

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0006

BETWEEN:

RUTH DURHAM

CLAIMANT

AND

MAVIS MYERS

DEFENDANT

Appearances:

Mrs. Ronnia Durham-Balcombe for the Claimant

Ms. Samantha Robertson for the Defendant

2020: 18th November
25th November
2021: 19th January

JUDGMENT

Byer, J:

- [1] The claimant and the defendant are neighbours in a middle class neighbourhood on the outskirts of Kingstown. In 2009 the defendant moved into the neighbourhood and built her dwelling on the adjacent property. For many years the parties co-existed although there was no evidence before the court that these two women were ever friends. In January 2020, the defendant, according to her having obtained the money to build the upper part of her house started construction and the proverbial “all hell broke loose”.
- [2] Procedurally the claimant first approached the court on an application for an injunction to stop the defendant’s construction and to instruct her to cut her banana trees and lower the height of the chain link fence the defendant had erected around her property¹.

¹ Without Notice Application filed 21/1/2020

- [3] After the court determined that the application for an injunction would be heard *inter partes*, the defendant represented by counsel attended court and gave her undertaking to accede to the request to stop construction. However, by some failure of the defendant to understand that the undertaking given was as good as the grant of the injunction, the defendant continued construction to the point that the building is now fully covered. The claimant therefore filed contempt proceedings and it was at that hearing that the court determined that the same should proceed to speedy trial to which the parties agreed.
- [4] The claimant therefore filed an amended claim form on the 3rd March 2020 in which she claimed the following reliefs:
- (i) A declaration of the claimant's statutory right to light through her windows which she had enjoyed for more than twenty years is to be preserved.
 - (ii) An injunction to restrain the defendant by herself or her agents or workmen or otherwise from erecting and/or continuing to erect an addition to her house so as to cause nuisance or illegal obstruction to the claimant's ancient windows and/or obstructing and/or diminishing the access of light to the windows of the claimant's home or any of them.
 - (iii) An order that the defendant demolish the addition to her house which has further diminished the access of light to the claimant's windows.
 - (iv) An injunction requiring the defendant to reduce the height of her chain-link fence, particularly towards the front of the claimant's premises, which is not only unsightly but also above the height prescribed by law.
 - (v) An injunction requiring the defendant to reduce the height of her banana trees which are not only unsightly but also substantially obscures the natural and artificial light entering the claimant's premises and encourages mosquitoes and other insects preventing the claimant from enjoying the use of her premises as before, and to keep the said trees below a height of six (6) feet (being the stipulated height of the fence pursuant to the section 16 (2)(f) of the Town and Country Planning Act No. 45 of 1992) so as not to obstruct the light entering the claimant's premises.
 - (vi) General damages for nuisance caused by the dust and debris into the claimant's property from the defendant's construction and substantial diminution in light.
 - (vii) Costs.
 - (viii) Further or other relief as the Court deems necessary and appropriate.
- [5] In response the defendant's defence was that having obtained planning permission from the requisite authorities she proceeded to construct the upper floor to her house. The defendant maintained that in doing so, she was aware that there would have been some dust from the construction process and attempted to do what she could to ensure that the dust did not escape as much. In addition, the defendant pleaded in her defence that although she keeps banana trees on

her land to offer some privacy on her side of the boundary, she had never been told by the building authorities to lower the height of her fence although she did admit that she removed the razor/barb wire that she had initially placed at the top of the fence.

- [6] By joint pre-trial memorandum, the parties agreed that the issues for trial were therefore as follows:
- i. Whether the claimant has acquired a statutory/prescriptive right to light through her windows.
 - ii. Whether the defendant's construction of her upper floor has obstructed the light through the claimant's windows such that the claimant cannot comfortably use and enjoy her property.
 - iii. Whether the defendant's chain-link fence and banana tree hedges are above the statutory height for fences?
 - iv. Whether the claimant is entitled to any or all of the reliefs sought and/or any other remedy?
- [7] At the trial of the action, there were three witnesses called in total being the claimant, her adult daughter and the defendant on her own behalf.

Evidence – the Claimant's Witnesses

Ruth Durham

- [8] Mrs. Durham was the claimant in this matter, and it was her evidence that the main source of sunlight and light comes through to her living room and bedroom of her daughter from the side of the house that shares the boundary with the defendant. The claimant contended that it was since the defendant built her upstairs that she is now unable to enjoy this source of light, which she claimed she had had for over 20 years. Her evidence was that the living room now gets dark very early in the afternoon because the sun can no longer come through the windows and she has to use artificial light when she has to entertain persons or other family gatherings are required in that room.
- [9] In addition to the issue with the source of her light being compromised, the claimant also gave evidence that the banana trees encouraged mosquitoes and other vermin and that the razor wire that the defendant had placed on her fence was dangerous if anyone from her side of the boundary passed too close to the wall on her boundary.
- [10] The claimant's final complaint was that the dust from the construction site was also a constant nuisance to her especially and her adult daughter who lived in the house who had to be constantly sweeping which was not conducive to her asthmatic conditions.
- [11] On cross examination the claimant reiterated that even though she is aware that it was more likely that air and light could pass through a chain link fence as erected on the defendant's property, her main complaint about that was that the banana trees on the property were so thick that they were the reason for the failure of light and air passing to her home. Upon further questioning the claimant finally revealed that it was not the fence that was a problem for her but rather the house that the defendant was building. The claimant told the court that before the building of the defendant's house she would use that part of the verandah which faced the shared boundary, to dry clothes and she enjoyed sunlight and air. The claimant also complained about the fact that her front yard which faces the defendant's building is now cold and damp all the time and that she

cannot come outside any more as she would get the glare from the windows which are installed in the upper portion of the defendant's house. Throughout her cross examination she maintained that her home did not receive sufficient light and that it was solely the result of the construction of the upper floor by the defendant.

Keisha Durham

- [12] The evidence of this witness in large measure mimicked the evidence given by her mother as to the conditions of the house she lives in now as a result of the building of the defendant's upper floor. However, she did mention some things of note. Firstly, those issues started with the defendant since 2014 when the defendant erected her fence next door. Not only was the fence higher than their boundary-wall but additionally that the fence had razor wire attached to it which presented itself as a safety concern to her and her family. Secondly, that the banana trees planted created a damp environment that raised concerns for her and her family especially since she was asthmatic. Thirdly, that when the workmen started to work on the defendant's home, there was no attempt at minimizing the effects of the construction and fourthly, although her room got darker it was in fact cooler and she was "not really complaining about it."²
- [13] On cross examination in relation to the area in front of the house that she complained was consistently damp, she admitted that in fact this area was not enclosed and was open to the sunshine and air, but she maintained that once it rained this area would now take longer to dry and as such caused there to be dampness around the house. With regard to her own bedroom, she admitted once again that her room was indeed cooler, and that she was in fact more comfortable utilizing the same. However, on re-examination in what appeared to be an attempt to minimize the unforeseen benefit, this witness for the first time mentioned that when it rained, water actually ran down the interior walls of that room making it damp.

The Defendant's Evidence

- [14] The sole witness for the defendant was the defendant herself.
- [15] The evidence of the defendant was that in July 2019 she obtained planning permission to build the top floor of her house and that she had been visited by the members of the planning department before the permission was granted and she was never instructed to change her plan or make any adjustments to her building.
- [16] The defendant vehemently denied that the building of her house could have interfered with the natural light to the claimant's house and that in any event the sun would and could only be blocked at certain times of the day given the lay of the land. The defendant maintained that any reduction in the light to the claimant's house would be minimal and would not interfere with her use and enjoyment of the premises.

² Witness Statement of Keisha Durham filed 20/7/2020 at paragraph 12

- [17] In fact the defendant made it clear that at certain times of the day, she is also deprived of light because of the claimant's wall but she erected a chain link fence to let as much light in as she could and chose not to pursue the matter like any good neighbour.
- [18] The defendant denied that it was her banana trees that bred any mosquitoes or attracted vermin and that she was not sure how the claimant could have made those claims when she had no stagnant water on the property nor were the banana trees growing in such water.
- [19] On cross examination she maintained that all that she had done on her house was pursuant to her planning approval and that she did not do anything without getting the advice of the planning. Thus her construction was always done bearing in mind that she had obtained such approval. When she was asked as to whether she had made a complaint as to the diminution in light from the claimant's home, she candidly told the court that she never felt she had to complain about this issue as she recognized it was the claimant's house that blocked the light and knowing that the sun is always moving, she recognized that at certain times of the day the claimant's building would block her light, but she accepted it as part of her living in a neighbourhood.
- [20] It was therefore on this evidence that the parties also made their submissions to the court.

The Claimant's Submissions

- [21] The nub of the submission of the claimant was that having enjoyed her right to light, in excess of 30 years, it was clear that she had established a prescriptive right to light.
- [22] The claimant therefore submitted that the construction of the upper portion of the defendant's home had significantly decreased the light entering her home. The claimant, it was submitted, was entitled to the comfortable and beneficial use of her home. Although the claimant admitted that neither she nor the defendant relied on an expert to give any definitive measurement of this decrease, the claimant submitted that the deprivation of light in her living room and the bedroom of her daughter have been to such an extent that the ordinary usage of those rooms has been diminished significantly.
- [23] Indeed, the submission of the claimant was that the court in considering the issue of whether there had been significant diminution to the claimant's right to light asked the court to consider that not only were there no other apertures for the natural light to enter the rooms but that additionally the court had to consider not only the present usage of the room but also any future usage of the rooms so affected which the claimant or her assigns may so implement.

The Defendant's Submissions

- [24] The defendant by her submissions made it clear that in order for the claimant to succeed on her claim, the claimant had to satisfy the court that she had enjoyed the right to light for a period of at least twenty years without interruption and without the consent of anyone. The defendant having no knowledge of whether the claimant had in fact been in occupation of the house since 1989, was

therefore not in a position to dispute the allegation of the claimant regarding the period of occupation and that finding was one that had to be made by the court on the evidence as led.

- [25] However the defendant did further submit that the test for whether there had been an interference in that right to light to be actionable the court had to consider not whether there had been a diminution of the light to the claimant's house but whether there was sufficient light remaining for the purposes of the claimant.
- [26] The defendant submitted that the claimant had led no evidence that spoke to the fact that she no longer had the amount of light needed for her purposes, but rather from the claimant's own evidence and the elucidating site visit it was clear that the construction of the claimant's home had not provided for adequate illumination in any event.
- [27] Finally the defendant submitted that if the court was satisfied that the construction of the defendant's upper building had interfered in the reduction of light to the claimant, the claimant also had to show that an injunction was an appropriate remedy as opposed to damages. The defendant submitted that the claimant had failed on the totality of the evidence to establish that there had been such a substantial interference with her right to light, if there indeed was any such interference, and as such in all the circumstances she should not be entitled to a mandatory injunction which would create grave hardship for the defendant.

Court's Analysis and Conclusions

- [28] Before this court embarks on the analysis of the agreed issues in this matter, I wish to put on the record what this court observed at the site visit held on the 25th November 2020 at about 2:10pm. These observations will be considered later in the judgment as required.
- [29] The site visit was conducted primarily for the court to understand the photographic evidence relied on by the claimant at trial as attached to her witness statement. At trial it was difficult for the court to understand the references made to the photographs and what they were supposed to be depicting, therefore at the site visit, I limited the information to the court to the simple identification of the areas as shown in the photographs attached to the witness statement of the claimant.
- [30] RD1³ - (first photograph) – when the court proceeded inside the claimant's home the court observed that the room in fact had one window facing the defendant's lot, covered by curtains and a space saver and one sliding door positioned almost obliquely opposite to the window. It was noted that the room was dark at that hour of the day.

RD⁴ - (first photograph) – The court did not see any razor wire in any area as this photograph was supposed to have indicated. What the court did observe was that there were areas of the pipe that

³ Exhibited to the WS of the claimant filed 20/7/2020 at paragraph 6 - showing the blockage of the direct sunlight to my window on the main floor of the house

⁴ Exhibited to the WS of the claimant filed on the 20/7/2020 at paragraph 11 - showing the remains of the razor wire and protruding pieces of wire from the defendant's chain link fence

framed the chain link fence that had been spliced showing some jagged edges. However these were well outside of the boundary wall of the claimant.

RD2⁵ - (second photograph) – no razor wire was seen.

RD3⁶ - the banana trees were seen on the property of the defendant, but they were not overhanging the fence nor were they thick and overgrown.

RD4⁷ - this photograph showed the proximity of the defendant's house to the claimant's house. At the visit, the court observed that the houses are in fact close but the court was not of the view that there was any issue with regard to the boundaries as between the two properties.

Issue #1: Whether the claimant has acquired a statutory/prescriptive right to light through her windows.

[31] When this court peruses the amended claim form and statement of claim it must be noted that there was no pleading as to the provisions of the Prescription Act⁸ (the Act) upon which the claimant sought to rely to claim that she was entitled to a declaration that she has acquired a right to light through her windows.

[32] Section 3 of the Act, establishes that there exists the right to claim a right to access and usage of light over a period of 20 years uninterrupted.

Section 3 in its entirety states:

"Use of Light

*When the access and use of light to and for any dwelling-house, workshop or any building shall have been **actually enjoyed** therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."* (My emphasis added).

[33] The terms of section 3 of the Act are in the exact terms of section 3 of the Prescription Act 1832 of the United Kingdom. Thus, the findings in the case of **Colls v Home and Colonial Stores Ltd**⁹ are just as applicable here. In that case Lindley LJ had this to say about the manner in which one could rely on the provisions of section 3¹⁰, "...every man on his own land ha[s] a right to all the light and

⁵ Same description as for footnote #4

⁶ Exhibited to the WS of the claimant filed on the 20/7/2020 at paragraph 12 - showing the chain link fence and banana trees

⁷ Exhibited to the WS of the claimant filed on the 20/7/2020 at paragraph 14 as RD3 - photographs showing the progress of the defendant's work on the upper floor of her house

⁸ CAP 329 of the Revised Laws of Saint Vincent and the Grenadines

⁹ [1904-7] All ER Rep. 5

¹⁰ "The language of s. 3 of the Prescription Act, 1832, shows that in order to acquire a right to light there must be, first, access and use of light, not access alone. Access here is understood to refer to free passage of light over the servient tenement. Secondly, such access and use must be to and for some dwelling-house, workshop, or other building. Thirdly, such access and use must be actually enjoyed therewith. Fourthly, such enjoyment must be

air which will come to him and he may erect even on the extremity of his land, buildings with as many windows as he pleases. In order to make it lawful for him to appropriate to himself the use of the light he does not require any consent from the owner of the adjoining land; he therefore begins to acquire the right to enjoyment of the light by mere occupancy....if the light be suffered to pass without interruption during that period to the building so erected the law implies from the non-obstruction of the light for that length of time ...the person who has erected the building upon his land shall continue to enjoy the light without obstruction.”¹¹

- [34] In order therefore, for this court to consider whether this claimant has established this right, it is clear, that the evidence that was elicited at trial must be assessed. In this court's mind, the evidence that was laid before the court on behalf of the claimant in this regard remained uncontroverted at the end of the trial. In her witness statement¹² the claimant clearly stated, *“I have been living in my home at Largo Height and raised my family there for over thirty-year (30) years since I completed building it in 1989. My late husband built the concrete boundary wall which encloses my property and separated our property from Ms. Myers.”* This contention was not questioned in cross examination. Further when the pleadings of the defendant are considered she also clearly stated that her actual residence of the adjoining parcel did not take place until 2009 when she built her home for the first time and in her witness statement¹³ she clearly stated that she moved into her home in 2009. This statement was also not challenged on cross examination.
- [35] It is therefore clear to this court that the claimant would have been in occupation of her present place of abode for the requisite period as required under the Act and that this court has no difficulty in finding that the claimant has established a right to use and access of light by virtue of the Act having fulfilled the provisions thereof in all the circumstances.
- [36] However at this juncture the more important question and the nub of this case, is whether that right has been infringed by the acts of the defendant in utilizing her land in the way in which she chose to do, being the fee simple owner of the same.

Issue #2: Whether the defendant's construction of her upper floor has obstructed the light through the claimant's windows such that the claimant cannot comfortably use and enjoy her property.

- [37] The essence of this claim requires the court to undertake a close assessment of both the evidence that was elicited in the matter and an assessment of the circumstances complained of by the claimant leading to this question and the injunctive relief being sought on behalf of the claimant.

without interruption for twenty years. Fifthly, if all these are proved, the right to the access and use of light so enjoyed becomes absolute and indefeasible unless it can be explained by some deed or writing. Pausing here for a moment, it will be observed that the statute does not in terms confer a right to light, but rather assumes its acquisition by use and enjoyment, and declares it to be “absolute and indefeasible”. Again, it will be observed that nothing is said about enjoyment as of right; it was early decided that as regards light claimed under s. 3 enjoyment as of right need not be alleged or proved, and that the right, whatever it may be, is acquired by twenty years' use and enjoyment without interruption and without written consent.”

¹¹ **Moore v Rawson** 3 B & C 339 per Littledale J referred to in the case of **Charles Dalton v Henry Angus** (1881) 6 App Cas 740 at 757-758

¹² Filed 20/7/2020 at paragraph 2

¹³ Filed 17/7/2020 at paragraph 4

- [38] The law of private nuisance, with which this case is concerned, fundamentally "...represents an attempt to preserve the balance between two conflicting interests, that of one occupier in using his land as he thinks fit and that of his neighbour in the quiet enjoyment of his land."¹⁴
- [39] The complaint of the claimant is contained in her witness statement¹⁵:
"6. Thus prior to January 2020 when Ms. Myers began construction of the upper floor, I had already enjoyed over thirty one (31) years of uninterrupted light through the windows. Now, as of 2020, the direct sunlight through the windows is blocked out. Up to June 2020 I was not getting any light through my windows as a result of Ms. Myers' construction. My living room got dark at 2:00pm and I had to put on the light in the house earlier than usual especially when my grandchildren got home from school...
- 7. However, as of June 2020 I observed that the sun is setting at a different angle but I only get a glare of light through the window. The glare of light is insufficient to brighten my living room as I still have to put on the light during the day if I am to entertain visitors or my grandchildren have to do their work in the living room. The living room is the biggest room in the house where we can gather as a family and now the natural light is gone and I do not believe I will ever get it back so long as Ms. Myers' house is built the way it is."*
- [40] On cross examination she expounded on this issue by disagreeing with counsel for the defendant that there was sufficiency of light on the porch where she complained was now less sunny since the building of the defendant's upper floor. In fact, she had this to say¹⁶,
"I cannot any longer put anything to dry there because no sun comes there"
"I can no longer use the verandah as I used to do before and sun my clothes"
"...once she put up the wall everything is blocking the sun until about 6pm..."
"I am not getting any light in the windows"
- [41] The defendant in response has primarily relied on the fact that she was given planning permission, that permission allowed her to build another storey and that in any event she too loses light at some point during the day, but she makes no complaint about it.
- [42] How therefore must the court address its mind to these competing interests? As stated above the law of nuisance must try to balance those competing interests and in doing so must consider the reasonableness of the behaviour of the defendant. Such reasonableness must of course be looked at "according to the ordinary usages of mankind living in ...a particular society"¹⁷ with the appropriate maxim of "...give and take, of live and let live."¹⁸

¹⁴ Winfield and Jolowicz Tort (19th Ed) at para 15-008

¹⁵ Filed 20/7/2020 at paragraphs 6 and 7

¹⁶ Notes of cross examination as recorded by the court at trial

¹⁷ Sedleigh-Denfield v O'Callaghan [1940] AC 880 at 903 per Lord Wright.

¹⁸ Bramford v Turnley [1862] 3 B & S 62; Cambridge Water Co v Easton Counties Leather PLC [1994] 2 AC 264 at 299

- [43] The question therefore for the court to decide upon is not how much light is left, but whether the claimant has been deprived of so much as to constitute an actionable nuisance.¹⁹
- [44] As McNaughten LJ stated in the **Colls v Home and Colonial Stores Limited** case²⁰, *“in order to give a right of action and sustain the issue there must be a substantial privation of light, sufficient to render the occupation of the house uncomfortable, and to prevent the plaintiff from carrying on his accustomed business (that of a grocer) on the premises as beneficially as he had formerly done. The jury must distinguish between a **partial inconvenience** and a **real injury** to the plaintiff in the enjoyment of the premises.”* (My emphasis added).
- [45] The question must therefore address itself as to whether the injury or interference is substantial, and that the defendant acted unreasonably in the circumstances.
- [46] What can be considered substantial is therefore the next phase of the question to be answered. In the case of **Vanderpant v Mayfair Hotel Co. Ltd**²¹ Luxmore J formulated it thusly, “every person is entitled as against his neighbour to the comfortable and healthy enjoyment of the premises occupied by him; and in deciding whether in any particular case his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence not merely according to elegant, dainty modes and habits of living but according to plain and sober and simple notions obtaining among the ... people.”
- [47] So in the instant case, can the complaint of the claimant be considered a substantial interference with her enjoyment of access and usage of light?
- [48] In this regard the site visit that was held by the court at the end of trial proved extremely useful. This court did indeed see a darkened room which was set as a living space/living room with one window towards the boundary with the defendant and a sliding door almost apposite that gave little light. What however was of some concern to the court was that this one window, which is alleged the defendant has totally blocked the access of light from entering the room, was in fact curtained with particularly dark curtains (I do not draw the inference that they may have been the light excluding type as intimated by counsel for the defendant) and was blocked by a moveable structure which is usually used to hold/display curios known as a space saver.
- [49] From having sight of these items, the conclusion that this court has come to on a balance of probabilities, is that the claimant, at the advent of the construction of the upper floor of the defendant’s house, knew that there would be a concomitant loss of privacy that they had enjoyed formerly. In an attempt to maintain that privacy the window coverings and the placement of the furniture was done. What is also clear is that from the observation of the manner in which the room was constructed, that room would not have enjoyed copious amounts of light in any event. The loss of light complained of by the defendant cannot therefore be laid at the feet of the defendant. In fact,

¹⁹ **Colls v Home and Colonial Stores Limited** at page 22 per Lindley LJ; **Dennis Regan v Paul Properties Limited and ors** [2006] EWCA Civ 1212

²⁰ Op Cit at page 11

²¹ [1929] All ER 296 at 308

as the court in the **Colls** case by way of the judgment of Lindley LJ²² made clear “...if a room...has been built so as to be badly lighted the owner or occupier cannot by enlarging the windows or altering the purpose for which he uses it increase the burden on the servient tenement.”

- [50] Having therefore considered the evidence, bolstered by the site visit that was extremely helpful to the court, this court is satisfied that the defendant's upper level has in fact not substantially interfered with the enjoyment of the natural light in the home of the claimant. It may have interfered with her privacy to a large extent but that in this court's mind is not an actionable nuisance. This court is satisfied that the claimant can herself take her own steps to mitigate what may amount to a loss of privacy, but this court is satisfied there has been no substantial interference of her statutory right.
- [51] Having so determined, the issue of whether the defendant in fact acted reasonably would now be rendered academic. However, I will say this that the defendant having acted upon the reliance of the planning permission that was granted to develop her land in the manner that she did, this court cannot find that her actions were unreasonable in all the circumstances. However it must be borne in mind that planning permission cannot be used to “deprive a property owner of a right to object to what would otherwise be a nuisance without providing [them] with compensation when there is no provision in the planning legislation which suggests such a possibility.”²³
- [52] Therefore as reasonable as the defendant's actions may have been, it must be stated that the role of the planning authority must be carried out knowing full well that they have no control and in fact cannot control the common law rights of an adjoining neighbour. In the case of **Lawrence v Fen Tigers**²⁴ Lord Neuberger, P had this to say: “A planning authority has to consider the effect of a proposed development on occupiers of neighbouring land, but that is merely one of the factors which has to be taken into account. The planning authority can be expected to balance various competing interests, which will often be multifarious in nature, as best it can in the overall public interest, bearing in mind relevant planning guidelines. Some of those factors, such as many political and economic considerations which properly may play a part in the thinking of the members of a planning authority, would play no part in the assessment of whether a particular activity constitutes a nuisance – unless the law of nuisance is to be changed fairly radically. Quite apart from this, when granting planning permission for a change of use, a planning authority would be entitled to assume that a neighbour whose private rights might be infringed by that use could enforce those rights in a nuisance action; it could not be expected to take on itself the role of deciding a neighbour's common law rights.”
- [53] In relation to this issue I therefore do not find in favour of the claimant. This prayer is dismissed.

²² Op Cit at page 23

²³ Lawrence and anr v Fen Tigers Ltd [2014] 2 All ER 622 at 647 per Lord Neuberger, P

²⁴ Op Cit at paragraph 95

Issue #3: Whether the defendant's chain link fence and banana tree hedges are above the statutory height for fences.

- [54] Pursuant to the Town and Country Act²⁵ no fence shall exceed the height of six feet. The contention of the claimant is that the fence that was erected by the defendant does in fact exceed six feet.
- [55] However the evidence of the claimant in this regard was a bald statement contained in her witness statement to the effect that:
"11. In 2014 Ms. Myers erected a chain-link fence on her side of the boundary which is very unsightly and about ten (10) feet high, above the statutory height...

12. She also planted banana trees as part of her fencing which have grown into thick clusters and higher than the chain-link fence which helps to substantially reduce the sunlight entering my yard, mosquitoes and other insects can be seen coming from there into my home and it is just completely unsightly. The branches overhang into my property encouraging moss to grow on my walls."
- [56] The claimant did not introduce any independent evidence as to the height of the fence and the banana trees and as far as this court is concerned there is no statutory limit on the height that a tree may be grown in a neighbour's yard and this court was certainly not directed to any such provision to the contrary.
- [57] The claimant in this court's mind has not proven that there has been any contravention by the defendant in this regard and as such I find that the claimant is also unsuccessful on this issue.
- [58] The court having found that the claimant has not shown that the defendant's use of her land is in any way a nuisance to the claimant, the claimant is not entitled to any of the reliefs sought and her claim is dismissed in its entirety with costs to the defendant on an unvalued claim pursuant to Part 65.5 CPR 2000.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar

²⁵Act 45/1992 section 16(4)(f)(ii)