**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV2015-03164

Between

**RAMDHARIE SUMAI** Claimant

And

**RAMDATH SUMAI** Defendant

**Before The Honorable Justice David C. Harris**

Appearances:

Ms. Marsha A. Chasseau **for the** Claimant

Mr. Brent K. Ali **for the** Defendant

**JUDGMENT**

**INTRODUCTION**

1. This claim concerns the use by the Claimant of an access road known as Sumai Drive, which forms part of the Defendant's land known as Lot #3. The claimant was granted a gratuitous licence to use the access for a limited domestic/private purpose.

**THE CLAIMANT'S CASE**[1]

2. The Claimant contends that the brothers – the Claimant, the Defendant and another sibling Ramsaran – own three contiguous parcels of land at Cunapo Southern Main Road, Sangre Grande.

[1] Extracted from the Claimant's Statement of Case and written submissions.

Sometime in 1979, the Claimant built a dwelling house on his land and has since built several houses on the said lands.

3. The brothers, by agreement the Claimant contends, constructed an access road to their properties, which was later called Sumai Drive. The said access road forms part of the Defendant's property and it was agreed between the brothers that it would be used as an access way to all of their lands. The Claimant alleges that he has been using the said lands since the 1970s and up until 2013 without interference. In 2014 the Defendant barred his access and thereafter in 2015 the Defendant fenced off two entrances to his (the Claimant's) home, effectively narrowing the roadway. It is under these circumstances, according to the Claimant, that he has approached the court for relief.

**THE DEFENDANT'S CASE[2]**

4. The Defendant contends that he never entered into any conversation or agreement with the Claimant neither was he aware of any similar conversation or agreement between Ramsaran Sumai and the Claimant concerning the access road. He occupied Lot 3 in or about 1975 after exchanging his original lot 1 with his brother for lot 3, graded and constructed a private access road partially on to Lot 3 and in or about 1977, started construction of a wooden house towards the end of his access road. When he moved onto the land in 1978, the Claimant was not living on Lot 2 and there were no houses constructed upon the said lot.

5. The Defendant constructed the private access road on Lot 3 for his personal use; it was not done as part of any agreement amongst the brothers but out of the sole effort and expense of the Defendant. Further, the said access road cannot be used as access to all the lands as it does not pass through or grant access to all the lands.

6. The Claimant was granted permission by the Defendant to use the access road up to a defined location, at the drain reserve, as a licensee and not as any grant or easement, as they were family. The Defendant at the onset and several times thereafter implored the Claimant to build his own access road. The Defendant migrated to the USA in 1994 for 20 years and returned annually to Trinidad. He left his son on the property until 2000, when his son migrated to the USA. After the

[2] Extracted from the Defendant's defence and written submissions.

Claimant trespassed beyond the permitted use of the access road, the Defendant erected a fence up to the point of the drain reserve to prevent such further acts and in 2015 he erected a fence along the northern boundary of Lot 3 with prior notice to the Claimant's attorney-at-law. The Defendant states that Lot 2 adjoins the Cunapo Southern Main Road and is not land-locked. In any event, the Defendant contends, he left three entrances for the Claimant to access Lot 2 via the private access road and that the Claimant was not permitted to use the access road beyond the point of the drain reserve.

**ISSUE TO BE DETERMINED**

7. (i) Whether, on the evidence, the Claimant has a valid and enforceable easement or right of way over the Defendant's land, the requirements of a valid easement or right of way having been satisfied;
   (ii) If so, whether this right or easement is saved by the Prescription Ordinance Ch. 5 No. 8, or by way of necessity.

**THE LAW**

8. *"An easement may be defined broadly as a right attached to the land (the dominant tenement) which gives the owner of that land a right to use the land of another (the servient tenement) in a particular way (for example to walk or drive across it)……"*[3]

9. In ***Re Ellenborough Park***[4] Evershed MR outlined the requirement to be satisfied before it can be said that such a right (of easement) exists: **(i)** There must be a dominant and servient tenement. **(ii)** An easement must accommodate the dominant tenement. **(iii)** Dominant and servient owners must be different persons. **(iv)** A right over land cannot amount to an easement unless it is capable of forming the subject matter of the grant.

10. To support a claim of acquiring the right of way by prescription as submitted by the Claimant, section 2 of the ***Prescription Ordinance***[5] provides:

[3] Commonwealth Caribbean Property Law, Gilbert Kodilinye, Cavendish Publishing Limited 2000 at page 172
[4] [1956] Ch 131 at 163
[5] Ch 5 No 8

> *"When any claim shall be made to any right of common or pasture, or other profit or benefit, except rent and services, or to any way or other easement, or to any water course, or the use of any water, to be taken or enjoyed or derived upon, over, or from any land or water of His Majesty, or of any body corporate or person, and* ***such right of common or other matter as hereinbefore mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of sixteen years,*** *the right thereto shall be deemed absolute and indefeasible,* ***unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing."*** [Emphasis added]

11. The 16 year use must be 'continuous' in that there cannot be unexplained periods of non-use. The use must be "as of right", which means that it must be "without force", "without secrecy", and "without permission". As lawyers like to use Latin; reference is made to these ingredients as "*nec vi*", "*nec clam*", and "*nec precario*". So, "without force" means that the exercise of the right cannot be contentious or against the will of the landowner. "Without secrecy", prevents someone from acquiring an easement by deceit. So for example, only using an access road in the dead of the night would bar a claim to a prescriptive right. "Without permission" means that if the owner of the land has consented to an arrangement, then a prescriptive easement will not arise.

12. The Claimant also put forward a case for acquiring a right of way by necessity, that is, there being no other way for access to the land but by way of the easement claimed. This was explored in ***Davidson v Joseph***[6] and supported in Halsbury Laws of England.[7] An easement of necessity is one of the exceptions to the rule in ***Wheeldon v Burrows.***[8]

13. An easement or right of way of necessity also formed part of the analysis.

14. Put simply, an easement of necessity is an easement without which the parcel of land transferred by the Defendant's father cannot be used at all. The level of necessity is one which is indispensable. The Claimant must establish that, without the provision of the desired disputed

[6] CV2014-02363 at para. 37 Seepersad J.
[7] Vol 87 (2017) at para. 759
[8] (1879) 12 Ch. D 31 at 49 "…..on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean *quasi* easements), or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted. The second proposition is that, if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant. Those are the general rules governing cases of this kind, but the second of those rules is subject to certain exceptions. One of those exceptions is the well-known exception which attaches to cases of what are called ways of necessity…."

access over lot #3, his tenement cannot be used at all. The authorities on this point are comprehensive and legend.

15. In the instant case, the issue over the application of the easement of necessity turns on **(i)** the identity of the grantor of the lot to the Claimant and if the consideration goes beyond this primary threshold, then; (ii) the criterion of 'necessity'. The authorities speak of alternate access ways belonging to 3rd parties or ways precarious in nature, as not being sufficient to defeat a claim for an easement of necessity. The alternate access must, it appears, be a way as of right.

16. The court, in this strict application of 'necessity' has in mind in part, as its justification, a man who does not take the trouble to secure an actual grant of a right of way against the grantor.

17. In ***Islam Baksh v Ken Butcher***[9] where Pemberton J, as she was then, stated at para. 21(1):

> *"An easement of necessity may arise where the dominant tenement is landlocked and unless the right of way is implied over the quasi-servient tenement, the owner of the dominant tenement cannot access the land."*[10]

**THE EVIDENCE**

18. The evidence in this matter is not extensive. There is no dispute that the lands were conveyed to the brothers including the Claimant and Defendant by their father and not from each other. I will refer to the parties' father from whom they got their respective lots 1-3, as the" grantor". There is no dispute that the Defendant was first granted lot 1 and that he subsequently by agreement with his brother, exchanged his lot 1 for his brother's lot 3.

19. The Claimant gave evidence in chief and in cross examination. The high water mark of his evidence is that the brothers including the Defendant agreed in the early 1970's to construct a road on the Defendant's land to access the lands of all the brothers.

20. The brother on the exchanged lot 1, Ramsaran Sumai, testified for the Claimant as to an oral agreement between him and the Defendant and later together with the Claimant. The agreement

[9] Cv2007-04455
[10] Principle culled from MRA Engineering Ltd v Trimester Co (1988) P. & C. R. 1

for convenience of discussion, appears to this court to have two limbs. His evidence of what this court refers to as the first limb of the agreement, was substantially that of the terms of the initial exchange of the lot 1 and lot 3 between the Defendant and himself. It involved the Defendant conveying two lots to Ramsaran's son as consideration for the exchange. There is no sufficient evidence to diminish this evidence and inference. In the end, albeit at a later point in time than anticipated by Ramsaran, the two lots were conveyed. The tenor of Ramsaran's evidence suggest he was not happy with the Defendant's procrastination to give effect to this exchange term of the agreement. This limb consumed much of his evidence of the nature of the *agreement* that he referred to in his evidence. Further to all of this, his evidence in chief is rendered almost incoherent having regard to the validity of several of the evidential objections. This is a witness of convenience.

21. The second limb, as it were, is the alleged later agreement between the three brothers as to the access alleged by the Claimant and forming the dispute before this court. On this limb, the witness Ramsaran is not very persuasive and indeed does not set out the "agreement" and the discussions of the detail and particulars sufficiently, so as to suggest the discussion and agreement actually took place. His reference to it is casual almost, sterile and skeletal. His evidence, like the Claimant's does not speak to the rationale for the use of the Defendant's lot to access lot #2 or indeed any or all of the lots. Considering that the case for the Claimant turns on the existence of the specific and what appears to be uncomplicated terms of this alleged agreement, the court would have reasonably expected the evidence to be more descriptive and cogent.

22. But, perhaps more significant, is the implausibility of the intent of the agreement. That the Defendant would enter into such an agreement to divest himself of the exclusive use of his lands to facilitate alternative access to others in all the circumstances of this case, including the layout and independent public road accessibility of the lots 1-3, is illogical on the face of it.

23. Firstly, the lot #1 is simply not served by this disputed access road. Ramsaran's son's lots on the Defendants lot #3, which Ramsaran negotiated for with the Defendant, are serviced by this disputed access and in any event the Defendant who conveyed the lots to them from his own, would be bound to provide them access to the public way if only by way of an easement of necessity as a last resort. That this son is not party to this matter is not surprising, for his right to

access is unassailable on the facts before me. I am afraid that on a balance of probabilities, the evidence of Ramsaran simply does not meet the threshold on the issue of the import of the alleged agreement for the disputed access of the public way.

24. Returning to the evidence of the Claimant, the court notes that the Claimant has not led cogent evidence as to the initial and inherent inaccessibility of his lands to the public way that would have led him to need an alternate access or would have led the Defendant to gratuitously allow his brother a perpetual and persistent access to his lot #2 over lot #3. Indeed, on the evidence before this court, including the plans, pictures and the oral testimony, there is nothing to suggest that lot #2 was inaccessible to the public way. The reason for determining this factual issue is only to lend weight to the court's conclusion that the substance of the alleged agreement from the Defendant's stand point is simply implausible/illogical; that is, the Defendant had no reason to give up or share his lands as alleged, for use by the Claimant (and others) when the Claimant's land appears as accessible to the public way as is the Defendant's. The Defendant has indeed refuted the claim by the Claimant. The benefit to lot # 2 is that he does not use up his lot for a roadway and derives the benefit of maximising the use of his lot #2.

25. This court accepts the Defendant's concern that given the pivotal role the alleged agreement and its specific terms play in mooring the case for the Claimant, the Claimant's response by way of letter to the Defendant's protest letter of 2013 inexplicably does not set out the existence of the alleged agreement nor from the court's observation, the basis for inferring the existence of such. So important is the existence and terms of this *agreement* as alleged, that it's omission from the lawyer's letter from the Claimant can in these circumstances only be explained in this court's view, by the non-existence of such an agreement and specific term, or the gross negligence of the Attorney. The Claimant has not alleged the negligence of the Attorney such that the court can be persuaded that that is the dominant explanation for the absence of reference to the alleged agreement in the letter response.

26. Further still, the Claimant admitted in his cross examination that in the 3rd July 1991 plan attached to the Deed 17962/94 where he conveyed a parcel to one Rupert Dookeran that the only access road (10.06m wide) shown on that plan is indeed located on his lands at lot #2, along the boundary with lot #3 and not on that of the Defendant's lot #3. As if that was not enough, the Claimant admitted that the October 2007 plan exhibited to the witness statement of the Defendant was

surveyed with the Claimant's authority and now shows the access on the Defendant's lands at lot #3. This shows a change in circumstances on the ground between the 1991 plan and the 2007 plan. Indeed it is from 2007 that the Defendant contends that the Claimant commenced his activities to further the access road by cutting down trees all the way to the western boundary. I accept this evidence of the Defendant over that of the claimant's, as true.

27. The Claimant admitted that a further plan of the 29th of July 2015 exhibited to his own witness statement as "J", was done with his authority and here it shows the access road running the entire East-West width of the Defendant's lot #3. Coming out from this access is shown a 7.5m reserve into the Claimant's lands.

28. No proper justification has been provided by the Claimant - save for reliance on the 1970's alleged agreement between the brothers - for this creeping encroachment from 1991 to 2015 reflected in the Claimant's authorized surveys and plans thereto.

29. The court notes further, that this reserve road demarcation on the 2015 plan and indeed any of the other plans still do not show how the other lots – more particularly lots 1 - are accessed by this disputed access.

30. To be clear, the Defendant has not denied that he allowed the Claimant to use his road up to a point at the drain reserve. He testified that this was to facilitate his brother until he built his own road. He said that at the onset and thereafter he always insisted that the Claimant build his own access. Counsel for the Claimant noted in his submissions that the continued request to the Claimant to build his own road was not pleaded or given in-chief. This is of no moment in the courts view. The foundation for this was laid in the pleadings and witness statement, and it is entirely consistent with the Defendant's case. In any event, it is not part of the Claimant's case that he was ever permitted to use the road temporarily until he built his own. He asserted and pleaded as part of his case, a long standing agreement to the contrary.

31. I accept the evidence of the Defendant that he came upon the lands before the Claimant and that he built the road up to his house. The Claimant's evidence on when he came onto the lands are significantly inconsistent and not supportive of the truth. Further, the "assessments" exhibited by

the Claimant are not a definitive statement of when the Claimant came upon the lands. In the end the Claimant conceded that he came upon the land well into the 1980s.

32. I accept the evidence of the Defendant that he maintained the roadway whilst he and later, his son, was resident upon the lands. In any event the court finds that the presence of the Claimant on the land whether before or at the same time as the Defendant, lends little weight to the Claimant's contention that he built a motorable road on lot #3. I accept however, that the Claimant would have at least jointly maintained the road and even done improvement in the road, but only after 2000 when the Defendant's son migrated. This is consistent with the Defendant having no reason to have entered into any agreement with the Claimant to divest himself of any part of his interest in the access way over the lot #3. It is logical that the Claimant, as long as he was using the access road, would need to maintain it after the Defendant's son left in 2000, at the very least for his own continued use as a licencee. The defendant would have been under no obligation to maintain the road for the claimant/gratuitous licencee. Exactly what the Claimant means by 'maintain' is not adequately defined and/or set out. But, there is agreement between the parties to this action, that at some time at least from the year 2000, the Defendant paid (adequately or not) the Claimant to keep cut, the lawn at his house and the side of the disputed access road. The Claimant maintained and asserted his right to the land and access road.

33. Where is the evidence that the Claimant obtained agreement from the Defendant to extend the access way beyond the original end point at the drain reserve? There is none in this court's view. The mere bald statement that the agreement exists is not sufficient. That subsequently the Claimant logged the lands, again, is not sufficient. That the Defendant continually *overtly* and later effected a "*hostile obstruction*" to the Claimant's expansion to the roadway is not in doubt and cannot on the evidence be denied by the Claimant.

34. Where is the evidence of the 16 year prescriptive right?

35. There is common ground between the parties that there was some agreement in place with respect to the access up to the drain reserve. Indeed the Defendant has said that he did give the Claimant permission to access the Claimant's property from the disputed roadway, but it was a mere licence, personal to the Claimant and it was for domestic/private access as it were, to the

Claimant's house until the Claimant constructed his own. The Claimant does not dispute that he was using the roadway on the lands of the Defendant pursuant to an agreement with the Defendant, albeit along with others and with a wider ambit of its terms. The initial use of the road as a temporary private access to the claimant's home was not surreptitious, but in plain sight and with permission. This is the finding of the court on the evidence on this point.

36. The court finds on the evidence that the temporary user of the access by the Claimant was in any event limited to domestic personal access by the Claimant, to his home and not as it appears now, for access to a significant property development.

**FURTHER FINDINGS AND ANALYSIS**

37. The Claimant is asking for a declaration that: *"… the claimant has acquired an equitable interest and right to the access road…"; "…the Claimant is entitled to a right of way of necessity…"; "…the claimant is entitled to a right of way by prescription of use…*" . The pleaded case is a narrow one; It is for a declaration of; **(i)** right of way by prescription **(ii)** right of way of necessity and **(iii)** an equitable interest and right to the access. This court is not entirely sure what the cause of action is as set out in **"(iii)"**. It is a nebulous pleading and does not zero in on a defined cause of action(if that is what it is at all) with discreet ingredients. Even the Claimant's legal submissions seem to skirt this pleading.

***Easement of necessity***

38. Taking the low hanging fruit first. An easement of necessity simply does not arise. The Claimant's action would be against the grantor of the lot to him, that is, his father. It is his father that is obliged to have provided him with access necessary for the reasonable enjoyment of the lot. There must have been *unity in title* of the title from which lot #2 and #3 were transferred from and one or other of the Claimant and Defendant must have been the person with the *unity* if I may use that expression, for him to be obliged to provide access from the lot to the public way. The Defendant has no such obligation in law. Even if it were that the Defendant was so obliged; the Claimant would not surmount the hurdle that, if other means of access exists, no matter how inconvenient, an easement of necessity cannot arise, for the mere inconvenience of an alternative way will not itself give rise to a way of necessity[11]. The Claimant has public road frontage. He has

[11] See page 7 para 21 of the Claimants written submissions.

not alleged or proved his independent access as being precarious for instance. He by his own deliberate actions has made that way inconvenient and perhaps costly[12], but it remains his independent and feasible way out.

***Prescriptive right***

39. Then there is the issue of the *prescriptive right*. The law is adequately set out in the submissions of the Defendant. The cases cited are ***Ramkisson v Pooransingh*** CV 2012-00542; and ***Davidson v Joseph*** CV 2014-02363[13]. Neither are appellate decisions it appears, but both set out the law found in the myriad of authoritative and binding authorities. The essential learning is that in order to acquire an easement by prescription the Claimant must prove that he enjoyed the right of way without the consent of the Defendant. On the facts of the instant case, the Claimant's fundamental assertion in support of his claim is that he used the access road pursuant to an agreement with the Defendant. The Defendant in turn has accepted that the Claimant had used the access with his ***permission***, albeit only up to the *drain reserve*. Thereafter the Claimant's attempts to expand the usage of the access beyond the drain reserve was met with the overt resistance of the Defendant and his challenge to the ***force*** of the Claimant. This puts an end to the claimants claim to a prescriptive easement of any part of the access from the main public way to the western boundary.

40. To address further the claim of prescriptive rights in relation to the extended access road beyond the drain reserve, the Claimant insists that the evolved agreement between the Defendant and himself was for the whole of the access shown on the plans. He said the Defendant agreed to the construction of the road for the benefit of all the lands of the brothers – lot I, 2, and 3. The Claimant's case as pleaded and his evidence in support preclude him from successfully establishing the prescriptive right. The Claimant has pleaded and insisted on the existence of an agreement to use the roadway and to extend it. In any event, in the absence of an agreement in relation to the extension of the access road – and to be clear the court finds that no such agreement existed – the Claimant has not proved he enjoyed the right of way for the requisite time provided by statute – 16 years.

[12] The Claimant has not pleaded or in any event proved an untenable cost.
[13] See also; Commonwealth Caribbean Land Law, Sampson Owusu, from pp 429.

41. The court accepts the Defendant's evidence that the Claimant commenced his effort to extend the access to the western boundary on or around 2007[14]. The court notes also on this point, that although for instance the plan of the 29th July 2015 shows the access road across the entire length of lot #3, there is no sufficient evidence to show that the extension of the access was actually fully constructed or in use. The evidence shows the graphic representation of the roadway as a "reserve" on the survey plans all the way to the western boundary.

42. The Defendant's actions are not definitive on the continuing use of the road. He has still permitted the Claimant an access to his properties by leaving several openings in the fence. This can best be explained by the eternal and underlying relationships between persons of the same blood. He is not objecting to the Claimant's continued access along the access road up to the Defendant's house but this is limited to his domestic private use to access his house for the duration of the license. The duration is until the Claimant builds his own road. Even at this trial the Defendant has not placed a time limit for the Claimant to build his own road. The Defendant is limiting the use to what was originally intended and permitted; what was in fact the original user of the access. This user did not include the carriage of trucks and heavy equipment for construction of buildings or a development. Conceivably it would allow for such equipment for use on the Claimant's residence if under renovation for instance. This further puts an end to this cause of action in relation to the *access* both before and beyond the drain reserve along the alleged access all the way to the western boundary.

***Claimants 3rd Limb of Relief claimed – Equitable interest and right of way***

43. I come to what appears to be the claimed "…*equitable interest and right of way*…" That the Claimant claims an *equitable interest and a right of way* is one thing, but the question is what equitable interest is he claiming to have acquired over the said access road? Then is it that the *right of way* referred to here is that over the said disputed access?

44. The short answer to that is to be found in the law represented above. The Claimant is claiming to have acquired this interest either by prescriptive right or by necessity, both of which this court finds he has failed to prove. The court ought not to have to speculate to any degree here as to

[14] See Defendant's evidence in relation to the photographs exhibited to his witness statement. See also his evidence in chief contained in para 35 of his witness statement, which remains substantially unchallenged.

what if anything is being claimed under this limb. The pleading needed to have been clear so as to allow the Defendant to meet the third (3rd) case (if at all there is one) that the Claimant may be attempting make. What possibly could have the Claimant been attempting to prove?

45. The Defendant in his submissions in writing raised the prospect that the Claimant may have been pursuing a failed claim of Proprietary estoppel giving rise to a *licence coupled with an equity* and cited the case of ***Davidson v Joseph***[15] and in relation to the extent of the *user* if such a licence was established, cited Professor Kodilinye in the text; ***Property Law 3rd Ed.*** (2011) at pp 164-166. That the Defendant granted the Claimant a licence is not in doubt and that is the court's finding. The court accepts the view of the Defendant in that the elements for proprietary estoppel in any event have neither been sufficiently pleaded nor proved.

46. On the nature of licences: A licence can be categorized as: a bare licence (granted gratuitously and revocable at any time); a licence coupled with a grant (which is ancillary to the grant of an interest which has been properly transferred to the claimant and not otherwise); a contractual licence (this is where the licence is supported by consideration).[16]

47. There is no grant of an interest from the Defendant to the Claimant proved in this matter. A claim that there is an interest coupled with a grant first requires the Claimant to identify and prove what was 'granted', upon which the licence would have attached. The *res* of the grant has not been identified and/or proved. This fails. Then there is the contractual licence; simply, no consideration has been alleged or proved for that matter. The existence of this form of licence also fails. This leaves the gratuitous bare licence which the Defendant alleges (which is not disproved) and is at will to revoke. He has sought to constrain its revocation. However, he is entitled to revoke it fully at any time or to enlarge it, if he desires, under terms and conditions acceptable to him. The Claimant is bound to comply with the Defendant's directions as to the ambit of the user, or absolute prohibition of use of the entire length and breadth of the disputed access road from the public way to the western boundary and all that there is in-between.

[15] Ibid para 12.
[16] See pp 204 -204 of Commonwealth Caribbean Land Law, Sampson Owusu.

48. The Claimant simply abused the temporary facility – a gratuitous licence given to him - and sought to develop his land, in part surreptitiously, at the expense of lot #3. The predicament he may find himself in now is entirely of his own making. But, he is not land locked. He has access to the public road albeit at an inconvenience and possibly an expense to him.

49. The Defendant's evidence was not without its own inconsistencies and shortcomings. The Claimant in his written closing submissions has drawn the court's attention to them[17]. There is no case where all the facts that exist is put before the court. The court deals with what is properly put into evidence before it. However, the burden remains on the Claimant to prove his case. The Defendant's case in answer to the claim is more logical, plausible and internally consistent. The Defendant's detail on central issues – the alleged *agreement* - are more indicative of the actual occurrence (or non-occurrence) of events. This is particularly so where the Claimant has failed to provide the detail and circumstances of the conversation or conversations I would imagine, that gave rise to the agreement whereby it is alleged that the defendant in essence gave away a portion of his land to all the brothers, to access their respective lands. This shortcoming of the claimant has reduced his credibility and the veracity of all his evidence.

**DISPOSITION**

50. For the reasons provided above; **IT IS HEREBY ORDERED THAT:**

    (i) The Claimant's claim is dismissed in its entirety;

    (ii) Judgment for the Defendant;

    (iii) Cost of the matter to be paid by the Claimant to the Defendant on the Prescribed Cost scale on the basis of a value of $50,000.00.

**DAVID C HARRIS**
**HIGH COURT JUDGE**
**12TH FEBRUARY, 2020**

[17] See para 31-39 of the Claimant's written closing submissions for instance.