



IN THE HIGH COURT OF JUSTICE

Suit No.120 of 1996

JOSEPH OBERIUS

VS

Defendants

1998: January 16
February 11

JUDGMENT

21 AUG 1979 15

- (i) *cease their trespass on the portion of land at Reunion, Quarter of Choissuel registered in the land Registry as Block and parcel No.0223B 114 owned by the Plaintiff*
- (ii) *cease their interference with the Plaintiff's building operations on the land, that is from removing the posts part of the fence being built on the said land*
- (iii) *remove and clear away the blocks, branches and other materials placed by the Defendants on the land and blocking the gate to the entrance of the land*

- (2) *Special Damages* \$575.00
- (3) *General Damages for nuisance caused the Plaintiff*
- (4) *Costs*
- (5) *Further and other relief."*

On that same day the Plaintiff filed a Summons supported by an affidavit of even date under Order 29 Rule 1 of the Rules of the Supreme Court claiming the following:

- "(1) *An Injunction that the Defendants their Servants and/or Agents do:*
 - (i) *cease their trespass on the portion of land situate at Reunion, Quarter of Choisuel registered in the Land Registry as Block and Parcel No.0223B 114 owned by the Plaintiff*
 - (ii) *cease their interference with the Plaintiff's building operations on the said land, that is from removing or interfering with the posts being built on the said land*
 - (iii) *remove and clear away the blocks, branches and other materials placed by the Defendants on the land and blocking the gate to the entrance of said land.*
- (2) *An Order that the Defendants do pay the costs of this Application.*
- (3) *Further and/or other relief."*

The gist of the supporting affidavit is, the Plaintiff claims that he is the registered owner of Block and Parcel No.0223B 114 in the registration quarter of Choisuel and that on the 8th of January, 1996 he had a fence constructed (costing \$379.00) on part of his property; that the first named Defendant who lives at the back of his property trespassed upon his land and destroyed the erected fence; that on the 10th of January he authorized the replacement of the same fence at a cost of one hundred and ninety-six dollars (\$196.00).

He further deposed that on the following day in the presence of the Police

the second named Defendant trespassed upon his land, shook the fence and thereby weakening the supporting posts to the fence causing them to lean sideways and that they are in that leaning position to date and as a result he as suffered further loss and damage.

On the 12th January, 1996 on awaking he saw a pile of blocks blocking his gate and preventing him from using his vehicle through his gate to and from his property.

He deposed that the Police returned to the scene on the 17th January, 1996 and in their presence the Defendants placed an oil drum and mango branches on top of the blocks further blocking his use of the land through the gate thereby creating a nuisance and trespass thereby.

On the 28th day of February the summons under Order 29 Rule 1 of the Supreme court was heard and the order was granted in these terms:

"Order granted as prayed in accordance with paragraph 1 to 3 of the summons.

Returnable dated 13th March, 1996."

On the 12th day of March an appearance was entered on behalf of the Defendants.

There were two adjournments and on the 24th day of May, 1996 an order was granted in these terms:

"That the order of Injunction granted on the 28th day of February, 1996 is hereby made perpetual or until further order of the court."

That order was entered on the 14th day of June, 1996.

On the 10th day of February, 1997 Judgment in Default of defence was

granted in the following terms:

- "1. That a Perpetual Injunction be granted against the Defendants their Servants and/or Agents to:
 - (i) cease their trespass on the portion of land at Reunion, Quarter of Choissuel registered in the Land Registry as Block and Parcel No.0223B 114 owned by the Plaintiff
 - (ii) cease their interference with the Plaintiff's building operations on the land, that is from removing the posts part of the fence being built on the said land
 - (iii) remove and clear away the blocks, branches and other materials placed by the Defendants on the land and blocking the gate to the entrance of the land.
2. Special Damages \$575.00
3. General Damages for nuisance caused the Plaintiff
4. Costs
5. Further and other relief.

On the 30th of June, 1997 Notice of Motion supported by two affidavits, one deposed to, by the Plaintiff and the other by Patrick Wilson were filed requesting that the second named Defendant Louesta Augustin do stand committed to the Royal Goal for contempt because of her disobedience of the order of the court dated 24th May, 1996.

On the 25th day of September, 1997 a summons to set aside the order of 10th February, 1997 was filed and the grounds pleaded were firstly, "that the judgment is irregular" and secondly "the order by way of Injunction was erroneously granted." That summons was supported by affidavit of the second named Defendant Louesta Augustin who denied ever being served personally with the order of injunction and of assaulting the Plaintiff. She deposed that the Plaintiff's erecting of a gate restrains and prevents her from having access to her own land and prayed that the order of injunction be set aside. She also filed on that same date a list of exhibits which included a draft defence.

That summons was heard on the 3rd day of October, 1997 and the order granted was entered on the 20th October, 1997.

The above mentioned order granted, reads as follows:

"That the Judgment in Default entered on the 10th February, 1997 be set aside as being irregular.

That the Defendants file and serve their defence within 14 days hereof.

That the Plaintiff do pay the second Defendant's costs of this application to be taxed unless otherwise agreed."

Meanwhile, on the 14th day of October, 1997 the Plaintiff filed a summons supported by an affidavit for leave to amend the court order dated 24th May, 1996 and leave to serve the same on the Defendants.

On the 5th day of December, 1997 the Defendants filed a summons supported by an affidavit to set aside the injunctions/orders of the 28th February, 1996 and 24th May, 1996.

Those two last summonses were argued in chambers on the 16th day of January, 1998. Learned Counsel for the Plaintiff sought to amend the order dated 24th day of May, 1996 by inserting a penal clause and to serve it on the Defendants and quoted Order 20 Rule 11.

Learned Counsel for the Defendants argued that if the injunctive order of 24th day of May, 1996 was still valid then he would concede to the insertion of the Plaintiff's request but it was his view that no such order was before the court since the judgment in default of Defence, a final order entered on the 10th day of February, 1997 had been set aside.

He argued that the injunctive order of 24th day of May, 1996 concluded with the words, "*or until further order of the court*" and that a further order was granted by Farara J, on the 3rd day of October, 1997 and therefore the order of 24th May, 1996 could no longer be considered as being in force.

CONCLUSION

This is a case where the prayer in the Statement of Claim seeks an injunctive relief as well as other forms of relief and on the same day an interlocutory application was filed for the same injunctive relief.

The interlocutory matter was heard and as usual the injunctive relief was granted in order to maintain the '*status quo*' until the matter is determined after trial. I pause here to state that very often the granting of the interlocutory injunction becomes the end of the matter.

In this case however, the interlocutory injunction was granted on an '*ex parte*' application which was eventually made perpetual "until further order of the court."

Judgment in default was later granted and then set aside (after arguments in chambers) and the case is to take its normal course since it was ordered "that the Defendants do file and serve their defence within fourteen (14) days thereof."

As I see it the case has started afresh and if an interlocutory injunction is needed then the Plaintiff has to file for that relief and the rules of court be followed.

I have observed that the order of 3rd October, 1997 the Plaintiff was ordered to pay costs of the application to the second Defendant to be taxed unless otherwise agreed.

Therefore my order will be as follows:

The summons of 14th October, 1997 for leave to amend the court order dated 24th May, 1996 and leave to serve the same on the Defendants is dismissed.

The injunction order of 28th February, 1996 made perpetual on the 24th day of May, 1996 is hereby set aside.

That there will be no order as to costs.



SUZIE d'AUVERGNE
HIGH COURT JUDGE