

MONTSERRAT

IN THE COURT OF APPEAL

HCVAP 2009/004

BETWEEN:

ALFRED EDWARDS

Appellant

and

[1] DIRECTOR OF AGRICULTURE – MINISTRY OF
AGRICULTURE HOUSING AND THE ENVIRONMENT
[2] THE HONOURABLE ATTORNEY GENERAL

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal [Ag.]

Appearances by written submissions:

Mr. David S. Brandt for the appellant

Mrs. Sheree Jemmotte-Rodney for the respondents

2010: February 17.

JUDGMENT

[1] BAPTISTE, J.A. [AG.]: This is an appeal from an order of a master striking out a claim on the ground that it is statute barred having been brought outside the 6 months period prescribed by Section 2 of the Public Authorities Protection Act.

[2] The claim was for damages for trespass and possession of land and was filed on 19th September 2006. On 24th July 2008 the claim for possession was discontinued. The master held that the discontinuance of the claim for possession clearly put an end to the issue of trespass and the sole issue outstanding was the defendant's liability for the damage caused to the property and fruit trees and plants of the claimant. The damage was caused on 7th March 2006. This was the

day on which the cause of action arose and the date from which time commenced to run for the purpose of the Public Authorities Protection Act and the failure to file the claim within the 6 months stipulated was fatal.

[3] The appellant advanced three grounds of appeal against the decision of the master. The first ground was that the master was wrong in law to hold that the discontinuance of the claim for possession of land put an end to the issue of trespass and that the sole issue outstanding was the liability of the defendants for damage to property, fruit trees and plants. The second ground was that the master erred in law when she held that the claim was statute barred despite the fact that at the time of the issuance of the claim the statement of claim pleaded a continuing trespass. The third ground was that the master erred in law in failing to distinguish a claim for continuing trespass and the remedy of possession.

[4] In my judgment there is no merit in this appeal. Possession is an integral part of sustaining an action for trespass whether continuing or not. When the claim for possession was discontinued, possession was no longer a live issue before the court. When the master determined the matter the claim before her was one for damages for trespass in relation to an alleged trespass said to have occurred on 7th March 2006 more than 6 months before the claim was filed. There was no error of law on the part of the master. The master correctly held that the claim was statute barred and rightly struck it out. It is ordered that the appeal is dismissed.

Davidson Kelvin Baptiste
Justice of Appeal [Ag.]