

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

CLAIM NO. NEVHCV2018/0070

In the matter of the Saint
Christopher and Nevis Constitution
order 1983, Sections 3 and 8

and

In the matter of the Acquisition by
the Nevis Island Administration of
2.6000 acres of land owned by
REST HAVEN LTD and mortgaged
to Kishu Chandiramani

BETWEEN:

[1] MANOHARDAS DEVIDAS CHANDIRAMANI
(In his capacity as Sole Executor of the Estate of Kishu Chandiramani – Deceased)

Claimant

and

[1] MARK BRANTLEY
(In his capacity as Minister of Finance in the Nevis Island Administration)
[2] THE ATTORNEY GENERAL OF ST. CHRISTOPHER & NEVIS

Respondents

Before:

The Hon. Mde. Justice Lorraine Williams

High Court Judge

Appearances:

Mr Garth Wilkin for the Claimant

Ms Rhonda Nisbett Browne Legal Department for the first Respondent

Mrs Simone Thompson-Bullen Solicitor General for the second Respondent

2018: October 31st
2019: November 29th

JUDGMENT

[1] **WILLIAMS, J.:** This matter is before the court by an Originating motion by way of Fixed Date claim and Affidavit in support dated 4th July, 2018. The Claimant applies to the Court for an Administrative order under Part 56 of the Civil Procedures Rules 2000, in particular under the Saint Christopher and Nevis Constitution order 1983.

[2] The Claimant has sought:

- (1) A Declaration that his fundamental rights conferred by sections 3 and 8 of the Saint Christopher & Nevis Constitution order 1983 have been infringed as a result of the failure by the Nevis Island Administration (NIA) to pay to the Claimant compensation assessed as due to him in respect of the Acquisition by the NIA on or about the 8th October, 2007 of lands owned by Rest Haven Limited and which were mortgaged to the Claimant.
- (2) An order requiring the first Respondent to issue a warrant authorizing the payment out of the Nevis Island Consolidated Fund of the said compensation.
- (3) Costs
- (4) Such further or other relief as the Court considers just.

Background

[3] The Claimant filed an Affidavit in Support of the claim dated 4th July, 2018 in which he deposed that Kishu Chandiramani was his brother who died on the 8th June, 2014. He was the sole executor named in his brother's wills and Probate was granted to him

on the 22nd January, 2015¹.

- [4] On the 27th July, 1993, by virtue of an Indenture of Mortgage, Rest Haven Limited conveyed by way of Mortgage to Kishu Chandiramani a parcel of land described in paragraph 4 of the Claimant's affidavit in Support of his claim.
- [5] According to the Claimant, Rest Haven Limited defaulted in its loan payments and Kishu Chandiramani purchased the property at public auction. Rest Haven Limited challenged the purchase of the property by Kishu Chandiramani at the Privy Council, and was ordered amongst other things that the:
- (1) Sale to Kishu Chandiramani was void.
 - (2) Rest Haven Limited was ordered to pay to Kishu Chandiramani:
 - (a) EC\$3,500.00
 - (b) EC\$66,928.26 – costs in the Court of Appeal
 - (c) EC\$231,930.00 – costs for Appeal to the Privy Council
- [6] The said sums remained unpaid and on the 8th October, 2007, the NIA acquired the said property. On the 21st November, 2013, the Board of Assessment awarded Rest Haven Limited the sum of US\$6,362,316.88 with interest at the rate of 6% per annum from the date of the Award.
- [7] According to the Claimant, it has been ten years since the acquisition of the property and four and a half years since the Award, and the NIA has to date failed to pay Kishu Chandiramani any compensation.
- [8] The Claimant is therefore seeking a declaration that Kishu Chandiramani's constitutional rights have been infringed and an order requiring the first Respondent as Minister of Finance to issue a warrant authorizing payment out of the Nevis Island Consolidated Fund to Kishu Chandiramani.

¹ See: Exhibit MDC1

[9] The first Respondent Mark Brantley filed an Affidavit in response to the Claimant's claim dated 30th November, 2018.

Mr Brantley asserted at paragraph 6 of his affidavit that he was aware by virtue of his position as Minister of Finance that lands belonging to Rest Haven Limited were acquired on the 8th October, 2007, by the NIA for a public purpose, which is a Touristic development.

[10] That it became known to him, about six years after the acquisition that a Board of Assessment had assessed the compensation value of the property to be US\$6,415,920.94 with interest at 6% per annum.

[11] That no separate award was made by the said Board to Mr Kishu Chandiramani who is the Mortgagee of the lands that were acquired. The only payment from the NIA was to Rest Haven Limited for the compulsory acquisition of the property. The first Respondent also states that Kishu Chandiramani did not appear before the Board of Assessment as a party to the proceedings, and although he was awarded costs for the Board of Assessment proceedings, no compensatory award was made to him. The first Respondent asserts that the Claimant's claim is groundless.

[12] The first Respondent therefore asserts further that there is no justifiable basis for a declaration of payment, and for a breach of the Claimant's rights under sections 3 and 8 of the Constitution, since the Board did not award compensation to the Mortgagee.

[13] The first Respondent contends that the Claimant is seeking to re-litigate issues already decided on in Claim number NEVHCV2015/0142 and which is pending Appeal number NEVHCVAP2016/0009.

The first Respondent further contends that this claim against the NIA relates to the same property and relies on the same facts for entitlement to compensation, and that it is an abuse of the process of the Court for this matter to be determined prior to the outcome of the Appeal matter.

[14] The first Respondent avers that the Claimant should seek to recover compensation from Rest Haven Limited which is the rightful debtor, and should have intervened in

the proceedings with Rest Haven Limited and mounted a challenge before the Board of Assessment.

[15] The first Respondent asserts that the Claimant's claim should not be granted as there may exist an alternative remedy by way of a Writ of Mandamus which the Claimant referred to in his Affidavit in Support of his claim.

Further according to the Claimant there is no order for compensation by the Board of Assessment to compel payment by the first Respondent.

[16] The first Respondent contends that where a Board of Assessment has made an award, and a mortgage amount is due to the Claimant on the said property, another remedy is available for recovery of debt based on the existing Deed of Indenture of Mortgage with Rest Haven Limited².

[17] The second Respondent filed an Affidavit in response to the Claimant's claim on the 29th October, 2018 in which he contended as follows:

(1) That Acquisition of land in the Island of Nevis is governed by the Nevis Land Acquisition Cap 4.02.

The Ordinance is a law made pursuant to sections 103 and schedule 5 of the Constitution of Saint Christopher & Nevis which gives the Nevis Island Legislature the power to make Laws in relation to specified matters including land and buildings, other than land and buildings vested in the Crown and specifically appropriated to the use of the Government including holding of land by persons who are not citizens. The Nevis Island Legislature is also given the power to make Laws in relation to compulsory acquisition and tenure of land.

(2) The Ordinance provides for the compulsory acquisition of land by the NIA for public purposes, which entails a purpose connected with or incidental to the specified matters in schedule 5 of the Constitution of Saint Christopher & Nevis, and includes the purpose of fulfilling any obligation of the NIA and any purpose pertaining or ancillary thereto. Amenities for Tourists, is a specified

² See: Exhibit MDC2

matter falling within the exclusive jurisdiction of the Nevis Island Legislature pursuant to schedule 5 of the Constitution.

- (3) That Mr Kishu Chandiramani whose Estate that the Claimant represents appeared before the Board of Assessment as an interested party, was not a party to the proceedings before the Board of Assessment and no award was made in his favour.
- (4) That the Board of Assessment awarded the sum of US\$6,415,920.49 as compensation for the compulsory acquisition of the Rest Haven Limited.
- (5) That there is another claim before the Court which was filed on the 22nd January, 2016 which is the subject of an Appeal and that there are in effect two claims before the Court in which different parties are asking for the same relief. Therefore according to the second Respondent the appeal matter should be heard and determined before the case at Bar is heard.
- (6) That there is no breach of sections 3 and 8 of the Constitution of Saint Christopher & Nevis in respect of the property in question as it was acquired for a public purpose (i.e.) a Touristic development pursuant to the provisions of the Nevis Land Acquisition Ordinance Cap 4.02, a Law which prescribes the principles on which and the manner in which compensation therefore is to be determined and given.

[18] The issues to be determined by this Court are:

- (1) Does the Claimant have locus standi to seek the relief sought in the claim against the first and second Respondents?
- (2) Is the Claimant entitled to be paid compensation as assessed for the acquisition of the said property by the first Respondent?
- (3) Is there a breach of the Claimant's constitutional rights under sections 3 and 8 of the Constitution of Saint Christopher & Nevis?
- (4) Whether the Court ought to decline exercising its powers on the basis that adequate means of redress is available to the Claimant for the alleged breach of its rights under sections 3 and 8 of the said Constitution.
- (5) Is there an abuse of the process of the Court, since the litigation as filed seeks to re-litigate issues ventilated and decided upon by the Court?

The Law

[19] Section 3 of the Constitution of Saint Christopher & Nevis provides as follows:

Fundamental rights and freedoms

Whereas every person in Saint Christopher & Nevis is entitled to the fundamental rights and freedoms, that is to say, the right whatever his or her race, place or origin, birth, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely:

(1) Protection for his or her personal privacy, the privacy of his or her home and other property, and from deprivation of property without compensation.

The provision of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any person does not impair the rights and freedoms of others or the public interest.

Section 8 of the Constitution of Saint Christopher & Nevis provides as follows:

Protection from deprivation of property

(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 for a public purpose and by or under the provisions of a Law that prescribes the principles on which and the manner in which compensation therefore is to be determined and given.

(2) Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a direct access to the High Court for:

(a) the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he or she is entitled and

(b) the purpose of enforcing his or her right to prompt payment of that compensation provided that, if the Legislature so provides in relation to

any matter referred to in paragraph (a), the right of access shall be by way of Appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a Tribunal or Authority, other than the High Court, having jurisdiction under any Law to determine that matter.

[20] The protection afforded by sections 3 and 8 of the Constitution is the right not to have land or any interest in or right over land compulsorily acquired except where such acquisition is made pursuant to the provisions of a Law which prescribes the principles on which and the manner in which compensation therefore is to be determined and given.

[21] In relation to Nevis, section 103 of the Constitution of Saint Christopher & Nevis outlines the authority of the Nevis Island Legislature to make Laws as follows:

- (1) Subject to the provisions of this Constitution the Nevis Island Legislature may make Laws, which shall be styled Ordinances for the peace, order and good government of the island of Nevis with respect to the specified matters.
- (2) A Law made by the Nevis Island Legislature may contain incidental and supplementary provisions that relate to a matter other than a specified matter, but if there is any inconsistency between those provisions and the provisions of any Law enacted by Parliament, the provisions of the Law enacted by Parliament shall prevail.

[22] Paragraphs 2 and 15 of Part 1 of schedule 5 of the Constitution gives the Nevis Island Legislature exclusive power to make Laws for Tourist amenities and land and buildings vested in the Crown and specifically appropriated to the use of the Government, including holding of land by persons who are not citizens.

Paragraph 23 of the said schedule gives the Nevis Island Legislature exclusive power to make laws in relation to any matter, that is incidental or supplementary to any matter referred to in Part 1 of the said schedule.

Paragraph 1(c) of Part 2 of the schedule provides that references to incidental and supplementary matters include, without prejudice to their generality, the compulsory acquisition and tenure of land.

[23] The Nevis Land Acquisition Ordinance Cap 4.02(N) is an Ordinance which authorizes the Acquisition of lands for public purposes on the island of Nevis and makes provision for related or incidental matters.

Section 3 provides for the acquisition of land by declaration of the Governor General acting on the advice of the Cabinet of Ministers of the NIA. The Ordinance provides for the appointment of an Authorized officer by the Governor General acting on the advice of the Cabinet. The Authorized officer is responsible for entering on the land acquired and taking possession of the same.

Section 8 of the said Ordinance provides that the Authorized officer may require **“The owner or occupier of, or any person interested in, any land or in any part thereof in respect of which a declaration or a notification has been published in a newspaper of general circulation in Nevis under section 3 or section 4 to deliver to him within a time to be specified in the notice, being not less than 21 days after service of the notice a statement in writing, containing so far as may be within his own knowledge, the name of every person possessing any interest in the land or any part thereof, whether as a Partner, Mortgagee, Lessee, Tenant or otherwise, and the nature of such interest”**.

Analysis

[24] The second Respondent, in the submissions raised the issue of locus standi; that is the Claimant’s standing before the Court.

The case of **Baldwin Spencer vs the Attorney General of Antigua & Barbuda et al**³ is instructive on the approach to be taken by the Court when the issue of locus standi is raised.

[25] At paragraph 114 of the judgment the Court stated:

“The common premise on which all these decisions seem to have been based was that before any question of locus standi can arise, there must be a sustainable allegation that a provision of the Constitution has been or is being contravened, and

³ [1998] ECSCJ No 19

that the alleged contravention affects the interests of the Applicant. On my reading of section 119(5) it says exactly the same thing; the limitation contained therein effectively makes locus standi a question of statutory interpretation.

(1) In my view, it is essential that two requirements of the alleged contravention of the Constitution and a resultant effect on the interest of the Applicant must both exist.

(2) In this case the finding of the learned Trial Judge that there was no allegation of any infringement of any provision of the Constitution of which the Court could take cognizance is conclusive. The Appellant therefore failed the test established by section 119(5) of the Constitution. I therefore conclude that the learned Trial Judge was wrong to find that the Appellant had locus standi."

[26] The second Respondent asserts that it is necessary to examine the Claimant's case to ascertain whether there is a sustainable allegation that a provision of the Constitution has been or is being breached in relation to the Claimant. It is only if such a violation is established that the question of standing therefore arises.

[27] The Claimant seeks a Declaration that his Constitutional rights conferred by sections 3 and 8 of the Saint Christopher & Nevis Constitution has been infringed as a result of the failure of the NIA to pay him the compensation assessed as due to him in respect of the acquisition by the NIA of lands owned by Rest Haven Limited and which were mortgaged to him.

However no compensation was assessed as due to the deceased Kishu Chandiramani by the Board of Assessment. Therefore according to the second Respondent the Declaratory relief sought by the Claimant is based on an incorrect premise and should not be granted.

[28] The second Respondent asserts that the deceased Kishu Chandiramani as a Mortgagee of the relevant land is an accepted interested party based on his mortgage interest in the property.

However the deceased Estate did not make a claim to the Authorized officer as provided under the Nevis Land Acquisition Ordinance, although the Estate was represented before the Board of Assessment.

[29] The second Respondent contends that the Board's decision awarding compensation to Rest Haven Limited was not appealed. Further the second Respondent asserts that there is no order requiring NIA to pay compensation to the Claimant.

[30] Therefore the second Respondent submits that there is no breach of Constitutional rights as alleged by the Claimant; since the deceased Estate did not present a claim before the Board of Assessment, and the award of compensation was given in favour of Rest Haven Limited. Consequently the Claimant has no standing to bring these proceedings.

Claimant's submissions with regards to Constitutional Relief

[31] The Claimant on the other hand contends that the first and second Respondents have misunderstood the nature of the proceedings before the Board of Assessment, and that while Mr Chandiramani was not a party to the negotiations between Rest Haven Limited and the NIA, it was accepted by all that he was an interested party in the acquisition because of his mortgage.

[32] The Claimant therefore contends that the sole purpose of the Board of Assessment was to assess the value of the land which was acquired as this would determine the overall liability of the NIA; rather than apportionment.

Court's findings and Analysis on breach of Constitutional rights 3 and 8

[33] In the case of **Blomquist vs the Attorney General of the Commonwealth of Dominica**⁴, Lord McKay of the Judicial Committee of the Privy Council opined that the delay in the payment of compensation to a landowner whose property has been

⁴ JPC [1987] 35 WIR 162

compulsorily acquired, could have the effect that the acquisition was not duly carried out in accordance with the Law authorizing the acquisition.

The Privy Council further held that the only remedy for delay in payment of compensation was an order for interest payable in accordance with section 21 of the Ordinance (i.e.) on the assessed compensation from the date of acquisition on the property to the date of the payment of compensation.

[34] This Court is guided by the reasoning in **Blomquist** and is of the further view that the **Nevis Land Acquisition Ordinance** is the law applicable to the acquisition of the Claimant's property in his capacity as Sole Executor of the Estate of Kishu Chandiramani.

The only right which the Constitution gives the Claimant is that the Acquisition should be performed in accordance with the Nevis Land Acquisition Ordinance which was duly done by the first Respondent. Therefore the Claimant's only remedy for delay in payment of compensation is an order for Interest payable in accordance with section 21 of the Land Acquisition Ordinance at 6% per annum.

[35] The Claimant is not entitled to be paid compensation by the first Respondent since the Board of Assessment has already made an Award of US\$6,415,920.94 together with interest of 6% and costs to Rest Haven Limited of which the Claimant is the Mortgagee.

[36] Further under the **Nevis Land Acquisition Ordinance** Cap 4.02 at section 8(1) under the heading "Authorized officer may require information as to interest in land", it states as follows:

(1) The Authorized officer may by Notice served personally or by post addressed to the last known place of abode or business of the person concerned, require the owner or occupier of or any person interested in any land or in any part thereof in respect of which a declaration or a notification has been published in a newspaper of general circulation in Nevis under section 3 or 4 to deliver to him within a time to be specified in the Notice, being not less than 21 days after service of the Notice, a statement in writing containing, so far as maybe within his own knowledge the name of every person possessing

any interest in the land or any part thereof **whether as a Partner, Mortgagee, Lessee, Tenant or otherwise, and the nature of such interest.**

[37] Under section 13 of the Ordinance the Authorized officer shall forward to the Chairman of the Board the documents which relate to the Acquisition or intended Acquisition of the land, including a copy of the report required by this section.

The content of that report is provided for under section 13(2) of the said Ordinance.

[38] From the evidence provided, I have noted that no documents were submitted to the Authorized officer on the Claimant's interest, and neither was a compensation award made to the Claimant. The Claimant clearly did not follow the procedure laid out under the Nevis Land Acquisition Ordinance to enable compensation by the Board.

[39] Further the Claimant has not appealed the decision of the Board of Assessment and it is my considered opinion that without such an Award, Constitutional relief in the form of a Declaration and Mandamus are not available to the Claimant.

Mr Chandiramani is in the same position as a litigant who seeks Constitutional relief solely for the purpose of avoiding making an Application to the Court in the normal way. His claim therefore amounts to an abuse of the process of the Court and will be dismissed against the first Defendant. The claim seeks to re-litigate issues already decided on in another claim NEVHCV2015/0142 which is pending appeal.

The second Respondent's submissions

[40] In relation to the Claimant's claim the second Respondent's submissions mirror that of the first Respondent.

The second Respondent asserts that the Board's decision awarding compensation to Rest Haven Limited was not appealed, and implicit in the deceased's acceptance of the Board's award in favour of Rest Haven Limited in his acceptance that he would be paid monies due to him by Rest Haven Limited and not by the Nevis Island Administration. The Claimant therefore cannot now complain that the NIA has failed to pay him as there is no other requiring the NIA to do so.

[41] The second Respondent submits that there is no breach of Constitutional rights as alleged by the Claimant. In relation to the issue of locus standi, the second Respondent submits that the deceased Estate chose not to present a claim before the Board and the Award of compensation by the Board in favor of Rest Haven Limited meant that the Claimant has no standing to bring these proceedings.

[42] The second Respondent contends that the Court should also consider the existence of an alternative remedy by way of a stay of proceedings. The second Respondent cites section 8(2) of the Constitution which provides as follows;

The High Court shall have original jurisdiction:

- (1) To hear and determine any application made by any person in pursuance of subsection (1) and
- (2) To determine any question arising in the case of any person that is referred to in pursuance of subsection (3) and may make such declarations and 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 3 to 17.

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.

[43] The second Respondent cites the case of the **Attorney General vs Siewchand Ramanoop**⁵ where the Privy Council discussed the issue of adequate means of redress.

“In other words, where there is a parallel remedy, Constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course; As a general rule, there must be some feature which at least arguably indicates that means of legal redress otherwise available would not be adequate.

To seek Constitutional relief in the absence of such a feature would be a misuse or

⁵ [2005] UKPC 15

abuse of the Court's process."⁶

[44] The second Respondent asserts that the procedure outlined by the **Nevis Land Acquisition Ordinance** is an alternative remedy to invoking the Constitutional jurisdiction of the Court. The Claimant is seeking an order from the Court that he should have made before the Board of Assessment.

[45] The second Respondent submits that the proper course of action for the Claimant is to apply to the Court for Mandamus and not to move the Constitutional jurisdiction of the Court.⁷

[46] The second Respondent asserts that this Court has already given a decision in NEVHCV2015/0142 which is the subject of Appeal SKBHCVAP No 9 of 2016. The second Respondent contends that there are now two claims before the Court in which different parties are seeking the same relief, giving rise to a possibility that the Nevis Island Administration can have two separate judgments issued against it for the same award given by the Board of Assessment.

[47] The second Respondent submits that pursuant to Civil Procedure Rules 26(1)(q), the Court can grant a stay of proceedings until a specified date or event.

[48] The second Respondent therefore asks the Court for the claim brought by the Claimant to be dismissed **or** alternatively that the claim be stayed pending the decision of the Court of Appeal.

Conclusion

[49] Having reviewed the totality of the evidence in this matter, and the authorities provided by all the parties, I have made the following findings:

- (1) The Constitution of Saint Christopher & Nevis gives a Claimant a right to compensation for property which has been compulsorily taken for a public

⁶ See also: *Durity vs Attorney General* [2009] 4LRC 376

⁷ See: *In the matter of the Land Acquisition Act of Antigua & Barbuda and another vs Harold Lorell* [2003] ECSCJ 41

purpose under the provisions of a Law that prescribes principles on which and the manner in which compensation is to be determined and given.

- (2) The applicable Law in this instant case is the Nevis Land Acquisition Ordinance Cap 4.02 of the Laws of Saint Christopher & Nevis and the amount awarded by way of interest under the said Ordinance is 6% per annum.
- (3) The Claimant representing the Estate of Kishu Chandiramani has already been awarded by the Board of Assessment the sum of US\$6,415,920.94 with interest at the rate of 6% per annum from the date of possession of the property acquired until the date of payment of the compensation.
- (4) Therefore I will not make a further award in Constitutional damages as the award on interest is adequate compensation for the delay by the first Respondent in payment of the Compensation Award; the Claimant can institute legal proceedings for the enforcement of that Award by way of a Writ of Mandamus against the first Respondent.
- (5) The Claimant is therefore not entitled to the relief sought in the Originating motion by way of Fixed Date claim at paragraphs 1 and 2.
- (6) Each party is to bear its own costs as this is a matter of Public Law.
- (7) I thank all Counsel for their very helpful submissions in this matter.
- (8) I apologise for the delay in the delivery of this Judgment.

Lorraine Williams
High Court Judge

By the Court

Registrar