

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA**
Civil Division

Claim No. **DOMHCV2025/0168**

IN THE MATTER OF sections 6, 16 and 103 of the Constitution of the Commonwealth of Dominica

AND IN THE MATTER OF an application for interim relief pursuant to Part 17 and Part 56 of the Civil Procedure Rules (Revised Edition 2023)

AND IN THE MATTER OF the Land Acquisition Act, Physical Planning Act, Environmental Health Services Act, Mines and Minerals Act, and related environmental and constitutional law

AND IN THE MATTER OF the St. Mary River and Environmental Protection Rights under the Escazu Agreement

AND IN THE MATTER OF unlawful encroachment on private land, breach of statutory procedure under the Land Acquisition Act and Physical Planning Act, and environmental degradation affecting the St. Mary River

BETWEEN:

ERIC DAVID SHARGEL

Claimant

and

THE ATTORNEY GENERAL

1st Respondent

THE PHYSICAL PLANNING DIVISION

2nd Respondent

CHINA RAILWAY NO. 5 ENGINEERING GROUP CARIBBEAN LTD.

3rd Respondent

MONTREAL MANAGEMENT CONSULTANTS DEVELOPMENT LTD.

4th Respondent

DOMINICA WATER AND SEWAGE COMPANY LTD. (DOWASCO)

5th Respondent

MINISTER OF HOUSING AND URBAN DEVELOPMENT

6th Respondent

APPEARANCES:

Eric David Shargel, Claimant pro se

Mrs Tameka Burton, Counsel for the 1st, 2nd and 6th Defendants

Ms Danielle Wilson, Counsel for the 3rd and 4th Defendants

Mr Jeffrey Douglas-Murdock, Counsel for the 5th Defendant

2025: October 15th Hearing
November 5th December 12th Submissions
2026: February 11th Decision

RULING

Application for Interim Injunction

Introduction:

[1] **JAWARA-ALAMI, J.:** By a Notice of Application, the claimant herein applies to this court for orders as follows;

- 1) an interim injunction restraining all Defendants, their servants, agents, and contractors from continuing any works on or affecting his land and the St. Mary River until trial or further order of this Honourable Court;
- 2) An interim injunction restraining the Respondents, whether by themselves, their servants, agents, employees, contractors or otherwise, from carrying out any further; Quarrying operations, excavation, construction, pipeline installation, or any heavy machinery work on or adjacent to the Applicant's land at Hatton Garden Estate; Use of explosives, blasting, or other disruptive activities; any further destruction or interference with the St. Mary River and surrounding environment; entry upon or occupation of any portion of the Applicant's land; Use or maintenance of water supply pipelines crossing or running on the Applicant's land without lawful agreement or compensation;

[2] The Applicant asserts that he is the lawful proprietor of a registered land at Hatton Garden Estate, Dominica and the Respondents, without lawful authority or due process under the Land Acquisition Act, have encroached upon, excavated, damaged, and occupied portions of his land and interfered with the St. Mary River, his sole water source. He also asserts that the 5th Respondent installed and maintained water supply pipelines across and along his land without his consent, authorization, or compensation for over fifteen years, denying him potable water access for at least eighteen months despite repeated formal requests.

[3] The Applicant further asserts that his constitutional rights have been breached by the Respondents' failure to comply with their legal obligations under:

- a. Sections 6, 16, and 103 of the Constitution of Dominica and the Land Acquisition Act, ¹in that the Respondents failed to issue lawful notices, conduct hearings, or pay compensation in respect of the taking and use of the Applicant's land;
- b. The Physical Planning Act, 2002, in particular sections 17, 23, and 84, by permitting and/or authorising development without proper development control procedures and without disclosure of any Environmental Impact Assessment (EIA);
- c. The Mines and Minerals Act, 1996, in particular sections 56 and 61, by failing to maintain and make available a public register of mineral rights;
- d. The Environmental Health Services Act, by failing to prevent or control nuisance and pollution and by failing to monitor air and water quality as required by law.

[4] As a result of the Respondents' unlawful acts and omissions, the applicant contends that the St. Mary River has been polluted and degraded, the surrounding land has been destabilised, and the Applicant's health and wellbeing have been severely affected. These injuries constitute irreparable harm not adequately compensable by damages.

[5] Further, the applicant claims that there is no functioning environmental management or monitoring system in place, contrary to statutory obligations and to international agreements binding on the State, including the Escazú Agreement and applicable United Nations environmental and human rights convention

The Issues

[6] The sole issue arising for determination is whether this Honourable Court may grant an application for an interlocutory injunction in circumstances where no substantive suit has yet been filed.

¹ Cap. 53:02 Revised laws of the Dominica

The law

- [7] The High Court's discretionary power to grant an interlocutory injunction is derived from **Section 24 of the Eastern Caribbean Supreme Court (Dominica) Act**².

The leading authority on the test for granting an interim injunction is *American Cyanamid Co. v Ethicon Ltd*³ which remains the locus classicus. Accordingly in an application for an interim injunction, the court must be satisfied that:

1. There is a serious question to be tried;
2. Damages would not be an adequate remedy; and
3. The balance of convenience favors granting the injunction.
4. The conduct of the parties and it must be right to put matters in status quo.

- [8] It is well established that all 4 conditions must be satisfied. The fulfilment of only one or two of these criteria is insufficient to justify the exercise of the Court's discretion to grant injunctive relief

Discussions

- [9] Having carefully perused the affidavits, written submissions, and the various exhibits filed by the parties, the Court will now consider, in turn, the criteria set out in **American Cyanamid Co. v Ethicon Ltd** as applied to the facts of this case and the parties' respective submissions;

Legal Right and Substantial issue to be tried

- [10] At this interlocutory stage, the Applicants are not required to prove their claim conclusively. They are required only to demonstrate that there is a serious issue to be tried and that they have a good prima facie. On this issue, the case of **American Cyanamid co v Ethicon Ltd** states:

"It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are questions to be dealt with at trial...So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought⁴".

² , Chap. 4:02 of the 1990 Revised Laws of Dominica.

³ [1975] A.C. 396 (H.L),

⁴ [1975] 1 ALL ER 504 at page 510 per Lord Diplock

- [11] Accordingly, at this stage of the proceedings, the Court is not required to determine finally the legal rights of the parties or the alleged violations thereof. It is sufficient that the applicant establishes a credible and arguable claim in support of the rights asserted as between the parties the legal right, the violation of which is the subject-matter of the claim. The mere existence of doubt as to the existence of such a right is not sufficient to prevent the Court from granting an interlocutory injunction.
- [12] Applying these principles to the present case, the Applicant has demonstrated that he is the registered proprietor of land situate at Hatton Garden Estate, Dominica. He alleges that the Respondents, without lawful authority or due process under the Land Acquisition Act, have encroached upon, excavated, damaged and occupied portions of his land and have interfered with the St Mary River, which he asserts is his sole source of water.
- [13] In response, the First, Second and Sixth Respondents avers in his affidavit that he reviewed the Applicant's Certificate of Title, including the attached survey plan. He states that he is familiar with the road which the Applicant alleges forms part of his property and asserts that this road is an estate road or track approximately sixteen feet wide, which has been used by members of the public, including landowners to the west of the Applicant's land, to access their properties and the Crapaud Hall area for more than thirty years.
- [14] The Applicant also contends that the 5th Respondent has installed and maintained water supply pipelines across and along his land for more than fifteen years without his consent, authorisation or compensation, and that despite repeated formal requests, he has been denied access to potable water for at least eighteen months. He asserts that this conduct constitutes a failure by the Fifth Respondent to safeguard public drinking water sources and infringes his proprietary and constitutional rights.

- [15] These competing factual assertions raise substantial issues as to: the true boundaries of the Applicant's registered land; whether the Respondents have unlawfully entered upon or interfered with that land; whether the use of the road and the installation of water infrastructure were lawful or constitute trespass or compulsory acquisition without due process; and whether the Applicant's environmental and constitutional rights have been infringed.
- [16] I am satisfied that these matters are neither frivolous nor vexatious and cannot be determined without a full hearing, including examination of the survey evidence and the legality of the Respondents' conduct. The Applicant has therefore established that there is a serious issue to be tried.

The balance of convenience

- [17] In considering the balance of convenience, the court is tasked to take into account the prejudice which the Applicant may suffer if no injunction is granted or the defendant may suffer if it is. In doing so, the positions of both parties must be weighed carefully by looking at the facts and the evidence presented.
- [18] The evidence in this case instant is that the applicant claims that the road being used forms part of his land which has been excavated. The Applicant contends that the Respondents continued activities on the disputed land have resulted in excavation, damage and interference with the St Mary River, which he identifies as his sole source of water. He claims that the 5th Respondent has installed and maintained water supply pipelines across and along his land without consent, authorization, or compensation for over fifteen years.
- [19] The 1st, 2nd and 6th Respondents assert that the road in question is an estate road which has been used by members of the public for more than thirty years, and that the works complained of were carried out in furtherance of public access and water supply. Ali Cuffy Director of Surveys, avers in his affidavit that, decades before Mr. Shargel had purchased the property from the Estate of Andrell Laville, the public track existed and was utilized by various land owners and

farmers enjoying a road width of 16 feet. He states that during the original survey in January 2002, the surveyor at the time calculated his area of 15.00 acres using the traverse points in the center of the road despite the fact that there was already an existing road. He avers that this is no fault of the Government since the sale and survey of the land was carried out in a private capacity.

[20] The 3rd and 4th Defendants state that, to improve access to the Quarry, road widening works were undertaken on the road subject to this suit, in accordance with measurements provided by the Department of Lands and Surveys, in or about July 2023. They further submit that the Quarry and Crusher Plant form an integral part of the construction of the International Airport, a major public infrastructure project, which requires approximately 400,000 cubic meters of aggregate for completion.

[21] In their affidavits, the 3rd and 4th Defendants aver that the location of the Quarry is essential to ensure efficiency in time, fuel, and cost, and to minimise wear and tear on vehicles transporting rock armour and aggregate between the Quarry, the Crusher Plant, and the Airport site. They assert that any restraint on quarrying operations would therefore have a direct impact on the supply of materials essential to the Airport project.

[22] The 5th Respondent contends that The Applicant himself admits in paragraph 2 of the grounds of his application that the pipeline has been installed “for over fifteen years”. They argue that the Applicant is very late in bringing this application, that the pipeline does not interfere with any activities of the Applicant, nor does it create a nuisance of any sort with regard to the Applicant enjoying his property peacefully and not being inconvenienced.

[23] in light of the foregoing, it would appear that the issue of public interest is apparent in this case and must be weighed against that of an individual interest. **In Edision James et al v Physical**

planning et al ⁵. The Defendants in this case cited economic reasons as a risk factor, arguing that granting an injunction would significantly affect the construction of the airport and impact the material and financial interests of the State. This Honourable Court held that public interest is a paramount consideration when deciding whether to grant an interim injunction and referred to **The Associated British Ports v Transport and General Workers' Union**⁶ which established that, in assessing the balance of convenience, public interest is a relevant factor. Furthermore, in **Kennaway v Thompson**⁷, public interest considerations were held to justify the refusal of a temporary injunction, as public interest should take precedence over private rights.

[24] in addition, the court notes that a plethora of authorities have cautioned the Courts to be slow in granting injunction against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals. Courts are generally reluctant to restrain the public body from doing what the law allows it to do or to execute its core mandate or function.

[25] Therefore, the grant of an interim injunction restraining activities at the Quarry would not merely affect the Respondents but may impede a project of substantial national importance and public benefit and according to the Respondents it may increase costs, delay construction, and disrupt logistics which have been structured around the present location of the Quarry and Crusher Plant. When weighed against this, the Applicant's alleged harm relates to disputed property boundaries and alleged environmental interference, matters which must be proven at trial. While those allegations are serious, they must be balanced against the wider public interest in the continuation of a critical infrastructure project. An order restraining the Respondents at this stage would therefore affect not only the Respondents but also members of the public who rely on that access road, and the DOWASCO water pipe and infrastructure. In fact, it is averred that the villages are provided with water from the pipe installation that the Applicant complains of. The effect of an injunction would interrupt the villages fifteen years of use.

[26] Accordingly, the Respondents have demonstrated that the continuation of the impugned works is necessary pending trial, that the public interest would be materially prejudiced by a temporary

⁵ CLAIM No. DOMHCV2024/0040

⁶ [1989] 3 All ER 822, [1989] ICR 557, HL

⁷ [1981] QB 88 at 93

restraint until the legality of their conduct is determined. In these circumstances, the balance of convenience does not favour the grant of an interim injunction. The prejudice to the Respondents and to the public arising from a halt in quarrying operations and interruption of the water source of the villages, would outweigh the prejudice to the Applicant pending trial, particularly in light of the absence of any undertaking in damages and the public nature of the works complained of

[27] The balance of convenience is also affected by the Applicant's failure to give an undertaking in damages. An undertaking serves to protect a respondent against loss occasioned by an injunction which is later shown to have been wrongly granted. In the present case, no such undertaking has been offered and no evidence has been placed before the court of the Applicant's ability to compensate the Respondents should they suffer loss as a result of the grant of interim relief.

[28] In these circumstances, the absence of an undertaking in damages shifts the balance of convenience away from the Applicant. It would not be just or convenient to restrain the Respondents' activities on an interim basis while leaving them without any protection should it later be determined that the injunction ought not to have been granted.

Whether damages would be an adequate remedy

[29] It is trite law that where the balance of convenience lies in favour of refusing an injunction, the question of the adequacy of damages does not ordinarily arise and need not be considered. Nevertheless, for the sake of completeness, and bearing in mind that the Applicant is a lay person, I shall address the issue of whether damages would be an adequate remedy.

[30] The governing principles is that if damages would be adequate and the Respondents can pay it, then the application should not be granted no matter how strong the applicant's case is. The American Cyanamide Co. case, has clearly stipulated that;

"If damages in the measure recoverable at common law would be an adequate remedy, and the defendant would be in the financial position to pay then an interlocutory injunction should not be granted, however, strong the Applicant's claim appears to be. Damages, will not be adequate if the Respondent is unlikely

to be able to pay; the wrong is irreparable; the damages are not pecuniary; and the damages would be difficult to assess⁸".

- [33] In short, the question that behoves on me at this point is whether the Applicant will be adequately compensated by damages. The Applicant alleges that he has been deprived of access to potable water for a prolonged period, if those allegations are well-founded, the resulting harm to the Applicant is ongoing and potentially irreversible. Damage to land and to a natural watercourse cannot readily be compensated by an award of damages.
- [34] Nevertheless, the applicant has failed to convince the court that the river is being polluted by the actions of the respondents and has placed no evidence before the court to prove same. It is trite that he who asserts must prove.
- [35] The Applicant's application for an injunction is grounded on the allegation that agents and servants of the State "have unlawfully entered, excavated and damaged" his land. These allegations, in substance, amount to a claim in trespass and it is well settled that, in such circumstances, damages are generally an adequate remedy.
- [36] In the absence of an undertaking in damages from the Applicant, the Court is unable to assess his ability to compensate the Respondents should it ultimately be determined that the injunction was wrongly granted. In any event, on a balance of probabilities, it is unlikely that the Applicant would be in a position to compensate the Respondents for the losses occasioned by halting a project which would adversely affect the construction of the Airport and, by extension, the country at large.
- [37] That said, the Respondents, acting on behalf of the State, would be in a better position to compensate the Applicant should it become necessary, given the State's greater economic capacity and its ability to remedy any damage caused to the Applicant's property. Accordingly, the adequacy of damages favours the Respondents, who are financially capable of

⁸ [1975] AC 396, [1975] 1 All ER 504, HL

compensating the Applicant, whereas the Applicant would be unable adequately to compensate the Respondents for the harm resulting from the suspension of the Airport project.

The conduct of the parties and it must be right to put matters in status quo.

- [38] Finally, the Court must have regard to the conduct of the parties and to the principle that it is generally just and convenient to preserve the status quo pending the determination of the substantive issues. In **National Commercial Bank Jamaica Ltd vs. Olint Corporation Ltd**⁹ the Privy Council held that:

"In deciding at the interlocutory state whether granting or withholding an injunction is more likely to produce a just result the basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. Maintaining the status quo therefore would produce the effect envisaged in the foregoing authority".

- [39] The Court's reasoning under the foregoing limb applies to this limb of the test. In the circumstances of this case, the balance of convenience lies in favor of preserving the status quo. In reaching this conclusion, the Court has taken into account the conduct of the parties and is satisfied that it is just and appropriate that matters be maintained in their present state pending the determination of the substantive issues. It is noteworthy that the Applicant has not filed a substantive claim Rule 17.3 of the Civil Procedure Rules provide that; "

'An order for an interim remedy may be made at any time, including –(b) before a claim has been made'

- [40] The foregoing rule assumes that an interim order is granted, in which case the court will order within a short time for the filing of the substantive suit. In this case instant, no order for an interim remedy was granted. It remains therefore that the court cannot make the order envisaged under the rules.

⁹ [2009] 1 WLR, [2009] UKPC 16

[41] In the circumstances therefore, having found that the Applicant has not met all the conditions prescribed for the granting of an interlocutory injunction, I hereby order as follows;

1. The application for interim injunctive relief is not granted;
2. The Applicant's claim is dismissed;
3. Cost is awarded to the Respondents in the sum of \$3000; and
4. The Applicant shall have conduct of this order.

Justice Zainab Jawara-Alami
High Court Judge

BY THE COURT

REGISTRAR