

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2007/0284

**IN THE MATTER OF SECTION 6 (1) AND SCHEDULE 2 OF THE GRENADA
CONSTITUTION ORDER, 1973**

AND

**IN THE MATTER OF THE LAND ACQUISITION ACT CHAPTER 159 OF THE 1990
REVISED EDITION OF THE LAWS OF GRENADA**

AND

**IN THE MATTER OF COMPULSORY ACQUISITION OF A LOT OF LAND
MEASURING 28,582 SQUARE FEET SITUATE AT MORNE ROUGE SOUTH IN THE
PARISH OF SAINT GEORGE IN THE STATE OF GRENADA BELONGING TO
FRANKLIN MASANTO**

BETWEEN:

FRANKLIN MASANTO

Claimant

AND

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. G. Delzin and Mrs. Emmanuel-Steele for the Claimant
Mr. R. Glasgow for the Defendant

2009: 28th October

JUDGMENT

[1] **CUMBERBATCH, J.:** The Claimant was at all material times the owner in fee simple of immovable property ('the property') hereinafter set out and described as follows:

“... certain hereditaments situate at Morne Rouge South in the parish of Saint George in the State of Grenada measuring 3 acres 2 poles and more particularly delineated and described in a map or plan drawn by James Landreth Smith dated 9th November 1910 recorded in the Registrar’s Office and thereon numbered 18.”

By consecutive publications in the Grenada Gazette of April 13th 1984 and April 19th 1984, the property was acquired by the Government of Grenada for public purposes. It is common ground that the said property was indeed acquired for the construction of a road leading to what became known as the Point Salines International Airport. The validity of the acquisition has not been challenged in this action.

[2] On the 2nd July 2007 the Claimant filed an Originating Motion seeking the following relief:

- “1. A declaration that the compensation due to the Claimant in respect of the compulsory acquisition by the Government of Grenada of the lot of land containing by admeasurement 28,582 square feet situate at Morne Rouge South, St. George’s, Grenada, is such sum representing the full and just equivalent of the value of the said lot of land as at the date of the said compulsory acquisition together with interest thereon calculated in such manner and at such rate as would take into account and compensate the Claimant for the loss incurred by the Claimant as a result of the compulsory acquisition and the excessive delay in payment of compensation in respect thereof:
2. an Order determining the amount of full compensation to which the Claimant is entitled
3. an Order for prompt payment of such full compensation on or before a date to be fixed by the Court; and
4. the costs of this action to be awarded to the Claimant in any event.

[3] In an affidavit in support of his motion the Claimant avers that the Claims Commission appointed by the then Governor General, Sir Paul Scoon, had recommended that he be compensated for the loss of his property at the rate of EC\$2.42 per square foot, this being the estimated market value of his land at the time of acquisition in 1984, together with interest thereon at 10% per annum.

[4] The acting Director of Lands and Surveys Mr. Trevor Barclay in an affidavit in response attested that the current market value of the property at the relevant period of time in 1984 was EC\$0.50 per acre. The report of the aforesaid Claims Commission also estimated that that was the market value of the property and not EC\$2.42 as was stated by the Claimant aforesaid.

[5] Section 6 (1) of the Constitution of Grenada provides as follows:

“6. (1) 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 where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.”

[6] The court is the guardian of the fundamental rights and freedoms enshrined in the Constitution, a duty which must be fearlessly carried out and zealously guarded. The fact that the Claimant has been obliged to bring this claim speaks volumes of the breach of his Constitutional rights aforesaid. He was neither compensated promptly or at all. I will refer to this breach later in this judgment.

[7] The Land Acquisition Act Cap 159 of the Revised Laws of Grenada provides at section 19 as follows:

“19. Subject to the provisions of this Ordinance, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land –

a. the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might have been expected to have realized at a date twelve months prior to the date of the second publication in the Gazette of the declaration under section 3:

Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;

b. the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers, or for which there is no market apart from the special

needs or a particular purchase or the requirements of any Ministry or Government department;

- c. where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account.
- d. where land is and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Board is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- e. no allowance shall be made on an account of:
 - (i) the acquisition being compulsory or the degree or urgency or necessity which has led to the acquisition:
 - (ii) any disinclination of the person interested to part with the land acquired;
 - (iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action:
 - (iv) any damage, not being in the nature of deprivation of or interference with an easement or legal right, which, after the time of awarding compensation is likely to be caused by or in consequence of the use to which the land acquired will be put:
 - (v) any increase in the value of the land acquired likely to accrue from the use to which the land acquired will be put;
 - (vi) any outlay or improvement of such land which shall have been made, commenced or effected within twelve months before the publication of the declaration under section 3 with the intention of enhancing the compensation to be awarded therefor in the event of such land being acquired for public purposes."

[8] This provision has been examined in its entirety by the Court of Appeal in the decision of **Grand Anse Estates Ltd. v The Governor General et al** Civil Appeal No. 3 of 1976. In that decision St. Bernard, J.A. opined thus:

"I am of the view that the provision in section 19 of the Land Acquisition Ordinance which places a limitation on the value of the

land acquired to a value twelve months prior to the date of acquisition is as it stands, an infringement of a fundamental right to full compensation enshrined in section 6(1) of the Constitution Order and therefore that provision in the Ordinance, on the face of it, is ultra vires to that extent.

The Land Acquisition Ordinance, however, is an existing law within the provisions of subparagraph (1) of paragraph 1 of schedule 2 to the Constitution Order and therefore the provision in section 19(a) relating to the market value of the land twelve months prior to the date of acquisition must be construed from the commencement of the Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution. It appears that the intention of these provisions is to secure the continuance of the validity of any existing law in so far as is possible. In order to construe section 9(a) and to bring it into conformity with section 6(1) of the Constitution then the compensation to which the appellant would be entitled must be compensation assessed on the market value of the land at the date of acquisition. Although I say that the appellant's rights have been infringed, I am of the view that because of the Transitional Provisions set out in Schedule 2 to the Order an acquisition is not null and void but the appellant is entitled to an order that the compensation must be assessed on the market value of the land at the date of acquisition.

In my opinion the interest payable must be an interest at a rate applicable to give the expropriated owner a just equivalent of his loss at the time of the expropriation and not a rigid and fixed rate whatever his loss may be."

[9] The Claimant in his affidavit in support of his claim has exhibited letters dated 14th August 2002 to the Permanent Secretary of the Ministry of Agriculture and the 14th July 2004 to the Minister of Agriculture both of which make requests of the Government for payment for the property. There is also exhibited a valuation from a licensed valuer stating the price of the property in the year 2004. No documents were exhibited by the Defendants purporting to be a reply to the requests made by the Claimant.

[10] Counsel for the Claimant has urged that the Claimant should be compensated in the sum of the current market value of the land at the time of the claim together with interest. In this regard the Claimant relies on a private valuation dated August 13th 2004 aforesaid which stated that the value of the property

was at that time in the sum of EC\$428,730.00. No authority was provided by Counsel to support this submission.

- [11] It is common ground that the Claimant must be compensated for the acquisition of his property. The parties are however undecided on the question of quantum. Counsel for the Defendants has submitted that the Defendants were ready willing and prepared to pay to the Defendant the sum of EC\$14,291.00 being the estimated value of the property in 1984 together with interest at the rate of 10% per annum until payment in full, a figure which he said the Defendant is unwilling to accept. The Court is satisfied from the contents of the affidavits of Trevor Barclay that the Defendant accepts that that sum should be paid to the Claimant, but no document was exhibited by the Defendant in which they informed the Claimant of this. Counsel for the Defendant relies on the dictum of St. Bernard, J.A. aforesaid in the **Grand Anse Estates** decision, and the affidavits of the Acting Director of Lands and Surveys.
- [12] The only evidence of the value of the property at the time of its acquisition is provided by the report of the Claims Commission and the unchallenged further affidavit of Trevor Barclay. The Court accepts the findings of both the Commission and Trevor Barclay that the value of the land was EC\$0.50 per acre at the time of its acquisition.
- [13] As stated aforesaid it is common ground that the Claimant was not paid by the Defendant, hence the institution of these proceedings. I find the decision of the Court of Appeal in the Grand Anse Estates case to be strong compelling authority as to the approach of the court in these matters. In the circumstances I find that the Claimant is entitled to be compensated for the loss of his property in the sum of EC\$14,291.00 together with interest at 10% per annum until payment in full.
- [14] The Claimant has also claimed compensation for the excessive delay in payment of compensation. There is no doubt that the Claimant is by virtue of the provisions of section 6 (1) of the Constitution aforesaid entitled to be paid promptly for his loss. There is also no doubt that he has waited for a period of

approximately 23 years to be paid. Neither party has provided the Court with any authority in which an award was made for breach of the Constitutional right to be paid promptly for the loss of property. The Court by its own research has considered the dictum of Barrow, J.A. in the decision of **The Attorney General of Antigua and Barbuda and The Estate of Cyril Thomas Bufton et anor**, Civil Appeal No. 22 of 2004. That case involved claims for compensation for the acquisition of land from which the respondents were removed by the Government of Antigua and Barbuda. In that decision Barrow, J.A. opined thus:-

“In the instant, case the Constitutional damages that the judge awarded for the Government’s deferring payment of compensation and causing distress and emotional travail to the Buftons, would not an award of interest have been adequate compensation for the delay in payment? Beyond the aspects of injury that the Buftons suffered in consequence of the compulsory acquisition, such as disturbance, loss of animals, loss of personal items and loss of their way of life and for which compensation has been awarded or not awarded, the only injury that the Buftons suffered was simply that they were kept out of their money. There was no suggestion that there was any consequential loss that they suffered because of the delay. The established remedy for being kept out of money is an award of interest. In the instant case, the judge awarded interest on the compensation for the value of the land at the rate of 4% per annum from 17th December 1997 (the date the Buftons were removed from the island) and there has been no challenge to that award or that rate. I do not see that the emotional consequences of being kept out of compensation money can justify an award of damages, whether under the Constitution or generally. It is well settled in the law of contract that save for specific exceptions, there can be no award for distress, frustration, anxiety, vexation and the like in compensating for breach of contract and I see no reason why it should be otherwise in this particular case. However, as the Government did not challenge the entitlement to an award of damages under this head, and specifically because the matter was not argued, I consider that it would be wrong for me to disallow such an award. I confine my attention, instead, to the matter of quantum.”

[15] The Court of Appeal considered the decisions of **Doris Fuller v Attorney General**, a decision from the Court of Appeal of Jamaica in which the point was made that an award of damages made against the State for breach of Constitutional rights must not amount to a windfall. Barrow, J.A. went on to state thus:-

“For the limited purpose that such an award should serve in this case, that is to vindicate the Constitution, and guided by the awards made in the Jorsingh case, as representing the lower end of the range, and Fuller case as representing the higher end of the scale, I consider the sum of \$10,000.00 to be an appropriate award of Constitutional damages.”

[16] Section 16 (2) of the Constitution provides:

“(2) The High Court shall have original jurisdiction-

- (a) To hear and determine any application made by any person in pursuance of subsection (1) of this section;
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such declarations or orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.”

[17] The question which arises is whether the proviso to section 16 of the Constitution strictly construed means that the provisions of the Land Acquisition Act provide adequate means of redress for the contravention of section 6(1) of the Constitution and that no further compensation should be awarded.

[18] The Land Acquisition Act aforesaid provides *inter alia* for the payment of compensation together with interest thereon. The *raison d’etre* for the payment of interest is undoubtedly to compensate the property owner for delay in the prompt payment of compensation.

[19] In the Privy Council decision of **Merson v Cartwright et anor** (2005) UKPC 38 an appeal from a decision of the Court of Appeal of the Bahamas, the appellant was awarded damages for wrongful imprisonment and various other torts committed by the Bahamian Police against her. Sawyer, J., as she then was awarded a substantial additional sum to the appellant for the breach of her Constitutional rights. On appeal the Bahamian Court of appeal set aside

the additional award finding first of all that it was in duplication to the sums awarded for the torts committed against her and secondly that adequate means of redress were available under the law. They referred to Article 28 (1) of the Bahamian Constitution which is in pari material the same as section 16 of the Constitution of Grenada and opined:

“the Constitution did not provide, nor did it intend to provide for a duplication of damages on the self-same facts both in tort ... as well as under the fundamental rights provisions of the Constitution ...

Indeed, the proviso precludes the Supreme Court from exercising its powers under the Constitution for breaches of fundamental rights, not in spite of but rather because of adequate means of redress being available under our law...”

[20] The Board at paragraph 18 of its decision opined thus:

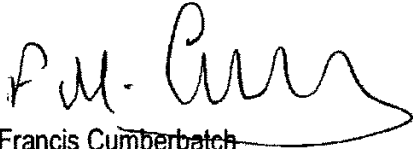
‘If the case is one for an award of damages by way of Constitutional redress.....the nature of the damages awarded may be compensatory but should always be vindicatory and accordingly the damages may in an appropriate case exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant ... The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages including substantial damages may seem to be necessary.’

[21] I now turn to consider the duplication issue. In the **Merson** decision the Board found that though many of the things done to the appellant were ingredients of nominate torts as well as infringements of Constitutional rights, there was not a complete overlap. The Board found that the wholesale contempt shown by the authorities in their treatment of the appellant, to the rule of law and its requirements of the police and prosecution authorities made it a proper case for vindicatory damages.

[22] The Claimant as stated before has been virtually ignored and kept waiting for 23 years to be compensated. His claim to the Claims Commission and letters sent both by himself and counsel on his behalf have not been given the

courtesy of a reply, nor have any sums of money been paid to him. I find in the circumstances an award of vindictory damages to be appropriate.

[23] Thus in the circumstances the Court grants the declarations sought at paragraph 1 of the Motion. The Court orders that the Claimant be paid the sum of \$14,291.00, together with interest at the rate of 10% per annum as compensation for the loss of his property. The Court also orders that the Claimant be paid the sum of \$10,000.00 as vindictory damages to compensate for the inordinate delay in the payment of compensation to him and the failure and or refusal of the Government to communicate with the Claimant for over 23 years. The Court will refer the matter to the Master for a payment schedule to be worked out between the parties and for the question of costs to be determined. These matters were not addressed by Counsel for the parties during the hearing.


Francis Cumberbatch
HIGH COURT JUDGE