

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2003/0400

BETWEEN:

OSBOURNE ROBERTS

Claimant

And

ROMEO ROBERTS  
ATTORNEY GENERAL

Defendants

**Appearances:**

Dr David Dorsett for the Claimant  
Mrs Carla Brooks Harris Crown Counsel1 for the Attorney General  
Mr. Romeo Roberts in person

.....  
2006: May 3<sup>rd</sup>  
June 2<sup>nd</sup>  
July 14<sup>th</sup>  
August 17<sup>th</sup>  
.....

**JUDGMENT**

[1] **Blenman, J:** This is a claim for nuisance together with an ancillary claim for indemnity for damages. This judgment also incorporates the Court's assessment of the damages.

**Background**

[2] Mr. Osbourne Roberts (Mr. Osbourne) is an Antiguan who resides in St. Thomas. He owns property situate at Urlings St Mary's in Antigua and Barbuda (the property).

[3] The Crown owns a parcel of land (the Crown's land) registered as Registration Section: **South East Block 55 1382F Parcel: 37** and adjoins Mr. Osbourne's land. The Crown's land is the only means by which Mr. Osbourne could access his property.

- [4] Mr. Romeo Roberts (Mr. Romeo) occupies the Crown's land from which he carries on the business of mechanical repairs.
- [5] Mr. Osbourne alleges that Mr. Romeo has committed acts of nuisance in relation to his (Osbourne's) property and that the Ministry of Agriculture has failed or refused to prevent Mr. Romeo from continuing to do so. Mr. Osbourne obtained default judgment against Mr. Romeo.
- [6] Mr. Osbourne asserts that despite his several requests, the Crown has refused and or neglected to have Mr. Romeo abate the nuisance. He therefore seeks compensation from the Crown.
- [7] The Attorney General is sued under the Crown Proceedings Act Cap 12 Laws in his official capacity as the representative of the Ministry of Agriculture, Land and Fisheries (Ministry of Agriculture).
- [8] On behalf of the Attorney General it is contended that several public/government officials have intervened on numerous occasions to prevent Mr. Romeo from impeding Osbourne's access to land.
- [9] The Attorney General denies that Mr. Osbourne ever complained to the relevant officers about Mr. Romeo dumping garbage on the Crown's land. Mr. Osbourne's complaints were only in relation to the fact that his (Mr. Osbourne's) access the road was blocked.
- [10] The Crown further denies that Mr. Romeo has created the acts of nuisance as alleged by Mr. Osbourne or at all.
- [11] The matter came on for trial in order for the Court to determine whether Mr. Osbourne has established his claim against the Crown.
- [12] The Attorney General filed an ancillary claim against Mr. Romeo. During the trial Mr. Romeo did not defend the ancillary claim brought by the Attorney General

- [13] Mr. Romeo though present in Court took no part in the proceedings
- [14] Judgment was entered for the Crown against the Mr. Romeo on the ancillary claim to the extent of any damages, if any, the Court awards.

#### Issue

- [15] The first issue the Court has to resolve is whether or not the Crown has neglected or refused to cause the nuisance, if any, created by Mr. Romeo to be abated.
- [16] The next issue is what quantum of damages if any, the Court should award to Mr. Osbourne.

#### Law

- [17] The Public Health Act, Cap 353 Laws of Antigua and Barbuda (the Act) is relevant to the matter.
- [18] Section 2 of the Act defines "*injurious*" to include *dangerous*;  
*"nuisance" means anything which is capable of being abated either by the person or persons concerned or by the Board.*"
- [19] Section 22 of the Act provides as follows:  
"On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Part, the Board shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default or sufferance the nuisance arises or continues, or if such person cannot be found, on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the nuisance within the time specified in the notice, and to execute such work and to do such things as may be necessary for that purpose, and if the Board think it desirable (but not otherwise), specifying any works to be executed."

- [20] Section 23 of the Act states that:  
"If either

- (a) the person on whom a notice to abate a nuisance is served as aforesaid makes default in complying with any of the requisitions thereof within the time specified;
- (c) the nuisance although abated since the service of the notice, is, in the opinion of the board, likely to recur on the same premises

the Board shall make a complaint before a Magistrate, and such Magistrate may make on such a person a summary order."

### **Evidence**

[21] Mr. Osbourne testified in support of his claim and called one witness Mrs. Roselyn Williams (Ms. Williams). Mr. Lionel Michael (Mr. Michael) the Chief Health Inspector testified on behalf of the Attorney General.

### **Mr. Osbourne's evidence**

[22] Mr. Osbourne said that on or around July 2002 Mr. Romeo piled up garbage on the Crown's land and blocked his waterway causing water to "back up" into his house damaging his (Osbourne's) house. As a result, there was flooding to his house and he had to expend a lot of money to have his house cleaned. Mr. Osbourne was forced to erect a concrete wall around his house in order to keep the water out. Mr. Osbourne tendered a number of receipts into evidence in support of his contention that he had to expend various sums of money to repair his property; the receipts are all dated 2000.

[23] Mr. Osbourne said that he reported the matter to an officer of the Fisheries Department on several occasions and to Mr. Dueberry all to no avail.

[24] In addition, Mr. Romeo placed dirt over gravel and filling that Mr. Osbourne had left on the Crown's land with which he had intended to construct a driveway on the Crown's land in order to access his house. Hurricane Lenny came and swept the dirt into the gut in front of his (Mr. Osbourne's) property blocking him in. Despite several pleas to Mr. Romeo, Mr. Osbourne complained that Mr. Romeo refused to remedy the situation.

- [25] Mr. Romeo continuously blocked the entrance to Mr. Osbourne's gate by leaving heavy earth moving equipment in front of his gate together with various vehicle parts such as old trees.
- [26] On various occasions, Mr. Romeo entertained his friends on the Crown's land and left the remains of food and garbage there, this caused rodents and other insects to infect the area. Fumes also emitted from the garbage.
- [27] Mr. Osbourne said that he made several complaints to Mr. Michael the latter who convened meetings with Mr. Romeo, Mr. Duberry, and Mr. Osbourne. Mr. Dubery and Mr. Michael directed Mr. Romeo to desist his use of the land in the manner that was causing the nuisance. These directions fell on deaf ears.
- [28] Mr. Osbourne further complained that Mr. Romeo lit fires on the Crown's land and blocked the drive way by placing a backhoe on the driveway.
- [29] Ms Osbourne alleges that he has suffered loss and damage as a consequence of Mr. Romeo's act. His house has diminished in value to the extent of \$20,000. He claims special damages reflected by the cost of repairs to stone work in the sum of \$3,473.14 together with the diminution in the value of his property to the tune of \$20,000.00. The total sum being \$23,473.14. He seeks general damages in the sum of \$75,000.00.
- [30] Mr. Osbourne complains that as recent as the date of the hearing of the matter Mr. Romeo had placed garbage on the Crown's land. Tyres are in front of the entrance of his house and blocking his entrance.
- [31] Mr. Osbourne further states that meetings were held between himself, Mr. Romeo and Mr. Michael and while Mr. Romeo was requested to clean the yard he has flatly refused to do so. He stated that even though Mr. Romeo was requested on several occasions to clean the Crown's land he (Romeo) has refused. Mr. Osbourne is of the view that the Crown has failed or refused to take reasonable steps to prevent Mr. Romeo from using the Crown's

land in an unlawful manner and therefore the Crown has breached its duty and has failed to abate the nuisance created by Mr. Romeo.

[32] Learned Crown Counsel, Mrs. Carla Brooks-Harris cross examined Mr. Osbourne at length. Mr. Osbourne maintained during vigorous cross examination that Mr. Romeo had several trucks parked on the Crown's land and impeded his access to the road. The Crown's land is the only means by which he could get to his property.

[33] Mr. Osbourne was adamant that as a consequence to the flooding in his yard, caused by Mr. Romeo several acts, water and dirt entered his home and he (Osbourne) had to expended the sum of \$3,473.00 in order to clean his home and to construct a wall to prevent the water and dirt from entering.

[34] Under further skilful cross examination by Mrs. Brooks-Harris, Mr. Osbourne was forced to admit that he did not have experience in the valuation of the property. At no time did he obtain a valuation of the property. He was nevertheless of the opinion that his property had devalued to the extent of \$20,000.

[35] He insisted that he made several reports to Mr. Michael about the garbage that Mr. Romeo has thrown on the Crown's land.

**Mrs. Williams's evidence**

[36] Ms. Williams supported Mr. Osbourne and stated that she visited Mr. Osbourne's house at Urlings. On one occasion she saw Mr. Romeo throwing old wood, tyres and garbage on the Crown's land into a burning fire. The fire was about 10 feet from Mr. Osbourne's bedroom window and smoke from the fire was coming through Mr. Osbourne's bedroom. She also witnessed Mr. Romeo place his backhoe and blocked the entrance to Mr. Osbourne's driveway.

### **Mr. Michael's evidence**

- [37] Mr. Michael is the Chief Health Inspector within the Ministry of Health and Sports. Mr. Michael admitted that Mr. Osbourne had made several complaints to him about Mr. Romeo dumping garbage and parking heavy duty vehicle on the Crown's land. As a result of the complaints, he convened several meetings with Mr. Osbourne, Mr. Romeo the then Chief Land Officer and Mr. George Duberry. Mr. Michael requested Mr. Romeo to remove the encumbrances on the land which included the vehicles and Mr. Romeo had agreed.
- [38] Mr. Michael stated that at no time was Mr. Romeo ever given permission to use the Crown's land. The Ministry of Agriculture, Lands and Fisheries never authorized, facilitated or allowed the alleged nuisance.
- [39] Mr. Michael admitted that on occasions Mr. Romeo habitually parked vehicles on the Crown's land blocking the access to Mr. Osbourne's property. However, he was clear that at no time did Mr. Osbourne ever complain to any public officer about Mr. Romeo having committed acts of nuisance or that Mr. Romeo had done acts which amounts to health hazards.
- [40] Neither the Crown nor any of its officers ever gave Mr. Romeo permission to use its land.
- [41] Under cross examination by learned counsel Dr David Dorsett, Mr. Michael admitted that he visited the Crown's lands on several occasions as a result of complaints he had received from Mr. Osbourne. On visiting the Crown's lands, he observed that Mr. Romeo had obstructed Mr Osbourne' access to the road by placing several heavy duty equipment and trucks together with garbage in the nature of solid waste on the land. Mr. Michael agreed that persons in the immediate area would be affected. However, he was of the view that there was nothing On the Crown's land that would constitute a health hazard.
- [42] Mr. Michael recalled that during one of his visits, he saw construction rubble on the land. The paved area that accessed Mr. Osbourne's land was dug up. While he has responsibility for environmental matters and agreed that public health breaches fall within

his remit, Mr. Michael stated that on his site visits he saw old engines and vehicles blocking Mr. Osbourne's access but at no time did he see any rodents or experienced any foul smells of which Mr. Osbourne complains.

[43] Mr. Michael further stated that while he is empowered to give defaulters notices to clean up and should they fail to comply he has legal remedies to his disposal; he has no authority to request persons to remove vehicles that are parked either on the Crown's land or on the road. He nevertheless stated he had cause to visit Mr. Romeo on several occasions and to request that Mr. Romeo removed some concrete material that he had accumulated on the Crown's land. On his return visit, Mr. Romeo had not complied with his directives, he therefore extended the time for Mr. Romeo's compliance. On his second return visit, Mr. Romeo had removed the concrete rubble.

[44] Mr. Michael said that, finally, on his return to the land he observed that Mr. Romeo has cleaned the area; however, he still has his vehicles blocking Mr. Osbourne's access to the road. The blocking of Mr. Osbourne's access to the road was in Mr. Michael's opinion not within the scope of his work as the Chief Public Health Officer but rather a matter to be dealt with by the police. He nevertheless expressed concern about the issue of safety should the need arise for persons to exist Mr. Osbourne's house, in cases of emergency.

### **Second Defendant's Submissions**

[45] Learned Counsel Mrs. Brooks-Harris on behalf of the Attorney General submitted that, it is undisputed that Mr. Romeo was not given any permission to use the land owned by the Attorney General and therefore Mr. Romeo should be treated as a trespasser. The evidence reveals that the Crown had no knowledge of the nuisance created by Mr. Romeo and therefore could not be said to have continued or adopted the nuisance.

[46] Crown counsel relied on **Sedleigh-Denfield v O'Callaghan 1940 AC 880** in which it was held that an occupier will not be liable for nuisance created by a trespasser without his knowledge or consent. Lord Wright at page 904 of the judgment stated that:

"If he [occupier] is to be liable a further condition is necessary, namely, that he had knowledge or means of knowledge, that he

knew or should have known of the nuisance in time to correct it and obviate its mischievous effects, the nuisance may be due to a latent defect or to the act of a trespasser or stranger, then he is not liable unless he continued or adopted the nuisance, or more accurately, did not without undue delay remedy it when he became aware of it, or with ordinary and reasonable care should have become aware of it.”

[47] Based on the above principle Mrs. Brooks-Harris stated that the question at hand is whether the Attorney General had knowledge of or consented to the alleged actions of Mr. Romeo on the Crown’s property. Mrs. Brooks-Harris further submitted that it is necessary for Mr. Osbourne to show that the government had knowledge of alleged nuisance that was committed on the Crown’s land.

[48] Mrs. Brooks-Harris further stated that Mr. Osbourne in his claim had stated that the alleged nuisance by Mr. Romeo was committed on or around July 2002. Counsel further submitted that it is clear from the facts that at the time the alleged nuisances were committed by Mr. Romeo, the Crown had no knowledge whatever of the activities that were committed by Mr. Romeo. This is evident by the evidence given by Mr. Osbourne and Mr. Michael that a meeting was convened with Mr. Osbourne, Mr. Romeo, Mr. Michael and the Commissioner of Inland Revenue after a report was made by the claimant of the alleged nuisance committed by Mr. Romeo. It is the evidence of both Mr. Osbourne and Mr. Michael that meetings were held amongst the parties in an effort to resolve the matter. Further, instructions were given to Mr. Romeo to cease obstructing Mr. Osbourne’s access to his property and he agreed to do so. Mr. Michael also indicated that he had given verbal instructions to Mr. Romeo to remove the construction rubble, Mr. Romeo partially complied with the directives. It was Mr. Michael’s evidence in chief that the said land was cleaned by Mr. Romeo sometime in 2002.

[49] Mrs. Brooks-Harris stated that another issue for determination, therefore, is whether the Crown has continued or adopted the alleged nuisance committed by Mr. Romeo.

[50] She argued that Mr. Osbourne has not adduced any evidence to show that the Crown had sanctioned, approved the acts of Mr. Romeo, or that they had benefited from it.

- [51] Finally Mrs. Brooks-Harris submitted that since there was nothing on the land that would constitute a nuisance or health hazard, the powers of the Chief Health Inspector cannot be invoked in the present case. Counsel referred the Court to Sections 19 and 20 of the Public Health Act Cap. 353 Laws of Antigua and Barbuda.
- [52] Next Mrs. Brooks-Harris took issue with Mr. Osbourne's claim for special damages. Mrs. Brooks-Harris further said the burden of proof lies on Mr. Osbourne to prove on a balance of probabilities the special damages claimed and that he did indeed suffer the damages to his property on account of the alleged nuisance caused by the Mr. Romeo.
- [53] Mrs. Brooks-Harris further stated that Mr. Osbourne is to put to proof of every item of special damages pleaded. Counsel stated that every claim for special damages by Mr. Osbourne must be explicitly claimed in the Statement of Claim with full particulars of how it is made See: **Hayward v Pullinger & Trade Partners Ltd 1951 ALL ER 581**. Further any monetary loss which Mr. Osbourne has not pleaded and particularized cannot be recovered. The receipts in respect to the special damages for the stonework are exhibited on pages 14 to 17 of the trial bundle are all dated 2000, those are dates well before the date on which the alleged acts of nuisance occurred. Mr. Osbourne in his Statement of claim stated that the alleged nuisance was committed by Mr. Romeo commenced in July, 2002; however these receipts are dated 2000. Mrs. Brooks-Harris therefore submitted that Mr. Osbourne's claim for special damages should be dismissed. Counsel relied on **Iikiw v Samuels (1963) 1 WIR 991** in support of her contention.
- [54] Mrs. Brooks-Harris also objected to Mr. Osbourne request of \$20,000 damages for diminution in value of his property. It has been held that where a nuisance causes damage to property the general rule is that the measure of damages is the difference between the money value of the Claimant's interest in the property before the damage and the money value of his interest after the damage. See **Moss v Christchurch Rural Council Rogers v Same [1952] 2 KB 750**.

### Mr. Osbourne's submission

[55] Learned counsel Dr Dorsett submitted that there is no doubt that Mr. Romeo has created several acts of nuisance in relation to Mr. Osbourne. Dr Dorsett relied on section 20(p) of the Public Health Act in support of his contention that Mr. Romeo has created several acts of nuisance on the Crown's land thereby affecting Mr. Osbourne's use of his land. Dr Dorsett further relied on section 22(1) of the Public Health Act and asserted that the acts committed by Mr. Romeo are capable of being abated by the person or person concerned or by the Board.

[56] Dr Dorsett also advocated that the actions of Mr. Romeo by substantially blocking Mr. Osbourne's right of way across the Crown's land, and which in effect is an easement of necessity, have given rise to an actionable nuisance. **Counsel relied on *Marshall v Blackpool Corporation* [1934] ALL E.R. 437 at 439.**

[57] Dr Dorsett stated further that the obstruction of Mr. Osbourne's right of access to the public road is an interference with a private right. This is the law as stated by Buckley J in ***Chaplin v Westminster Corporation* [1901] 2 Ch 329 at 334** when he said that:

"A person who owns premises abutting on a highway enjoys as a private right the right of stepping from his own premises on to the highway, and if any obstruction be placed in his doorway, or gateway, or, if it be a river, at the edge of his wharf, so as to prevent him from obtaining access from his own premises to the highway, that obstruction would be an interference with a private right."

[58] Counsel further said that any undue interference with the use or enjoyment of Mr. Osbourne's land constitutes nuisance. The fact that the police did not intervene is no defence to the one causing the obstruction or continuing the obstruction. Counsel relied on ***Lyons, Sons & Co v Gulliver* [1911-13] All ER Rep 537**. The 1<sup>st</sup> Defendant has no defence. Neither does the Crown."

[59] Dr Dorsett further opined that private nuisances are of three kinds (***Hunter v Canary Wharf Ltd* [1997] 2 ALL ER 426 at 441 per Lord Lloyd of Berwick**). There are:

- (a) Nuisance by encroachment on a neighbour's land;
- (b) Nuisance by direct physical injury to a neighbour's land; and
- (c) Nuisance by interference with a neighbour's quiet enjoyment of his land.

[60] Dr Dorsett further posited that the Crown is liable because the Crown continued the nuisance and failed to take the necessary steps to abate the nuisance when it was in its power so to do **Sedleigh-Denfield v O'Callaghan [1940] 3 ALL ER 349**. The law as laid down by in Sedleigh-Denfield v O'Callaghan is stated as follows by Viscount Maugham at p. 358 letter E – G:

"The statement that an occupier of land is liable for the continuance of a nuisance created by others, eg., by trespassers, if he continues or adopts it – which seems to be agreed – throws little light on the matter, unless the words "continues" a nuisance if with knowledge or presumed knowledge of its existence he fails to take any reasonable means to bring it to an end though with ample time to do so. He "adopts" it if he makes any use of the erection, building, bank or artificial contrivance which constitutes the nuisance. In these sentences I am not attempting exclusive definitions."

[61] In the case of **Lippiatt v South Gloucestershire Council [1999] 4 ALL ER 149** in which the claimants, who were tenant farmers of land situated on either side of a main road, brought an action in nuisance against the council for damages for its failure to curb the activities of travelers who had occupied a large strip of land owned by the council on one edge of the road. In their claim the claimants alleged that the travelers, between 1991 and their eviction by the council in 1994, frequently trespassed onto the farm land and carried out various acts including obstructing access to an adjacent field, leaving rubbish and excrement on it, tethering their own livestock thereon, stealing timber and fences, damaging a stone wall, permitting their dogs to chase the plaintiffs' sheep, acting belligerently towards the plaintiffs, their families, employees and neighbors and damaging crops so as to render them unfit for sale or consumption. At the start of the trial, the council applied to strike out the claim on the grounds that it had no prospect of success. The application was granted by the judge who held that the council could not be liable for actions committed by the travelers on the claimants' land. The claimants appealed. The Court of Appeal in unanimously allowing the appeal observed that regrettably the attention

of the judge below had not been drawn to authorities which showed that an occupier could be liable in circumstances where a claimant's enjoyment of his land was interfered with due to the continuing presence on the defendant's land of persons whose actual or apprehended activities the defendant knew included repeated harmful acts on the claimant's land."

[62] At p 157 letter c of **Sedleigh-Denfield v O' Callaghan** *ibid*, Evans LJ held that the owner-occupier of land can be found liable "by allowing the troublemakers to occupy his land and to use it as a base for causing unlawful disturbance to his neighbours"

[63] Sir Christopher Staughton in his concurring judgment in **Lippiatt v. South Gloucestershire Council** [1999] 4 ALL ER 149 at 160H stated as follows:

"The council may be found to have adopted the nuisance by failing to exercise its power to turn out the travelers once their habitual misbehaviour became apparent. Alternatively, it can be said that the nuisance becomes that of the Crown in leaving the 1<sup>st</sup> Defendant to commit his mischief on the land."

[64] Dr Dorsett argued that the Crown, as the owner of land, is under a duty, and a high duty at that, to seek to it that no nuisance emanates from its land or that its land is used as a base from which cranks, busybodies and other mischief makers engage in the annoyance of neighbours. Furthermore, the Crown was and is empowered by means of police officers and other agents of the Crown to see to it that the nuisance was fully abated. Indeed, even though the Crown recognized that "there had been partial compliance" it did not do all within its power to ensure full compliance."

[65] Dr. Dorsett further urged the Court to find that the Crown was under a duty to ensure that no nuisance emanates from its land. There is no doubt that at all material times that the Crown had knowledge of the nuisance. Dr Dorsett further submitted that the Crown failed in its duty to abate the nuisance even after its officers held several meetings with Mr. Romeo and requested Mr. Romeo to discontinue creating the several nuisances. Counsel relied on **Sedleigh-Denfield v O'Callaghan** *ibid* in support of his arguments.

- [66] In support of Mr. Osbourne's contention for damages for the alleged diminution in his **proper**, Dr Dorsett sought to rely on **Snell and Prideaux v Dutton Mirrors (1995) 1 EG LR 259** in which it was held that the claimant's entitlement to damages amounted to the difference between the value of their property with the full right of way, including the right of passage way for vehicles, and its value with the more limited right of way.
- [67] Dr. Dorsett said that the Court should award Mr. Osbourne special damages in the sum of \$3,473.14 being reimbursement for the monies Mr. Osbourne expended.
- [68] Counsel also invited the Court to award Mr. Osbourne general damages in the sum of \$75,000 for the nuisance he has suffered. He states that Mr. Osbourne has endured annoyance in convenience discomfort and anxiety distress for several years. Dr Dorsett further stated that Mr. Osbourne is entitled to recover non-pecuniary for loss of amenity and inconvenience and relied on **Hunter v Canary Wharf Ltd [1997] 2 ALL ER 426 at 442 E** where Lord Lloyd said that *"damages for loss of amenity value cannot be assessed mathematically, but this does not mean that such damages cannot be awarded."*
- [69] Dr Dorsett stated that there could be no doubt that Mr. Osbourne's property has diminished in value by virtue of the fact that his right of way is severely affected. Dr Dorsett also submitted that an award in the sum of \$20,000 is reasonable for the depreciation in value in Mr. Osbourne's house.

### **Assessment of Damages**

- [70] In assessment of quantum of damages to which Mr. Osbourne is entitled against Mr. Romeo, Mr. Osbourne claimed special damages in the sum of \$23,473.14 together with general damages in the sum of \$75,000.00 together with costs.
- [71] Mr. Osbourne sought to claim reimbursement for his air fares. This was a new item of damages that was not pleaded in the Statement of Claim. Mr. Osbourne sought to recover the costs of his air travels during the case management stage of the matter and during the trial. He says that he has expended to the best of his knowledge the sum of \$10,000.00.

[72] Crown Counsel Mrs. Brooks-Harris cross-examined Mr. Osbourne with a view to proving that the airfare costs were not pleaded. Mr. Osbourne admitted that indeed the cost of his airfare was not pleaded.

[73] Mrs. Brooks-Harris urged the Court not to award Mr. Osbourne the costs of his airfare in so far as it was not pleaded.

[74] Dr. Dorsett stated that the court should make an award in favour of Mr Osbourne under this head for airfare.

#### **Court's Findings and Analysis**

[75] I am not persuaded that the Court should award Mr Osbourne Roberts for the alleged costs of his air travel. It was not pleaded and I am not satisfied with Mr. Osbourne's proof of this item, in any event.

#### **Court's Further Findings and Analyses**

[76] Mr. Osbourne owns lands which adjoin the Crown's lands, and in order to get to the main road he has to cross the Crown's land. I am satisfied that Mr. Osbourne obtained permission from the Crown's officials to use its lands and has been using the land for several years.

[77] Mr. Romeo has been utilizing the Crown's land though not with its permission but with its acquiescence. Mr. Romeo has continually utilized the Crown's land to store heavy duty mechanical equipment, the equipment block Mr. Osbourne's access to the road.

[78] Frequently, Mr. Romeo has lit fires on the Crown's lands in an effort to destroy the garbage that he had accumulated thereon. I have no doubt that the emission of smoke and fumes therefrom cause much inconvenience to Mr. Osbourne and amounts to a nuisance.

[79] I am equally satisfied that Mr. Romeo caused dirt to be placed in the gut that borders Mr. Osbourne's property causing flooding on Mr. Osbourne's land. The water and dirt entered

Mr. Osbourne's home also I accept that he expended money in remedying the situation. Mr. Osbourne's claim states that the acts of nuisance of which he complains occurred around July 2002. However, the receipts that he has tendered indicate that he spent the various sums in 2000. I accept the objections of Mrs. Brooks-Harris that special damages must be pleaded and proved. I am of the respectful view that Mr. Osbourne has failed to prove some of the items of special damages which he claims. I have no difficulty in accepting the Mrs. Brooks-Harris submissions that the receipts to which Mr. Osbourne referred to a period before the acts of nuisance as stated in the statement of claim. Therefore, Mr. Osbourne is debarred from recovering these sums of moneys since he has failed to prove that he expended the various sums as a consequence of Mr. Romeo's acts of nuisance.

[80] While I have not been provided with any assistance from counsel by way of legal authorities as to the quantum of damage that should be awarded in circumstances of nuisance I have no doubt that Mr. Romeo has consistently and without any letting up blocked Mr. Osbourne's rights of access.

[81] I am not of the view that the Crown has no recourse in this matter. Surely, as soon as Mr. Romeo's several breaches were brought to the attention of the Crown's officers they ought to have ensured that the breaches were remedied immediately. If as occurred and despite the best efforts of the Crown, Mr. Romeo has failed to abate the nuisance in all the circumstances the Crown is liable. In coming to this conclusion I have applied the principles very helpfully stated in **Sedleigh-Denfield v O'Callaghan (1940) 3 ALL ER 349** and am satisfied that in the circumstances the Crown has adopted the nuisance created by Mr. Romeo. In this regard I also rely on the principles enunciated in **Lippiatt v South Gloucestershire Council** *ibid*.

[82] I am equally satisfied that the Crown through its servants or agents were well aware of the several acts of nuisance committed by Mr. Romeo and is liable for the loss or damage suffered by Mr. Osbourne due to Mr. Romeo's continued unlawful use of the land. I also have no doubt that from time to time Mr. Romeo has conducted harmful acts on the

Crown's land such as burning garbage which resulted in the emission of fumes. See **Lippiatt v South Gloucestershire Council (1999) 4 ALL ER 149.**

[83] The Crown is remiss in its duty in failing to take the necessary measures to ensure that Mr Romeo vacates its land and/or discontinues his several acts of nuisance. It behoves the Crown to ensure that Mr. Romeo vacate its land.

[84] In view of all of the circumstances, I am of the opinion that Mr. Osbourne ought to be awarded damages in the sum of \$20,000.00 (twenty thousand dollars) for the inconvenience that he has suffered and continues to suffer due to Mr. Romeo acts of nuisance.

[85] While Mr. Osbourne has not been able to adduce any positive extent as to the extent of the loss he has suffered as a consequence of this right of way being impeded I have no doubt that as a consequence of Mr. Romeo having blocked the right of access from Mr. Osbourne's house to the main road that the value of his property has diminished. I adopt the principles stated in **Snell and Prideux v Dutton Mirrors (1995) 1 EG LR 259.**

[86] I cannot resile from my duty and must determine what a reasonable award in all of the circumstances is. I have reviewed the entire evidence and have no doubt that the sums of \$20,000.00 is reasonable to be awarded to Mr. Osbourne for the diminution in the value of his house as a result of the acts of nuisance committed by Mr. Romeo on the Crown's land. I therefore award Mr. Osbourne damages in the sum of \$20,000.00 for the depreciation in the value of his property.

[87] In conclusion and for the above reasons I make the following orders.

- (a) Mr. Osbourne Roberts is awarded general damages in the sum of \$20,000.00 (twenty thousand dollars) against the Crown jointly and severally for the inconvenience he has suffered as a consequence of Mr. Romeo Roberts acts of nuisance which also the Crown has failed or neglected to abate;

- (b) I award Mr. Osbourne Roberts damages against the Crown for the sum of \$20,000.00 against Mr. Romeo Roberts and the Crown jointly and severally for the diminution in the value of his house caused by this acts of nuisance by Mr. Romeo Roberts and adopted by the Crown;
- (c) Mr. Osbourne Roberts is awarded prescribed costs, unless otherwise agreed;
- (d) The Crown is entitled to be indemnified by Mr. Romeo Roberts to the extent of the damages and costs ordered herein.

[88] I commend both learned counsel for their industry.

Louise Esther Blenman  
**Resident High Court Judge.**