

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO. MNIHCV 2006/0020

BETWEEN:

MURIEL ROSE-GREEN
Personal Representative of the estate of SUSAN FENTON

Claimant

and

CONSTANCE MASON

Defendant

Appearances:

Mr. Jean Kelsick. for the Claimant

Mr. Khari Markham for the Defendant

2015: May 18th
September 8th

JUDGMENT

- [1] **COMBIE MARTYR, J. (Ag.):** This claim relates to a portion of land at Carrs Bay Road (also known as Brades Estate) devised under the Last Will and Testament of Susan Fenton to her husband Edward Fenton whom she predeceased and who in his will (the Fenton will) devised the said portion of land to their daughter Muriel Rose Green.
- [2] The devise of **'my land at Carrs Bay Road'** to Muriel Rose Green, is founded on a sale by Samuel Wade the defendant's father (Wade) to Susan Fenton (Fenton) of a portion of land measuring **two and one quarter acres** dismembered from Brades Estate (the land), evidenced by a Deed of Conveyance registered on the 17th August 1972 in Liber L Vol. 11 folios 283-288 (the 1972 conveyance).
- [3] Muriel Rose Green now claims that portion of the land on behalf of the estate of Susan Fenton (the claimant) and asserts that the said portion of land under the 1972 conveyance is the **'land at Carrs Bay Road'** referred to in the Fenton will.

- [4] A fact not in dispute is that the 1972 conveyance was registered prior to the introduction of the system of registered land in Montserrat in 1978. That new system of land adjudication, registration and supporting legislation¹ provided for the adjudication of rights and interests in land. The new system placed a positive obligation on a person who claimed an interest in land previously registered under the system of deeds registration² to make a claim within a specified period, demarcate the boundaries of the land claimed and avail himself of the procedures set out in the Land Adjudication Act, for registration as a proprietor of land on the register relating to the corresponding 'parcel of land' created under the new system.
- [5] The claimant alleges that due to inadvertence, Fenton failed, during the specified period, to make a claim to have her title to the land registered under the new system and now alleges that the land is '*more particularly described as 'parcels 21, 55 and 58 Block 13/3 St. Peter's Registration Section'.*
- [6] It is the claimant's case and her evidence that on the 22nd August 1983, Wade fraudulently transferred *parcels 55 and 58 (formerly parcel 20)* to his daughter the defendant and her husband Stanley Mason and on the death of Wade his wife Beatrice Wade on 8th November 1987, fraudulently transferred *parcel 21* to the defendant.
- [7] The claimant alleges that the defendant knew or had constructive notice that Wade had sold the land to Fenton. As such the defendant acted dishonestly and therefore fraudulently and had constructive notice that she was acting improperly, in accepting the transfer of *parcels 55 and 58* from Wade and the transfer of *parcel 21* from the representative of Wade's estate. Put simply, the claimant is alleging fraud on the part of Wade merely on the basis of a land transfer to the defendant and fraud on the part of the defendant on her acceptance of the land.
- [8] The claimant alleges that the subsequent sales by the defendant of *parcel 58* on 5th November 1997 to Equipment and Supplies Ltd for the sum of \$113,645.00 and *parcel 55* on the 26th December 1997 to Bruce Farara for the sum of \$88,000.00, were fraudulent.
- [9] It is the claimant's case that as a consequence, (1) the defendant holds the proceeds of sale in the sum of \$201,654.00 on a constructive or resulting trust for the claimant and that she is entitled to the sum with interest or in the alternative (2) that the defendant has unjustly and fraudulently enriched herself and converted the proceeds of sale to her own use (3) the claimant is entitled to restitution (4) the claimant is entitled to rectification of the land register to enter the claimant as proprietor, in place of the defendant or of possession of *parcel 21*.

¹ Land Adjudication Act Cap 8.07 and Registered Land Act Cap 8.08 Revised Edition of the Laws of Montserrat

² Title by Registration Act Cap 257 (now repealed)

- [10] The court notes that on the 11th March 1998, a caution was entered by the claimant against the register relating to *parcel 21* which has not been withdrawn, removed or cancelled by order of the court.
- [11] The defendant 'makes no admission' regarding the allegations in paragraphs 1 and 2 of the statement of claim which the court notes relate to (1) the 1972 conveyance and the particulars of registration of the land sold to the claimant (2) the description of the land as *parcels 21, 55 and 58* and (3) the failure of Fenton to register her title to the land under the new system of registered land, allegedly due to her inadvertence.
- [12] The defendant asserts that the defendant is not the proper party to a claim based on the allegation of fraud allegedly committed by Wade and Beatrice Wade as the Personal Representative of the estate of Wade.
- [13] The defendant denies being a party to any fraud in (1) the transfer by Wade of *parcel 20* (mutated to *54, 57 and 55*) now *55 and 58* to the defendant and her husband in 1983 (2) the transfer of *parcel 21* to the defendant by the Personal Representative of the estate of Wade (3) the conveyances of *parcels 54 and 57 merged to form parcel 58* to Equipment and Supplies Ltd in November 1997 and *parcel 55* to Bruce Farara in December 1997.
- [14] The defendant denies that an alleged devise in Fenton will, amounts to a conveyance or transfer to the claimant and asserts that a cause of action in fraud survives the death of Wade and Fenton, but not for the benefit of the claimant in her personal capacity.
- [15] As an alternative, the defendant asserts the factual and physical possession of the land by Wade for more than 40 years who was not dispossessed by the claimant and that the continued possession of the land after 12 years, bars any claim by the claimant. The defendant denies that the claimant ever occupied or owned the land or was ever in possession or dispossessed the defendant thereof.
- [16] The defendant asserts that no particulars of the alleged fraud have been pleaded in the claim or in the response to the request and denies holding the proceeds of the two sales or any land on any trust constructive or resulting for the claimant.

THE EVIDENCE

- [17] The claimant stated that she was not aware that in 1969 Wade gave a portion of the land to his son Seymour. She was not aware that Seymour built a two bedroom house on the land and that a portion of the land was rented to a Mr. Tuitt. She later confirmed that she became aware that about 1/2 acre of the land was rented to Mr. Tuitt.

- [18] The claimant asserted as in her affidavit dated 19th November 2008, that the land formed part of the lands at Brades owned by Wade, the location of which was shown to her by Fenton and which land is recorded in "black and white" in her document (referring to the affidavit aforementioned) 'measuring 2 1/2 acres and are the parcels 21, 55 and 58'.
- [19] She further stated that she paid no taxes on the land as she heard that it was sold, did not know that the defendant paid any taxes, or whether Fenton or her daughter paid any taxes and was not familiar with a Mr. Johnson working with the government who was allegedly renting the two bedroom house built on the land by Seymour.
- [20] The claimant reiterated that she does not know that *parcels 21, 55 and 58* represented all the lands at Brades owned by Wade and was consistent throughout her testimony that Wade sold a portion of his lands at Brades measuring 2 1/2 acres to Fenton and in his will Edward Fenton left the said '***parcels 21, 55 and 58 (ie the said 2 1/2 acres of land)***' to her, relying on her affidavit evidence before the court. The claimant informed the court that her evidence is sufficient to satisfy the court that the 2 1/2 acres constitute *parcels 21, 55 and 58*.
- [21] The claimant stated that she was not in Montserrat in 1978, did not know whether Wade claimed the land under the new system of registration and did not know whether her mother Susan Fenton had sold it or what she did with the land after purchase, as she was in England at that time. The claimant conceded that other than the land, Fenton does not own any other lands in Brades or along the Carrs Bay road.
- [22] The defendant stated that she left Montserrat in 1969 and has no knowledge of the 1972 conveyance. However she is aware of the Deed of Gift of land by her father Wade to her brother Seymour in 1969 registered at Liber M Vol. 111 Folio 258 and which is alleged to be *parcel 55* in her affidavit dated 4th February 2009. Of that parcel the defendant states that in 1972, when Wade was alleged to have sold *parcel 55* to Fenton, *parcel 55* was already owned by Seymour.
- [23] She asserted that Wade gave her *parcel 58* and he showed her where the land is located. She stated that she knew Fenton but did not know of the claimant or any sale of land to Fenton in 1972, until the claim was served on her alleging that Wade sold the land to Fenton, took it back and transferred the land to her. It was at that time too that she surmised the claimant was Fenton's daughter.
- [24] The defendant pointed out that the combined areas of *parcels 21, 55 and 58* together measure approximately 1.25 acres or less and **not** the 2 1/4 acres purchased according to the 1972 conveyance.

- [25] The defendant further stated that when Seymour defaulted on a loan which was secured by *parcel 55*, she and her husband settled his debt and in consideration thereof *parcel 55* was transferred to them. She reiterated that she was not aware that the land given to her by Wade father was land that he had already sold to Fenton.
- [26] Of *parcel 21* the defendant explained that she knew it to be the portion of land originally rented to Mr. Tuitt. The defendant admitted that at the date of her father's death in 1985 there were 12 children alive but did not know that all 12 children were entitled to share *parcel 21*. Her explanation was that on the death of her father the land belonged to her mother and during her lifetime her mother as administrator of the estate put the land in the names of the administrator and the defendant, she being the closest to her parents, the most responsible and the person who helped them.
- [27] The defendant maintained that she did not know it was against the law to put the land only in the names of the administrator and the defendant and had she known that she would not have done so. She repeated that she had not committed fraud in respect to the land, was not a party to fraud committed by any person and did not conspire with any person to commit fraud.

ISSUES FOR DETERMINATION BY THE COURT

- [28] 1. Whether the court can infer that the parcels currently registered as *21, 55 and 58* are what remains of the original 2 1/4 acres purchased by the 1972 conveyance and devised to the claimant in the Fenton will.
2. Whether the defendant is in breach of CPR 10.5 (3)-(5) and the consequences of CPR 10.7 apply.
3. Whether the claimant has established that the land measuring 2 1/4 acres purchased by Fenton by the 1972 conveyance and devised to the claimant in the Fenton will, constitute the parcels currently registered as *21, 55 and 58*.
4. Whether the court can infer from the evidence that having previously transferred *parcels 55 and 58* to the defendant, that Wade through his fraudulent representation applied under the new system of registration and became recorded as owner of *parcels 21, 55 and 58*.
5. Whether the particulars of the allegations of fraud pleaded are sufficient to establish fraud on the part of Wade and Beatrice Wade and on the part of the defendant in accepting the lands transferred to her and the subsequent sales.
6. Whether the case for fraud or mistake has been made out and proven.

7. Whether the defendant holds the proceeds of sale of *parcels 55 and 58* on a constructive or resulting trust for the claimant.
8. Whether the claimant is entitled to restitution by way of payment of the proceeds of sale of *parcels 55 and 58*.
9. Whether the title to *parcel 21* recorded in the name of the defendant and Beatrice Wade as Personal Representative of Samuel Wade, can be set aside and land register rectified to instate the name of the claimant pursuant to Section 140 (1) of the Registered Land Act Cap 8.01 Revised Edition of the Laws of Montserrat, on the basis of fraud or mistake.

ANALYSIS OF THE ISSUES AND SUBMISSIONS OF THE PARTIES

- [29] 1. Whether the court can infer that the parcels currently registered as *21, 55 and 58* are what remains of the original 2 1/4 acres purchased by the 1972 conveyance and devised to the claimant in the Fenton will.
2. Whether the defendant is in breach of CPR 10.5 (3)-(5) and the consequences of CPR 10.7 apply.
3. Whether the claimant has established that the land measuring 2 1/4 acres purchased by Fenton by the 1972 conveyance and devised to the claimant in the Fenton will, constitute the parcels currently registered as *21, 55 and 58*.
- [30] Submissions of learned counsel filed on the 21st and 27th May 2015, addressed succinctly the facts and evidence before the court and eloquently detailed the law relating to the issues to be determined by the court. However before the court can proceed with the analysis of the law, it is crucial for the court to address issues 1-3 *supra* as that analysis will determine whether it is necessary for the court to proceed to deal with issues 4-9 *supra*.
- [31] Counsel for the claimant in his submissions, referred to the 1997 sales of *parcels 54, 55 57* and made reference to the *'uncontroverted evidence of the claimant at TB2, para 6 (c) pg 3, that 'parcels 54, 55 and 57 comprised part of the said 2 1/2 acres of land' . Counsel invites the court to consider that this averment is sufficient to support the contention that due to further consolidations after sales 'what remains of the land is now described as parcels 21, 55 and 58'.*
- [32] The court and the defendant accept that it is the claimant's case and after clarification of the exhibits³ to the court at trial by counsel for the claimant, that after subdivision and mutation (not after sales), *parcels 54 and 57* (formerly *parcel 20*) were merged and consolidated to form *parcel 58* and *parcel 55* resulting in

³ TB 2 pgs 19-20

parcels 21, 55 and 58, and to that extent only, the evidence of the claimant is uncontroverted.

- [33] However the court does not accept that the claimant's evidence '*parcels 54, 55 and 57 comprised **part** of the said 2 1/2 acres of land*' is uncontroverted'. A clear reading of paragraphs 7-10 of the defendant's affidavit ⁴ contradicts materially, the submission of counsel for the claimant in that regard. Certainly there is no allegation in the claim or evidence before the court to that effect and as such the court therefore rejects the submission regarding the claimant's evidence that '*parcels 54, 55 and 57 comprised **part** of the said 2 1/2 acres of land*', is uncontroverted'.
- [34] The defendant in paragraph 10 of her affidavit ⁵ raised the inconsistency regarding the combined area of parcels 21, 55 and 58 measuring 1.25 acres or less and **not** the 2 1/4 acres purchased and devised under the Fenton will. In fact the court expressed the possibility that the very uncertainty in the area of the land may well lead to the inference that the land purchased and devised under the Fenton will, does not constitute or is not parcels 21, 55 and 58 as contended.
- [35] Counsel for the claimant in his submissions attempted to clarify what the court considers inconsistency, uncertainty or deficiency in the allegations in the claim and evidence before the court and the question raised by the court as to whether a sufficient nexus had been established between *parcels 21, 55 and 58* block 13/3 St Peters Registration Section, measuring 1.01 acres and the 2 1/4 acres of land purchased in the 1972 conveyance and devised to the claimant in the Fenton will.
- [36] The court has now been asked to infer that *parcels 21, 55 and 58* measuring 1.01 acres are '*what remain of the 2 1/4 acres of land devised to the claimant in Susan Fenton's will*'. The basis for that inference, is a breach by the defendant of CPR 10.5 (3) -(5) and the nexus according to counsel for the claimant, is to be found in the averment in paragraph 1 of the statement of claim and the response in paragraph 2 of the Defence to wit: *The defendant makes no admission to paragraphs 1 and 2 of the statement of claim*'.
- [37] The consequence of that response says counsel, is an acceptance by the defendant, that the land is *parcels 21, 55 and 58*, from which the defendant cannot now resile, is estopped from saying otherwise and the consequences of CPR 10.7 apply. Counsel contended that counsel for the defendant did not challenge paragraph 3 of the claimant's affidavit nor did he put to the claimant that the land is not *parcels 21, 55 and 58*.

⁴ TB 2 pgs 59-60

⁵ TB 2 pg 60

- [38] Counsel for the defendant in his submissions posited that the defendant was not in a position to respond otherwise. Further that it was improper to require the defendant to provide factual pleadings in support of the allegations in paragraphs 1 and 2 of the statement of claim which relate to 3rd parties who are deceased and who or whose estates were not parties to the claim at the date of filing. The defendant could have no knowledge and would not have been able to provide any particulars in response to these allegations.
- [39] The court however takes a different view from counsel for the claimant as it relates to the statement of claim and more so in light of the testimony of the claimant. The court acknowledges CPR 10.5 (3) - (5) imposes a duty on the defendant to set out her case or give reasons for resisting or to put a different version of events, particularly when the defendant denies or neither admits or denies an allegation in the statement of claim. The court also considered the application of CPR 10.7 which provides that the defendant may not rely on any allegation which is not set out in the defence, unless the court gives permission or the parties agree.
- [40] With respect to CPR 10.5 (5) which provides for a defendant who neither admits nor denies allegations in a claim and in the case at bar, applies to the defendant who *'makes no admission to paragraphs 1 and 2 of the statement of claim'*. This court interprets that response as meaning, the defendant does not know or has no knowledge and cannot confirm the following: (1) Wade sold 2 1/2 acres of land in Brades to Susan Fenton in 1972 (2) the land sold in the 1972 conveyance, is registered at folios 283-288 (3) the land sold is more particularly described in the deed as parcels 21, 55 and 58 (4) Susan Fenton failed to have her title registered in 1978 and (5) Susan Fenton's failure to do so was due to her inadvertence.
- [41] The court agrees with the submission posited by counsel for the defendant and goes further to state that CPR 10.5 (5) which provides that:
- “If, in relation to any allegation in the claim form or statement of claim, the defendant does not –
(a) admit it; or
(b) deny it and put forward a different version of events;
the defendant must state the reasons for resisting the allegation.”
- must be interpreted within the context of allegations made specifically **against the defendant** and certainly not in relation **to or against a 3rd party** of which allegation, the defendant would simply have no personal knowledge and would not be able to state any reason for resisting same.

Sandra Ann Marie George (Administratrix of the estate of Karlos George v Nigel Don-Juan Glasgow- SVGHCVP 2013/0003 applied.

- [42] It became obvious to the court during trial that there were inconsistencies or deficiencies in the pleadings in this matter in the testimony of the claimant and documentary evidence before the court. The court was forced to accept certain explanations from counsel and inferences in respect to the evidence in order for the matter to proceed.
- [43] The court accepted counsel for the claimant's explanation and counsel for the defendant's concession, that there was an error in the pleadings and affidavit regarding the area of land purchased by Fenton in the 1972 conveyance. In so doing the court accepted that it was **two and one quarter acres** of land at Brades Estate/Carrs Bay road as described in the 1972 conveyance and **not two and one half acres** of land, in clear contradiction of the allegations in paragraph 1 of the statement of claim and the evidence before the court. This fortifies the interpretation by this court, that the defendant simply did not know and could not have said otherwise or give any reasons in respect to allegations not made against the defendant herself.
- [44] As a consequence, the court does not accept that the response in paragraph 1 of the defence that *'the defendant makes no admission of the allegations in paragraphs 1 and 2 of the statement of claim'*, constitutes a breach of CPR 10.5 (3) - (5) and the consequences of CPR 10.7 apply or the failure by counsel for the defendant to challenge paragraph 3 of the claimant's affidavit or to put to the claimant, that the land is not *parcels 21, 55 and 58*, constitute an acceptance by the defendant of the claimant's averment, from which the defendant cannot now resile.
- [45] This court does not accept that the aforementioned could possibly provide a nexus between the land purchased by Fenton and described in the schedule to the 1972 conveyance (two and one quarter acres of land at Brades), the land devised to the claimant in the Fenton will (my land at Carrs Bay Road) the land described in the statement of claim and admitted in evidence (2 1/2 acres of land in Brades more particularly described as *parcels 21, 55 and 58*) the land transferred to the defendant (*parcels 21, 55 and 58* actually measuring 1.01 acres) and from which evidence the court is now being asked to infer that the combined area of *parcels 21, 55 and 58* being 1.01 acres, are *'what remains of the land devised under the Fenton will to the claimant'*.
- [46] The court respectfully declines to make such an inference for the following reasons:
1. The claimant did not know the subject matter of her own claim;
 2. The claimant did not know that the 1972 conveyance upon which her claim is grounded, describes *2 1/4 acres* and **not 2 1/2 acres** of land in Brades sold to Fenton to which she was entitled under the Fenton will;
 3. The claimant did not know that the 1972 conveyance did not describe the lands purchased, as *parcels 21, 55 and 58*;

4. The defendant could not have known the reason, whether due to inadvertence on her part or otherwise, that Fenton failed to have title to the land registered in her name;
5. The defendant could not have known whether Fenton in fact failed to have title to the land registered in her name;
6. The statement of claim, affidavit evidence and consistency of the testimony of the claimant is that the 2 1/2 acres of land purchased by Fenton under the 1972 conveyance is parcels 21, 55 and 58.

[47] This court will not allow the claimant whose duty it is under CPR 8.7 to set out her case and must include in the claim all the facts on which she relies, to rely on the argument in submissions to relieve the claimant of the obligation to prove all allegations in this claim on a balance of probabilities.

[48] The evidence must be sufficient to satisfy the court and in particular, that the 2 1/4 acres of land purchased by Fenton by the 1972 conveyance, is the land described and devised to the claimant under the Fenton will, is the land described in the statement of claim and admitted in evidence in this claim, is the land more particularly described as *parcels 21, 55 and 58* and is the land allegedly fraudulently transferred to the defendant.

[49] In essence, the 2 1/4 acres of land sold to Fenton is specific, physical and tangible with its boundaries specifically described in the schedule to the 1972 conveyance. As such the land must occupy a *specific physical location* in Brades and consequent on the new system of registration, must occupy a *specific physical location* on the registry map/plan. It is the opinion of this court that the specific location of the land must be definitively and specifically identified by the claimant in order to found the basis for this claim.

[50] The court during the trial engaged in an excursion into the 1972 conveyance which described the vendor as "*being possessed for upwards of 20 years of certain lands originally forming part of Brades Estate and has **agreed to sell a portion of the said lands to the purchaser***" and the schedule to the 1972 conveyance which describes the land sold as bounded as follows:

*"on the north: by public main road to Carrs Bay,
on the south by lands in possession of the Government of Montserrat and used as an experimental farm,
on the east by lands of Nathaniel Buntin and
on the west by lands retained by the Vendor".*

[51] The court also perused the registry maps/ plans ⁶ in an attempt to address its concern regarding the uncertainty and the difficulty in reconciling whether the

⁶ TB 2 pages 19 - 20

lands purchased by the 1972 conveyance and the parcels allegedly fraudulently transferred to the defendant were one and the same, invited counsel to consider the appointment by consent, of an expert to assist the court in that regard. The court was guided by the approach taken by their lordships in ***John Goddard v National Development Corp (St. Lucia) [1993] UKPC 2a (1 February 1993)***. Nevertheless counsel for the claimant declined the invitation and the matter continued with the court making the following observations:

- the northern and southern boundaries of *parcels 21, 55 and 58* are as described in the schedule as aforesaid;
- the location of the lands owned by Nathaniel Buntin (lot/parcel 43) which is described as being lands on the **east** of the land;
- the land of Nathaniel Buntin does not bound on the east of *parcels 21, 55 or 58*;
- the inability to identify the location of any of the lands originally owned by Wade;
- the inability to identify the location of the lands comprising the original 2 1/4 acres sold to Fenton;
- the inability to identify the location of the remainder of the lands retained by the vendor;
- the inability to geo-reference the original 2 1/4 acres sold to Fenton under the Torrens system and the corresponding parcels created under the new registered land system.

[52] The court having considered all the evidence in this case, concludes that there is:

1. No evidence with respect to the location of the original 2 1/4 acres sold to Fenton under the Torrens system or under the new registered land system;
2. No evidence with respect to the location of the remainder of the land retained by Wade following the sale to Fenton under the Torrens system or under the new registered land system;
3. No evidence before the court with respect to the location of the land owned by Wade before the sale to Fenton under the Torrens system or under the new registered land system;
4. No evidence before the court evidencing any claims or adjudication records relating thereto, made by Wade under the new system.
5. No evidence of any claims or adjudication records relating to any claim by Wade under the new system with respect to *parcels 21, 55 and 58*;
6. (Even if the court were to infer that Wade became recorded as owner of the land), no evidence as to whether the land to which Wade became recorded as owner, is the same land that Fenton failed to claim;
7. No evidence of a report of a Licensed Land Surveyor or expert of geo-reference information of the 2 1/4 acres sold and the corresponding parcels created therefrom, after the new system of registration;

8. No land registers evidencing the sales to and proprietors of *parcels 21, 55 and 58* or of any of the parcels shown on the registry map/plan at TB 2 pgs 19 -20

- [53] The facts and evidence before this court were insufficient to establish definitively, that the same physical area and location of the land measuring the 2 1/4 acres sold to Fenton, occupies the same physical area and location of land subsequently transferred to the defendant or that the 2 1/4 acres sold to Fenton is the same as or constitute *parcels 21, 55 and 58*.

CONCLUSION

- [54] This uncertainty as to the subject matter of the claim is very relevant to the allegation of fraud made against the defendant and the court considers it crucial in any determination of the issues in this claim. As such any attempt by this court to make a definitive determination regarding the 2 1/4 acres of land purchased by Fenton and the subject matter of this claim is speculative at best and the justice of this case militates against the court so doing.
- [55] The outcome of this case is in no way an indictment on the quality of the presentation of the case and submissions of counsel, but rather on the lack of the crucial evidence sufficient to ground the claim in fraud against the defendant.

ORDER

- [56] Having regard to the foregoing, it is unnecessary to deal with the other issues for determination (4-9 *supra*) and accordingly the order of the court is as follows:
1. Claim is dismissed.
 2. The Registrar is ordered to remove, withdraw or cancel the caution dated 11th March 1998 entered against parcel 21, Block 13/3 St Peter's Registration Section.
 3. The claimant shall pay the defendant prescribed costs.



Cynthia Combie Martyr
High Court Judge (Ag)