

IN THE SUPREME COURT OF BELIZE A.D., 2007

CLAIM NO. 175 OF 2007

(DELVORINE WILLIAMS CLAIMANT
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BETWEEN (AND
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(TOM SWING DEFENDANT

Before: Hafiz J.

Tricia Pitts for the Claimant
Mrs. Agnes Segura- Gillett for the Defendant

J U D G M E N T

1. This is a dispute between neighbours concerning their boundary line. The Claim is for Damages for trespass on the Claimant's land. Both parties are claiming ownership to the portion of land in dispute. Both parties have documentary title to their property.
2. The Claimant, Ms. Williams states that she is the freehold owner of one half acre of land situate in Sittee River Village, Stann Creek District, Belize. She claimed that that Defendant who is her neighbour gave her a Notice dated 7th March, 2007 informing her that he intended to take down her fence. She claimed that the Defendant on or about the 26th day of March, 2007 without her consent entered her property and took down all her fencing and cut down her trees and grass. Ms. Williams claims that as a result she has suffered loss and damage and claims damages and an injunction requiring the Defendant to refrain from trespassing on her land.

3. The Defendant, Mr. Swing pleaded that he has title to the said portion of land. He pleaded that title was issued to the Claimant based on prescriptive rights pursuant to Supreme Court Order granted in Action No. 519 of 1998 on April 11th 2000 but said Order was based on inaccurate information put forward by the Claimant. Further that at the time the Claimant applied to the Supreme Court for prescriptive rights to the said portion of land, she knew fully well that title to the said portion was no longer vested in Matthew Andrews but rather in the Defendant and his wife by virtue of a Deed of Conveyance dated the 11th day of October 1996. He admitted that the Notice was issued by him because the Claimant had erected her fence on a portion of Block 10 belonging to him. Mr. Swing also admitted taking down the fence and cutting down the trees as proprietary rights to the portion of land were duly vested in him and his wife.
4. The Claimant filed three witness statements in support of her claim. One from herself, one from Daniel Mc Cann and one from Sal Marin. Sal Marin did not appear for the trial and so there is no evidence before the Court from him.
5. The Defendant filed two witness statements, one from himself and one from Kirk Emmanuel who is a Licensed Surveyor and who in my view was a critical witness to this case.

Evidence

6. Ms. Williams in her witness statement stated that she is the Freehold Owner of the one half acre of land situate in Sittee River Village, Stann Creek District, Belize subject to a First Certificate of Title recorded in the Lands Titles Unit, Belmopan, Belize in Land Titles Register in Volume 8 at

Folio No. 29. That she was born on the property on March 31, 1926 where she lived all her life until 2005 when she moved to another house in Sittee River. She said she raised all her 10 children on the said property, the oldest of whom is now 62 years old. She said that at no time whilst in occupation of the said property has the Defendant or any other person demanded from her rent for her occupation of the property.

7. She stated that in or about 1998 the Defendant gave her an eviction notice to vacate the property. She said she was made to understand that the Defendant claimed to own the property which he bought from Mr. Ernest Andrews.
8. Ms. Williams stated that in or about the year 1998 by Action No. 476/1998 Rudolph Andrews, brother of Ernest Andrews applied to the Supreme Court for a declaration of title fee simple absolute in possession for the said property. The court denied the application for prescriptive title because Mr. Rudolph Andrews could not substantiate his claim that he had occupied the property for over 30 years and consequently neither Rudolph Andrews nor Ernest Andrews possessed legal title to the property to convey valid title to Mr. Swing.
9. Ms. Williams at paragraph 7 of her witness statement stated that in 1999 she applied to the Supreme Court and obtained prescriptive title to the said property based on her occupation for over 40 years which was open, continuous and uninterrupted. She said that no fraud was perpetrated by her on the court in order to obtain prescriptive title. She said that during the proceedings both the Defendant and Mr. Ernest Andrews were present so that both are aware that neither possess title to the property.

10. At paragraph 9 of her witness statement she stated that after she obtained the First Certificate of Title to the property she caused to be erected a barbed wire fence enclosing the property which she occupied. She said that the fence did not encroach on the portion of land occupied by the Defendant but rather it was the Defendant's house that encroached on a portion of her property.
11. Ms. Williams stated that by notice dated March 17, 2007 she was informed by Mr. Swing that he intended to take down her fence which enclosed her property. That on or about March 26, 2007 Mr. Swing without her consent entered onto her property and took down her fence, fence posts and also cut down trees and grass. She stated that Mr. Swing used a tractor to take down the fence. See paragraphs 10 and 11 of her witness statement.
12. In cross-examination by Mrs. Gillett, Ms. Williams said that Mr. Swing cut down plantain sucker and grass. Ms. Williams could not answer any other questions asked which I believe was as a result of her old age, 82 years and she obviously was not in good health.
13. The other witness for the Claimant was Daniel Mc Caan who was not cross-examined as he was sitting in the court-room when Ms. Williams testified. Mrs. Gillett objected to the admission of his evidence. However, his witness statement was admitted by the Court on the basis that it was filed before the trial and would cause no prejudice to the Defence. Mr. Mc Caan stated that he is familiar with the Claimant's property where she lived in Sittee River, Stann Creek District, Belize. That he visited the property many times where on occasions he stayed briefly. He stated that from since he has known the Claimant she has lived on the same property in Sittee River until recently when she moved to a nearby property.

14. Mr. McCaan stated that in or about the year 1998, he, along with his wife, Delvorine, Elvis, Dean Ramos and Hilton Lamb, the Claimant's husband, erected the fence that enclosed the Claimant's property. The fence was made of barbed wire. He stated that he bought most of the material for the fence and delivered them to the site and participated in the actual construction of the fence. He stated that the materials bought included, but was not limited to, approximately 70 fence posts, 30 rolls of barbed wire, corner posts, cement and fence staples which amounted to approximately \$1,200.00.
15. At paragraph 5, he stated that he visited the Claimant's property in or about April 2007 where he observed that the fence he constructed had been taken down with the fence posts rooted up from the position where they were placed but the corner posts remained and since then the fence has not be repaired.
16. Mr. McCann said at paragraph 6 of his witness statement that whilst visiting the Claimant's property around the said time he noticed that several fruit bearing tress, such as coconut trees, plantain trees and citrus trees which once stood on the Claimant's property were also destroyed.
17. Mr. Tom Swing for the Defendant testified that on the 11th day of October, 1996, he and his wife purchased two parcels of Land being Block No. 10 and Block No. 1 in Sittie River from the Beneficiaries of the Estate of Matthew Andrews. See **Exhibit "T.S. 2"** for a copy Deed of Conveyance.
18. He said that prior to the purchase of the property, they had made site visits and noticed that there was a small wooden chattel house on the property which they were informed belonged to Delvorine Williams. He said that they were advised by the Vendors, through their agent Ernest Andrews that Delvorine Williams occupied a small portion of Block 10 as a Tenant at Will

but that she had been advised of the impending sale and had agreed to vacate the property before they entered into occupation. Immediately after they purchased the property, they cleared the land and in January 1998, they had a house erected on a portion of Block 10. Throughout this period, they made repeated requests for Delvorine Williams to vacate their premises but she refused to do so.

19. Mr. Swing said that in late December 1998 they were informed by Ernest Andrews that Delvorine Williams had filed Claim No. 519 of 1998 for a Declaration of Title in respect of a portion of Block No. 10. Ernest Andrews advised them that since he was served with Notice of the Proceedings and that he would defend the claim. That they later found out that Ernest Andrews defaulted in appearing and on April 11th 2000 the Supreme Court made an order granting Delvorine Williams prescriptive title to a portion of Block 10.
20. Mr. Swing said that although Delvorine Williams was made aware of their title from the date they purchased Block 10, she at no time disclosed to the court that the land belonged to his wife and him and not to Matthew Andrews or his Estate. Ms. Williams at all times referred to the land as "land now or formally belonging to Matthew Andrews." He further stated that immediately after obtaining the Court Order, Ms. Williams seized her occupation of Block 10.
21. Mr. Swing stated that in or about October 2002, they were advised by one John McDougall, who had also bought land from the Matthew Andrew's Estate, that their 1996 conveyance should have been signed by all of the Beneficiaries of the Estate and not just by the Administrator and that they should therefore have it redrafted. That on 25th November, 2002, a new conveyance was drafted in respect of Block 1 and Block 10 and this

conveyance was signed by all the Beneficiaries of the Estate. A copy of this Deed of Conveyance is Exhibited as **“T. S. 3”**.

22. At paragraph 11 of his witness statement he said that in late December 2006, his wife and him decided to commission a re-survey of Block 10 taking into account the portion that had been awarded to Delvorine Williams by the Supreme Court on the 11th April 2000. A copy of the Supreme Court Order is **exhibited as “T.S. 4”**.
23. He stated that on December 26th 2006, his wife had Mr. Solomon Marin of Dangriga Land Developers conduct the said re-survey of Block 10. That the Survey prepared by Mr. Solomon Marin showed that the portion of land that Delvorine Williams had fenced was not what had been awarded to her by the court. A copy of the Survey is Exhibited as **“ T.S. 5”**.
24. At paragraph 14 of his witness statement he said that based on the survey by Mr. Marin, he proceeded to issue a Notice to Delvorine Williams requesting that she remove her fence from his property. See **Exhibit “T.S. 6”** for a copy of the Notice.
25. Mr. Swing said that after the expiration of the 21 days stipulated in the Notice, he dismantled the fence and placed it in the middle of the property for the Claimant to carry it off his property. He stated that he also cleared a portion of the land which had become overgrown and was hindering his use and occupation of the remainder of his property and that only overgrown grass was cut down, all tress remained intact. See paragraph 15 and 16 of his witness statement.
26. Mr. Swing’s evidence is that in order to be further assured that he was exerting rights over land which in fact belonged to him, he commissioned a second survey to be done by Mr. Kirk Emmanuel, Licenced Surveyor. That

on April 26th 2007, Mr. Kirk Emmanuel completed a re-survey of Block 10 showing: (i) the original boundaries of Block 10; (ii) the portion of Block 10 fenced by Delvorine Williams; and (iii) the portion awarded to Delvorine Williams by the Supreme Court. A copy of said Survey is Exhibited as **“T.S. 7”**.

27. Mr. Swing stated at paragraph 19 of his witness statement that Mr. Kirk Emmanuel's survey further confirmed that Delvorine Williams was in wrongful occupation of his property.
28. Mr. Swing stated that from 1996 to present, he has been paying all taxes in relation to the entire Block 10 and Delvorine Williams has paid no taxes in respect of any portion of the property. A copy of Land Tax Statement for Block 10 is Exhibited and marked **“T.S. 8”**.
29. In cross-examination by Ms. Pitts, he said that Ms. Williams was living in the area when he moved there and that the house she was living in is still there. He said that he saw Ms. Williams and her family on the property after the court order of April 11, 2000. He said that he did not ask Ms. Williams with whose permission she was there. He said that he has no knowledge if she has ever paid any rent.
30. Mr. Swing in further cross-examination said that in 1996 he got conveyance and when Mr. Andrews came to Court in 1998 he believed he was trying to get the piece of land that Ms. Williams was occupying. He said that by conveyance of 11th October, 1996 Mr. Andrews had already conveyed to him but later realized that it was a mistake. He said he was not sure if Mr. Andrews had title but he knows that he inherited the land from his father.
31. Mr. Swing testified that he only became aware of Ms. Williams occupation after she had gone to the Court and he later understood that the application

concerned a portion of Block 10. He further said that after Ms. Williams got her title he re-executed his conveyance.

32. Ms. Swing further testified in cross-examination that Ms. Williams house sits on the centre of Block 10 but that he is claiming the whole property including where Ms. Williams house sits. He said when he bought the property Ms. Williams house was there. He also said that he just want to know his boundaries.
33. Mr. Swing said that he took down the fence after the survey and the notice to Ms. Williams.
34. In re-examination, Mr. Swing said that he became aware of the Court proceedings by Ms. Williams after the proceedings began. He said he was not given notice of the proceedings.
35. He testified that he understands from Mr. Emmanuel's plan that he owns portion to the right, centre, part of the portion of the left which is in blue colour and that Ms. Williams was awarded by the Court the green portion on the plan.
36. The second witness for the Defence was Kirk Emmanuel, Licenced Land Surveyor, of Sarawee Village, Stann Creek District. He said that on or about April 19th 2007, he was contacted by Mr. Tom Swing who requested that he conduct a re-survey of Block 10, taking into account Lands granted to Delvorine Williams pursuant to a Court Order dated April 11th 2000 in Action No. 519 of 1998.
37. He testified that on execution of the survey he received a copy of a Court Order from Mr. Swing. Also, he had a copy of Entry No. 2830, Registration No. 14 which is a copy of a sub-division showing Lot. No. 10 and adjacent

lots. He said that in accordance with the Court Order it specifically states that the boundary by Ms. Williams is 375 feet more or less east of the south eastern corner of a parcel of land belonging to Ezgene Kelly.

38. Mr. Emmanuel said that based on the information contained in the said Court Order, he visited Block 10 and executed the necessary surveys. He thereafter prepared a survey showing: (a) the Boundary of Block 10 (appearing in red on the survey); (b) Area fenced by Delvorine Williams (appearing in Blue on the survey); (c) Area awarded to Delvorine Williams by the Court (appearing in Green on the survey).
39. At paragraph 3 of his witness statement he said that his survey of Block 10 clearly showed that Delvorine Williams had fenced a portion of Land belonging to Tom Swing and not that which was awarded to her by the court.
40. Mr. Emmanuel was cross-examination by Ms. Pitts. He said he is a surveyor since 1996 but has been surveying since 1981. In 1981 he worked under the new system, the U.T.M. grid system. He also said he is not versed with the old system but he is versed with the present practices or methods.
41. He was asked if he is familiar with meters and bounds and he said that when property is being surveyed the meters and bounds is identified before the feet is put in. He explained that when one uses the term 375 feet "more or less" it means that you can give or take 10 – 15 feet. However, he has never found 10 – 15 feet.
42. He was asked whether he saw a house on Lot No. 10 and he said that he did see a house on the said lot belonging to Mr. Swing and he believes it is Ms. Williams house.

Submissions by Ms. Tricia Pitts for the Claimant

43. Ms. Pitts submitted that it is not disputed that the Claimant erected a fence on the property. She submitted that fencing around a piece of land is clear evidence, but not the only evidence, that the occupier has taken factual possession and intends to retain possession to the exclusion of all the world including the owner. Learned Counsel submitted that it is clear evidence of the factual possession and *animus possidendi*. She relied on the case of **Malcom Watters v. Louis Escobar**, Supreme Court Action No. 143 of 2001.

44. Learned Counsel referred to **Halsbury's Laws of England, Third Volume, paragraph 1213** and submitted that it is not necessary in order to maintain trespass that the Claimant's possession should be lawful and actual possession is good against all except those who can show a better right to possession in themselves.

45. Ms. Pitts submitted that the only person who can defeat the Claimant's claim based on her continuous undisturbed possession is a person with better title to the property. She submitted that the Defendant relies on two conveyances which it is purported establishes his title to the subject property. However, she submitted that the very circumstances and the history that precedes the execution of these conveyances undermine the root of title and ultimately the title on which the Defendant relies. Learned Counsel further submitted that the Defendant has failed to prove that he has a better title or better right to title.

46. Learned Counsel submitted that the evidence of Mr. Emmanuel, Licensed Surveyor shows that the portion of Block 10 for which the Court granted title to the Claimant is not in fact the portion on which her house stands. That the portion of title is located elsewhere. Ms. Pitts submitted that the

inconsistency can only be attributed to an honest misdescription of the boundaries of the portion of land on which the Claimant's house stands. She submitted that the plausibility of errors being made by surveyors when delineating boundaries was explained by Mr. Emmanuel who said that the words, 'more or less' used in the description of property is an approximation.

47. Learned Counsel submitted that the misdescription does not alter the position that the Claimant has been in possession of the same portion of land prior to, during and after the Declaration of Title proceedings which clothes her with sufficient *locus standi* to make and succeed with the claim as the Defendant has been unable to prove that he has a better title or right to title of the same portion of Block 10.
48. Learned Counsel further submitted that since the Defendant failed to establish that he has a better right to title or a better title than the Claimant the Defendant has no authority to take down the fence he did not erect. Ms. Pitts submitted that to do so constitutes an unlawful entry upon the Claimant's portion of Block 10 and therefore is liable to damages for trespass which is actionable per se.
49. Learned Counsel submitted that if the Defendant is allowed to succeed on his claim on the strength of his conveyances then that would be revisiting and challenging the title to the Claimant's portion of Block 10 by inappropriate forum as against the weight and strength of the Supreme Court decision in Action No. 519 of 1998 that the Claimant has been in possession for more than 30 years.
50. Learned Counsel submitted that unfortunately, no estimation of the cost of the plantain suckers were adduced into evidence but it is still open to the court to grant some form of compensation as the court thinks just that will compensate

the Claimant for her loss having regard to the nature of trespass itself and the attendant damage.

Submissions by Mrs. Gillett for the Defendant

51. Mrs. Gillette referred to Winfield & Jolowicz on Tort, Sweet and Maxwell at page 300 which states that “**Possession in fact:** sometimes known also as “custody,” “detention” or “de facto possession,” may be defined as “any power to use the thing and exclude others ... if accompanied by the animus possidendi, provided no one else has the animus possidendi and an equal or greater power.
52. Learned Counsel submitted that the Claimant’s evidence is that she moved to another house in 2005 and therefore admitting that she is not in fact in occupation of the property in respect of which she has brought the claim.
53. Mrs. Gillett further submitted that it would appear that the basis on which the Claimant initiated the claim was because she believed herself to be the freehold owner of the property. That it was not until after evidence was adduced that the Claimant did not have title to the disputed portion of Block 10, that the Claimant’s attorney sought to rely on ‘possession’ to ground the Claimant’s cause of action. She further submitted that in the absence of any evidence of possession, the Claimant has not proved that she is within the class of persons who can maintain an action for trespass in respect of the disputed property.
54. Learned Counsel referred to Halsbury’s Laws of England Vol. 45, 4th Edition at paragraph 1405 which states that, “*A Defendant may plead and prove that he had a right to the possession of the land at the time of the alleged trespass, or that he acted under the authority of some person having such a right*”.

55. Mrs. Gillett submitted that from the evidence it is evident that the portion of land in respect of which the Claimant is claiming damages for trespass in fact belongs to the Defendant. Therefore, she submitted that the Claimant, even if she had a basis to maintain an action for trespass, such an action could not succeed against the Defendant who is clearly the owner of the property and who has exercised possessory rights over it.

Determination

56. The claim for trespass by the Claimant is on the strength of a First Certificate of Title recorded in the Land Titles Unit. See paragraph 1 of her Statement of Case. This Certificate of Title was not adduced into evidence by Ms. Williams. Further, the size or description of the area of trespass was not stated in the evidence. The evidence of Ms. Williams is that in 1999 she applied to the Supreme Court and obtained prescriptive title to the said property based on her occupation for over 40 years which was open, continuous and uninterrupted. Her evidence is that after she obtained the First Certificate of Title to the property she caused to be erected a barbed wire fence enclosing the property which she occupied. The evidence is that she obtained the Court Order on 11th April, 2000.

57. Mr. Tom Swing evidence is that he is also the owner of this disputed portion of Block 10. His evidence is that he purchased two parcels of Land being Block 10 and Block No. 1 on 11th day of October, 1996. See Exhibit "T.S. 2" for copy of Deed of Conveyance. When this purchase was made the Defendant was aware that Ms. Williams house stood on a portion of Block 10 but was told by the Vendors that Ms. Williams is a tenant at will and that she will vacate the property before they entered into occupation. It was after this purchase by Mr. Tom Swing of the Block 10 that Ms. Williams went to Court

and obtained prescriptive title to the land adjoining that of the Defendant. Mr. Swing was not given notice to the proceedings but his Vendor's agent who was given notice did not defend the claim. At this time Mr. Swing was already Ms. Williams neighbour.

58. Mr. Swing subsequently obtained a new conveyance in 2002 which was signed by all the beneficiaries of the Estate as the first conveyance was signed only by the Administrator. The Claimant sought to attack the title given to Mr. Swing as she said that neither Rudolph Andrews nor Ernest Andrews possessed legal title to the property to convey valid title to Mr. Swing. Ms. Pitts in her submission also questioned Mr. Swing's conveyance because of the history of the execution. I must mention that the claim before this court is for trespass. This is not a claim challenging Mr. Swing's title.

59 The disputed land concerns only a portion of Block 10 and not the entire portion occupied by Mr. Swing. Ms. Williams has a First Certificate of Title and Mr. Swing has a Deed of Conveyance. Further, the evidence is that Mr. Swing pays taxes for the entire Block 10. See Exh. "T.S. 8" The issue for the Court is therefore a determination of the boundary of the adjoining lands. That is, whether the plans prepared by Mr. Marin and Mr. Emmanuel, the Licensed Surveyors are correct. The Claimant by accident or design did not produce to this Court the documentary title which is the Certificate of Title on which she based her claim nor the Court Order which gives her title to the land. Instead, Ms. Pitts relied on possessory title. She argued that the fence around the piece of land is clear evidence that the occupier has taken factual possession and intends to retain possession to the exclusion of all the world including the owner. She relied on the case of **Malcom Watters v. Louis Escobar** supra. This case can be distinguished from the case at hand. In Escobar case, Mr. Escobar had fenced the land for more than 30 years and thereafter asked the court for a declaration of a fee simple title to the land area that he had fenced. In the case at bar, Ms. Williams fenced the land after

she obtained title from the court. Therefore, it is my considered view that her boundary should be as stated in the court order. The reason being is that Ms. Williams had already established before the Court in April, 2000 in Action No. 519 of 1998 that she had exclusive possession of the portion of land granted to her. It was in that action that Ms. Williams had to prove her factual possession and *animus possendi* in order to obtain her Certificate of Title. It seems to me that Ms. Williams is now seeking to have another bite at the cherry.

60. The issue of trespass which is now before this court can be disposed of based on the survey of the land which shows the common boundary of the adjoining lands. The evidence of the survey of the said land comes from Mr. Emmanuel, the licensed surveyor. Further, there is supporting evidence by the Defendant that a survey was also prepared on his instructions by Mr. Solomon Marin who is also a Licensed Surveyor which showed that the portion of land that Delvorine Williams had fenced was not what had been awarded to her by the court. See copy of the Survey by Mr. Marin Exhibited as “**T.S. 5**”.

61. The evidence before the court is that when Mr. Emmanuel did a re-survey of Block 10 he took into consideration the portion awarded to Ms. Williams by the Supreme Court on 11th April, 2000. This Order is exhibited by the Defendant as “**T.S. 4**”. Mr. Emmanuel used as the basis for determination of the boundary, the description in the said Court Order.

62. The description of the land in the said Supreme Court Order dated 11th April, 2000 states that:

“IT IS ORDERED that title to ALL THAT lot piece or parcel of land situated on the north bank of the Sittee River bounded on the north by Sittee River back road on the east and west by lands now or formerly belonging to

Matthew Andrews and on the south by Sittee River more particularly described as follows:

Commencing at a wooden post which is 375 feet more or less east of the south eastern corner of a parcel of land belonging to Ezgene Kelly thence in a northerly direction on a true bearing of 341 degrees 15" for a true distance of 283 feet 2 inches to a point on the southern limit of the Sittee River back road
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63. The evidence of Mr. Emmanuel, was not challenged by the Claimant. He prepared the survey showing three portions of land in red, blue and green. See **Exhibit "T.S. 7"** for copy of survey. The Plan shows the re-survey of Lot No. 10 as shown on Entry No. 2830, Reg. No. 14. Mr. Emmanuel's evidence is that:

- (i) The survey appearing in **red is the boundary of Block 10;**
- (ii) The survey appearing in **blue is the area fenced by Ms. Williams;**
- (iii) The survey appearing in **green shows the area awarded to Ms. Williams by the Court.**

64. I accept the evidence of Mr. Emmanuel which shows the area awarded by the Court to Ms. Williams. I find him to be credible and very professional. This evidence which is unchallenged by the Claimant is that the survey of Block 10 clearly shows that Ms. Williams had fenced a portion of Land belonging to Mr. Swing and not that which was awarded to her by the court. Mr. Marin's survey also supports this position.

65. Based on the foregoing, I find that Mr. Swing removed fence which was on his portion of Block 10. I also find Mr. Swing's evidence credible that he cut only over-grown grass which was on his portion of Block 10. Consequently, I find that there was no trespass on the Claimant's land.

66. For sake of completeness I will consider the submission made by Ms. Pitts in her written submissions on a possible misdescription in the Claimant's Certificate of Title. Learned Counsel, faced with the evidence by the surveyor asked him for an explanation of the term '375' feet 'more or less'. To which he answered that one can give or take 10 – 15 feet. Ms Pitts submitted that the inconsistency in the description of title in the court order and the position of the Claimant's house can only be attributed to an honest misdescription of the boundaries of the portion of land on which the Claimant's house stands.
67. I have carefully considered the evidence by the Claimant and I find that there is no evidence to show that there was an error within the 375 feet more or less which according to Mr. Emmanuel could be 10 – 15 feet. The Plan clearly shows that Ms. Williams has not fenced the portion of land awarded to her by the court.
68. In my view, this court has no jurisdiction to revisit the court order dated 11th October, 2008 based on submissions in this case for trespass that the Court was given incorrect information when Ms. Williams was granted her title. This description was given to the court by the Claimant when she made her application for prescriptive title. This court has no jurisdiction to alter the description in the Certificate of Title to accommodate the action for trespass. Further, this court will not make any ruling on the title of either party as the case before the court is not a challenge to title but one of trespass and in which case both parties have shown that they have title with defined boundaries.

69. Conclusion

The Claim for trespass and injunction against the Defendant is dismissed.

Cost to the Defendant to be agreed or taxed.

Dated this 15th day of December, 2008.

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Minnet Hafiz
Supreme Court Judge