SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.17 OF 2005

BETWEEN:

CECIL BERNARD MIKE

Appellant

and

[1] KOLAI ISAAC
[2] LOLLY BASS
[3] DEREK BASS
[4] LEVI PHILLIP
[5] ROMAIN TOTA

Respondents

Before:

The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Denys Barrow, SC	Justice of Appeal
The Hon. Mr. Hugh A. Rawlins	Justice of Appeal

Appearances:

Mr. Courtney Abel for the Appellant
Mr. Emile Ferdinand for the Respondents

2006: March 23;
September 18.

JUDGMENT

[1] GORDON, J.A.: The appellant brought an action in nuisance and in trespass against the respondents complaining that the respondents wrongfully caused or permitted their cattle to graze and bellow at all hours of the day and night on lands adjacent to his property and that they also permitted their cattle to stale and dung both on the adjacent lands and on his lands. The appellant claimed that his enjoyment of his property, on which he built his home in which he now lives, has been considerably diminished by both the noise and smells emanating from the defendants' cattle.

[2] After a trial of the issues the trial judge held as follows:[1]

> "Paying regard to the circumstances as outlined and applying the objective test to accord with the standard of the ordinary, reasonable and responsible person living at Cedar Grove Housing Development, I conclude that Mr. Mike has failed to establish a case in nuisance against the defendants. The claim in nuisance is accordingly dismissed. With respect to the case in trespass, Mr. Mike has established that cattle belonging to Levi Phillip and Kolai Isaac have trespassed on his land. Levi Phillip paid $1,142.50 in relation to a judgment that was entered against him concerning a case where his cattle went in Mr. Mike's yard. He also repaired a pipe in Mr. Mike's yard that was damaged by his cattle. Levi Phillip has addressed the trespass by way of compensation and repair. I do not consider there to be an injunction. Trespass was not established against the other defendants. In the circumstance the claim in trespass also fails."

[3] The appellant being dissatisfied with the judgment has filed this appeal. The appellant relies on two grounds of appeal only. They are:

> "(a) The learned trial Judge erred in law in failing to apply the proper test in considering whether or not the claimant [appellant] established his case in Nuisance.
> (b) That the learned trial Judge erred in law in that he failed to find that on the evidence the claimant had established his claim in trespass against the Defendants [respondents]"

[4] The appellant lived for some 15 years in England before returning to live in St. Kitts. He is the owner of Lot No.1 Cedar Grove Housing Development (hereinafter the Development), which is itself a dismemberment of Milliken Estate, St. Peter's, St. Kitts. It is not clear when the appellant purchased Lot No.1, but the evidence reveals that he built his house in 2000.[2]

[5] Both the appellant and his witness, Beverly Audain, gave evidence, which the trial judge accepted, of the several instances of the defendants cattle being tied on or near to his property and of the resulting smells deriving from the stale and excreta and also of the disturbance from the noise of the bellowing of the cattle. He

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[1] Paragraph 9 of judgment
[2] Page 2 line 25 Notes of Evidence

complained to the respondents from time to time but, to use a colloquialism, they did not take him on.

[6] The Development comprises some 25 acres to be dismembered from a total acreage of 400 acres of Milliken Estate. The learned trial judge characterized the development as a residential rural area, a characterization fully justified from the facts derived from the evidence of John Napier that the Development "is situate in a rural area of St. Kitts, being part of the lands comprising Milliken Estate, and several persons other than the Defendants [respondents] named in these proceedings graze cattle and livestock on the lands of the said Milliken Estate, the neighbouring estates (e.g. Fountain and Shadwell Estates) and along the road leading to the said Milliken and neighbouring estates."

[7] The question of nuisance or no nuisance is a question of fact[3] and is to be determined by a broad consideration of all the circumstances of the case. In Sturges v Bridgman[4] Thesiger LJ laid down that:

> "whether anything is a nuisance or not is a question to be determined not merely by abstract consideration of the thing itself, but in reference to its circumstances: what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey; and where a locality is devoted to a particular trade or manufacture carried on by the traders or manufacturers in a particular and established manner not constituting a public nuisance; judges and juries would be justified in finding, and may be trusted to find, that the trade or manufacture so carried on in that locality is not a private or actionable wrong."

[8] It is clear from the findings of the trial judge, as quoted at paragraph 2 above, that he found as a fact that the appellant had failed to prove that the activities of the defendants constituted a nuisance. Learned Counsel for the appellant has advanced no reason or argument before us that would enable us to challenge the conclusion of the trial judge. I am of the view that there was a sufficiency of evidence to justify his finding in that regard. For example, the trial judge found that

[3] Stone v Bolton [1949] 1 All E.R. 237 per Oliver J.
[4] (1879) 11 Ch D 852

the Development is a dismemberment from a large estate on which cattle customarily graze, that none of the other dwellers in the Development have complained of the activities of the respondents, that the Development is a rural residential. Ground (a) as set out at paragraph 3 above therefore fails.

[9] With regard to ground (b) of the Grounds of Appeal, namely that the trial judge erred in law in failing to find that the appellant had established his case in trespass against the defendants, I have some difficulty in following this ground. The learned trial judge did find that trespass had been committed by two of the respondents. What is of interest, however, is that the trial judge awarded no damages for the trespass he found. Whilst I say that this is of interest, the fact is that the appellant did not appeal against this aspect of the decision. Indeed, at paragraph 4 of the Notice of Appeal, "Orders Sought", the appellant seeks only an injunction against the respondents restraining them from continuing the acts of what he characterises as nuisance and not to prevent further trespass.

[10] In the circumstances, I would dismiss this appeal and award costs to the respondents in the sum of $6,000.00 being two-thirds of $9,000.00 awarded in the court below and which latter sum was not challenged.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal