

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. C.V. 2017-00560**

**Between**

**KENNEDY STEWART**

**Claimant**

**And**

**BARBARA SIMON**

**(Erroneously sued as BARBARA MUSSO SIMMONS)**

**First Defendant**

**SELWYN PHILLIP**

**Second Defendant**

**SELWYN JOSEPH**

**3<sup>rd</sup> Named-Party/Ancillary Claimant**

**Before the Honourable Mr. Justice Frank Seepersad**

**Appearances:**

1. Mr. Pope for the Claimant.
2. Ms. Ollway instructed by Mr. Thomas for the Defendant and Ancillary Claimant.

## **REASONS**

The evidence revealed that the Claimant initially went into occupation of the lands by virtue of a tenancy arrangement. That agreement existed between the then owners of the land and his mother. The Claimant's position was that he eventually took over that tenancy. Prior to the divesting of her interest in the subject parcel of land, Barbara Simon, in cross examination, accepted that rent was last received twelve years prior, from the Claimant, pursuant to the tenancy arrangement that existed. It was also not in dispute that Ms. Simon no longer has any proprietary interest with respect to the subject land and that same was sold to the Ancillary Claimant, Selwyn Joseph.

Based on the evidence adduced, the court found that a tenancy which existed was a statutory tenancy vis-a-vis Mr. Stewart's mother and the land owners. The court found as a fact that rent was last received approximately twelve years ago. Pursuant to the provisions of the Statutory Tenure Act, a person who rented lands and erected a dwelling house on those lands became entitled to a thirty year lease and then to a renewal for a further thirty years subject to the filing of requisite statutory notice in 2010. From the commencement of the act and until 2010, whether or not the tenant paid rent, the landlord was deprived of the right to take possession of the land without going to the board as contemplated and set up under the act.

The tenant also had a right to purchase the subject land at half of the market value. After the expiration of that first thirty year period the law imposed upon the tenant an obligation to renew the statutory tenancy by informing the landlord of his or her intent to remain in possession of the said lands. There was in fact, on the national level, much discussion in relation to that issue which resulted in parliament extending the time period within which notices should be sent out. Advertisements were also placed in the newspapers.

Before this court, there is absolutely no evidence that this statutory tenancy was renewed. In the management of this matter, the court extended the time period for service, relieved the Claimant from sanctions and adduced the Claimant's witness statement into evidence

though it was not served. The Claimant/Defendant on the Ancillary claim accepted in cross examination that his witness statement made absolutely no mention of either an attempt to or of any successful renewal of the statutory tenancy. There has been a plethora of Judicial decisions as to the effect of the failure to renew a statutory tenancy and as harsh and oppressive as it may be, the law is that anyone who failed to renew the statutory tenancy as provided for under the law, lost any statutory protection in relation to the subject land.

In the circumstances, this court found as a fact, on a balance of probabilities, that the statutory tenancy which existed in favor of the Claimant's mother and to which the Claimant would have had a legal entitlement was not renewed in accordance with the relevant law.

Accordingly, from the date as outlined in the legislation in 2010, the Claimant lost any legal protection vis a vis his occupation of the said lands. Mr. Selwyn Joseph acquired the land prior to 2010 and his acquisition was subject to the statutory tenancy, however, that statutory tenancy was not renewed. If the Claimant was unaware of the transfer of interest in the land, there was still no evidence of the service of a renewal notice on the person whom he regarded as the landowner.

Accordingly, with effect from May 2010 Mr. Stewart lost any legal protection in relation to the subject land and once asked to vacate same, he became a trespasser. In 2016 Ms. Simon removed a structure over the roadway leading to her house and she availed herself of the benefit of the remedy of self-help, as a trespasser had no right to interfere with an access route so as to prevent any of the adjacent landowners from accessing their respective property. The court noticed some level of contradiction between what was actually referred to as the shed but accepted that on the evidence, Ms. Simon was not present when the removal was done as that removal was orchestrated and carried out by Mr. Phillip. Mr. Phillip indicated the structure he removed was partially covered and when he removed the portion affixed to a mango tree, the rest fell down. Values of the shed were placed at \$45,000.00 and \$15,000.00 labor. The court, having looked the photographic evidence which was adduced and having taken into account the evidence of Mr. Phillip, who the court found ultimately to be a credible witness, the court found as a

fact that the structure which was removed was not a structure valued in accordance with what was outlined in the pleadings. It is more likely than not that the shed was not complete and the material used was not destroyed when the shed fell. Accordingly, there is no entitlement to compensation. The court is also of the view that there is no need to grant any of the relief as sought in the counterclaim. Ms. Simon is no longer an owner of the lands and can have no interest in relation to any declaratory relief. The counterclaim is therefore dismissed with no order to costs. The Claimant's claim is dismissed and the Claimant is to pay costs in accordance with part 67 of the CPR to be calculated on a prescribed costs basis the claim being deemed to be valued at \$50,000.00 in the sum of \$14,000.00. There would be stay of execution of the payment of costs of twenty eight days. Before the court is also the Ancillary Claimant's claim for possession of the said subject parcel of land and in support of the claim the Ancillary Claimant Selwyn Joseph testified. The finding of the court as it applied in relation to the Claimant's claim applies in equal measure to the Ancillary claim. Pursuant to the existence of a statutory tenancy between Mr. Stewart's mother and the former land owners, Mr. Joseph would have been required to honor that statutory tenancy while it was in effect. That dynamic changed in 2010 when there was a failure to renew the statutory tenancy. From that point in time the Claimant had no legal entitlement to remain on the subject parcel of land. The court noted that exhibited to the Ancillary Claimant's witness statement as exhibit SJ5 was a letter penned by Mr. Theodore Guerra SC dated the 4<sup>th</sup> October, 2010 which called on Mr. Stewart to vacate the premises because he was a trespasser. As at October 2010 Mr. Stewart became a trespasser. In those circumstances, there can be no legal justification for Mr. Stewart to remain in possession of the subject parcel of land. For the reasons that have been outlined, the Ancillary defendant Kennedy Stewart is to deliver up vacant possession of ALL and Singular that certain piece or parcel of land situated in the Ward of St. Anns in the Island of Trinidad comprising ONE THOUSAND AND SEVENTY THREE POINT ONE SQUARE METERS as described in the Ancillary claim at paragraph 1 and which property is known as LP No. 4 Coffee lane, Cantaro Village, Upper Santa Cruz. There is inadequate evidence before the court so as to justify an award in relation to mesne profits. Costs on the Ancillary claim will be on a prescribed cost

basis and on the Ancillary claim the Ancillary Defendant, Kennedy Stewart is to pay to the Ancillary Claimant Selwyn Joseph the sum of \$14,000.00.

Leave is granted to the Ancillary Claimant to issue a writ of possession and the Ancillary Defendant, Mr. Kennedy Stewart, is to deliver up a vacant possession of the said premises on or before the 31<sup>st</sup> October, 2018.

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**FRANK SEEPERSAD**

**JUDGE**