



[2012] JMSC Civ. 115

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. 2010 HCV 05809**

**IN THE MATTER** of awards of Compensation made by the Commissioner of Lands under Section 11 of the Land Acquisition Act

**AND**

**IN THE MATTER** of a reference to the Court by the Commissioner of Lands under Section 17 of the Land Acquisition Act

**AND**

**IN THE MATTER** of all that parcel of land and premises being part of **CHARLEMONT** in the parish of **SAINT CATHERINE** and being part of the land comprised in Certificate of Title registered at Volume 1359 Folio 871 of the Register Book of Titles in the Name of the Minister of Housing

<b>BETWEEN</b>	<b>THE COMMISSIONER OF LANDS</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>CLIFFORD ARMSTRONG</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>A N D</b>	<b>RAYMOND ELLIS (In the Estate of Walford Ellis, deceased)</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>A N D</b>	<b>DELBERT FRANCIS</b>	<b>3<sup>RD</sup> DEFENDANT</b>
<b>A N D</b>	<b>HEADLEY GRAHAM</b>	<b>4<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>FITZROY GREEN</b>	<b>5<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>DAVID HARRISON</b>	<b>6<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>DONALD JAMES</b>	<b>7<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>JULET MURPHY</b>	<b>8<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>LOXLEY MURPHY</b>	<b>9<sup>TH</sup> DEFENDANT</b>

<b>A N D</b>	<b>LENFORD PARKER</b>	<b>10<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>AUTHUR SMITH (In the Estate of Winchester Smith, deceased)</b>	<b>11<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>WINSTON TAFFE</b>	<b>12<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>RONALD WATKISS</b>	<b>13<sup>TH</sup> DEFENDANT</b>
<b>A N D</b>	<b>RALPH WEIR</b>	<b>14<sup>TH</sup> DEFENDANT</b>

Miss Marlene Chisholm and Miss Cheryl-Lee Bolton instructed by Director of State Proceedings for claimant.

Mrs. Elise Wright-Goffe instructed by E.R. Wright-Goffe and Company for defendants.

**Heard: 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> May, 2012 and 13<sup>th</sup> August, 2012**

**COMPULSORY LAND ACQUISITION – COMPENSATION AWARDS – PAYMENT  
OF INTEREST – LAND VALUATION – DAMAGES FOR ACTUAL EARNINGS –  
REFERENCE BY THE COMMISSIONER OF LANDS – LAND ACQUISITION ACT**

**CORAM: EVAN BROWN J (PRESIDING)  
NORMA BREAKENRIDGE – ASSESSOR  
KENNETH ALLISON – ASSESSOR**

**EVAN BROWN J**

[1] The Government of Jamaica sought to acquire land in the parish of St. Catherine for a public purpose namely, the construction of Highway 2000 Phase 1B. In consequence of that, the Commissioner of Lands entered into negotiations with the relevant persons with a view to acquiring the lots by private treaty. Those negotiations came to naught. Following the failure of that process, the Commissioner of Lands made awards of compensation. Those awards of compensation were rejected. Subsequent to their refusal to accept the compensation awarded, the defendants applied to the Commissioner of Lands to refer the matter to this court for its determination. This is therefore a reference by the Commissioner of Lands under section 17 of the Land Acquisition Act, by

Fixed Date Claim Form filed on the 22<sup>nd</sup> November, 2010. The court therefore sat with two assessors, appointed under section 20 of the said Act.

[2] At the first hearing on the 6<sup>th</sup> May, 2011, the 14<sup>th</sup> defendant, Ralph Weir, accepted the award made by the Commissioner of Lands before Brooks J (as he then was). On the 18<sup>th</sup> May, 2011, the matter was once again before Brooks J by way of Notice of Application for Court Orders. Brooks J made two orders. First, one requiring the Commissioner of Lands to pay out to thirteen of the named defendants the sums previously awarded to them by the Commissioner of Lands. That is, all the defendants excepting Ralph Weir. That payment was ordered to be made with interest at 5% per annum from the 1<sup>st</sup> August, 2009 to the date of payment. Secondly, it was ordered that the court should determine the difference between the amounts awarded by the Commissioner of Lands and that being claimed by the respective applicants.

[3] The events leading to this reference are amply captured by the affidavit of the Commissioner of Lands. In her affidavit she said that the Ministry of Housing is the registered owner of land being part of CHARLEMONT in the parish of SAINT CATHERINE and being all of the land comprised in Certificate of Title registered at Volume 1359 Folio 871 of the Register Book of Titles. A copy of the duplicate certificate of title registered at Volume 1359 Folio 871 of the Register Book of Titles was exhibited.

[4] The Ministry of Housing was facilitating the transfers of lots comprising the said land and had an obligation to provide Certificates of Titles to allottees (the defendants herein), who took steps to purchase the lots in or about the 1940's on special terms and conditions pursuant to a land settlement project undertaken by the Government of Jamaica at that time.

[5] The defendants are some of the various allottees. Each defendant occupied various lots on the land, as indicated below:

- Clifford Armstrong - Lot 38
- Raymond Ellis (in the Estate of Walford Ellis) - Lot 9
- Delbert Francis - Lot 12
- Headley Graham - Lot 112
- Fitzroy Green - Lot 7
- David Harrison - Lot 108
- Donald James - Lot 8
- Julet Murphy - Lot 114
- Loxley Murphy - Lot 111
- Lenford Parker - Lot 22
- Authur Smith (in the Estate of Winchester Smith) - Lot 10
- Winston Taffe - Lot 37
- Ronald Watkiss - Lot 3
- Ralph Weir - Lot 115

**NOTICE ISSUED PURSUANT TO SECTION 3(1) OF THE LAND ACQUISITION ACT**

[6] By way of Notification dated the 22<sup>nd</sup> day of August 2007 issued pursuant to section 3(1) of the Land Acquisition Act and published in the Jamaica Gazette on the 29<sup>th</sup> day of August 2007, the Minister of Agriculture (“The Minister”) gave notice that all that parcel of land located at Charlemont in the parish of Saint Catherine, being the land comprised in Certificate of Title registered at Volume 1359 Folio 871 of the Register Book of Titles was likely to be needed for a public purpose, namely, for the construction of Highway 2000 Phase 1 B. A copy of the Jamaica Gazette dated the 29<sup>th</sup> day of August 2007 was exhibited.

**DECLARATION PURSUANT TO SECTION 5(1) OF THE LAND ACQUISITION ACT**

[7] On the 22<sup>nd</sup> day of August 2007, a Declaration was made by the Minister pursuant to section 5(1) of the Land Acquisition Act that all that parcel of land located at Charlemont in the parish of Saint Catherine being the land comprised

in Certificate of Title registered at Volume 1359 Folio 871 of the Register Book of Titles was needed for a public purpose. This declaration was published in the Jamaica Gazette on 29<sup>th</sup> August 2007.

[8] The Commissioner of Lands was directed by the Minister, pursuant to section 6 of the Land Acquisition Act, to take proceedings for the acquisition of the lots comprising the land. The Commissioner of Lands then took the necessary steps to cause the various lots of land to be valued and to enter into negotiations with the defendants with a view to acquiring the lots by way of private treaty. These negotiations were unfruitful.

#### **NOTICES ISSUED PURSUANT TO SECTION 9 OF THE LAND ACQUISITION ACT**

[9] There having been no agreement by private treaty for the purchase of the lots the Commissioner of Lands, on the 29<sup>th</sup> day of June 2009, published separate Notices pursuant to section 9 of the Land Acquisition Act indicating the intention of the Government of Jamaica to acquire the said lots on the land. Each Notice bore the sole name of each of the defendant and invited claims for compensation from persons with an interest in the said land. The Notices also invited such persons to appear at an Enquiry personally or by agent before the Commissioner of Lands on the 22<sup>nd</sup> day of July 2009 to state the nature of their interest in the land, as well as the amount and particulars of their claim to compensation. Copies of the Notices dated 29<sup>th</sup> June 2009 to each defendant were exhibited.

#### **NOTICES ISSUED PURSUANT TO SECTION 15 OF THE LAND ACQUISITION ACT**

[10] By way of Notices issued pursuant to section 15 of the Land Acquisition Act, the Commissioner of Lands was directed by the Honourable Orrett Bruce Golding, Prime Minister, to take urgent possession of the lots on the land. The Notices were issued in the sole names of each of the defendants. Copies of these Notices were also exhibited.

## **ENQUIRIES HELD PURSUANT TO SECTION 11 OF THE LAND ACQUISITION ACT**

[11] On the 22<sup>nd</sup> day of July 2009, the Commissioner of Lands held Enquiries in accordance with the provisions of section 11 of the Land Acquisition Act for each of the lots for each defendant. Mr. Robert Pickersgill, Attorney-at-Law represented all the defendants, except the 12<sup>th</sup> defendant, Mr. Winston Taffe, who did not attend the Enquiry. In addition, Mrs. Lois Edwards-Bourne, Director of Corporate Legal Services at the National Land Agency (“NLA”); Ms. Brandie Anderson, Legal Officer at NLA; Mr. Phillip Myers, Manager of Land Acquisition at the National Road Operating and Construction Company Limited (“NROCC”); and Ms. Peta Gaye Leslie, Coordinator of Land Acquisition for the NROCC were also in attendance.

[12] Also in attendance at the Enquiries were the defendants in person or their representatives, namely Mr. Phillip Armstrong on behalf of Mr. Clifford Armstrong; Mr. Raymond Ellis; Mr. Delbert Francis; Mr. Headley Graham; Mr. Fitzroy Green; Mr. David Harrison; Mr. Donald James; Ms. Julet Murphy; Mr. Loxley Murphy; Mr. Lenford Parker; Mr. Wesley Barnes on behalf of Mr. Authur Smith; Mr. Ronald Watkis; Mr. Taverl Burgess on behalf of Mr. Ralph Weir. As stated no one appeared on behalf of Mr. Winston Taffe. Offers of compensation were made for the purchase of the lots of land as outlined below.

### **OFFER OF COMPENSATION**

#### **CLIFFORD ARMSTRONG – LOT 38**

[13] Lot 38 had been surveyed by Llewelyn L. Allen, Commissioned Land Surveyor, and a surveyor’s report generated which showed that the area of the lot was 10,939.12 square meters. A copy of the surveyor’s report was exhibited. The sum of \$2,857,434.00 was offered to Mr. Armstrong in full compensation for the lot. However, the sum of \$1,006,150.00 which was the value of the crops and a building which were on the lot was deducted because this sum had already been paid to Mr. Armstrong prior to the holding of the enquiry. Hence the final

amount offered was \$1,851,284.00. This offer was rejected by Mr. Armstrong and his legal representative.

[14] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 38. The Award stated that the true area of the land to be acquired was 10,939.12 square meters, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. Further, that the compensation which should be awarded in the opinion of the Commissioner of Lands was \$1,851,284.00. The award further stated that the compensation was awarded solely to Clifford Armstrong, the allottee occupying the lot. A copy of the award was exhibited.

[15] In determining the amount of compensation to be awarded for the lot, the Commissioner of Lands considered its market value as at the date of the service of the Notice under section 9 of the Act. In this regard, the Commissioner of Lands relied on the valuation report for the lot prepared by Henry Rose & Associates Limited. The lot was appraised in the sum of \$2,849,000.00. This is the ground on which the amount of compensation was determined. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of the valuation and inspection reports were exhibited.

[16] Soon thereafter, the Commissioner of Lands received fourteen documents each dated the 5<sup>th</sup> November 2009 and entitled "Application Under Section 17 of the Land Acquisition Act for Court Determination" from E.R. Wright Goffe & Company, Attorneys-at-Law in respect of all the defendants. Each defendant informed the Commissioner of Lands that the award of compensation granted by her would not be accepted as each is dissatisfied with the award. Further, that they wished to have the compensation payable determined by the Court pursuant to section 17 of the Land Acquisition Act. The documents also contained several objections, including a complaint that the Commissioner of Lands failed to make

an award in keeping with the market value of the lot. Copies of “Application Under Section 17 of the Land Acquisition Act for Court Determination” outlining the objections were exhibited.

**RAYMOND ELLIS – LOT 9**

[17] Lot 9 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor’s report prepared which showed that the area of the lot was 10,096.87 square meters. A copy of the surveyor’s report was exhibited. Mr. Raymond Ellis had attended the Enquiry as the personal representative for the estate of Walford Ellis, deceased. The deceased was the allottee and father of Mr. Raymond Ellis.

[18] The sum of \$2,739,000.00 was offered to Mr. Ellis. That figure included the sum of \$452,880.00 for crops and \$75,000.00 for a building that were on the lot. The sum of \$527,880.00 had already been paid to Mr. Ellis prior to the holding of the enquiry. An amount of \$8,548.00 was unpaid by Mr. Ellis to the NLA and remained unpaid for the purchase of the lot. The balance owed to Mr. Ellis was therefore \$2,202,572.00. This offer was rejected by Mr. Ellis and his legal representative.

[19] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 9. The award stated the true area of the land to be acquired was 2.49 acres and being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. Additionally, that the compensation to be awarded was \$2,202,572.00, in the opinion of the Commissioner of Lands. The award further stated that the compensation was awarded solely to duly appointed personal representative in the estate of Walford Ellis. A copy of the award was exhibited.

[20] In determining the amount of compensation to be awarded for the said lot, the Commissioner of Lands considered the market value of the lot as at the date



of service of the notice under section 9 of the Act. For that, reliance was placed on the valuation report of the lot prepared by Henry Rose & Associates Limited, which appraised the lot in the sum of \$2,739,000.00. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

#### **DELBERT FRANCIS – LOT 12**

[21] In June 2009, Lot 12 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared which showed that the area of the lot was 17,312.90 square meters. A copy of the surveyor's report was exhibited. The NROCC determined that the area required for take for the declared public purpose was 14,826 square meters. To assist in ascertaining the market value of this area, a valuation report dated the 1<sup>st</sup> July 2009 was prepared by Henry Rose & Associates.

[22] The sum of \$4,026,000.00 (which included the value of crops on the lot in the sum of \$2,003,800.00) was offered to Mr. Francis. A payment in the latter sum had already been paid to Mr. Francis prior to the holding of the enquiry. The balance owed to Mr. Francis was therefore \$2,022,200.00. In purchasing the lot initially, Mr. Francis had overpaid in the purchase price for the lot in the sum of \$6,635.00. The latter sum was also added to the balance. Hence, the total sum offered was \$2,029,135.00. This offer was rejected by both Mr. Francis and his legal representative.

[23] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 12. The award stated that the true area of the land to be acquired was 14,826 square meters and being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The compensation payable in the opinion of the Commissioner of Lands was \$2,029,135.00. The award further stated that

the compensation was awarded solely to Delbert Francis, the allottee. A copy of the award was exhibited.

[24] In determining the amount of compensation to be awarded for lot #12, the Commissioner of Lands considered the market value of the lot as at the date of the service of the Notice under section 9 of the Act. The Commissioner of Lands relied on the valuation report of the lot prepared by Henry Rose & Associates Limited. They valued the required area for take of the lot at \$4,026,000.00. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

**HEADLEY GRAHAM – LOT 112**

[25] In June 2009. Lot 112 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared which showed that the area of the lot was 16,769.10 square meters. A copy of the surveyor's report was exhibited. The sum of \$4,564,123.00 was offered to Mr. Graham. That figure included the value of crops on the lot in the sum of \$610,560.00. A payment in the latter sum had already been made to Mr. Francis prior to the holding of the enquiry. The balance owed to Mr. Francis was therefore \$3,953,563.00. This offer was rejected by Mr. Graham and his legal representative.

[26] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 112. The award stated that the true area of the land to be acquired was 16,769.10 square meters, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The compensation awarded was \$3,953,563.00. The award further stated that the compensation was awarded solely to Headley Graham, the allottee. A copy of the award was exhibited.

[27] In determining the amount of compensation to be awarded for the lot, the Commissioner of Lands considered the market value of the lot as at the date of the service of the Notice under section 9 of the Act. In this regard, the Commissioner of Lands relied on the valuation report of the lot prepared by Henry Rose & Associates Limited, valuing the lot for \$4,554,000.00. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

#### **FITZROY GREEN – LOT 7**

[28] In June 2009, Lot 7 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared which showed that the true area of the lot was 11,441 square meters. However, the area required for the declared public purpose was 3,013.82 square meters. A copy of the surveyor's report was exhibited. The sum of \$5,109,200.00 was offered to Mr. Green. The latter figure included the cost of a pig pen that was on the lot in the sum of \$825,000.00. A payment in the latter sum had already been made to Mr. Walton McKenzie, the lessee.

[29] Further, the \$5,109,200.00 also included the cost of a dwelling house erected on the lot. The cost of the house was \$550,000.00 which was paid to Mr. Blackwood the owner of the house in November 2009. The sum offered also included the costs of crops planted by Mr. Green and Mr. Blackwood, namely, \$84,000.00 and \$39,800.00 respectively. In addition, the sum offered also included the cost of a farm house on the lot, valued at \$57,671.00, which was deducted. Consequently, the balance owed to Mr. Green was therefore \$3,692,529.00. This offer was rejected by Mr. Green and his legal representative.

[30] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 7. The award stated that the area of the land to be acquired was

3.59 acres and being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The compensation payable in the opinion of the Commissioner of Lands was \$3,692,529.00. The award further stated that the compensation was awarded solely to Fitzroy Green, the allottee. A copy of the award was exhibited.

[31] In determining the amount of compensation to be awarded for Lot #7, the Commissioner of Lands considered the market value of the said lot as at the date of the service of the Notice under section 9 of the Act. Reliance was placed on the valuation report for the lot prepared by Henry Rose & Associated Limited, valuing it at \$3,949,000.00. An inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

#### **DAVID HARRISON – LOT 108**

[32] In June 2009, Lot 108 was surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report generated which showed that the true area of the lot was 24,288.11 square meters. A copy of the surveyor's report was exhibited. The sum of \$6,600,000.00 was offered to Mr. Harrison. That figure included the sum of \$393,500.00 for the value of the crops on the lot. The latter sum had already been paid to Mr. Harrison during previous negotiations. The sum offered also included outstanding amounts in the sum of \$103,000.00 due to the NLA. The sum due to the NLA was also deducted from the award. Consequently, the balance owed to Mr. Harrison was \$6,103,500.00. That was the offer made to Mr. Harrison, which he and his legal representative rejected.

[33] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 108. The award stated that the area of the land to be acquired was 6 acres, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The award also disclosed that the compensation in the

opinion of the Commissioner of Lands was \$6,103,500.00. The award further stated that the compensation was awarded solely to David Harrison, the allottee. A copy of the award was exhibited.

[34] In determining the amount of compensation to be awarded for lot #108, the Commissioner of Lands considered the market value of the lot as at the date of the service of the Notice under section 9 of the Act. The valuation report for the lot prepared by Henry Rose & Associates Limited valuing the lot for \$6,600,000.00 was relied by the Commissioner of Lands. An inspection report was also prepared by Henry Rose & Associates Limited. Copies of both reports were exhibited.

#### **DONALD JAMES – LOT 8**

[35] In June 2009, Lot 8 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report submitted. That report showed the true area of the lot as 10,769.66 square meters or 2.66 acres. However, the area required for the declared public purpose was 5,662 square meters. A copy of the surveyor's report was exhibited.

[36] The sum of \$2,128,000.00 was offered to Mr. James. Mr. James owed the sum of \$45,677.00, the outstanding payment on the lot. The latter figure was deducted from the sum offered. Consequently, the balance owed was \$2,082,323.00. This offer was rejected by Mr. James and his legal representative.

[37] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 8. The award stated that the area of the land to be acquired was 2.66 acres, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The compensation payable in the opinion of the Commissioner of Lands was \$2,082,323.00. The award also stated that the

compensation was awarded solely to Donald James, the allottee. A copy of the award was exhibited.

[38] In determining the amount of compensation to be awarded for the said lot, the Commissioner of Lands considered the market value of the said lot as at the date of the service of the Notice under section 9 of the Act. In this regard, she relied on the valuation report of the lot prepared by Henry Rose & Associates Limited in which the lot was appraised in the sum of \$800,000.00 per acre. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of the valuation and inspection reports were exhibited.

#### **JULET MURPHY – LOT 114**

[39] Lot 114 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared in June 2009 which showed that the true area of the lot was 15,044.14 square meters. A copy of the surveyor's report was exhibited. The sum of \$4,081,000.00 was offered to Ms. Murphy. This figure included \$367,200.00 for crops that were on the lot which had been previously forwarded to Ms. Murphy. The latter figure was deducted from the sum offered. Further, Ms. Murphy was entitled to a credit amount in the sum of \$6,915 from the NLA. The \$6,915.00 was added to the remaining balance. The compensation offered to Ms. Murphy was therefore \$3,720,715.00. This offer was rejected by both Ms. Murphy and her legal representative.

[40] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 114. The award stated that the area of the land to be acquired was 15,044.14 square meters and being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The compensation payable in the opinion of the Commissioner of Lands was \$3,720,715.00. The award also stated that the compensation was awarded solely to Julet Murphy, the allottee. A copy of the award was exhibited.

[41] In determining the amount of compensation to be awarded for the said lot, the Commissioner of Lands considered the market value of the lot as at the date of the service of the Notice under section 9 of the Act. The valuation report of the lot prepared by Henry Rose & Associates Limited, was the Commissioner's guide. The lot was appraised in the sum of \$4,081,000.00. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

#### **LOXLEY MURPHY – LOT 111**

[42] Lot 111 had been surveyed by Llewelyn L. Allen and a surveyor's report generated which showed that the area of the lot was 24,458.11 square meters. A copy of the surveyor's report was exhibited. The sum of \$6,644,000.00 was offered to Mr. Murphy in full compensation for the lot. However, the sum of \$295,020.00, representing the value of crops which were on the lot was included in that figure. This sum had already been paid to Mr. Murphy prior to the holding of the enquiry. Hence, it was deducted from the final offer of compensation. In addition, Mr. Murphy owed \$43,164.00 to the NLA. This figure was also deducted. Hence, the final amount offered was \$6,305,816.00. This offer was rejected by Mr. Murphy and his legal representative.

[43] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 111. The award stated that the true area of the land to be acquired was 24,458.11 square meters, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The compensation payable in the opinion of the Commissioner of Lands was \$6,305,816.00. The award further stated that the compensation was made solely to Clifford Armstrong, the allottee and occupant of the lot. A copy of the award was exhibited.

[44] The determination of the amount of compensation to be awarded for the lot was based on the market value of the lot as at the date of the service of the Notice under section 9 of the Act. In this regard, reliance was placed on the valuation report of the lot prepared by Henry Rose & Associates Limited, appraising the lot for \$6,644,000.00. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of the valuation and inspection reports were exhibited.

**LENFORD PARKER – LOT 29**

[45] Lot 29 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared in June 2009 which showed that the true area of the lot was 10,084.23 square meters. A copy of the surveyor's report was exhibited. The sum of \$2,988,000.00 was offered to Mr. Parker in full compensation for the lot. This figure included a sum of \$756,500.00 for crops that were on the lot which had previously been paid to Mr. Parker. The latter figure was deducted from the sum offered. Mr. Parker was entitled to a credit in the sum of \$4,101.00 from the NLA. This was added to the remaining balance. The sum offered to Mr. Parker was therefore \$2,235,601.00, which was rejected by both Mr. Parker and his legal representative.

[46] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 29. The award stated that the area of the land to be acquired was 2.49 acres, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The award also stated that compensation \$2,235,601.00 was payable in the opinion of the Commissioner of Lands. The award further stated that the compensation was awarded solely to Lenford Parker, the allottee. A copy of the award was exhibited.

[47] The compensation to be awarded was based on the market value of the lot as at the date of the service of the Notice under section 9 of the Act. The



Commissioner of Lands was guided by the valuation report of the lot prepared by Henry Rose & Associates Limited in which the lot was appraised in the sum of \$2,988,000.00. An inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

**AUTHUR SMITH – LOT 10**

[48] Lot 10 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared which showed that the true area of the lot was 13,367.23 square meters. A copy of the surveyor's report was exhibited. The sum of \$3,630,000.00 was offered to Mr. Authur Smith, the beneficiary of the deceased allottee, Winchester Smith. This figure included the sums of \$536,480.00 and \$75,000.00 for crops and a shed respectively that were on the lot. Both sums had already been paid to Mr. Smith prior to the holding of the enquiry. The balance owed to Mr. Smith was therefore \$3,024,765.00. This offer was rejected by both Mr. Smith and his legal representative.

[49] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 10. The award stated that the area of the land to be acquired was 3.30 acres, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. It also declared the compensation which was payable in the opinion of the Commissioner of Lands to be \$3,024,765.00. The award further stated that the compensation was awarded solely to duly appointed personal representative in the estate of Winchester Smith. A copy of the award was exhibited.

[50] The amount of compensation to be awarded for the lot was arrived at upon a consideration of the market value of the lot at the date of the service of the Notice under section 9 of the Act. The valuation report for the lot was prepared by Henry Rose & Associates Limited, appraising the lot in the sum of

\$3,630,000.00. This is the ground on which the amount of compensation was determined. In addition, an inspection report was also prepared by Henry Rose & Associates Limited. Copies of both the valuation and inspection reports were exhibited.

**WINSTON TAFFE – LOT 37**

[51] Lot 37 had been surveyed by Llewelyn L. Allen, Commissioned Land Surveyor and a surveyor's report prepared which showed that the area of the lot was 14,265 square meters. A copy of the surveyor's report was exhibited.

[52] As indicated earlier, no one appeared on behalf of Mr. Taffe at the enquiry held on July 22, 2009. However, the Commissioner of Lands felt that it "was prudent that an appropriate sum for compensation be assessed". She determined that the sum of \$3,872,000.00 would be offered to Mr. Taffe in full compensation for the lot. \$1,876,970.00 was deducted as payment for the value of crops which were on the lot. That sum had been paid to Taffe prior to the holding of the enquiry. Mr. Taffe was entitled to a credit of \$6,185.00 from the NLA as he had made over-payments on the purchase price for the lot. Hence, the final offer was \$1,981,215.00.

[53] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 37. The award stated that the true area of the land to be acquired was 14,275 square meters, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. Further, that the compensation payable in the opinion of the Commissioner of Lands was \$1,981,215.00. The award also stated that the compensation was awarded solely to Winston Taffe, the allottee and occupant of the lot. A copy of the award was exhibited.

[54] In determining the amount of compensation to be awarded for the said lot, the Commissioner of Lands considered the market value of the said lot as at the

date of the service of the Notice under section 9 of the Act. For that, the Commissioner of Lands relied on the valuation report of the lot prepared by Henry Rose & Associates Limited. The lot was valued at \$3,872,000.00 (for 3.52 acres which equates to 14,244.93 square meters). An inspection report was also prepared by Henry Rose & Associates Limited. Copies of the valuation and inspection reports were exhibited.

### **RONALD WATKISS – LOT 3**

[55] In June 2009, Lot 3 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared which showed that the true area of the lot was 10,974.53 square meters. A copy of the surveyor's report was exhibited. \$3,252,000.00 was offered to Mr. Watkiss. This figure included the sums of \$1,412,720.00 and \$75,000.00 representing the value of crops and building respectively that were on the lot. Mr. Watkiss owed the sum of \$57,920.00 to the NLA. All these figures were deducted from the sum offered. Consequently, \$1,706,360.00 was tendered to Mr. Watkiss. This offer was rejected by Mr. Watkiss along with his legal representative.

[56] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 3. The award stated that the area of the land to be acquired was 10,974.53 square meters, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. The award also expressed the compensation to be paid in the opinion of the Commissioner of Lands as \$1,706,360.00. The compensation was awarded solely to Ronald Watkiss, the allottee. A copy of the award was exhibited.

[57] In determining the amount of compensation to be awarded for the said lot, the Commissioner of Lands considered the market value of the said lot as at the date of the service of the Notice under section 9 of the Act. The valuation report of the lot prepared by Henry Rose & Associates Limited valuing the lot for

\$3,252,000.00, guided the Commissioner of Lands. An inspection report was also prepared by Henry Rose & Associates Limited. Copies of both reports were exhibited.

**RALPH WEIR – LOT 115**

[58] In June 2009, Lot 115 had been surveyed by Commissioned Land Surveyor Mr. Llewelyn L. Allen and a surveyor's report prepared which showed that the true area of the lot was 18,572.48 square meters. A copy of the surveyor's report was exhibited. The sum of \$5,049,000.00 in full compensation for the lot was offered to Mr. Weir. This figure included the sum of \$1,476,144.00 for the value of the crops that were on the lot. The latter sum had been handed over to Mr. Bynard Bennet, on the written authorization of Mr. Weir. The payment for the crops was deducted from the sum offered. Consequently, \$3,492,174.00 was offered. Mr. Burgess and Mr. Weir's legal representative both rejected this offer.

[59] On the 25<sup>th</sup> day of September 2009, the Commissioner of Lands made an Award of Compensation pursuant to section 11 of the Land Acquisition Act in relation to Lot 115. The award stated that the area of the land to be acquired was 18,572.48 square meters, being part of land comprised in Certificate of Title registered at Volume 1359 Folio 871. Also stated was the compensation payable in the opinion of the Commissioner of Lands, namely, \$3,492,174.00. The compensation was awarded solely to Ralph Weir, the allottee. A copy of the award was exhibited. The amount of compensation to be awarded for the lot was based on its market value, as at the date of the service of the Notice under section 9 of the Act. The valuation report of the lot prepared by Henry Rose & Associates Limited was relied on. Henry Rose & Associates Limited appraised the lot in the sum of \$5,049,000.00. An inspection report was also prepared by Henry Rose & Associates Limited. Copies of both reports were exhibited.

## **VALUATIONS BY HENRY ROSE AND ASSOCIATES**

[60] Glenton Rose, a Chartered Valuation Surveyor and a member of the Royal Institute of Chartered Surveyors since 2008 also gave an affidavit. He is also a member of the Association of Land Economy and Valuation Surveyors and a Registered Real Estate Dealer. He had been a practicing valuator for over 25 years and worked at senior levels in both the private and public sectors. Importantly, Mr. Rose is the Director in charge of valuation at Henry Rose and Associates Limited, the valutors upon whom the Commissioner of Lands relied. At the time of this hearing Mr. Rose was the Land Acquisition Manager at NROCC. He has held this position since January 31, 2011.

[61] Mr. Rose had done valuations for the acquisition of property for the development of major highway projects including the North Coast Highway improvement project, the Old Harbour by-pass project, the Howard Cooke Boulevard dualisation project, the East Kingston Coast Road project and Highway 2000 project. Since 1993 he has been a part-time lecturer in Valuations at the University of Technology (UTECH), lecturing final year students pursuing the Bachelor of Science Degree and Diploma courses in Land Economy and Valuation Surveying. He also lectured Introduction to Valuation to students pursuing the Real Estate Dealers Course. Mr. Rose is also the holder of a Master of Science Degree in Facilities Management from Leeds Metropolitan University, a Bachelor of Science Degree (Hons) in Urban Estate Management from University of Westminster and Diplomas in Land Economy and Valuation Surveying and Management Studies from UTECH and Jamaica Institute of Management respectively.

[62] By way of a public tender Henry Rose and Associates Limited was contracted by NROCC to provide valuation services for the acquisition of some of the properties required for the Highway 2000 project. This contract was executed between June 2008 and December 2010. In June 2009 Henry Rose and Associates Limited received instructions from NROCC to value the requisite

lots. The valuation was for the determination of the market value of the subject property as at July 1, 2009 relative to the Section 9 Notice issued pursuant to the Land Acquisition Act.

[63] Mr. Rose was guided by the definition of Market Value, as agreed by the “Royal Institute of Chartered Surveyors” and the “International Valuation Standards (2007)” which is:

*“The estimated amount for which a property should exchange at the date of valuation between a willing buyer and willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion.”*

Mr. Rose said this definition of market value implies the assumption of Highest and Best Use (HABU). He relied on the definition of Highest and Best Use as agreed by the ‘Royal Institute of Chartered Surveyors’ and the ‘International Valuation Standards (2007)’, that is:

*“The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible and which results in the highest value.”*

[64] His preliminary investigation of the planning considerations relating to the lots based on The Town and Country Planner (Bog Walk/Linstead/Ewarton area) Provisional Development Order, 1964 revealed that the lands were zoned for agricultural purposes. However, over the years the planning authorities have allowed the development and use of residential facilities in the area. Consequently, in general, the “Highest and Best Use” is considered to be residential/agricultural, that is farmstead accommodation. A copy of the Provisional Development Order, 1964, was exhibited.

[65] The inspections of the subject properties were carried out over the period June 10<sup>th</sup> – 30<sup>th</sup> 2009. The following were noted:

(a) *All these lots are part of an agricultural subdivision developed by the Government of Jamaica in or about the 1940’s and allotted to*

- farmers by the Commissioner of Lands. Sections of some of the lands in the area were being used for residential purposes;*
- (b) The reserve roads within the subdivision were in need of repairs (some unpaved), water and electricity were available in close proximity;*
  - (c) Generally the terrain ranges from relatively flat to gentle sloping;*
  - (d) Most of the lots were being used for agricultural purposes. Sections of the lots were bearing mixed crops such as coconuts, breadfruit, citrus, a variety of fruit trees, sugar cane and others, with the remainder in ruinate;*
  - (e) Some of the lots accommodated farm buildings. However, on instructions from NROCC the buildings were not taken into account in the valuation because separate arrangements were being made for compensation; and*
  - (f) The highway reservation was cleared for construction.*

A map showing the location of the subject properties and environs were exhibited.

[66] Mr. Rose said that he arrived at the market value of the subject properties by use of the *comparable sales method* of valuation. That is, the market research was carried out to identify similar properties which were recently sold, these sales were analysed, and the appropriate adjustments made and applied to the valuation of the subject properties.

[67] The properties that were chosen as suitable for comparison are as follows:

- *Part of Shenton, St. Catherine – This is property comprised of 20.76 acres or 8.4 hectares and was sold in September 2007 at a rate of \$770,560.00 per acre. It is located along the parochial road from Bog Walk to Knollis. It was considered to be comparable agricultural lands and with similar low tone residential influence.*

- *Part of Ewarton, St. Catherine – This property is registered at Volume 1342 Folio 235. It has an area of 3.25 acres and was being used for agricultural purposes (mixed crops) but with potential for residential development. It was sold in March 2008 for \$3,800,000.00. That is, at a rate of \$1,169,000.00 per acre.*
- *Part of Cocoa Boo and Ivy, Ewarton, St. Catherine – This property is registered at Volume 1185 Folio 432. It has an area of 2.75 acres and was being used for agricultural purposes (mixed crops) but with potential for residential development. It was sold in March 2009 for \$2,800,000.00. That is, at a rate of \$1,018,000.00 per acre.*

[68] Mr. Rose also swore that the following lots in the same subdivision were sold as follows:

- *Part of Lot 118C Charlemont, St. Catherine – This property is comprised of 3645.12 square metres or 0.90 of an acre. This parcel was sold by private treaty on February 26, 2009 for \$1,080,000.00. That is, at a rate of \$1,200,000.00 per acre.*
- *Part of Lot 128 Charlemont, St. Catherine this property is comprised of 1941 square metres of 0.48 of an acre. This parcel was sold by private treaty on May 5, 2009 for \$528,000.00. That is, at a rate of \$1,100,000.00 per acre.*
- *Part of Lot 13 Charlemont, St. Catherine – This property is comprised of 3278 square metres or 0.81 of an acre. This parcel was sold by private treaty on May 6, 2009 for \$891,000.00. That is, at a rate of \$1,100,000.00 per acre.*

[69] Upon analysis of the various factors, Mr. Rose determined that the market value of the relevant lots was in the range of \$800,000.00 to \$1,200,000.00 per acre. The market value of the subject properties was determined as summarized below from the inspection/valuation reports submitted to NROCC and which were



relied upon and exhibited by the Commissioner of Lands in her affidavit filed on November 22, 2010.

<b>LOT NO.</b>	<b>AREA OF LAND</b>	<b>MARKET VALUE AS AT 1.7.09</b>	<b>REMARKS</b>
3	2.71 Acres/1.097 Ha	\$3,252,000.00	Land with sugar cane valued at \$1.2 M per acre
7	3.59 acres/1.445 Ha	\$3,949,000.00	Land with mixed crops valued at \$1.10 M per acre
8	2.66 acres/1.077 Ha	\$2,128,000.00	Vacant lands in ruinate valued at \$0.80 M per acre
9	2.49 acres/1.008 Ha	\$2,739,000.00	Land with mixed crops valued at \$1.10 M per acre
10	3.30 acres/1.337 Ha	\$3,630,000.00	Land with mixed crops valued at \$1.10 M per acre
12	3.66 acres/1.483 Ha	\$4,026,000.00	Land with mixed crops valued at \$1.10 M per acre
29	2.49 acres/1.008 Ha	\$2,988,000.00	Land with mixed crops valued at \$1.10 M per acre
37	3.52 acres/1.427 Ha	\$3,872,000.00	Land with mixed crops valued at \$1.10 M per acre
38	2.59 acres/1.094 Ha	\$2,849,000.00	Land with mixed crops valued at \$1.10 M per acre
108	6.0 acres/2.429 Ha	\$6,600,000.00	Land with mixed crops valued at \$1.10 M per acre
111	6.04 acres/2.446 Ha	\$6,644,000.00	Land with mixed crops valued at \$1.10 M per acre
112	4.14 acres/1.678 Ha	\$4,554,000.00	Land with mixed crops valued at \$1.10 M per acre
114	3.71 acres/1.504 Ha	\$4,081,000.00	Land with mixed crops valued at \$1.10 M per acre

[70] Mr. Rose commented on the valuation report for part of Charlemont, Saint Catherine prepared by A.C. Barrett, Registered Real Estate Dealer. Mr. Rose's observations were as follows:

- *The report did not specify which lot is the subject of the Valuation;*
- *It was not signed by the Valuator;*
- *The comparable sales data provided (Items 1 and 3 of the Addendum) are indications of asking prices by sellers in the general area. It must be noted that asking price alone cannot be used as evidence of market value. Market value is usually determined based on agreed prices between willing buyers and willing sellers; and*
- *Regarding the transaction outlined at Item 4 of the Addendum, I am aware that the transaction involved the acquisition of a parcel of land along the Treadways Main Road which was being substantially developed for residential purposes and a section was occupied at the time of the acquisition. This, in my opinion is of a higher use other than the Charlemont farm lots and would therefore attract a higher value.*

[71] Mr. Rose visited lot 38. What he saw was that the section of land to be used for construction of highway was already cleared. He observed the crops impacted by the reservation. For this exercise he was told to look for buildings. He saw no buildings on this lot. According to Mr. Rose, under normal circumstances, to determine market value he would take into account all the improvements. The value of \$1.1 million is for the unit with crops; crops which would have occupied the entire area.

[72] Under cross-examination Mr. Rose said he didn't notify any of the owners of the lots of his visit because he wasn't going to enter any buildings. Such notification would have been for NROCC. Mr. Rose was guided by NROCC as to what crops were there.

[73] Mr. Rose also visited the property on Treadways main road. Ms. Murphy, the allottee, told him she was a returning nurse from USA. He subsequently went back and did valuation for buildings. Those instructions were not related to this valuation. He was asked to do valuations of a typical farm house in the general sub-division and specifically, he was asked to provide the depreciation costs, not market value. He described the typical farm house as a one room open facility without bathroom or kitchen. The structures would be valued individually where there is more than one. He did not incorporate the subsequent valuation for buildings in his original valuation. He valued the buildings in respect of the fourteen (14) lots. Mr. Rose said that if the value of the building had been included in one report that is, market value, there would have been a difference. The depreciation cost would result in a higher value.

#### **DEFENDANTS' CASE**

[74] The affidavit evidence of Clifford Armstrong was typical of the case for the defendants. Clifford Armstrong rejected the amount awarded to him for the following reasons:-

- (a) *That the market value of lands in and around Charlemont in the parish of Saint Catherine is valued between \$2,000,000.00 - \$3,000,000.00 per acre as stated by A.C. Barrett Real Estate Consultant in the Addendum to his valuation dated 27<sup>th</sup> May, 2009.*
- (b) *That a price of \$1,937,560.00 per acre was paid to Dorrett Murphy for the acquisition of her land situate in the same area.*
- (c) *That the Minister of Housing sold Lot 106 Charlemont which comprises quarter (1/4) of an acre of land to Samuel Gyles for one Million Dollars (\$1,000,000.00). The Minister of Housing also sold Lot 98 Charlemont to Wesley Barnes for Six Hundred and Fifty Thousand Dollars (\$650,000.00), respectively.*
- (d) *That valuation of land in Jamaica is always based on the unimproved value of the land and all improvements and crops are assessed separately and added to the unimproved value of the land. The award made to him failed to compensate him for his trees, fruit trees and crops.*
- (e) *That the value of the building on his land should have been added to the unimproved value of the land and he should receive*

*compensation for same. The award made to him failed to compensate him for his building.*

- (f) That in valuing the trees, fruit trees and crops on his land, the life span of said trees and crops and the earnings obtainable from the said trees, fruit trees and crops must be considered and valued accordingly and must be added to be unimproved value of the land. The award made to him failed to do this.*
- (g) That in accordance with section 14(1)(c) of the **Land Acquisition Act** compensation for damages should be paid to him by reason of the acquisition injuriously affecting his earnings. Said compensation for damages is payable from the date the Government took possession of his land. The award made to him failed to do so.*
- (h) That interest at 5% per annum as provided under section 36 of the **Land Acquisition Act** should be paid to him. The award made to him failed to do this.*

[75] The defendants also asked that the Court makes the following Orders:-

- (a) That a value of \$1,937,560.00 per acre be the value of the unimproved land for Lot 36 and 38 Charlemont, St. Catherine.*
- (b) That all improvements on the land including trees, fruit trees, crops and buildings be valued and assessed separately and the assessed value be added to the unimproved value of the land.*
- (c) That compensation for damages by reason of the acquisition injuriously affecting their earnings as provided under section 14(1)(c) of the **Land Acquisition Act** be paid to them.*
- (d) That interest at 5% as provided under section 36 of the **Land Acquisition Act** to be paid to them from the date possession of their land was taken to the date of payment.*
- (e) That if applicable interest at 5% as provided under section 30 of the **Land Acquisition Act** to be paid to them from the date possession of their land was taken to the date of payment.*

**ASTON C. BARRETT**

[76] Aston C. Barrett, Real Estate Consultant and a registered Real Estate Dealer, was called on behalf of the defendants. He had been registered with the Real Estate Board in Jamaica for upwards of thirty (30) years, and was a valuator for approximately forty (40) years. His experience was island-wide but he

claimed more expertise for the Linstead area. He said he was familiar with valuations of land in Jamaica, particularly with the value of lands in and around Charlemont and Treadways areas in the parish of St. Catherine. During the third week in May 2009, he was requested by Rudolph Cheese, a farmer of Charlemont, to carry out a valuation of lands in the Charlemont area on behalf of a number of farmers, the present defendants.

[77] On the 27<sup>th</sup> May 2009, Mr. Barrett attended on Rudolph Cheese at Lot 30 Charlemont, Linstead in the parish of St. Catherine. Mr. Barrett inspected the land owned by Mr. Cheese and some of the other lands in the area. Mr. Barrett placed a value of \$1,937,560.00 per acre for the lands in the area. Mr. Barrett swore that at the time he inspected the land for Rudolph Cheese he was informed that the Commissioner of Lands intended to acquire 0.56 acres of the Cheese land. Mr. Barrett therefore did a valuation for 0.56 acre of the land.

[78] In May 2009 when Mr. Barrett did the valuation on the property owned by Rudolph Cheese, he had previously valued other properties in the area for a similar figure of \$1,937,560.00 per acre. One of those properties that Mr. Barrett valued in 2008 for \$1,937,560.00 per acre belonged to Clarence Murphy and Dorrett Murphy-Williamson the owners of Lot 147 Treadways. Mr. Barrett said all valuations were based on the unimproved value of the land. Further, that if there were buildings or crops on the land those would be stated as improvements and valued separately.

[79] In his oral evidence Mr. Barrett said that he did valuations for Rudolph Cheese and Clarence and Dorrett Murphy on 19<sup>th</sup> February 2008 and 27<sup>th</sup> May 2009, respectively. The purpose was to arrive at a value for the portion of property that would be needed by NROCC. He said he didn't know what became of the valuation for Murphys' neither if it was acted on. He admitted being told by Mr. Cheese that the valuation was to be used by him for a proposed project by NROCC. Further, that he was approached by Mr. Cheese only.

## **CROSS-EXAMINATION**

[80] Mr. Barrett was aware all the defendants were relying on the valuation prepared for Mr. Cheese. The lot in respect of Mr. Cheese is Lot 30. Mr. Barrett described this as an agricultural land. Lot 30 was being so used at the time. Mr. Barrett agreed that in arriving at the valuation for Lot 30 he would compare similar lands. Therefore, in arriving at these valuations he relied on sales of properties in the area obtained for the NLA. He agreed that the relevant consideration was what the land was being sold at, not what sellers were asking.

[81] Mr. Barrett declared himself to be familiar with how market values are arrived at for lands being acquired by Government. He was confronted with item #2 of the Addendum to his valuation report. That item reads, "any construction project of this nature normally triggers an increase for goods and services in the particular and this NROCC Project is no exception." He insisted item #2 of the Addendum was not taken into consideration. It was included out of being generous in his remarks. Mr. Barrett valued the Murphy's property for \$9,050,000.00 registered at Volume 710 Folio 15. The use of this property was residential and agricultural.

[82] Mr. Barrett agreed that this property was located by the main road. It was an incomplete single story dwelling house. One bedroom in section A was completed. Section B consisted of one bedroom, one bathroom, small passage, family/living room and laundry area. Section B was 75% complete. Section C comprised a living and dining area, kitchen and verandah. This section was 30% completed. The total floor area is 1476.3 square feet or 137.1 meter square. The building was new and in good condition. Extra improvement of absorption pit. The RUL (remaining useful life) was estimated at approximately 50 years.

[83] Mr. Barrett said he arrived at a value for the land separately and the building separately, taking into account the prevailing construction costs per square feet, together with the size of the building and percentage completion. He

attached a value to the cultivation, taking into consideration its proximity to the main road. Further, he arrived at a specific value for the absorption pit. All these separate values were added. The breakdown is as follows:-

Land	=	\$6,200,000.00
Building	=	\$2,800,000.00
Absorption pit	=	<u>\$50,000.00</u>
		\$9,050,000.00

He believed there were some fruit trees on the property, which was 3.2 acres.

[84] In re-examination Mr. Barrett said the house site is about a quarter (1/4) of an acre. In response to questions posed by Mr. Allison, Mr. Barrett said the house was about 20 – 25 feet from the main road. The property on which the house was, bordered the main road. The frontage was 281.2 feet or 87.7 meters. The house was built probably about in the middle of the land. There were no crops on the land, just fruit trees; a couple around the house. There were other houses in the vicinity. This was a subdivision, with all the utilities present, including piped water.

[85] The Cheese property was about  $\frac{1}{2}$  -  $\frac{3}{4}$  mile away from the Murphy property. The main road was paved. The access road to Cheese property was an unpaved, reserve road. A reserve road is not maintained. On the other hand, a parochial road is taken over by the parish council and maintained. On the reserve road there was piped water, electricity and telephone. Mr. Barrett agreed that the Cheese property was not directly comparable with the Murphy property as the latter was on the main road.

[86] However, he said it was logical that he would have taken this into consideration based on his experience. He asserted that he did so. Nevertheless, he agreed that the valuation of the Cheese property reflected a direct transfer of the value of the Murphy property. That is, he assigned the same value per acre to both properties.

## THE LAW AND REASONING

### THE PROCEDURE FOR LAND ACQUISITION

[87] The pertinent law governing this reference is the **Land Acquisition Act**, (the Act). Section 3(1) of the Act requires the publication of a notification in the Gazette whenever “land in any locality is likely to be needed for any public purpose.” That determination is made by the Minister. Thereafter, the Commissioner of Lands is mandated to “cause public notice of the substance of such notification” to be disseminated at convenient points in the locality of the land.

[88] The Minister makes a declaration of the public purpose under section 5 of the Act. Having made the declaration, the Minister then directs the Commissioner of Lands to “take proceedings for the acquisition of the land,” by virtue of section 6 of the Act. Among the things that the Commissioner of Lands is required to do is to cause the land to be surveyed (section 7) and valued, and negotiate the purchase of the land by private treaty: section 8 of the Act. The Minister’s approval concludes the agreement for the purchase by private treaty.

[89] The failure of the negotiations by private treaty triggers the section 9 procedure. The Commissioner of Lands is thereunder required to post notices at convenient points, on or near the land to be acquired (section 9(1) of the Act). In addition, notice must also be served on any occupier of the land, as well as on “all persons known or believed to be interested ... or to be entitled to act for persons so interested,” who reside in the parish in which the land is situated. Service is by registered post on the relevant persons, residing outside the parish without an agent (section 9(3) of the Act).

[90] The notices are to state that claims for compensation for all interests in the land should be made to the Commissioner of Lands: section 9(1) of the Act. Under sub-section 2, the notices must give particulars of the land and require all interested persons to appear before the Commissioner of Lands, either



personally or by his agent, at a specified time and place. On the date they appear before the Commissioner of Lands, the interested persons are to state their respective interests in the land, the particulars and amount of the compensation sought and any objection to the survey.

[91] Having posted and served notices under section 9 of the Act, the Commissioner of Lands holds enquiries and makes awards in respect of the subject lands. According to section 11(1), so far as is relevant:

*The Commissioner shall enquire-----*

- (a) into the objections, if any, which any person interested has stated, pursuant to the ... notice, to the survey;*
- (b) into the value of the land; and*
- (c) into the respective interests of the persons claiming the compensation, and shall make an award under his hand as to*

*-----*

- (i) the true area of the land,*
- (ii) the compensation which in his opinion should be allowed for the said land;*
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whose claims he has information, whether or not they have respectively appeared before him.*

In the case of disputes concerning the apportionment of the compensation or, the persons to whom the compensation is payable, the Commissioner may refer the matter to the Supreme Court for resolution.

## **PERTINENT CONSIDERATIONS FOR COMPENSATION**

### **MARKET VALUE**

[92] Common to all the defendants was the complaint that the Commissioner of Lands in making the awards relied on a market value which did not reflect the true value of the lots. What then are the matters which are appropriate for consideration in arriving at the compensation package? The Act explicitly circumscribes the matters fitting for the consideration of the Commissioner of Lands when conducting the enquiry. The Commissioner of Lands may be seized of the following four matters only. First, the market value of the land at the date of

service of the notice under section 9(3) must be considered: section 14(1)(a) of the Act. The Commissioner of Lands is to disregard any increase in the market value of the land, brought about by improvements made by either the present owner or his predecessor in title which were not bona fide. That is, the improvements were made within two year of the service of the section 9(3) notice and in contemplation of proceedings for the land being acquired under the Act: section 14(2)(a) of the Act. Further, the Commissioner of Lands cannot take into account any increase in value resulting from an unlawful user of the land: section 14(2)(b) of the Act.

[93] In arriving at the market value, any subsisting valuation of the unimproved value of the land must be borne in mind: section 14(2)(c) of the Act. The meaning of unimproved value is taken from the **Land Valuation Act (LVA)**. Under the LVA:

*“unimproved value” means land on which no improvements as defined in this Act have been effected;*

*“unimproved value” means –*

- (a) in relation to unimproved land the capital sum which the fee simple of the land together with any licence or other right or privilege (if any) for the time being affecting the land, might be expected to realize if offered for sale on such reasonable terms and conditions as a bona fide seller would require;*
- (b) in relation to improved land the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a bona fide seller would require, assuming that at the time as at which the value is required to be ascertained for the purposes of this Act the improvements as defined in this Act do not exist:*

*Provided that in determining the unimproved value of any land, the Commissioner may assume that –*

- (a) the land may be used, or continue to be used, for any purpose for which it was being used or could have been used at the time as at which the value is required to be ascertained for the purposes of this Act; and*
- (b) such improvements as may be required in order to enable the land to be so used or continue to be so used, will be made or continue to be made,*

*so, however, that nothing in this Act shall prevent the Commissioner, in determining the unimproved value of land, from taking into account any*

*other purpose for which the land may be used if those improvements, if any, had not been made:*

*And provided further that the unimproved value shall in no case be less than the sum that will be obtained by deducting the value of the improvements from the improved value at the time as at which the value is required to be ascertained for the purpose of this Act.*

[94] Secondly, the Commissioner of Lands must bear in mind any increase in the value of other land of any interested person, likely to result from the use to which the acquired land is put. Thirdly, the damage sustained by any interested person. That is, damage occasioned at the time the Commissioner of Lands took possession of the land which 'injuriously affected' the person's actual earnings. Fourthly, the reasonable and incidental expenses of relocation of residence or place of business of any interested person, arising as a necessary consequence of the acquisition. (Section 14(1)(ii) of the Act).

[95] Not only does the Act prescribe the matters which fall within the remit of the Commissioner of Lands, it also proscribes the Commissioner of Lands from considering other specific matters. First, the Act rules out of consideration the urgency which led to the acquisition. Secondly, the Commissioner of Lands cannot take onboard any reluctance of the interested person to relinquish the land. Thirdly, the Commissioner of Lands ought not to have regard for any damage occasioned to an interested person which, if done at the hands of a private person, would not be a good cause of action. Fourthly, the Commissioner of Lands is forbidden from considering damage likely to be caused to the land as a consequence of its use, post the publication of the declaration under section 5 of the Act.

[96] Fifthly, and consistently with item one of the relevant considerations, any increase in the value of the land which is likely to be occasioned from its subsequent user, cannot be considered. Sixthly, also not meet for the consideration of the Commissioner of Lands, is any expense incurred on additions or improvements to the land after the publication of the section 5 notice

which were not necessary “for the maintenance of any building in a proper state of repair.” The penultimate proscription is the fact of the compulsory acquisition of the land. Lastly, the Commissioner of Lands is barred from considering “whether or not compensation is to be paid” by the issue of land bonds. (Section 14(1)(ii) of the Act).

[97] The first point of note is, whatever the actual sum, the market value is that which obtained at the date of the service of the notice required by section 9 of the Act. Those notices are dated 29<sup>th</sup> June, 2009. Photographs showing the notices affixed to trees were exhibited. While the Commissioner of Lands spoke to the publication of the notices and that she used the market value dictated by section 9 of the Act, she did not give the date of service of the notices. So, there was no evidence of the actual date or dates on which they were served. However, Glenton Rose said he received instructions from NROCC to arrive at the market value of the lots, as at 1<sup>st</sup> July, 2009. Further to those instructions, Mr. Rose inspected the lots between June 10<sup>th</sup> and 30<sup>th</sup>, 2009. Indeed, the NROCC stamp on the exhibited notices shows that very date. The court therefore accepts that date as the date on which the notices were served. Consequently, the relevant market value is that which prevailed on the 1<sup>st</sup> July, 2009.

### **CONTENDING VALUATIONS**

[98] Two contending, as well as contrasting, valuations for the lots were placed before us. Glenton Rose characterized the lots as farmsteads and determined the market value as ranging between \$800,000.00 and \$1,200,000.00 per acre. Mr. Aston Barrett, for the defendants, appraised the market value at \$1,937,500.00 per acre. In deciding which market value to accept, the methodology of each valuator was placed under the judicial microscope, affixed with the lenses of the experienced and well-respected assessors.

[99] Mr. Barrett testified that in arriving at his valuation he used sales of properties in the area, obtained from the NLA. However, it became clear during

his cross-examination that what he did was to extrapolate from the value of a property of an entirely different character. Further, Mr. Barrett was less than credible in denying that he took into consideration the purpose for which the land was being acquired. That was a flagrant breach of section 14(ii)(e) of the Act. Additionally, the valuation of the Cheese property was done over a month earlier than the date of the publication and service of the section 9 notices. Section 14(1)(a) of the Act required him to ascertain the market value as at the date of service of the notices under section 9 of the Act. For these and other reasons more fully expressed in the reasons of the assessors, the market value of Mr. Barrett was rejected. Similarly, we accepted the market value fixed by Mr. Rose for the reasons stated there.

#### **DAMAGES UNDER SECTION 14(1)(i)(c)**

[100] The defendants also claimed compensation for damages under section 14(1)(i)(c) of the Act. That is, they claimed that the acquisition injuriously affected their earnings. What the section speaks to is actual earnings. The defendants provided evidence of their annual earnings from the “trees, fruit trees and crops.” Having accepted that they were paid for damage in the area of take only, this claim was met by compensating the defendants for the crops covering the entire acreage; that is, crops on both the area of take and the remainder of the lot. Indeed, the release and discharge to which the defendants affixed their signatures clearly shows that they were in part compensated by NROCC for “DAMAGE sustained as a result of the acquisition by NROCC.”

#### **DEDUCTIONS FOR BUILDINGS & CROPS**

[101] Finally, it was agreed at the hearing that the Commissioner of Lands was in error when she deducted the value of buildings from the appraised value of the land. So that, as in the case of the 13<sup>th</sup> defendant Ronald Watkiss, his compensation package was \$75,000.00 less than what it should have been. The Commissioner of Lands seems to have treated the NROCC payment for crops as part payment for the land, and therefore made a deduction in each case.

However, the release and discharge signed by the defendants clearly state that the payment was for “crops only and the land is not included.” Consequently, the Commissioner of Lands again fell into error in treating the payments for crops as a deposit or part payment for the land when she made those deductions.

#### **PAYMENT OF INTEREST**

[102] The payment of interest is contemplated by sections 30 and 36 of the Act. Under the former, interest not in excess of five per centum per annum may become payable if the court makes an award greater than that of the Commissioner of Lands. In that event, it is only that portion of the court’s award which exceeds the award made by the Commissioner of Lands which attracts interest. On the other hand, the payment of interest at the rate of five per centum per annum is mandatory, once the compensation is not either deposited or paid on or before the taking of possession of the land. The interest payable in this case is on the entire compensation awarded, “from the time of taking possession until it has been paid or deposited.”

[103] The Commissioner of Lands is empowered under section 15 of the Act to take possession of the lands affected by her section 9 notices. The section 9 notices were posted on the 1<sup>st</sup> July, 2009. Therefore, the Commissioner of Lands would have taken possession on a date after the 1<sup>st</sup> July, 2009. However, to take the evidence of just one of the defendants, NROCC bulldozed the land in April, 2008 and it was after that was done, that he was paid for the damaged crops. In fact, the Statement of Intent for the Sale of Crops is dated 11<sup>th</sup> April, 2008. It seems clear that possession was in fact taken prior to the issue of the section 15 notices.

[104] Mr. Headley Graham, the 4<sup>th</sup> defendant, testified that NROCC first entered his land in 2007. It is against this background that counsel for the defendants submitted that interest under section 36 of the Act should be awarded from 1<sup>st</sup> December, 2007 for the 4<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> defendants, and from April, 2008 for the

others. However, there is no evidential basis upon which to join the 8<sup>th</sup> and 9<sup>th</sup> defendants in the separation from the other defendants. Learned counsel for the Commissioner of Lands, quite honourably, conceded that NROCC may have entered the land before the posting of the section 15 notices. Indeed, when the matter came before Brooks J, as he then was, it seems to have been accepted that interest was payable under section 36 of the Act. The court accepts the word of the defendants on the point.

#### **ASSESSORS' REMUNERATION**

[105] The issue of the payment of a just remuneration to the assessors who have given unstintingly of their valuable and indispensable time was judicially considered in **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2012] JMSC Civ. 108. I adopt and endorse the views of my learned sister that the "fee not exceeding twenty dollars" may well be regarded as an insult. Indeed, it would not be stating it too strongly to say it gives pith and substance to derisory. I add my voice to her call to the need for urgent legislative action.

[106] However, I feel constrained to go a step further than the recommendation of *ex gratia* payments. Assessors in their private endeavour are paid at the rate of fifteen thousand dollars (\$15,000.00) per hour. A payment of sixty thousand dollars (\$60,000.00) per day is much less than that hourly rate. It is therefore ordered that each assessor be paid at the daily rate of sixty thousand dollars (\$60,000.00) for seven (7) days as costs imposed on the Commissioner of Lands. No order is made in respect of any other costs.

#### **ASSESSORS' OPINION**

[107] The defendants claim is that:

- 1) The Commissioner of Lands has failed to pay compensation for crops and trees on the area of land falling outside the 'Area of Take' ('Area of Take' defined as that area falling within the route of the Highway);

- 2) That compensation of \$800,000.00 per acre for land only and \$1,100,000.00 - \$1,200,000.00 per acre for land with mixed crops was too low and below market value. They contended a price of \$2,000,000.00 - \$3,000,000.00 per acre for land and tried to substantiate this by a valuation done by Mr. A.C. Barrett, Real Estate Consultant on a 0.25 acre parcel at Charlemont, not comparable to any of the parcels in question.

[108] Mr. Barrett agreed that his basis of valuation was 'Asking Prices' and not actual sales. He referred to one acquisition by NROCC by private treaty from Dorett Murphy of an improved parcel of land on the main road showing \$1,937,560 per acre, but failed to make adjustments to the price for the fact that the property was improved and in a superior location on a paved main road, while the subject properties are on an unpaved reserved road approximately  $\frac{1}{2}$  -  $\frac{3}{4}$  mile from the main.

[109] We reject Mr. Barrett's opinion of value for the reason that:-

- 1) He relied mainly on asking prices and not actual sales for comparison;
- 2) He failed to properly analyze and make the necessary adjustments to the transaction between NROCC and Murphy;
- 3) He failed to properly investigate market transaction in the area;
- 4) He did not do a valuation of any of the fourteen (14) parcels the subject of this hearing.

[110] With respect to the valuation by Mr. Rose for NROCC and the Commissioner of Lands, we accept the basis for valuations. He has relied on actual sales of vacant land and land with mixed crops in comparable location and of similar sizes. He found vacant land at \$800,000.00 per acre and land with mixed crops at \$1,100,000 - \$1,200,000.00 per acre. This put mixed crops at



\$300,000.00 - \$400,000.00 per acre. Mr. Rose admitted not seeing the crops in the 'area of take' but relied on information supplied to him by NROCC.

[111] We accept his findings and would value crops at \$400,000.00 per acre generally. We note and it was agreed by the parties that the valuations done by Mr. Rose do not include the value of buildings; and that the agreed value of \$75,000.00 would apply where necessary. We note that compensation for crops paid by NROCC was full compensation for crops in the 'area of take' only. This was not contested or denied by the claimant. The defendants should be compensated for crops falling on the remaining portion of land taken. It is also our opinion that no part of payment for crops on the 'area of take' should be treated as a deposit or down-payment on the land and therefore should not be deducted from final payment.

[112] On the question of loss of income we do not find the claims credible. For instance in the case of Mr. Clifford Armstrong Lot 38 was 10,939.12 square metres or 2.7 acres, the 'area of take' that is the area falling within the route of the highway was 2.268 acres or 2.27 acres approximately, leaving him with a residue of 0.44 acre approximately. He was paid for the crops in the 'area of take'. So at best he could only claim payment on 0.44 acre (just less than ½ acre). His claim is calculated over the entire 2.7 acres.

[113] We are also of the opinion that to pay interest on the value of the crops from the date of possession by NROCC and loss of earnings for the same period would amount to double counting.

#### **COURTS' AWARDS**

[114] **CLIFFORD ARMSTRONG - Lot 38 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 10,939.12 sq. metres (2.70 acres)

AREA OF TAKE 9,177.00 sq. metres (2.27 acres)

RESIDUE 1,762.12 sq. metres (0.44 acres)

ADJUSTED TAKE 10,939.12 sq. metres (2.70 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$1,851,284.00

- CROPS \$931,150.00

COMPENSATION:-

Recommended compensation 2.7 acres

@ \$800,000.00/ acre

\$2,160,000.00

Less Commissioner's Award

1,851,284.00

Difference on land

308,716.00

Crops in residue 0.44 acres @ \$400,000.00/ acre

176,000.00

AMOUNT PAYABLE

**484,716.00**

[115] **RAYMOND ELLIS - Lot 9 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 10,096.87 sq. metres (2.49 acres)

AREA OF TAKE 5,968.00 sq. metres (1.47 acres)

RESIDUE 4,128.87 sq. metres (1.02 acres)

ADJUSTED TAKE 10,096.87 sq. metres (2.49 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$2,202,572.00

- CROPS \$ 452,880.00

- ARREARS (\$8,548.00)

COMPENSATION:-

Recommended compensation 2.49 acres

@ \$800,000.00/ acre

\$1,992,000.00

Less Commissioner's Award

2,202,572.00

Difference on land

(210,572.00)

Crops in residue 1.02 acres @ \$400,000.00/ acre

408,000.00

AMOUNT PAYABLE

**197,428.00**

[116] **DELBERT FRANCIS - Lot 12 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 17,312.90 sq. metres (4.28 acres)

AREA OF TAKE 11,203 sq. metres (2.77 acres)  
NORTH-EAST RESIDUE 3,111.90 sq. metres (0.77 acres)  
ADJUSTED TAKE 14,201.00 sq. metres (3.51 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$2,022,200.00  
- CROPS \$2,003,800.00  
- CREDIT \$6,635.00

COMPENSATION:-

Recommended compensation 3.51 acres	
@ \$800,000.00/ acre	\$2,808,000.00
Less Commissioner's Award	<u>2,029,135.00</u>
Difference on land	778,865.00
Crops in residue 0.74 acres @ \$400,000.00/ acre	<u>296,000.00</u>
AMOUNT PAYABLE	<u><b>1,074,865.00</b></u>

[117] **HEADLEY GRAHAM - Lot 112 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 16,769.10 sq. metres (4.14 acres)  
AREA OF TAKE 3,039.00 sq. metres (0.75 acres)  
RESIDUE 13,730.10 sq. metres (3.39 acres)  
ADJUSTED TAKE 16,769.10 sq. metres (4.14 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$3,953,563.00  
- CROPS \$610,560.00

COMPENSATION:-

Recommended compensation 4.14 acres	
@ \$800,000.00/ acre	\$3,312,000.00
Less Commissioner's Award	<u>3,953,563.00</u>
Difference on land	(641,563.00)
Crops in residue 3.39 acres @ \$400,000.00/ acre	<u>1,356,000.00</u>
AMOUNT PAYABLE	<u><b>714,437.00</b></u>

**[118] FITZROY GREEN - Lot 7 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 14,454.82 sq. metres (3.57 acres)

AREA OF TAKE 3,013.82 sq. metres (0.75 acres)

RESIDUE 11,441.00 sq. metres (2.82 acres)

ADJUSTED TAKE 14454.82 sq. metres (3.57 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$3,468,729.00  
- CROPS (BLACKWOOD)  
\$39,800.00  
- CROPS (GREEN) \$84,000.00  
- ARREARS (Green) \$57,671.00

**COMPENSATION:-**

Recommended compensation 3.57 acres

@ \$800,000.00/ acre \$2,856,000.00

Less Commissioner's Award 3,692,529.00

Difference on land (836,529.00)

Crops in residue 2.82 acres @ \$400,000.00/ acre 1,128,000.00

AMOUNT PAYABLE **291,471.00**

**[119] DAVID HARRISON - Lot 108 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 24,288.11 sq. metres (6.00 acres)

AREA OF TAKE 7396 sq. metres (1.83 acres)

RESIDUE 16,892.11 sq. metres (4.17 acres)

ADJUSTED TAKE 24,288.11 sq. metres (6.00 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$6,103,500.00  
- CROPS \$393,500.00  
- ARREARS -\$103,000.00

**COMPENSATION:-**

Recommended compensation 6 acres

@ \$800,000.00/ acre \$4,800,000.00

Less Commissioner's Award 6,103,500.00

Difference on land	(1,303,500.00)
Crops in residue 4.17 acres @ \$400,000.00/ acre	<u>1,668,000.00</u>
AMOUNT PAYABLE	<u><b>364,500.00</b></u>

**[120] DONALD JAMES - Lot 8 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 10,769.66 sq. metres (2.66 acres)  
 AREA OF TAKE 5662 sq. metres (1.40 acres)  
 RESIDUE 5,107.66 sq. metres (1.26 acres)  
 ADJUSTED TAKE 10,769.66 sq. metres (2.66 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$2,082,323.00  
 - ARREARS \$45,677.00

COMPENSATION:-

Recommended compensation 2.66 acres @ \$800,000.00/ acre	\$2,128,000.00
Less Commissioner's Award	<u>2,082,323.00</u>
Difference on land	45,677.00
Estimated crops on 2.66 acres	<u>464,000.00</u>
AMOUNT PAYABLE	<u><b>509,677.00</b></u>

**[121] JULIET MURPHY - Lot 114 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 15,044.14 sq. metres (3.72 acres)  
 AREA OF TAKE 10519 sq. metres (2.60 acres)  
 RESIDUE 4525.14 sq. metres (1.12 acres)  
 ADJUSTED TAKE 15,044.14 sq. metres (3.72 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$3,706,885.00  
 - CROPS \$367,200.00  
 - CREDIT \$6,915.00

COMPENSATION:-

Recommended compensation 3.72 acres

@ \$800,000.00/ acre	\$2,976,000.00
Less Commissioner's Award	<u>3,720,715.00</u>
Difference on land	(744,715.00)
Crops in residue 1.12 acres @ \$400,000.00/ acre	<u>448,000.00</u>
AMOUNT PAYABLE	<u><b>0.00</b></u>

**[122] LOXLEY MURPHY - Lot 111 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 24,458.11 sq. metres (6.04 acres)  
 AREA OF TAKE 2,331.00 sq. metres (0.58 acres)  
 RESIDUE 22,127.11 sq. metres(5.46 acres)  
 ADJUSTED TAKE 24,458.11 sq. metres (6.04 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$6,305,816.00  
 - CROPS \$295,020.00  
 - ARREARS (\$43,164.00)

COMPENSATION:-

Recommended compensation 6.04 acres	
@ \$800,000.00/ acre	\$4,832,000.00
Less Commissioner's Award	<u>6,305,816.00</u>
Difference on land	(1,473,816.00)
Crops in residue 5.46 acres @ \$400,000.00/ acre	<u>2,184,000.00</u>
AMOUNT PAYABLE	<u><b>710,184.00</b></u>

**[123] LENFORD PARKER - Lot 29 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 10,084.23 sq. metres (2.49 acres)  
 AREA OF TAKE 4,966.00 sq. metres (1.23 acres)  
 RESIDUE 5,118.23 sq. metres(1.26 acres)  
 ADJUSTED TAKE 10,084.23 sq. metres (2.49 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$2,235,601.00  
 - CROPS \$756,500.00  
 - CREDIT \$4,101.00

COMPENSATION:-

Recommended compensation 2.49 acres	\$1,992,000.00
@ \$800,000.00/ acre	
Less Commissioner's Award	<u>2,235,601.00</u>
Difference on land	(243,601.00)
Crops in residue 1.26 acres @ \$400,000.00/ acre	<u>504,000.00</u>
AMOUNT PAYABLE	<u><b>260,399.00</b></u>

[124] **AUTHUR SMITH - Lot 10 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 13,367.23 sq. metres (3.30 acres)  
AREA OF TAKE 8,119.00 sq. metres (2.01 acres)  
RESIDUE 5,248.23 sq. metres(1.29 acres)  
ADJUSTED TAKE 13,367.23 sq. metres (3.30 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$3,018,520.00  
- CROPS \$536,480.00

COMPENSATION:-

Recommended compensation 3.3 acres	\$2,640,000.00
@ \$800,000.00/ acre	
Less Commissioner's Award	<u>3,024,765.00</u>
Difference on land	(384,765.00)
Crops in residue 1.29 acres @ \$400,000.00/ acre	<u>516,000.00</u>
AMOUNT PAYABLE	<u><b>131,235.00</b></u>

[125] **WINSTON TAFFE - Lot 37 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 14,265.00 sq. metres (3.52 acres)  
AREA OF TAKE 12,911.00 sq. metres (3.19 acres)  
RESIDUE 1,354.00 sq. metres (0.33 acres)  
ADJUSTED TAKE 14,265.00 sq. metres (3.52 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$1,988,845.00  
- CROPS \$1,876,970.00

- CREDIT \$6,185.00

COMPENSATION:-

Recommended compensation 3.52 acres	
@ \$800,000.00/ acre	\$2,816,000.00
Less Commissioner's Award	<u>1,981,215.00</u>
Difference on land	834,785.00
Crops in residue 0.33 acres @ \$400,000.00/ acre	<u>132,000.00</u>
AMOUNT PAYABLE	<u><b>966,785.00</b></u>

[126] **RONALD WATKISS - Lot 3 Charlemont Pen - Volume 1359 Folio 871**

LAND AREA 10974.53 sq. metres (2.71 acres)  
AREA OF TAKE 10405 sq. metres (2.57 acres)  
RESIDUE 569.53 sq. metres (0.14 acres)  
ADJUSTED TAKE 10974.53 sq. metres (2.71 acres)

OFFERED BY COMMISSIONER OF LANDS: - LAND \$1,822,200.00  
- CROPS \$1,412,720.00  
- ARREARS \$57,920.00

COMPENSATION:-

Recommended compensation 2.71 acres	
@ \$800,000.00/ acre	\$2,168,000.00
Less Commissioner's Award	<u>1,706,360.00</u>
Difference on land	461,640.00
Crops in residue 0.14 acres @ \$400,000.00/ acre	<u>56,000.00</u>
AMOUNT PAYABLE	<u><b>517,640.00</b></u>

[127] The sum of seventy-five thousand dollars (\$75,000.00) is awarded to the following defendants: Clifford Armstrong, Raymond Ellis, Fitzroy Green, Authur Smith and Ronald Watkiss. In addition, interest at the rate of 5% per annum is awarded to Headley Graham from the 1<sup>st</sup> December, 2007 and to all other defendants, excepting Ralph Weir, from the 15<sup>th</sup> April, 2008 on the compensation package determined by the Commissioner of Lands, without the deductions held



to have been incorrectly made, under section 36 of the Act. Interest at the same rate of 5% per annum is awarded to all the defendants except Ralph Weir, on the amounts exceeding the compensation awards made by the Commissioner of Lands, under section 30 of the Act. That is, those amounts reflected as 'AMOUNT PAYABLE' above.