

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)**

SUIT NO: NEVHCV2009/0091

BETWEEN:

Leonora Jean Jacques - Claimant

vs.

Leon Gumbs – Defendant

APPEARANCES:

Ms. Kalisia Isaacs for the Claimant.

Ms. Kurlyn Merchant for the Defendant

JUDGMENT

2014: May 21, June 16, July 21

2014: September 24

[1] **WILLIAMS, J. (Ag):** This matter is before the Court by way of fixed date Claim Form with a Statement of Claim whereby the Claimant Leonora Jean Jacques seeks the following relief against the Defendant Leon Gumbs:

- a) Recovery of possession of a stone wall forming the south-eastern boundary of the Claimant's 0.4452 acre of land situate at Morning Star Estate, and separating the Claimant's land from the Defendant's 0.6814 acre of land, which said stone wall has served as a protective fence for the Claimant's property in excess of 54 years.
- b) A declaration that the Claimant is entitled to Claim the stone wall as hers even if it is found by this Honourable Court, that a portion or even the whole of the stone wall forms a part of the Defendant adjoining 0.6814 acre of land, and that the Claimant would have acquired title to the same based on possession by herself and her predecessors in title for in excess of 54 years.
- c) An Injunction restraining the Defendant whether by himself, his servants and/or agents from further trespassing on, entering on or interfering with the stone wall of the Claimant, the subject matter of this action.
- d) General and special Damages for Trespass.
- e) Costs.
- f) Such further and other relief as this Court deems fit.

- [2] The Claimant in her Statement of Claim sets out particulars of special Damage in the sum of \$9515 and a further \$7860 to repair the wall as a result of heavy rainfall caused by a Hurricane.
- [3] The Defendant Leon Gumbs is the owner of 0.6814 acre of land situate on the south western boundary of the Claimant's land, situate at Morning Star Estate St. John's Parish, Nevis. The said lands are registered in Block 43, Folio 177 of the Registrar of Titles for the Nevis Circuit.
- [4] The Defendant has filed a Defence and Counterclaim denying:
- a.) that the stone wall belongs to the Claimant
 - b.) that he removed the stone all or any part of it
 - c.) that the stone wall has been destroyed or that his agents caused any damage to the said stone wall.
- [5] The Defendant has also counterclaimed for;
- a) Damages for Trespass on his land by the Claimant.
 - b) An Order that the Claimant be restrained whether by herself, her agents or servants, from interfering with the Defendant's use and enjoyment of his lands described in Certificate of Title in his favour dated 20th May 2005 and

recorded in Register of Tiles for the Nevis Circuit,
including the stone wall situate on the Defendant's land.

c) Such further or other relief as the Court deems just.

d) Costs.

Background

[6] According to the pleadings the stone wall referred to is the south western boundary of Leonora Jean Jacques land and common boundary to Leon Gumbs' land. This boundary was created during a division of property by John Howell in 1954 and first described in Book 7 Folio 99. The boundary was marked and described as a "stone wall" in the title and subsequent titles in the chain of records, (i.e.) namely Benjamin Liburd dated 29th March 1954 and registered in Book 7 Folio 99, and Christianna Melvina Liburd in Book 24 Folio 69 in July 1986. The present title in favour of Leonora Jean Jacques registered in April 1989 in Book 27 Folio 81 does not label the south western boundary as "stone wall", but as lands belonging to Anthony Gumbs. This title was created from a survey conducted by Hilton Lawson during a subdivision of the land held by her mother Christianna Melvina Liburd in June 1988.

Adjoining records starting in July 1939 and held by Nathan Williams does not label the said boundary as “stone wall” nor do subsequent titles of Anthony Gumbs or Leon Gumbs. The parcel of land held by Nathan Williams in Book 18 Folio 85 was also further subdivided and transferred to Doreen Baker registered in Book 16 Folio 43 and Clive Beverly Baker registered in Book 44 Folio 95.

[7] According to the witness statement of the Claimant, the stone wall has been in the Claimant’s family from around 1954. At that time her family which consisted of her father Benjamin Liburd, her mother Christianna M. Liburd and her siblings moved to the said plot of land from where the family was originally living at Burden Pasture. The land was bought by the Claimant’s father from John Howell and his Certificate of Title recorded in Register Book 7 Folio 99 of the Register of the Book of Titles shows a stone wall around the entire perimeter of the said land.

[8] According to the Claimant, this was the only property with a stone wall constructed all around it, and the wall was at all times used to fence the family’s crops, to protect the land from

trespassers and animals, and to prevent soil on the south western boundary of the land from being eroded.

[9] After the death of the Claimant's father, Christianna Liburd, mother of the Claimant's obtained a Certificate of Title to all the lands held by the deceased, then partitioned the said lands and transferred to the Claimant in 1989 the plot of land which she now holds a Certificate of Title and is the subject of this matter before the Court.

[10] In March 1988, the Defendant's father Anthony Gumbs acquired the neighbouring lands on the Claimant's south western boundary from Nathaniel Williams. On the 20th May 2005, the said land was transferred to the Defendant by his father and his Title was recorded in Register Book 26 Folio 31 of the Register of Titles.

[11] The Defendant Leon Gumbs in his witness statement at paragraph 5 (c) states that the stone wall was built by the said Nathaniel Williams prior to Benjamin Liburd becoming owner of the adjoining land. That wall was built for the purpose of protecting his land from erosion. The Defendant also claims that the stone wall was always located on the land of Nathaniel

Williams and his successors in title, including the Defendant himself, and that the stone wall currently belongs to him.

[12] The Defendant also claims that his Certificate of Title, and his father's Certificate of Title to the said land, both clearly show that the Registered proprietor owns an access road 9.96 feet in width, and not a footpath as stated by the Claimant.

[13] According to the Defendant in his oral evidence on or around 10th September 2007, he went to the said access road with a backhoe operator to clear a portion of his land including the access road to his land. The Claimant approached the backhoe operator and stood in the way of the backhoe. He called the police on two occasions and they advised the Claimant to leave his (the Defendant's) property.

[14] According to the Claimant the Defendant caused serious damage to her wire fence which was constructed in the middle of the wall. The Claimant states that she rebuilt the wall after it was destroyed; but in May 2009 the Defendant ran water pipes along the length of the stone wall and trespassed onto the said stone wall.

[15] As a consequence of this, Ms. Leonora Jean Jacques filed an Application for an Injunction on the 18th day of June 2009 and the Court granted the following orders in the terms stated below;

“The parties undertake that:

i. Neither party shall by themselves and/or their servants or agents.

(a.) Remove or substantially interfere with the structural integrity of the dry stone wall along the boundary of their adjoining land.

(b.) Walk, stand or sit on the said dry stone wall.

ii. The status quo in relation to the presence of the water pipes on the wall shall remain until the substantive matter is determined or until further order.

[16] The Defendant Leon Gumbs takes issue with Ms. Leonora Jean Jacques Claim. He denies that the stone wall belongs or even belonged to the Claimant and contends that the Claimant wrongfully erected a wire fence on his property in 2005.

[17] The Defendant also states that he had employed the services of a backhoe operator to clear a portion of his land and the access road to the land when the Claimant went into his land and stood in the

way of the backhoe operator, and the police had to be called to resolve the dispute.

[18] The Defendant insists that the stone wall was built by Nathaniel Williams about 1946 to protect the land from erosion. The stone wall according to the Defendant attaches to the land and its ownership runs with the ownership of the land on which it is situate. He submits that ownership of the stone wall passed from Nathaniel Williams to Anthony Gumbs and subsequently to him.

[19] Accordingly the Defendant has counterclaimed for Damages for Trespass by the Claimant, an Injunction to restrain the Claimant from interfering with the use and enjoyment of his land and a Declaration that the Claimant's wire fence encroaches on his land and constitutes a continuing trespass.

[20] The Defendant states that the Claimant is not entitled to any to any of the relief claimed.

Issues

[21] The following issues arise for the Court's determination;

- a) Whether the Defendant L. Gumbs has committed trespass to property that is owned by the Claimant, Leonora Jean Jacques.

- b) Whether the Claimant is entitled to claim the stone wall.
- c) Whether the Defendant caused to be moved portions of the stone wall in 2007 and 2009 and if so should the Claimant be compensated for any alleged repairs to the stone wall.
- d) Is the 9.96 feet road appearing on the Defendant's Certificate of Title a private access path of the Defendant or a shared access road.
- e) Whether Ms. Jean Jacques is entitled to be compensated for alleged Trespass to her property by the Defendant.
- f) Whether the Defendant is entitled to be compensated by the Claimant for Trespass to his property.
- g) Whether the Court should grant injunctive relief to any of the parties.

Evidence

[22] Ms. Leonora Jean Jacques and Mr. Simeon Hill testified on behalf of the Claimant, and were cross-examined.

Mr. Leon Gumbs, Mr. Elmo Farrell testified for the Defence and were similarly cross-examined.

Court's Analysis and Findings of Fact

The Court has given careful consideration to the evidence adduced by both sides and the written submissions of both learned Counsel.

[23] The Court finds the following facts;

Ms. Leonora Jean Jacques the Claimant in this matter is the legally registered proprietor of property situate at Morning Star Estate and recorded at Book 27 Folio 8 of the Register Book of Titles at the High Court Registry, Charlestown, Nevis.

[24] The Claimant relies on her father Benjamin Liburd for her title to the property. Benjamin Liburd bought land at Morning Star Estate in 1954 from John Howell. That land is recorded in Book 7 Folio 99 of the Register Book of Titles at the High Court Registry, and the property is described in the said Certificate of Title.

[25] Benjamin Liburd's Certificate of Title with plan attached shows a dry stone wall around the perimeter of the plot purchased by Benjamin Liburd.

[26] The said property was transferred in 1986 to Christianna M. Liburd, the wife of Benjamin Liburd upon his death, and the mother of the Claimant, who subsequently partitioned the land and transferred 0.4452 acre of

land to the Claimant. That land, as stated before is recorded at Book 27 Folio 8 of the Register Book of Tiles at the High Court Registry.

[27] In 1988, the Defendant's father Anthony Gumbs purchased land adjoining the south-western boundary of the Claimant's land from Nathaniel Williams. That land is registered in Book 26 Folio 31 of the Register Book of Titles at the High Court Registry.

[28] The Defendant came into possession of the said land through his father's Estate upon his death and the said portion of land situate at Morning Star Estate is registered in Book 43 Folio 177.

[29] The Certificate of Title of the Defendant describes the manner in which the land is bounded and shows the strip of land measuring 9.96 feet on the south-western boundary.

[30] Neither the Certificate of Title and plan of Leonora Jean Jacques or Leon Gumbs show the presence of a dry stone wall which was clearly visible on the Certificates of title of Benjamin Liburd, and Christianna Melvina Liburd.

[31] There is clear and unchallenged evidence that the stone wall was already built when Nathaniel Williams bought the land in 1985 and sold it to Anthony Gumbs in 1988.

[32] There is also clear and uncontroverted evidence before the Court that Ms. Jean Jacques constructed her house and fenced her property on the said land in 2005, and that the Defendant had not as yet constructed his home on his property.

[33] The Claimant called the witness Simeon Hill, in support of her Claim, the licensed land surveyor who provided the Court with elucidating evidence and who the Court considers a reliable witness. The Surveyor presented a report of his findings (Exhibit S.H.1). His findings were itemised in paragraph 10 (1-6) of the said report. At paragraph 5 and 6 of the report, Mr. Hill states that the "Survey plan recorded on the title of Anthony Gumbs (Book 26 Folio 31) and presently held by Leon Gumbs indicates that a common boundary existed, hence no overlapping or gaps between the common boundary of Leonora Jean Jacques and Leon Gumbs.

Subsequent and adjacent surveys conducted for Dorothy Liburd- Caines daughter of Christianna Melvina Liburd indicates that **the stone wall forms the common boundary between Leonora Jean Jacques and Leon Gumbs. (My Emphasis)**

[34] In his oral evidence, Mr. Hill refers to (Exhibit SHI) MAP I pg. 22 of his report. He states;

“This map is accurate, the map was prepared by me and reflects the owners at the time it was done. I separated the two Bakers property. In looking at Leon Gumbs’ title and Anthony Gumbs’ title, there is only one plot belonging to Doreen Baker in front of his plot; the access to the plot is through the public road.”

“In reference to Doreen Baker’s Certificate of Title, I see that her title was transferred from Miriam Liburd. The land held by Nathaniel Williams was transferred to Anthony Gumbs and then to Leon Gumbs.

Ms. Hill then refers to paragraph 10 (2) of the surveyor’s report and states that the survey plans referred to in the said paragraph 10 (2) and labelled A and C on Map I.

He adds that “Based on this plan unless some arrangement was made for access to be part of Leon Gumbs’ land, it should not have been shown as such, and should not have been part of the title.”

“The access on Mr. Gumb’s plan does not reflect the access on Doreen Baker’s land. Her access is on the south west whereas Mr. Gumb’s access on his plan is shown to the north west; on Nathaniel Williams plan, the access is shown on the north east, but does not go through Kerry Baker’s property; the strip of land that provides access for Mr. Leon Gumbs and Kerry Baker is not owned by Leon Gumbs or Kerry Baker.

[35] Under cross-examination of Mr. Hill by Counsel for the Defendant Ms. Kurlyn Merchant, he stated as follows;

“ Based on Leon Gumbs plan, the strip of land belongs to him and based on Leonora Jean Jacques’ plan, the strip of land belongs to the former Anthony Gumbs and now Leon Gumbs.”

“Also based on the two plans of the Claimant and the Defendant, **the strip of land belongs to Leon Gumbs**, and based on the tile of Leon Gumbs and Leonora Jean Jacques **there is no mention of foot path or access road.** (My Emphasis) the stone wall is part of the common boundary.

This coincides with Ms. Leonora Jean Jacques’ boundary as the correct boundary. **The section of the wall outside the fence would be Mr. Gumb’s property.** (My Emphasis).

I made a site visit, the section outside of Leonora Jean Jacques wall is accessed through the land of Leon Gumbs. There is no public access to that portion of the wall.”

[36] Mr. Hill further states under cross-examination, that in relation to the land of Clive Beverly Baker recorded at Register Book 44 Folio 95 in March 2006, it was bounded by lands of Doreen Baker to the north west, by lands of Nathaniel Williams to the south east, on the north east by

lands of heirs of Benjamin Liburd, and on the south west by lands of Ferdie Williams. He says that “there is reference to a chain link fence, but there is no reference to a stone wall.”

His observations according to his oral evidence, were that the dry stone wall was on the opposite boundary on land owned by Doreen Baker and previously owned by Mary Williams and Nathaniel Williams.

He states “There was some portion of the wall surrounding the property that was removed and the remainder was intact. The fence constructed on the wall could not have affected the wall. The fence did not run the full extent of Ms. Jean Jacques’ property.”

[37] Under re-examination by Counsel for the Claimant Ms. K. Isaacs, Mr. Hill stated categorically “ I did a whole assessment of the area. There is a piece of land owned by Leon Gumbs that is not part of the original title done in 1954 and now owned by Kerry Baker. **That strip of land should not have been included unless it was bought or agreed upon.**” One cannot rely on a plan of one Certificate of Title but all adjacent titles to land. Therefore if one looks at the plan of **Leon Gumbs, it would not be fair to say the strip of land belongs to him.** (My Emphasis)

[38] The Defendant Leon Gumbs in his oral evidence stated that there is a narrow strip of land adjacent to his land to the back, and this is a private

road which his father Anthony Gumbs had obtained from Nathaniel Williams. He further stated that he had cleared the road in 2007 but had not interfered with the stone wall or damaged Ms. Jean Jacques's fence and wall. He had only cleared three hundred feet (300) to allow cement trucks and other vehicles to pass through to start building his house.

Ms. Leonora Jean Jacques had never notified him of any repairs to the stone wall, and it was the Hurricane in 2010 and the ghaut that runs through her land that tore down her fence. Mr. Gumbs also stated that he had put up a gate to prevent the Claimant from coming on to this property.

He states "The gate is still there. When I leave the gate closed, she can come in on the side close to Doreen Baker's land, and when the gate is open, she just walks out into my private road. She comes out of her gate, and comes to my gate and road."

Mr. Gumbs also referred the Court to photos he had taken of the Claimant allegedly on his private road (Exhibit L.G.4 collectively). He reiterated that in 2010, there was a Hurricane and the water tore down the Claimant's fence and wall. She had reconstructed the wall although there was an Injunction in place that neither party was to go on the wall. He also emphasised that he did not touch the stone wall or gave

instructions to anyone to touch the wall. The last time he was Ms. Jean Jacques on the wall was Thursday 15th May 2014.

[39] Under cross-examination by Ms. Isaacs the Defendant was adamant that the stone wall was not on the Claimant's property and was part of the 9.96 foot road which was part of his land. He stated further that the access path is connected to his land and not to Mr. Kerry Baker's land. The stone wall was on his easement road.

[40] In re-examination by Counsel Ms. Merchant, the Defendant stated "No one in the area has issues with the gate I erected. The gentleman that owns the adjoining land, his sister came from Tortola B.V.I and she and her brother said it is o.k. for me to maintain that gate there, I am the only person using that road."

[41] Having listened carefully to the evidence and the evidence of Simeon Hill the Surveyor in particular and visited the said locus at Morning Star Estate and having examined the Certificates of Title of Clive Baker, Nathaniel Williams, Anthony Gumbs, and the Defendant Leon Gumbs. I am of the considered opinion that the strip of land of 9.96 feet in width belongs to the Defendant Leon Gumbs, and that said strip of land provides access to his land and property which is at some distance away from the public road.

I have perused all of the Certificates of Title tendered in evidence to obtain a holistic picture of all of the boundaries of the landowners in the area, in particular Mr. Clive Baker, Mr. Leon Gumbs, Mr. Benjamin Liburd and Mrs. Christianna Liburd.

Mr. Clive Baker's Certificate of Title issued on the 31st March 2006, shows a 10 foot access road, and Mr. Leon Gumbs whose Certificate of Title was issued on the 20th May 2005 also shows a 9.96 foot access. However the titles of the Claimant's father and mother Benjamin and Christianna Liburd (Exhibit LLJ1 and LLJ2) do **not** show a public access road adjoining their property. I am therefore satisfied by the evidence that the 9.96ft access road is part of the property of Leon Gumbs, and Ms. Leonora Jean Jacques has no rights or title to this private access road.

The Law

[42] The Legal basis for a Claim to recover possession lies in Section 6 (3) of the Limitation Act Cap 5.09 of the Laws of St. Christopher and Nevis. The Section states "No action shall be brought after the expiration of twelve years from that date on which the right of action accrued to him or her if first accrued to some person through whom he or she claims to that person."

The Evidence

- [43] The Claimant in her testimony stated that she enjoyed undisturbed successive possession of the stone wall from 1954 to 2007. She states further that the stone wall appears on the Certificate of Title of Benjamin Liburd, her father whose lands were subdivided by her mother Christianna Melvina Liburd upon his death. The land she now occupies was transferred to her by her mother in 1989.
- [44] The Claimant also alleges that the Defendant through his agent Roger Browne interfered with the said wall and damaged the wall when clearing the access road with a backhoe in 2007. The Defendant has denied this allegation and claimed that he was clearing the access road to his property and never interfered with or touched the wall.
- [45] The Claimant's evidence is that in her mother's Certificate of Title, there is a plan which refers to a dry stone wall and it is the first triangular piece next to the public road. Her Certificate of Title was issued on the 11th April 1989 and there was a stone wall present although it was not shown on the plan of the plot of her land.
- [46] The Claimant continues in her evidence to state that the stone wall formed part of her land to protect the erosion of the land. She walked on

the slip road and not on the Defendant's land. As a child she knew it as a footpath, and that the slip road provided access to other landowners in the area. She goes to the slip road to clear the wall and pick the peas on the fence, which she has done from 2004-2005. Her family cleaned the wall which was on the footpath from 1954.

[47] The Claimant also states that she moved back to Nevis from England in 2004 and then started to construct her house. The Defendant was not living next to her when she completed construction. She completely fenced the property in 2005 but did not have a survey done of her land when she fenced the property. She knew her bounds and fenced the property accordingly.

[48] The licensed surveyor Simeon Hill in his oral evidence stated that the stone wall is part of **the common boundary of the land**, the section of the wall outside of Ms. Leonora Jean Jacques' fence would be Mr. Gumbs' property. The section outside of Ms. Jean Jacques' wall is accessed through the land of Leon Gumbs; there is no public access to that portion of the wall.

Mr. Hill stated further that the boundary marks of the Claimant were located in the centre of the wall. He concluded that the stone wall is the boundary between the property of Mr. Leon Gumbs and Ms. Leonora

Jean Jacques. “The fence is at the centre, but more on Ms. Jean Jacques’ property.”

[49] I have carefully considered the evidence in particular that of Simeon Hill the surveyor, on the issue of ownership of the stone wall. Also on a visit to the locus on the 21st July 2014, I am fortified in my opinion that the stone wall is a joint shared boundary between the property of the Claimant and the Defendant and that the legal ownership of the stone wall is not vested in the Defendant or the Claimant.

[50] The Claimant has contended that in the event the Court finds that a portion or even the whole of the stone wall forms part of the Defendant’s land, she would still have acquired title to the same based on possession by herself and her predecessors in title for in excess of 54 years.

[51] In the case of **Winston Molyneaux vs. Hugh Smith et al ECSC- Court of Appeal BVIHCVAP2009/0022**, J.A Periera (as she then was) laid down the elements necessary for Legal possession.

1. “A sufficient degree of physical custody and control or factual possession and
2. An intention to exercise such custody and control of one’s own behalf and for one’s own benefit. The intention required of the trespasser is not one to own or acquire ownership of the land.

All he need intend is to possess it for the time being in so far as that was reasonably practicable. It must be an intention on one's own name and on one's own behalf to exclude the world at large including the owner with the paper title, if he be not himself the possessor so far as reasonably practicable, and so far as the processes of the law will allow. Once such an intention on the part of the trespasser exists, the true owner is said to be dispossessed."

[52] The Law on Adverse possession was also explained in the House of Lords case of **J.A. Pye (Oxford) Ltd. and another vs Graham and Another [2003] 1AC 419**. Lord Browne-Wilkinson said at paragraph 41, approving the statement of Shadde J. in **Powell vs McFarlane and another [1979] 38 PE CR 42** that:

"What must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done."

[53] **The Halsbury Laws of England Vol. 45 (2) at paragraph 517 – What possession is sufficient** states as follows:

“Any form of possession so long as it is clear and exclusive and exercised with the intention to possess, is sufficient to support a claim for trespass against a wrong doer. It is not necessary in order to maintain trespass, that the Claimant’s possession should be lawful; **See; Graham vs Peat [1801] 1East 244.**

[54] The Claimant said in her evidence that in 1954, “We met the wall there. It is an old wall, it is Estate wall. In 2004, the wall was intact other than an odd stone falling. I do not know the wall belongs to the property, it is a boundary wall.”

[55] Ms. Leonora Jean Jacques stated further that she migrated to England in 1964 and returned to live in Nevis permanently in 2004. However she returned every two years, but the plot of land belonging to the Defendants remained unoccupied. The Claimant did not produce evidence to substantiate this Claim that she returned to Nevis every 2 years. However the Court is of the unshakeable view that this action of the Claimant did not show an act of undisturbed possession of the wall and an intention to exercise custody and control on her behalf for her benefit.

[56] Ms. Leonora Jean Jacques continued in her evidence to state that she fenced her property in 2004, and her fence was placed on top

of the stone wall, in the centre of the wall. This evidence of the wire fence was corroborated by the Defendant and Mr. Hill the licensed land surveyor.

[57] On the Court's visit to the locus at Morning Star Estate on the 21st July 2014, the Court obtained a pellucid picture of the Claimant's fence which was placed on top of the stone wall. Mr. Hill the surveyor who was present at the site visit confirmed that the boundary marks of the Claimant were placed in the centre of the wall and that the stone wall outside the wire fence formed part of the property of Leon Gumbs the Defendant.

[58] After careful and deliberate consideration of all the facts of this matter and having read the authorities in relation to possession, it is clear that the genesis of this dispute is the fact that the family of the Claimant Ms. Leonora Jean Jacques, treated the stone wall as part of their property whereas the evidence points to the fact that the stone wall is a shared boundary wall between the property of the Claimant and the Defendants and their predecessors in title.

[59] The Court therefore finds that the stone wall is not the exclusive possession of the Claimant and that none of the acts of the Claimant can be deemed to amount to possession. I am **not** of the

view that merely repairing and cleaning a wall which has been damaged by the force of nature can amount to possession or dispossession of the owner. Further the Claimant has fenced her property in the middle of the stone wall and in my opinion this does **not** indicate an intention by the Claimant to exclusive possession of the whole of the stone wall, nor is there any evidence of a diverse possession of the stone wall by the Claimant.

[60] The Court will therefore decline to grant a Declaration to the Claimant to claim the stone wall as hers or that she acquired title to the said wall based on possession by herself or her predecessors in title.

[62] The Defendant has raised the issue of contempt of Court by the Claimant in relation to the Claimant's non compliance with the Court Order of the 21st day of September 2009.

The Order of the Court was set out as follows:

The Parties undertake that:

- i. Neither party shall by themselves and/or their servants or agents

- a) Remove or substantially interfere with the structural integrity of the dry stone wall along the boundary of their adjoining land.
 - b) Walk, stand or sit on the said dry stone wall.
- ii. The status quo in relation to the presence of the water pipes on the wall shall remain, until the substantive matter is determined or until further notice.

[63] The Claimant admitted in her evidence that she did not obtain permission of the Court to effect repairs to the stone wall in 2010, and the Defendant claims that the Claimant is in flagrant breach of the order of the Court, and should not be heard.

The Law on Contempt

[64] In Hadkinson vs Hadkinson [1952] C.A 265 Per Romer L.J he stated at page 568:

“It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent Jurisdiction to obey it, unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it

extends even to cases where the person affected by an order believes it to be irregular or even void.”

“Two consequences flow from the nature of the breach of a Court’s order, the first being that anyone who disobeys an order of the Court is in contempt, and may be punished by committal or attachment or otherwise, while the second consequence is that no application to the Court by such person will be entertained until he has purged himself of his contempt.”

[65] However in the said case of **Hadkinson vs. Hadkinson**, Denning L.J (as he then was) had a different perspective. He held that it was rare for the Court to refuse to hear Counsel for an Appellant. Lord Denning stated at pages 574-575:

“It is a strong thing for a Court to refuse to hear a party to a cause, and it is only to be justified by grave considerations of public policy. It is a step which a Court will only take when the contempt itself impedes the course of Justice, and there is no other effective means of securing his compliance. I am of the opinion that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being heard, but if his disobedience is such that so long as it continues, it impedes the course of Justice in the cause, by making it more difficult for the Court to

ascertain the truth or to enforce the orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.”

[66] **In Bastion Holdings Limited vs. Jorrill Financial Inc. (Jamaica) 2007**
UKPC 60, Lord Scott of Foscote referring to the Judgment of Denning L.J
stated:

“These passages from Denning L.J’s Judgment in **Hadkinson** seem to their Lordships to fit this case; Mr. Whittaker’s contempt in refusing to allow himself to be cross-examined on his affidavit, and on the documents he had produced pursuant to the Court’s discovery order, impeded McIntosh J’s endeavour to ascertain the truth about the Agreement.... In their Lordships Judgment, McIntosh J’s decision to decline to hear submissions was a decision in her discretion, she was entitled to take.

[67] The Learned authors of **Arlidge, Eady & Smith on Contempt** state that;
“An effective sanction was the practice that one who was in contempt might not be heard further in the same litigation for his own benefit, unless and until he purged his contempt. In the words of Lord Broughman “It is a general rule of all Courts that no party shall be allowed to take active proceedings if in contempt. This was clearly a

practice primarily coercive in nature rather than punitive. It was by no means universally applied. There have also been recognised so-called exceptions, for example a contemtor might be heard on an application to purge the contempt, or for the purpose of setting aside the Order, breach of which had put him in contempt, or of appealing against the order of committal for lack of Jurisdiction.

[68] In the case of **Vance Lewis vs Joyce Lewis BVIHMT2008/0062** ,

Hariprashad-Charles J. stated as follows:

“It is beyond dispute that a Court may refuse to hear a party who has been found to be in contempt, and who has made no effort to purge that contempt. However the approach the Court should now adopt is found in the Judgment of **Lord Bingham** in **Arab Monetary Fund vs. Hashim et al [1997]** unreported where he said;

“I think, it is wrong to take as a starting point, the proposition that the Court will not hear a party in contempt, and then ask if the instant case falls within an exception to that general rule. It is preferable to ask whether in the circumstances of an individual case, the interests of Justice are best served by hearing a party in contempt or by refusing to do so, always bearing in mind, the paramount importance which the

Court must attach to the prompt and unquestioning observance of Court orders.”

[69] The important question to be asked is whether the interests of Justice are best served by hearing or refusing to hear the Claimant Ms. Leonora Jean Jacques, always bearing in mind the importance which the Court must attach to the prompt and unquestioning observance of its Order.

[70] I am of the opinion that the interests of Justice will **not** be served by debarring Ms. Leonora Jean Jacques from having her Claim heard or waiting until she has completely purged her contempt.

[71] Consequently I have permitted Ms. Leonora Jean Jacques to present her claim to her Court.

[72] Another issue for determination by the Court is whether Ms. Leonora Jean Jacques is entitled to be compensated for alleged Trespass to her property by the Defendant or whether the Defendant is entitled to be compensated by the Claimant for Trespass to his property.

[73] The **Halsbury Laws of England Vol. 45 (2) paragraph 518** states under the heading **“Who may sue for Trespass”** that;

“Trespass is an injury to a possessory right and therefore the proper Claimant in a claim for Trespass to land is the person who was or is deemed to have been in possession at the time of the Trespass. The

owner has no right to sue in Trespass if any other person was lawfully in possession of the land at the time of the Trespass, since a mere right of property without possession is not sufficient to support the claim; the type of conduct necessary to evidence possession varies with the type of land and to maintain a claim against a person who never had any title to the land. The slightest amount of possession is sufficient; See- **Wuto Ofer vs. Danquah [1961] 3A11ER 596.**

[74] At paragraph 519 of **Halsbury's** it states "A person having the right to the possession of land acquires by entry the lawful possession of it and may maintain Trespass against any person, who being in possession at the time of entry, wrongfully continues on the land. The slightest acts by the person having title to the land, or by his predecessor in title indicating his intention to take possession may be sufficient to enable him to bring an action for Trespass against a Defendant.

See: Ocean Estates Ltd. vs. Pinder [1963] 3A11 E.R 596; Simpson vs. Weber [1925] 41TLR 302.

[75] Trespass is actionable at the suit of the person in possession of land; **See Patel vs. W.H Smith Ltd. [1987] 2 A11ER 569.**

[76] Learned Counsel for the Defendant Ms. Merchant in her written submissions posited that the Defendant has presented clear proof of his

claim for Trespass against the Claimant including photos labelled collectively as (Exhibit LG4) showing the Claimant allegedly entering and leaving the strip of access road on his property.

The Defendant also tendered photos allegedly taken on the 15th May 2014 again showing the Claimant on the property of the Defendant. (Exhibit LG5).

[77] Counsel for the Defendant then referred to the case of **Clarabell Investments Limited et al vs. Antigua Isle Co. Ltd. et al**, **ANUHCV2006/00326**. In that case the learned Trial Judge Blenman J (as she then was) stated that “It is clear that the owner of land, even though not in physical possession of land can have an action against a trespasser.... Trespass on a person’s land gives rise to a continuing action for as long as the Trespass lasts.”

[78] The Claimant in her pleadings claims that the Defendant, his servant or agents has trespassed on her stone wall and has wrongfully installed water pipes unto the said stone wall. It is on this basis that the Claimant makes the claim for continued Trespass against the Defendant.

[79] In the case at Bar, and on the Court’s visit to the locus on the 21st July 2014, the Defendant illustrated to the Court that he had laid pipes under the strip access road on his property, to bring potable water to his house

that he had constructed on his plot of land. No evidence has been adduced by the Claimant and the Court found no evidence of Trespass to the Claimant's fenced property by the Defendant, and therefore will dismiss the Claimant's claim for General and Special Damages for Trespass against the Defendant.

[80] Moreover the Court finds that it is the Claimant who has trespassed and continues to trespass on the Defendant's property by entering on the Defendant's land from September 2007, and interfering with the Defendant's use of his land, and with his water pipes without license or permission. The Claimant continues to pick the peas and over hanging fruit on the Defendant's property.

The Defendant has also filed a Counterclaim for Trespass contending unlawful entry on his property by the Claimant.

[81] In the Clarabell case, the learned Judge Blenman J as she then was, explained that "Trespass on a person's land gives rise to a continuing action (from Day to Day) for as long as the Trespass lasts."

Remedies

[82] Having made a finding of Trespass against the Claimant, the Court must now determine the remedies to which the Defendant is entitled.

In Stone on- Trent Council vs. W&J Wass Ltd. [1988] 1WLR 1406, the

Court stated that;

“A Claimant in Trespass is entitled to recover damages, even though he has sustained no actual loss. There is no need for the Claimant to prove any actual damage in order to be able to sustain an action for Trespass.”

Also in the case of Yelloly vs. Morley [1910] 27TLR 20, the Court held that Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another. It is Trespass to place anything on or in land in the possession of another.

[83] In applying the principles of Trespass to the case at Bar, I am of the view that Ms. Leonora Jean Jacques must pay Damages to the Defendant Leon Gumbs for Trespass to his property and that her continued unlawful presence on the Defendant's land constitutes a continuing trespass and must cease immediately.

[84] It is the Law that a person whose property has been trespassed upon is entitled to be compensated by way of Damages. The two bases for calculating a Monetary remedy or [...] profits are Compensatory and Restitutionary. The purpose of the award of Damages is to place the Claimant in the position he would have been in had Trespass not been committed. Compensation refers to the Cost of any work reasonably

required in order to restore the Claimant's use of the land. It is the cost of reinstating the land.

See: A.G vs Blake [2001] A.C 268.

[85] In calculating Damages, consideration is given to the benefit deemed to have been acquired by the Trespasser by reason of the unauthorised use of the land. As already stated, the law does not require the Claimant to prove any loss, neither is it relevant that the Trespasser obtained any actual benefit from his wrongful use of the land.

[86] In **Asot S. Michael vs. Astra Holdings Ltd. Civil Appeal No. 17 of 2004,**

Antigua & Barbuda Rawlins J.A (Ag) stated that;

“A Claimant must set out in his pleadings the value by which his land was diminished and the expense of moving any debris left by the trespass, if any. On the other hand he may set out the costs of correcting the damage and restoring the land to its original condition. Where there is continuing Trespass damages are usually measured by the worth of the use of the land. This would normally be the rental value of the land.”

[87] The Court is of the opinion that Mr. Gumbs is entitled to Damages which would represent the cost to place the property it was in before the Trespass.

The Defendant in his pleadings has not set out the value by which his land has been diminished by the act of Trespass by the Claimant. The written submissions of Counsel for the Defendant has also given no assistance to the Court or any helpful authorities to allow the Court to grant Damages for Trespass. Consequently I will grant Court assessed Damages of \$8000.00 to the Defendant for the Trespass committed on his property.

[88] There is no evidence of the rental value of the stone wall that the Defendant claims as part of his private land. The Court has made a finding that the Trespass commenced in 2007 and continues even up to the date of the Trial of this matter. Therefore the Damages that the Court awards to the Defendant should indicate a sum that reflects the fact that there was a Trespass on the stone wall and access road.

[89] In light of all the evidence and circumstances of this case and taking in account that Counsel provided no authorities to assist the Court in this regard to Damages, the Court is of the view that the sum of \$5000.00 is appropriate to award the Defendant as Damages for Trespass to the stone wall which forms part of his property.

Injunctive relief

[90] I now address the issue whether the Court should compel Ms. Jean Jacques, her servants or agents from trespassing on, entering on or interfering with the stone wall, and the access road, the subject matter of this action.

[91] During the course of this Trial, the Court has observed the conduct, bad blood and tension filled relationship between the Claimant and the Defendant. The Claimant appears to be provocative and cantankerous, and the Court is satisfied that the Claimant will continue her unlawful acts in the future if not restrained although an interlocutory Injunction had already been granted. I am satisfied that unless the Court grants the Injunction prayed for by the Defendant, Ms. Leonora Jean Jacques the Claimant would take no steps to remedy her unlawful acts, and that the making of Declarations and an Award of Damages will not suffice to curb the Trespass by the Claimant.

[92] The Court therefore grants an Injunction restraining the Claimant Ms. Leonora Jean Jacques whether by herself, her servants or agents from further trespassing on, entering on or interfering with the stone wall, and from entering on or trespassing on the access road, the private property of the Defendant.

Conclusion

[93] In view of the foregoing and the totality of evidence, It is hereby ordered as follows;

- a) That the Claimant's claim for recovery of possession of a stone wall forming the south-eastern boundary of the Claimant's 0.4452 acre of land situated at Morning Star Estate and separating the Claimant's land from the Defendants 0.6814 acre of land is dismissed, and the Court further declares the said stone wall to be a common boundary shared by the Claimant and the Defendant. The Court also declares that the stone wall outside of the perimeter of the Claimant's fenced property is part of the private property of the Defendant.
- b) That the Claimant's claim for an Injunction restraining the Defendant, whether by himself, his servant and/or agents from further trespassing on, entering on, or interfering with the stone wall of the Claimant is disallowed and dismissed.
- c) That the Claimant do pay the sum of \$13,000.00 to the Defendant as Damages for trespass to his property.

- d) That the Defendant is granted an Injunction restraining the Claimant whether by herself, her servants or agents from interfering with the Defendants use and enjoyment of his lands described in Certificate of Title in his favour dated 20th May 2005 and recorded in Register Book 43 Folio 177 on the Register of Titles including the stone wall and Access road that forms part of the said property of the Defendant.
- e) That the Claimant's concrete wire fence does not encroach on the Defendant's land and does not constitute a continuing trespass, the said concrete and wire fence being in the centre of the stone wall which is a shared boundary for the lands of the Claimant and the Defendant.
- f) That prescribed costs are to be paid to the Defendant in accordance with Part 65 of the CPR 2000, unless otherwise agreed.

[94] The Court gratefully acknowledges the assistance of both Learned Counsel.

Lorraine Williams
High Court Judge (ag)