

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-04477

BETWEEN

WAZID ALI

**(The Legal Personal Representative of the
Estate of Yussuff Ali, Deceased)**

Claimant

AND

FARHAD MOHAMMED

Defendant

Before the Honourable Madam Justice Jacqueline Wilson

Appearances:

Mr. Gerard Raphael for the Claimant

Ms. Ms. Kristin Khan instructed by Ms. Giselle Seepersadsingh for the Defendant

DECISION

The Claimant's Application

1. By Notice of Application filed on 31 January 2018 the Claimant sought leave to admit the evidence of Mr. Ganesh Ramcharitar, Licensed Land Surveyor, as expert evidence at the trial of these proceedings. The application was brought on the following ground:

“The evidence of Mr. Ganeshdath Ramcharitar would assist the court in determining the substantive issue before the court as the expert will give evidence as to what 1A OR 7P relates to in the Plan of Gill Thomson dated 15th June 1953 and show that the land in question was resumed by the State.”

2. The Claimant is the legal personal representative of his deceased father, Yussuff Ali, and has brought a claim against the Defendant in trespass alleging that the Defendant erected a wooden structure and a concrete bridge on a parcel of land which the Claimant asserts has been cultivated by him and his predecessors from 1953 to the present (the Claimant’s Parcel.)
3. So far as is material, the Claimant’s case is that by agreement in writing dated 2 March 1953 his deceased father was granted a lease by the Sub-Intendant of Crown Lands for the cultivation of the Claimant’s Parcel, which comprises two (2) roods and twenty (20) perches. The lease was for a term of one year at an annual rent of five dollars and twenty cents (\$5.20). The Claimant alleges that upon the expiration of the one-year term his deceased father continued in occupation and paid the annual rent of \$5.20 until his death in 1977. Thereafter the Claimant took over the cultivation of short term and other crops until 1989 when one of the deceased’s grandsons continued with the cultivation. The Claimant alleges that in 2013 the Defendant erected a wooden structure on the Claimant’s Parcel and in November 2016 erected a concrete bridge leading from a parcel of land owned by the Defendant on to the Claimant’s Parcel.
4. The Defendant alleges that by memorandum of transfer dated 15 August 1967 he and his brother became the owners of a parcel of land comprising 1 acre and 7 perches delineated and coloured pink on the plan registered in volume 1275 Folio 413 (the Defendant’s Parcel) and that prior to the transfer, the Defendant’s Parcel was owned by his grandmother.
5. The Defendant states that in 2002 he began the construction of a house on the eastern portion of the Defendant’s Parcel, where his son now resides, and subsequently constructed a warehouse and a concrete bridge over a canal that passes through the

Defendant's Parcel. The Defendant states that he has been in exclusive possession of the Defendant's Parcel and denies that it has been cultivated by the Claimant or his predecessors.

6. In January 2018 the parties filed witness statements pursuant to directions of the court. In his witness statement the Claimant alleges that a survey plan by one Mr. Gill Thomson dated 15 June 1953 wrongly describes the Claimant's Parcel and the Defendant's Parcel as together comprising 1 Acre 0 Roods and 7 Perches. The Claimant asserts that this was a mistake by Mr. Thomson and that the Defendant's Parcel is located to the east of the Guayamare South Bank Canal and comprises 1 Acre 0 Roods 7 Perches¹ whereas the Claimant's Parcel is located to the west of the canal. The Claimant further states that the survey plans of Licensed Land Surveyors Jankaran Micoo and Leslie Akum Lum dated 30 December 1980 and 5 May 1994 respectively, show his father's name written in the area where the Claimant's Parcel is located.²
7. The Claimant states that the evidence of Mr. Ramcharitar would assist the court in establishing the location of the lands described in the survey plan of Mr. Gill Thomson as comprising 1A 0R 7P.

Mr. Ramcharitar's Proposed Evidence

8. The Claimant provided a draft witness statement by Mr. Ramcharitar in support of the application.
9. In his draft witness statement Mr. Ramcharitar states that in or around May 2013 the Claimant engaged his services to conduct a survey of a parcel of land at Guayamare Canal, Charlieville. He completed the survey plan on 24 May 2013 and the plan shows that the parcel of land to the west of the Guayamare Canal comprises 2,526 square metres or approximately 5 $\frac{3}{4}$ lots.

¹ Paragraph 4 of witness statement

² Paragraph 15 of witness statement

10. Mr. Ramcharitar states that he reviewed the survey plan by Mr. Gill Thomson in which the Claimant's and the Defendant's Parcels were identified as together comprising 1A 0R 7P which, when converted, is equivalent to 4,224.1 square metres or 45,465.7 square feet. Mr. Ramcharitar also states that he reviewed a survey plan dated 14 October 1987 signed by P. Homer for the Director of Surveys which shows the land to the east of the Guayamare Canal as comprising 4,246.3 square metres or approximately 45,707.2 square feet or 1A 0R 7P. Mr. Ramcharitar concludes that the Defendant's Parcel is located to the east of the Guayamare Canal and does not include the area to the west of the Guayamare Canal (the Claimant's Parcel.)
11. Mr. Ramcharitar's opinion on the size and location of the Defendant's Parcel was based on an examination of the following documents:
- | | |
|--|-------------------|
| i. Copy of Survey Plan of Ganeshdath Ramcharitar | 24 May 2013 |
| ii. Copy of Survey Plan signed by P. Homer for Director of Surveys | 14 October 1988 |
| iii. Copy of Survey Plan of Prevatt and Thompson | 25 May 1948 |
| iv. Copy of Survey Plan of Gill Thomson | 15 June 1953 |
| v. Copy of Survey Plan of Jankaran Micoo | 30 December 1980 |
| vi. Copy of Survey Plan of Leslie Akum Lum | 5 May 1994 |
| vii. Copy of Trinidad and Tobago Gazette p. 962 | 23 July 1987 |
| viii. Copy of Trinidad and Tobago Gazette p. 1192 | 30 September 1987 |
| ix. Copy of Plan of C.E. 1 by Mr. K. Russell | |

The Issues

12. The questions that arise for determination are whether Mr. Ramcharitar's draft witness statement constitutes expert evidence and, if so, whether the court's permission should be granted to the Claimant to adduce the said evidence at the trial of these proceedings.

Expert Evidence

13. In *Nirmal Bhaggan and Endeavour Holdings Limited CV2010-02387*, Justice Rajnauth-Lee, as she then was, held that in determining whether evidence was expert

evidence or non-expert opinion evidence, the witness statement must be such that a person without instruction or experience in the area of knowledge would not be able to form sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in that area.

14. In *Readymix (West Indies) Limited and Super Industrial Services Limited* CV2010-03435 Justice Rampersad made the following observations in relation to a witness statement prepared by a witness relying on his knowledge and experience as a photogrammetric engineer and land surveyor:

“This court has no doubt that the opinion ...amounts to expert evidence since it takes data which is gathered through several unexplained technical instruments and then processes it, using an unexplained engineering computer software program which was then allegedly verified by another unexplained American entity to churn out a figure upon which the claimant seeks to rely. The process is, on the face of it, more technical than the mere crunching of numbers on a calculator to determine a usable aggregate. It seemingly involves the use of aerial photography upon which opinions and conclusions are drawn by the witness and the interpretation of results from the other methodologies referred to by him to prepare the appropriate variables for what is presumably a sophisticated mathematical interpretation to the extent that a dedicated appropriate computer software program has to be used. This is more than just factual observations and descriptions. This is more than a “mere” survey plan drawn by a surveyor using information which he observed and recorded and translated into his plan. It seems to be a highly technical interpretative method used to decipher factual information in a scientific way. To my mind, this calculation involves expert evidence that goes beyond mere factual observation.”³ [Emphasis mine.]

³ Paragraph 36

Conclusion

15. There is nothing in Mr. Ramcharitar's draft witness statement to demonstrate that in reviewing the survey plans outlined by him and in discounting or re-affirming their findings, as the case may be, he was guided by the application of technical rules or the use of complex methodology. The draft witness statement does no more than recount information observed or recorded by Mr. Ramcharitar and captured in documents compiled by others or that is otherwise publicly available.
16. Therefore, the draft witness statement cannot be considered as expert evidence admissible pursuant to the procedures prescribed in Part 33 of the CPR.
17. For these reasons, the Claimant's application for leave to admit the expert evidence of Mr. Ramcharitar was dismissed.

Dated this 16th day of July 2018

Jacqueline Wilson

Judge