

**Belize v Nicette  
(2001) SLR 264**

Charles LUCAS for the Plaintiff  
Anthony JULIETTE for the Defendant

**Judgment delivered on 5 February 2001 by:**

**PERERA ACJ:** The Plaintiff and the Defendant are owners of adjoining lands at Reef Estate, Anse Aux Pins. The Plaintiff avers that on 3 February 1995, the Defendant entered her land and destroyed 4 chilli plants, 6 pumpkin bushes and 20 cassava plants, all worth R5000. She further claims R5000 for littering her land, R10,000 for trespass, R10,000 for abuse and insults and a further R10,000 as moral damages, a total of R40,000. She also seeks a restraining order on the Defendant preventing her from entering the land.

The Plaintiff testified that on 3 July 1995, she asked her son to gather a pumpkin, and he returned saying that the area had been cleared by someone. Hence, she made a complaint to the police. She claimed that the next day a police officer came to inspect the land. The Defendant and her husband who were at their residence admitted to the police officer that they cleared the place. The Plaintiff however, admitted that she did not see them doing so. Hence, it was on the basis of that admission that the action was filed against the Defendant. She further stated that it was not the first time that such a thing had happened.

The Plaintiff also testified that in 1994, the Defendant caused a coconut tree on her own property to be felled and although it fell on to her (the Plaintiff's) land it was not removed. She also stated that the Defendant had on several occasions thrown rubbish on to her land, and when she complained, she received abuse and insults from her.

The Plaintiff sent a letter dated 28 March 1995 (Ex P2) through her lawyer, to the Defendant, requesting her to abate the nuisance and harassment. She testified that that had no effect. She further stated that although there is another road leading to the house of the Defendant, they continued to use a path on her land.

On being cross-examined the Plaintiff denied that there was an approved 4 metre road reserve over her land for the Defendant to use to get to her property, although both of them and another purchased the properties from the Seychelles Housing Development Corporation. She however stated that the SHDC called a meeting of all the surrounding landowners regarding the use of the road reserve, but it was the Defendant alone who failed to attend. She said that that was the reason why she would not permit her to use that road.

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

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

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

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

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

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

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

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

by Loria. He denied that any pumpkin or chilli plants were uprooted by him; the Defendant, or Loria Finesse.

Basically, the evidence discloses a dispute between the parties regarding the use of a road which serves the lands of the Plaintiff, the Defendant and the Defendant's mother Loria Finesse. Sergeant Kilindo testified regarding several complaints received by the police in that respect. The evidence is unclear as to the identity of the tortfeasor. The Plaintiff herself did not see the Defendant causing the damage. She however stated that the Defendant was in the house that day. The Defendant denies that she was responsible. Her concubine Antoine Jules was admittedly not at home throughout 3 February 1995. The Defendant's mother, Loria Finesse admitted responsibility for cutting one cassava plant, but is unaware as to who uprooted the pumpkin and chilli plants. She suggested that the Plaintiff herself may have done it to implicate them, but she admitted that the cassava plant was cut on 3 February 1995, the same day the other vegetation was allegedly damaged. Loria Finesse did not impress me as a truthful witness. She showed her bitterness and resentment towards the Plaintiff for objecting to permit her and her daughter, the Defendant, to use the land. She was obviously taking part of the blame, to prevent the Defendant from being held liable. The Defendant did not testify that she was working at the CCCL, and that after working hours, was doing ironing in a house at Cascade, as was testified by Antoine Jules. She only stated that she is presently unemployed, and that she was not at home on 3 February 1995, but on returning home, saw that someone had cleared the road. She further stated thus:

Q: Who had cleaned the place, do you know who cleaned the place?

A: When I got home I saw my mother, I asked her who had cleaned the place, and she said it was her, together with my youngest brother.

But Loria Finesse was adamant that she cut only one cassava tree that provided shade.

In view of this contradictory evidence adduced in the defence case, the Court has necessarily to rely on the independent evidence of Sergeant Kilindo. I accept his evidence that Antoine Jules apologised on behalf of the Defendant his concubine for cleaning the area and damaging the vegetation. On a consideration of the totality of the evidence, I find on a balance of probabilities that it was the Defendant who caused the damage.

### **Quantum of Damages**

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

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

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

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

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

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

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

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

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

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

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

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

**Record: Civil Side No 83 of 1995**