

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2014-02363

BETWEEN

PAMELA DAVIDSON

ADRIAN JOHN

TREVOR RAMBALLY

GILLIAN BLEASDELL-ALEXANDER

Claimants

AND

LENNOX ADOLPHUS JOSEPH

Defendant

Before the Honourable Mr. Justice Seepersad

Date of Delivery: March 8, 2019

Appearances:

1. Mr. Joseph instructed by Mr. Robert Boodoosingh for the Claimants.
2. Ms. Karen Des Vignes for the Defendant.

ORAL DECISION REDUCED INTO WRITING

1. Before the court for its determination was the contempt application filed by the claimants against the defendant on February 8, 2019. The application concerned the defendant's non-compliance with the court's order dated May 2, 2016 which stated as follows:

"It is declared that the Claimants are entitled to a right of way over the roadway from the parcel of land situate in the Ward of St. Anns, in the island of Trinidad, being part of the Celestine Estate comprising of several lots occupied by the Claimants and other land tenants and other land owners immediately to the South of the public roadway known as La Canoa Road and now known as Hill Crest View, this being the right of way that is currently in existence.

It is ordered that:

1. An injunction is granted restraining the Defendant whether by himself and/or his servants, agents, employees or however otherwise from:
 - (i) In anyway blocking and/or hindering the use of the said right of way by the said Claimants; and/or
 - (ii) From interfering in anyway with the concrete and steel bridge that stands across the said right of way.
 2. The Defendant do pay the Claimants' costs in the sum of Fourteen Thousand Dollars (\$14,000.00)."
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2. It is evident to the court that the defendant did in fact breach the mandatory order issued by the court in relation to the access route that formed the subject matter of the court's decision. The defendant was however afforded an opportunity to remedy same and upon the occasioning of the court's site visit earlier today it was obvious that the breach had been remedied insofar as

- the defendant restored a roadway that could accommodate at least one vehicle without the risk of that vehicle slipping into the valley.
3. The court needs to underscore the need for strict compliance with mandatory orders and with declarations issued and it is rather unfortunate that Mr. Joseph dug up the roadway and he materially interfered with the access route used and enjoyed by the claimants. At the time of issuing its order, the manifest intent of the court was to ensure that the road would enable single lane traffic as that was the condition of the road when the court had its first site visit before the substantive judgment was issued. The defendant's disregard for the court's orders is symptomatic of the degree of unlawfulness that seems to have permeated our nation and such a circumstance is one which the court will view from a no-tolerance perspective.
 4. The actions of the defendant also demonstrated a degree of selfishness as he displayed no concern for persons living up the roadway or for how they would traverse same to access their homes when he interfered with the road. He however demonstrated an appreciation of the seriousness of the application before the court at the first hearing of the instant application and he remedied the breach which he occasioned, by repairing the roadway.
 5. While the court is clear in its mind that there was in fact a breach of the court's order which amounted to a contempt of court, the remedying of the situation required the court to determine the best way to deal with the application. The vindication of the rule of law is of paramount importance but the court in the exercise of its mandate must be guided by a moral conscience, by an acute sense of fairness and must act in a way that is devoid of bias and exercise proportionality. Consequently, it cannot and ought not to lose sight of the practical realities on the ground.

6. This matter is one in which the parties must learn to co-exist because the claimants and the defendants are neighbours and the defendant is the landowner upon which the court has determined that there is a right of way/access route. When the court therefore balanced the considerations, it feels that no useful purpose would be served by incarcerating the defendant though this was an option which the court may have entertained if the Defendant did not remedy the breach. It is also evident that for the sake of absolute clarity, that the order issued in the judgment needs to be amended so as to reflect that the roadway upon which the claimants have the unrestricted right to traverse, shall be a roadway measuring 8 feet from the eastern to western end with a further 1 foot area to be used to shore up the roadway so as to prevent slippage.
7. Having gone to the site visit today and having seen how the road has been restored by the defendant, the measurements which were taken clearly show that the road is now 8 feet wide and a vehicle such as a van can pass upon same. There is also a 1 foot area to the edge of the road on the side of the valley.
8. Therefore, the order of the court is that pursuant to its inherent jurisdiction and under the liberty to apply provision the court will clarify its initial order and the court declares that the roadway shall be a maximum width of 9 feet, east to west with 1 foot of same being the area upon which shoring up is to be done by the claimants so as to prevent slippage.
9. With respect to the contempt, while the court is of the view that the actions of the defendant were contemptuous in nature, no order for incarceration is made. The defendant must however pay to the claimants' costs associated with the contempt application because it was clear that the claimants were

within their rights to initiate the said proceedings because of the defendant's acts.

10. The court shall assess the cost of the application based on the length and complexity of the issues and the time spent in court and at the site visit. Accordingly, the court orders that the defendant shall pay the claimant's costs in the sum of \$12,500.00.

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FRANK SEEPERSAD
JUDGE