

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2007/0901

BETWEEN:

JEROME MONTOUTE

Claimant

and

ATTORNEY GENERAL

Defendants

Appearances :

Mr. H. Deterville QC, G. Delzin and Ms. Charles for Claimant

Mr. D. Lay and Mr. L. Prospere for Defendants

2008: July 10.

RULING

- [1] **COTTLE, J.:** The Claimant owned certain lands at Gros Islet in St. Lucia. In 1990 the Government of St. Lucia acquired 94 acres. The Claimant has yet to receive full compensation for the lands.
- [2] The Claimant filed the present constitutional motion in 2007.
- [3] At a hearing before the court the parties agreed that a Board of Assessment be established in accordance with the provisions of the Land Acquisition Act chapter 5.04 of the Revised Laws of St. Lucia 2001. They also agreed to provide the court with written submissions concerning sections 19 and 21 of the Act for a ruling to guide the Board of Assessment. This is that Ruling section 19 of the Land Acquisition Act sets out the principles which are to guide a Board in

assessing the compensation to be paid to a land owner whose property is compulsorily acquired. At subsection (a) of section 19 it is provided as follows:

"The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realized at a date twelve (12) months prior to the date of the second publication in the Gazette of the declaration under Section 3."

Section 21 deals with the issue of interest payable to the land owner:

"The Board, in awarding compensation may add thereto interest at the rate of 6% per year calculated from the date upon which the authorized officer entered into possession of the land acquired until the date of the payment of the compensation awarded by the Board."

[4] These sections must be considered in the light of Section 6(1) of the Constitution of St. Lucia:

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking possession or acquisition for the prompt payment of full compensation."

[5] This issue has been the subject of litigation before. Both sides have urged the court to consider the decision of the Court of Appeal in Civil Appeal No. 3 of 1976 from Grenada, the case of Grand Anse Estates Ltd De Gale et al.

[6] In that case Justice Bernard J.A. considered the relevant Grenada legislation and the constitution of Grenada.

[7] He concluded that the requirement in the constitution to pay full compensation meant that the relevant section of the Land Acquisition Act must be read to provide

for full compensation at the date of the acquisition not 12 months earlier. The learned judge also concluded that the arbitrary restriction of a rate of interest at 5% in Grenada (6% in St. Lucia) could not be justified.

[8] The interest payable must be **“at a rate applicable to give the expropriated owner a just equivalent of his loss at the time of his expropriation not a rigid and fixed rate whatever his loss may be.”**

[9] The Privy Council considered similar legislation in a case in appeal from St. Vincent. They came to a different conclusion in Windward properties Ltd. Government of St. Vincent [1996] 47 WIR 189 but did so, on the basis that the constitution of St. Vincent and the Grenadines differed from that of Grenada. The difference is easily appreciated when one looks at the decision in Bloomquist vs Attorney General of Dominica 1987 35 WIR 162.

[10] There the Privy Council considered the Grand Anse case and distinguished it.

[11] The conclusion that I arrive at is that the legal position in St. Lucia is now clear.

[12] Sections 19 and 21 of the Land Acquisition Act are to be read in such a way as to make them conform with the Constitution. I adopt and follow the reasoning of the Court of Appeal in the Grand Anse case on the issues of full compensation and applicable interest rates.

[13] Mr. Montoute is entitled to the value of his lands at the date of assessment. He is also entitled to interest at a rate which the Board will assess in an effort to secure him full compensation.

[14] Costs of this motion:

It is clear that the Claimant has succeeded on this motion. He is entitled to his costs. Mr. Delzin for the Claimant suggests that costs be awarded on the basis of prescribed costs on whatever value the Board of Assessment finds. I do not agree. The Claimant acted reasonably in bringing this motion.

The Defendants have had many decades to complete the assessment. They have failed to do so. It was only the impetus of this motion which has at last led to a resolution. Yet the Defendants have not really contested this motion. They have readily agreed to the constitution of a new Board of Assessment. The short legal arguments have been dealt with by preliminary submissions.

In the circumstances I award the Claimant costs to be assessed under CPR 2000 part 65.12 unless agreed.

BRIAN S. COTTLE
HIGH COURT JUDGE