[2026] JMCA Civ 34

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE DUNBAR GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

PARISH COURT CIVIL APPEAL NO COA2023PCCV00010

BETWEEN	**WALLY SIMMONDS**	**1ST APPELLANT**
AND	**ANSEL SIMMONDS**	**2ND APPELLANT**
AND	**OSWALD PARKER**	**3RD APPELLANT**
AND	**MARYLYN MORGAN**	**1ST RESPONDENT**
AND	**MELVA MORGAN**	**2ND RESPONDENT**
AND	**JASON SALMON**	**3RD RESPONDENT**

Mrs Melrose Reid instructed by Melrose G Reid & Associates for the appellants

John Clarke for the respondents

12, 13 November 2024 and 9 October 2026

Civil Appeal – Trespass to Land – Applicable principles – Nominal damages – Whether the learned judge erred in awarding interest on nominal damages

P WILLIAMS JA

Introduction

[1] The parties in this appeal are neighbours in the community of Swaby's Hope in Spur Tree in the parish of Manchester and have been for many years. In 2017, Ms Wally Simmonds, Mr Ansel Simmonds, and Mr Oswald Parker ('Mr Parker') (collectively 'the appellants') began constructing a house on a portion of land part of Swaby's Hope. Ms Marylyn Morgan, Ms Melva Morgan, and Mr Jason Salmon ('Mr Salmon') (collectively 'the respondents') objected to the construction, claiming that the land was theirs and that the appellants were trespassers. For convenience only, the parties with similar surnames will be referred to by their first names. On 17 January 2017, the respondents, who were the

plaintiffs, filed a plaint in the Parish Court for the parish of Manchester seeking damages for the trespass and an injunction restraining the appellants from trespassing on the disputed land.

[2] The matter was heard over several days between 30 November 2021 and January 2022 before Her Honour Ms Natalie Brooks ('the judge of the Parish Court'). She gave her decision on 10 March 2022 in the following terms, as endorsed and signed by her on the plaint:

> "For last 15 years [respondents] have been in possession of the land for over 50 years.
>
> [Appellants] have not demonstrated that they displaced the [respondents].
>
> [Appellants] committed the tort of trespass.
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> Judgment for the [respondents] after trial.
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> [Respondents] awarded damages for trespass committed by [the] appellants in the sum of $400,000.00.
>
> Interest thereon at rate of 3% from Jan 17.
>
> Costs to the [respondents] to be agreed.
>
> No further construction is to take place."

[3] Aggrieved by the decision of the judge of the Parish Court, the appellants filed a notice and grounds of appeal on 17 March 2022. The grounds principally challenged the judge's findings of fact concerning the parties' respective possession and use of the disputed land, as well as the award of damages. The appellants sought to have the judgment set aside.

Proceedings in the Parish Court

[4] In the particulars of claim dated 13 January 2017, which accompanied their plaint, the respondents asserted that they were the owners of, and jointly entitled to possession of all that parcel of land, being part of Hope and French Park, formerly known as Swaby's

Hope, in the parish of Manchester, measuring approximately 14,164.00 square metres and being unregistered land relating to valuation number 183-03-001-006-8 on the Tax Roll ('the disputed land'). They further asserted that, on or about 8 January 2017, the appellants, by themselves and through their agents, unlawfully trespassed upon the disputed land by excavating portions thereof and preparing to lay foundations for the construction of a structure. The respondents sought damages for trespass in the sum of up to $1,000,000.00 and an injunction restraining the appellants from further trespassing upon the disputed land.

[5] On 5 December 2017, the parties consented for the matter to be referred to a commissioned land surveyor. The instructions to the surveyor were contained in a formal order signed by His Honour Mr D Staple, who was the judge of the Parish Court at the time. The terms of the formal order are reproduced below:

> "1. A Commissioned Land Surveyor is to produce a Survey Report with sketch showing the area of land claimed by the respective parties, report shall show all building and structures on the property.
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> 2. Description of the property to be identified is land at Swaby's Hope in the parish of Manchester, otherwise called French Park.
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> 3. Surveyor shall indicate whether any portion claimed by either party falls within Valuation #183-03-001-006-8 or Valuation #183-03-001-008-9 (registered title) or any other property.
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> 4. Costs of Report to be borne equally by both parties."

[6] The survey was conducted by Mr K V Masters, a Commissioned Land Surveyor, and a report dated 22 June 2018, together with an attached sketch, was submitted to the court.

[7] At the commencement of trial, on 30 November 2021, the defence advanced by the appellants as defendants in the court below was that:

> "[Appellants] have been in occupation of a portion of the disputed property estimated to be about one acre of land. This occupation has been open, undisputed and undisturbed for over 40 years. And as such we have a right to occupy the land."

[8] In response, Mr Maurice Smith ('Mr Smith'), counsel then appearing for the respondents, stated that the matter was old and the defence had never raised this issue before and so he was taken by surprise. He, however, indicated he was ready to proceed and did not wish for time to take instructions.

[9] Given the nature of the challenges to the decision of the judge of the Parish Court, I consider it best to set out in some detail the evidence of the parties. I begin with the respondents' case.

[10] The first witness was Marylyn. She testified that Melva is her sister and Mr Salmon her son. They all resided on the entire property; she and Melva shared a house, and Mr Salmon had lived with them until he built his own house at "the bottom of the property". She stated that she had lived in the house since birth and had never known Melva to live elsewhere. She further asserted that the entire property, including the disputed land belonged to her parents.

[11] Marylyn stated that there was a banana walk beside the houses which had been planted by her mother Clarice Wallace Morgan, who had died in June 2010. She described how she, Melva and their father, Vincent Morgan, had raised pigs in a pig pen adjoining the house. Vincent Morgan, had died approximately 10 years before the trial, and she had never known him to reside anywhere else.

[12] Marylyn further testified that the appellants lived "at the side along the line of their property". She stated that the line (the boundary line) was marked by a fence in the form of a stone wall, which had been there as long as she could remember. However, she was unable to say who had put it there.

[13] Marylyn explained her reason for bringing the claim. Sometime in 2017, one Saturday morning, she saw Mr Parker and Wally, his mother, on the left side of the property "clearing, cutting out bush" close to the fence. They then proceeded to lay out a house spot. Over the following days, excavation work began, and material was delivered to the property. The building of the house commenced with the laying out of blocks, marl and steel. During this time other members of the appellants' family were observed assisting with the construction.

[14] Marylyn testified that she was at home when Mr Masters attended the property to conduct the survey in 2018. The report prepared by him was tendered and admitted into evidence as an exhibit. Also admitted into evidence were property tax receipts.

[15] Marylyn detailed the various ways in which the entire property was utilised over the years. While alive, her mother had done farming on about one acre on the right side of the disputed land. Her father also farmed the disputed land. Her brother, Roderick Morgan, reared cows in an area measuring about 1 acre located in the "middle of the land on the left", which was "fenced up". At the time of the trial, Roderick Morgan was residing in the United States. Marylyn testified that the appellants had commenced building on the entire area that Roderick Morgan had used for raising cows. She maintained that the structure was being built without her permission and therefore constituted an act of trespass. She wanted the structure removed.

[16] In concluding her evidence-in-chief, Marylyn spoke of Ebenezer Edwards, who was her mother's uncle, and who had lived on the property. He had passed before her mother died and before she was born. She never knew him, but he, along with her mother, father and grandparents, were buried on the property.

[17] Under cross-examination, Marylyn identified the area where the graves were located as being to the left of her house. She stated that the area where Roderick Morgan reared cows was situated to the left of the graves. The appellants were constructing the house to the left of the wire fence that Roderick Morgan had erected. She subsequently

explained that the wire fence had been demolished after the appellants commenced construction and they had erected their own fence. However, she admitted that she had never seen them demolish the fence. She acknowledged that there was a chicken coop where Frank Simmonds, the father of Wally and the grandfather of Ansel, had raised chickens which she maintained was on her property, and that she had objected to its construction. The chicken coop had been converted into a work shed, which was used by a nephew of Mr Parker.

[18] Marylyn stated that Frank Simmonds also farmed in the same area where the chicken coop was located. Following his death, Ansel farmed in the same area. She testified that Frank Simmonds was paying a lease to farm there, although there was no written agreement. She further stated that she never personally collected any of these payments from Frank Simmonds and insisted that her father had done so.

[19] She agreed with the suggestion that she had never raised any objection while the work shed was being built. She also agreed that, following the death of Frank Simmonds, Wally, Ansel and other family members continued to farm on the land located to the left of the wire fence. However, she maintained that they did so with permission.

[20] Mr Salmon next gave evidence. He identified Marylyn to be his mother, with whom he had resided from birth until seven years before the trial, when he moved into his own house, which he had built nearby. He corroborated his mother's evidence that Roderick Morgan had raised cows in a "fenced-up" area on the property and that this was the area on which the appellants had commenced the construction of a house. Mr Salmon further testified that, before his uncle began raising cows in that area, his grandfather, Melva, and his aunt had raised pigs there. He stated that he had too raised pigs there after they had stopped doing so, approximately three years before the trial. He had built a separate pig pen in the same area where the appellants had begun building the house.

[21] Mr Salmon testified that, prior to his grandfather's death, they had discussions concerning the ownership of the land. He stated that, as a result of the discussions, he began paying property taxes in respect of the land.

[22] Mr Salmon denied that the appellants had ever been in possession or occupation of the disputed land. He acknowledged that Frank Simmonds was farming at the bottom of the disputed land but, to his understanding, Frank Simmonds paid rent to do so. He further testified that he was present when Wally and Mr Parker visited Marylyn and informed her that they had paid taxes in relation to the disputed land. According to Mr Salmon, this occurred after proceedings had already commenced in court.

[23] Under cross-examination, Mr Salmon stated that there was a fence between Mr Parker's house and the disputed land. He acknowledged that the work shed was on the disputed land, and was located at approximately 40 feet from Mr Parker's house. He maintained, however, that the work shed was not separated from the house by the fence. He further confirmed that it was a chicken coop at the bottom of the disputed land which had been converted to the work shed.

[24] Mr Salmon insisted that he paid taxes for the entire parcel of land. He was aware that the appellants had also paid property tax. He rejected the suggestion that there had never been a pig pen in the area where the house was being built. He also maintained that banana trees were also there. He agreed that he had never collected rent from Mr Parker or his family and neither had he observed Marylyn doing so. He stated, however, that on one occasion he had observed Marylyn being given money for the payment of taxes.

[25] Upon re-examination, Mr Salmon explained that a part of the land was referred to as "down by the bottom". He described this area as being at the "exact end of the property – almost to the end of the boundary line". He stated that Wally was building the house about 200 feet from the end of the property.

[26] Melva next testified and said that she had lived on the property, in the house previously owned by her parents for "60 odd years". That was where she was born. She said her father had done farming at that house and reared pigs on the left side of the disputed land.

[27] Melva said that one of the nearest neighbours to the area where her father reared pigs was Isabel Simmonds, who was the mother of Wally and Ansel and the grandmother of Mr Parker. She stated that Isabel Simmonds had passed away eight years prior to the time of the trial. After Isabel Simmonds passed away, Mr Parker farmed down by the bottom of the land, which was behind the area where the house was being constructed. She too corroborated the evidence that Roderick Morgan had raised cows in a fenced-off area located where the house was being constructed. She explained that Roderick Morgan had left Jamaica about ten years prior to the trial but had stopped raising cows about 15 years earlier.

[28] Melva testified that her parents had paid the property taxes and that, upon their deaths, Roderick Morgan and another of her sisters had continued to do so. The other respondents had also assisted. She was aware that Mr Parker had paid property tax after "this land ting come up". However, she was also aware that, Mr Parker's father had always given her father a little money towards the taxes while he was occupying the land.

[29] Under cross-examination, Melva admitted that Mr Parker had farmed about 40 yards from the house in which Marylyn lived, and his wife also farmed there. She said nobody had stopped them from doing so and they had never asked permission to do so.

[30] Melva insisted that cows had been raised in the same area where Wally commenced the construction and denied the suggestion that Mr Parker's grandfather had given permission for the cows to be kept there.

[31] Regarding the appellant's case, Wally testified that she had been living in the United States of America since 2001. Prior to that, she had lived in Swaby's Hope. Her parents were Isabel and Frank Simmonds, and she recalled moving from her

grandparents' house to the home of her parents on 26 November 1959. This house was located to the left of the disputed land.

[32] She asserted that she had a right to build her house on the disputed land. According to her, Frank Simmonds had acquired the disputed land after the person "who had it" died in 1972, and Frank Simmonds started to pay taxes. She identified a Mr McLeod as the person who had the disputed land and had been responsible for it. Frank Simmonds began to use the disputed land by cultivating yams to the left, while her mother planted vegetables to the east. She said that as a child she used to tie animals owned by her father at the spot where she was building her house. After he died in 1999, Mr Salmon and his brother utilised the disputed land by farming and raising chickens on it.

[33] Wally confirmed that a chicken coop was on the disputed land and stated that Frank Simmonds had built it. She also confirmed that after his death, the chicken coop was used as a workshop by her nephew. She denied that a cow pasture was once there, although she accepted that Roderick Morgan had put a fence there which she said served as a border. She also refuted Marylyn's assertion that a banana walk was at the spot where the construction was taking place since nothing could be grown there due to the stones.

[34] Wally explained how she came to discover that the taxes were in arrears after the death of Frank Simmonds and, during a visit to her home by Marylyn she asked her, "how the taxes going." Having been informed that there was an outstanding amount for which Mr Salmon had been taken to court, Wally explained that, upon her return home to the United States of America, she sent US$1000.00 to Mr Parker for him to pay the outstanding taxes and provide Marylyn with a copy of the receipt so she could go to court "to let them know [that] taxes [were] being paid". She stated that she considered it her responsibility to pay the taxes because her father had previously done so. Further, since they were utilising the disputed land, she believed it was right to do so. She also testified that she went to the tax office, paid the taxes, and was issued receipts. She identified

four receipts which were admitted into evidence, dated 5 February, 8 April and 1 June 2015 and 4 February 2020.

[35] Wally indicated that, as far as she was aware, when Frank Simmonds farmed on the disputed land, he had not received permission from anyone, and there was no objection to him farming there. She was not aware of any objection to the shed being built on the disputed land or of her father seeking permission to build it.

[36] Under cross-examination, Wally admitted that she only had the four tax receipts. She denied that her family was contributing to the payment of the property taxes in exchange for use of the disputed land. She said she saw her father making payments to Marylyn's father, although she did not know what the payments were for. She, however, subsequently admitted she was not present when the payments were being made.

[37] Wally said she understood that Mr McLeod was in charge of the disputed land. However, at the time her father was paying money to Marylyn's father, Mr McLeod had already died. She agreed that Mr McLeod had not sold or gifted the disputed land to her father, nor had Mr McLeod owned it. She accepted that the disputed land, for which her father contributed money to pay taxes, was owned and in the name of Ebenezer Edwards. She subsequently admitted that she did not know him and had only heard about him. She testified that "she was not saying Ebenezer Edwards sold or gifted the land to [her] father" or that her father stole or took or inherited it from Ebenezer Edwards. When asked if she agreed that her father did not own the disputed land, she responded, "[h]e utilise[d] the land. He utilise[d]. He did not own it. Yes, it was right to continue paying taxes after my father died as my family was using the land".

[38] Although she was not present when Mr Masters visited the property, she was aware that a sketch had been produced. She was satisfied that the sketch accurately and fairly represented the physical condition on the ground.

[39] Ansel testified that Wally was his sister and Mr Parker was his nephew. He said he used to be close friends with the respondents, with "jus one block" between his house

and theirs. The disputed land was between the two houses. He acknowledged that Ebenezer Edwards owned the disputed land when he "first came to know it". He did not know of Ebenezer Edwards having any children or if he had "willed the land to anyone".

[40] Ansel said when he came to know the disputed land there were tombs, trees and a tank on it. He stated that his father, Frank Simmonds, farmed and kept livestock on it. He further stated that Wally was building her house approximately in the middle of that same disputed land. The respondents' property was to the right of the disputed land which they had occupied and owned since 1973.

[41] Ansel testified that after Frank Simmonds died, he, along with the other two appellants, owned the disputed land. He maintained that they owned it by paying the taxes. He stated that the disputed land was used for agricultural purposes, and that he had a workshop there for over 30 years. According to Ansel, his father never paid rent for the disputed land but paid taxes, and he would give Vincent Morgan the money to do so. He explained that both the lands owned by the respondents and the disputed land were on the tax roll as one property.

[42] Ansel testified that he had been farming on the disputed land since 1972 and had not sought permission from anyone to do so. He stated that none of the respondents or their family had ever stopped him from farming. He denied that the respondents kept cows in the area where the house was being built. He acknowledged that a chicken coop, which his father had converted into a workshop, was situated on the disputed land. He further stated that his father had built the chicken coop without seeking permission from anyone to do so.

[43] Ansel estimated that the disputed land measured approximately 1 acre. He testified that there was a fence marking the boundary where the respondent's property starts and where the appellants' property starts. Wally had built the fence after Mr Masters had conducted the survey. Prior to that, they "just used a boundary and worked in a straight line". The boundary had been there since 1972.

[44] When cross-examined, he subsequently admitted that Wally built the fence while the matter was in court. He agreed that she started building the house in January 2017, and before that time, the disputed land was empty. He, however, said he had been farming and raising goats there.

[45] Ansel stated that he did not witness his father pay taxes to Vincent Morgan and had never been present during any discussions between the two men concerning the disputed land. He did not know of any "word of mouth lease agreement" between them. He further stated that he did not know whether there was an agreement for his father to use the work shed space on the disputed land.

[46] Ansel accepted that the boundaries shown to him by Mr Masters in 2018 were the true boundaries. He was shown the sketch prepared by Mr Masters and said, he was "in agreement with how it is drawn". He later clarified that the boundaries he was referring to were "between Ebenezer Edwards and Frank Simmonds".

[47] Mr Parker testified that he had known the land in dispute all his life. He stated that he lived on the estate that belonged to his grandfather, Frank Simmonds, and was aware that the estate was registered in his grandfather's name. He stated that he had seen the title. However, he explained that the disputed land was to the left of his grandfather's estate, which was to the right of the respondents' house. As far as he was aware, the disputed land was owned by his family. He testified that he was familiar with the boundaries of the disputed land occupied by his family; having measured it himself and described its shape as a rectangle. He was also aware that Mr Masters had conducted a survey of the land in 2018.

[48] Mr Parker denied that cows had ever been raised on the area where the house was built. He further stated that he had never observed cows on the area owned by the appellants. He said his grandfather had his farm on the "same west side of the property in dispute". He maintained that he was familiar with the boundaries of the disputed land which his family occupied.

[49] Mr Parker also corroborated the evidence that Wally paid taxes for the disputed land. She would sometimes send the money for him to pay it. He explained that he paid taxes on the disputed land because they owned it. He never sought permission from the respondents to use the disputed land and did not know of any rental arrangement between the appellants and his family.

[50] Under cross-examination, Mr Parker acknowledged that he had not bought, leased, or captured the disputed land, and neither did he have any papers showing he owned it. He agreed that his grandfather paid taxes for the disputed land to Vincent Morgan although he had not seen the payments being made and was never present when the men had discussions pertaining to the disputed land.

[51] When asked if he could recollect whether, while his grandfather was alive, his grandfather had "title to this land", Mr Parker responded yes. He agreed that he had never lived in the area where his mother was trying to build her house. He was shown the report prepared by Mr Masters and agreed that it was accurate.

The decision of the judge of the Parish Court

[52] The judge of the Parish Court, setting out the law applicable to this matter, stated the following:

> "The Tort of trespass is based on possession and not ownership. It occurs where an individual unjustifiably intrudes on the property of another. It is generally described as an interference with possession. The right to sue therefore is based on actual possession or the right to possession."

The judge of the Parish Court, in her preliminary statements, identified one of the main issues for determination as whether the appellants had unlawfully and unjustifiably interfered with property that was in the possession of the respondents at the material time. She also considered it necessary to determine whether the site of construction formed part of the registered land in the name of Frank Simmonds.

[53] The judge of the Parish Court recognised that to arrive at her decision she had to resolve the factual disputes and assess the demeanour, credibility and reliability of the witnesses. She also recognised that it was open to her to examine the survey diagram that had been exhibited and give it such weight as deemed fit.

[54] The judge of the Parish Court conducted an extensive review of the evidence of the parties. She then set out the following as findings:

> "42. The dispute in this matter arose when [Wally] began constructing a house on the disputed property.
>
> 43. The [respondents'] case is that the land belongs to their family and that they have been in possession of it for decades. They are claiming ownership by themselves and through Vincent and Clarence [sic] Morgan.
>
> 44. Vincent and Clarence [sic] were parents of 1st and 2nd name [respondents] [Marylyn and Melva]. The 3rd name [respondent] [Jason Salmon] is [Marylyn's] son and [Melva's] nephew.
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> 45. The defence is claiming that the particular portion of the land in contention was never occupied by the [respondents]. Instead they are saying that the [appellants] are not trespassing where the house is being built as they have been in open, undisturbed and 'adverse' occupation for 49 years.
>
> 46. The critical issue to be determined from the evidence is who was in possession of the disputed property for the requisite period up to January 2017. I have to consider whether up to that time the [appellants] were in open and undisturbed possession of the portion of land on which the [appellants] commenced building the offending structure."

[55] The judge of the Parish Court went on to set out the law regarding the issue of possession. She recognised that two elements necessary to establish possession are: (1) a sufficient degree of custody and control, known as factual control and (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit. One only needs to demonstrate an intention to occupy and use the land as one's own.

[56] In considering the evidence from the witnesses, the judge of the Parish Court expressly noted that she had the advantage of assessing their demeanour and was able to form a view as to their credibility and candour. She found, for instance, that Marylyn had been inconsistent in her evidence under cross-examination regarding the building of the shed but concluded that this was not detrimental to their case. She also found that Marylyn's evidence that a banana-walk planted by her mother where the house was being built was contradicted by the other respondents and preferred their evidence.

[57] The judge of the Parish Court proceeded to make findings which are summarised as follows:

1) The disputed land was rocky, and so no banana-walk was there. However, a pigpen was at the location belonging to the respondents who had this portion of land fenced off for the holding of livestock.
2) For more than 50 years, the respondents and other members of their family had exercised control over the property and also asserted ownership and authority over the disputed land. They also paid property taxes dating back to 1976, as evidenced by the tax receipts admitted into evidence on their behalf.
3) Frank Simmonds was paying money to the respondents' relatives towards rent and not towards taxes. It was illogical that he had his own registered property and yet handed over money to the respondents for payment of taxes on his own property.
4) The evidence of Wally was that her father did not inherit, steal or purchase the property, which meant that Frank Simmonds could only be best described as a tenant.
5) The valuation report illustrates that the disputed land was not a part of land registered in the name of Frank Simmonds.
6) The assertion of the appellants that Frank Simmonds had occupied the work shed on the disputed land for a period of over 12 years was

insufficient to establish that he did so as an owner rather than as a tenant. Neither was it established that his use of the work shed was at the exclusion of the respondents from the entire disputed land.

7) The respondents demonstrated factual possession of the disputed land as well as an intention to occupy and use it as their own over decades. They had been in possession for in excess of 50 years on their own behalf. They had fenced and used the disputed land for the rearing of livestock over a significant period and consistently treated it as belonging to them.

[58] The judge of the Parish Court concluded as follows:

> "56. I find that the [respondents] had a right to possession of the disputed [land] in January 2017. The [appellants] have not demonstrated a better right to possession. I find that they entered without consent. I therefore find that the [appellants] committed the tort of trespass when they whether by themselves or through their agents cleared the [disputed] land and commenced construction of a building on the said property.
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> 57. Having found that the [respondents] have established possession sufficient to ground a claim in trespass I now have to look at the matter of damages. I do not find that the [appellants] have proved any quantified loss. I thus will consider nominal damages in the circumstances. I consider the nature and extent of the trespass where the [appellants] and/or their agents entered the property early one morning and began clearing the land and subsequently building on it. This case does not involve any personal injury or outrageous home invasion. The figure is therefore $150,000.
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> 58. It is hereby ordered as follows:
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> 59. The [respondents] are awarded damages in Trespass against the [appellants] in the sum of $150,000;
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> 60. That no further construction takes place and that the [appellants] refrain from re-entering the property;

61 Costs to the [respondents] — to be agreed or taxed."

[59] As noted at para. [2] above, the endorsement on the plaint states that the award of damages was in the sum of $400,000.00, and interest thereon at rate of 3% from January 17. The record submitted to this court from the Parish Court also includes a document described as the "ruling," signed by the judge of the Parish Court, which repeats this as being the award.

The appeal

[60] The notice of appeal was filed on 17 March 2022. After identifying the details of the order being appealed, six findings of fact and one finding of law were specified as being challenged. Seven grounds of appeal were set out. At the commencement of the hearing of this appeal, counsel for the appellants, Mrs Melrose Reid ('Mrs Reid'), sought leave to abandon the original grounds and to rely instead on supplemental grounds, which, she submitted, encapsulated the original grounds.

[61] Civil appeals from the Parish Court are governed by sections 251 to 266 of the Judicature (Parish Court) Act ('the JPCA'). There is no requirement under the JPCA that the notice of appeal and grounds are to be filed at the same time. The written notice of appeal must be filed within 14 days, while the grounds of appeal are to be drawn up and served within 21 days of the appellant receiving notice of the availability of the reasons for judgment of the judge (see section 256 of the JPCA). The grounds shall set out concisely the facts and points of law (if any) on which the appellant intends to rely in support of the appeal and shall conclude with a statement of the relief prayed (see section 257 (1) of the JPCA). This court may dismiss without hearing any appeal in which there was failure to comply with these provisions (see section 257(2) of the JCPA). Significantly, there is a limitation placed on the hearing of grounds of appeal. It shall not be competent for the appellant to argue or give evidence on any other ground other than those already filed and served on the respondent unless this court otherwise orders, and on such terms as deemed fit (see section 265 of the JPCA).

[62] Importantly, however, the provisions of the JPCA conferring a right of appeal in civil matters are to be construed liberally in favour of that right. Pursuant to section 266, this court may permit an appellant to impeach a judgment where any of the formalities prescribed by the JPCA appear to have been omitted inadvertently or through ignorance or necessity, and where the justice of the case so requires.

[63] In this matter, it appears the original grounds may have been formulated before the reasons for the judge of the Parish Court had been available. Notably, Mrs Reid did not appear in the Parish Court, and her desire to set out more concisely the grounds she wished to advance challenging the judgment of the judge of the Parish Court could be appreciated. For the respondents, Mr John Clarke, who also did not appear in the Parish Court, was not opposed to what he described as this court exercising its statutory discretion under section 265 of JPCA. In the circumstances, ultimately the justice of the case required that the appellants be permitted to argue grounds not previously filed and served.

[64] The supplemental grounds, Mrs Reid was permitted to argue, are therefore as follows: -

> "1. The Learned Parish Court Judge (LPCJ) erred in law when she found the defendants/appellants to be trespassers.
>
> 2. The LPCJ **erred in facts** when she found that the [respondents] occupied the [disputed land] for over 50 years, and the Appellants paid rent to the Respondents.
>
> 3. The LPCJ, **erred in law** when she awarded $400,000.00 plus interest at 3 per cent per annum from the year 2017 instead of awarding nominal damages (if any). [sic] OR $150000.00 (as of the Notes of Evidence)."(Emphasis as supplied)

Grounds 1 and 2

The learned Parish Court Judge erred in law when she found the appellants to be trespassers

The learned Parish Court Judge erred in facts when she found that the respondents occupied the disputed land for over 50 years, and the appellants paid rent to the respondents

[65] In these two grounds, the appellants challenge the basis upon which the judge of the Parish Court found that they were trespassers. Thus, these grounds raise related issues and may therefore conveniently be considered together.

Summary of the submissions

For the appellants

[66] I consider it necessary to note that, in the "preamble" to her written submissions, Mrs Reid accepted that the issue concerns a portion of land referred to as the disputed land. She contended that "there is a large parcel of land, triangular in shape, which is **nested in the middle** of two properties …a large, unregistered lot to the North; the triangular land to include the [disputed land] in the middle and to the South a registered property (emphasis as supplied)". Counsel further contended that it is not the entire triangular parcel that is in dispute, but it is a portion of that land which the appellants claim possession and the respondents claim ownership and/or possession of. She maintained that this "triangular land" which encompasses the disputed property is not owned by Vincent Morgan nor by Ebenezer Edwards. She identified the issue as being about the land which is nested in the middle of registered land belonging to Frank Simmonds and the unregistered land belonging to Vincent Morgan. She opined that on the evidence, both Frank Simmonds and Vincent Morgan utilised the land in the middle, with Frank Simmonds utilising the portion to the left and Vincent Morgan utilising the portion to the right.

[67] The challenge in ground 1 is that the judge of the Parish Court erred in law when she found the appellants to be trespassers. The primary contention of Mrs Reid was that the judge of the Parish Court "seemed not to have made a distinction between the triangular land (the entire stretch of land) which includes the [disputed land] to the left and bundled the [disputed land] in the entire stretch". She submitted the judge of the

Parish Court must have been mistaken as to the precise location of the disputed land. Counsel noted that the judge of the Parish Court accepted that the respondents were born there and the parents of Marylyn and Melva occupied the disputed land prior to the birth of the respondents. On her reading of the evidence, Mrs Reid was of the view that the disputed land was a portion of the triangular lot and on which none of the parties claims to have been born. Counsel contended that the respondents were never on the disputed land. Further, counsel posited that the issue of ownership, possession or trespass only arose after the Wally began to erect a building on the disputed land.

[68] Mrs Reid submitted that there had to be sufficient evidence of possession to demonstrate occupation of the disputed land and the occupiers, having taken it over, treated it as if they owned it, thereby establishing both physical control and an intention to possess. Counsel relied on **Shirley Ann Thorpe v Harald Nobert Frank and Lesley Frank** ('**Thorpe v Frank and Frank**') [2019] 1 WLR 6217 in support of her submission.

[69] Mrs Reid questioned the basis on which the judge of the Parish Court found that the respondents had possession of the disputed land. She contended that the overwhelming evidence demonstrated that the appellants were in physical use, establishing the factual possession and dealing with it as the owner would, by farming the arable portion, rearing animals, and using the coop/shed/workshop for a number of years undisturbed, without interference and without permission. Further to this established factual possession, the appellants established the intention to possess by paying property taxes for the disputed land. Ultimately, the appellants, in having begun to construct a permanent house on the property, demonstrated their understanding that the disputed land belonged to them.

[70] Mrs Reid also contended that the disputed land had not been left untended and that there was no dispute that the appellants had occupied it for over 49 years undisturbed through Frank Simmonds, or from the time of his death, for 18 years. She submitted that the appellants had entered the disputed land without permission and it had been established that it belonged to them. Thus, counsel contended that the

appellants could not be trespassers. Counsel referred to **Conway v George Wimpey Co Ltd** [1951] 2 KB 266.

[71] Mrs Reid highlighted Marylyn's evidence as to her observing the appellants commence the construction of the house and pointed out that Marylyn took no action until the building had reached window height. She contended that it could logically be inferred that the appellants' use of the disputed land over all those years did not amount to trespass, but it was the construction of the house that was the trespass. Further and more fundamentally, counsel submitted that the respondents were never on the stretch of land which comprised the disputed land.

[72] Thus, on this ground, Mrs Reid concluded that the evidence, when properly scrutinised, shows that the respondents were never on the disputed land. They utilised the portion of the land to the right of the middle of the triangular land and the appellants utilised the portion to the left. There was nothing to show that the appellants were trespassers on the disputed land and the judge of the Parish Court erred in law and fact in concluding otherwise.

[73] In relation to ground 2, the appellants challenge the facts on which the judge of the Parish Court found that they were trespassers, specifically the findings that the respondents were occupiers of the disputed land for over 50 years and that Frank Simmonds paid rent to Vincent Morgan and was therefore, at most, a tenant. Mrs Reid acknowledged that it was well established that this court will not readily set aside a judgment on the basis of fact alone without more; however, if the fact is misplaced, misinterpreted and misrepresented so that it results in a wrong decision, this court has the power to examine the effect. Counsel relied on **Watt (or Thomas) v Thomas** [1947] AC 484 and **Industrial Chemical Co Ltd v Ellis** (1986) 35 WIR 303.

[74] Mrs Reid contended that only one of the three respondents, namely Marylyn, said Frank Simmonds paid rent to Vincent Morgan. She highlighted aspects of the evidence supporting the assertion that money was handed over to assist with the paying of

property taxes. Counsel concluded that the judge of the Parish Court identified no valid legal ground for disbelieving or discrediting Melva, Mr Parker, or Wally that Frank Simmonds contributed to the payment of taxes. Nor did she provide any valid reason to disbelieve the appellants and two of the respondents that Frank Simmonds paid money towards property taxes for the triangular land to include the disputed land. From the evidence, taxes were not paid after the death of Frank Simmonds; thus, the back taxes were paid by both the appellants and the respondents.

[75] Counsel submitted that "there could be no greater show that the appellants had the reasonable belief (proffered by the factual possession; by the paying of property taxes) that the [disputed land] belongs to them". Reference was made to **Thorpe v Frank and Frank**, **Powell v McFarlane and Another** (1977) 38 P & CR 452, **Farrington v Bush** (1974) 12 JLR 1492.

[76] Although recognising that this was not a case of adverse possession, Mrs Reid urged that an examination of the position in this case reveals that the appellants would have occupied the disputed land for more than 12 years undisturbed, uninterrupted and without permission from the respondents. Counsel referred to sections 3 and 30 of the Limitation of Actions Act, **Kenneth Blaine v Junior Diggs-White and Janeth Diggs-White** [2016] JMSC Civ 162, and **Peter Perry v Carol Baugh and others** [2018] JMCA Civ 12.

[77] In concluding her submissions, Mrs Reid contended that the real dispute between the parties concerned the construction of the house on the disputed land. She maintained that the evidence reveals that the respondents' issue was not with the use of the disputed land but rather it was the building of the house, which Marylyn said was done without her permission. That was what amounted to trespass and she wanted the house removed. There had been no trespass prior to this, and the appellants had occupied and used the disputed land without any objections for several years.

For the respondents

[78] Mr Clarke identified the main issue in this appeal as whether the judge of the Parish Court was plainly wrong in making the finding of fact that the appellants were trespassing on the disputed land. Counsel submitted that although ground 1 sought to establish that the judge of the Parish Court erred in law, the challenge was to the conclusions that she arrived at, which were based on application of the law to the facts and therefore the ground was misconceived. Thus, he contended both grounds were in effect challenges to findings of fact.

[79] Counsel submitted that the judge of the Parish Court properly demonstrated her understanding of the relevant law. It was contended that she indicated that she understood her role when she noted that "the court therefore has to determine whether the site of construction forms part of the registered land in the name of Frank Simmonds" and that "the question therefore arising from this is whether the [appellants] can claim a right to possession of the said property or whether their action of construction is a trespass".

[80] Mr Clarke submitted that, in challenging the findings of fact of the judge of the Parish Court, the appellants' task was to convince this court that she was plainly wrong in her conclusions and that no reasonable judge could have reached them. In support of this submission counsel referred to **Watt (or) Thomas v Thomas**, **Volpi v Volpi** [2022] EWCA 464, **Algie Moore v Mervis L Davis Rahman** (1993) 30 JLR 410, **Cablemax Limited & Others v Logic One Ltd** [2012] JMCA 14, **Piglowska v Piglowski** [1999] 1 WLR 1360, **Rohan Sudine v Shay Newman and Dwayne Chambers** [2023] JMCA Civ 49 and **Rainford Wade v Norman McBean and Rupert Campbell** [2024] JMCA Civ 3.

[81] Mr Clarke pointed to Wally's evidence, in which she explained that although her father had utilised the disputed land while paying taxes, she herself had not done so since she had migrated in 2001. She also explained that she paid the property taxes in 2016/2017 because her father "use to pay so [she] decide[d] it was her responsibility to

pay as [she] thought it was right as [they] had the land utilising….". This admission, Mr Clarke submitted, demonstrated that she was not laying a claim to the disputed land or the fact that her father had owned it. Further, since she had been away since 2001, she would not have been in possession for the requisite time to claim adverse possession of the land on which she was constructing her house.

[82] Further, Mr Clarke contended that the fact that a shed was on the disputed land which could be linked to her father could not assist the appellant in relation to the issue of possession. Counsel submitted that the judge of the Parish Court was correct to find that this would not be sufficient for her to find that Frank Simmonds occupied the work shed more than just a tenant as opposed to being an owner or to find that this occupation excluded the respondents from the entire area in dispute.

[83] Mr Clarke opined that the appellants' case was fatally flawed once they agreed with the surveyor's report, which supported the respondents' assertion as to the usage of the disputed land.

[84] In relation to the payment of monies by Frank Simmonds and then by the appellants, counsel contended that it was clear that the payments were being made to the respondents who had "possessory title" for utilisation of the disputed land with permission. The judge of the Parish Court was accordingly correct to have questioned why Frank Simmonds would have been paying property taxes in this manner for property which was not his registered land.

[85] Mr Clarke concluded that the evidence of the appellants fell well short of demonstrating factual possession of the disputed land and the intention to possess it to the exclusion of the appellants. Reference was made to **Thorpe v Frank and Frank** and **Treloar v Nute** [1976] WLR 1295.

Discussion and disposal

[86] The tort of trespass to land is described as an interference with possession. This means that any person in possession of, or who has a right to possession of land may bring an action for trespass to land as long as the person was in possession at the date of entry of the alleged trespasser. The person complaining of a trespass does not have to be the owner of that land. In **George Rowe v Robin Rowe** [2014] JMCA Civ 46, this court recognised that the person claiming possession may even be mistaken as to his ownership of the property but would still be entitled to maintain an action for trespass against another.

[87] In **Beverly Simms and Donovan Simms v Lionel Johnson** [2019] JMCA Civ 19, Edwards JA succinctly described the tort of trespass as follows: -

> "[76] A claim for trespass is a claim grounded in possession. It involves a complaint of an unwelcome and unjustifiable interference by one person on or with the land in the possession of another. Any right to sue in trespass is based on actual possession or the right to possession. In such a claim, proof of actual possession or the greater entitlement to possession than the alleged trespasser is required. The right to possession arises from the paper title owner to the land or actual possession of the land or both. The paper title owner, however, has the actual right to possess and is deemed to be in possession. A person with no title must be in actual possession with an intention to possess. See the case of **Francis & Francis v Graham** [2017] JMCA Civ 39 where this court embarked on a more comprehensive discussion of those general principles and the authorities."

[88] In **Francis and Francis v Graham** [2017] JMCA Civ 39, there was a consideration of what amounts to sufficient possession to sustain an action for trespass. The opinion of Lord Guest in **Wuta-Ofei v Danquah** [1961] 3 All ER 596 was found to be instructive. At page 600, Lord Guest stated that:

> "Their Lordships do not consider that, in order to establish possession, it is necessary for a claimant to take some active step in relation to the land such as enclosing the land or

> cultivating it. The type of conduct which indicates possession must vary with the type of land. In the case of vacant and unenclosed land which is not being cultivated, there is little which can be done on the land to indicate possession. Moreover, the possession which the respondent seeks to maintain is against the appellant who never had title to the land. In these circumstances, the slightest amount of possession would be sufficient."

[89] I am of the view that any challenge as to whether the judge of the Parish Court properly appreciated the law relating to the tort of trespass could not be successfully mounted. Her statement setting out the law as rehearsed at para. [52] above is unexceptional and Mrs Reid took no substantial issue with it. I find that Mr Clarke was correct in his submission that the challenge was really to her finding of facts that supported her conclusion that a trespass had in fact been committed by the appellants.

[90] The proper approach to the review of the factual findings of a trial judge by an appellate court is well-settled. An appeal court must be extremely careful about disturbing factual findings of a trial judge who is assumed to have taken proper advantage of having seen and heard the witnesses in assessing the evidence and arriving at a decision. In a recent decision from the Privy Council **Christo Gift and another v Dr Keith Rowley** [2025] UKPC 37, Lord Burrows, writing on behalf of the Board, summed up the correct approach in the following way:

> "2. It is not for an appellate court to overturn the findings of fact of a trial judge because it would itself have come to a different view. Determination of the facts is pre-eminently a matter for the trial judge who will have had the advantage of seeing and hearing all the relevant evidence. But there are limited circumstances in which the Court of Appeal can overturn factual findings. Expressed in a single short-hand phrase, this is so where the Court of Appeal is satisfied that the trial judge was plainly wrong."

[91] In ground 1, a significant plank of Mrs Reid's complaint was that the judge of the Parish Court must have been mistaken as to the location of the land in dispute. Counsel maintained that the judge of the Parish Court failed to make a clear distinction between

what counsel described as the triangular land, which was the entire land, and the disputed land which was included therein.

[92] The surveyor's diagram was admitted into evidence without objection, and all the parties accepted that it was accurate. It was therefore evidence for the judge of the Parish Court to affirm and accept. As requested, in the diagram the surveyor identified the area of land claimed by both parties and set out all the buildings and structures on the property. He identified the land being claimed by both parties as part of the land with valuation number 183-03-001-006-8, and the name on the tax roll for that entire portion was Ebenezer Edwards. He also noted that the house being built by Wally was on a portion of this land. Further, the surveyor identified the lands claimed by Marylyn as the entire area which has Ebenezer Edwards' name on the tax roll. This portion runs completely along the boundary with the land with a title registered in the name of Frank Simmonds.

[93] Based on the evidence of the parties, it was not only the specific portion of land on which the house was being constructed that was being claimed by the appellants. Both Marylyn and Mr Salmon testified that the construction of the house was taking place on the entire area on which Roderick Morgan had reared cows and which had been fenced off. Mr Salmon and Melva spoke of Frank Simmonds farming down "the bottom" of the land. Mr Salmon testified that Frank Simmonds had been paying rent to do so. Melva described that area to the bottom of the land as being behind the construction that was taking place on the property.

[94] On the evidence from the appellants, Wally agreed that the property tax she paid was for land which had been owned and was in the name of Ebenezer Edwards. She said that the work shed was also on the land in dispute. The surveyor's diagram shows the shed as straddling the disputed land, a little distance from where the construction had commenced. Ansel testified that both the land in dispute, which they were claiming to own, and the land owned by the respondents were on one tax roll as one property. He said the house was being constructed in the middle of the disputed land. Significantly, Mr

Parker in describing the portion they were claiming to own, said that "the land is like a rectangle". The surveyor's diagram depicting the land is supportive of this assessment by Mr Parker. There is no portion which appears to be triangular in shape, as Mrs Reid submitted.

[95] The judge of the Parish Court was not plainly wrong in finding that the construction was taking place on land which was within the boundaries of the entire area which bears the same valuation number. All of this land had been owned by Ebenezer Edwards, whose name still appears on the tax roll as owner. The evidence does not support the assertion being made by Mrs Reid that the land in dispute was a parcel of land, nested in the middle of the registered land belonging to Frank Simmonds and the unregistered land belonging to Vincent Morgan. It was part of the land which belonged to Ebenezer Edwards, the entirety of which the respondents claimed a better right to possession. It is my view that, on the evidence, the judge of the Parish Court did not err in her identification of the disputed land.

[96] Given that there was no error in the identification of the disputed land, the essential question before the judge of the Parish Court was whether the respondents had established actual possession of the disputed land, or a greater right to possession than the appellants at the material time. The competing cases involved not only assertions as to ownership but, more importantly for the purposes of the claim in trespass, competing accounts of the parties' use and control of the disputed land. The respondents maintained that the appellants' use derived from permission previously given to Frank Simmonds, whereas the appellants asserted that their family had occupied and used the land openly and without permission for many years.

[97] The judge of the Parish Court conducted a sufficiently thorough analysis of the competing evidence. In so doing, she expressly recognised the advantage she had in assessing the demeanour, candour and credibility of the witnesses. Her findings concerning the parties' respective use of the disputed land depended, to a significant extent, upon her assessment of that evidence. Having reviewed the material placed

before her, she was entitled to prefer the respondents' account of the use and control of the disputed land and to conclude that they had established a greater right to possession. The question for this court is not whether it might have reached a different conclusion, but whether the findings were reasonably open to the judge on the evidence or were otherwise affected by error of principle. I conclude that the findings were open to her on the evidence and were not erroneous in principle. There is therefore no basis to disturb her conclusions in this regard. Ground 1, therefore, is without merit and fails.

[98] Mrs Reid also challenged the specific finding of the judge of the Parish Court that Frank Simmonds had paid money to Vincent Morgan towards rent rather than towards the payment of property taxes. The fact of the payments was not disputed, although none of the parties had first-hand knowledge of any formal arrangement governing them. The appellants relied on the payments together with their own payment of property tax as supporting their assertion of a greater right to possession of the land. The judge of the Parish Court was, therefore, required to assess the competing explanations for the payments.

[99] The respondents' evidence was that the appellants' family had used portions of the disputed land with their permission. Marylyn described the payments as being paid towards a lease, although she had not personally collected it. Mr Salmon testified that, from his knowledge and understanding, Frank Simmonds rented a portion of the disputed land for farming. In cross-examination, he said he was aware the appellants also paid some of the property taxes for the disputed land. Melva testified that Frank Simmonds had given her father money towards taxes while occupying the disputed land, and she too was aware the appellants also paid some of the taxes.

[100] Wally accepted that her father made payments to Vincent Morgan although she maintained they were connected with the payment of property tax. She was not, however, present when the payments were made. She gave money to Marylyn to pay the outstanding arrears in property tax, since that matter was before the court. She subsequently also paid some herself. She explained that after her father died, she thought

it right to assist in paying the taxes since her family was using the disputed land. Mr Parker likewise acknowledged that he had not witnessed the payments or any discussions between Vincent Morgan and Frank Simmonds concerning the disputed land. He also accepted that he had not purchased or leased the disputed land and had no documentary evidence of ownership.

[101] The judge of the Parish Court preferred the evidence of the respondents on the issue. In particular, she was entitled to take into account the fact that Frank Simmonds was said to have made payments to Vincent Morgan while using land which, on the appellants' own evidence, was not the land registered in his name. The significance of those payments was ultimately a matter for the judge of the Parish Court to assess in conjunction with the other evidence concerning the parties' use and control of the entire property. She accepted that the payments made represented sums being paid by the appellants' family for being permitted to use the disputed land. It was not an unreasonable or unsupported finding. There is no reason to disturb the findings of the judge of the Parish Court in this regard. Accordingly, ground 2 also fails.

Ground 3 – The learned judge of the Parish Court erred in law when she awarded $400,000.00 plus interest at 3 percent per annum from the year 2017 instead of awarding nominal damages (if any) or $150,000.00 (as of the Notes of Evidence)

Summary of the submissions

For the appellants

[102] It was submitted that the judge of the Parish Court erred in awarding nominal damages with interest as the respondents failed to establish that the construction resulted in any calculable loss. In the circumstances, the amount awarded should have been limited to nominal damages only without interest. It was further submitted that any award of nominal damages should not be "out of scale" with the nature of the infringement proved. In support of these submissions, counsel relied on **Stroke-on-Trent City Council v W and J Wass Ltd** [1988] 3 All ER 394 and **The Owners of the Steamship Mediana v The Owners, Masters and Crew of the Lightship Comet (Owners,**

Master and Crew of the Lightship), The Mediana [1900] AC 113, **Carlton Greer v Alstons Engineering Sales and Services Ltd** [2003] UKPC 46, **Richmond Pharmacology Ltd v Chester Overseas Ltd and others** [2014] EWHC 2692 (Ch), and **Martin John Coward v Phaestos Limited and Others** [2013] EWCA Civ 1256.

[103] It was further acknowledged that the courts have, in numerous cases since the early 2000s, awarded nominal damages while consistently reaffirming the principles governing such awards. Counsel referred to **Michael Sailsman v The Attorney General of Jamaica and another** (unreported), Supreme Court, Jamaica, Suit No CLS206/2001, judgment delivered 26 March 2010, **The Jamaica Observer Limited v Orville Mattis** [2011] JMCA Civ 13, **The Attorney-General of Jamaica v Devon Bryan (Administrator of Estate of Ian Bryan** [2013] JMCA Civ 3, and **Delia Burke v Superintendent Carol McKenzie and another** [2014] JMSC Civ 139.

[104] Miss Reid contended that the respondents adduced no evidence concerning the value of the land in dispute and, more fundamentally, how the trespass caused them to be out of pocket or created some inconvenience. Counsel noted that there was some evidence of an old fence being removed, but no evidence was provided of the value of the fence. Counsel submitted that there was nothing to assist the judge of the Parish Court to arrive at an appropriate award for nominal damages and opined that the appellants had actually improved the value of the property. It was therefore untenable, unreasonable and without merit for the judge of the Parish Court to make an award for either $400,000.00 or $150,000.00 plus interest at 3% per annum. Counsel also questioned the appropriateness of an award of interest. Counsel submitted that an award of $10,000.00 in nominal damages, without interest, would be appropriate in the circumstances.

For the respondents

[105] Mr Clarke described as "an unresolved issue on the record" the discrepancy in the sum awarded for nominal damages. He highlighted the fact that, in the ruling, the sum awarded is stated as $400,000.00, whereas in the reasons for judgment the sum awarded

is stated as $150,000.00. It was submitted that the question for this court is whether to affirm, alter, reverse or remit the issue of the nominal damages of $400,000.00 awarded.

[106] It was further submitted that the starting point in considering an appeal against an award of damages is the well-established principle that an appellate court will not ordinarily interfere with such an award unless the award is shown to be an error of law or so inordinately disproportionate as to be plainly wrong. Reference was made to **Jamaican Redevelopment Foundation Inc v Clive Banton and Sadie Banton** [2019] JMCA Civ 12 at para. [108].

[107] It was contended that in this case, to succeed on this appeal, the appellants must demonstrate that the judge of the Parish Court acted on some wrong principle of law, or the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damages to which the respondents are entitled. Reference was made to **Jamaica Public Service Company Limited v Rosmarie Samuels** [2021] JMCA App 15 at paras. [35] and [42]. It was contended that in appreciating the nominal damages awarded in this case, the Court must have regard to the fact that this is a trespass case and that the respondents had no duty to prove loss. Further, this was not a plain trespass case since there were admissions on all sides and on the survey document that there was construction on the disputed land, which was a significant issue that would affect the nominal damages.

[108] It was submitted that the effect of the judgment sum of $400,000.00 on the special facts of this case is to do substantial justice between the parties for the following reasons:

> "1) It is accepted by both parties that the length of the trespass continued from at least Jan 2017 till the date of the judgment. The [appellants] stated their possession was for a longer period of time.
>
> 2) The acts of trespass resulted in the unwanted construction by the appellants on the respondents' land.

3) The respondents applied to the court to have the unwanted constructions ceased by the material court

4) There is no order from the material court for the Appellants to remove the unwanted construction.

5) On the face of the judgment, the Respondents would have to remove the unwanted construction at their own costs.

6) There is no factual basis for saying the nominal sum, does substantial injustice to the Appellants or reaches the threshold for intervention by this court.

7) The figure awarded for nominal damages is not 'inordinately high' or 'so erroneous' as to justify the intervention of this court."

[109] It was considered important to examine the authorities on trespass to ascertain whether the judge of the Parish Court was plainly wrong to award $400,000.00 with interest for trespass on the facts of this case. It was pointed out that of the authorities cited by the appellants, only one directly related to the issue of trespass to land, namely **Delia Burke v Deputy Superintendent Carol McKenzie and another** [2014] JMSC Civ 139. In that case, $65,000.00 was awarded for momentary trespass caused by the police physically entering the home of the claimant. It was noted that this amount, when updated as at August 2024, amounted to $105,728.32, and interest was awarded on the general damages, which included the sum for trespass.

[110] The case of **Nattal Smith v Newton Wright** [2020] JMSC Civ 100 was relied on. In that case an award of $150,000.00 was made in circumstances where the judge considered that nominal damages were appropriate where the trespass was ongoing for 11 years. The claimants sought compensation for crops and trees which he stated he planted and from which he claimed he earned an income. He had not adduced any evidence concerning the value of the land nor had he given any evidence as to the amount earned. Ultimately, the judge was of the view that the claimant was entitled to damages as his "right to possession of the property has been infringed". The sum of $150,000.00, updated as at August 2024, was $203,323.70.

[111] It was contended that in the instant case, the legal rights infringed were not only the right to possession but, more importantly, the respondents' right to have the appellants not build on the land for which the respondents have possession. It was opined that there was an issue in relation to the partially constructed building in that the respondents had no right to compel the appellants to remove it and there was no known power that the judge of the Parish Court has by statute to order the appellants to do so.

[112] The submission was also advanced that since nominal damages were to be awarded at the discretion of the court and may be awarded where the fact of a loss is shown, but there is no necessary evidence as to the amount, the essential question, is whether the amount awarded can be justified as damages. Reliance was placed on **North Plant LPG Cooperative Society Limited v Continental Corporation Limited** Civil Appeal No CA CIV No P 274/2020 from the Court of Appeal of the Republic of Trinidad and Tobago.

[113] It was also noted in Halsbury's Laws of England 4th edition, Volume 45, at para. 641, the basis on which the court may assess the quantum of damages for trespass to land was outlined. It is expressly stated that if the plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss and further when the defendant has made use of the plaintiff's land, the plaintiff is entitled to receive by way of damages such a sum as would reasonably be paid for that use.

[114] In concluding, counsel submitted that there was no authority or relevant legislative framework which supported the assertion that the rate of interest awarded, in the discretion of the court, was an unfounded award or an error of law deserving of intervention of this court.

Discussion and disposal

[115] In addressing the issue of damages, in the reasons for judgment, the judge of the Parish Court stated:

> "57. Having found that the [respondents] have established possession sufficient to ground a claim in trespass I now have to look at the matter of damages. I do not find that the [respondents] have proved any quantifiable loss. I thus will consider nominal damages in the circumstances. I consider the nature and extent of the trespass where the [appellants] and/or their agents entered the property early one morning and began clearing the land and subsequently building on it. This case does not involve personal injury or outrageous home invasion. The figure therefore is $150,000."

[116] As already noted, the endorsement on the plaint, which is dated 10 March 2022 and bears the signature of the judge of the Parish Court, states that the award is in the sum of $400,000.00 with interest thereon at the rate of 3% from 17 January. The document described as the "ruling" which also bears the judge's signature states the same figure. Thus, there is an unexplained discrepancy between the amount stated in her reasons and the formal records of the judgment. In these circumstances the order contained in the endorsement and the ruling, which bears her signature, must be treated as the award that is under appeal.

[117] The judge of the Parish Court correctly recognised that the respondents had not proven any quantifiable loss and thus could only be awarded nominal damages. There is no dispute that this was the correct approach. In McGregor on Damages 13th Ed at para. 295 it is stated that "[n]ominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given". Similarly, in **Stoke-on-Trent City Council v W&J Wass Ltd**, Nourse LJ at page 397 stated the following:

> "The general rule is that a successful plaintiff in an action in tort recovers damages equivalent to the loss, which he has suffered, no more and no less. If he has suffered no loss, the most he can recover are nominal damages."

[118] It is generally accepted that the concept of nominal damages was best explained in **The Mediana,** where the Earl of Halsbury LC stated at page 116:

> "'Nominal damages' is a technical phrase which means that you have negatived anything like real damage, but that you are

> affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all yet gives you a right to the verdict or judgment because your legal right has been infringed. But the term 'nominal damages' does not mean small damages."

[119] An appellate court will ordinarily be slow to interfere with an assessment of damages. Intervention is justified where the award results from an error of principle or is so inordinately disproportionate as to be plainly wrong. In **Cadet's Car Rentals and another v Pinder** [2019] UKPC 4, the Privy Council re-visited and reiterated the proper approach of an appellate court when considering an appeal from an assessment of damages. Lord Lloyd-Jones, writing on behalf of the Board, restated the guidance given in **Flint v Lovell** [1935] 1 KB 354 and **Nance v British Columbia Electric Railway Co Ltd** [1951] AC 601. At para. 7, he had this to say:

> "An appellate court will not, in general, interfere with an award of damages unless the award is shown to be a result of an error of law or so inordinately disproportionate as to be plainly wrong."

[120] In the present case, the difficulty is not merely that this court might have selected a different figure. The reasons of the judge of the Parish Court do not disclose any evidential or principled basis for an award of $400,000.00. In the reasons, having found that no quantifiable loss had been proved, she identified the nature and extent of the trespass as the relevant consideration. She noted that the appellants had entered the disputed land, cleared and commenced construction on it, but also expressly recognised that the case involved neither personal injury nor an outrageous invasion of the respondents' home. Having regard to those matters, she demonstrably arrived at her conclusion that the appropriate figure was $150,000.00.

[121] One can, however, readily appreciate her difficulty in assessing the award since there is no proof of loss, which is generally required to assist a court in quantifying an appropriate award of damages. The authorities demonstrate that nominal damages for trespass to land may vary according to the circumstances of the particular infringement.

In **George Rowe v Robin Rowe** ('**Rowe v Rowe**') [2014] JMCA Civ 46, Brooks JA as he then was, writing on behalf of the court, conducted a comprehensive discussion on this issue in which he referred to decisions where the quantifying of such an award was considered. At para. [62] he stated:

> "Although these awards for nominal damages cannot be said to be within a narrow band, it may be said that claims involving personal injuries seem to attract higher awards within the band than claims involving injury to reputation or trespass to land. Even where there is no personal injury, claims arising from tortious high-handed behaviour may result in an increase in the level of the award. Trial judges must be mindful, however, that if they are of the view that only nominal damages are merited, there should be compliance with the principle explained in **The Mediana**."

[122] In **Rowe v Rowe** the plaintiff, in claiming for damages arising from the defendant's trespass to lands in his possession, had adduced no evidence concerning the value of the land and had not provided a value for the removal of a fence, which was done in the course of defendant's trespass. There was no evidence of any other inconvenience or loss or of the cost of replacing the fence. This court conducted its own assessment and found that an award of $50,000.00 as nominal damages, in those circumstances, was an appropriate award.

[123] Helpfully, Mr Clarke referred to two authorities involving trespass in which awards were made for nominal damages. As he pointed out in **Delia Burke v Deputy Superintendent Carol McKenzie and another**, the award made was $65,000.00, which updated to the amount of $105,728.32 in August 2024. This was in circumstances where police were found to have entered the claimant's home without her consent, without a warrant and without reasonable and probable cause to enter and remain amounting to a trespass which had lasted for over five hours. In making the award, McDonald Bishop J (as she then was) made the observation that there was the need to maintain uniformity and consistency in awards of this nature.

[124] In the second case relied on by Mr Clarke**, Smith v Wright,** it was highlighted that the award of $150,000.00 was made by Lindo J in circumstances where she found the trespass had been ongoing for 11 years and that the claimant's right to possession of the property had been infringed. The latter figure was subsequently stated to be equivalent to $203,323.70 when updated to August 2024.

[125] I do not regard those cases as establishing a tariff for nominal damages, nor do I consider a comparison of the figures, without more, sufficient to determine the appropriate award. They do, however, illustrate that the circumstances and extent of the infringement remain important to the assessment. In the present case, there was no evidence of any quantifiable loss, no evidence as to the value of the land, and no evidence of any other financial loss or particular inconvenience suffered by the respondents. The judge of the Parish Court also expressly excluded considerations of personal injury and an outrageous invasion of the home. Most importantly, her reasons themselves identify $150,000.00 as the figure appropriate to the infringement she had found. In those circumstances, I consider that the award of $400,000.00 cannot be sustained. The discrepancy between that figure and the figure stated in the reasons, coupled with the absence of any discernible basis in the reasons for the higher amount, demonstrates an error in the assessment warranting appellate intervention. The award of $400,000.00 should, therefore, be set aside and the sum of $150,000.00 substituted.

[126] The appellants also challenge the awarding of interest. The starting point for this discussion must be the statutory provision. Section 3 of the Law Reform (Miscellaneous Provisions) Act provides:

> "In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damage for the whole or any part of the period between the date when the cause of action arose and the date of the judgment…"

[127] Pursuant to section 10 of the Act, a Parish Court is designated a Court of Record, and thus there is no dispute that the judge of the Parish Court could order interest on the award. In one of the earliest cases from this court interpreting this section, **Central Soya Jamaica Ltd v Junior Freeman** (1985) 22 JLR 152, at page 17, it was stated:

> "On the literal interpretation of this statutory provision a trial judge has an unfettered discretion to determine whether or not to grant any interest at all, and if he decides to grant interest to decide at what rate the interest should be, and on what part of the judgment, and within the parameters of the section from what time the interest should run."

[128] This being an exercise of the discretion of the judge of the Parish Court in ordering interest, the basis on which it can be disturbed is well settled. For this court to do so it must be demonstrated that the exercise was based on a misunderstanding of the law or the evidence, or that her decision was palpably wrong (see **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042 and **Attorney General of Jamaica v John Mackay** [2012] JMCA App 1).

[129] The principle underlying the granting of interest has long been accepted as best explained by the statement of Lord Herschell in **The London Chatham and Dover Railway Company v The South Eastern Railway Company** [1893] AC 429, where at page 437, he stated that:

> "...when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use"

[130] In **Tate & Lyle Food and Distribution Ltd v Greater London Council and Another** [1981] 3 All ER 716, the basis on which a judge should award interest in a commercial case was considered. The observation of Forbes J is useful to cases other than commercial cases; at page 722, he stated:

> "Despite the way in which Lord Herschell LC in *London, Chatham and Dover Railway Co v South Eastern Railway* Co [1893] 429 at 437 stated the principle governing the award of interest on damages, I do not think the modern law is that interest is awarded against the defendant as a punitive measure for having kept the plaintiff out of his money. I think the principle now recognised is that it is all part of the attempt to achieve restitutio in integrum."

[131] Thus, it is now accepted that an award of interest to compensate a claimant is granted based on the principle of restitutio in integrum, that is, to return the claimant to the position he would have been in had the action complained of not occurred.

[132] Another important consideration is the nature of the loss. The authors of Halsbury's Laws of England, 5th Ed, Volume 12A (2020), at para. 1230 state that:

> "As interest is intended to make good deprivation of money, or its equivalent if, on the facts, there is no deprivation or, because there is an award of restitutionary damages, all loss is otherwise made good, there will be no award on interest."

[133] In the instant case, the respondents did not seek interest, and this meant the judge of the Parish Court was not provided with the basis on which such an award should have been made. Further, the judge of the Parish Court did not make any award of interest in what is referred to as her findings, and so no legal basis was expressed in her reasoning. The award of interest found its way in the endorsement of the plaint and her ruling. In any event, this being an award of nominal damages on the basis that there was no proof of substantial loss means that this award was not truly restitutionary or compensatory. In these circumstances I am satisfied that an award of interest was inappropriate. There is, therefore, merit to this ground, and the appellants accordingly succeed on ground 3.

Conclusion

[134] The judge of the Parish Court demonstrated a sufficiently correct appreciation of the law with regard to the tort of trespass. The challenges to her decision related to her

findings of fact and the conclusions drawn from her findings. There was evidence to support the findings of fact arrived at by her on her assessment of the credibility of the witnesses. It cannot be said that she was plainly wrong in her findings. There is no basis to disturb them. I, however, find that the judge of the Parish Court erred in principle in making the award for nominal damages in the sum she did, and the resultant award was excessively high. Further, given the circumstances in which this award for nominal damages was made, it was wrong to have granted any award for interest. I would, therefore, propose that the following orders be made:

1. The appeal is allowed in part.

2. The judgment of the judge of the Parish Court made on 10 March 2022 that the appellants had committed trespass is affirmed.

3. The award of damages in the amount of $400,000 with interest thereon at rate of 3% thereon from January 17 is set aside and substituted therefor is damages in the amount of $150,000.00.

4. Costs in the amount of $50,000.00 to the respondents.

DUNBAR GREEN JA

[135] I have read, in draft, the judgment of P Williams JA and agree with her reasoning and conclusion. There is nothing that I wish to add.

G FRASER JA (AG)

[136] I, too, have read the draft judgment of P Williams JA. I agree with her reasoning and conclusion.

P WILLIAMS JA

ORDER

1. The appeal is allowed, in part.

2. The judgment of the judge of the Parish Court made on 10 March 2022 that the appellants had committed trespass is affirmed.

3. The award of damages in the amount of $400,000.00 with interest at rate of 3% thereon from January 17 is set aside and substituted therefor is an award of damages in the amount of $150,000.00.

4. Costs in the amount of $50,000.00 to the respondents.