

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS28/2014

[2017] SCSC

CHERUBIN MORIN	FIRST PLAINTIFF
ROSINA MORIN	SECOND PLAINTIFF
JEAN PIERRE MORIN	THIRD PLAINTIFF
BRENDA MORIN	FOURTH PLAINTIFF
NORBERT DOGLEY	FIFTH PLAINTIFF
CECILE DOGLEY	SIXTH PLAINTIFF
WILL DOGLEY	SEVENTH PLAINTIFF
ROBIN DOGLEY	EIGHTH PLAINTIFF
SIMON DOGLEY	NINTH PLAINTIFF
THE ESTATE of the late Leonette Dogley represented By Her executor, JEMMY DOGLEY	TENTH PLAINTIFF
JOHNNY DOGLEY	ELEVENTH PLAINTIFF
GEROME DOGLEY	THIRTEENTH PLAINTIFF
JEMMY ETIENNE	THIRTEENTH PLAINTIFF
FRANCISKA ETIENNE	FOURTEENTH PLAINTIFF
ROLLY SINON	FIFTEENTH PLAINTIFF
FRANCE SANGOIRE	SIXTEENTH PLAINTIFF

GERINA SANGOIRE
All of Fairview Estate, La Misere, Mahe

SEVENTEENTH PLAINTIFF

VERSUS

ALF BARBIER
Of Fairview Estate, La Misere, Mahe

DEFENDANT

Heard: 3 February 2017
Counsel: Mr Joel Camille for Plaintiffs
Mr Frank Ally for Defendant
Delivered: 24 March 2017

JUDGMENT

McKee J

[1] The Plaintiffs and the Defendant are owners of property in the residential area known as Fairview Estate, La Misere, Mahe. Parties have produced documents of title in support. The Plaintiffs averred that they have a prescriptive right of way over a portion of the property belonging to the Defendant, which portion is more particularly described as land parcel V10414. Each plaintiff seeks an Order of this Court formally granting them a right of way over the property of the Defendant. In addition the Plaintiffs sought an order against the Defendant restraining him from interfering or blocking the access roadway over land parcel V10414. The Plaintiffs filed in the Registry of the Supreme Court on 19th March 2014.

[2] An interim injunction was granted on 21 March 2014 ordering the Defendant not to interfere with the Plaintiffs' use of the road over land parcel V10414 and to remove any obstruction thereon pending determination of the main suit. The Defendant has complied with this order. Defences and Counterclaim were lodged by the Defendant on 30 July 2014. The Plaintiffs amended on 27 October 2016 adding a further averment that the properties of the Plaintiffs were within an enclaved area and that the only practical access

to the public road was over land parcel V10414. In Amended Defences it was averred that the lands were not enclaved and that there was an adequate access by the road recently built by Government. Furthermore the Defendant denied that the Plaintiffs have any legal or prescriptive right of easement or access over land parcel V10414 and that any intrusion is unlawful.

- [3] A number of photographs have been admitted into evidence and I will take these into account to assist me. However I have also taken the opportunity to visit the locus and walk the roads and routes referred and I will rely on my conclusions from the site visit
- [4] I am advised that the main Fairview Estate was constructed to accommodate expatriate personnel of Costain Limited , international builders, the main contractor of the Mahe International airport which was completed around 1971.
- [5] Access to Fairview Estate is gained from La Misere Road which is the trans-island road connecting the west coast of Mahe with Victoria the capital. It was against this general background that the original tenants or “blockers” took up occupation of their “blocks” or plots of land on the upper reaches of Fairview Estate by arrangement with the Government of Seychelles. The present Plaintiffs are either descendants of the blockers or purchasers of plots in the area. The original “blocks” were used for farming and agricultural purposes. With the passage of time the “blockers” established residences on the “blocks” and normal family life commenced there. The Plaintiffs who are descendants of the original “blockers”, spoke of leaving home on foot walking through the land parcel V10414 to the main road to catch transport for school.
- [6] General area of Fairview Estate and access thereto.
- [7] Access to Fairview Estate Road is from La Misere Road by either of two entrances. The lower entrance has been referred to as “the Chung Fai entrance” while the higher entrance was referred to as”the Lousteau Lalande entrance”. The distance between the entrances is only a few hundred yards.
- [8] Attending the *locus in quo* I entered by car at the Chung Fai entrance. The road goes uphill and then turns left, follows the contours of the hill but by a fairly level route

before it then descends to the Lousteau Lalande entrance. Dwelling houses are built along this road. This is the Fairview Estate Road. The whole area of land in the ownership of the Defendant which includes the dwelling house erected thereon and land parcel V10414 abuts the Fairview Estate Road.

[9] At present there is a motorable access road to the properties of the Plaintiffs over land parcel V10414. This access roadway leads to the rear boundary of the Defendant's plot of ground and then continues further on to the various plots of land occupied by the Plaintiffs. I would estimate that the distance from Fairview Estate road to the rear boundary line of the Defendant's property is some 50 yards.

[10] Parcels of land in the ownership and occupation by the Plaintiffs.

[11] While at the locus I walked across land parcel V10414 on the existing roadway to view the properties of the Plaintiffs. This led to the large area of ground where the properties of the plaintiffs are situated. At a fork in the road I followed the road to the left. This road took me past residences until I reached the property of the First Plaintiff and his family. If I had taken the right fork I would have reached the residential properties belonging to the other Plaintiffs. The location of the properties are shown on plans admitted into evidence. The First Plaintiff and his family have residential accommodation on his plot of land from where he also conducts a commercial business. The evidence indicated that the remaining Plaintiffs use their properties for residential purposes only. I then continued through the property of the First Plaintiff, crossed a bridge and came to a junction in the road. I turned left and went downhill. This roadway, which is the alternative roadway built by Government, leads to Fairview Estate Road. I will call this the "alternative roadway".

[12] THE EVIDENCE

[13] The First Plaintiff, Cherubin Morin, who I considered to be the principal plaintiff, was first to give evidence. He is aged 66 years of age. He described himself as a farmer rearing livestock such as pigs and chickens and also as a market gardener growing vegetables. He has been in business since 1974, a period now of some forty two years.

His place of residence has been on this property since 1974. His property comprises three separate plots which were disposed in two documents of title produced as exhibits to the court.

[14] He knows the Defendant and the property owned and occupied by him. He further stated that when he, that is, Mr Morin, came to live in his property the property of the Defendant was owned by a Mr Abhaye. Mr Morin stated that his property is not immediately adjacent to that of the Defendant. The intervening property is the property belonging to the family Dogley who are represented by the Tenth Plaintiff, Mr Jemmy Dogley. I can find from my visit to the *locus* that the whole property of the Defendant has a boundary with Fairview Estate Road, which is a public road. I also find from my visit that the property of the First Plaintiff does not have a boundary with this public road and is located further up the hill. The First Plaintiff stated that since 1974 he has used land parcel V10414 as his access to Fairview Estate Road. There was no alternative access. He stated that this access was used by four “blockers” or farmers, including himself, who had been allocated plots of land for farming. The government assisted in the construction of a roadway through land parcel V10414 to allow the farmers access to and egress from their plots to bring materials in, produce out and to assist in their businesses. He gave the names of the other three farmers as Dogley, Cedras and another of Christian name “Will”. At first this access was an earth footpath but as time progressed a footpath was insufficient and, following an approach by the First Plaintiff, Government upgraded the access by paving and concreting. These improvements were carried out over a period of years between 1976 and 1986. It was the First Plaintiff’s evidence that he and the other plaintiffs’ families have used land parcel V10414 as an access to the main road since 1974.

[15] The First Plaintiff stated that he did not recall any court action against him by either Mr Abhaye or the Defendant. He estimated that the Defendant had moved into his property around fifteen to twenty years ago. He stated that on a number of occasions the roadway on land parcel V10414 had been blocked by the Defendant thus preventing the Plaintiffs and other residents access to their properties. There had been a number of verbal interchanges and police involvement. It was after a similar incident in 2014 that the

present action was raised. The First Plaintiff agreed that Government had provided an alternative roadway for him to gain access to his property but this alternative road was unsuitable for vehicular traffic including his own pick-up vehicle. It was also unsuitable for emergency vehicles. He confirmed that his property extended to seven or eight hectares, which included his residence, ground used for his commercial business of rearing livestock and growing vegetables. There were also a number of cold storage units. He had placed the business in the hands of his son, the Third Plaintiff. He stated that trucks, in the course of this business, used the access roadway through land parcel V10414 since this was is the only suitable access. Despite objection I allowed this evidence as it was relevant to the overall issue.

- [16] In cross-examination Defence Counsel took the First Plaintiff through the early history of his occupancy of his property. He was unsure of the precise year when the Defendant took occupation of his property. He confirmed that the access provided over land parcel V10414 gave access to the dwelling house of the Defendant and the previous occupier. Other neighbours in the upper hill area also used land parcel V10414 as access to their properties and continued to do so as it progressed from being a footpath to a road providing vehicular access. The First Plaintiff was granted title to his first plot in 1980 and title to the remaining two plots in 1991. He explained that the problems of access over land parcel V10414 had existed for some twenty years after a period of calm immediately after the Defendant's entry to his property. The First Plaintiff stated that the Defendant prevented tourists crossing land parcel V10414 when they sought to explore the upper areas. The First Plaintiff stated that government vehicles also used land parcel V10414 to gain access to upper areas when drainage or water problems arose. The First Plaintiff was reticent when referred to a similar case in 2002. The First Plaintiff found the alternative roadway to be an unsafe stretch of roadway. The steepness of the gradient rendered it unsuitable for heavily laden delivery vehicles used in the course of his business.
- [17] The First Plaintiff was cross-examined. He recalled receiving a "lawyer's letter" intimating that he had no right to use the road crossing land parcel V10414. He recalled that the Defendant had erected a notice that it was private property and that he was denied

access but agreed that he continued to cross land parcel V10414 since he had no alternative access. He knew that the Defendant had been reinstated as owner of land parcel V10414 following the revocation of a prior compulsory purchase order in favour of Government. The First Plaintiff had moved to this property shortly after his marriage and his family grew up there.

[18] The First Plaintiff repeated that he had always used the access roadway over land parcel V10414 despite attempts by the Defendant to block this route. Occupiers of the upper plots and also sightseeing tourists, military and local authority personnel also used land parcel V10414 to cross into upper areas. There had been repeated attempts by the Defendant to block this access with rocks, and fallen trees. He agreed that heavy lorries either belonging to him or on his instructions used the access over land parcel V10414 in the normal course of his business, for example, for the delivery of meat. Large vehicles used in construction had also used this road access when he was carrying out improvements to his property.

[19] In re-examination, he confirmed that Mr Abhaye had not objected to his using the access over land parcel V10414; in fact, Mr Abhaye had benefitted since Government assisted in the improvement and development of the access roadway. In answer to questions from the Court the First Plaintiff confirmed that he had started his cold storage business for meat some five years ago and that he now had five cold storage units and six containers in this aspect of his business. He advised that members of the Dogley family, {*namely, the Fifth to the Twelfth Plaintiffs*} used the access over land parcel V10414.

[20] The Second Plaintiff is the wife of the First Plaintiff and the mother of the Third and Fourth Plaintiffs who reside near to her. She adopted the evidence in chief and cross-examination of her husband.

[21] The Third Plaintiff is the son of the First Plaintiff. He has had his own property since 2011. He resides close to the family property. He is a businessman with his father, trades under the name of Rosebelle Pty Limited and is involved in the breeding of pigs and chickens, market gardening and in the importation, storage and sale of meat, vegetables and flowers. He has trucks and tractors at the business premises.

- [22] He has used the access over land parcel V10414 since he was a child when it was only a path paved with rocks. He stated that his family, the Dogley family, the Cedras family and Dr Ferrari all used this route as an access to Fairview Estate Road. He had used only this route for thirty six years originally as a pedestrian access and thereafter in the course of his business. He said that he never received a formal written notice instructing him not to use the access roadway over land parcel V10414. He was not aware of the reconveyance of the land parcel from Government to the Defendant following revocation of the Compulsory Purchase Order. He has not made use of the alternative access roadway provided by Government. He recalled the incident in the year 2014 when the Defendant blocked the roadway leading over land parcel V10414.
- [23] He was cross-examined and conceded that he had been shown a letter advising his father of the said reconveyance. He recalled that the road over land parcel V10414 had been paved with rocks and properly surfaced at a later date. He recalled ill-feeling between his father and the Defendant. He could not give a date when the alternative roadway had been built but he had only seen small cars using it, and then only rarely. He was unaware whether accidents had occurred on it. He denied that his continued use of the roadway over land parcel V10414 was to annoy the Defendant or to bolster the Plaintiffs' case that the alternative road was hazardous and dangerous.
- [24] The next witness was Mr Peter Andrew Guy Sinon who has served Government in a number of capacities. As Minister for Agriculture between 2010 and 2014 He knew the farming community on the upper reaches of Fairview Estate, which he referred to as "Rosebelle Estate". He considered that the First Plaintiff to be the biggest farmer in the region. He knows the roadway crossing land parcel V10414, which he estimated to have been in existence for some forty nine years, and in fact he still uses this roadway today. He recalled the incident in 2014 giving rise to this case. It was his understanding that in 2014 this access roadway was still "open". He was aware that large vehicles used the roadway across land parcel V10414 and understood this to be because there was no alternative access. He knew the full nature of the businesses conducted by the First Plaintiff.

- [25] In cross-examination he advised that he knew of government discussion concerning what had become a problem issue. He had driven over the alternative roadway but was not satisfied that it was suitable for the First Plaintiff or other residents in the upper area. It was his opinion that the roadway over land parcel V10414 should remain open. In re-examination he expressed the view that the alternative roadway was unsuitable for the purposes intended and would be a dangerous route for drivers of lorries. Mr Sinon further explained his concerns. He had driven up the alternative roadway and found the road to be steep in certain parts which he felt could become slippery following rain. He felt that the driver of a lorry may lose traction in a climb. There would be danger to life if a vehicle left the road bearing in mind that there were dwelling houses situated below the roadway. He confirmed that Government had compulsorily acquired land parcel V10414 to ensure access to the upper area for the owners and occupiers of property situated there.
- [26] The next witness was the Fourth Plaintiff, and a daughter of the First Plaintiff. She is a self-employed with her own accounting and auditing business. She resides in a dwelling house on the property belonging to her father. She spent her early years living with her family before going overseas to study and work for the period from 1989 to 2012. She supported the evidence already led. She has always used the roadway over land parcel V10414 as an access to her property both as a young person and also following her return to Seychelles. She had never been told not to use this access but was aware of the general air of disagreement between her father and the Defendant. It was her opinion that the alternative roadway was dangerous and unsafe for use. She found this road to be very narrow and very steep with a “*huge curve*” where vision was restricted. There was little room for manoeuvring safely if two vehicles met on the hill. She spoke of inadequate barriers and no barrier at a spot where there is a steep drop off the road.
- [27] The next series of witnesses were the Plaintiffs who were the direct descendants of Mr and Mrs Dogley, original blockers or farmers on this upper area. Their properties lay between the properties of the First Plaintiff and the Defendant. The First Plaintiff had to cross Dogley land to reach land parcel V10414. The Sixth, Seventh, Eighth, Ninth and Tenth Plaintiffs gave similar evidence. Each plaintiff stated that his father had reared livestock and grown vegetables. Each spoke of walking over land parcel V10414 during

childhood and continuing to use this access during adulthood either on foot or by vehicle. They spoke to the transformation of the access from footpath to cemented roadway. They were aware that the Defendant also used this roadway access to reach his own property. They were all aware of the 2014 incident when the Defendant blocked the road. They were aware of the alternative roadway and considered unsuitable for its proposed purpose.

[28] Robin Dogley resided in a property immediately adjacent to the property of the Defendant. He said that Mr Abhaye had no objection to the farmers using land parcel V10414 as an access to the upper lands. He considered that the alternative roadway was a “small” road, non-motorable, dangerous and steep and would be unable to accommodate the volume of traffic brought about by the residents of the upper area. It was unsuitable for heavy trucks. The access over land parcel V10414 provided a shorter route than the alternative roadway to Fairview Estate Road.

[29] The Seventh Plaintiff Mr Will Dogley is fifty three years of age and has had his own property in the upper area since 1992 but prior to that he stayed with his parents. He returned from overseas in 2008 where he had studied and worked. He had always used the land parcel V10414 to reach his residence. He considered that the alternative roadway was very steep, dangerous when it rained and too narrow. He confirmed that the only access to his property was either over land parcel V10414 or the alternative roadway. The shortest route from his house to Fairview Estate road was over land parcel V10414. He had had no personal disagreements with the Defendant between 2008 and 2014. He said the residents of the upper area had used land parcel V10414 for some forty years. He accepted that his neighbours, Lewis Victor, Francois Belmont and a Doctor Georges, travelled by the alternative roadway. He has only driven this road on occasions. He stated that Mr Victor, when driving a bus, would not use the alternative road during a rainy period. He found the alternative road was dangerous especially at the bend. There were no “passing areas” for vehicles. Vehicles of the Public Utilities Corporation used the route over land parcel V10414. There were approximately twenty five residents in the upper area and those with cars drove over land parcel V10414

- [30]** Tenth Plaintiff, Jemmy Dogley, the eldest son, gave similar evidence to that recorded above concerning the history of access over land parcel V10414 which he still used when visiting family. He knows the alternative roadway. He finds it difficult to negotiate and he is worried about a dangerous curve and blind corner.
- [31]** Ms Cecile Dogley, the Sixth Plaintiff, is a senior medical officer at Victoria Hospital. She owns a property on the upper estate. She continues to use the access roadway over land parcel V10414. She also walks down the alternative roadway on occasions but will not do so after dark. As normal in her profession she works irregular hours. She recalled an occasion in the late evening when a hospital staff bus could not negotiate the alternative roadway due to the wet road surface; the driver had to use the road over land parcel V10414. She further stated that the shortest route from her home to Fairview Estate road was by land parcel V10414. She conceded that she had seen vehicles use the alternative roadway.
- [32]** The Fifth Plaintiff, Mr Norbert Dogley, also gave evidence. He has stayed on the family property all his life as a child and later as an adult and family man. He has always used and continues to use the access roadway over land parcel V10414 to reach his home. He has not been told by the Defendant not to cross land parcel V10414. He has not used the alternative road since he considers it dangerous. He acknowledged that on the Fairview Estate and also in Seychelles there were roads of varying gradients where care is required when driving.
- [33]** The Ninth Plaintiff, Simon Dogley, was the final witness from the Dogley family. He is a tour guide. He is aged forty three and has always lived on the family property. He has always used the access over land parcel V10414 since childhood. Prior to the incident in 2014 he had never been told by the Defendant not to use this access at land parcel V10414. He has walked the alternative roadway and driven it on rare occasions. He noted that there is a “blind spot” and vehicles coming from opposite directions would not have prior sight of each other. He also drew attention to a “precipice” at a particular stretch of this road. He also knew of the 2014 incident. He has seen some people drive on the alternative roadway out with his immediate family and the Morin family. He confirmed

that a short stretch of road was built to connect the property of the First Plaintiff to the alternative roadway.

- [34] The next witness was Mr Rolly Sinon, the Fifteenth Plaintiff. He is also an owner of property in the upper area holding title in joint names with his father, Mr Rodace Cedras as fiduciary to the land. He is fifty years of age and has lived on the same property all his life. Since childhood he has always used as his means of access the roadway over land parcel V10414 despite the later availability of the alternative roadway. He, like others, knew the history surrounding this matter. He described the alternative road as “dangerous” and used it only on foot. He pointed out that there were now quite a number of people living in the upper area and access by the alternative roadway only would present a problem. This witness had also worked occasionally for the Defendant.
- [35] Mr France Sangoire, the Sixteenth Plaintiff, and his wife, Mrs Gerina Sangoire, the Seventeenth Plaintiff, gave evidence; she adopted the evidence of her husband. They acquired their plot of land in the upper area in 1994, built their house and have lived there for the past twenty years. Mr Sangoire retired from the police force in 2008. He stays with his wife, has three children, one of whom a daughter, also known as Franciska Etienne, resides nearby in her own house. She is the Fourteenth plaintiff. She is separated from her husband, Jemie Etienne, who is the Thirteenth Plaintiff.
- [36] Mr Sangoire stated that he has also used the roadway over land parcel V10414. He recalled receiving a court document relating to this access in 2002 and appeared, represented in court, but could not recall the outcome. In any event he and his wife continue to use the road over land parcel V10414. He was present at the 2014 incident. He received no official notification of the construction of the alternative roadway. He stated that he had travelled this road by car when the weather is sunny but expressed the view that it would not be possible “in a transport”. He recalled an occasion as a passenger in his car that it could not negotiate the road and his wife had to resort to the access over land parcel V10414. In cross-examination he stated that he had never owned a car and used the alternative roadway on foot. He saw the alternative road being built and thereafter made use of it after he saw other people using it. He agreed with the suggestion

that there was a “movement” amongst neighbours not to use the alternative road in an effort to persuade Government to call on the Defendant to grant a right of way. He admitted that he knew of the reconveyance of land parcel V10414 back to the Defendant and the latter’s request that the residents of the upper ground desist from using this plot as an access roadway.

[37] The court heard evidence from Mr Jean Francois Ferrari, a member of the House of Assembly and his father, Doctor Desire Jean Maxime Ferrari, a medical practitioner and former Government Minister between 1975 to 1984. Doctor Ferrari was Minister responsible for Land Acquisition and also held the portfolio for Planning, Development and Housing between 1978 and 1982. He was a proprietor of land at La Misere and had sold it to the First Plaintiff. Mr Jean Ferrari had stayed at his father’s property and used the access roadway over land parcel V10414 with all other nearby residents. He also knew the history of this matter and came to hear of the alternative roadway. Doctor Ferrari confirmed that he bought a property, a former “block” occupied by one Rodace, during 1991 to 1992 and subsequently this land was formally transferred to the First Plaintiff in 2011. During his period of residence he relied on the access over land parcel V10414 without objection from the Defendant.

[38] Ms Vivienne Moustache, wife of the Fifteenth Plaintiff, also gave evidence. She has resided in the upper area for some seven years. She has used the access roadway over land parcel V10414 and also the alternative roadway. She will use the alternative access on foot when the day is sunny and dry but not when it is rainy weather as the road is slippery. She would not use the alternative access in a vehicle since there is a “blind bend” and if vehicles meet one vehicle needs to reverse to allow the other vehicle to progress. She advised the court that her husband suffers from epilepsy and an attack of epilepsy at home requires the services of an ambulance to carry him to hospital. She recalled that on two occasions the ambulance was unable to gain access to her property due to wet and slippery conditions on the alternative roadway and hence, despite the “Private Property” sign on the Defendant’s property the ambulance had to cross land parcel V10414 to reach her property. She did explain that her husband and son used the

family car and they would use of the roadway at land parcel V10414. She has never seen an accident on the alternative roadway.

[39] The final witness for the Plaintiffs was Mr Yvon Foster. He is a fully qualified and licensed Land Surveyor of twenty years' experience now in private practice. He previously held the position of Director of Surveys and other similar senior posts with the Government of Seychelles. He is fully involved in cadastral and topographical surveys and engineering projects. Topographical surveys involve examination of terrain in Seychelles. He was instructed by the Plaintiffs in this matter to carry out a survey of the alternative roadway constructed by Government. He did so and produced a Report which is admitted into evidence. He gave *viva voce* evidence in relation to his findings. All parties to this action, their Counsel and I are familiar with this stretch of roadway and have "walked" the route. This roadway starts at Fairview Estate Road and runs in an upward direction before meeting an upper road which is known as "Rosebelle Road". The survey also refers to the length of Rosebelle Road leading from the upper junction to where a bridge is situated and thereafter to the property of the First Plaintiff.

[40] Mr Fostel gave his findings in respect of the gradient of the section of alternative roadway leading from Fairview Estate Road leading up to Rosebelle Road. He found that the gradient on this road leading to the upper junction was 1:4.4. The length of Rosebelle road leading from the upper junction to the aforementioned bridge had a gradient of 1:22, that is, this stretch of road was almost level. He described the roadway leading upwards as "steep".

[41] Having dealt with gradient, Mr Fostel gave his opinion on the adequacy of the width of the roadway as it went in its upward direction. He gave the width of the roadway as varying between 3.5 metres and 5.00 metres. He explained that this stretch of roadway did not have a constant width but varied between the 3.5 metres and 5.00 metres. A width of 5.00 metres had been recorded at the bend in the middle section of the roadway.

[42] Mr Fostel was knowledgeable of government planning and control guidelines. One guideline stipulates that where a roadway is serving ten dwelling houses or less the acceptable gradient is 1:4. Where a roadway provides access to more than ten dwelling

houses the acceptable gradient is 1:5. Mr Fostel advised at the end of his testimony that a 1.4 gradient is steeper than a 1.5 gradient. He had not personally counted the number of dwelling houses served by the alternative roadway but from the cadastral plan of the area and related photographs he estimated that there were more than ten dwelling houses in the upper area.

[43] There was also a relevant guideline in respect of the width of an access road leading to houses in an upper area. Again the number of dwelling houses was a relevant factor. Mr Fostel told the Court that the minimum width of the road when it serves one dwelling house is 3.5 metres; if there are ten dwelling houses or less the required width is 4.5 metres, and for more than ten dwelling houses the required width is 5.5 metres.

[44] Mr Fostel's evidence extended to observations made while on site. He referred particularly to a bend in the middle section of the roadway. He stated that the bend was "very sharp". He found that the width of the roadway did not conform to government guidelines. He found that there was a "blind bend" on the roadway which would mean that, if a driver had entered the "bend", he would not be able to see another vehicle approaching from the other direction. He had also noted a "blind spot" near to the top junction where the roadway meets Rosebelle Road. He was of the opinion that the driver of a vehicle travelling up and close to the upper junction would be unable to see vehicle about to enter the downwards stretch of the roadway.

[45] Finally, by reference to his calculations in respect of gradient and his measurements in respect of width it was the opinion of Mr Fostel that the alternative roadway between the Fairview Estate Road and Rosebelle Road did not comply with the government guidelines.

[46] Mr Fostel was subject to cross-examination. He explained the method of calculation to determine gradient and its significance for the upward stretch of roadway. While he had not carried out a detailed examination he agreed with Defence Counsel that there were stretches of the Fairview Estate Road which did not appear to comply with the guidelines on gradient and road-width. He was of the view that other existing roads on Mahe may also not meet these guidelines. He had visited the locus for a total period of four to five

hours over a two-day period. He had observed only one vehicle coming down the steep part of the road. He expressed the opinion that a roadway only 3.5 metres wide would be suitable for one-way traffic only. He found that the roadway was 3.5 metres wide in most parts but widened to five metres at the bend. He agreed that if two vehicles met head-on at either the upper or lower junction, one vehicle would have to reverse to allow the other to proceed. He was of the view that if the roadway was improved to comply with the government guidelines this would be acceptable. He agreed that other roads in use on Mahe had similar deficiencies but they were unsafe, safety being the criterion.

[47] This concluded the evidence for the Plaintiffs.

[48] The Defendant proceeded to give his evidence. I have referred to him as “Mr Barbier”. Having listened to the evidence of the Plaintiffs I now have a fair idea of the general situation as it has developed from around 1970 until the present time. Mr Barbier purchased his property, with dwelling house thereon, from Mr Cyril Abhaye in January 1979 and has been in continual occupation since that date. His property document was produced to the Court. He explained that the property transferred to him was contained in parcels of ground V2328 and V2329. Later parcel V2328 was sub-divided into plots V10414 and V10413. The dwelling house is erected on parcel V10413. Parcel V10414 is unbuilt-on and is the remaining area of ground. It is the area compulsorily acquired by Government and later reconveyed to Mr Barbier. The area of ground which is the subject of dispute is land parcel V10414; it is also used by Mr Barbier as driveway leading to his dwelling house. In 1979 this driveway consisted of two strips of concrete with grass in the middle. Mr Barbier stated that prior to his purchase Mr Abhaye had not advised him that the occupiers of land and houses in the upper area also used land parcel V10414 as an access to their properties, although he later found this to be the case. Mr Barbier confirmed that he knew all the Plaintiffs.

[49] The upper area had been developed and a road system built which led to the driveway on land parcel V10414. The occupiers of plots in the upper area then considered that they had a motorable access from their properties over land parcel V10414 to the Fairview Estate Road and used it as such. Mr Barbier tried to negotiate with Government to bring

this arrangement to an end, but without success. There was further correspondence with Government and the occupiers of the higher lands but the occupiers of the upper lands continued to use the access over land parcel V10414. Mr Barbier threatened to physically block the access advising that he wished the practice to end. It would seem that this running argument continued over a number of years without any solution being reached. The position became polarized with Government threatening to compulsorily acquire land parcel V10414. The position further deteriorated when the First Plaintiff used land parcel V10414 to bring in heavy building material by heavy lorry with excavation equipment as he further developed his business. By May 2002 the position had become confrontational and police had been called to the site to ensure good order on more than one occasion.

[50] Finally proceedings were commenced in the Supreme Court in 2002 to bring some finality to the situation. By this time the majority, if not all the occupiers, in the upper area were involved. The court action came to a premature end when Government compulsorily acquired land parcel V10414. This decision to acquire was challenged unsuccessfully in the Constitutional Court by Mr Barbier who then sought to challenge the decision in the Court of Appeal. Argument was heard in the Court of Appeal and the matter was adjourned for judgment. Throughout the court proceedings discussions and negotiations had continued between Government and Mr Barbier. As a result of the negotiations being successful the Court of Appeal did not proceed to judgment.

[51] The substance of the successful negotiation was as follows:[1]Government would reconvey to Mr Barbier the land compulsorily acquired, namely, land parcel V10414, [2]Government would make a compensatory payment to Mr Barbier, [3] it would repair and rebuild the driveway on land parcel V10414 which, it was alleged, had been substantially damaged by the movements of the heavy machinery and lorries, and finally, Government would build an alternative access roadway for the use of the occupiers in the upper area, which it did, completing the work in 2011. During this whole period the occupiers of the upper lands, which included the present Plaintiffs, had use of land parcel V10414 as a direct result of the compulsory acquisition. The formal document of re-

conveyance transferring ownership of land parcel V10414 to Mr Barbier was finalized, according to the Registrar General, in 2013.

[52] By 2013 Mr Barbier would have felt confident that he had then sole use of land parcel V10414 and to reinforce this erected a “No Access” Notice at its entrance from Fairview Estate Road. The First Plaintiff was formally advised by letter of the position.

[53] Mr Barbier stated that he had driven the alternative roadway and experienced no difficulty in doing so. He estimated that the number of the tenants on the upper area to be ten to twelve, most of whom had their own transport. He stated that the occupiers of the upper area regularly drove up and down this alternative roadway using their personal vehicles. Goods trucks and delivery trucks also made use of this road.

[54] Mr Barbier stated that the business undertaken by the First Plaintiff had originally been agriculture but had expanded into cold storage and Plant Hire businesses. He explained that the original “blockers” had crossed his land on foot and he had tolerated that practice although he had been particularly unhappy with the First Plaintiff using this access and that they had never been on good terms. In these early times, the “blockers” would bring goods by vehicle to the Fairview Estate Road and then carry them up through land parcel V10414 to their property.

[55] Mr Barbier held the opinion that the plots of land were not enclaved since Government had provided access by the new alternative roadway. There was no right of way over his driveway, that is, over land parcel V10414. Mr Barbier confirmed that the Plaintiffs and other proprietors of plots in the upper area, even now, are continuing to use the access roadway over land parcel V10414; but agreed that this was permitted in terms of the interim injunction granted at the commencement of this case. The main users of land parcel V10414 are members of the Dogley family and the First Plaintiff. The members of the Dogley family use their own personal transport, but the First Plaintiff uses this access in connection with his business. Hence the access is used by lorries, refrigerated trucks and other vehicles leased in connection with the plant hire business. The heavy vehicles cause damage to the roadway at land parcel V10414. The passage of all the vehicles caused hardship, suffering and inconvenience to him and his family who cannot fully

enjoy their property. He had plans to redevelop land parcel V10414. He wished the Court to order that the Plaintiffs are not entitled to use land parcel V10414 as an access roadway to their properties. Furthermore he also sought a declaration that the Plaintiffs did not have a right of way over land parcel V10414 since they had been provided with a suitable access by the alternative roadway constructed by Government.

[56] In cross-examination Mr Barbier confirmed that the some of the Plaintiffs, principally the Morin and Dogley families were already resident at La Misere when he bought the property. Others persons took up residence at a later date. At the time of his purchase the “blockers” were farming the land. Later they were allowed to purchase their plots. Originally land parcel V10414 had two strips of concrete with grass in the middle and at first the “blockers” used this area as a pedestrian access. Later, around 1983, the “blockers” started to use land parcel V10414 as a vehicular access. This access, *inter alia*, led to the property of the First Plaintiff through the network of roads in the upper area. He denied the Plaintiffs then in residence used land parcel V10414 as a motorable access prior to 1979. He denied that Mr Abhaye had told him that land parcel V10414 was used as an access to the upper properties. He denied that his title deed gave a right of access to the Plaintiffs over land parcel V10414.

[57] Mr Barbier said that he tolerated the Plaintiffs crossing over his property and since 1983, when an improved roadway system was completed in the upper area, he had still not given express permission to the Plaintiffs to cross his land. He entered into negotiation with Government in 1983 to seek a resolution to the problem but there was no definitive result despite continuing discussions.

[58] In 2002 Mr Barbier felt confident enough to file a case in the Supreme Court following the issue of formal letters of complaint but no final judgment was reached. Around 2004, land parcel V10414 was compulsorily acquired by Government who allowed the Plaintiffs to use land parcel V10414 as an access to their properties. It was this acquisition by Government that led to the case in the Constitutional Court which, in turn, led to a settlement of issues, one of which was the construction of the alternative roadway which was intended to allow the Plaintiffs vehicular access to their properties. After

completion prior to 2013 the reconveyance of land parcel V10414 to Mr Barbier was completed.

[59] After completion of the reconveyance there was the disturbance between the parties when Mr Barbier blocked the access road over land parcel V10414. This led to police intervention and, in turn, this court action. Mr Barbier was unsure of the number of dwelling houses in the upper area but he estimated that there could be around ten to twelve. It was suggested there were about twenty houses in the area. He was uncertain on this point but did mention that one or two houses were in the course of being constructed. Mr Barbour conceded that some of the trucks crossing land parcel V10414 were related to the new construction but most heavy vehicles were in connection with the First Plaintiff's business. It was suggested to Mr Barbier that the First Plaintiff brought his heavy loaded vehicles and refrigerated trucks over land parcel V10414 since it was the most practicable route to reach his property. Mr Barbier suggested that the First Plaintiff should now use the new alternative roadway. It was further suggested to Mr Barbier that the First Plaintiff could not use the alternative roadway since it was not practicable due to its topography and the gradient of the road. Mr Barbier disagreed stating that during its construction asphalted lorries reversed up the road and trucks carrying construction materials drove up and down the alternative roadway. Mr Barbier held the view that the First Plaintiff continued to use land parcel V10414 only to harass and annoy him.

[60] There were witnesses called by the Defence. Mrs Jeannine Lepathy, the Assistant Registrar of the Supreme Court, produced the Records of the three court cases already mentioned. Mr Fred Hoareau, Deputy Registrar General gave evidence as to the Deduction of Title relating to Mr Barbier's property and that the reconveyance by Government to Mr Barbier of land parcel V10414 was dated 13th November 2013. Mr Chang Tave, Director for Development and Controller at Seychelles Planning Authority could confirm that the Planning Application relating to the alternative roadway was submitted on 14th June 2004 by Government and Approval was granted on 22nd August 2006. He stated that the Planning Authority received a Commencement Notice, on 7th May 2007.

- [61] I confirm that I have made only one site visit.
- [62] This concluded all the evidence and Counsel elected to place their final submissions in writing before the court, which they did.
- [63] FINDINGS.
- [64] This is a civil case and hence the burden of proof is on the balance of probabilities and not on the more onerous burden of beyond reasonable doubt.
- [65] I have considered all the evidence, the exhibits, photographs and the closing submissions. I also conducted a *locus in quo* and hence I am conversant with the whole area of land and road systems. I intend during this judgment also to rely on my own conclusions as a result of my site visit. I have also considered the judgments referred in the annexure to this judgment and which can be also be seen in the Seychelles Digest 2014 Edition at pages 438 to 446 under the general heading of “**Rights of Way**”.
- [66] I have set out in the initial part of this judgment the evidence given by all parties who wished to take the opportunity to address the Court. Since this matter had been the cause of much dispute and ill-feeling over the years it was important that all who wished to be heard should be heard.
- [67] Despite the length of this case and the previous proceedings of 2002, followed by a compulsory acquisition order and reconveyance of land parcel V10414, the point in issue is narrow. Put simply, it is this; are the Plaintiffs entitled to have a right of way over land parcel V10414 to gain access to their individual properties from Fairview Estate, Road?
- [68] At the present time and after the reconveyance of land parcel V10414 by Government to the Defendant in 2013 there are now two access roadways available to the Plaintiffs, that is, the roadway over land parcel V10414 and the other which I have called the “alternative roadway”.
- [69] During the *locus in quo* I walked on to land parcel V10414, which is a concreted roadway, directly from Fairview Estate Road. After some fifty yards or so I emerged from the rear of the property of the Defendant. This portion of the roadway from

Fairview Estate Road has a slight gradient. After a further short distance this roadway continues and then forks left and right. I was not asked to proceed to the right but it is apparent from plans produced that a number of plaintiffs have their residences in that area. I proceeded by the left fork and after a short distance came to the large commercial premises and residences of the first four Plaintiffs. I continued on for some distance on a fairly level plane until a further junction is reached. I was told that that section of the road is now known as Rosebelle Road. This is the junction where Rosebelle Road meets the alternative roadway coming up from Fairview Estate Road. I walked down the alternative road until it met Fairview Estate Road.

[70] I find from the evidence that the original blockers or tenants of the upper lands, from whom the Morin family and Dogley family and other plaintiffs are descendants, used land parcel V10414 firstly as a pedestrian access and later as a vehicular access with the full approval and consent of the then owner, Cyril Abhaye. Mr Abhaye sold his whole property to the Defendant in 1979 [which included land parcel V 10414] although the Defendant's evidence was that he had not been expressly advised by Mr Abhaye that the blockers used land parcel V10414 to gain access to their properties]. Be that as it may, the Defendant over the years tolerated the continuing use of this access by the Plaintiffs and the road was regularly improved to cope with the passage of vehicles, which vehicles gradually increased in size and numbers. I think it is fair to say that the First Plaintiff and the Defendant have never been on the best of terms. Larger and heavier vehicles came to use this access and most were under the direction of the First Plaintiff as he extended his business and business premises. By 2002 the Defendant's patience had come to an end and he instituted court proceedings to resolve the issue. There was no final court determination but an arrangement was reached. Government compulsorily acquired land parcel V10414 thus ensuring that for a while the Plaintiffs had access by that route but also agreed to construct the alternative roadway, which it did. By 2013 land parcel V10414 was reconveyed into the ownership of the Defendant and the alternative roadway had been completed for the use of the Plaintiffs. All should have been well. However the Plaintiffs found the alternative roadway unsuitable and continued to use the roadway over land parcel V10414. This inevitably led to dispute and this case. An interim injunction

was granted in March 2014 to allow the Plaintiffs continued access over land parcel V10414 until final determination of this present matter.

[71] The Plaintiffs have filed this suit against the Defendant claiming a right of access over his property and in particular over that portion known as land parcel V10414 to the public road, Fairview Estate Road. The Defendant resisted their claim arguing that an alternative adequate and suitable access now exists following the construction of the alternative roadway.

[72] I find that none of the individual properties of the Plaintiffs has an immediate and direct access to the public road known as Fairview Estate Road and hence I find that the properties of each Plaintiff is an enclaved plot.

[73] Accordingly the Plaintiffs' claims fall to be decided under Articles 682 [1] and 683 of the Civil Code of Seychelles which read as follows:

[74] "682(1) The owner whose property is enclosed on all sides and has no access or inadequate access on to the public highway either for the private use or for business use of his property, shall be entitled to claim from his neighbours a sufficient right of way to ensure the full use of such property, subject to his paying adequate compensation for any damage that he may cause".

[75] "683 A passage shall generally be obtained from the side of the property from which the access to the public road is nearest. However, account shall also be taken of the need to reduce any damage to the neighbouring property as far as possible."

[76] In my opinion this matter hinges on particular wording within the body of Article 682[1] namely, where the owner of enclaved property " *has no access or **inadequate** access on to the public highway either for **the private or for the business use of his property**etc*".

[77] Hence, firstly, in respect of each and every Plaintiff I look to see if adequate access is there at all or whether the access, if present, is adequate or inadequate.

- [78]** Secondly, if there is adequate access, and again in respect of each Plaintiff, is it adequate for his private use, or, if he is in business, is it adequate for his business use.
- [79]** I take the second point first. I find that the First, Second and Third Plaintiffs claim principally in respect of the business use of their property. The remaining Plaintiffs claim in respect of the private use of their properties.
- [80]** As at the present date there are two roadways available to the Plaintiffs, [a] the access roadway over land parcel V10414 and [b] the roadway named “the alternative roadway”.
- [81]** I consider the merits of each access roadway.
- [82]** Roadway over land parcel V10414
- [83]** I find that this means of access has been in use for a period commencing prior to 1979, when the Defendant purchased his property, until the present time. Consent was given expressly by Mr Abhaye, grudgingly by the Defendant, by Government following their compulsory acquisition of land parcel V10414 and finally under the interim injunction order of the Court.
- [84]** I find that this access roadway links Fairview Estate Road with the general area in which the properties of the Plaintiffs are situated. The distance from the rear boundary to Fairview Estate Road is only some fifty yards or so. The distances from this rear boundary to the individual properties of each Plaintiff is, again, a short distance. The access roadway over land parcel V10414 is a cemented roadway leading upwards at a gentle gradient from the main road.
- [85]** The First and Third Plaintiffs submitted that, in the normal course of business, it was necessary that heavy transport vans and other vehicles have access to their business and commercial premises. They say that the existing roadway over land parcel V10414 provides suitable and adequate motorable access for vehicles used in the course of business, personal vehicles and also pedestrian access. The remaining Plaintiffs also submitted that the roadway over land parcel V10414 provided them with convenient and

suitable vehicular and pedestrian access to the main road. All Plaintiffs wish the *status quo* to remain and this access to be confirmed as a formal right of way.

[86] THE ALTERNATIVE ROADWAY

[87] The Defendant submitted that this was **the** alternative route to be used. All Plaintiffs hence are required to use it and not the access roadway over land parcel V10414. He had plans to develop land parcel V10414.

[88] The collective evidence of the Plaintiffs was that the alternative roadway was further from their properties than land parcel V10414. The alternative roadway from Fairview Estate Road was steep, narrow, had no recognized 'passing places' and was unsafe. There was a tight bend at the mid-way point with a vertical drop on one side with no safety barriers or fences despite the fact that there were dwelling houses immediately below. Mrs Vivienne Moustache, wife of the Fifteenth Plaintiff, recalled that an ambulance trying to reach her home due to a late medical emergency could not negotiate the alternative roadway due to wet road conditions. Ms Cecile Dogley, a senior medical officer, could recall a similar difficulty in the hours of darkness when a hospital staff bus delivering her to her home could not drive up the alternative roadway due to wet road conditions. In each case the driver of the vehicle had to use the access at land parcel V10414.

[89] CONCLUSION

[90] I have had the opportunity to walk down the alternative roadway during my site visit. I keep in view that if the Plaintiffs' claim was to be dismissed it is more likely than not that the Defendant would physically block off land parcel V10414 thus denying all access to the Plaintiffs and all of their vehicles, commercial or personal. Land parcel V10414 would not be available for emergency vehicles such as ambulances and fire appliances to access the properties of the Plaintiffs. The alternative roadway would be the sole means of pedestrian and motorable access available to the Plaintiffs. Heavy commercial vehicles would have no alternative other than use the alternative roadway to access the business premises of the First and Third Plaintiffs. Private cars would only use this route. Pedestrians

again could only reach the main road by the alternative roadway. From my site visit I can find that land parcel V10414 provides a shorter access to Fairview Estate Road than the alternative roadway.

[91] Having observed the whole area and walked down the alternative roadway it is my opinion that the concerns of all the Plaintiffs are well founded. I look for independent evidence supporting or tending to support this view. I find it from the testimony of Mr Yvon Fostel, an experienced land surveyor and final witness for the Plaintiff who, in my view, gave credible evidence on which I can rely. He was of the opinion that the alternative roadway was steep as it went from Fairview Estate Road to Rosebelle Road. He had measured the gradient and width of this road at intervals. He compared the actual site measurements to government regulations on the premise that there were more than ten dwelling-houses in the upper area, with which I agree. The regulatory gradient requirement of a road serving more than ten dwelling houses is 1 : 5. The actual gradient of the alternative roadway was found to be 1 : 4.4. This measurement of 1:4.4, is a steeper gradient than 1:5, and hence the alternative roadway did not comply with government regulations. He measured the width of the road at various intervals and also based his finding on the basis of ten dwelling-houses being located in the upper area. He found that the width of the road varied between 3.5 metres and 5.00 metres. The regulatory minimum requirement for this volume of housing is 5.5 metres. Again the alternative roadway did not comply with regulations in respect of width. He emphasized his view by stating that the width requirement for a roadway providing only “one way” traffic is 3.5 metres. The conclusion can then be reached that the alternative roadway does not comply with government regulations. The regulations were in force to ensure the safety of road users. Moving away from this technical aspect, he was of the view that the upper point where the alternative roadway met Rosebelle Road was a blind spot and there was always a danger of collision.

[92] The Defendant cannot provide a detailed or technical argument in reply simply stating that this roadway provides an adequate alternative access.

- [93] The property of the First Plaintiff is used for a busy commercial and agricultural business. In support, I observed from my inspection of this property that commercial goods vehicles, including refrigerated vehicles, were parked on site. A motorable access capable of taking heavy goods traffic is required for the business interests of the First, Second and Third Plaintiffs. The remaining Plaintiffs, generally, speaking, use their properties for residential purposes although some may have small agricultural businesses. They require motorable access for personal vehicles and small commercial vehicles. such as, pickups.
- [94] I keep in view that with only the alternative roadway available vehicles of **all types**, commercial and personal, would require to use it on a daily basis. It is more likely than not with the passage of time that the volume of traffic would increase. With increasing regularity vehicles would come face to face on this stretch of road. In these circumstances, bearing in mind the gradient and width of the road, the blind spots, the tight turn at the mid-way point with the vertical drop, it is more likely than not that there will be an increasing danger of accident, collision and injury. In my view heavily laden commercial vehicles will encounter increasing difficulties in negotiating this length of roadway especially when the road surface is wet. Similar difficulties will be encountered by emergency vehicles.
- [95] I have also considered whether the Fourth Plaintiff to the Seventeen Plaintiff are merely supporting the First Plaintiff out of a sense of misplaced loyalty but I reject this. The alternative roadway is equally unsafe for personal vehicles bearing in mind that it is more likely than not that the volume of traffic will increase.
- [96] The Defendant has not persuaded me to find in his favour in respect of this matter.
- [97] I find that the roadway over land parcel V10414 provides a suitable, adequate and practical access from the enclaved plots of the Plaintiffs to the main road, Fairview Estate Road.
- [98] I find that the alternative roadway does not provide an adequate and practical access route from the enclaved properties, namely the properties it has to serve, to the main road,

Fairview Estate Road. I find that the alternative roadway does not provide a viable, adequate, suitable and practical alternative to the access roadway provided by land parcel V10414. The access over land parcel V10414 provides the shortest route from the enclaved lands of the Plaintiffs to the public road. The alternative roadway does not offer a satisfactory and safe route as does the route over land parcel V10414.

[99] Consequently, I enter Judgment for each of the Plaintiffs as follows:

[100] [a] I hereby declare that each of the Plaintiffs has a right of way in favour of their enclaved properties over the Defendant's land parcel V10414 along the existing motorable access road leading to the public road, Fairview Estate Road,

[101] [b] I grant a perpetual injunction restraining the Defendant from interfering with the Plaintiffs' use of the said right of way, from obstructing the said right of way or causing any damage to it,

[102] [c] I dismiss the counterclaim of the Defendant,

[103] [d] I order that the Defendant shall pay the Costs of the Plaintiffs.

[104] For the avoidance of doubt, the interim injunction of 21 March 2014 shall at present remain in full force and effect pending any final disposal of this case.

[105] Annexure.

[106] Cases referred to:

[107] 1 to 16 enumerated below.

List of Authorities

1. Mirabeau v Camille [1974] SLR 158
2. Uzice v Serret [1988] SLR 128
3. Laurette v Sullivan [2004] SLR 65
4. Clarisse v Gomme SSC 19 September 2002
5. Denise v Sullivan [2003] SLR 127

6. Umbricht v Lesperance [2007] SLR 221
7. Azemia v Ciseau [1965] SLR 199
8. Norah v Otari [1983] SLR 55
9. Rose v Monnaie [1997] SLR 177
10. Payet v Labrosse [1978] SLR 222
11. Vadivelo v Otari [1979] SLR 216
12. Georges v Basset [1983] SLR 177
13. Delpech v Soomery [1980] SLR 135
14. Potter v Cable & Wireless [1971] 334
15. Delorie v Alcindor [1981] SCAR 28
16. Kate v Payet [1980] SLR 90

Signed, dated and delivered at Ile du Port on 24 March 2017

C McKee
Judge of the Supreme Court