



[2026] JMSC Civ 45

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV 01580

BETWEEN	The Commissioner of Lands	CLAIMANT
AND	Morvick Sirica Hyde	1st DEFENDANT
AND	Sheridene Drummond-Hyde	2nd DEFENDANT

IN OPEN COURT

Kristina Jones and Karessian Gray, instructed by the Director of State Proceedings, for the claimant

Everton Dewar, instructed by Brydson Campbell, appears for the defendants

Heard: September 18 and 19, 2023 and May 1, 2026

Compulsory acquisition of property by the Commissioner of Lands - Dispute over compensation offered to defendants by the Commissioner of Lands – Land Acquisition Act

Coram: Hon. Kirk Anderson (J)

Mervyn Down

Norma Breakenridge

Background

- [1] This is a claim brought by the Commissioner of Lands pursuant to **sections 17 & 18 of the Land Acquisition Act**. The claimant has sought the court's determination of the amount of compensation payable to the defendants, in relation to the compulsory acquisition by the government of the property that is owned by them, which is situated at Phoenix Park, in the parish of St. Ann, being part of the lands comprised in Certificate of Title registered at Vol. 1376 Folio 245 of the Register Book of Titles.
- [2] The defendants' property was acquired for the purpose of the construction of a part of Highway 2000, in particular, Phase 2A. The steps taken by the claimant which eventually led to her having taken to this court, this claim, have been accurately set out in paragraphs 3-12 of the affidavit of Elizabeth Stair – the Commissioner of Lands, and therefore, need not be repeated here. It is to be noted that the defendants have not taken issue with any of the averments of the claimant as made in paragraphs 3-12 of the claimant's affidavit evidence. The court admitted Ms. Stair's affidavit evidence pursuant to the provisions of **rules 26.1 (2) (Q) and 29.2 (2) (b) of the Civil Procedure Rules**. Ultimately, the award made by the Commissioner, arising from the acquisition of the relevant property, was \$12,000,000.
- [3] On the site of the compulsorily acquired property, there are and were, at all material times, three buildings comprised of a chicken pen (fowl coop), a 50% completed in terms of construction – pig pen and a residential building which is a split level residence, in respect of the semi-basement of same, was only, partially completed. The roof of that semi-basement consisted of concrete slab and that basement consisted of two bedrooms, with windows and one bathroom with a shower and lavatory basin, living and dining area and a kitchen. The windows were glass louvered, jalousie type and grilled. We have accepted the valuation report of Allison Pitter & Co. as having accurately described the condition of the relevant

property as at the times when, according to his evidence as given during cross-examination, Mr. Allison – Chartered Valuation Surveyor, inspected same, those times having been in June and July of 2013. At the time when he inspected same, external walls for the residential building on the relevant premises, were neither rendered, nor painted, the floor was concrete screed finish, while the fixtures and joinery work in the kitchen appeared temporary and the semi-basement's ceiling, though rendered and painted was watermarked/discoloured. There was no roof at the apex of the split-level residence.

[4] The relevant property is a 0.535 acre lot and was purchased by the defendants in January, 2012, for \$6,500,000. With the assistance of a mortgage from the N.H.T. the chicken coop had an area of approximately 400 square feet and the partially completed pig pen had an area of 408.77 sq. ft. The pig pen was built of concrete blocks of 4-5 blocks height with concrete floor and was portioned into a number of farrowing pens. The chicken coop was a roughly constructed timber-framed structure on a concrete foundation and with a compressed marl floor. The residential building, as then partially completed, was disposed over a gross floor area of 2,646 square feet. **Section 14 of The Land Acquisition Act** states what are the only matters to be taken into consideration in determining the amount of compensation to be awarded for land acquisition under that Act.

[5] Notably also, at the time when the inspections of the property were done by Mr. Allison, no animals were seen on the property. Mr. Allison's evidence as to that, was unchallenged. There were only some banana roots, then on that property, approximately seven (7) or thereabouts, along with two coconut trees. The relevant premises is designed only for residential use.

The Land Acquisition Act and its applicability.

[6] **Section 17 of The Land Acquisition Act**, specifically states that (1) *'Any person interested who is dissatisfied with any award may, by written application to the Commissioner, require that the matter be referred by the Commissioner for the determination of the court, whether this objection be to the survey, the amount of*

*the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. (2) The applicant shall state specifically the grounds on which objection to the award is taken and at the hearing no other grounds shall be given in argument without the leave of the court. (3) Every such application shall be made – (a) if the person making it was present or represented before the Commissioner at the time of the enquiry under **section 11**, within six weeks from the date of the Commissioner’s award. (b).... (4) The periods within which an application for reference to the court shall be made shall not be capable of enlargement by any court.*

[7] Since the defendants were both present at the Commissioner’s enquiry in accordance with **section 11 of The Land Acquisition Act**, it is their then attorney’s letter of objection to the award which was made by the Commissioner, arising from that enquiry and what was specified in that letter that can only be considered, for present purposes. That is so, because time would have expired as at April 24, 2014 for any other claim by means of objection to the award made. The 1st defendant obtained notice of the award of the Commissioner, on March 11, 2014. That letter of objection referred to, is under the hand of attorney Drew St. Clair of the Caribbean Law Group of attorneys-at-law.

[8] In that, letter of his though, Mr. St. Clair referred to many expected bases for a greater (larger sum) to be awarded to his clients by this panel/court, which cannot properly be considered any further by this court/panel, for present purposes. That is so, because of the provisions of **section 14 of The Land Acquisition Act**. Thus, ‘current legal fees’ and ‘future legal fees of new purchase’ and ‘loss of business income’ are each irrecoverable, for present purposes. As earlier stated, the relevant premises is designated for residential use, only. Thus, any business income that may have been being obtained by the defendants from that property, prior to its acquisition by the Crown for the benefit of the Jamaican government, would not have been lawfully so obtained. In the circumstances, whilst at first glance, it may appear as though, ‘loss of business income,’ falls within the ambit of **section 14 (1) (c) of The Land Acquisition Act**, for present purposes, since

that business income was not then being lawfully obtained, as the premises was not to have been used for any business purpose whatsoever, the claim for same, cannot properly be considered any further.

- [9] Additionally, the same applies to the claim made by attorney Mr. St. Clair, on the claimant's behalf for the sum of \$477,999.00 as, loss of business income and the former sum being claimed as, fair market value of property. To our minds though, as, members of this panel we consider those two last- mentioned, separate claims, as constituting what is often described as, 'double counting.' The latter is included in the former. In other words: if the defendants recover the fair market value of the relevant property, they will also recover, as part and parcel thereof, for, 'home loss compensation.'
- [10] This tribunal/court agrees with the submission of learned counsel for the claimant that only the claim for, 'fair market value,' is of any practical relevance for present purposes. We are of the view that the claim for, 'loss of employment earnings, 'is also unsustainable for present purposes, bearing in mind, the clear provisions of **section 14 (1) of The Land Acquisition Act.**
- [11] For present purposes therefore and in accordance with **section 14 (1) (i) (a) and (c)** of the relevant Act, this court/panel has considered the market value of the relevant land parcel with buildings thereon, two of which were only partially completed and a chicken coop which was fully completed and that market value considered, is the same as at the date of the service of the notice under **subsection (3) of section 9.** In other words therefore, that market value date which is to be applied by this court/panel, is as at October 15, 2013. It is to be recalled that Mr. Allison inspected the relevant property in June and July of 2013. In his valuation report, which is dated February 25, 2020, but which is no doubt, based on those inspections which were done, several years earlier, Mr. Allison stated that the market value of the relevant property, was J.\$8.0 – 8.5 million. This court/panel is of the considered view that the said valuation must be referable back to the inspection dates in June and July of 2013. Of course, it is to be recalled also,

that the sum awarded by the Commissioner and thus stated by her, as the sum to be paid to the defendants as compensation for the compulsorily acquired, relevant land is: \$12,000,000. That is no doubt, in this court/panel's estimation, far more than would have likely been the market value of the relevant property, as at October 15, 2013. Of course too, the 1st defendant specifically testified that the pictures which are in Mr. Allison's valuation report, appear to depict the relevant property, as at October 15, 2013. Those pictures were, according to Mr. Allison's evidence, taken by him when he inspected the property in June of 2013.

Future legal fees of new purchase.

- [12] In a claim of this nature under **The Land Acquisition Act**, the burden of proof was on the defendants and the standard of proof is that of a balance of probabilities.
- [13] Thus, it was for the defendants in this claim, if they could have, to have satisfied this court/panel, that a different sum, larger/higher amount, ought to have been awarded to them by the Commissioner of Lands. The defendants have failed to meet that burden.
- [14] There were some disparities in the evidence which was provided to this court, upon the trial of this claim, by the 1st defendant and by Mr. Allison, the Chartered Valuation Surveyor. Notably however, during the time spent cross-examining him, none of those discrepancies were challenged by defence counsel, on behalf of the defendants.
- [15] Thus, even where such disparities exist, we have decided to accept as being both truthful and accurate, all of the evidence which was provided to this court/panel, at trial, both on affidavit, as well as via sworn, oral evidence, by Mr. Allison.
- [16] The defendants cannot properly obtain from this panel/court, pursuant to the provisions of **The Land Acquisition Act**, any compensation for 'future legal fees of new purchase.' No evidence was led in support of this claim. Monetary sums being sought as compensation from the government, arising from a land acquisition of private property, by the government, should not be expected to be

awarded, if seemingly plucked out of a hat. To expect otherwise, is none other than a futile hope.

Current legal fees

[17] The defendants can only recover compensation for their current legal fees, if they are successful in their defence of this claim, at least in part, if not wholly so. That is not a head of compensation therefore, that the Commissioner of Lands could properly, or should be expected to pay to the defendants, as compensation for the acquired land of theirs. In any event though even if we are collectively wrong in having reached that conclusion, there was, in any event, no evidence advanced before this panel/court, that could properly serve to have enabled this court to now make any award to the claimant under this head as claimed for.

The valuation report prepared by Theo M. Dixon

[18] There was a valuation report prepared by Theo Dixon. It was referred to in the affidavit of Morvick Hyde, which was filed on November 28, 2018. The defendants are relying on that report, which was attached to that affidavit of the 1st defendant and marked as exhibit 'MSH 21.' In that valuation report, the said Mr. Dixon, has disclosed that, in his opinion, a fair market value for the property which is the subject of this court dispute, is: \$16,483,333.

[19] It is important to note though and this court/panel has accepted the claimant's counsel's submission in this regard, that said valuation report is un-dated. That omission is significant, since, once again, we will re-iterate, that under **section 14 (1) of The Land Acquisition Act**, *'the following and no other matters shall be taken into consideration – a) the market value at the date of the service of the notice under subsection (3) of section 9 ...'* (None of the other provisions of that section, are relevant for present purposes).

[20] Mr. Dixon's valuation is thus unhelpful for present purposes, because the date of the valuation is of such critical importance, for present purposes. It is the market value of the relevant property, 'at the date of the service of the notice under

subsection (3) of section 9. The valuation report prepared by the claimant's witness – Mr. Allison, who is, it is to be recalled, a chartered valuation surveyor, was prepared in abbreviated form, as at October 15, 2013, The Commissioner of Lands had, according to her affidavit evidence which was filed on April 18, 2018 at para 6, specified that it was on October 7, 2013, she caused a Notice, pursuant to section 9 of **The Land Acquisition Act**, to be published. Thus, Mr. Allison's report as to the valuation of the relevant property, relates to a valuation which was done, in accordance with the relevant Act.

[21] Added to that, in the case before this court/panel, the said Mr. Theo Dixon never gave any sworn or oral evidence, with respect to the valuation report which he prepared and thus, his valuation as done, was not able to be tested/challenged, in any way. This is quite the opposite of that which occurred in respect of Mr. Allison, who gave, under oath, oral testimony to this court.

[22] **The Land Acquisition Act** was passed into law, on May 22, 1947. It has been amended on a few occasions but was last amended in 1976. It is therefore, fair to state that it is not modern legislation. Section 20 of that Act provides, in summary, that in respect of a claim such as this, the court shall appoint two assessors for the purpose of aiding the court in date Mining the objection. **Section 27** specifically provides that:

'every assessor shall receive such fee not exceeding twenty dollars as the Judge shall direct for each day upon which he shall sit as an assessor or upon which he shall be engaged in inspecting the land the subject of the proceedings. Such fee shall be deemed to be costs in the proceedings.'

[23] **Section 27 of The Land Acquisition Act**, to our mind, requires urgent amendment, so that the assessors appointed under **section 20** of that Act, can be properly compensated for their services, under that Act. Twenty dollars per day is wholly inadequate in that regard. This court/panel is not at liberty to make an award of fees to the assessors, larger than the twenty dollars sum per day as prescribed under that Act. That sum is so small, that in respect of this particular claim, wherein

the assessors have had to sit to assist in this adjudication, the assessors have been kind and decided to waive payment to them, of the fees as specified under the presently applicable law. That waiver of fees, they can do, under the existing law, since as the judge, I will, in the circumstances, not be directing that any such fees, *'not exceeding twenty dollars,'* be paid to the assessors. The defendants especially within the context of this claim, should be especially grateful for the assessors' kindness in that regard, since under **section 27 of The Land Acquisition Act**, the assessors' fees, *'shall be deemed to be costs in the proceedings.'* We will next therefore, address the issue of the costs of this claim.

Costs of Claim

[24] In **section 29 (1) of The Land Acquisition Act**, it is provided that, 'The costs of any proceedings under this part shall be in the discretion of the court.' The 'Part' referred to, is **Part III** of that Act, which has, as its heading: 'Reference to court and Procedure thereon.' **Section 31** of the said Act, provides that: *'Save in so far as they maybe inconsistent with anything contained in this Act, the provisions of the Rules of the Supreme Court shall apply to all proceedings before the Court under this Act.'*

Conclusion

[25] The sum of \$12,000,000 which was awarded by the Commissioner of Lands, pursuant to **section 11 of The Land Acquisition Act**, is upheld. That sum is upheld, as being the market value of the relevant land, at the date of the service

of the notices under **subsection (3) of section 9.**

Hon. K. Anderson, J

Mervyn Down

Norma Breakenridge