

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

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0088

BETWEEN:

CALIXTUS CLIFFORD

Claimant

and

FRANCIS CLAXTON

Defendant

Appearances:

Mrs. Lydia Faisal for the Claimant

Mr. Michael St. Catherine for the Defendant

.....
2008: September, 26
.....

MASON J

[1] What I find important to note is that none of the players in this case can lay legal claim to the land over which they were squabbling. They are all squatters on Crown Lands.

[2] From the evidence I find that the Defendant's witness who also happens to be the Claimant's sister, Catherine Hippolyte, had planted some pillars some time before the claimant built his farine hut. The Claimant's hut was however completed before

Catherine's house which the Defendant was occupying at the time of the incident together with one of the Claimant's nieces.

- [3] The relationship between the Claimant and his sisters was not very good. In fact they both gave evidence for the Defendant.
- [4] The facts as I find them are that on the morning of 18th May 2003 the Claimant started digging holes for the purpose of erecting a barrier between the two houses. He had in his possession some sticks for the fence as well as a crowbar and a cutlass.
- [5] It is the evidence of the Defendant himself that I find telling. I quote here from his witness statement:-

(2) *That on 18th May 2003 at approximately 2:00 p.m. I was at home cleaning and flattening the surface in front of my house I saw the Claimant carrying some sticks into a frame hut nearby. After making about three trips he returned with a cutlass and a crowbar.*

(3) *That the Claimant had previously dug a drain next to my house. The drain in my opinion was too close to my home so I blocked it. The Claimant came next to my house and started digging holes where the drain used to be. I asked him to stop digging the holes but he didn't stop. I came towards him and asked him to stop digging the holes. I was very close to him and as a result he was unable to dig the holes. He gave me a chuck. I still insisted that he wasn't digging anymore holes.*

(4) *The Claimant gave me a lash with the crowbar on my left arm. I then pushed him. He rushed towards me. I had a cutlass in my hand so I blocked him with it. The cutlass cut him on his arm as a result. The Claimant still gave me a chuck so I pushed him again. He rushed*

towards me a second time so I did the same thing. He had a cutlass in his hand all the time.

(5) The Claimant then went to get a stick. The stick was very long. He rushed towards me, pricked me two places on my left arm and he also lashed me with the stick on my head. The Claimant then lashed me with the cutlass on my left arm. My left arm was covered with blood. The Claimant rushed at me with the cutlass again. I raised my cutlass but the Claimant's hand was in the way and I accidentally cut him thereon. All of this happened in front of my house.

(6) The Claimant's sister, Florita arrived and asked him what was going on. He lashed her with the stick on her head. His cutlass fell to the ground but he was unable to pick it up because I ran after him.

(7) The Claimant's brothers arrived, Solomon and Francis and there was also a Rasta man. The Rasta man held the Claimant and left with him but Solomon and Francis stayed back and started pelting stones at me. Francis hit me on my left leg with a stone.

[6] I am unable to accept the Defendant's version of the supposed subsequent attack by the Claimant. He claims self defence and accidental injury to the Claimant.

[7] The Claimant's version is much more credible. He admits to having the crowbar but states that he put it down because it was too heavy and he picked up the stick to block the cutlass and while doing so, he struck the Defendant on his arm.

[8] Having had the benefit of observing both parties, I find it inconceivable given the weight of a crowbar that the Claimant could have simultaneously and effectively manipulated both the crowbar and the cutlass to inflict any real harm upon the Defendant.

[9] It is my view that the Defendant was taking up the cudgels on behalf of the Claimant's sisters, that that morning he was unhappy that the Claimant was erecting the fence and he confronted him because he was determined to prevent him from so doing. In my opinion he was the aggressor and he deliberately and intentionally attacked the Claimant and in the process caused the injuries complained of.

[10] I did not give much credence to the evidence of the defence witnesses, the Claimant's two sisters. They made it clear but that were pitted against their brother. Catherine for example admitted to not knowing who started "the incident" as she calls it but she berated the Claimant for leaving his house on a Sunday to "come and fight Francis". The evidence proved otherwise.

[11] In the circumstances I find in favour of the claimant.

DAMAGES

[12] From the medical reports I note that the Claimant would not have been able to follow his occupation as a farmer for a minimum period of 3 months post injury. He is consequently claiming the sum of \$4200.00 as special damages for loss of earnings over the 3 month period.

[13] Special damages must be strictly proved. However it is established that in the absence of adequate documentation it is open the court to recompense the claimant in a sum which while not constituting a windfall must not appear to be nugatory.

[14] In the circumstances I consider an award of \$3000.00 for special damages to be adequate.

[15] After researching cases of similar ilk, I have made an award of \$5000.00 to the Claimant as general damages for pain and suffering and loss of amenities.

DEFENDANT'S COUNTERCLAIM

[16] I do not consider that the Defendant has made out a case such as to entitle him to succeed on a counterclaim. It is therefore dismissed.

ORDER

Judgment entered for the Client as follows:-

1. Special damages in the sum of \$3000.00 together with interest at rate a of 3% from the date of the incident to date of judgment.
2. General damages in the sum of \$5000.00 together with interest at a rate of 6% from the date of service of the claim to date of judgment.
3. Costs prescribed in accordance the Part 65.5 CPR 2000.

JUSTICE SANDRA MASON QC
HIGH COURT JUDGE