REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2023-02864**

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE SAID CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF SECTION 4 OF THE SAID CONSTITUTION

BETWEEN

FRANKYLN MASCALL
(in his capacity as Legal Representative of THE ESTATE OF ADELLA O'GARRO)

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mme. Justice Jacqueline Wilson KC

Date of Delivery: 18th June 2025

APPEARANCES:
Mr. Matthew Gayle instructed by Mr. Jason Jones Attorneys at law for the Claimant
Ms. Tinuke Gibbons-Glenn and Ms. Aryanta Williams instructed by Ms. Abigail Bristo Attorneys at law for the Defendant

JUDGEMENT

1. The claimant seeks a declaration that the defendant's seizure and/or possession of the claimant's undivided six-fifteenth share in an eight acre parcel located in Picton, Laventille, Trinidad, without due process of the law or proper compensation was

unlawful and in breach of his rights under sections 4(a), 4(b) and 4(d) of the Constitution. The claimant seeks an order for compensation, including an award of aggravated and exemplary damages, for the said breach.

THE CLAIMANT'S AFFIDAVIT

2. The claimant has brought the proceedings as the legal personal representative of the estate of his deceased grandmother, Adella O'Garro, who died on 2 December 1960 (the Deceased) pursuant to a grant of administration *de bonis non* made on 9 July 2018. In an affidavit sworn on 2 August 2023 in support of the claim, the claimant states that he is one of twelve children born to Olga Mascall (nee O'Garro) who was one of four children of the Deceased. All of the Deceased's children are now deceased.

3. On 12 December 1948, the Deceased executed her last will and testament in which she devised her undivided six-fifteenth share in the eight acre parcel located at Picton, Laventille, Trinidad (the Family Lands) to four of her children, the claimant and others. The claimant states that the Family Lands were rich in minerals and natural resources and, as a result, the Deceased had made agreements for mining and limestone quarrying with various companies under which rent and royalties were paid. After the death of the Deceased, two of her children, George and Elizabeth O'Garro, obtained a grant of probate of her will both of whom have died intestate without administering the Deceased's estate.

4. The claimant, his parents and siblings are named as beneficiaries under the Deceased's will and they all resided on a portion of the Family Lands until 1962, when they were relocated by the Government to a property known as 7th Street, Malick, Trinidad. In or around 1965, they were provided with temporary housing at No. 29 Cicada Street, Morvant, by the then National Housing Authority (NHA) and, in or

around 1970, the NHA took possession of the Family Lands to construct a housing estate now known as the Picton Development. To date, the Family Lands have not been acquired by the State and the claimant and his family have continued to pay the taxes for them.

5. In or around 1981, the claimant's mother entered into a lease of property known as No. 29 Cicada Street, Morvant for a term of thirty years under a proposed arrangement for relocation. Prior to the said lease, and thereafter, the claimant's mother and other family members wrote on various occasions to officials at the NHA, the NHA's successor, the Housing Development Corporation (the HDC), the Ministry of Housing, the Office of the Prime Minister and others seeking compensation for the Family Lands. After the death of his mother, the claimant and his now deceased brother, Bertrand Mascall, continued to engage with State agencies for the payment of compensation. In a report dated 18 February 2008 by the HDC's then Acting Corporate Secretary a recommendation was made for compensation to be paid.

6. In or around March 2009, the Family Lands were surveyed by Mr. Naseer Abdul, Land Surveyor, who provided a survey plan. By letter dated 20 August 2010, to the claimant's former Attorney by the HDC, the HDC advised that it had received a valuation report for the Family Lands and that it was awaiting approval by its board of directors to settle the claim made on behalf of the claimant and his family. Notwithstanding the extensive period of discussion and engagement by the claimant and family members to the various authorities, no compensation has been paid to date for the acquisition of the Family Lands.

THE AFFIDAVIT OF MARYLENE MATHURIN MASCALL

7. In an affidavit sworn on 2 August 2023, Ms. Marylene Mathurin Mascall, the wife of the claimant explains the difficulties that she and the claimant have encountered by virtue of the failure to obtain compensation for the Family Lands.

THE CLAIMANT'S SUBMISSIONS

8. In written submissions fled pursuant to directions of the court, Counsel for the claimant submits that the State's failure to comply with the requirements of the Land Acquisition Act for the acquisition the Family Lands and the payment of compensation is unlawful. The claimant seeks the payment of sum in the region of $6,200,000.00 to $6,500,000.00 as compensation, representing the market value of his share in the said lands and the payment of $75,000.00 to $100,000.00 as vindicatory damages.

9. Counsel for the claimant submits that the defendant has filed no affidavits in response to the claimant's affidavits, therefore, the claim is uncontested and the claimant's evidence is unchallenged. The claimant relies on the decisions of the High Court in ***M.M. Brokers Limited v the Attorney General of Trinidad and Tobago*** HCA 7203 of 1986 and ***Rodriguez and Rodriguez v Attorney General of Trinidad and Tobago*** CV2020-00516 to support the assertion that the defendant's seizure and occupation of the Family Lands and the construction of the Picton Development Housing Estate on them without the payment of compensation, are in breach of the claimant's right to the enjoyment of property and the right not to be deprived thereof without due process of law under section 4(a) of the Constitution. The claimant further submits that the defendant's seizure and occupation of the Family Lands without recourse to remedies and procedures provided for compulsory acquisition and compensation are in breach of the claimant's right to the protection of the law under section 4(b) of the Constitution.

10. Counsel for the claimant submits that Section 4(d) of the Constitution guarantees a right to equality of treatment by public authorities in the exercise of their functions. The scope of the right and the circumstances in which a breach is engaged were

discussed by Lady Hale in the Privy Council decision of ***Annissa Webster and Ors. v The Attorney General of Trinidad and Tobago*** [2015] UKPC 10 at para 24:

> '(*1) The situations must be comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment.*
>
> *(2) Once such broad comparability is shown, it is for the public authority to explain and justify the difference in treatment.*
>
> *(3) To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.*
>
> *(4) Weighty reasons will be required to justify differences in treatment based upon the personal characteristics mentioned at the outset of section 4: race, origin, colour, religion or sex.*
>
> *(5) It is not necessary to prove mala fides on the part of the public authority in question (unless of course this is specifically alleged).'*

11. Counsel for the claimant submits that members of the Mascall Family were systematically excluded from the rights and protections granted to other persons under the Land Acquisition Act 1994 and/or the Trinidad and Tobago Housing Development (Vesting) Act 2004 ('the Vesting Act'), although they were in a broadly similar position to those whose property had been occupied or utilised by or on behalf of the State. In failing to acquire the land under the legislative procedures or and to compensate the claimant, the defendant has denied the claimant and his family a basic measure of dignity and respect and has deprived them of the procedural fairness and due process that were routinely provided to others.

12. Counsel for the claimant submits that the Land Acquisition Act and the Vesting Act provide the procedures to be followed by the State in carrying out its duty to protect the interests held by persons in private property whose rights must give way to the public interest. The Land Acquisition Act provides the procedures for acquisition, notification, valuation and compensation — and that the claimant has been denied its procedural protections.

13. Under the Vesting Act, the defendant acknowledges and addresses the "hardship and anxiety" that is faced by persons whose property is to be used for the construction of housing projects. The Preamble to the Vesting Act expressly states, inter alia, that:

> "*WHEREAS the National Housing Authority ("the Authority") established by the Housing Act is responsible for the execution and carrying out of the policy of the Government in relation to housing:*
>
> *And whereas the Authority has over a number of years in the exercise of the functions, powers and duties conferred on it by the Housing Act upon the instructions and/or with the acquiescence of the State occupied certain lands owned by the State and constructed thereon housing projects without having obtained conveyances, transfers, leases, or other documentary title to the aforesaid lands: And whereas the absence of such documentary title to the said lands has prevented the Authority from providing evidence of title to the occupiers of the houses and apartments erected by the Authority on the said lands, thereby causing great hardship and anxiety to them: And whereas the accelerated housing delivery policy of the Government requires that the Authority be empowered to provide the recipients of the housing units with documents of title promptly so as to enable them to achieve the full benefit of home ownership."*

14. Despite expropriating, exploiting and developing the Family Lands for a public housing project, the defendant has selectively excluded the claimant from the protections afforded by the Vesting Act and has failed to recognise the claimant's ownership of the Family Lands or make payment of compensation. The differential treatment is clear and indefensible as private citizens in similar circumstances have benefitted from the lawful processes and procedural safeguards while the claimant and his family have been denied similar protection of their rights without explanation.

15. Having established a breach of the claimant's rights under sections 4(a), (b) and (d) of the Constitution, the claimant is entitled to redress for the infringement. The decision of the Privy Council decision in ***The Attorney General of Trinidad and Tobago v Siewchand Ramanoop*** [2005] UKPC 15, establishes that under section 14 of the Constitution a court has the jurisdiction to make orders to provide appropriate relief for the violation of fundamental rights. Such orders may take the form of a declaration, an award of monetary compensation, including the payment of vindicatory damages where appropriate. In providing guidance on the approach to be taken, the Board in ***Ramanoop*** at paras 18 to 19 stated as follows:

> *"18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.*

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award."

16. Counsel for the claimant submits that, in light of the above, the minimum monetary compensation to which the claimant is entitled is within the range of $6,200,000.00 to $6,500,000.00. This reflects an approximate sum of $5,000,000.00 as the land replacement value and an additional sum to address the emotional and opportunity costs borne by the claimant and the beneficiaries if the Deceased's estate for an extended period.

17. The claimant submits that the case involves a severe and sustained breach of constitutional rights that mandates an award of vindicatory damages to fully acknowledge the depth of harm suffered by the claimant and the beneficiaries of the Deceased's estate. The claimant's affidavits show that he and his family have persistently pursued justice and have been met with delay, evasion and empty assurances by the defendant. The pattern of neglect was not simply an

administrative failing but an intentional disregard for the claimant's fundamental right to property and warrants a strong judicial response.

18. The claimant submits that an award of vindicatory damages to demonstrate public disapproval and to underscore the significance of the rights that have been violated. The claimant satisfies the requirements for the grant of such an award as the defendant's actions were deeply unjust and have had a sustained and profound impact on the claimant.

19. In keeping with the court's ruling in ***Shazim Mohammed***, although in a different factual context, the claimant submits that the appropriate range for an award of vindicatory damages is between $75,000.00 and $100,000.00.

THE DEFENDANT'S SUBMISSIONS

20. In its written submissions Counsel for the defendant accepts the history of events provided in the claimant's affidavit. The defendant asserts that the Attorney General is not a proper party to the proceedings and that the proceedings ought to have been brought against the HDC.

21. The defendant accepts the claimant's argument that, where a landowner has been deprived of the use of his property without a formal acquisition by the State, the courts have found the omissions to constitute a breach of the right to the enjoyment of property without due process of law. The defendant further accepts that the HDC has had the information that is needed to determine the boundaries of the claimant's lands and that the lands have been used by the State without a formal acquisition.

22. Counsel for the defendant submits that the claimant has provided no evidence of comparators or of the alleged discriminatory treatment that are required to establish a breach of his rights under section 4(d) of the Constitution.

23. The defendant accepts the history of occupation provided by the claimant and the numerous occasions on which a resolution has been sought. The defendant further accepts that the HDC has provided no explanation for the delay in compensating the claimant for the lands. However, according to the defendant, the sums sought by the claimant are excessive and the award of damages ought to be based on the market value of the property at the time the land was appropriated. As the 2010 valuation report gave the value of the property in the sum of $825,000.00, the claimant should be compensated in that amount.

24. The defendant further submits that an award of vindicatory damages should not exceed the sum of $75,000.00. Interest should be paid on the award of damages at the rate of 2.5% from the date of service of the originating motion on 4 September 2023 to the date of judgment with costs to be awarded on a prescribed basis and all payments should be made by the HDC.

THE CLAIMANT'S REPLY SUBMISSIONS

25. In his reply submissions, Counsel for the claimant submits that the claimant's evidence establishes that in or around the 1960s, the Central Government engaged in the use of explosives for quarrying activities on lands adjacent to the Family Lands causing Olga Mascall and her twelve (12) children to be displaced. As their displacement and relocation displacement were the direct result of activities by the State that rendered their continued occupation on the Family Lands unsafe, the Ministry of Works, under the authorisation of the then Prime Minister, Dr. Eric Eustace Williams, engaged the NHA to provide accommodation for Olga Mascall and

her dependents (see paras 19 to 24 of Mr. Mascall's affidavit). Therefore, it was the central Government and not the HDC (as the NHA's predecessor) that gave directions for the relocation to take place. The State's direct involvement in the relocation is further established by the deed of lease that was signed in 1981 between the Government of Trinidad and Tobago and Olga Mascall to facilitate the accommodation of the claimant's family for a period of thirty (30) years. These arrangements refute the defendant's assertion that the HDC should be held responsible for the claimant's loss as the claimant's uncontested evidence demonstrates the State's longstanding and direct involvement in the events that gave rise to the present proceedings. Although the court has a discretion to add the HDC as a party to the proceedings no such order is needed on the facts of the case. The HDC did not exist at the time the constitutional breaches first occurred and the breaches were committed by the NHA under the direction of the State, therefore, the Attorney General of Trinidad and Tobago is a proper party to the proceedings.

26. The defendant has not contested that other landowners have received compensation under the existing legal framework and has not provided justification for depriving the claimant of the same protections. This amounts to unequal treatment, as other landowners in similarly circumstances as the claimant were treated more favorably without lawful justification. The disparate treatment of the claimant, whose property was expropriated without legal process, constitutes a breach of the right under section 4(d) of the Constitution. The hypothetical comparator is any landowner whose property was lawfully acquired under the **Land Acquisition Act** or any prospective land owner whose status was regularised by the statutory intervention of the State through the **Housing Development Corporation (Vesting) Act 2004** or otherwise. Unlike the claimant, these landowners enjoyed the benefit of the formal legal acquisition processes and its compensation mechanisms and were not arbitrarily deprived of their property without due process and the failure to afford the claimant similar treatment was a clear breach of section 4(d) of the Constitution.

27. The decision in ***Mohanlal Bhagwandeen*** [2004] UKPC 21 (supra) establishes that, where a prima facie case of differential treatment is established, the burden shifts to the State to justify the differential treatment and the defendant has failed to justify why the claimant's lands were taken without engaging the formal acquisition procedures or his exclusion from the compensation process that was afforded to other landowners or the failure to remedy the unequal treatment for an extensive period.

28. Counsel for the claimant submits that the valuation report of 19 February 2010 is dated some forty (40) years or more after the State took possession of the Family Lands and that, having regard to its vintage, it does not provide the true market value of the property. The valuation report also relates to only 1.2141 hectares (approximately 3 acres) of the eight-acre parcel of Family Lands from which the claimant's six-fifteenth share is to be determined.

29. The claimant further submits that over the past four years, the short-term investment rate has been maintained at 3.5% per annum and that this is appropriate interest rate to be applied and not the 2.5% interest rate suggested by the defendant.

FINDINGS AND CONCLUSION

30. As demonstrated above, the defendant does not dispute the history of ownership of the Family Lands provided by the claimant or the events that gave rise to the relocation of his family members. The defendant has also mounted no real challenge to the claimant's allegation of a breach of the rights under sections 4(a) and 4(b) of the Constitution. The essential argument raised by the defendant is that there has been no breach of the claimant's right under section 4(d) of the Constitution and that the HDC, and not the State, should be made liable for any sums that are found to be

owed to the claimant and that compensation should be based on the value of the property as provided in 2010 valuation report.

31. In ***Annissa Webster,*** Lady Hale discussed the difficulties that arise in determining the scope of the "open-ended constitutional guarantees of equal treatment by public authorities" provided by section 4(d) of the Constitution. The "free-standing" requirement of the provision was considered to be a unique feature of the Constitution for which no equivalent could be found in comparable international instruments. Lady Hale discussed the distinction between the rights protected by section 4(b), under which the "equal protection of the laws" required that the laws themselves be equal and that legislative distinctions in treatment be justified on reasonable and objective criteria, and the rights protected by section 4(d), which provided "a free-standing requirements of equal treatment by public authorities."

32. ***Annissa Webster*** concerned a complaint by Special Reserve Police Officers that that, although they were paid a salary consistent with regular police officers, they did not have the same entitlements to paid leave, medical benefits and other allowances. Lady Hale provided the following benchmarks to determine whether a breach of the right under section 4(d) of the Constitution has been established:

> *"24. The current approach to section 4(d) of the Constitution of Trinidad and Tobago may therefore be summarised as follows:*
>
> > *(1) The situations must be comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment.*
> >
> > *(2) Once such broad comparability is shown, it is for the public authority to explain and justify the difference in treatment.*

(3) To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(4) Weighty reasons will be required to justify differences in treatment based upon the personal characteristics mentioned at the outset of section 4: race, origin, colour, religion or sex.

(5) It is not necessary to prove mala fides on the part of the public authority in question (unless of course this is specifically alleged).

25. It must, however, be acknowledged that there is a considerable overlap between the "sameness" question at (1) above and the justification question at (3). This is because the question of whether a difference between the two situations is material will to some extent at least depend upon whether it is sufficient to explain and justify the difference in treatment."

33. The question that arises is whether the actual treatment of the claimant's family members by the public authorities in taking possession of their lands and relocating them without compensation is a violation of section 4(d). In my view, it is not. Although it is alleged that the procedures that were followed by the public authorities were in breach of the legislative requirements and of the claimant's rights under sections 4(a) and 4(b) of the Constitution, the unlawfulness alone, even if established, does not give rise to a breach of section 4(d) unless it can be shown that persons in circumstances that were broadly comparable to the claimant had received different treatment. The claimant has not satisfied this particular condition and a general argument that compensation has been paid to other persons under the Land Acquisition Act does not meet the legal threshold that is required to establish a breach of section 4(d) of the Constitution.

34. In all the circumstances, having regard to the claimant's unchallenged evidence and the narrow grounds of objection taken by the defendant, I have concluded that the claimant is entitled to the following relief sought on the fixed date claim:

a. A declaration that the defendant's seizure and/or possession of the claimant's undivided six-fifteenth share in an eight acre parcel located in Picton, Laventille, Trinidad, without the payment of compensation was unlawful and in breach of the claimant's rights under sections 4(a) and 4(b) of the Constitution.
b. The claimant is entitled to an award of damages as compensation for the said breach.
c. Damages are to be assessed by this court in default of agreement.

Jacqueline Wilson KC
Judge