SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2007/0715

BETWEEN:

ANDRE ALEXANDER

Claimant

and

ST. LUCIA GOLF RESORT & COUNTRY CLUB LIMITED

Defendant

Before:

The Hon. Mr. Ephraim Georges — High Court Judge [Ag.]

Appearances:

Ms. Leandra G. Verneuil with Ms. Trudy Glasgow for claimant
Ms. Cheryl Goddard-Dorville for defendant

2009: June 10, 11;
August 11;
December 9;
2011: January 25.

JUDGMENT

[1] GEORGES, J. [AG.]: This is a claim for damages in nuisance and negligence as well as personal injury brought by the claimant against the defendant alleging that the defendant by itself its servants and/or agents wrongfully caused or permitted "grey water" used to sprinkle its golf course to enter the defendant's land/premises situate adjacent to the defendant's property thereby interfering with and considerably diminishing his enjoyment of his property on which he had built his home by the droplets of water entering upon his property and the odour emerging from the sprinkler system when it is turned on.

[2] According to the claimant he initially purchased the house at Cap Estate in 1991 with the intention of renting it long term and by 1999 he had already had two long term tenants at a rental of EC$3,000.00 per month. With the expansion of the golf course in 1999-2000 rental opportunities ceased with construction work and burning of bush and shrubs resulting in the smoke mostly coming in the direction of his home the claimant alleged.

[3] On completion of the expansion project in 2001 when he himself went into occupation he deposed that he began to experience problems with the sprinkler system and offensive smells from the facility adding that he had ceased renting since the expiration of the lease in 1999. To this day he disclosed he continues to live there as his residence although it had been listed with a real estate agent from 2001-2003. It is no longer listed he said.

[4] In May 2003, he told the court that he had personally through friends in Trinidad secured a two week tenancy by some folks from there who had come for the Jazz Festival. They however left after one week because of odour coming from the pool. He himself he said had not used the pool or sat on the patio for three and a half years he disclosed.

[5] He went on to deny experiencing any skin rash since he had started living at 31 Golf Hill (his residential address) in 1991 but had developed skin rash from 2001-2005 after the expansion of the golf course had been completed in 2001.

[6] I pause here to note that Dr. Jeaneen Payne, a medical doctor of 11 years said that the claimant was her patient and that they had been friends for 15 years. She saw him as a patient she said on 15th May 2007 and had treated him for pityriasis veriscolor – a fungal infection of the skin which was extensive – on his limbs and trunks. The infection was treated with oral and topical anti-fungal medication.

[7] Andre (the claimant) she continued visited the clinic again on 18th December 2007 and was treated on that occasion for impetigo – a bacterial infection of the skin caused by Streptococcus and Staphylococcus bacteria which are usually found on

infected skin i.e. boils abscesses. Diagnostic tests were carried out on that visit. He was treated with anti-parasitic medication. She concluded by saying that she was aware of Andre's history of exposure to "grey water" for a number of years and that exposure she added could be a probable cause of his ailments. However in cross examination she disclosed that she had found out from the patient himself his history of exposure to "grey water" and she could not say that the patient's condition/ailment was as a result of exposure to "grey water" and there were other probable causes of his ailment. That of course diminishes the weight of her evidence as she had not had first hand evidence of the claimant's skin condition prior to 2007.

[8] At paragraph 5 the claimant deposed that he began developing skin rash from 2001-2005 and apart from seeing a doctor at the Gros Islet Polyclinic in April 2006, who gave him an injection for allergies and a prescription for hydrocortisone 100 he made no mention of seeing a doctor for skin infections until he visited Dr. Jeaneen Payne in May 2007 and saw her again in December of the same year. It is my considered view that the testimony of Dr. Payne leaves wide open whether the skin rashes/sores and other possible infections complained of by the claimant could with any reasonable degree of certainty be attributed to his exposure to "grey water" as he alleged.

[9] In the concluding paragraphs of the claimant's witness statement – the certificate of truth of which is undated – he relates how in November 2007 he was suddenly covered with a rash of boils completely covering his hands. They were on the back of his hands and between every finger. This he said lasted approximately three weeks and he was on a treatment of Benadryl and alcohol based rub to minimise the irritation.

[10] By the end of November 2007, sores started to emerge on his arms and legs which started out as tiny red blemishes and grew into larger open sores. By the time he visited the doctor (presumably Dr. Payne on 18th December 2007) he said he had sores in his ears, scalp, forearms and all over his legs. Photographs were

displayed (Exhibit AA6) (allegedly) taken on 29th November 2007 (left hand) and 1st December 2007 (right arm, right leg, right foot, left elbow, right earlobe and scalp).

[11] The doctor he said confirmed that he had several bacterial infections and disorders (on 18th December 2007) which were most likely linked to the exposure to the raw sewage in the water. Under cross examination however (at the end of paragraph 7) Dr. Payne left open the probable causes of the claimant's condition/ailment and made no mention of raw sewage in the water. She further agreed that the diseases which she had diagnosed were not mentioned in the expert report by Dr. Stephen King and specifically made the point that pityriasis veriscolor could be caused by a number of factors including living in tropical environments and was one of the more common skin conditions experienced in patients in St. Lucia. Impetigo she disclosed was a bacterial infection which is contagious in the sense that it can spread by touching one of the sores.

[12] Two of the claimant's immediate neighbours testified on his behalf. First Mr. Richard Jn Marie of 32 Golf Hill Cap Estate the Manager of Maria Shell Gas Station deposed in his witness statement dated 21st November 2008 that his wife and himself had moved to their home at Golf Hill in August 2000. The house he said was situated and bounded to the Golf Course on its eastern boundary and is shaded by big trees from the Golf Course.

[13] Paragraph 4 of the witness statement reads:

> "Sometime in 2001, when the golf course was completed and when irrigation of the course started, I started to experience the smell of raw sewerage from the golf course. The smell was most prominent at about 5:30-6:00 p.m. In addition to the foul smell, whenever the sprinklers were turned on, I had to close all windows and doors facing the Golf course. Many times my family and I had to leave home because of the awful stench. When visitors came to my house it was most embarrassing. My guests would ask whether I had a problem with my septic system."

[14] And paragraph 5 states that:

> "As a result of the smell of the raw sewerage, I asked my family not to drink any water unless it was boiled. My home is fitted with a cistern that collected water from the roof and feed throughout the house. I condemned the use of it and ensured that I collected in water tanks water directly collected from WASCO's pipes for my home."

He added that he made complaints to Cap Estate (without specifying who) but no one responded or cared or came around to see the problem that he was experiencing. He carried out his own investigation with the Water and Sewerage Authority (WASCO) about the water being used by the Golf Course and was informed by an employee (no name) that the Golf Course took pure sewerage water from WASCO however there was a condition that the water would be treated by a treatment plant that the Golf Course was to install.

[15] He also complained of mosquito infestation from the ponds. No one else apparently did incidentally. He had refrained from building a swimming pool as a result of the problems and had done no improvements to his house. About two years ago (i.e. 2006) he said that his son had gone to his neighbour John Francis' house and bathed in his pool and had suffered an ear infection. This I venture to say is not an uncommon occurrence and could well have been due to the negligence or lack of experience or supervision of the youngster in the pool.

[16] In cross examination Mr. Jn Marie admitted that he knew the claimant very well and that they were friends and the he had asked him to be a witness in this case. He went on to say that notwithstanding the big trees between his property and the defendant's property he had experienced droplets from the defendant's property when the sprinklers were turned on between 5:30 p.m. and 6:30 p.m. He had to close all windows and doors facing the Golf Course he said because of the smell coming from the sprinklers. He had to condemn the use of a cistern that collected water and fed throughout the house and collected water in tanks directly from WASCO's pipes for his home. The big trees between his property and the defendant's property provided no shield from the sprinklers he added.

[17] In closing the witness admitted in cross examination that he had never documented any of his complaints to the defendant. A verbal complaint to a Mr. Delpeche the Ground Manager had evoked no response he said. It was his wife who had taken his son to the doctor he said when he complained of an ear infection and he himself did not ask what was wrong but felt that the infection was caused by contact with contaminated water. He never asked what the doctor had diagnosed and in fact made no inquiries whatsoever.

[18] John Francis, another of the claimant's adjoining neighbours who resided at 33 Golf Hill said he and his wife had moved to their home in December 1999 and about two years later (2001) he started to be affected by an odour most foul emanating from the Golf Course and whenever the sprinklers were turned on his family and himself were unable "to sit peacefully and enjoy being on their patio in the late afternoons". The reason he said was because apart from the foul and offensive smell the water from the sprinklers fell on his skin and the rest of his family. Consequently he was unable to have social gatherings poolside and had to keep all doors and windows on the western side of the house shut to prevent the spray entering his home.

[19] As a result he wrote to the General Manager of the defendant (Cap Estate) complaining of the spray from the sprinkles entering his house and the offensive odour. He said he received no written reply but got a verbal response from someone (anonymous) which was tantamount to that he should be grateful for their building a Golf Course next to his property and improving its value and he ought not to complain about the irrigation. And so the spray and offensive smell continued Mr. Francis said and he had his attorney write Cap Estate whereupon the General Manager paid him a visit and promised to tone down the sprinklers and to turn them on only late at night. That however did not solve the problem he said and the water from the sprinklers caused the pool water to turn green constantly. As a result he lamented he spent a fortune on chlorine and algaecide to keep the pool clear and was denied use of his pool for years. He concluded by

saying that about 18 months ago (which would have been June 2007) the problem seemed to have been resolved and his pool had been operating well.

[20] I find that disclosure difficult and indeed impossible to reconcile with the statement which immediately follows it in the final paragraph of his witness statement to the effect that:

> "About a year ago (which would have been November 2007) my son who was about 14 years old at the time complained about two sores on his arms. The sores were not healing and lasted months. My wife took him to the doctor because all over the counter medication that I used including Neosporin did not cause my son's sores to heal. The doctor gave a prescription and the sores took two months to heal."

[21] Coincidentally it was about the end of November 2007 that the claimant himself said that sores started to emerge on his arms and legs which spread to his ears scalp forearms and all over his legs. In that regard paragraphs 11 of the judgment is most revealing. The claimant stated at paragraph 24 of his witness statement that the rash of boils which had completely covered his hands in November 2007 lasted approximately three weeks and the sores that emerged on his arms and legs at the end of November 2007 took about two months to heal.

[22] The gist of Mr. Jn Marie's complaint as gleaned from his testimony is that following completion of the expansion of the defendant's Golf Course in 2001 droplets of water from the defendant's sprinklers (used in irrigating the Golf Course) came on to the western side of his house when the sprinklers were turned on between 5:30 p.m. and 6:30 p.m. forcing himself and his family to close all windows and doors facing that part of the Golf Course and retreat into the house because of the offensive smell emanating from the sprinklers. The huge trees between the Golf Course and his residence afforded no protection in that regard. He also complained of mosquito infestation from ponds. About the year 2006 his son he said had contracted an ear infection from the Francis' pool which he felt had been caused by contaminated water. There was no mention of any member of his family contracting any skin disease sores or other ailments from the putrid droplets coming onto his property/residence from the defendant's sprinklers.

[23] In sum Mr. Francis also complained that from about 2001 he and his family too had started to be affected by an odour most foul emanating from the Golf Course whenever the defendant's sprinklers were turned on in the early evening thus chasing them away from their poolside patio not only because of the offensive odour from the sprinklers but to prevent the droplets making contact with their skins.

[24] Following upon written complaints by this witness to the defendant's general manager and another by his attorney steps were taken to tone down their sprinklers and turn them on at nights but that apparently did not help to abate the problem. Water from the sprinklers got into the pool resulting in the pool water constantly turning green. The witness said he spent a fortune on chlorine and algaecide to keep the pool clear and he and his family were denied the use and enjoyment of the facility for some years. That is accepted by the court.

[25] However about June 2007 on Mr. Francis' admission (at paragraph 10 of his witness statement) the problem seemed to have been resolved and the pool had been operating as expected. From this it would be reasonable to infer that by then the droplets from the defendant's sprinklers no longer affected his pool or use of the patio or his residence generally and the foul smell which had hitherto emanated from the sprinkler system had also abated and no longer posed a problem in respect of the use and enjoyment of his property or those of the residents who had alleged to have been similarly affected.

[26] The essential facts which the claimant alleges constitute his cause of action against the defendant are:

(1) That the defendant was negligent by using/permitting "grey water" in its irrigation system to come onto his property thereby causing:
    (a) loss or damages to his property by diminishing his use and enjoyment of it; and
    (b) pain and/or injury as well as personal suffering to the claimant.

(2) That the defendant caused a nuisance on his property which resulted in loss and damages thereto.

(3) That the defendant allowed the "grey water" to escape causing loss and damage to his property.

[27] The issues which therefore fail to be determined are:

(1) Whether the defendant negligently brought "grey water" onto the claimant's property thereby causing damage to it.

(2) Whether the defendant created a nuisance by sprinkling the golf course with "grey water".

(3) Whether the defendant is liable for any loss, damage or injury suffered by the claimant.

(4) Whether the loss, damage or injury suffered by the claimant was reasonably unforeseeable by the defendant and whether the defendant is as a result not liable to the claimant in negligence nuisance or under the rule in Rylands v Fletcher.

(5) What (if any) is the measure of damages for which the claimant is liable.

[28] The claimant alleges that the defendant was negligent by using "grey water" to irrigate its golf course which caused loss of the lease of his home and damage, pain and injury to himself. The burden of proof consequently rests on the claimant to adduce evidence to show that he was injured and/or suffered loss and/or damage by a negligent act or omission for which the defendant is in law responsible/liable. If the defendant rebuts that evidence the issue to be resolved then is whether the claimant has discharged the legal burden of proof on him on a balance of probabilities. The claimant purported to prove the alleged negligence and pain, suffering and injury by contending that the defendant used "grey water" of substandard quality to irrigate its golf course which was harmful to him. In this regard reliance was placed on the expert evidence of Dr. Stephen King a registered medical practitioner and Chief Medical Officer from January 2004 to January 2007 and at present a pathologist in private practice who disclosed that

he had had many years experience in matters of public health especially in relation to laboratory investigations.

[29] Dr. King's four page report dated 5th May 2009 relied on two reports written by Andres Simons Griffith, Environmental Health Consultant, dated 27th June 2006 and 14th February 2006 and a report also dated 27th June 2006 from Joseph Medard, Senior Environmental Health Officer who himself drew on the results of an investigation carried out by Andres Simons Griffith consisting of a site visit to the defendant's premises (the Golf and Country Club) and another to the claimant's premises and discussions with officials of WASCO the Golf and Country Club and the claimant himself.

[30] In paragraph 2 of his report Dr. King referred to three letters he had received from the claimant dated 10th April 2006, 23rd June 2006 and 26th July 2006:

(1) Expressing concern about the quality of the water being used by the defendants for sprinkler irrigation of its golf course;
(2) Complaining about the foul odour of the water used; and
(3) Indicating that he had suffered many skin rashes and allergies which he felt was caused by exposure to the irrigation water.

I pause here to mention that according to paragraphs 24 and 25 of the claimant's witness statement it was in November 2007 that a rash of boils had suddenly and completely covered his hands and by the end of November 2007 large sores emerged on his arms and legs and spread to his ears, scalp, forearms and legs. There were no complaints of skin rashes and allergies by the claimant prior to November 2007 by which date the problem had reportedly been resolved.

[31] Discussion revealed that investigations had also been carried out by the laboratory at Caribbean Environmental Health Institute apart from those conducted by Andres Simons Griffith and Joseph Medard Dr. King said. On the basis of his findings Mr. Medard recommended inter alia that a statutory notice under section 4 subsection (1) of the Public Health Regulations No. 22 of 1978 should be served on

WASCO and copied to the defendant prohibiting WASCO from supplying effluent to the defendant and any other organisation. It was also recommended that a statutory notice be served on the defendant to stop using the effluent from WASCO for irrigating the golf course.

[32] Based on that and further discussions with Messrs Griffith and Medard Dr. King stated in paragraph 4 of his report that he was made to understand that the recommendations of Mr. Griffith in a memo dated 14th February 2006 had not been implemented. He himself he said therefore issued the requisite notices to WASCO and the defendant on 24th August 2006 which were duly served on them whereupon WASCO ceased supplying the effluent water to the defendant and commenced works to improve the functioning of the sewerage ponds fencing and dredging. That would seem to tally with the testimony of John Francis who disclosed in paragraph 10 of his witness statement that about June 2007 the problem seemed to have been resolved.

[33] However as stated at paragraph 28 Dr. King in his report to which was appended copies of three authorities/publications captioned:

(1) Waste Water Usage for Golf Course Irrigation
(2) WHO Guidelines for safe use of water excreta and "grey water"
(3) Assessment of wastewater treatment plants in the Caribbean, regional report AA Vulgman 1992

placed considerable reliance on the findings in a report by Andres Simons Griffith in arriving at his own conclusions and acknowledged under cross examination that he had not himself conducted any investigations of the "grey water" in question.

[34] Mr. Andres Simons Griffith's report dated 14th February 2006 refers at paragraph 4 to an inspection being conducted on 31st January 2006 of the Rodney Bay Wastewater Treatment Works and areas of the defendant's property where two ponds stored "grey water" from WASCO. No evidence was adduced of tests actually conducted by Mr. Griffith himself to assist in arriving at the conclusions concerning the "grey water". No samples were in actual fact collected nor were

tests conducted by the Ministry of Health from either the WASCO facility or the defendant's ponds but he relied instead on the findings requested from and provided by WASCO based on testing of the WASCO ponds only. According to Mr. Griffith:

> "We recommended to give us a summary of the effluent quality for the last six months of December 2005."

[35] Dr. King conceded under cross examination that he did not know who had collected the samples referred to in Mr. Griffith's report and he could not verify the method of analysis used. He went on to say that the quality of the water at the source (viz the WASCO plant) could be substantially different from a sample taken elsewhere and that a sample of wastewater taken from another site after discharge from the WASCO pond could differ from that taken at the WASCO pond.

[36] No evidence was adduced by the claimant that Mr. Griffith or anyone else for that matter had extracted samples of the purported harmful droplets from his property/residence for testing or that any tests had been carried out on samples of the said droplets. In the absence of testing the water from the defendant's ponds defendant counsel submitted that Mr. Griffith could not accurately conclude that the water from the ponds at the defendant's golf course was of the same quality as that extracted from the WASCO ponds. I agree.

[37] The claimant alleged that he developed skin rashes, sores and other skin allergies as a result of his exposure to the "grey water" emitted from the defendant's sprinklers onto his property and person. At paragraph 5 of his report Dr. King tabled no fewer than 25 pathogens that could be transmitted by wastewater and the corresponding diseases which could result from the presence of those pathogens in the human body. Curiously neither of the two skin diseases diagnosed by Dr. Jeaneen Payne on examination of the claimant in May and December 2007 is mentioned.

[38] The crucial question therefore which remains to be resolved is whether the claimant has discharged his evidential burden of proof on a balance of

probabilities. Defendant counsel submitted that the claimant had failed to adduce evidence that his skin diseases would not have occurred but for the "grey water" used by the defendant to irrigate its golf course. And it is my considered view that the preponderance of the evidence indicates that the claimant has failed to show that the claimant negligently brought "grey water" onto its property thereby causing loss or damage to his property and personal injury and suffering to him. Nor would the defendant be liable on the evidence adduced for creating a nuisance by sprinkling the golf course with "grey water" which it evidently had no reason to believe was contaminated. In sum I am satisfied that on a balance of probabilities that such loss, damage or injury allegedly suffered by the claimant was in all the circumstances reasonably unforeseeable by the defendant who would consequently not be liable to the claimant in negligence nuisance or under the rule in Rylands v Fletcher.

[39] Regarding the alleged liability in nuisance the burden of proving loss rests on the claimant to prove that the defendant's use of "grey water" to irrigate its golf course was unreasonable and interfered with his use and enjoyment of his land. This is a question of fact and critical to the issue of private nuisance is the question whether the damage done was foreseeable. It is now well established beyond any doubt that there cannot be liability in nuisance unless the harm was reasonably foreseeable.

[40] As stated in the headnote of the Privy Council decision in Overseas Tankship (UK) Ltd. V Miller Steamship Co. Pty.[1]:

> "Foreseeability of the injury is a necessary element in the measure of damages recoverable in cases of nuisance and it is not sufficient that the injury suffered was the direct result of the nuisance if that injury was in the relevant sense unforeseeable."

[41] With regard to liability under the rule in Rylands v Fletcher in order to succeed the claimant must show that the defendant's activities constituted a "non-natural" user of land and the claimant's burden would clearly be less if the defendant's use

[1] The Wagon Mound (No. 2) [1966] 2 AER 709 at letter D

of his land is inherently unreasonable. Fault in Rylands v Fletcher is assessed therefore having regard to reasonable user and remoteness considerations. Thus in Cambridge Water v Eastern Counties Leather[2] it was held that the concept of "non-natural user" was a valid one and whilst what the defendants were engaged in constituted a non-natural use nevertheless the same test for remoteness as applied in negligence also applied to the rule and as a result the loss suffered by the claimant was not of a type foreseeable by the defendants and the damage was therefore too remote.

[42] As regards the law in respect of the recovery of damages under the rule in Rylands v Fletcher this has been clarified and settled by the dictum of Lord Goff in Cambridge Waters v Eastern Counties Leather supra "that knowledge or foreseeabilty of damage of the relevant type is a prerequisite for the recovery of damages".

[43] As stated at the foot of paragraph 38 a defendant is not liable in negligence nuisance or under the rule in Rylands v Fletcher for a particular kind of loss, damage or injury suffered by a claimant as a result of the defendant's act or omission if a reasonable man who possessed the defendant's knowledge would not have foreseen a substantial degree of probability – as distinct from a bare or remote possibility – that the particular loss damage or injury or risk thereof would be a consequence of his act or omission.

[44] On the basis of the legal principles enunciated and the case authorities referred to I hold on the facts found that on a balance of probability the defendant is not liable to the claimant for loss or damage or personal injury in negligence nuisance or under the rule in Rylands v Fletcher.

[45] I am satisfied that the defendant had no knowledge that the "grey water" which was brought onto its land for the purpose of irrigating its golf course was contaminated. There were no complaints of damage or injury akin to that alleged

[2] (1994) 1 AER 53 (HL)

by the claimant from the defendant's agents, patrons or from other residents at Cap bar Messrs Jn Marie and Francis. And it is highly unlikely that the "grey water" purchased from the treatment plant of WASCO for irrigation of its golf course would have caused or was likely to cause damage of the relevant kind if it escaped.

[46] At paragraph 29 of his witness statement the claimant alleged that he invited an engineer to look at his plumbing system and provide a quotation for refurbishment of the water system, water tank and pool surfaces. An undated and unsigned quotation report furnished by one Ronald Deterville put the cost at $29,950.00 (Exhibit AA11) which was not specifically pleaded as a head of damage in the claimant's amended statement of claim or strictly proved at trial.

[47] It is trite law that special damages must be specifically pleaded and strictly proven. Of the nine heads of loss/damage for which special damages has been claimed none is substantiated or has been strictly proven. The claimant failed to specifically plead and strictly prove any special damage so that that part of his claim is disallowed in its entirety and is consequently struck out.

[48] Five witnesses testified on behalf of the defendant and it is in my view unnecessary to recount what they all said. Suffice it to say that Alex Blanchard a playing member of the Golf Club for 29 years – long before it was owned by the present owner he said – told the court that on average he played three days a week – a typical game he said lasting up to three hours. He had he added been sprinkled on many occasions by droplets from the sprinklers and had never suffered any physical reaction from being on the golf course. And none of the members he played with had ever complained or exhibited any signs of skin disease or ailment from being on the golf course. He was unshaken in cross examination. I accept his evidence as trustworthy.

[49] Lawrence Samuel the Chief Operating Officer of the defendant since September 2002 and whose job entailed all aspects of the day to day running of the golfing facility filed a supplemental witness statement dated 31st August 2009 which

provided a useful account of the circumstances relating to this claim. He impressed as a witness of truth and spoke with remarkable candour under cross examination. I have accepted his evidence on the whole as credible and reliable.

[50] The penultimate paragraph of his supplemental witness statement and in my view merits replication as it strikes at the heart of the case. There the witness declares that:

> "Since I have been working as Chief Operations Officer of the Golf Club the Claimant's complaint with respect to lesions, carbuncles and other ailments of the skin is the first and only such complaint ever received by the Golf Club. No other person, staff or patron, has ever complained about this condition or any other skin related condition. The Golf Club is adamant that the Claimant's condition was not caused by the 'grey water' and the fact that the Claimant continued to experience the lesions after the suspension of use of the 'grey water' by the Golf Club supports this position."

No more need be said.

[51] In the result the claim is dismissed and as regards costs the rule is that costs follow the event and the successful party is generally entitled to costs: Part 64.6(1) Civil Procedure Rules 2000 (CPR). In her written closing submissions learned counsel for the defendant requested that prescribed costs be awarded against the claimant on the basis of the sum stipulated by the court as the value of his claim: Part 65.5(2)(b)(ii) CPR.

[52] In paragraph 20.00 counsel for the claimant asked for general damages of $75,000.00 and loss of amenity in the sum of $75,000.00 thus giving a global figure of $150,000.00. In respect of special damage as indicated at paragraph 47 none of the heads of damage claimed were specifically pleaded or strictly proved and the claim for special damage was accordingly struck out/dismissed.

[53] For the purpose of computation of costs to which the defendant is entitled I put the value of the claim at $150,000.00 and award costs of $22,500.00 in accordance with Part 65.5(1) CPR.

[54] It would be remiss of me in closing not to express my appreciation for the assistance provided by learned counsel for each side which proved most invaluable.

Ephraim Georges
High Court Judge [Ag.]