



[2012] JMSC CIV 108

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008 HCV 01887

IN THE MATTER of an award by the  
Commissioner of Lands under Section 11 of the  
Land Acquisition Act on 30<sup>th</sup> day of April 2007

A N D

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

A N D

IN THE MATTER of all that parcel of land and  
premises known as part of KENSINGTON in the  
parish of St. Andrew being the lot numbered FIFTEEN  
on the plan of Kensington and being all of the land  
registered at Volume 1353 of the Register Book of  
Titles in the name of HOMEWAY FOODS LIMITED

BETWEEN	THE COMMISSIONER OF LANDS	CLAIMANT
AND	HOMEWAY FOODS LIMITED	1 <sup>ST</sup> DEFENDANT
AND	STEPHANIE MUIR	2 <sup>ND</sup> DEFENDANT

G. Mitchell instructed by Director of State Proceedings for Claimant

C. Davis for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Heard: June 11 and July 31, 2012

*Compulsory Acquisition of Land – Declared  
Purpose – Change in Purpose –  
Reversal of Declaration of Minister-Administrative Orders-  
Fees and payment to assessors*

## **Lawrence-Beswick J**

- [1] This matter concerns two applications which have been heard together. One filed May 14, 2012 seeks, *inter alia*, six declarations, the effect of which would be to reverse the decision of a Minister of Government to compulsorily acquire land and the second filed June 8, 2012 which seeks to strike out that application.
- [2] Meanwhile, the assessment of the value of the land which is the subject of the application is now part-heard and the date for the continuation of that assessment awaits the determination of these applications.

### **Background**

- [3] The Students' Loan Bureau (SLB) acquired lands at Old Hope Road, St. Andrew, and wished to also acquire the adjoining property at 6 Kensington Crescent, St. Andrew, the subject of these applications.

The registered proprietor of that adjoining property was Homeway Foods Limited ("Homeway"), a registered company which had its own plans for the use of its land. Ms. Stephanie Muir is a shareholder of Homeway.

- [4] The Commissioner of Lands, (the Commissioner), on behalf of the Government of Jamaica, sought to negotiate with Homeway to arrive at a mutually agreed purchase price. Homeway was opposed to being deprived of its land and it was therefore no surprise that no agreement was reached as to a purchase price. Thereafter, the Commissioner commenced the procedure to compulsorily acquire the land and caused a valuation of the property to be done, in accordance with the law governing compulsory acquisitions of land.
- [5] Homeway's property was valued for \$20 million by the Government's assessor, and the Commissioner awarded that amount to Homeway. Homeway disputed this amount and caused its own valuation to be done. That valuation concluded

that the property was worth \$40 million and that is the amount Homeway seeks as compensation for the property.

The Court is now in the process of determining the proper compensation to be paid for the land, with the assistance of the Court Appointed Assessors, Ms. Norma Breakenridge and Mr. Kenneth Allison.

- [6] Throughout the process of the assessment of the compensation, the prospect of an agreement between the parties has loomed large. However, the discussions were dependent on various Cabinet/Ministerial discussions and policies and their legal implications. As time passed, the Government changed on more than one occasion, and with that came fundamental changes in policy.
- [7] Eventually, it became clear that a resolution outside of court was extremely unlikely and a date was set which would have seen the continuation of the assessment process by the Court. It was at this stage that the Notices of Application mentioned above, were filed.

### **The Submissions**

- [8] In her application Ms. Davis, submitted on behalf of Homeway, that the Minister's decision to compulsorily acquire the land ought to be set aside because the declared purpose for which the land was acquired, no longer exists.
- [9] She acknowledges that the Minister had the authority to acquire land for a declared purpose and that the original acquisition was in order. However, she argues, now that the purpose no longer exists, the acquisition should be reversed by the Court.
- [10] Ms. Mitchell, on behalf of the Commissioner of Lands hinges her argument in opposition to these submissions, on procedural points. She argues that Ms. Davis has approached the court by the wrong procedure and therefore her application should be struck out. She views the application, coming as it does at this stage of the proceedings, as an abuse of the process of the Court.

[11] Ms. Mitchell submits that the true substance of Ms. Davis' application is for an Order of Certiorari because of the nature of the declarations sought. Ms. Mitchell urges the Court to recognize that by filing a Notice of Application for declarations, Ms. Davis has sought to circumvent the requirement for obtaining leave to apply for an Order of Certiorari and all the other procedural requirements. This should be fatal to the application.

### **The Procedure**

[12] I consider first if the procedure adopted is fatal to the reliefs sought.

Part 56 Civil Procedure Rules 2002 (CPR) deals with applications:

- a. for judicial review;
- b. ....;
- c. for a declaration ... in which a party is the State ... or any ... public body.

These are regarded as administrative orders.

The main reliefs sought by Homeway are for declarations against the Commissioner of Lands, which is a public body. This appears to place the application under this Rule.

The requirements laid down under the Rules ensure that persons with a sufficient interest in a claim for the State or public body to act in a certain manner are allowed the opportunity to participate in a hearing in an informed manner.

[13] Rule 56.9 CPR provides that an application for an administrative order must be made by a fixed date claim and specifies details of a supporting affidavit.

Rule 56.13 provides that this application would culminate in a first hearing where the judge must give directions that may be required to ensure the expeditious and just trial of the claim. This includes Orders concerning affidavits, disclosure of documents and skeleton arguments.

- [14] Rule 56.15 addresses the hearing of an application for an administrative order and allows any person having a sufficient interest in the subject matter of the claim to make submissions whether or not they had been served with a claim form.

The general purpose therefore, of the Rules governing administrative orders, is to make orders to allow for parties directly concerned or having sufficient interest in the claim, to be heard.

- [15] In this matter the current application by Homeway concerns compulsory acquisition of Homeway's land by the Commissioner of Lands for the use by the Students Loan Bureau. Counsel for the Crown represents the Commissioner of Lands and Homeway itself is represented. Affidavits have been filed by the parties.

In my view, proceeding by this Notice of Application causes no advantage to be gained or detriment suffered by any parties. I am fortified in my view by Rule 56.7(2) CPR which provides:

*"The court may at any stage direct that the claim is to proceed by way of an application for an administrative order."*

The transition can be readily made, if the submission by Counsel for the Commissioner is correct.

- [16] However, at this stage of the proceedings, where all arguments have been completed, it appears to me that any order for additional documents to be now filed and served, would be an exercise only increasing costs.

My conclusion therefore is that the applications by Homeway are indeed applications for administrative orders framed as an Application for Court Order and that the application can nonetheless properly proceed in the circumstances of this case.

## Substantive issues

### [17] (a) **Acquisition**

Can the compulsory acquisition be reversed? The method by which land is to be compulsorily acquired is stated in the Land Acquisition Act (LAA).

It involves the publication of a declaration and then payment for the land.

Section 5 of the LAA empowers the Minister to declare land as being needed for a public purpose. It provides:

*5(1) Whenever it appears to the Minister that any particular land is needed for a public purpose a declaration shall be made to that effect under his signature.*

[18] Thereafter, the declaration is published in the Gazette stating the details of the land and of the purpose<sup>1</sup> and is conclusive evidence that the land is needed for a public purpose.<sup>2</sup>

The Minister then directs the Commissioner of Lands to acquire the land<sup>3</sup> and he in turn causes the land to be valued and then negotiates for the purchase.<sup>4</sup>

[19] The land must be surveyed if it had not already been surveyed and the Commissioner's negotiations for the purchase of the land are by private treaty.<sup>5</sup> However, if there is no agreement by private treaty for the purchase within a reasonable time, the Commissioner shall cause notices to be posted stating that claims for compensation may be made to him.<sup>6</sup>

Any such interested persons must attend personally or by agent before the Commissioner and state, *inter alia*, their claims to compensation.<sup>7</sup>

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<sup>1</sup> S.5 (3) Land Acquisition Act

<sup>2</sup> S.5 (4) Land Acquisition Act

<sup>3</sup> S.6 Land Acquisition Act

<sup>4</sup> S.5 (8) Land Acquisition Act

<sup>5</sup> S.6-8 Land Acquisition Act

<sup>6</sup> S.9 (1) Land Acquisition Act

<sup>7</sup> S.9 (2) Land Acquisition Act

[20] Where there is a settlement, that award is filed in the Commissioner's office. However, where there is a dispute as to the compensation, the Commissioner may refer the dispute for the decision of the court.<sup>8</sup>

In this matter, the Commissioner took all the required steps to agree on compensation for the land and when there was no agreement for compensation, she referred the matter to this Court to determine the amount of compensation.

### **(b) Taking Possession**

[21] The Act allows the Commissioner to take possession of any land needed for a public purpose at any time after the notices inviting claims from interested parties have been posted.<sup>9</sup>

The land then vests in the Commissioner of Lands in trust for Her Majesty in right of the Government of Jamaica and a notice to the effect is published in the Gazette.<sup>10</sup>

When the Commissioner furnishes the Registrar of Titles with a copy of that notice, the Registrar enters the particulars in a book kept for that purpose.<sup>11</sup>

### **The Facts**

[22] It is undisputed that:

- a. On March 9, 2006, a Notice was published in the Gazette that the land, the subject of this suit, was needed for a public purpose, namely for the offices of the Students' Loan Bureau.

Almost nine months earlier, on June 20, 2005, the SLB had acquired another adjoining piece of land which was to have housed the offices whilst the land, the subject of this suit, was to become its parking lot.

- b. On or about May 2006, the Commissioner of Lands took possession of the land, 6 Kensington Crescent.
- c. On June 2, 2006, the Commissioner of Lands signed a Notice under S. 9 of the Act notifying persons to appear before her to state their claim for compensation for any interests they had in the land.

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<sup>8</sup> S.11 (2) Land Acquisition Act

<sup>9</sup> S.15 (1) Land Acquisition Act

<sup>10</sup> S.16 (1) Land Acquisition Act

<sup>11</sup> S.16(2) Land Acquisition Act

- d. The Certificate of Title is endorsed that the land is now vested in the Commissioner of Lands from May 2007.

### **The Declared Purpose**

- [23] Throughout the proceedings for the court-determined compensation, there was a veiled suggestion that perhaps the premises were no longer needed for the declared purpose of offices of the Students' Loan Bureau.

Indeed, the matter had been adjourned on several occasions for discussions to occur between the Executive and the property owners as it concerns returning the land to the original owners.

No construction occurred on the lands.

Then came information in the newspapers of March 9, 2012 from a Board member of the Students' Loan Bureau, that the Bureau had acquired a building elsewhere for its offices. Further, it was stated that the building was purchased from proceeds of land in Kensington which the SLB had sold.

### **The Actual Purpose**

- [24] The evidence is that the other portion of land which SLB had bought for its offices was sold by the SLB in January 2012 to a third party and was then mortgaged to a fourth party.

- [25] In these circumstances I readily find as a fact on a balance of probabilities that the property is no longer required for the declared purpose of Students' Loan Bureau offices.

### **Separation of Powers**

- [26] I am mindful of the importance of maintaining the separation of the powers of the Judiciary, the Executive and the Legislature in a democracy such as ours. In this application Homeway and Ms. Muir are in effect asking the Court to reverse the decision of a member of the Executive. In certain circumstances that may be necessary. In this matter, the member of the Executive who actually signed the declaration which ultimately resulted in the suit, is not a party named in the suit but the Director of State Proceedings who appears for the Commissioner, is

clothed with the responsibility for representing the State's interest in general. At issue really, is the power which the declaration gave to the Commissioner.

[27] The Privy Council in **Wijeyesekera v Festing**<sup>12</sup> ruled clearly that a directive from the Governor of Ceylon, directing a Government Agent to compulsorily acquire land, was not open to challenge by the land owners. There the Governor had declared that the owner's land was needed for a public purpose, of building a road. The owner resisted the declaration that the road was needed for that purpose, refused to accept compensation and challenged the validity of the Governor's declaration.

[28] The Land Ordinance (Ceylon) 1876 provided that:

*<sup>13</sup>s.6 ... [U]pon the receipt of [Surveyor-General's] report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government Agent to make order for the acquisition of the land.*

The landowner was thus not allowed to challenge the compulsory acquisition of the land.

There the purpose for which the land was acquired had not changed.

[29] The issue as to whether the declaration of a member of the executive was subject to review by the judiciary was also considered in **HMB Holdings Ltd. v Cabinet of Antigua & Barbuda**.<sup>14</sup> There **HMB Holdings Ltd** owned the Half Moon Bay Hotel in Antigua which had been closed as a result of hurricane damage and had been compulsorily acquired by an Order of the Secretary of the Cabinet of Antigua & Barbuda by way of a published declaration.

[30] Negotiations between the parties resulted in a stay of the execution of the order on condition that HMB Holdings would re-open the property by a stated date.

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<sup>12</sup> [1997] AC646

<sup>13</sup> [1995] 1 All ER 760

<sup>14</sup> [2007] UKPC 37

However, that did not occur and the Government took possession of the property. HMB Holdings applied for judicial review of the Cabinet's decision to acquire its property and the approval of its decision by the legislature and challenged the correctness of the decisions. The question to be determined was whether the Secretary's declaration was final and conclusive or whether it could be challenged by judicial review.

[31] The Act under scrutiny was the Land Acquisition Act where is stated:

*"If the Cabinet considers that any land should be acquired for a public purpose they may, with the approval of the legislature, cause a declaration to that effect to be made by the Secretary to the Cabinet ... and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose."*

[32] The Privy Council recognized that the Secretary's declaration was conclusive that the purpose for which the land was required was a public purpose and that the land was required for that purpose.

That executive decision was not justiciable. It cannot be appealed or be subject to any form of judicial scrutiny. Nonetheless, their Lordships continued that the exercise of a decision-making power is always susceptible to challenge on specified grounds.

[33] The Cabinet's decision was not immune from judicial review. It could be challenged on the ground of illegality, irrationality, procedural impropriety or that it was manifestly without foundation.

*[H]owever widely the field in which a decision-maker operates is defined by statute; there are always certain fundamental assumptions which necessarily underlie the ... remission, or delegation of a power to decide, such as the requirement that a decision must be made in good faith.*<sup>15</sup>

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<sup>15</sup> At para. 30

### ***Change in declared purpose***

- [34] However, it was a change in the purpose for which the land was acquired that brought before the Privy Council, the issue of whether a deed vesting compulsorily acquired lands in a County Council could be reversed. In **Lewis and others v. Mid Glamorgan County Council and Others**,<sup>16</sup> land belonging to commoners was compulsorily acquired by the Mid Glamorgan Water Board for the purpose of building a reservoir. Compensation was agreed in 1970 and the plan to build the reservoir was abandoned in 1972. Within weeks, the commoners asked if the Board would be continuing the transaction as they thought the project had been abandoned. The Water Board assured them that they intended to proceed with the project, paid the agreed sum and a deed which had been previously signed was vested in the Water Board in January 1973.
- [35] Some six months later, the Water Board sold the land for the purpose of building a golf course. Up to 1985 there was no change in the use and conditions of the land. However, in 1988, the Council sought the Court's determination of several issues, including whether the commoners should be allowed to challenge the vesting deed.
- [36] The House of Lords held that when compensation was paid to the commoners in 1973, the vesting of the title was valid and complete and could not be challenged. Section 9 (3) and (4) of the Compulsory Acquisition Act provided that once the compensation was paid in Court, then the acquiring body had the legal right to execute a deed poll with names of those who had received compensation and thereafter the acquiring authority had absolute title and was entitled to possession.
- [37] Their Lordships continued that if the Board had stated that they had intended to use the land for a different purpose than that for which it had been acquired and had done that before compensation and the vesting deed then the Water Board

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<sup>16</sup> [1995] 1 All ER 760

would be acting contrary to the purpose for which the compulsory acquisition was granted and there would be grounds to set aside the Order.

[38] **Grice and another v Dudley Corporation**<sup>17</sup> concerned compulsory acquisition where the purpose for the acquisition had changed.

In the **Grice** case, Dudley Corporation made a compulsory purchase order of Grice's property. The parties agreed as to the compensation but the transaction stalled for various reasons. Some 16 years later the Corporation sought to purchase the property at the original agreed price and its proposals for the use of the property were substantially different from the original proposals of road widening and market hall. That approach was resisted.

[39] The Court held that by seeking to acquire the property for substantially different purposes than the original declared purposes, the Corporation was thereby providing evidence that it was abandoning its original right to compulsorily acquire the property. In those circumstances, the Court held, the owner could not be compelled to submit to compulsory acquisition of its land by the authority. The Compulsory Acquisition Order should be used for the purpose for which the land was acquired.

[40] *"[The] Court has an inherent jurisdiction to control the exercise of statutory powers if, but only if, it can see that the powers are being exercised not in accordance with the purpose for which the powers were conferred."*

So opined Upjohn J in the **Grice case**.<sup>18</sup>

Upjohn J continued that in such a case, the Court has the power and the duty to restrain the further exercise of those powers which are not in accord with the Act which gave the power. He did, however, intimate that such control would be at the instance of the Attorney General on behalf of the public or person damnified.

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<sup>17</sup> [1958][Ch 329]

<sup>18</sup> Supra at 339

- [41] In the instant matter, the Director of State Proceedings, for the Crown, sought to continue with the acquisition of the land.

### **Analysis**

- [42] Although Entry number 1534398 endorsed on the original Certificate of Title states that the land vests in the Commissioner in trust for Her Majesty in right of the Government of Jamaica, compensation has not yet been paid for the land and the amount payable awaits the determination of the court. It is during this interim period that, in my view, a change has occurred in the purpose for which the land was originally acquired. Indeed, although it is clear that the land will not be used for the SLB's offices, the Commissioner has not sought to provide a purpose for which this single lot of land will be used. She has not denied the assertion that the land is not required for the original purpose nor has she confirmed that it will be used for its original purpose.
- [43] The declared purpose for which the land was compulsorily acquired was to be offices of the Students' Loan Bureau. That cannot be challenged as being a public purpose for which the land would be used. In any event that may well have been considered to be a public purpose.
- [44] The current public purpose for which the land is to be used remains unstated. Compensation is not yet paid; indeed it has not even been determined. In my view there is no rational reason for continuing with the compulsory acquisition of the property.
- The adjoining lot which had initially been obtained to be also used as offices for the Students' Loan Bureau was sold by the Government. To conclude this acquisition for a purpose other than the declared purpose and indeed for no apparent public purpose at all, would demonstrate in my view, a lack of good faith.
- [45] The land has been held hostage to the changes in the policies of varying administrations. Now in the absence of the declared public purpose and a determined compensation, the compulsory acquisition should not be completed.

The LAA has no specific provision to revert that which was compulsorily acquired. However, in these circumstances the acquisition has not been completed as compensation has not been paid and therefore in my view the process can be reverted at this stage.

[46] The English Act, the Compulsory Purchase Act, provides for compensation to be paid after which the acquiring authority is entitled to possession of the land.

However, in the Jamaican Land Acquisition Act, the Commissioner takes possession, the land vests in him in trust for Her Majesty, then the Registrar of Titles enters the particulars in a book kept by him for that purpose. This occurs whether or not compensation has been paid. Indeed Section 36 of the LAA provides for interest to be paid on the amount of compensation if the compensation was not paid before the land was taken into possession thus making it clear that in the Jamaican circumstances the acquirer can be in possession before the acquisition is completed by payment.

[47] In this case, the amount of compensation has not been decided and this Court has adopted the approach that it ought not to be paid for reasons stated above. I consider the circumstances of this case as being unusual because of the simultaneous changing of the declared purpose for the land during the actual process of the Court determining compensation for the land.

[48] It may well be viewed as an unjust and untenable situation if the parties were compelled to complete the acquisition process in this situation where this Court has determined that the exercise of compulsory acquisition of this land would lack good faith and that there is no reason for the acquisition. Relief is only possible if the acquisition process is stopped now when the amount for compensation has not been paid.

[49] As it concerns the relief sought in the application for what is described there as compensation for the wrongful occupation of the land, my view is this. Up until this judgment, the Commissioner had every right to be in possession of the land

while the matter of compensation was being determined and any occupation up until now was lawful, and no doubt the compensation which would have been determined would have had to have some consideration for the six years which have passed since the Commissioner took possession of the land.

[50] Now, since Homeway will retain its land, it will receive no compensation for the entire value of the land. I bear in mind, however, that through no fault of its own, Homeway, the registered proprietor of land, was prevented from using its own land. In my view, the compensation should be calculated as the amount which Homeway would have obtained as mesne profits from the date when the Commissioner took possession until the date when Homeway recovers possession from the Commissioner. Such an amount can be agreed between the parties, with or without the assistance of a land valuator.

[51] In the substantive matter of this suit, where the Commissioner sought the intervention of the Court to determine compensation, Homeway was seeking compensation for the acquisition of the land and also for expenditure associated with the land. For the most part, Homeway will now have the benefit of the expenses, e.g. construction of the perimeter wall, legal advice re transfer of Homeway's shares to Ms. Muir. I make no additional award for compensation of those associated expenses.

[52] In view of my decision that the acquisition process should stop, it follows that the declarations sought in the substantive matter must be refused as it is no longer necessary to assess the compensation for the purchase of the land since it will revert to its original owner. However, there are some decisions which must be made consequent upon terminating the assessment of the compensation. One such is the remuneration to be paid to the Court appointed assessors for the role which they have already played.

- [53] The Land Acquisition Act stipulates that assessors must be appointed by the Court where the landowner objects to the amount of the compensation awarded by the Commissioner and provides:

*"20. If the objection is in regard to the amount of the compensation and the award of the Commissioner is not less than two thousand dollars, the Court shall appoint two assessors for the purpose of aiding the Court in determining the objection .... Every person so appointed shall attend and serve as an assessor unless excused by a Judge."*

The two assessors in the substantive matter have been attending Court and have been participating in the hearing under compulsion of the law. They have been addressing their minds to the most appropriate method to be used to calculate compensation in the circumstances. This is all being done to assist the Court to make an appropriate compensation and it is without doubt that these assessors must be paid. The question is, however, how much.

- [54] The Land Acquisition Act provides:

*"27. 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 proceedings."*

- [55] The Land Acquisition Act was enacted in 1947 and no doubt at that time the maximum fee of twenty dollars payable to each assessor was adequate. However, today in 2012, that amount could well be regarded as being an insult for a day's work by a professional valuator. It does not even begin to approach any amount which could be regarded as being fair and reasonable.

- [56] Nonetheless I am shackled by the law and recognise that the fees payable to the assessors must accord with the law as antiquated as its provisions may be. I must therefore rely on the sense of fair play and justice of the Commissioner of

Lands, the Director of State Proceedings and other relevant agencies of the State to ensure that a fair and reasonable amount is paid to the assessors for the work that they have done. The Act limits the **fees** payable but I consider myself at liberty to recommend a further amount to be paid to the assessors not as fees per se but as an ex gratia **payment**.

[57] I strongly urge the legislature to urgently amend the Land Acquisition Act so as to address the unacceptable situation now existing where a professional is compelled by the Court to serve and is paid twenty dollars for a day's assistance to the Court. The need for immediate attention is no doubt obvious. However, incentive for immediate amendment perhaps lies in the fact that in recent times the Act has been used to empower the acquisition of land for the purpose of creating major highways across the length and breadth of Jamaica. The Act relies on tapping the skill and expertise of professional valuers in order to provide the Court with critical input in the quest to deliver justice to many landowners who find themselves in the position where they are compelled by the Act to give up their land for a public purpose, commonly for the construction of highways.

[58] It is in my view critical to the judicial process that professionals with valuation skills assist a Court which is charged with the responsibility of assessing an appropriate amount for compensation for land compulsorily acquired. It would be no surprise for these professionals to respectfully decline to provide their services if they are to be paid at such an outdated and consequently, unreasonable and unfair amount of twenty dollars per day. The mind boggles at the possible effect of such an action on the process of compulsory acquisition of land in Jamaica.

[59] In the circumstances of this case I recognise that the fees to be paid to the assessors must be either taxed or agreed at the maximum amount mandated by the Act as fees and I therefore strongly recommend that the assessors also be paid an ex gratia payment to supplement the obviously inadequate fees.

[60] The **Orders** I make are declarations:

- i. That the declaration of the Minister on March 9, 2006 declaring land registered at Volume 1353 Folio 971 likely to be needed for public purpose that is to construct offices of the Students' Loan Bureau be set aside.
- ii. That all proceedings for the acquisition of the said land be set aside.
- iii. That the Miscellaneous Entry # 1534398 endorsed on May 1, 2008 on title of land registered at Volume 1353 Folio 971 be removed by the Registrar of Titles.
- iv. Homeway is entitled to resume possession of the said land on or before August 3, 2012.
- v. Homeway is entitled to compensation for mesne profits from the date it relinquished possession until the date of recovery of possession. If not agreed within 60 days of this Order, these mesne profits are to be assessed by the Registrar of the Supreme Court.
- vi. The declarations sought by fixed date claim form dated April 17, 2008 in the substantive matter are refused.
- vii. Costs of these proceedings and costs thrown away are awarded to Homeway and Ms. Muir as against the Commissioner of Lands, to be agreed or taxed. The costs thrown away include the fees to be paid to the Assessors in the substantive matter. Strong recommendation that additional ex gratia payment be made to the assessors.