

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
Port of Spain**

Claim No. CV2014-01253

BETWEEN

HEMCHAND SURRATTAN

First Claimant

YVONNE SURRATTAN

Second Claimant

AND

JOYCE PERSAD

Defendant

Before the Honourable Mme. Justice Jacqueline Wilson

Date of delivery: July 30, 2018

Appearances:

Ms. Gail Persad Attorney at law for the Claimants

Mr. Lemuel Murphy Attorney at law for the Defendant

JUDGMENT

1. On 14 May 2018 the court delivered its judgment in this matter. Upon delivery of the judgment the parties sought an opportunity to file written submissions on the quantum of damages that should be awarded to the Claimants in trespass. The parties also sought to file

submissions on what they considered to be the appropriate order for costs upon the dismissal of the Defendant's counterclaim. Written submissions were filed by the Claimants and the Defendant on 26 and 28 June respectively. The final judgment is now provided.

2. The Claimants are the registered owners of 6 acres of land situated in Toco, Trinidad (the property). They are the brother and sister of the Defendant, against whom this action in trespass is brought. The property was transferred to the Claimants by their father, Sydney Surrattan, in July 2013. The Claimants allege that, prior to the said transfer, in or around February 2011 the Defendant was granted permission by their father to occupy and construct a house on one lot of land that forms part of the property but proceeded to occupy a substantially larger area of approximately 10 lots for which no authorisation was granted (the disputed parcel). The Claimants allege that the Defendant constructed a gate that blocks access to the property and that the Claimants efforts to gain access are met with hostility, aggression and abuse by the Defendant and her husband. The Claimants allege further that the Defendant, in attempting to widen the existing track that provides access to the property, excavated a hill, creating a steep gradient and causing damage and erosion to the property.

3. The Claimants seek:

- 1) An order that the Defendant and/or her agents remove the gate that blocks the established access to the property;
- 2) An order restraining the Defendant and/or her agents from erecting any structure designed to block the established access to the property;

- 3) An order restraining the Defendant and/or her agents from trespassing onto any other portion of the property by her occupation in whatsoever manner, other than the one (1) lot on which she is allowed to construct her house;
 - 4) Damages for trespass to those parts of the property that the Defendant and/or her agents have occupied without due authority and for the damage done to the property by cutting and removing the dirt thereon;
 - 5) An order restraining the Defendant and/or her agents from harassing, threatening, abusing or in any way interfering with the Claimants and/or their agents in any way preventing the Claimants from the peaceful enjoyment of their property.
4. The Defendant denies that her permissible occupation of the property is limited to one lot and asserts that her father, the said Sydney Surrattan, granted her permission to occupy the disputed parcel, both verbally and as recorded in a sworn and unsworn declaration signed by him in February 2011. The Defendant states that the sworn declaration was signed at the house of a Commissioner of Affidavit in St. Augustine, one Mr. Baboolal, while the unsworn declaration was signed at her father's house.
 5. The Defendant admits excavating the land to provide improved access to the property but denies the allegation of erosion or damage. The Defendant states further that she has invested considerable time, effort and expense in clearing the property and in planting crops and rearing poultry.

6. The Defendant counterclaims against the Claimants for the following relief:

- 1) A declaration that the Defendant is entitled to exclusive possession and occupation of the disputed parcel and/ or alternatively that the Defendant is by equity entitled to a share in the property in a portion to be determined by the Honourable Court.
- 2) An injunction restraining the Claimants, their servants and/or agents from entering upon and/ or trespassing and/or remaining upon the disputed parcel.
- 3) Further and/ or alternatively, a declaration that the Defendant is entitled to a lien on the disputed parcel for such sum as the Honourable Court may deem fit, together with interest, costs and damages.

7. The issues arise for determination are:

- 1) Whether the Defendant, as a result of the verbal and written representations of her father has acquired an equitable interest in the disputed parcel; or
- 2) Whether the Defendant has otherwise trespassed on the disputed parcel.

THE CLAIMANTS' EVIDENCE

8. Six witnesses gave evidence on behalf of the Claimants.

9. Mr. Sydney Surrattan was the Claimants' first witness. At the time of trial, Mr. Surrattan was some 81 years old and was said to be in failing health, as a result of which a request was made for him to be relieved from further attendance after giving his evidence.
10. Mr. Surrattan stated that in or around 2011 the Defendant visited him at his home in Cunupia and requested land on which she could build her house. Mr. Surrattan told her that she could build on "the lot of land where Miss Mary lived." Mr. Surrattan stated that the Defendant returned to his home on another occasion and gave him a document to sign, which neither she nor anyone else read to him. Mr. Surrattan stated that he cannot read and that he signed the document in the belief that it was to assist the Defendant in having water and electricity supplied to the property and not for the purpose of giving the Defendant 10 lots of land. Mr. Surrattan denied going to St. Augustine to sign a statutory declaration giving 10 lots of land to the Defendant.
11. Mr. Surrattan was firm and forthright in his response regarding the one lot of land that he gave to the Defendant and which she was intended to occupy. He was adamant in every response in this regard, notwithstanding that he wavered on other occasions when it appeared that he did not fully understand the questions that were asked of him.
12. Ms. Darcel Douglas was the second witness called on behalf of the Claimants. She is the 27-year old granddaughter of Mr. Sydney Surrattan and the niece of the parties to this action. Her mother, Glenda, is their sister.
13. Ms. Douglas stated that she lives in Warrenville, Cunupia, not far away from the Claimants and she grew up knowing the Claimants and had a

close relationship with them. Ms. Douglas stated that she knew the Defendant while growing up and that the Defendant left the area several years ago but recently returned for occasional visits, when she would spend the night at the Douglas' residence.

14. Ms. Douglas stated that sometime in 2011 the Defendant visited her at home in Cunupia and asked her to sign a type-written document. The Defendant told her that Mr. Surrattan had given her (the Defendant) a piece of land in Toco and she wanted Ms. Douglas to sign the document as a witness. Ms. Douglas stated that she did not see Mr. Surrattan sign the document but observed his name typewritten at the top of the document and what appeared to be a signature at the end. Ms. Douglas stated that she did not read the entire document before signing it, but read only the first paragraph and there were no witness signatures on the document. Ms. Douglas she stated that her brother was present when she signed the document but the Defendant did not show the document to him. She stated further that her mother, Glenda, returned home after she had signed the document that her mother read the document in the Defendant's presence.
15. Mr. Joseph Vaal was the third witness on behalf of the Claimants. He stated that he was a retired linesman and grew up in Toco and lived there until the age of eighteen or nineteen when he moved to Carenage and then to D'Abadie where he currently resides. Mr. Vaal stated that he makes regular visits to family and friends in Toco and stays at the same house where he was born and grew up.
16. Mr. Vaal stated that he knows the Surrattan family and grew up in the same area with them. He stated that he is familiar with the property and played there regularly with the First Claimant as a child. He stated

that the Surrattan family home (the family home) was located on a hill on the same location where their sister Carmala has now put up a small wooden house and that when the Surrattans lived at the family home a woman known as "Miss Mary" lived in a house located to the front of the family home overlooking the main road.

17. Mr. Vaal stated that the Defendant has erected a foundation on the location where Miss Mary lived and that the Defendant lives in a small wooden house constructed on the dirt road that was used to provide access to the family home. He stated that the dirt road leading to the family home was about 4 to 6 feet wide at the end of which it narrowed to a short cut that was used to climb up to the family home. Mr. Vaal stated that the dirt road has been excavated leaving a cliff and that it is now impossible to climb up to the family home from the dirt road. He stated that he saw the excavation on an occasion when he went to purchase eggs from the Defendant.
18. Ms. Carmala Ramlogan was the fourth witness called by the Claimants. She is the sister of the parties to this action and the daughter of Mr. Sydney Surrattan. Ms. Ramlogan stated that she was born in Toco and spent her childhood there before moving to Cunupia. She stated that Miss Mary lived in a small wooden house located at the front of the family home overlooking the main road and that a dirt road with a gradual uphill gradient was used to gain access to the family home and Miss Mary's house. The dirt road got narrower as it ascended and was accessible by car for a certain distance before getting too narrow. Thereafter the family home was accessible only by foot using a shortcut.
19. Ms. Ramlogan stated that the Defendant excavated the dirt road to widen it and that the steep gradient created by the excavation makes it

impossible to gain access to where the family home stood, using the shortcut as before.

20. Ms. Ramlogan stated that her father gave her permission to build a house on the location where the family home stood previously, and that in June 2012 she, her father and her husband started to clear the land in order to build the house. At that time the Defendant was already in occupation of the property, having built her house on the dirt road that lead to the family home.
21. Ms. Ramlogan stated that between June and September 2012, she and other family members made a number of visits to clear the land and that the Defendant was cooperative with them during that time. However, the relationship deteriorated in or around April 2013, shortly after construction began, when a backhoe used by the Defendant to excavate the road buried some of Ms. Ramlogan's construction posts.
22. Ms. Ramlogan stated that construction on her house continued between April and November 2013, when in November she, her husband and her uncle came across a galvanize gate blocking their entrance to the property. After making telephone calls to the Defendant and a report at the Police Station Ms. Ramlogan and the other family members eventually got permission from the Defendant's husband to gain access to the property and were able to take their building material to the house. They did not return for several months, until receiving a court order that allowed them to obtain a key for the gate from the Defendant.
23. On their return, in or around August 2014, Ms. Ramlogan and other family members observed that construction material and other items

were missing from in and around the house. The Defendant disclaimed any knowledge of what had transpired and the family members made a report to the police. Work on the house continued for several months and in April 2015 Ms. Ramlogan and family members were blocked from gaining access to the house by items that were deposited in the pathway. A month later they were again blocked from gaining access by the Defendant's husband. The Defendant and her husband are alleged to have verbally abused Ms. Ramlogan on those occasions.

24. In cross examination Ms. Ramlogan denied convincing her father to go back on his promise of giving 10 lots of land to the Defendant. Ms Ramlogan denied that there was any other entrance to the property other than through the gate constructed by the Defendant.
25. The First Claimant, Mr. Hemchand Surrattan, was the fifth witness to give evidence on behalf of the Claimants. The First Claimant stated that he owns the property in equal shares with his sister, the Second Claimant, and that the property was transferred to them as a gift from their father after the family experienced problems with the Defendant on the property. The First Claimant stated that although the property is in the Claimants' names, they consider the property to be family land as family members grew up there and visit the property on occasion.
26. The First Claimant stated that he first became aware that his father had given the Defendant permission to build a house on the spot where Miss Mary lived when problems with her occupation began. He stated that he was present when his father accompanied a surveyor to the property and identified the lot of land that was given to the Defendant. He stated that the surveyor marked off the lot of land that was identified by his father. At that time the Defendant's foundation was already built and

the surveyor measured around it. In the said survey plan the area is demarcated as comprising 465 square metres or approximately 5,005 square feet.

27. In cross-examination the First Claimant stated that the grading the road by the Defendant has made access to the property convenient in dry weather but in rainy conditions the road became slushy. He also stated that the steep terrain of the property made it difficult to build another track to gain access to his sister Carmala's house.
28. The Second Claimant, Ms. Yvonne Surrattan, was the sixth witness to give evidence on behalf of the Claimants. Ms. Surrattan stated that in February 2011 she received a telephone call from her sister, Glenda, who told her that the Defendant had visited her home earlier that day with a document from their father.
29. Ms. Surrattan stated that about two weeks later she received copies of two documents from the Defendant's husband, both of which were undated. One of the documents bore her father's signature and the signature of Glenda's daughter, Darcel Douglas, while the other document bore her father's signature with a space left blank for execution by a Commissioner of Affidavits.
30. Ms. Surrattan stated that shortly thereafter she, her father and sister, Glenda, visited the offices of Attorneys-at-law in Chaguanas, who prepared a letter to the Defendant stating that Mr. Sydney Surrattan did not sign any document in the presence of a Justice of the Peace or of Ms. Darcel Douglas. Ms. Surrattan gave the letter in a sealed envelope to a neighbour for delivery to the Defendant.

31. Ms Surrattan stated that in or around April 2012, the Defendant contacted her for permission to obtain the connection of electricity and water to the property. Ms. Surrattan prepared letters to the respective authorities, T&TEC and WASA, to facilitate the Defendant's request.
32. Thereafter Ms. Surrattan became aware of two statutory declarations which appeared to be copies of the same documents she had received previously from the Defendant's husband. One document now bore the signature of an additional witness and the other bore the signature, date and stamp of a Commissioner of Affidavits.
33. In cross examination Ms. Surrattan admitted that she was not present when her father gave the Defendant permission to live on the property but stated that he told her he had done so in early 2011. Ms. Surrattan explained that she gave permission to the Defendant to obtain the supply of water and electricity to the property after becoming aware that the Defendant was not on the designated location because the Defendant required utilities for her home. Ms. Surrattan stated that she last visited the property in March 2016, when she saw the wooden house constructed by the Defendant and the concrete foundation that was laid by her. Mr. Surrattan stated that she did not see any fruit plants and was not aware whether the Defendant was selling food crops.

THE DEFENDANT'S EVIDENCE

34. The Defendant gave evidence on her behalf but did not call witnesses. She stated that in or around October 2010, she visited her father's house in Cunupia and her father told her in the presence of the Second Claimant and two other siblings to take 10 lots of land at the front of the property and that her siblings made no objection.

35. The Defendant stated that in or around January 2011 she hired workers to cut down bush and trees so that she could cut a road on the property. She stated that she tried to keep a record of the expenses incurred but was unable to find it. She stated that upon the advice of a lawyer she took a type-written document to her father to sign. He signed and dated the document in a shed at his home in Cunupia and his signature was witnessed by his granddaughter, Darcel Douglas, and one Randy Banwarie who was also present. Her father then took her to a Commissioner of Affidavits in St. Augustine, one Mr. Baboolal, who prepared a statutory declaration in the same terms as the other document. The statutory declaration was signed by her father and stamped by Mr. Baboolal.

36. The Defendant stated that after receiving the statutory declaration she began to cut an access road to the disputed parcel using a track that she had cleared earlier that year. She then built a wooden house a short distance away from the Cocoa House, otherwise known as Miss Mary's house. She moved into the wooden house at the end of March 2011 and continued to widen the road through the middle of 2012. The Defendant stated that with the help of the Second Claimant, who provided her with written authorisation, water and electricity were connected to the disputed parcel and she planted long term and short-term crops and raised poultry.

37. The Defendant stated that problems began in 2013 when her sister Carmala began to build her house on the property and her workmen began passing along the Defendant's road to gain access to the house. The Defendant stated that she was upset that Carmala did not build her own road and that all that was needed was to cut the grass and widen the existing track. The Defendant stated that there were several tracks

running through the property and there a steep climb provided access to Carmala's property, unless the Defendant's road was used.

38. The Defendant stated that prior to 2011, the property had been abandoned for 20 years and was overgrown. She stated that "pipers" and hunters used the property as a thoroughfare and she built a gate to keep them out. She stated that she intended to give Carmala a key to the gate but Carmala went to the police station on the first occasion that she saw the gate locked. The Defendant stated further that the relationship with her family members broke down after that incident and they have called her names and abused her on occasions.
39. The Defendant stated that she graded the land to widen the road and denied that the grading caused erosion or that anyone told her that she should not cut the road or grade the land. She stated that she had invested "her entire life" in her home and had spent a year and a half cleaning, clearing and building on the disputed parcel and that as a result of her efforts and hard work and the help of her husband and friends the property was now accessible.
40. In cross examination the Defendant stated that prior to building her house on the disputed parcel she and her husband lived in rented accommodation on Mission Road, Toco. She stated that she visited her father on two occasions before he signed the documents giving land to her. On the first occasion she asked her father to occupy the property and on the second occasion her father signed the declaration giving her the disputed parcel. She stated that her father could read "a little" and that she and her brother read the document to him.

41. In cross examination the Defendant also stated that at the time her father signed the declaration all of her siblings were present and agreed to the document. She went on to state that all of her siblings read the document to her father and he understood that he was giving her 10 lots of land.
42. When the inconsistency in the Defendant's witness statement and her evidence given in cross-examination was drawn to her attention - namely, her previous statement that her father signed the declaration under a shed at his house in Warrenville when two witnesses were present – the Defendant held fast to her statement that all of her siblings were present when her father signed the declaration and asserted that she forgot to mention this fact in her witness statement.
43. The Defendant was unable to provide an explanation for the different versions of declarations given to the Second Claimant by the Defendant's husband. The Defendant also stated that she did not call the Commissioner of Affidavits, Mr. Baboolal, as a witness as no one told her to do so. She stated further that she did not want compensation for the sums spent on clearing the land and cutting the road as this was done for her convenience but that she wanted the 10 lots of land given to her by her father.

ASSESSMENT OF THE EVIDENCE

44. The Claimant's evidence and the evidence of the witnesses called on their behalf was not undermined in any material respect in cross-examination. Mr. Sydney Surrattan was clear and consistent in his evidence that he intended to give the Defendant one lot of land so that she could build her house on the spot where Miss Mary lived and that

the statutory declarations produced by her to support the grant of the disputed parcel were not reflective of his wishes or intention. Mr. Surrattan denied attending the home of a Commissioner of Affidavits to sign any document to this effect or at all.

45. It was not in dispute that Mr. Surrattan cannot read, but can sign his name. Therefore, that the nature of any document signed by him would not be understood unless it was first read to him. No independent evidence was adduced by the Defendant to establish that at the time Mr. Surrattan signed the statutory declarations purporting to transfer the disputed parcel to her, he was aware of their object and intent. Therefore, the Defendant's evidence in this regard was not corroborated by any third party.
46. Further, the Defendant's evidence on this material aspect of her defence did not withstand scrutiny. The Defendant's evidence, elicited in cross-examination, that all of her siblings were present at the time her father signed a declaration giving the disputed parcel to her was a radical departure from her evidence-in-chief where she deposed that her niece, Darcel Douglas, and one Randy Banwarie were the persons who were present when her father signed the declaration. The Defendant's evidence-in-chief was also contradicted by Darcel Douglas who disclaimed the assertion that she was present and witnessed Mr. Surrattan sign the declaration, stating that she signed the declaration at her home and in Mr. Surrattan's absence after the document appeared to have been signed by him.
47. In short, apart from the Defendant's contradictory statements in that regard, the Defendant did lead any evidence to support her assertion that Mr. Surrattan signed the declarations in question after they were

read to him and that he fully understood their object and intent. This, notwithstanding that she is one of seven siblings all of whom she alleges were present at the time their father made a promise granting the disputed parcel of family land to her.

48. The Defendant's inconsistent evidence on this critical aspect of the matter significantly undermines her credibility as a witness and compromises her ability to seek equitable relief consistent with the maxim that "he who comes to equity must come with clean hands."

PROPRIETARY AND PROMISSORY ESTOPPEL

49. Counsel for the Defendant relied on the verbal and written statements by Mr. Surrattan as giving rise to an estoppel.
50. The doctrine of proprietary estoppel was described in the leading case of *Gillett v Holt* as "equity intervening to prevent unconscionable conduct."¹ It is concerned with the positive acquisition of rights and interests in the land of another person.²
51. More recently, in ***Kurt Farfan and Ors v Anthony White CV2016-03644*** Kokaram J discussed the application of the doctrines of proprietary and promissory estoppel as follows:

1) For a promissory estoppel to arise there must be a clear and unambiguous promise intended to affect the legal relations between the parties and which is reasonably expected to be relied

¹ *Gillett v Holt* at p. 304j

² *Ibid.*, at p 308 (k)

on by the person to whom it is made. In Snells Equity 31st Edition 2005, the learned author states at paragraph 10-08:

“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it.”

- 2) *The principles of proprietary estoppel are neatly summarised in the recent Privy Council decision of Henry v Henry [2010] 75 WIR. There must be representation, reliance and detriment. The element of each will vary with the circumstances of the case and the Court must take into account all of the circumstances and adopt a broad approach to these questions with the overriding test of unconscionability of conduct. Reliance and detriment are often intertwined. In Henry v Henry, Sir Jonathan Parker noted at paragraph 55:*

‘[55] As to the relationship between reliance and detriment in the context of the doctrine of proprietary estoppel, just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances which are said to form the basis of the estoppel, so the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct

adopted by the claimant in reliance on those assurances. Thus, notwithstanding that reliance and detriment may, in the abstract, be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.....In the instant case, that is certainly so.”

52. In **Knowles v Knowles [2008] UKPC 30** Sir Henry Brooke stated that³:

*“...the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result.... While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free. In *E & L Berg Homes Ltd v Grey* (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108: ‘I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care.’ ”*

53. In **Theresa Henry and Anor. v Calixtus Henry** [2010] UKPC 3, the Privy Council laid down the following guidelines in cases of proprietary estoppel:

³ See paragraph 25

(i) The court should adopt a cautious approach.

(ii) The court must consider all of the circumstances in order to discover the minimum equity to do justice to the claimant.

(iii) The court however enjoys a wide discretion in satisfying an equity arising from proprietary estoppel.

(iv) Critical to the discovery of the minimum equity to do justice, is the carrying out of a weighing process; weighing any disadvantages suffered by the claimant by reason of reliance on the defendant's inducements or encouragements against any countervailing advantages enjoyed by the claimant as a consequence of that reliance.

(v) In determining the balance in the relationship between reliance and detriment: just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances, inducements and encouragements which are said to form the basis of the estoppel, so also the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on the assurances, inducements and encouragements.

(vi) Though in the abstract reliance and detriment may be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.

54. Sir Jonathan Parker expounded on the principles laid down in ***Gillett v Holt, Jennings v Rice and Cobbe v Yeoman's Row Management Ltd***, and made the following observations:

(i) Reliance and detriment are often intertwined. However, the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all of the elements of the doctrine.

(ii) Detriment is not a narrow or technical concept; it need not consist of the expenditure of money or other quantifiable detriment, so long as it is substantial.

(iii) Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded; in this regard, the essential test is unconscionability.

(iv) The aim of the court in satisfying an equity arising from a proprietary estoppel is to decide in what way the equity can be satisfied in the context of a broad inquiry as to unconscionability.

55. As indicated above, the Defendant relies on verbal statements by her father and on the declarations signed by him in support of the grant of an estoppel.
56. The provenance of the documents relied on by the Defendant is highly questionable. The validity of the documents was contested by Mr. Surrattan himself and the Defendant was unable to adduce any

independent evidence to establish that the documents were read to Mr. Surrattan or that he understood their meaning and effect.

57. Mr. Surrattan's alleged verbal statements regarding the grant of the disputed parcel to the Defendant must also suffer the same fate as the written declarations. The Defendant's evidence is that the statements were made when three of her siblings, including the Second Claimant, were present. However, no family member has come forward to support the Defendant's assertion that Mr. Surrattan told her that she could occupy the disputed parcel and both Mr. Surrattan and the Second Claimant have expressly denied the allegation.
58. Further, the Defendant's recent untruthful statements that all of her siblings were present when her father was alleged to have signed the unsworn declaration giving the disputed parcel to her undermined the credibility of her evidence on the whole, including her allegation of the verbal promise by her father giving the disputed parcel to her.
59. In the circumstances, the Defendant has failed to establish that there was a clear and unequivocal promise by her father that she could occupy the disputed parcel, giving rise to an estoppel. The defence of estoppel therefore fails.

DAMAGES FOR TRESPASS

60. It is not in dispute that the Claimants are the registered owners of the property. Their claim in trespass is brought on the basis that their father granted the Defendant permission to occupy and construct a house on one lot of land that forms part of the property, but the Defendant has

proceeded to occupy a substantially larger area for which no authorisation was granted. The actual loss or damage sustained by the Claimants is alleged to arise by virtue of the Defendant's construction of a gate that blocks access to the property and by the Defendant's excavation of a hill that has created a steep gradient and caused damage and erosion to the property.

61. The Defendant's evidence has failed to establish any grounds to support the grant of an equitable interest in the disputed parcel. Therefore, the Defendant's permitted occupation of the property is limited to the one lot that was demarcated in the survey carried out on the instructions of her father in the presence of the First Defendant. The Defendant's occupation of any area outside of the said lot as demarcated in the survey constitutes an act of trespass for which the Defendant is liable in damages to the Claimants.
62. Upon the delivery of judgment in this matter on 14 May 2018, the Claimants expressed their agreement to accept nominal damages only in respect of the Defendant's acts of trespass. The Defendant, through her Attorney, has since agreed to the payment of \$7,500.00 as nominal damages in this regard. An award in the sum of \$7,500.00 is in keeping with the range of awards of this nature. Therefore, the sum of \$7,500.00 is awarded to the Claimants as nominal damages for trespass.

COSTS ON THE COUNTERCLAIM

63. Upon the delivery of judgment, the parties were given an opportunity to make submissions to the court on whether costs should be awarded to the Claimant on the dismissal of the Defendant's counterclaim.

64. The Defendant's counterclaim seeks the following relief:
- 1) A declaration that the Defendant is entitled to exclusive possession and occupation of the disputed parcel and/ or alternatively that the Defendant is by equity entitled to a share in the property in a portion to be determined by the Honourable Court.
 - 2) An injunction restraining the Claimants, their servants and/or agents from entering upon and/ or trespassing and/or remaining upon the disputed parcel.
 - 3) Further and/ or alternatively, a declaration that the Defendant is entitled to a lien on the disputed property for such sum as the Honourable Court may deem fit, together with interest, costs and damages.
 - 4) Interest.
 - 5) Costs.
65. The Claimants assert that they are entitled to costs upon the dismissal of the counterclaim pursuant to the principle that costs should follow the event.
66. The Defendant asserts that while the costs for a claim and counterclaim stand separately, costs should be awarded on a counterclaim only where the costs were incurred directly as a result of the counterclaim. The Defendant argues that where the facts pleaded in a counterclaim were a natural consequence of the defence, the filing of the counterclaim serves to avoid a multiplicity of proceedings and the Court

has a discretion whether to award costs upon the dismissal or withdrawal of the counterclaim.

67. A review of the counterclaim demonstrates that no facts were pleaded by the Defendant in support of the counterclaim, notwithstanding that the counterclaim set out a prayer for relief. In this regard, the counterclaim was misconceived and is struck out as disclosing no cause of action against the Claimants and as an abuse of the process of the court. In the circumstances, there shall be no order as to costs on the dismissal of the counterclaim.

DECISION

68. In light of the above, it is hereby ordered as follows:
- 1) The Defendant's counterclaim is hereby dismissed;
 - 2) There shall be no order as to costs on the dismissal of the counterclaim;
 - 3) The Defendant and/ or her agents shall continue to provide the Claimants with a key to the gate constructed by the Defendant that provides access to the property described in Certificate of Title Volume DCCLIX Folio 285 (the property);
 - 4) The Defendant and/ or her agents are restrained from erecting any structure designed to block the established access to the property or from causing any restriction of access by any means;

- 5) The Defendant and/ or her agents are restrained from trespassing upon or otherwise occupying any portion of the property in whatsoever manner, other than the area comprising 465 square metres demarcated in the survey plan dated 5 May 2015 and annexed hereto;
- 6) The Defendant and/ or her agents are restrained from harassing, threatening or abusing the Claimants and/ or their agents in any way and from interfering with the Claimants' peaceful enjoyment of the property.
- 7) The Defendant shall pay the Claimants' nominal damages in trespass in the sum of \$7,500.00.
- 8) The Defendant shall pay the Claimants' prescribed costs in the sum of \$14,000.00.
- 9) There shall be a stay of execution of 60 days.

Jacqueline Wilson

Judge