

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 274 OF 2003

BETWEEN:

YOULANDA DASENT

Claimant

V

PALMISTE SHALLOW

Defendant

Appearances:

Mr. M. Malcolm for the Claimant

Mr. C. Williams for the Defendant

2007: October 24;
November 16.

JUDGMENT

- [1] **MATTHEW J (Ag.):** On July 7, 2003 the Claimant instituted an action against the Defendant seeking among other things a declaration that the Defendant has unlawfully and maliciously trespassed and blocked the bye-way that leads to the Claimant's premises at Freeland, Mesopotamia and related orders.
- [2] The Defendant in her defence denied that there is a bye-way as claimed by the Claimant and said that the portion of land in dispute is the Defendant's land.
- [3] At the trial the Claimant tendered in evidence her witness statement and was cross-examined. Under cross-examination it was put to her that there is no indication of a bye-way on the deed of gift to her mother, that is, deed 855 of 1983. She made no reply.

- [4] Michael Dasent, the Claimant's brother, also tendered a witness statement and was cross-examined. He said his mother divided her portion of land between himself and his sister. He obtained his land from deed 3015 of 1997. He tendered a plan for his land, Number C9/148.
- [5] The Claimant, her brother and her witness Roslyn John all testify that the bye-way in question has been in use for a long time and it leads to Mr. Sampson's property as well. It was stated in evidence that Sampson has another way to get out of his property but whereas Roslyn John says he uses the bye-way more often, the Defendant says Sampson does not use the alleged bye-way at all.
- [6] Palmiste Shallow also tendered a witness statement and she was cross-examined. Under cross-examination she admitted that her daughter bought her car in 1990 and parked it close to her home and this was the event that gave rise to the Claimant's noise that she was blocking the place. She said Sampson's main road to his house is the bottom road which is not visible from the Defendant's home or the village road.
- [7] The day after the evidence was closed, the Court visited the locus together with the Parties. Learned Counsel for the Claimant was duly notified and reminded the said morning of October 25, 2007 but he was not present while the Court officials and the Parties were viewing the locus for upwards of thirty minutes. Counsel was seen driving in the opposite direction while the Court officials were returning from Mesopotamia. The Claimant, her brother and the Defendant pointed to certain locations.
- [8] The Court examined the following:
- (a) the location of the Claimant's land;
 - (b) the location of the Defendant's land;
 - (c) the location of Michael Dasent's land;
 - (d) the location of lands of Sampson and Wesley Guy;
 - (e) the concreted village road; and

(f) the place where a green car was parked next to Defendant's home, among other locations.

[9] It became evident from the visit that both Parties are advancing issues which more benefit Sampson and they do so to advance their respective case. The Court saw a well demarcated dirt road in excess of 6 feet in width that leads directly from the village road to the Claimant's house. The Defendant says that road is built on Sampson's land. But of what interest is that to the Defendant?

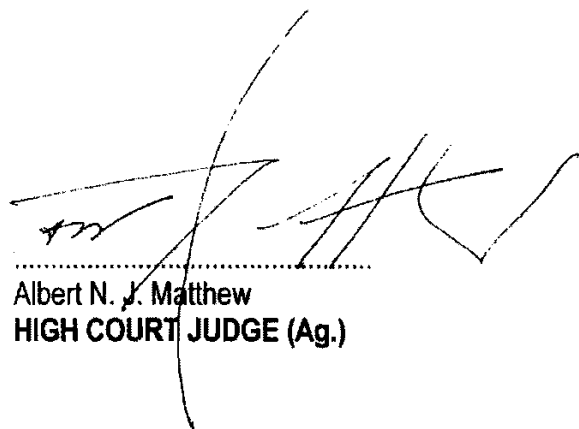
[10] The Claimant's dirt access road which is wide and clear is of excellent quality and it bogs the mind why she should be interested in a route over which the car stands, a route which is bushy and hilly so much so that a row of blocks has to be put in front of the vehicle less it takes a nose dive if the handbrakes were to be released.

[11] That alleged bye-way would make more sense to Sampson's land so the Claimant is using Sampson to reinforce a claim to a right of way which would be more inconvenient to her. She would have to go downhill, turn right, then uphill to get to her home. Presently she simply has to step from the dirt road to the village road.

[12] Deed 855 of 1983 indicates that the village road is on the East and land belonging to Wesley Guy is on the North. That description seems to be in accordance with what I saw at the locus. That deed of Ruby Dasent, the Claimant's mother does not indicate any right of way which the Claimant and her brother say had been there for many years.

[13] There was no need for a right of way to serve Ruby Dasent's land who could access the village road from her land by simply stepping on to it. The village road abounded Ruby Dasent's land. The need for a right of way only emerged when Ruby gave Michael the portion of land next to the village road and the Claimant was placed at the back. It seems to me that in such circumstances a right of way of necessity for the Claimant would have to be carved from the land of Michael Dasent.

- [14] Michael Dasent's deed, No. 3015 of 1997, has cardinal points different to those on deed 855 of 1983. In the former deed Wesley Guy appears on the North and in the latter Wesley Guy appears on the West. That may account for some of the problem. The survey plan which shows Michael Dasent's land shows the well defined dirt road that I spoke of earlier which leads to the Claimant's home. What else does the Claimant want?
- [15] I do not say that route has been in existence for many years. Rather it seems to be of very recent origin.
- [16] I looked carefully at where the green car was parked with a row of blocks to prevent the car from falling below. There is absolutely no trace of a right of way being located there. That portion of land is in accordance with the Defendant's deed of assent, No. 966 of 1972. It is a longer, more hazardous route to the Claimant's premises.
- [17] In as much as that is the bone of contention between the Parties, I reject the Claimant's case that the spot where the car is normally parked is a right of way to her home.
- [18] I dismiss the Claimant's case with costs to the Defendant in the amount of \$3,000.00.



Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)