesser of possession or occupation” to place the onus on the tenant to repel the presumption that his possession had ceased. The onus remains on the Defendant in the instant case and the Defendant has not discharged this onus.
 28. In the circumstances, the deed in favour of the Defendant could only have been in respect of the reversion alone and was subject to the existing tenancy of the estate of John Mankee.
 29. As such, the entry upon the lands and the demolition of the house thereon amounted to a trespass and the Plaintiff is entitled to damages for trespass and to the injunction sought.
 30. However, the action cannot be sustained because of the fact that at the time of the commencement of this action, the Plaintiff had not yet obtained a grant of letters of administration. In those circumstances, regrettably, the Plaintiff did not have the necessary *locus standi* to bring this action. As a result the Plaintiff's claim must be dismissed. However, this is an occasion when costs should not follow the event. The Defendant has acted in a high handed and unlawful manner taking the

law into her own hands while completely misunderstanding the rights attached to this piece of land and the only reason that this court cannot make an order against the Defendant is because of the technicality in respect of the Plaintiff's status to bring this action. If this court could have made an order for costs against the Defendant notwithstanding the fact that the Plaintiff's action is dismissed it would have but that would be going too far. In those circumstances, this court is minded to make no orders as to costs.

ORDER:

31. The Plaintiffs claim is therefore dismissed with no orders as to costs.

Post Script:

32. Now that this issue has been decided, there is nothing preventing the Plaintiff from commencing a new action for the declaration sought which, it is suggested, should now proceed without technical impediment. Bearing in mind what has been found in this matter by this court, the Defendant ought, however, to recognize the rights of the Plaintiff which is that the Plaintiff would, in this court's view, otherwise than for the technicality in respect of her *locus standi*, have been entitled to a declaration as to a statutory tenancy and would have been entitled to damages for trespass. As such, it is suggested that it would be wise for the Defendant to prevent further litigation [which would not be statute barred in the circumstances of this case] and to take steps to regularize the Plaintiff's clear right to the statutory tenancy without further delay.

Devindra Rampersad
Judge