## Belize v Nicette (2001) SLR 264

Charles LUCAS for the Plaintiff
Anthony JULIETTE for the Defendant

## Judgment delivered on 5 February 2001 by:

**PERERA ACJ:** The Plaintiff and the Defendant are owners o Estate, Anse Aux Pins. The Plaintiff avers that on 3 Februa entered her land and destroyed 4 chilli plants, 6 pumpkin I plants, all worth R5000. She further claims R5000 for litterin trespass, R10,000 for abuse and insults and a further R10,00 total of R40,000. She also seeks a restraining order on the E from entering the land.

ining lands at Reef 195, the Defendant s and 20 cassava land, R10,000 for moral damages, a lant preventing her

The Plaintiff testified that on 3 July 1995, she asked her son the returned saying that the area had been cleared by some complaint to the police. She claimed that the next day a police the land. The Defendant and her husband who were at their repolice officer that they cleared the place. The Plaintiff however not see them doing so. Hence, it was on the basis of that admittiled against the Defendant. She further stated that it was not thing had happened.

ner a pumpkin, and lence, she made a ser came to inspect nce admitted to the mitted that she did that the action was st time that such a

The Plaintiff also testified that in 1994, the Defendant caused a property to be felled and although it fell on to her (the Plaremoved. She also stated that the Defendant had on several conto her land, and when she complained, she received abuse a

nut tree on her own s) land it was not ons thrown rubbish sults from her.

The Plaintiff sent a letter dated 28 March 1995 (Ex P2) thr Defendant, requesting her to abate the nuisance and harassme had no effect. She further stated that although there is ano house of the Defendant, they continued to use a path on her lar

her lawyer, to the ne testified that that oad leading to the

On being cross-examined the Plaintiff denied that there was at reserve over her land for the Defendant to use to get to her p them and another purchased the properties from the Seychelle Corporation. She however stated that the SHDC called a most

roved 4 metre road y, although both of using Development

Corporation. She however stated that the SHDC called a meeting or all the surrounding landowners regarding the use of the road reserve, but it was the Defendant alone who failed to attend. She said that that was the reason why she would not permit her to use that road.

Sergeant Jean Claude Kilindo who was the officer in charge of the Anse Aux Pins Police Station at the material time, testified that there were several complaints made by

the parties arising from disputes between them. He investigated the complaint regarding the damage caused to the vegetation and saw the area that was cleared. Then the concubine of the Defendant told him that the Defendant had cleared the area not knowing where the boundary was, and he apologised to the Plaintiff on her behalf. Sergeant Kilindo further testified that he told the parties that they should settle the issue of damages among themselves. Later, Surveyor Michel Leong wanted him to show the area where the damage had occurred. It was found that the plants had been on the Plaintiffs land.

Antonio Jean Baptiste, the Personal Manager of the Cement Company (Sey). Ltd where Antoine Jules, the concubine of the Defendant worked, testified that Jules worked from 6 am on 3<sup>rd</sup> February 1995 throughout the day and up to 2 am on the 4<sup>th</sup> February. Counsel for the Defendant did not cross-examine him, and hence it was established as a matter of fact that Antoine Jules could not have been the person who damaged the plants on 3 February 1995.

The Defendant testified that she too was not at home on 3<sup>rd</sup> February 1995, and that she also noticed that the plants had been cleared by someone only when she returned home. Then her mother told her that it was she who cut the plants with the help of her (the Defendant's) younger brother. As regards the coconut tree, she stated that it fell on its own and that although a portion of it was removed, the balance portion remained on the Plaintiff's land.

On being cross-examined, the Defendant admitted that Sergeant Kilindo came to investigate the matter the next day and that she spoke with him. She admitted that the cleared area was later found to be on the Plaintiff's land but maintained that she did not cut the plants. She stated that her mother lived in a different house close to her house, but she came there to clean the pathway.

Loris Finesse, the mother of the Defendant testified that it was she who cleared the pathway, but cut only one cassava plant. She further stated that there was a dispute with the Plaintiff as regards the right of way and that the Plaintiff did not permit her, or her daughter, the Defendant, to pass over her land. Questioned by counsel for the Defendant whether she told her daughter that it was she who was responsible for clearing the place, she replied that she did not ask her about it.

On being cross-examined she maintained that she cut down only a cassava plant, and stated that if pumpkin and chilli plants had been uprooted, the Plaintiff herself may have done it before lodging a complaint with the police.

Antoine Jules, the concubine of the Defendant testified that he and the Defendant were away at work on 3 February 1995 when the alleged destruction of vegetation took place. He came back home only on the following day, and the Defendant who worked at the Civil Construction Co. Ltd, worked after normal hours at a house in Cascade. He further stated that Sergeant Kilindo came to investigate the complaint on 4 February 1995 after he returned home. He too maintained that only one cassava tree was cut, and that too

by Loria. He denied that any pumpkin or chilli plants wer Defendant, or Loria Finesse.

ooted by him; the

Basically, the evidence discloses a dispute between the partie road which serves the lands of the Plaintiff, the Defendant and Loria Finesse. Sergeant Kilindo testified regarding several cor police in that respect. The evidence is unclear as to the ident Plaintiff herself did not see the Defendant causing the damage. the Defendant was in the house that day. The Defendan responsible. Her concubine Antoine Jules was admittedly no February 1995. The Defendant's mother, Loria Finesse ad cutting one cassava plant, but is unaware as to who uproote plants. She suggested that the Plaintiff herself may have done she admitted that the cassava plant was cut on 3 February other vegetation was allegedly damaged. Loria Finesse did not witness. She showed her bitterness and resentment towards th permit her and her daughter, the Defendant, to use the land. S part of the blame, to prevent the Defendant from being held li not testify that she was working at the CCCL, and that after w ironing in a house at Cascade, as was testified by Antoine Jul she is presently unemployed, and that she was not at home on returning home, saw that someone had cleared the road. She fu arding the use of a Defendant's mother its received by the the tortfeasor. The nowever stated that iies that she was 10me throughout 3 1 responsibility for pumpkin and chilli implicate them, but the same day the ess me as a truthful ntiff for objecting to as obviously taking The Defendant did g hours, was doing he only stated that oruary 1995, but on stated thus:

Q: Who had cleaned the place, do you know who cleane
A: When I got home I saw my mother, I asked her who place, and she said it was her, together with my you

place? cleaned the t brother.

But Loria Finesse was adamant that she cut only one cassava t

at provided shade.

In view of this contradictory evidence adduced in the defendencessarily to rely on the independent evidence of Sergea evidence that Antoine Jules apologised on behalf of the Defecteaning the area and damaging the vegetation. On a consideration evidence, I find on a balance of probabilities that it was the Dedamage.

se, the. Court has indo. I accept his t his concubine for of the totality of the int who caused the

## **Quantum of Damages**

As was held in the case of *Symphorien Lucas v Clement Delpech* (1981) SLR 85, damages under Article 1149 of the Civil Code covered loss that the injured party had sustained and the profit he had been deprived of. Such damages, including moral damages, were compensatory, and it was immaterial whether the infringement of the rights of the injured party had been deliberate, negligent, inadvertent or was done under a bona fide mistake.

The number of the plants alleged to have been damaged remain unrebutted by

evidence for the Defendant, save for the testimony of Loria Finesse and Antonio Jules that only one cassava tree was cut. On the basis of the evidence of Sergeant Kilindo, I accept the evidence of the Plaintiff that the area cleared by the Defendant would have accommodated 4 chilli plants, 6 pumpkin bushes and 20 cassava plants. The Plaintiff testified that she would pick chillis worth about R200 per week and that she received around R1200 or R1300 from the crop. It is doubtful that 4 chilli plants would have yielded such an income. In the circumstances I would consider a sum of R200 to be adequate compensation for the loss of 4 chilli plants.

As regards the 6 pumpkin bushes, the Plaintiff claimed that she sold ten to twelve pumpkins per week at prices ranging from R25 to R30 each. However she admitted under cross examination that the creepers were only flowering and that she has been deprived of an income. For the purpose of compensation, I would base the assessment on an average of 5 pumpkins per bush at the cost of R25 each. Hence for the 6 bushes, I award a sum of R750.

Questioned by counsel for the Defendant as to how big the cassava plants were, the Plaintiff replied:

A: A cassava tree becomes big and then branches out and the cassava is under ground.

The Plaintiff was therefore testifying about young plants in their formative stages. In the absence of reliable evidence as to the actual value of the loss, I would award a nominal amount for this item, in a sum of R250.

As regards the littering of the Plaintiff's land, it was averred that the Defendant's coconut tree fell over her land and part of it was left behind. It was also averred that the Defendant threw rubbish on to her land, and also that waste water from a pig sty was also diverted to her land. Most of these allegations remained unproved. There was however an admission that a part of the coconut tree was left behind. Hence, I award a sum of R100 as a reasonable amount incurred for clearing it.

The Plaintiff also claims R10,000 for trespass to land. It has been established that the vegetation damaged was on the Plaintiffs land. However, for delictual damages, trespass must be accompanied by any loss or damage caused to the owner of the land. Punitive damages are not payable for trespass. The damage caused has already been considered under the previous heads, and hence no award is made under this head.

The Plaintiff further claims R10,000 each for abuse and insults, and as moral damages. The head of abuse and insults has not been proved. Hence no award is made. However, I accept that the Plaintiff suffered a certain amount of anxiety, stress and pain of mind due to the act of the Defendant. Hence, I award a sum of R1500 as moral damages.

Judgment is accordingly entered in favour of the Plaintiff in a sum of R2800, together

with costs in a sum of R2200 as agreed by parties. Further, order is hereby made restraining the Defendant, her agents and servants from destroying the Plaintiff's plants, littering her land, or trespassing on her property.

Record: Civil Side No 83 of 1995