

THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 342 OF 1996

BETWEEN:

GIDEON CODOGAN

Claimant

V

CENTRAL WATER AND SEWERAGE AUTHORITY

Defendant

Appearances:

Mr. Emery Robertson for the Claimant

Ms. Zhing Horne for the Defendant

2003: January 20
2003: September 23

JUDGMENT

[1] **BRUCE-LYLE, J:-** This is a claim for compensation as per an amended statement of claim filed on the 14th November 2002, for the balance of \$49,323 being the sum remaining from an assessment of the value of the claimant's crops and produce on a parcel of land measuring 5 acres which he claimed he had cultivated since 1985, having inherited the said lands from his mother Lucy Lewis, and which lands had been declared a protected area. It is not in dispute that the defendant paid to the claimant the sum of \$12,282.00 as compensation, despite an assessment to a total sum of \$61,605.00 as posited by the claimant.

- [2] The defendant on the other hand asserted that in or about 1991 or 1992 Crown lands upstream of the Perseverance intake were granted to the defendant and consequently became a protected area. The claimant was therefore proscribed from rearing pigs, cultivating or planting crops and from using chemicals on the said lands. The defendant further asserted that despite the foregoing the claimant continued his farming activity, and that it was also clearly understood and agreed by the parties that no compensation would be paid for the crops referred to in the statement of claim, as the said tree crops were all on the said lands before the claimant commenced his occupation of the said lands, which they considered to be squatting or illegal.
- [3] The defendant further asserted that at no time did it ever acknowledge the claimant's claim or undertook to pay same as alleged by the claimant. They therefore denied owing the claimant any sums of money further to the \$12,282.00 already paid to the claimant.
- [4] The matter proceeded to trial at which by consent both counsel informed the court that all documents on file as exhibits were to be admitted into evidence as exhibits. During the trial the claimant was the sole witness for his case. The defendant also called one witness Mr. Carlos James who was present during the assessment or valuation of the crops on the claimant's land, and testified as to the reasons behind the payment of the sum of \$12,282.00 despite their assessment figure of \$39,005.00.
- [5] From the claimant's evidence, there is no dispute that the lands were extensively cultivated; at least with 5,118 mats of bananas which were categorized into percentages according to their stage of development. But then the Claimant also stated that alongside bananas, he planted or cultivated other crops like plantain, coconut, breadfruit, soursop, golden apples, mangoes and other fruit trees; but mainly he described himself as a banana farmer. He stated in his evidence and I surmise from the evidence in totality, that upon receipt of the notice to cease operations on the said lands, an extension officer, a senior one at that, who is now a Minister of Government, Mr. Montgomery Daniel, a Mr. Edwin Glasgow now deceased, Mr. Garth Springer who now resides in Canada, and the sole witness for the defendant Mr. Carlos James, came to his lands for the purposes of

assessing or valuing his lands and crops thereon for compensation payment. On completion of the valuation, the Claimant said he received a copy of what the tallies were.

[6] Of crucial importance, is the assertion by the claimant that he knew that Mr. Cummings, the Manager of the defendant company was informed of the valuation, as he Mr. Cummings paid a visit to him on his lands and told him money was not a problem and that he would be compensated for his crops. The claimant further stated that based on his valuation figure of some \$61,000.00 and the payment of \$12,282.00 he received from the defendant since 8th September 1993, he instructed his solicitor to write to the defendant to claim the balance of the compensation; he has to date not received that balance. The claimant then identified the valuation report prepared by Mr. Montgomery Daniel which had also been signed by Mr. Carlos James. This by consent, as already stated, was part of the evidence as exhibit. The valuation report speaks for itself in regard to the crops valued; the assessment was placed at \$39,005.00.

[7] The claimant contends that other trees like coconuts, oranges and tangerines, soursop, golden apple, nutmeg, mangoes, breadfruit and cocoa plus the plantains were not included in the valuation. This he said he drew to the attention of the valuers during the assessment. He also instructed his solicitor to inform the defendant of these facts. He identified the letters from his solicitor to the defendant which by consent were in evidence as exhibits. On the allegation by the defendant that the claimant was a squatter exhibit C.G. 2 demolishes that assertion – this represents a grant of the said lands from the Crown to Joshua Lewis dated the 5th May 1927, from whom the claimant claims the lands, and evidence of which has not been controverted by the defence. In my view the claimant was not a squatter, nor was he illegally occupying the said lands in the absence of any evidence to the contrary.

[8] Under cross-examination the claimant to my mind maintained his position as regards the proper compensation that ought to have been paid to him by the defendant, and insisted that upon receipt of the notice to quit the said lands, he did not plant nor engage in any activity on the said lands pertaining to his crops. Most importantly he maintained that

when he left his lands, plenty of bananas were bearing on his trees. He also mentioned that there were some tree crops on the land before he started farming it in 1985 but these were not much. These he identified as a couple of old coconut trees. Apart from that, he said, he planted all the other tree crops on the land. He then stated that he was not claiming for the tree crops that were on the land before he took over the lands in 1985.

[9] On being shown the assessment or valuation in evidence as Exhibit D.C. 2, the Claimant told the Court that even though he did not agree with the figures contained therein, he would accept payment of compensation based on those figures if they included a valuation of the plantains he said were also on the land. He admitted the assessment was done on 2nd December 1991, whilst he received the notice in October 1991.

[10] The defendant's sole witness Mr. Carlos James, an employee of the defendant company for the past 25 years, and designated as Superintendent for the area of Sion Hill to FitzHughes, testified to the effect that he was familiar with the Perseverance water supply intake where the claimant had had his lands. He stated that the lands in that area were reserved lands. They became so in 1991, by Gazette Notice to the public. He said there were also radio releases and signs placed around the catchment area signifying that these were reserved lands. Basically, his evidence pertained to the method used in the valuation of the claimant's lands and the figures arrived at, based on prices set by the Ministry of Agriculture.

[11] He however stated that the claimant despite a verbal notice to him to cease cultivating the lands, continued to do so, and even after being sent a written notice. He did not actually see the claimant continue to cultivate the lands but based his conclusion on the stages of growth or development of the banana plants on the lands at the time of the valuation, a contention the claimant disputes vehemently. But even then after the valuation, his evidence as to the figures conformed with what was contained in Exhibit D.C. 2. Quite interestingly he stated that the board of directors and management of the defendant had the final say in what compensation is paid, and that none of the assessors of the claimant's lands had any say in what compensation would be paid, and also that the purpose of the

assessment was to have the information at hand for the authorities to base their compensation figure on.

[12] Really, this case is not based on whether the claimant is entitled to compensation or not, but rather what quantum of compensation he was entitled to, in the circumstances of the case. Having thus held, I cannot find anything in the evidence to assist me in accepting the figure of \$12,282.00 that was paid to the claimant as anything but adequate.

[13] A person is entitled to fair and adequate compensation for his investment in any property which for one reason or the other is compulsorily acquired in the national interest. In this case there is no dispute as to the claimant's ownership of the lands in issue. I have ruled on that issue elsewhere in this judgment. There is no doubt in my mind that the claimant has expended great time and effort into transforming the said lands into one bearing bananas and other crops, which were valued by certain officials mandated to do so, and based on prices set by the Ministry of Agriculture.

[14] There is no evidence whatsoever from the defendant as to the reasons why the Board of Directors and Management of the defendant company took the decision to ignore the valuation of the mandated officers and to settle for and impose a figure of compensation of only \$12,282.00. Frankly speaking, I was not at all impressed with the evidence of Carlos James himself a banana farmer, who clearly has an interest of his own to serve being an employee of the defendant company. But he has categorically stated that "none of the assessors of the claimant's lands had any say in what compensation would be paid."

[15] In the circumstances, having made the findings made earlier in this judgment, and on the preponderance of the evidence before me, I hold and order that the claimant is entitled to a fair and just compensation in an amount more than the \$12,282.00 already paid to him by the defendant. Having told this Court that he is prepared to accept the figures in the valuation documents Ex. D.C. 2, plus the sums claimed further by the claimant in his evidence which brings his total claim to \$61,605.00 less the already paid sum of \$12,282.00, I order that the defendant pay the claimant the sum of \$49,323 with interest at

the rate of 6% per annum from the date of filing of this suit until the date of payment of the judgment sum. The defendant will also bear the claimant's costs in the sum of \$12,000.00.

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Frederick Bruce-Lyle
HIGH COURT JUDGE