

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.13 OF 2001

BETWEEN:

CLENDON LOUIS

Appellant

and

ANDREW SMITH

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Adrian Saunders

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Kenneth Foster, QC for the Appellant
Mr. Vern Gill for the Respondent

2003: June 12;
October 21.

JUDGMENT

- [1] **REDHEAD, J.A.:** It is in the interest of the people of any country that litigation is brought to an end. This is expressed in the well-known ancient latin maxim interest reipublicae ut sit finis litium.
- [2] This case is coming before this Court for the fourth time for a resolution of the same issue ie. the determination of the access road which adjoins the properties of the parties.

- [3] On 27th day of April 1999 Andrew Smith, the Respondent made an application to the High Court for an injunction. It seems from the record that the injunction was granted on 21st March 2000 in the following terms:
- "That the Respondent be restrained from allowing his fence and derelict vehicles and any other encumbrance to remain on the area marked out for the access road."
- [4] On 27th September, 2000 there was a hearing on an application that the injunction granted on 31st March, 2000 be continued until further Order.
- [5] This Order was granted on 11th October, 2000 that the Order continue until further Order. There were subsequent Orders extending the Order of 31st March, 2000. On 23rd March, 2000 the Solicitors for Andrew Smith filed a Notice of Motion for the committal of the Respondent for contempt of Court.
- [6] On 16th September, 2001 a Summons was filed by Solicitors for the Respondent seeking a stay of the Order of committal. The matter came before the Court of Appeal for the first time on 28th January 2002. An Order was made by the Court of Appeal that Registered Licensed Land Surveyor, Mr. Foche Modeste be appointed to establish by survey the right of way. The parties agreed to be bound by the report of the Surveyor. On 4th April, 2002 the parties, by consent, agreed that the licensed Land Surveyor, Mr. Rufinus Baptiste be appointed as the Surveyor to replace the Registered Licensed Land Surveyor, Mr. Foche Modeste to undertake the work of establishing by survey the right of way.
- [7] The Surveyor, Mr. Baptiste duly presented his report to the Court on 10th June, 2002 and notwithstanding the undertaking by the parties that they would abide by the report of the Surveyor, when the matter came back to the Court of Appeal for report Clendon Louis raised objections to the report.
- [8] The matter was then referred to Mediation by this Court for settlement. The case was sent to Mediation on 28th May, 2003 but unfortunately there was no

agreement. As a result of this failure the matter was set down before the Court of Appeal. The parties then announced to the Court that the Mediation exercise failed.

[9] The matter was then referred to a single Judge of the Court of Appeal. On 10th June, 2003 the parties appeared before a Court of Appeal Judge in Chambers. The Court was then informed that Mr. Kenneth Foster, QC who previously appeared for Clendon Louis had withdrawn from the case.

[10] At that hearing, the Appellant, Clendon Louis urged the Court to visit the disputed area and undertook to abide by any decision reached by the Court after such visit. On 12th June, 2003 the Court visited the disputed area. Having visited the disputed area, I am satisfied with the accuracy of the Surveyor's report and that there is an encroachment of the fence and the vehicles on the right of way.

[11] I am of the view having regard to the history of this matter that there is a stubborn refusal by the parties to this dispute, particularly the Appellant to accept the decisions of the Court. The Court cannot be a party to this conduct. It is hereby ordered that the report of the Licensed Land Surveyor, Rufinus Baptiste presented to the Court together with the attached plan be made part of this Court Order.

[12] The appeal is therefore dismissed, prescribed costs to the Respondent in the sum of \$9,333.33.

Albert Redhead
Justice of Appeal

I concur.

Sir Dennis Byron
Chief Justice

I concur.

Adrian Saunders
Justice of Appeal