

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0341
(FORMERLY CLAIM NO. ANUHCV2013/0417)

BETWEEN:

URIEL CALEB

Claimant

and

NATIONAL MORTGAGE & TRUST COMPANY LTD

Defendant

CONSOLIDATED WITH:

(FORMERLY CLAIM NO. ANUHCV2013/0719)

BETWEEN:

URIEL CALEB

Claimant

and

ANTIGUA PUBLIC UTILITIES AUTHORITY

Defendant

Appearances:

Ms. Ruth-Ann Richards-Simpson, Counsel for the Claimant

Mrs. Carla Brookes-Harris, Deputy Solicitor General, for National Mortgage &
Trust Company Ltd

Mr. Lenworth Johnson, Counsel for Antigua Public Utilities Authority

2025: January 17th;
April 16th.

DECISION

- [1] **MICHEL, M.:** There are a total of six applications before the Court for determination. By an amended notice of application filed on 30th September, 2024 the Claimant, Mr. Uriel Caleb ("**Mr. Caleb**") applied for: (i) an order for a variation of an order for interim payment, alternatively, a further interim payment ("**the Interim Payment Application**"); (ii) permission to amend his statement of

case (“**the Amendment Application**”); (iii) permission to call Reuben Everon Zachariah as an expert witness; (iv) permission to call Dr. Linroy Christian as an expert witness; and (v) permission to call Terrence E.D. George as an expert witness (together, “**Mr. Caleb’s Expert Applications**”);

- [2] The sixth application for determination is an application by the Defendant, the Antigua Public Utilities Authority (“**APUA**”) filed on 22nd October, 2024. APUA seeks permission to call Mr. Wayne Martin as an expert witness, alternatively, permission to call Mr. William Keith Thomas as an expert witness (“**APUA’s Expert Application**”).
- [3] It is necessary to set out in some detail the background to these proceedings and the procedural history of these proceedings to place these applications into their proper context.

Background

- [4] Mr. Caleb is and was at all material times the registered proprietor of a parcel of land described on the Land Register as Registration Section: Barnes Hill and Coolidge; Block No. 41 2094A; Parcel 27 (“**Parcel 27**”). In or about the early to mid-1990s, the Defendant, the National Mortgage & Trust Co. Ltd (“**NMTC**”) entered upon Parcel 27 without Mr. Caleb’s permission or consent and installed four manholes and buried sewerage pipes.
- [5] The defendant, APUA also entered upon Parcel 27 in the 1990s without Mr. Caleb’s permission or consent and erected a high-tension tower for its use.
- [6] Mr. Caleb subsequently commenced separate proceedings against NMTC and APUA. Mr. Caleb first commenced Claim No. ANUHCV2013/0417 by fixed date claim filed on 26th June, 2013 seeking *inter alia* mense profits and damages for trespass and nuisance. Thereafter he initiated claim no. ANUHCV2013/0719 by fixed date claim filed on 6th November, 2013 against APUA and the Government of Antigua and Barbuda (“**the GOAB**”) seeking an order for possession of Parcel 27 and mense profits and damages for trespass and nuisance.
- [7] NMTC and APUA and the GOAB filed defences to Claim No. ANUHCV2013/0417 and Claim No. ANUHCV2013/0719, respectively. The two claims were subsequently consolidated by order dated 22nd October, 2015. By consent order of even date, judgment was entered for Mr. Caleb against NMTC and APUA with damages to be assessed. The consent order further ordered that the claim against the GOAB proceed to trial and the assessment of damages in respect of NMTC and APUA be stayed pending the trial of the claim against the Crown.

- [8] By judgment delivered on 8th May, 2017 Mr. Caleb's claim against the GOAB was struck out. Mr. Caleb appealed the judgment of the trial judge. In the meantime, Mr. Caleb applied for an order for an interim payment from NMTC and APUA. The application in respect of APUA was withdrawn, however NMTC was ordered to make an interim payment to Mr. Caleb in the sum of \$200,000.00 and an interim cost payment in the sum of \$25,000.00.
- [9] Mr. Caleb's appeal was heard on 14th March, 2019. The Court of Appeal allowed the appeal and ordered that the case be remitted to the judge below for the determination of the sole issue that whether on the pleadings, evidence, and submissions that were before her, the Government of Antigua and Barbuda had in fact permitted APUA to trespass on the appellant's property and did so to the effect of such finding on the issue of liability.
- [10] It is unclear from the Court's record as to what precisely occurred after the order of the Court of Appeal was made in 2019; however, when the claim against the GOAB came on for hearing before a judge on 31st January, 2023 then Counsel for Mr. Caleb withdrew Mr. Caleb's claim against the Crown. The Judge then referred the matter to the Master for assessment of damages in relation to Mr. Caleb's claims against NMTC and APUA.
- [11] After multiple case management conferences, on 6th July, 2023 directions were given for an assessment of damages in respect of the consolidated claims against NMTC and APUA. The assessment of damages was fixed for 16th November, 2023. The matter came on for assessment of damages on 16th November, 2023 however, none of the Parties had complied with the directions for assessment of damages. On that occasion, Counsel for Mr. Caleb indicated that he was unable to take instructions from Mr. Caleb as Mr. Caleb fell seriously ill and a long adjournment was requested. The matter came on for report on a further two occasions. On both occasions similar indications were given to the Court by then Counsel for Mr. Caleb that Mr. Caleb was seriously ill and Counsel was unable to take further instructions.
- [12] When the matter came on for further report on 10th July, 2024 new Counsel appeared for Mr. Caleb and the matter was adjourned for further case management and the Parties were granted permission to file any interlocutory applications including any application for expert evidence. It was following this order that Mr. Caleb and APUA filed their present applications on 30th September, 2024 and 22nd October, 2024 respectively.
- [13] Having placed the proceedings into context, I will first consider Mr. Caleb's Amendment Application.

The Amendment Application

[14] Rule 20.1 of the **Civil Procedure Rules (Revised Edition) 2023** (“CPR 2023”) makes provision for a party to apply to the court for permission to amend its statement of case. CPR 20.1(3) provides that when considering an application to amend a statement of case, the factors to which the Court must have regard shall include:

- “(a) how promptly the applicant has applied to the court after becoming aware that the change was one which he or she wished to make;
- (b) the prejudice to the applicant if the application were refused;
- (c) the prejudice to the other parties if the change were permitted;
- (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
- (e) whether the trial date or any likely trial date can still be met if the application is granted; and
- (f) the administration of justice.”

[15] In **Marinor Enterprises Limited et al v First Caribbean International Bank (Barbados) Ltd. formerly known as Barclays Bank Plc**¹ a case dealing with a late application to amend, Baptiste JA stated the following:-

“The grant or refusal of an application to amend calls for the exercise of the court’s discretion. In exercising that discretion, the overriding objective – with its emphasis on enabling the court to deal with cases justly – is of the utmost importance. Just disposal of a case is not, however, the preserve of one party. The court has to perform a balancing act as it seeks to strike a fair balance. The factors relevant to doing so depend on the facts of the case and as such cannot be exhaustively listed. However, they are likely to include the history as regards the amendment and an explanation as to why it is being made late; the prejudice which will be caused to the applicant if the amendment is refused; the prejudice which will be caused to the opposing party if the amendment is allowed; and whether the text of the amendment is satisfactory in terms of clarity and particularity.⁶ (See *Brown and others v Innovatorone Plc* [2011] EWHC 3221 (Comm) at para. 14 (Hamblen J)). There is a heavy burden on a party applying for a very late application to amend. An explanation for the lateness is called for and the court must consider the consequences for the opposing party. Where an amendment imperils a trial date which has been fixed, this is a significant factor to put into the scale. The risk to a

¹ DOMHCVAP2013/0003 (delivered 4th April 2016, unreported) at para. 7.

trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission.”

- [16] What this case demonstrates is that the Court must carry out a balancing exercise when considering an application to amend. The court must balance all the factors set out in CPR 20.1 keeping in mind the overriding objective of dealing with cases justly. How those factors are balanced will depend on the facts of a case. The pronouncements of the Court in **Marinor** as well as the case of **George Allert et al v Joshua Matheson et al**² and more forcefully in **The Attorney General of Saint Lucia v Darrel Montrope**³ also make it clear that the Court should refuse to grant leave to amend if the amendments are fanciful or will serve no useful purpose.
- [17] The case of **Marinor** also makes it clear that the later a party seeks to amend its statement of case, the more important it becomes for a party to provide a good explanation for the lateness of the application.
- [18] I will now consider Mr. Caleb’s application to amend his statement of case, having regard to the factors set out in CPR 20.1(3).

How promptly the Applicant has Applied to the Court after Becoming Aware that the Change was One which he Wished to Make

- [19] Mr. Caleb’s application to amend his statement of case was made 11 years after the filing of his two claims. The claims, now consolidated, are at the stage of assessment of damages.
- [20] Mr. Caleb’s evidence is that he was dissatisfied with the state of his pleadings filed by his first lawyer and that he had communicated this dissatisfaction to his various counsel over the years and even to the Court in the course of proceedings against the GOAB in 2017. He has stated that he has known he wanted to make changes to his statement of case, but as to the precise changes to be made, he needed Counsel’s guidance and input.
- [21] Mr. Caleb stated that since he retained new counsel in May 2024, who formally came on record in July 2024, and was advised by his new Counsel that it was necessary for him to amend his pleadings so that he can claim the full extent of the damages and losses he has sustained over the years.

² GDAHCVAP2014/0007 (delivered 24th November 2014, unreported).

³ SLUHCVP2019/0021 (delivered 9th July 2020, unreported) at para. 65.

- [22] Mr. Caleb does not state precisely when he received the advice, however this application was filed four months after Mr. Caleb engaged new counsel and two months after she formally came on record. Mr. Caleb explained the challenges that he and his present Counsel were facing retrieving his complete file and putting his entire file together for review, which further delayed making his application to amend.
- [23] Given the above circumstances, Mr. Caleb stated that it is open to the Court to find that he acted promptly to make this application to amend his statement of case after receiving legal advice and after he found that there were amendments that he needed to make.
- [24] APUA and NMTC contend however that Mr. Caleb's application to amend has been made much too late. They note that judgment was entered against them in October 2015 and that case management directions were given for the assessment of damages on 6th July, 2023 and that Mr. Caleb failed to comply with those directions. They contend that there has been an inordinate delay in making the application and that Mr. Caleb has not provided any cogent reason for making the application and reason for the delay. APUA further states that Mr. Caleb is the reason for the matter taking so long due to his illness and that he has changed lawyers nine times over the course of the proceedings.

The Prejudice to the Applicant if the Application were Refused

- [25] Mr. Caleb contends that he would be prejudiced if the amendments to his statement of case were not permitted particularly given that the claim was filed in 2013 and that it needs to be updated to reflect his losses or at least so that he can plead all his losses at the assessment.

The Prejudice to the Other Parties if the Change were Permitted

- [26] NMTC's evidence is that it would be prejudiced if Mr. Caleb's application to amendment were granted. NMTC filed the affidavit of Desai Gomes, former Administrative Manager of the NMTC in opposition to Mr. Caleb's application. Ms. Gomes stated that NMTC is prejudiced by the delay in making the application as the amendments are introducing new claims and facts which Mr. Caleb ought to have been aware of since the filing of the claim or at least when the matter came on for hearing on 6th July, 2023.
- [27] APUA did not directly address the issue of prejudice to it in the affidavit of Lyndon Francis, Transmission and Distribution Engineer of APUA, in opposition to Mr. Caleb's application to amend and mostly sought to give evidence to refute

some of the allegations made by Mr. Caleb in relation to the proposed amendments. Mr. Francis did, however, state in his affidavit that there is no prejudice to Mr. Caleb if his application to amend is refused as the claim is already on the path to assessment of damages. APUA's evidence is that any proposed additional quantum of damages can be taken care of in Mr. Caleb's argument on assessment and that Mr. Caleb concedes that his proposed amendments only update and amplify his losses during the assessment phase.

- [28] In its grounds of its notice of opposition to Mr. Caleb's application, APUA more specifically addressed the issue of prejudice to it. APUA contended that the changes would result in increased and unnecessary legal costs as APUA may be required to amend its defence thereby starting the whole case over after 11 years. This, APUA argues, makes no sense and is not cost effective.

Whether any Prejudice to any Other Party can be Compensated by the Payment of Costs and or Interest

- [29] Mr. Caleb stated that any potential prejudice to NMTC and APUA could be mitigated by a modest cost order should the court deem that costs are necessary. Mr. Caleb's position therefore is that the prejudice to NMTC and APUA is limited to cost and a complaint about delay and that these issues can be remedied in costs particularly given that the NMTC and APUA have admitted liability.
- [30] As already stated, APUA's position is that permitting an amendment would be akin to starting the whole case over and that this is not cost effective.

Whether the Trial Date or Any likely Trial Date can still be met if the Application is Granted

- [31] As it relates to the trial date, at a case management conference on 6th July, 2023 directions were given for an assessment of damages and the matter had been fixed for assessment on 16th November, 2023. None of the Parties complied with the directions for assessment of damages. When the matter came on for assessment on 16th November, 2023 the assessment of damages was vacated and the matter adjourned for report on account of the illness of Mr. Caleb. No new date for the assessment has since been set. Thus, although a date for assessment had been set, that assessment date was vacated on account of Mr. Caleb's illness and was not predicated by the application to amend. A new date for assessment, however, has not been fixed because of these intervening applications.

The Administration of Justice

- [32] Mr. Caleb's evidence is that the application ought to be allowed to further the overriding objective by facilitating the disposal of this matter justly, by saving expense, ensuring that the matter is deal with expeditiously and allotting to it an appropriate share of the Court's resources, whilst taking into account the need to allot resources to other cases. He stated that the interests of justice support the granting of this application.
- [33] APUA on the other hand stated that the interests of the administration of justice does not favour allowing amendments at this time. APUA stated that amending the statement of claim at this time does not save expense, does not ensure the matter is dealt with expeditiously and does not further the overriding objective of dealing with cases justly.
- [34] NMTC stated that the amendments are not necessary or relevant as Mr. Caleb is still required to prove the damages he has suffered in respect of the claim filed herein.

Discussion

- [35] Mr. Caleb is seeking to amend his statement of case for an assessment of damages after the conclusion of the issue of liability of NMTC and APUA by consent. The consent order on the issue of liability against NMTC and APUA was made on 22nd October, 2015 but provided that the assessment of damages in respect of NMTC and APUA be stayed pending the trial of the claim against the Crown. A judge of the High Court determined the issue against the GOAB in 2017, which was appealed and the Court of Appeal remitted the matter to the High Court in 2019. The proceedings against the GOAB were finally disposed of on 31st January, 2023 when Counsel for Mr. Caleb withdrew Mr. Caleb's claim against the Crown. It was then that the matter was referred to the Master's Court for the assessment of damages in relation to the present claims against NMTC and APUA where liability was admitted.
- [36] Mr. Caleb's application to amend was therefore made approximately one year and eight months after the matter was referred to the master for assessment of damages. This in my view is the more critical timeline in this claim because the proceedings against NMTC and APUA had effectively been stayed between October 2015 and January 2023 pending the determination of the claim against the GOAB.
- [37] I agree with NMTC and APUA that it would have been most prudent for Mr. Caleb to have made an application to amend his statement of case after the order was made referring the matter to the master for assessment of damages

and before any directions for the assessment of damages were given. This was not done. The application was made more than a year after directions for assessment of damages were first given by the Court.

[38] However, it is important to consider the reasons put forward for the timing of his application. Mr. Caleb has given a detailed history of this claim, he has been forthright about his dissatisfaction with the state of his pleadings. Although directions for assessment of damages were given, Mr. Caleb fell ill (an assertion which has not been challenged) and the assessment did not take place and none of the Parties took any steps towards complying with the orders for assessment. The assessment date was therefore vacated.

[39] Mr. Caleb subsequently obtained new counsel and his evidence is that after a thorough review of his files his new counsel advised of the need to update his claim to particularise his losses. In my view, the evidence shows that Mr. Caleb only became aware of the changes he wanted to make sometime after he retained Counsel in May 2024.

[40] Thus, looking at the matter as a whole, it could be said that Mr. Caleb is seeking to make a very late amendment, however, the application to amend concerns the assessment which only became a live issue again in January 2023 before which the assessment of damages were stayed. Putting the matter into its proper context, I am of the view that Mr. Caleb has provided a sufficient explanation for why his application to amend was made at the time that it was. The application to amend was made approximately four months after he engaged new Counsel and he became aware that the change was one he wanted to make.

[41] When one considers the proposed amendments, they all essentially relate to the issue of quantum. None of the proposed changes appear to be inconsistent with the issue of liability. The proposed changes seek to update the loss, provide clarification on the quantification of loss. They also, however, seek to add further heads of damage. I will consider these later.

[42] I disagree with the contention of NMTC that Mr. Caleb is seeking to make new claims. In Berezovsky v Abramovich⁴ it was noted:

“Thus the addition or substitution of a new loss is by no means necessarily the addition or substitution of a new cause of action. For a cause of action to arise in tort there must be a breach of duty which causes loss but it is permissible to add or substitute further losses if

⁴ [2011] 1 WLR 2290.

they all stem from an original breach of duty which has caused some loss.”

- [43] All the amendments Mr. Caleb seeks to make stem from the same basic facts which established his cause of action against the NMTC and APUA.
- [44] There is no doubt that Mr. Caleb would suffer prejudice if his application to amend were not allowed. The NMTC and APUA seek to diminish the issue of prejudice to Mr. Caleb by arguing that Mr. Caleb has put forth as the basis of his application the need to update his losses and that these are matters which can be addressed in submissions at the assessment of damages.
- [45] It is well settled so as to be considered trite that special damages must be strictly pleaded and proved. The requirement is not satisfied by the production of documentary evidence in a list of documents or evidence set out in a witness statement. This was recently explained by Bennett JA [Ag.] in **Carl Webster v Historic Beacon Point Anguilla Ltd et al.**⁵
- [46] Further, a claimant has a duty under CPR 8.7(1) to set out in the claim form or in the statement of claim the statement of all the facts on which they intend to rely. Thus, as was noted in **Carl Webster**, unless a claimant includes a particular out of pocket expense or amends their statement of case to include particulars of a claim for such an expense or loss, it will disentitle a defaulting claimant from recovering the claimed sum.
- [47] In relation to general damages, the judgment of the Court of Appeal in **Carl Webster** also makes it plain that If ‘a claimant has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act, he must warn the defendant in the pleadings that the compensation claimed will extend to this damage, thus showing the defendant the case he has to meet and assisting him in computing payment into court.’ Thus, As the Court explained, where general damages are claimed, the statement of case should identify all the heads of loss that are being claimed. The claimant may not otherwise rely on any allegation or factual argument which is not set out in the claim but which could have been set out there, unless the court gives permission, or the parties agree.
- [48] What the above shows is that Mr. Caleb would be precluded on the assessment of damages from recovering any losses that are not properly pleaded. It would not be sufficient to set out those losses in a witness statement or written submissions on the assessment. He would therefore be seriously prejudiced on

⁵ AXAHCVP2020/0020 (delivered 21st June 2023; re-issued 19th September 2023, unreported).

the assessment of damages if permission to amend his statement of case were refused.

[49] NMTC and APUA's argument as it relates to prejudice essentially boils down to additional costs and lost judicial time. As it relates to additional legal costs, this could adequately be dealt with by an appropriate costs order. In terms of delay, it would be noted that the Parties are in no different a position now than before directions for the assessment were given in July 2023. None of the parties complied with the directions for assessment of damages which was scheduled for 16th November, 2023.

[50] Looking at the matter as a whole, in my view, it does not appear to me that there is any prejudice occasioned to NMTC and APUA that cannot be addressed by costs or interest. If, as APUA contends, there may be a need to amend its defence, any costs associated with an amendment can adequately be addressed by a cost order. Contrary to the views of APUA and NMTC there will be no resetting or unravelling of the proceedings over the years by allowing the proposed amendments. As I have indicated above, no new cause of action is being introduced by the proposed amendments and the proposed amendments are not inconsistent with the issue of liability concluded by the judgment on liability by consent. All the matters that are proposed relate to quantum which is the stage at which the proceedings are presently.

[51] Although it can be argued that there was a date set for an assessment, that date was vacated. The vacating of the assessment of damages was not occasioned by Mr. Caleb's application to amend, rather, it was because the Parties had not complied with the directions for assessment of damages and Mr. Caleb had taken ill. There is therefore no date for the assessment of damages to be met, however, the filing of this application has indeed delayed setting the date for an assessment. Critically, the Parties will have the opportunity to obtain evidence and file witness statements in relation to the proposed amendments. APUA has already sought to provide such evidence in resisting this application which can no doubt be deployed on the assessment of damages. APUA is also seeking the Court's permission to advance expert evidence.

[52] The administration of justice favours the real issues in controversy between parties being determined. In the present case, liability has been accepted on Mr. Caleb's claim. The Court on the assessment will have to determine what damage Mr. Caleb has actually suffered. In my view, the interest of justice favours allowing the proposed amendments so that the full extent of the damage can be quantified.

[53] In the case of **Denise Stevens v Luxury Hotels International Management**,⁶ the Court considered an application by the claimant to amend her statement of claim during the assessment of damages hearing. In considering the administration of justice, the learned master stated the following which I consider to be particularly apt in relation to the present application:-

“The overriding objective is to deal with cases justly. A refusal of the application would in my view prevent the claimant from seeking to recover losses suffered as a result of the negligence of the defendant. Permitting the amendment will not automatically result in the claimant recovering the sums pleaded – she is still required to prove her loss at the hearing in which the defendant has an opportunity to be heard. The only evident prejudice to the defendant in my view can be compensated in costs and or in the determination of an award of interest and in the circumstances I do not find that the amendment would result in an injustice to the defendant.”⁷

[54] The circumstances of the present case are similar to that of **Denise Stevens** and I would adopt the pronouncements of the court in the present case.

[55] Having considered all the relevant factors, I am of the view that once the circumstances of the case are carefully considered, Mr. Caleb would have been advised between the period May to July 2024 that he needed to amend his pleadings. He applied to amend his pleadings four months later in September 2024 after new Counsel made attempts to compile and review his file. The explanation provided for why the application to amend was made in September 2024 in my view shows that the delay is not as inordinate as the NMTC and APUA contend because Mr. Caleb has demonstrated by cogent evidence why he was unable to make the amendments earlier. In any event the amendments he seeks to make are to update his losses since the filing of the claims in 2013.

[56] Mr. Caleb will suffer greater prejudice if the proposed amendments are not allowed as he would not be able to recover any losses not properly pleaded. The prejudice to NMTC and APUA however will be less as liability is no longer in issue and the only issue is quantum. Mr. Caleb will still have to prove his losses on the assessment and NMTC and APUA will still have the opportunity at the assessment to refute any losses pleaded. Any prejudice occasioned by having to amend their defence as it relates to the proposed amendments can be addressed by a costs order.

⁶ SKBHCV2013/0069 (delivered 19th December 2014, unreported).

⁷ At para. 60.

- [57] There is presently no date set for the assessment of damages and revised directions will have to be given to allow the parties to file their evidence and written submissions on which they intend to rely for the assessment of damages.
- [58] In my view, the administration of justice will be served by permitting the amendment and allowing Mr. Caleb to update and set out any alleged losses
- [59] I note however, that Mr. Caleb has sought to make some amendments to his claim against APUA at paragraphs 8 and 10 of the statement of claim that treat with the liability of the Government of Antigua and Barbuda. In light of Mr. Caleb having withdrawn its claim against the Crown, these amendments serve no useful purpose and will not be permitted; otherwise, the Court will permit Mr. Caleb to amend his statements of case.

Mr. Claimant's Expert Applications

Application to Appoint Reuben Everon Zachariah as an Expert Witness

- [60] Mr. Caleb seeks to appoint Mr. Rueben Everon Zachariah as an expert witness in matters of:-

“land surveys, valuations of developed and undeveloped property, engineering analysis and design, income generation assessment, water seepage soil investigation, property drainage and other matters that would objectively assist the Court relative to the assessment of damages concerning property more particularly described as Registration Section Barnes Hill and Coolidge Block 41 2094A Parcel 27”

- [61] Mr. Zachariah is a Civil Engineer. He provided an affidavit in support of Mr. Caleb's application to set out his qualifications and experience. He first made it plain that should the court require boundary verification for the assessment of damages, he is not a licensed surveyor. He stated that valuations of developed and undeveloped property is a specialized field that engineers in the past have conventionally been doing because of their general knowledge of engineering. He further stated that he does valuations for major banks, several private organizations, private individuals and other clients. He stated that he has been doing valuations for well over 15 years and that it is within the remit of his expertise to value developed and undeveloped property as well as unfinished structures.
- [62] Mr. Zechariah further stated that he would be able to provide projections of income from one point in time to another and that this is within the remit of

valuation and economic analysis which also falls within his civil engineering courses.

[63] In an affidavit filed on 31st October, 2024 Mr. Caleb candidly noted that the experts proposed by APUA, namely Mr. Wayne Martin and Mr. William Keith Thomas are Members of the Appraisal Institute and Fellows of the Chartered Institute of Surveyors, respectively, which are helpful designations, and Mr. Zachariah does not hold such Membership or Fellowship; however, he stated that the range and breadth of Mr. Zachariah's qualifications will provide a valuable perspective for the Court in this matter.

[64] The sole objection to the appointment of Mr. Zachariah by APUA is its contention that Mr. Zachariah is a qualified Civil Engineer but not a certificated valuer and that the services of a civil engineer are not required for this assessment. APUA further contends that Mr. Zechariah also has no proper expertise or qualifications to provide projections of income and further that Mr. Zechariah is not a licensed land surveyor. NMTC's position is that a valuer is needed to assist the court in determining the issues, Mr. Zachariah is not a certified valuer and is therefore not competent to provide evidence in this regard.

[65] Part 32 of CPR 2023 deals with expert evidence to assist the Court. CPR 32.2 provides that 'Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.' CPR 32.6 gives the Court the power to control expert evidence. The rule provides that 'A party may not call an expert witness or put in the report of an expert witness without the court's permission.' In **John Oliver Dyrud v Palmavon Jasamin Webster et al**,⁸ the Court of Appeal cited with approval the case of **Kennedy v Cordia (Services) LLP**⁹ as it relates to the considerations which govern the admission of expert evidence in civil proceedings, namely:-

- (i) whether the proposed evidence will assist the court in its task;
- (ii) whether the witness has the necessary knowledge and experience;
- (iii) whether the witness is impartial in his or her presentation and assessment of evidence and;
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

[66] Mr. Caleb's expert evidence applications are being objected to on the basis of considerations (i) and (ii), that is (i) whether the proposed evidence will assist the court in its task; and (ii) whether the witness has the necessary knowledge and experience. Consideration (ii) is particularly important.

⁸ AXAHCVP2021/0010 heard together with Palmavon J. Webster v John O. Dyrud e al AXAHCVP2021/0011 (delivered 27th April 2022, unreported.)

⁹ [2016] 1 WLR 597.

- [67] For this assessment of damages a valuation of the property in question is of critical importance. This would be important in determining the value of the property, the value of the area of trespass, the rental value and any award of mense profits.
- [68] Having considered the evidence in support of Mr. Caleb's application, the evidence of Mr. Zachariah, his curriculum vitae, it is clear that Mr. Zachariah has the necessary qualifications and experience as a civil engineer. Mr. Zachariah, however, also has experience doing valuations of developed and undeveloped property. This is a relevant consideration. No material has been placed before me that shows that certification is required to conduct the land valuation. Mr. Zachariah, however, has also demonstrated that he has knowledge and experience conducting valuations and this is an area undergirded by a reliable body of knowledge. Further, Mr. Zachariah has relevant experience conducting valuation of undeveloped and developed property. Thus, if Mr. Caleb's application were refused, the Court may very well be deprived of Mr. Zachariah's skill and experience in producing an expert report.
- [69] APUA and NMTC would still have the opportunity on the assessment to address any concerns with the content of the expert report and the Court will place the appropriate weight on the expert evidence or parts of it, taking all factual and legal matters into account and the evidence of other expert witnesses or witness called during the assessment.¹⁰
- [70] I would therefore grant Mr. Caleb's application to appoint Mr. Zachariah as an expert witness.

Application to Appoint Dr. Linroy Christian as an Expert Witness

- [71] Mr. Caleb also seeks to appoint Dr. Linroy Christian as an expert witness in matters of soil contamination and other matters which he says would objectively assist the Court relative to the assessment of damages concerning Parcel 27.
- [72] Mr. Caleb's application to appoint Dr. Christian is opposed by APUA and NMTC on the basis that his expert evidence is not required. In the affidavit of Desai Gomes filed by NMTC in opposition to the application, she stated that she has been advised by counsel and verily believes that the expert evidence proposed by Dr. Christian is not relevant or necessary for the determination of the issues of fact or law. She further states that she has been advised by counsel and verily believes to be true that nowhere in Mr. Caleb's pleadings does he allege that

¹⁰ John Oliver Dyrud v Palmavon Jasamin Webster et al AXAHC VAP2021/0010 heard together with Palmavon J. Webster v John O. Dyrud et al AXAHC VAP2021/0011 (delivered 27th April 2022, unreported).

there was any leakage of any sewage that caused the property to be contaminated.

[73] APUA contended in its notice in opposition that soil contamination, the primary reason for proposing Dr. Christian as an expert is not relevant in the action against APUA.

[74] Mr. Caleb's evidence, however, is that the issue of soil contamination is a live issue. He made reference to paragraphs 5 and 6 of his original statement of claim against NMTC and stated that he has been advised by counsel and verily believes that he has an obligation to raise all matters now that would originally arise from his pleadings.

[75] Mr. Caleb pleaded the following at paragraphs 5 and 6 in his statement of claim against NMTC:

"5. The Defendant dug and buried the sewerage pipe 6 feet below the surface and 30 feet from the boundary. The sewerage pipe ran 400 feet across the Claimant's property from west to east on the property where the sewerage treatment plant was installed to the east of the property approximately 30 feet from the Claimant's property and created a nuisance.

"6. That due to the Defendant installing the sewerage treatment plant and running the sewerage pipes through the Claimant's property, it has now become impossible for the Claimant to have any residence upon the said land being hotel, dwelling house, guest house or his two (2) storey apartments. The Claimant's land has effectively been devalued as a result of the sewerage pipes, manholes and treatments plants that the Defendant installed."

[76] The learned authors of Halsbury's Laws of England explain the concept of private nuisance as follows:

"A private nuisance is one which interferes with a person's use or enjoyment of land or of some right connected with land. It is thus a violation of a person's private rights as opposed to a violation of rights which he enjoys in common with all members of the public. The ground of the responsibility is ordinarily the creation of the nuisance, and the person who creates a nuisance is liable even if does not have occupation or control of the land from which the nuisance proceeds."

[77] Under the rubric, “damage essential” the learned authors go on to explain that”¹¹

“Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved, except in those cases in which it is presumed by law to exist.

The damage need not consist of pecuniary loss, but it must be material or substantial, that is, it must not be merely sentimental, speculative or trifling, or merely temporary, fleeting or evanescent. However, nothing can be deemed fleeting or evanescent if it results in substantial damage, and therefore regard is to be had not merely to the duration of the thing complained of but to the effect of the act or omission upon the claimant.

[78] Mr. Caleb has pleaded that due to NMTC installing the sewerage treatment plant adjacent to his property and running the sewerage pipes through his property, it has now become impossible for him to have any residence upon the said land being hotel, dwelling house, guest house or his two-storey apartments and his land has been devalued. Expert evidence on matters in connection with the use and enjoyment of the land, may very well benefit the Court at the assessment of damages.

[79] In my view, at this point in the proceedings, the Court ought to pay heed to the guidance of Farara JA [Ag.] in **Palmavon Webster** and caution against ‘too rigid an interpretation of what expert evidence of fact is necessary to assist the court.’ Further, issues of relevance of the expert evidence or parts therefore can be dealt with at the assessment of damages upon any objection by NMTC or APUA.

[80] There is no other basis put forward for objecting to Dr. Christian being appointed as an expert. I am satisfied that he has met all the considerations identified earlier in this decision when dealing with applications for the appointment of experts. I would therefore grant Mr. Caleb’s application for the appointment of Dr. Christian as an expert.

Application to Appoint Mr. Terrence E.D. George as an Expert Witness

[81] Mr. Caleb’s third expert application is to call Mr. Terrence E. D. George as an expert witness in matters of land surveys and boundary verification that would objectively assist the Court relative to the assessment of damages concerning Parcel 27.

¹¹ At para. 112.

- [82] In his affidavit in support, Mr. Caleb stated that Mr. George would assist the Court with a survey and boundary verification regarding Parcel 27.
- [83] Both APUA and NMTC contend that the proposed evidence of Mr. George, Licensed Land Surveyor is not relevant or necessary for the determination of the issues before the Court as there is no issue regarding boundary verification or the need for the land to be surveyed.
- [84] In her written submissions learned Counsel for Mr. Caleb submitted that given that there is an issue of trespass and with due regard to the manner in which the Courts have been known to treat with the issue, depending on the trespass, the Claimant, out of an abundance of caution proposes Mr. George as expert in matters of land surveys and boundary verification. She submitted that unlike Mr. Zachariah or any of the experts proposed by APUA, Mr. George is a licensed surveyor.
- [85] In her oral arguments, learned Counsel for Mr. Caleb contended that a survey of the property was conducted some 11 years ago and an updated survey is required. Learned Counsel for NMTC and APUA argue however that Mr. Caleb has not shown what would be the purpose of having an updated survey for the assessment.
- [86] APUA in its written submissions stated that Mr. Sean D. Peters, a Licensed Surveyor instructed by Mr. Huburn Edwards, Valuer, who himself was instructed by Mr. Caleb, has already provided a Survey Report dated 27th February, 2014 showing a detailed drawing of the trespass by APUA (tower and electrical transmission lines) and NMTC (sewer lines and manholes). Learned counsel for APUA further submitted that the trespass by NMTC was removed approximately six years ago, so any new survey would not show that.
- [87] In the circumstances, APUA contends that there is therefore no need to appoint a new surveyor. Learned Counsel for APUA submitted that in any event, neither APUA nor NMTC has ever challenged or has had any issues with the survey report provided by Mr. Peters at the behest of the Claimant. In addition, he submits, the valuation report dated 9th September, 2016 provided by Mr. Trevor Gonsalves, Civil Engineer (attached as Exhibit "UC2" to the Affidavit of Uriel Caleb filed 30th September, 2024) provided very detailed dimensions of the trespass (in square feet) and also vivid colour pictures of the trespass. Learned counsel for APUA submitted that while Mr. Gonsalves was instructed by APUA, the Claimant has never challenged Mr. Gonsalves' dimensions of the trespasses.
- [88] In my view, given that there is evidence before the court in relation to certain developments of the removal of sewerage pipes by NMTC and that it does not

appear that an expert report pursuant to Part 32 of CPR 2023 has ever been filed by a party in this matter in relation to the survey and boundary verification of the property, the Court would be assisted by such a report for the assessment of damages.

- [89] Mr. George is a licensed land surveyor. He therefore has the necessary qualifications and experience and there is a body of knowledge underpinning his area of expertise. No other objections have been raised by NMTC and APUA about his independence, qualifications or experience. I would therefore grant Mr. Caleb's application for the appointment of Mr. Terrene George as an expert and to produce an expert survey report.

APUA's Expert Application

- [90] Before I move on to Mr. Caleb's other application, I believe it would be appropriate at this junction to deal with APUA's expert application. APUA has applied for permission to call Mr. Wayne Martin, Certified Property Appraiser, alternatively, Mr. William Keith Thomas, Fellow of the Royal Institution of Chartered Surveyors as an expert for the purpose of the assessment of damages.
- [91] APUA stated in its application that expertise as to the overall value of the trespassed property including rental value and the dimensions of the area trespassed upon is reasonably required to resolve the proceedings justly. It contends that Mr. Wayne Martin or alternatively Mr. William Keith Thomas are qualified to provide such valuations.
- [92] Learned counsel for APUA submitted that having read the affidavit of Mr. Caleb in opposition to APUA's application, it seems that he is simply trying to make the case that the Court should appoint Mr. Zachariah over Mr. Martin or Mr. Thomas to produce a valuation report. Learned counsel for APUA submitted that Mr. Caleb readily accepts that the evidence of both Mr. Martin and Mr. Thomas would be reasonably required for these proceedings and that they have the requisite knowledge and experience grounded by body of work in their field of expertise. Having read Mr. Caleb's affidavit and submissions, I agree.
- [93] The only real point of opposition by Mr. Caleb to APUA's application seems to relate to his independence from the Parties because he previously did work for the GOAB and APUA and provided at least one valuation to the Ministry of Legal Affairs in connection with this matter. This is the valuation report of Mr. Martin dated 21st October, 2015 which is exhibited to Mr. Caleb's amended application filed on 30th September, 2024.

- [94] Mr. Caleb however does not move the point any further. In my view, without more, I am unable to form the view that Mr. Martin has a material conflict of interest whereby the Court ought to decline to rely on his expert evidence. Mr. Caleb's reference to Mr. Martin's previous involvement in the proceedings was to stand in contrast with his proposed expert Mr. Zachariah, who has not previously provided a report to any of the Parties in connection with these proceedings. However, I am not satisfied that a material conflict of interest is shown that raises material concerns about his ability to.
- [95] In my view, Mr. Martin has satisfied all the considerations the Court ought to have regard to. His evidence, being that of a valuation report of Parcel 27 is reasonably required, he has the necessary qualifications and experience and there is a body of work relevant to his area of expertise. Further, based on the material before the Court, I am unable to conclude that Mr. Martin would not be impartial in his presentation and assessment of evidence in the proceedings.
- [96] Having carefully considered the application by APUA, the evidence in support and the evidence in opposition, I am of the view that APUA's application to appoint Mr. Martin as an expert witness has satisfies all the relevant requirements and considerations. The application in respect of Mr. Thomas having been made in the alternative, it is therefore unnecessary to consider whether he should be appointed as an expert.

Mr. Caleb's Interim Payment Application

- [97] The final application for the Court's consideration is Mr. Caleb's application for an interim payment.
- [98] The Court is empowered by CPR 17.6 to make an order for an interim payment and the rule provides the conditions to be satisfied before an order can be made. CPR 17.6(1) sets out the different circumstances under which a court can make an interim payment. In my view, this case clearly falls within the ambit of CPR 17.6(1)(a) and (c), which provide:-

“(1) The court may make an order for an interim payment only if –
“(a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;”
....
(c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (including costs) to be assessed;

[99] In this case, Mr. Caleb has obtained judgment by way of consent on the issue of liability against the NMTC and APUA for damages to be assessed.

[100] The further consideration when making an order for an interim payment is CPR 17.6(4) which provides that 'The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.'

[101] The Court also has the power under CPR 17.7 to adjust an interim payment. CPR 17.7 provides that:-

“17.7 (1) If a defendant has been ordered to make an interim payment, or has voluntarily made an interim payment, the court may make an order to adjust the interim payment.

(2) The court may in particular –

(a) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment;

(b) order all or part of the interim payment to be repaid; and

(c) vary or discharge the order for interim payment.”

[102] There is no question as to whether the Court may make an order for an interim payment to Mr. Caleb. He has satisfied this first limb for the Court's consideration by virtue of the admission of liability and the judgment on liability and the order for assessment. The question is whether the Court should exercise its discretion to make a further award, keeping in mind that the Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

[103] Further, there have also been interim payments made by NMTC and APUA to Mr. Caleb and the court may vary these payments pursuant to CPR 17.7.

[104] Mr. Caleb in his affidavit filed in support of his application for an order for an interim payment stated that on 12th April, 2016 he filed an application for an interim payment by APUA and NMTC and APUA volunteered to make an interim payment of \$150,000.00. He stated that NMCT also ended up making a payment. He stated that the order of the Court dated 13th July, 2016 notes that payments totaling \$250,000.00 had been made by APUA and NMC. The application for an interim payment was withdrawn and dismissed.

[105] Mr. Caleb subsequently made another application on 7th June, 2017 for an interim payment by NMTC and APUA, which was amended on 2nd August, 2017.

The application in respect of APUA was withdrawn and by order of the court dated 5th October, 2017 NMTC was ordered to make an interim payment to Mr. Caleb of \$200,000.00 and an interim payment to Mr. Caleb against costs in the sum of \$25,000.00.

[106] Mr. Caleb stated that it is therefore the case that APUA has never been ordered to make an interim payment to him; however, APUA has made voluntary payments and NMTC has made a voluntary payment and was ordered to make a payment in October 2017.

[107] Mr. Caleb has obtained interim payments in these proceedings by both order of the Court and voluntarily by APUA and NMTC in the sum of \$4500,000 plus an interim cost payment of \$25,000.00 from NMTC. Mr. Caleb now seeks a further payment of \$150,000.00.

[108] It is to be noted that the above interim payments were made at the stage in these proceedings when the assessment of damages on Mr. Caleb's claims against NMTC and APUA was stayed whilst Mr. Caleb's claim against the GOAB continued before the Court for final determination.

[109] On an application for an interim payment, a claimant must give evidence on affidavit stating their assessment of the amount of damages or other monetary judgment that are likely to be awarded. Such evidence is important since the court ought not to make an order for an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

[110] In relation to the assessment of the amount of damages of the likely amount of the final judgment, Mr Caleb stated the following in his 2nd affidavit in support of his amended application:-

"In terms of the assessment of what my potential damages can be, I am advised by Counsel and do verily believe that, in 2013, the Chief Valuator valued my land at \$1,960,000.00 EC using a value of \$15.00 per square foot. In 2016, Trevor Gonsalves valued my land at \$4.50EC per square foot, thereby assigning it a total value of \$588,060.00. Further, he assigned the area of trespass a lease value of \$78,965.00EC. These are older valuations which I am advised by Counsel and do verily believe can be regarded as showing conservative estimates. I am advised by Counsel and do verily believe that the Court can be satisfied my damages will exceed \$2,000,000.00."

[111] Mr. Caleb then went on to give details of previous proceedings involving APUA, the facts of which he deposed were similar to the present case. This case was

settled by a consent order and an assessment was not conducted by the Court on its merits.

- [112] Mr. Caleb exhibited several valuation reports for Parcel 27 to his affidavit in support of his application. He exhibited a valuation report prepared by John Bradshaw dated 14th July, 2011 which valued Parcel 27 without any nuisance at \$1,568,000.00. The second valuation report was a report dated 4th May, 2014 by the Chief Valuation Officer of the Government of Antigua and Barbuda. This report valued the property, disregarding the nuisance at \$1,960,000.00.
- [113] The third report is a valuation report dated 28th February, 2014 by Huburn Edwards. Without the nuisance, the open market value of the property was estimated in the report at \$1,581.680. With the nuisance, the property was estimated at \$405,560.00.
- [114] The fourth valuation report was a report dated 21st October, 2015 by Wayne Martin. The property was given a market value at that time of \$653,000.00 and a forced sale value of \$520,000.00. The report noted that the value concluded is as if the high voltage electrical transmission tower and lines are not in place as if the owner was in the position before such features were installed.
- [115] The fifth valuation report is a report by Trevor B. Gonsalves dated 9th September, 2016. The report estimated the value of the entire property for purchase at \$588,060.00.
- [116] In his report, Mr. Gonsalves stated that Parcel 27 would not be considered developed residential land and would fall under the category of undeveloped land, and he estimated a leasing rate of 25 cents per square foot. Based on the area of trespass he estimated the annual rate for power lines to be \$3,812.00 and the annual rate for sewer pipes at \$825.50. The report estimated the total sale value of the trespass area at \$129,060.00. The report also estimated the lease value of the trespass area for 17 years at \$78,965.00.
- [117] It can therefore be seen that on the evidence provided by Mr. Caleb, there is a range of values ascribed to his property, not taking into account any nuisance, from \$588,060.00 to \$1,960,000.00. Further, the report of Trevor B. Gonsalves is particularly useful and far more specific than the other reports, as it valued the trespass area and sought to estimate the lease value of the trespass area. These figures point to substantially lower values than the value of the entire property.
- [118] Trespass is actionable without proof of damage. If a claimant proves trespass, they are entitled to recover damages even if they have not in fact suffered any actual loss. If the trespass has caused actual damage, the claimant is entitled

to receive such an amount as will compensate him for his loss. Where there is actual damage, the measure of damage is to put a claimant in the position they were in before the trespass.

- [119] The learned authors of Halsbury's Laws of England state the following in relation to damages for trespass:

"In a claim of trespass, if the claimant proves the trespass then he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use. Where there is an oppressive, arbitrary or unconstitutional trespass by a government official or where the defendant cynically disregards the rights of the claimant in the land with the object of making a gain by his unlawful conduct, exemplary (or 'punitive') damages may be awarded. If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, the general damages may be increased."

Although damages are normally awarded only for loss that has already been suffered, in an appropriate case the court may award damages in lieu of an injunction in respect of anticipated loss which the claimant has not yet sustained."

- [120] In the present case, whilst I accept that Mr. Caleb will recover damages occasioned by the APUA's trespass and NMTC's trespass and nuisance, I agree with the submissions of NMTC that there is uncertainty on this assessment as to the amount Mr. Caleb will recover.

- [121] Mr. Caleb seeks to recover damages under several heads for which, at this juncture, there is insufficient evidence before the Court to satisfy the Court that Mr. Caleb will likely be able to prove these losses. Further, given the uncertainty as to the value of the area of the trespass in light of the disparities in the reports exhibited to Mr. Caleb's affidavit, in my view, it would be prudent to have before the Court, the expert evidence in relation to the value of the land on which the trespass occurred.

- [122] Learned Counsel for Mr. Caleb referred the Court to the case of **Test Claimants in the FII Group Litigation v Revenue and Customs Comrs (formerly Inland**

Revenue Comrs) (No. 2)¹² where at paragraph 51 of the judgment the Court stated:-

“If the conditions in rule 25.7(1)(c) have been satisfied then the court will have concluded that the claimant would, if the claim went to trial, obtain judgment for a substantial amount of money. In reaching that conclusion the court will often have had to decide, on the material before it, what sum it thinks the applicant would obtain at trial, in order that the court considering the interim payment application can conclude whether or not the judgment amount would be a “substantial amount of money”. If that is the correct approach, then it seems to me that in many cases it is unlikely that there will be very much more (if anything) that a court will have to do for the purposes of deciding what the “likely amount of the final judgment” will be for the purposes of rule 25.7(4). I appreciate that there may be cases where it is clear that the claimant would obtain judgment on the claim and it would be for a “substantial amount”, but on the material available at the time of the interim payment application it is not entirely certain what, precisely, that sum might be. In such a case the judge has to take a view, based on the material before him, on the “likely amount of the final judgment” in order to decide what would constitute a “reasonable proportion” of that “likely amount” so as to make the interim payment order.

[123] Mr. Caleb has already received \$250,000.00 in voluntary payments from APUA and \$200,000.00 involuntary and Court ordered payments from NMTC. I am of the view that, on the basis of the evidence that is before the Court at this stage these are reasonable proportions of the likely amount of the final judgment. On the material before the Court, in my view, the Court ought to maintain the status quo in relation to interim payments and refrain from varying the award upward or making a further award as the Court may run the risk of ordering more than a reasonable proportion of the likely amount of the final judgment.

[124] Counsel for APUA urged the Court to exercise its powers under CPR and instead of making a further interim payment order, expedite the assessment of damages. I note that the matter is already on the assessment of damages track and further directions are to be issued for the assessment of damages to take place. The Parties ought to comply with those directions to allow the assessment of damages to take place and conclude these proceedings.

[125] In light of the foregoing, I would dismiss Mr. Caleb’s application for an interim payment.

¹² [2012] 1 WLR 2375.

[126] Having determined all six applications for the reasons outlined above, I would therefore make the following orders:-

1. Mr. Caleb's application to amend his statements of case is granted.
2. Mr. Caleb shall file and serve his amended statements of case as exhibited to his affidavit filed on 30th September, 2024, save and except for his amendments in relation to the GOAB, in compliance with Practice Direction 20 No. 5 of 2011, on or before Friday 2nd May, 2025.
3. NMTC and APUA are each at liberty to file amended defences solely in relation to the amendments to Mr. Caleb's statement of case, on or before Monday 2nd June, 2025.
4. Mr. Caleb shall pay NMTC and APUA costs on his application to amend, such costs to be summarily assessed at the next case management conference for this matter, unless sooner agreed.
5. Mr. Caleb's applications to appoint Mr. Rueben Zachariah, Dr. Linroy Christian and Mr. Terrence E.D. George as expert witnesses are granted.
6. APUA's application to appoint Mr. Wayne Martin as an expert witness is granted.
7. The Instructing Party shall file and serve the expert reports of the appointed experts on or before 20th June, 2025. The expert reports must comply with the provisions of Part 32 of the Civil Procedure Rules (Revised Edition) 2023.
8. The non-instructing Party is at liberty to put written questions to an expert about his report within 28 days of receipt of the expert report.
9. The expert shall provide written answers to the written questions put to him about his report within 28 days of receipt of the questions.
10. Each Party shall bear their own costs on the expert applications.
11. Mr. Caleb's application for an interim payment is dismissed.
12. Mr. Caleb shall pay NMTC and APUA costs on the interim payment application, such costs to be summarily assessed at the next case management conference of this matter unless sooner agreed.

13. The matter shall be set down for further case management including directions for assessment of damages to 18th September, 2025.

[127] I wish to thank learned Counsel for all Parties for their helpful oral and written submissions.

Carlos Cameron Michel
High Court Master



By the Court

Registrar