

SUPREME COURT OF SEYCHELLES

Reportable

CS110/2018
[2020] SCSC 772

In the matter between

DOREEN ELLEN BOUCHEREAU
(*rep. by Divino Sabino*)

Plaintiff

and

1. MARGARET ZOE

2. MARGARATE MALBROOK

3. HANZEL ZOE

4. SHEENA SOLIN

5. SHARAN POOL
(*rep. by Somasundaram Rajasundarm*)

Defendants

Neutral Citation: *Bouchereau v Zoe & Ors* CS 110/2018) [2020] SCSC 772 (19 October 2020)

Before: Twomey CJ

Summary: right of way- trespass - threatening violence, erecting barriers, obstructing entry- Article 1382 (3) damages due - permanent injunction

Heard: 31 October 2019 – 27 September 2020

Delivered: 19 October 2020

ORDER

1. The Second and Third Defendants are to jointly pay the Plaintiff the total sum of SR55, 000 for trespass onto and obstruction to her property
2. The Third Defendant is to pay to the Plaintiff a further sum of SR10, 000 for threatening her with violence
3. The Second and Third Defendants are to pay the Plaintiff interests and costs

4. A permanent injunction is issued against the Second and Third Defendants restraining them from harassing the Plaintiff and form further acts of trespass onto and obstruction to the Plaintiff's land and home

JUDGMENT

TWOMEY CJ

The Plaintiff's claim

- [1] The Plaintiff, the owner of Parcel V7259 at Pascal Village, Mahe is the neighbour of the Defendants who own adjoining parcels of land and / or are children of the First or Second Defendants. The Plaintiff claims that the First and Second Defendants have instead of using a right of way specifically provided for them, trespassed onto her land on a private access road serving Parcels V3686, V3673, and V7258 to gain access to their land. She claims that in doing so, the first three Defendants have interfered with her rights of ownership, peaceful possession and enjoyment of her property and thereby have committed a *faute*. She particularises the fault by the First, Second and Third Defendants as obstructing the access to and preventing her from reaching her property; the First and Second Defendants trespassing and cutting down vegetation on her property, the Third Defendant coming to her gate to threaten her and throwing a knife at her; the Fourth and Fifth Defendants instructing persons to go onto her property to cut down vegetation and to verbally abuse her and threaten to fight with her; and the Defendants burning rubbish and debris on the property boundary and allowing smoke to blow into her property and dwelling house.
- [2] She claimed further that she has had to go to the police for protection; she has had to leave her car in St Louis and walk home when the private access was blocked on numerous occasions and for a continuous period of seven months. This caused her to jump down a "ravine" and duck under corrugated iron sheeting to get to her home as the private access

was blocked. She claims the sum of SR 100,000 for chronic injuries to her knees and SR 650,000 for moral damages.

The Defendant's joint defence

[3] In their statement of Defence, the Defendants put the Plaintiff to strict proof of the allegation of the right of way she describes in her plaint and aver that she enjoys a different right of way to them. They deny trespassing on her right of way or walking onto her property. They deny the allegations of fault on their part and deny encroaching or trespassing onto the plaintiff's land and aver that she has not sustained damages as claimed or at all.

The evidence

[4] The testimonies of the parties in court were long, repetitive and drawn out but permitted in order to allow the parties to fully ventilate what was clearly a feud between neighbours.

[5] In summary, the Plaintiff's evidence is to the effect that she owns Parcel V7259, which she bought from a Seychellois living overseas, one Roy Morel. After purchasing the land, her husband and herself set about clearing it. She noticed that the Second and Third Defendants were coming up on an adjoining parcel of land, namely V7258 and onto her land, V7259. She explained that Parcels V7258, V7259 and V7260 were subdivisions of a parent parcel, V4953. The First Defendant's land is Parcel V6528 and the Second Defendant's land is V6298. The Third Defendant is the Second Defendant's son and the Fourth and Fifth Defendants are the First Defendant's children who trespass onto her property. They have planted flowers thereon and other vegetation without her permission.

[6] Subsequently, the Plaintiff dug up a trench and erected a retaining wall. It was her testimony that the Second Defendant offered to buy the part of the land between the retaining wall and the boundary to her property, which the Plaintiff refused. The trouble between them then started. The Second and Third Defendants threw bottles at her and her husband, they came up to her property with machetes to threaten them and the police had to be called to make them stop. The First and Second Defendants parked their cars on her property obstructing her access so that she had to get an excavator to make some space so she could get to her property.

- [7] Eventually, she built her home and the retaining wall and this meant the Defendants could not park their cars on her property. There was more trouble when she installed a gate and concreted her drive. The Third Defendant tried to remove the gate. He threw a knife at her for which he pleaded guilty and was convicted. Several cases for breaches of the peace between herself, her husband and the Second and Third Defendants ensued.
- [8] Subsequently the Second, Third and Fourth Defendants put up a barrier blocking the access to her home in early December 2014. Police Officer Rudy Michel and branch administrator Mirena Souris informed her that the motorable access she had been using was not her right of way and that one Christopher Hoareau had given the Defendants permission to block her access. After consulting her lawyer and the authorities, the barrier was taken down. On 24 December 2014, the barrier was placed again and this time not removed for another seven months. This meant her family and herself had to jump down into a ditch and under the barrier to reach their home. Photographs of the barrier were produced. The situation meant their shopping and animal feed had to be thrown over the barrier and dragged to their house, as they had no vehicular access to their home. Her husband would drop them at the bottom of the drive and park their car at St. Louis and then walk home. It greatly inconvenienced her family and made her knee joints painful and caused her to walk awkwardly. She could no longer work as a carer for her mother as her knees were too painful. She produced a medical certificate of her medical ailment. Her daughter, a promising swimmer and member of the Seychelles national swimming team gave up swimming as it was too difficult to bring her for training.
- [9] She had several meetings with personnel of the Ministry of Land Use and Housing (MLUH) to sort out the problem but to no avail. She eventually took down the barrier herself. Subsequently the MLUH's employees cleared a right of way between her retaining wall and the Defendant's to give them access despite the fact that in 2011 a separate access road had been provided to the Defendants.
- [10] In cross-examination, she stated that she had always used the access road through Parcel V7258 to get to her home. She had moved into her home in 2011. She agreed that she lived on high ground and the Defendants on a level below her property. She agreed that the

Defendants had in the past entered their respective properties both through the access road she herself used and another road through Pascal Village. She stated that the access road near her gate being used by the Defendants was at the foot of her retaining wall but that the alleged right of way was also on her property as she had built her retaining wall three meters away from the boundary of her property with that of the Defendants.

- [11] Dr. Boyanapalli Rao, a Senior Medical Officer testified that he had seen the Plaintiff who complained of pain in both knee joints. The x-ray images showed osteoarthritic changes in both her knees. This could either be due to aging, a previous injury or prolonged sitting or standing or even prolonged activity over a period of months. He stated that the ailment had to be further investigated. It was a chronic ailment.
- [12] Stephie Clarisse from the Land Registration Division produced cadastral plans and official search certificates of the parcels of land concerned with the suit. She stated that Parcel V6528 was registered in the name of Didier Solin with a caution in favour of the First Defendant who claims a share in the property. The Second Defendant and one Wilson Zoe owned V6298. V7258 was owned by Michael Hoareau with no encumbrances registered against the title. V10683 was owned by the Government of Seychelles. V10682 was owned by Francis Bristol. There were no registered rights of way on Parcel V7259 but Parcel V9118 had a registered road reserve leading to Parcel V7259. There was also a road reserve registered on Parcel V7258.
- [13] Michel Leong, a Land surveyor also testified. He confirmed that Parcel V7259 was a subdivision of Parcel V4953. Parcel V4953 had a right of way delineated on the southwest corner and all of its three subdivisions, namely Parcel V7258, V7259 and V7260 benefited from it.
- [14] Norbert Bouchereau, the Plaintiff's husband largely corroborated the Plaintiff's narrative and produced more photographs of the barriers put up by the Defendants to prevent them accessing their home. He described the incidents in 2014 when the Third Defendant had threatened him after he had asked him not trespass on their property. He was emotional describing the difficult moments his family had experienced when the barrier had blocked access to their home for seven months. He accepted that the access road he himself used

was on Michael Hoareau's property and that that right of way was itself the subject of an ongoing court case.

- [15] Sophie Bouchereau, the Plaintiff's daughter testified that she had taken the photographs in 2015 admitted as evidence.
- [16] The Second Defendant testified that she was a cleaning contractor and lived on Parcel V6298. She stated that the First Defendant was her former sister-in-law and no longer resided in Seychelles having left seven years previously. The Third Defendant was her son and the Fourth and Fifth Defendants were the First Defendant's daughters living in a house adjacent to hers. She had lived on the property for forty years and the Plaintiff had lived there for about nine years. When she first came to live at Pascal Village she used the road used by the Plaintiff to access her house next to Mr. Hoareau's land. Then they had to use a road across Mr. Bristol's property (Parcel V10682) instead because of difficulties with the Plaintiff. The Plaintiff and her husband would throw stones at them from the top of their property. The government had four years ago built another access road, which is usable in dry weather but is steep and gets slippery in wet weather. On those occasions they have to leave their cars on the side of the road and ask Mr. Bristol, the owner of Parcel V10682, permission to go through his property to access their houses.
- [17] Before that they had accessed their houses through the Plaintiff's property. She denied cutting vegetation on the Plaintiff's property or going to her gate to fight with her. She stated that she did clean around her own house and burn the rubbish. The barricade was placed on Mr. Hoareau's road with his permission. Likewise, she had taken part in cleaning exercises in the area in her job as cleaning contractor. She also fell into the trench described by the Plaintiff on a dark night and sent three days in hospital. She was not responsible for digging the trench. In cross-examination, she accepted she was the person holding a machete in the photographs produced to court but said it was because she was using it to clean the area. She denied trespassing onto the Plaintiff's land but if she had done so it was because she had been permitted by the government to use that pathway to her home. She admitted that recently the government had built a separate access road through Parcels V91118 and V17619, which she could use to access her home. She also admitted putting

the barrier across the road together with others including the Third Defendant to prevent the Plaintiff gaining access to her home.

[18] The Third Defendant also testified. He stated that he lived with his mother, the Second Defendant, on Parcel V6298. He denied trespassing onto the Plaintiff's property. He admitted that he was the person in the photographs exhibited in court and seen on the Plaintiff's land but that he was cleaning the property on the day in question. He denied putting up the barricade across Mr. Hoareau's land. He admitted that he had been convicted of threatening violence to the Plaintiff but said he had pleaded guilty for throwing a knife at the Plaintiff and paid a fine of SR8000 on the instructions of his lawyer. In cross-examination, he admitted that he was the person in the photographs cutting grass but he had done so because, he was under the impression that the land belonged to the government and not the Plaintiff.

[19] The Fourth Defendant also testified and stated that she lived on her father's (Didier Solin) land, that is Parcel V6258, together with her sister, the Fifth Defendant. Her mother is the First Defendant. To access her home on foot she uses the footpath across Mr. Bristol's land and for motorable access she uses the road recently built by the government. She stated that she had never trespassed on the Plaintiff's land; rather it was the Plaintiff who threw stones at her whenever she cleaned her property.

[20] The Fifth Defendant adopted the Fourth Defendant's evidence. She added that the government had notified them in the Official Gazette of 27 June 2016 that it was acquiring the part of the Plaintiff's land (V7528) they had used for access to their properties. She had never trespassed on the Plaintiff's land, nor instructed anyone to cut vegetation on the Plaintiff's land.

[21] Mr. Joseph Francois, the CEO of the Planning Authority testified. He confirmed that the government had given notice of the acquisition of part of Parcel V7259 which belonged to the Plaintiff and a compensation mechanism had been set in place. The acquisition concerned more than one parcel of land but the process had not been completed. He accepted that a letter from the Ministry had indicated that the Defendants' properties would be served by an alternative right of way through Parcel V17619 and V9118. He had

personally visited the area and tried both routes and confirmed that the latter route was a difficult option because it was steep. He had not been able to continue his journey on it and had to abandon his vehicle and walk up the hill.

[22] Nicholas Oniare the government surveyor also testified. He had gone on site to relocate beacons between the parties' land, in particular Beacon QL73. He was unable to tell if there had been any encroachment onto the Plaintiff's land. He stated that he had used both routes to access the site, the one over Parcel V7259 and the one over V9118. He had had no difficulty using the second route.

[23] The court visited the *locus in quo* and observed that the Plaintiff accesses her property through property belonging to Michael Hoareau. Mr. Hoareau's brother Christopher, was at the *locus* and stated that the road was partly built by Michael Hoareau but that he was unaware as to whom had built the rest of the road to the Plaintiff's land. The Court observed the area where the barricade had been put up and it was clear that the Plaintiff could not have driven to her home with the barrier in place. There was a drop of about three feet from the road into the ditch where she indicated she had had to crawl into to get around the barricade. The court was also shown where a three-meter right of way from the Plaintiff's retaining wall had been demarcated to give access to the Defendants.

[24] The court also observed a separate right of way built by the government currently being used by the Defendants. It ended at the bottom of the Plaintiff's retaining wall with the wall extending about four and a half meters above it. The access was steep but motorable.

Closing Submissions.

[25] The Defendants in their closing submissions have stated that they have filed a common defence denying the Plaintiff's averments with respect to the alleged delictual acts committed by them. They claim that they are entitled to use the right of way on Parcel V7259 as delineated on the survey plan although the same has not been registered. They rely on exhibits P1 and P4 (cadastral plans of Parcels V6528 and V62980) to show the right of way they claim. They also rely on the decision of Karunakaran J in *Bouchereau v Minister of Land Use and Habitat* (Civil Side: MC 51/2012) [2014] SCSC 251 (11 July 2014) in which he found that the erection of the fence on the Plaintiff's land would block

the right of way to neighbouring land. They also rely on the evidence of the government surveyor that there had not been any encroachment onto the Plaintiff's land. They submit that it is the inimical attitude of the Plaintiff that has resulted in the present vexatious litigation.

[26] With regard to the evidence of the government surveyor they admit that the Defendants have got their own alternative motorable access on the road reserve V9118, and that therefore there was no necessity for the Defendants to encroach or trespass on the Plaintiff's land especially given the height of the Plaintiff's retaining wall. The Court's attention was also drawn to a pending court case between Michael Hoareau and the Plaintiff and the statement of Mr. Christopher Hoareau, Michael Hoareau's brother, at the *locus in quo* that he allowed the Defendants to use his property to access their property. The Defendants have also given their interpretation of the photos and have submitted that it is highly unlikely that grass cutting would amount to trespass and cause prejudice. In any case it is their submission that the Plaintiff has failed to show that the grass cutting was on her property. They also submit that there has been no corroboration of the Plaintiff's narrative regarding the trespass and acts of violence. It is their submission that the Plaintiff has failed to prove the three elements needed to constitute a delict committed by the Defendants namely fault, damage and causality.

[27] With regard to the damages claimed by the Plaintiff they have submitted that damages in delict are compensatory and not punitive (*Payet v Pierre* (CS 213/2005) [2007] SCSC 8 (26 September 2007)); that moral damages must be assessed even when it is arbitrary (*Fanchette v Attorney General* (SCA 15/2011) [2012] SCCA 16 (31 August 2012)); and that awards set by precedent must be reassessed when there is a fall in value.

[28] The Plaintiff in her closing submissions pointed out that the property, Parcel V6258 occupied by the First Defendant in fact belongs to Didier Solin. Similarly, Parcel V6288 belongs in co-ownership to the Second Defendant and one Winslow Zoe. With regard to the disputed right of way, there is indeed a legal encumbrance registered against parcel V7259 for the benefit of Parcel V7260. The Land Surveyor also testified that Parcels V6528 and V6298 are served by a right of way on Parcel V9118. This is supported by the

letter dated 22 April 2013 (Exhibit 19) from MLUH to the Defendants in which they are informed of this fact. Mr. Oniare indicated that the retaining wall built by the Plaintiff is about three metres inside the boundary of the Plaintiff's land. They also submitted that it is Mr. Michael Hoareau and not his brother Christopher who was at the *locus* who was the owner of the land (Parcel V7258) on which the alleged right of way claimed by the Defendants originated.

- [29] In respect of the trespass and the cutting of vegetation, although the Defendants have averred that they have only cut vegetation on their side of the boundary, the photographs in Exhibit 14 (1) show the Third Defendant in between the water tank and the Plaintiff's boundary, which clearly indicates his acts of trespass. Exhibits 14(4) and 14(5) show the Third Defendant's pick up on the Plaintiff's land; Exhibit 14 (6) shows the Second Defendant close to the retaining wall holding a machete. It is the Plaintiff's submissions that the photographs clearly show the Second and Third Defendants and their agent trespassing upon the Plaintiff's land and cutting vegetation. It is also their submission they have testified to the Fourth and Fifth Defendants cutting and clearing vegetation on the boundaries of Parcel V6528 and V7259. They submit that despite Mr. Oniare stating that he saw no signs of encroachment it does not mean that the Defendants have not trespassed onto the Plaintiff's land.
- [30] With regard to the smoke, it is the Plaintiff's submission that the photograph, Exhibit P14 (1) shows the thick smoke rising from the burning of rubbish including plastics, which is a nuisance to the Plaintiff.
- [31] With regard to the violence and aggression by the Third Defendant, the Plaintiff submits that he was convicted of threatening violence against the Plaintiff on 14 March 2013. No appeal against this conviction was lodged. The incident involved the Third Defendant throwing a knife at the Plaintiff narrowly missing her while he was on her property.
- [32] With regard to the barrier, the Plaintiff submits that this was erected out of pure malice on two occasions, first in early December 2014 and then on Christmas Eve 2014 apparently with the permission of one Christopher Hoareau and with the assistance of a police officer and a branch administrator. This caused her the most stress necessitating that she park her

car some way from her home and physically ducking under the barrier to get through each time she had to travel to and from her home. When they tried to remove the barrier, the police had prevented them from doing so. This caused great distress to herself and her family for seven months; her daughter was in the national swimming team and could not attend training. It also negatively impacted on her knees. She has relied on the case of *Civil Construction Limited v Leon & Ors* (SCA 36/2016) [2018] SCCA 33 (14 December 2018) to submit that trespass is a delict governed by Article 1382 of the Civil Code. She claims corporal damages for developing knee problems and moral damages for stress, anxiety and inconvenience.

The issues to be resolved

[33] There has been a large amount of evidence adduced in this case which is not at all concerned with the issues raised in the Plaintiff and which have to be decided by the court. Of foremost importance, it must also be noted that there is no counterclaim by the Defendants either for damages or for a right of way across the Plaintiff's land.

[34] The only issues to be resolved by this court are whether the Defendants have trespassed onto the Plaintiff's land and interfered with the peaceful enjoyment of her property namely, cut vegetation thereon, threatened the Plaintiff, erected a barrier preventing her from accessing her home during a period of seven months, caused injury to her knees, caused noxious smoke from fires to escape into the Plaintiff's home, and if so what damages if any are due and further whether a permanent injunction should issue restraining the Defendants from further acts of trespass and obstruction to the Plaintiff's home.

Discussion on the issues with regard to the evidence adduced and the applicable law

[35] I note first of all that the Plaintiff's claims against the Fourth and Fifth Defendants are to the effect that they instructed persons to go onto her property to cut down vegetation, to verbally abuse her and threaten to fight with her; and that they burnt rubbish and debris on the property boundary allowing smoke therefrom to blow into the Plaintiff's property and dwelling house. On the analysis of the evidence adduced and summarised above I did not find these claims supported in any way by the Plaintiff and I therefore dismiss them. Similarly, the Fourth and Fifth Defendants' claim that the Plaintiff threw stones at them,

although believable, has not resulted in any counter claim by them and therefore cannot be considered and in effect has no bearing on the remaining issues to be decided by the Court.

[36] With respect to the Plaintiff's claim against the First Defendant, evidence was led that she has been out of the country for a period of at least seven years. The Plaintiff did not contradict this evidence apart from stating that the First Defendant did occasionally come on holidays to Seychelles. In the circumstances, the claims made against the First Defendant, in particular, that she had trespassed onto the Plaintiff's land and interfered with her rights of ownership, peaceful possession and enjoyment of her property and had also obstructed the Plaintiff access to and prevented her from reaching her home; and also cutting vegetation on the Plaintiff's land cannot stand. The Plaintiff's claims against the First Defendant are therefore also dismissed.

[37] I now turn to the claims against the remaining two Defendants. Article 1382 of the Civil Code of Seychelles provides in relevant part:

*"1. Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.
2. Fault is an error of conduct, which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.
3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest."*

[38] As was stated by Perera J in *Gresle v Sophola & Or* (2002) SLR 139:

'As regards "trespass to land", not every entry upon the property of another, gives right to a delictual claim. Delictual liability is based on damages caused by the act or omission of a person. Hence, mere entry for a lawful purpose is not actionable. So also, is entry with notice or with express or implied authority. Trespass is an invasion of privacy or of proprietary rights over property. However, if the dominant purpose of the entry is to cause harm or damage to the property, even if it appears to have been done in the exercise of a legitimate interest, it would constitute a fault within the meaning of Article 1382 (3) of the Civil Code.'

[39] In the light of these provisions and authority, and the evidence adduced I find that the Second and Third Defendants committed acts of trespass on the Plaintiff's land. They in fact admitted to it but claim that they had always used a pathway through the land until the

Plaintiff had prohibited them from doing so. They have also admitted to erecting the barriers with others to obstruct and prevent the Plaintiff and her family from driving to their home but state that they were permitted to do so by the owner of the land on which the barrier was erected.

[40] I pause here to note that the documentary evidence produced and the testimony of witnesses are to the effect that the Plaintiff reaches her property by an access road through Michael Hoareau's land (Parcel V7258), which access road is not a registered right of way. Similarly, it is the Defendants' evidence that they also used to reach their properties by the same access road over Parcel V7258 and then onto the Plaintiff's property (Parcel V7259) onto their own respective properties. Parcels V7258, V7259 and V7260 are subdivisions of Parcel V4953. Michel Leong, the surveyor, testified to this fact and also confirmed that in the subdivision of the parent Parcel V4953, a right of way had been reserved in the cadastral plans to serve the three subdivided properties. It is common ground that that right of way has however to date not been registered. It is also clear for the cadastral survey plans that the right of way was not made to serve the Defendant's properties although their properties abut it.

[41] The evidence of the CEO of the Planning Authority, Mr. Francois confirms that there was a separate access to the Defendants properties' specifically provided by the government on Parcels V17619 and V9118. The letter dated 23 April 2013 from the Ministry of Land Use informing the Second Defendant that the right of way to her property is through Parcels V171619 and V9118 further confirms this. Having visited the *locus* I am well aware that that that access road may well be difficult during inclement weather. What seems to have happened is that the Defendants aided by Christopher Hoareau acting on behalf of Michael Hoareau used force to not only barge their way through the Plaintiff's land after she repeatedly refused them access but subsequently also prevented her from having access to her own home by erecting a barrier on Michael Hoareau's land. It was in effect a tit-for-tat manoeuvre. It was also a case that, aided by the police and the district administrator, 'might became right'.

- [42] It is not denied that the barrier erected by the Defendants remained in place for the best part of seven months and despite the Plaintiff's appeals to the police and Planning Authority, she was prevented from removing it. The Court cannot countenance these illegal and reprehensible acts by the police, the district administrator and the Planning Authority but these parties were not sued in the present action and the Court will therefore not comment further on their actions. However, the turn of events is even more concerning given the fact that a compulsory acquisition process of part of the Plaintiff's land was subsequently commenced by the government - this despite the fact that the same Planning Authority had informed the Defendants that they had alternative access to their properties specifically provided for them by the government through Parcels V171619 and V9118 and that the same could be realigned if it was causing difficulties (see letter of 23 April 2013, Exhibit 19).
- [43] The photographs are further ample evidence of the Defendant's illegal acts erecting the barrier preventing the Plaintiff from accessing her home. It is not a defence that Mr. Hoareau permitted them to erect the barrier and that the barrier was on Mr. Hoareau's land. If Mr. Hoareau had wanted to prevent the Plaintiff from using the unregistered right of way delineated on the cadastral plan burdening his property he necessarily had to come to Court for such an order and not use or permit others to use force to stop such access by the Plaintiff. It would seem from the evidence adduced that, in fact, a case by Mr. Hoareau on this issue is currently being heard by the court.
- [44] The erection of the barrier obstructing the Plaintiff the only motorable access to her home for seven months was a cruel and detestable act by the Second and Third Defendants amounting to a *faute*, which is reparable in damages.
- [45] I also find that there is ample evidence to support the Plaintiff's claim that she was threatened violently by the Third Defendant. His conviction for the same and the photographs produced confirm the Plaintiff's claim. Similarly, there is ample evidence of the Second and Third Defendants trespassing onto the Plaintiff's land. In fact they do not deny the fact.

- [46] With regard to the burning of rubbish and the smoke being blown onto the Plaintiff's land and home, I do not find sufficient evidence to support the Plaintiff's claim. She is on higher ground than the Defendants and is therefore prone to smoke billowing to her from lower ground. In this regard, she failed to prove that the smoke complained of exceeded the ordinary standards of the neighbourhood (see *Hallock v Green* (1979) SLR 72, *Bouchereau v Francois* (1980) SLR 80, *De Silva v UCPS* (1996) SLR 74, and *Laporte v Berjaya* (2002-2003) SCAR 135).
- [47] With regard to the corporal injuries suffered, I do not find that the Plaintiff has been able to show that the injuries to her knees were as a result of ducking under the barrier into the ditch over the many months she had to do so to reach her home. Both the paucity of medical evidence and the evidence of Dr. Rao to the effect that a number of factors could have led to the osteoarthritis she complained of, fail to confirm that the medical ailments she had were as a result to the barrier erected by the Defendants.
- [48] With respect to the sum of SR650, 000 for moral damages claimed, I can only take into account those damages suffered by the Plaintiff, as she is the only claimant in the suit. I accept that the threats, the harassment, the many acts of trespass by the Second and Third Defendants and the long period of time she was put through the inconvenience and indignity of ducking under a barrier to get to her home and hauling shopping and animal feed over the same caused her great distress and hardship.
- [49] It is trite that under Article 1149 of the Civil Code damages are compensatory and not punitive, and that it is immaterial whether the infringement of the rights of the injured party has been deliberate, negligent, inadvertent or was done under a bona fide mistake (see *Lucas v Clement Delpech* (1981) SLR 8 and *Belize v Nicette* (2001) SLR 264).
- [50] I have not received any submissions with regard to comparable damages awarded in similar cases. I find however, that in *Isidore v Quilindo* (61 of 2007) [2008] SCSC 15 (15 October 2008) Renaud J granted a total of SR15, 000 for trespass; in *Thyroomooldy v Nanon* (60 of 2008) [2009] SCSC 3 (08 November 2009) Egonda –Ntende CJ awarded the sum of SR 15,000 for trespass, loss of enjoyment and use of property. In addition he awarded moral damage for anxiety, distress and inconvenience in the sum of SR 10,000. In *Frichot v Otar*

(CS 93/2016) [2019] SCSC 665 (02 August 2019) Andre J awarded a total sum of SR15,000 for trespass and in *Albert & Anor v Etheve & Ors* (CS 31/2016) [2020] SCSC 139 (19 February 2020) she awarded S 2,500 for trespass SR5,000 for moral damages.

The Court's Orders

[51] With these comparators in mind, I conclude that given the level of sustained harassment and numerous acts of trespass and the cutting of vegetation on the Plaintiff's land, the sum of SR25,000 should be jointly paid to the Plaintiff by the Second and Third Defendants. I also find that the Third Defendant should pay the Plaintiff a further sum of SR10,000 for the threat of violence with a knife against her for which he was convicted. As regards the damages to be paid with regard to the illegal barrier erected by the Second and Third Defendants which prevented the Plaintiff from reaching her home for a period of seven months, I award her the further sum of SR30,000 and the whole with interest and costs.

[52] I also issue a permanent injunction restraining the Second and Third Defendants from harassing the Plaintiff and from further acts of trespass onto and obstruction to the Plaintiff's land and home.

[53] In summary the following orders are issued:

1. The Second and Third Defendants are to jointly pay the Plaintiff the total sum of SR55,000 for trespass onto and obstruction to her property
2. The Third Defendant is to pay to the Plaintiff a further sum of SR10,000 for threatening her with violence
3. The Second and Third Defendants are to pay the Plaintiff interests and costs
4. A permanent injunction is issued against the Second and Third Defendants restraining them from harassing the Plaintiff and from further acts of trespass onto and obstruction to the Plaintiff's land and home

Signed, dated and delivered at Ile du Port on 19 October 2020.



Twomey CJ

Read out in open court.



Judge Mshel Bulh.

19-10-2020