[2014] JMSC CIV.16

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. HCV2012 02767

BEWTEEN	**THE MINISTER OF HOUSING**	**CLAIMANT**
AND	**NEW FALMOUTH RESORTS LTD.**	**DEFENDANT**

Mrs. Jacqueline Samuels-Brown Q.C. instructed by Hollis & Company for the Claimant
Mrs. Julliet Mair Rose instructed by Riam Esor & Company for the Defendant

Heard on: May 21, 2013; June 7th, 2013; June 21, 2013; July 9, 2013 & February 12, 2014

Interlocutory injunction to restrain registered owner from evicting unlawful occupants - previous order for damages against occupants not complied with – compulsory acquisition – Housing Act section 4 & section 25 – Land acquisition act section 6 – Jamaica Constitution section 18 – public purposes meaning of – no general interest of the community – True reason for acquisition – claimants conduct.

CAMPBELL, J.

Background

[1] The Claimant, the Minister of Housing, is a corporation sole, by virtue of Section 3 of the Housing Act 1969 the Housing Agency of Jamaica falls under the aegis of the Ministry of Housing and acts as its agent and representative in this matter.

[2] The defendant is a limited liability company registered under the laws of Jamaica, its sole owner Mr. James Chisholm is its Chairman and CEO. The defendant is the registered owner of all the parcel of lands forming part of Volume 1389 Folio 427 and Volume 1008 Folio 636, known as Orange Grove, in the Parish of Trelawny.

[3] Some nine acres of the defendant's lands have been occupied by a group of persons who have resisted all efforts of the defendant to remove them from its lands. This group of persons are said to contain some one hundred families who have been in occupation of the defendant land for more than a decade.

The Claim

[4] On May 18th, 2012 the claimant filed a Fixed Date Claim Form, seeking declarations and order.

(i) A declaration that the Minister of Housing is entitled pursuant to Section 6 of the Land Acquisition Act 1947 and Section 25 of the Housing Act to compulsorily acquire part or all of the land known as "Orange Grove" south of Coopers Pen and Burnwood Beach containing nine (9) acres, be the same more or less, and being part of lands registered at Volume 1008 Folio 636 of the Register Book of Titles as more particularly described in the Technical Description dated May 1, 2012 prepared by Mr. Amos, Land Surveyor employed to the Housing Agency of Jamaica Limited.

(ii) A Declaration that pursuant to Section 15 of the Land Acquisition Act, that the Minister of Housing may direct the Commission of Lands to take possession of part of all the lands known as "Orange Grove" south of Coopers Pen and Burnwood Beach containing nine (9) Acres, be the same more or less and being part of lands registered at Volume 1008 Folio 636 of the Register Book of Titles, as more particularly described in the technical description dated May 1, 2012, prepared by Mr. Mark Amos,

Land Surveyor employed to the Housing Agency of Jamaica Limited.

(iii) By Section 16 of Land Acquisition Act , that the lands known as "Orange Grove" south of Coopers Pen and Burnwood Beach containing nine (9) acres, be the same more or less, and being part of lands registered at Volume 1008 Folio 636 of the Register Book of Titles as more particularly described in the Technical Description dated May 1, 2012 prepared by Mr. Amos, Land Surveyor employed to the Housing Agency of Jamaica Limited now vests with the Commissioner of Lands.

(iv) An Order that the Respondent New Falmouth Resorts Limited, shall be compensated for the said lands according to the provisions of Section 14 of the Land Acquisition Act .

(v) An Order that the Respondent, New Falmouth Resorts Limited, be restrained from transferring, parting with and or disposing of its interest in the lands known as "Orange Grove" south of Coopers Pen and Burnwood Beach containing nine (9) acres, be the same more or less, and being part of lands registered at Volume 1008 Folio 636 of the Register Book of Titles as more particularly described in the Technical Description dated May 1, 2012 prepared by Mr. Amos, Land Surveyor employed to the Housing Agency of Jamaica Limited without the written consent of the Minister of Housing or an Order of this Court.

(vi) An Order that the respondent New Falmouth Resorts Limited be retrained from evicting, harassing, intimidating, molesting and or disturbing in any way any of the current occupants currently on the land known as "Orange Grove" south of Coopers Pen and

Burnwood Beach containing nine (9) acres, be the same more or less, and being part of lands registered at Volume 1008 Folio 636 of the Register Book of Titles as more particularly described in the Technical Description dated May 1, 2012 prepared by Mr. Amos, Land Surveyor employed to the Housing Agency of Jamaica Limited without the written consent of the Minister of Housing or an Order of this Honourable Court.

(vii) And Order that the Respondent, New Falmouth Resorts Limited be restrained from demolishing, removing or altering any of the structures currently on the land known as "Orange Grove" south of Coopers Pen and Burnwood Beach containing nine (9) acres, be the same more or less, and being part of lands registered at Volume 1008 Folio 636 of the Register Book of Titles as more particularly described in the Technical Description dated May 1, 2012 prepared by Mr. Amos, Land Surveyor employed to the Housing Agency of Jamaica Limited without the written consent of the Minister of Housing or an Order of the Court.

[5] The Affidavit of Simone Morris-Rattray in support of the Fixed Date Claim Form states at paragraph 12 – 16;

(12) Over the years the land has been occupied by over a hundred families as informal settlers.

(13) These families have contended that they have occupied the lands for over fifteen years and several even averred that for generations they had established their homes, raised families and built a vibrant community. Many of them work in fishing, craft vending and the hospitality industry in the nearby hotels.

(14) Nearly all the occupants have established permanent concrete structures on the land and have the usual amenities of water and electricity.

(15) Over the years it appears efforts were made to properly organize the residents through a provident society called “Coopers Pen Provident Society” in order to formally acquire the lands. Nothing came of that effort. The registered proprietor has contended that through its principal, James Chisholm, he also made representations and sought to have the residents participate in a scheme to purchase a part of the lands.

(16) That in 2007, the registered proprietor of the lands, New Falmouth Resorts Limited the Respondent herein brought an action to recover possession of the land from these occupants.

[6] Mr. Chisholm in his affidavit dated 4th June 2012, in opposition to the application for injunctive relief, being sought on behalf of the occupants, complains at paragraph 13;

(13) That for more than a decade I have been appealing to all the government agencies to assist the squatters, including the HAJ since 2002, to no avail. Attached and exhibited hereto marked as “JHC 3” for identification is a copy of some of my various correspondences over the years to anyone or any government entity I believed could help, including the Prime Minister of Jamaica, the Most Honourable Portia Simpson-Miller. This composite exhibit not only demonstrate the tremendous efforts made by New Falmouth Resorts Limited over the years to stop the squatting, but also demonstrate the appeals made to the HAJ and the Minister of Housing to assist the squatters. No one has helped.

(14) That to date there has been no attempts by the HAJ to assist the squatters in any way that is beneficial to all the parties concerned. It appears that they are active in their attempts to continue to pervert the course of justice, as squatters are now telling everyone that their Member of Parliament is going to take the land from New Falmouth Resorts and let them stay on it.

McIntosh J, Orders

[7] That in 2007 New Falmouth Resort brought an action to recover possession of the land from persons in unlawful occupation. On 6th April, 2010 McIntosh J, granted an injunction to New Falmouth Limited restraining the occupants, their servants or agents from doing any further construction whatsoever on the New Falmouth Limited lands at Orange Grove and Florence Hall being lands registered at Volume 1008 Folio 636 and Volume 1389 Folio 427 and Volume 1109 Folio 442 of the Register Book of Titles

[8] Each defendant was ordered to pay $50,000 in damages for trespass, wrongful occupation of the claimant's land and to demolish and remove their illegal structures from the claimant's land. It is unchallenged that the occupants have not paid the sum or demolish or remove the structures as ordered by the court.

[9] That an application was made before the Court on March 8, 2012 for injunctive relief as well as Stay of Execution of judgment in claim HCV01702/2007. On the 20th April 2012, McIntosh J heard the application and adjourned until May 4, 2012 requesting that either the Honourable Minister or the sworn affiant of the Housing Authority should appear. The learned judge recognized the presence of agents of the Ministry of Housing in court, and copies of his orders were handed to those persons. Neither the Minister nor Mr. Shoucair appeared. McIntosh J refused the Stay of Execution and ordered costs be paid to the claimant. Leave to appeal was granted, no appeal was pursued

Claimant's Submission

[10] The Claimant relied on the learning in **American Cynamid Co v Ethicon Office (1975) 1 All 504** and **National Commercial Bank Jamaica Limited v Olint Corp, Ltd, {Privy Council Appeal No 61 of 2008}** to support the propositions that the real purpose of an interlocutory injunction is primarily to enable the court to do justice after the determination of the merits at the trial. In doing so the court will be concerned to protect the claimants against injury by violation of his rights for which he could not be compensated in damages, if the action were resolved in his favour at the trial.

[11] It was further submitted that , the court must balance this against the need to protect the defendant against injury at a trial, as a result of his having been prevented from exercising his own legal rights for which he could not be adequately compensated if the case were to be resolved in his favour. At the interim stage the court is not concerned to resolve conflicts of evidence (if there is any such conflict) but rather to assess whether the plaintiff has any real prospect in succeeding in his claim for a permanent injunction at the trial. Counsel submitted that, it would be appropriate to take into account in tipping the balance the relative strengths of each party's case as revealed by the affidavit evidence adduced in relation to the application for the injunction.

[12] Mrs. Samuels-Brown outlined the "statutory context in which the claim is launched by the Honourable Minister". She pointed out that Section 18 of the Jamaican Constitution, enables and empowers the government to compulsorily acquire private property so long as it is under the provision of a law that;

a) provide for the citizen to be compensated ; and

b) gives any person claiming an interest in or right over the property access to the court.

[13] That **Section 4 of the Housing Act** allows the Minister to declare a particular area to be a Housing Area if he is satisfied that the conditions in **Section 6 of the Housing Act** exist. If the Minister considers that, in general the houses in that area are by reason of disrepair or sanitary defects, are unfit for human habitation or the area is badly laid out or arranged, or there is overcrowding such as to be dangerous to the health of the inhabitants and if the Minister further considers that such conditions can be effectively remedied, he may by order declare the area to be an improvement area.

[14] It was further submitted that, pursuant to **Section 25(1) of the Housing Act** any land,

> *'proposed to be acquired for the purposes of an improvement scheme etc, may be acquired in accordance with the provisions of the Land Acquisition Act, and in relation to such acquisition the purposes aforesaid shall be deemed to be public purposes.'*

Defendant's Submission

[15] The respondents submission was for the Fixed Date Claim Form to be struck out pursuant to **Rule 26.3 (1) (a) (b) and Rule 26.3 (2)**. It was argued that The Claimants were estopped from pursuing the issues in these proceedings which is the **same claim** and the **same relief** that were advanced against the defendants in claim No.2007HCV01702 filed on March 8th, 2012.

[16] Further, the claimants are raising in this suit issues directly and substantial that have been raised in former suit under a Notice of Application for injunctive relief and Stay of Execution, filed on March 18, 2012 (HCV 2007 01702) The same issues had been raised, heard and finally decided on May 4, 2012. Mrs. Rose Counsel for the defendant also urged that the second claim breached the principle of res judicata. The court was referred to **Arnold v National**

Westminister Bank {1990} 1 All ER 529 and **Tewani Ltd v Indru Khemlani (2011) JMCA CIV31**.

[17] The claimant's application on the 6th March 2012, in claim 2007HCV01702 applied for injunctive relief and stay of execution. The claimants in that matter relied on the affidavit of Joseph Ameen Shoucair, the managing director of the Housing Agency of Jamaica, acting as the duly authorized agent of the Honourable Minister of Housing Paragraph 5, of the Notice of Application states;

> "That the Honourable Minister of Housing has declared the lands comprised in Certificate of Titles registered at Volume 1008 Folio 636 and Vol.1389 Folio 427 (the subject lands) to be a "Housing Area" in accordance with Section 6 of the Housing Act. Having so done, the Minister is at liberty to acquire the land in accordance with the provisions of the Housing Act or the Land Acquisitions Act (see section 25(1))"

[18] In Paragraph 6, dated 7th June 2012 in support of the application, it is stated;

> "That the Minister of Housing and the Housing Agency of Jamaica Limited have an interest in this matter as it touches and concerns the occupation of lands in Western Jamaica on which a significant community of persons have been in possession and have established their homes."

[19] The basis of the claims is the same that the Minister of Housing had issued on the February 29, 2012 Orders declaring the Respondents lands an "improved Area". Justice Donald McIntosh considered that Ministerial Order and ruled on May 4, 2012. The claimant disregarded the Order, and proceeded on May15, 2013 to gazette the Ministerial Order in relation to the same lands under Volume 1008 Folio 636.

[20] That the affidavit of Simone Morris-Rattrays dated May18th, 2012 in support of the 2nd claim admits that the second attempt in adjudication was premised on this declaration of the Ministry of Housing, and for the simple reason that the claimant could not comply with Justice Donald McIntosh orders because it would result in serious social and economic turmoil. The affidavit says at paragraph 16.

> "Since the court handed down its judgment, the occupants sought to have it stayed. This was premised on a declaration that was granted by the Honourable Minister of Housing under powers conferred under the Housing Act. The application for the stay was triggered by an attempt by the Jamaica Public Service Company Limited who sought to discontinue the provision of electricity services to the occupants and to terminate their customer contracts."

[21] The respondent argues that it is unfair, unduly burdensome and outrageous to compel the Respondent to forfeit its land to circumvent a riot by illegal occupants who want to remain in occupation contrary to a court order. That the failure to comply with the court order issued on May 4th, 2012 in the first proceedings and bringing the same issue back to the court with a different claim number is an abuse of the process of the court. To accommodate any such action would not give effect to the overriding objective of the court as set out in section 1.1 of the CPR.

[22] It was submitted that the statutory condition was not satisfied, for the reason that public purpose generally defined, means the benefit of the populace whereas this is intended for a specific group of 99 squatters. Further the Minister must be satisfied that the houses in that area is, unfit for human habitation, or by reason of their bad arrangement of the streets or by reason of overcrowding. The respondents deny that the majority of the houses meet those criteria. Further the Ministry has not followed the due process procedures for valuation.

[23] Mrs. Samuels Brown QC, in reply stated that the fact that the claimant had joined in an application initiated by others to do something which by injunction the parties were forbidden to do, did not bar him from obtaining an injunction in the case then being litigated .That the furthest one can say that the affidavit of Mr. Joseph Ameen Shoucair, showed where the government sympathy lay and revealed its thinking at that time, but the principles of res judicata and abuse of process as a term of art are not relevant .

Analysis

[24] Is there material before this court on which this court could hold as the Claimants/ Applicants are contending that there are serious issues to be tried? Have the applicants a real prospect of being granted a permanent injunction for which they have prayed in their claim. The Privy Council in **Enee Yong v Letuchasan** stated;

> that in the grant of interlocutory junction, the guiding principle in granting an interlocutory injunction is the balance of convenience, there is no requirement that before an interlocutory injunction is granted the plaintiff should satisfy the court that there is a 'probability' a 'prima facie case' or 'a strong prima facie case' that if the action goes to trial he will succeed; but before any question of a balance of convenience can arise the party seeking the injunction must satisfy the court that his claim is neither frivolous or vexatious; in other words that the evidence before the court discloses there is a serious question to be tried**. American Cynamid v Ethicon Ltd. (1975) AC396**

[25] Is there a serious issue to be tried? Mrs. Rose for the respondent submits that the failure of the claimant to comply with McIntosh J orders and to pay costs, and the starting of a similar claim against the same defendant based on substantially the same facts constitutes an abuse of process. There is a further contention that the issues before this court have already been litigated before McIntosh J, on the respondent's application for eviction and the claimant's

application for a stay of execution of the order against the occupants. That the actions of the claimant amounts to expropriation of the Respondents land in a "high handed manner" contrary to the Orders of the court. The Judiciary, is anxious to preserve its capacity to intervene when unacceptable conduct is observed on the part of public bodies. It recognizes that public bodies remain subject to law. See **R v Horseferry Road Magistrates' Court, ex p Bennett** (1993) 3 WLR 90 per Lord Griffiths at 104F- G, and Lord Bridge 109H.

[26] Mrs. Samuels Brown Q.C. argues that the claim before McIntosh J was a claim couched in private law, between private individuals. Whereas, the present claim is grounded in public law. The case for the occupants in the earlier claim, according to Mrs. Samuels Brown, sought to put up a defence of adverse possession which was not found by the judge to be established. An application for stay was made to facilitate an appeal, which was supported by an affidavit of Mr. Joseph Shoucair this did not make him a party to the litigation. The identification or public law issues are an insufficient answer to the defendant's argument that the issues have been ventilated before the courts. The court had noted the presence of the claimant's agent already court in the earlier matter.

> "The principle remains intact that public authorities and public servants are, unless, clearly exempted, answerable in the ordinary courts for wrongs done to individuals."

See **Davy v Spelthorne Bourough Council (1984) AC 262 per Lord Wilberforce at page 276E-G.**

[27] Before McIntosh J, none of the 99 defendants appeared, but were represented by two officers of the Housing Agency of Jamaica acting as duly authorized agents of the Ministry of Housing. I accept the submission of Counsel for the Respondent, that the relief sought in both claims was the acquisition of the subject lands. The assertion in Mr. Shoucair affidavit, in the earlier claim is as it is now, that the Minister of Housing on February 29th, 2012 Orders declared the

Respondents lands an “Improved Area”. See the affidavit of Simone Morris Rattray dated May 18th, 2012 in support of the Claim at paragraphs 16, 18 and 19 in this claim. It is interesting to note that, McIntosh J, commented on the presence of the legal officers of HAJ as suggesting their involvement in the matter.

[28] The crucial question is to determine whether a party is seeking to raise before the court an issue which could and should have been raised before. The court has to take a broad approach and determine whether in all the circumstances a party’s conduct is an abuse (emphasis mine). See **Tewani Limited v Indru Khemlani SCCA No.31/2011 (2011) JMCA CIV 31**. The conduct of the parties was the subject of the strongest criticism from this court see judgment of McIntosh J, where the learned Judge describes the application as iniquitous, and that it is devoid of sincerity.

[29] In this case the procedure by which the ministerial declaration pursuant to the Housing Act was made, I find is irregular and is evidenced by procedural impropriety. The evidence before me offers no basis on which a ruling could be made by the Minister pursuant to Section 4 of the Housing Act. What material did the Minister consider, in respect of “the housing conditions in the area and the needs of the area with respect to further housing accommodation?” It would seem that both the occupants and the defendants are determined not to have any further housing accommodations on those lands. The stated intent of Section 4 of the Housing Act expressly seeks to restrict further buildings. The injunctions sought by the claimants are geared to restrain any actions against current occupants currently occupying the lands. New Falmouth would therefore be free to restrict and hinder further housing accommodations being built. Section 4 has not been shown relevant to the circumstances existing on the land.

[30] Section 6 identifies for attention houses in disrepair, or sanitary defects, the Minister is required to be, satisfied that in general the houses in that area are by

reason of disrepair or sanitary defects, unfit for human habitation, or by reason of their bad arrangements of the streets, or by reason of overcrowding in the area, dangerous or injurious to the health of the inhabitants of the area , and that such conditions can be effectively remedied without the demolition of all the buildings in the area. The affidavit of the Senior Manager for Legal Services, of HAJ, the duly authorized agent of the claimant, proves the contrary. Ms. Simone Morris-Rattray at paragraph 14 states that nearly all the occupants have established permanent concrete structures on the land and have the usual public amenities of water and electricity. The affidavit describes the area as a "vibrant community"

[31] I find that there is no evidence before this court on the following;

(i) that the Minister has caused to be prepared proposals for a housing Scheme, as required by Section 4 (2)

(ii) That there is a prepared improvement scheme as required by Section 6 (2) of the Housing Act.

(iii) That the prepared improvement scheme has been approved by the Minister as required by Section 11 of the Housing Act. There is no evidence to satisfy either the requisite state of the houses or the overcrowding or poor arrangement of the roads to suggest that the conditions that exist constitute a danger or is injurious to the health of the inhabitants. The evidence as I have indicated moves in the other direction.

[32] Section 25 of the Housing Act provides that lands acquired for the purposes of the various acquisition schemes and in relation to such acquisition the purposes shall be deemed to be public purposes. This deeming provision raises a presumption that the purposes for the acquisition is for public purposes. This is a rebuttable presumption. The purpose of the 100 families in illegal occupation does not constitute a public purpose, for the purposes of the Constitution and the

Land Aquisition Act. It is permissible to look behind the stated purpose, to reveal that it's a sham. In this regard I am mindful of my brother McIntosh J, comments that the application is lacking in sincerity.

[33] **In Bethel and Others (Appellants) v The Attorney General of the Commonwealth of Bahamas** (Respondent 2013] UKPC 31 it was held; it is clear on the one hand that there may be cases in which it is open to an owner to show that the purpose behind the acquisition is not genuine. A striking example was **Toussaint v Attorney General of St Vincent and the Grenadines, [2007] 1 WLR 2825**, in which it was alleged that the true reasons for the acquisition were political and that the stated purpose of having a learning resource centre was a sham (per Lord Mance, paragraph 6). There was no dispute that this was a proper subject of investigation by the courts, the main issue being whether it was permissible to look at a statement by the Prime Minister to the House of Assembly to determine that issue.

[34] In **Baldwin Spencer v The Attorney-General of Antigua & Barbuda & Lester Bryant Bird & Asian Village Antigua Limited CIV. APP. NO.20A of 1997** the Court of Appeal had for consideration the meaning of "public purposes" in Section 3 of the Land Acquisition Act Cap 33, The Court relied on what it called "the root decision on the meaning of public purpose" In **Hamabai Framjee Petit v Secretary of State for India (1914) L.R. Vol. XLII Indian Appeals 44** where Lord Dunedin said at page 47

> *"The argument of the appellants is really rested upon the view that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. Their Lordships do not agree with this view. They think the true view is well expressed by Batchelor, J. in the first case, when he says: "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase "public purposes" in the least; it is enough to say that, in my opinion, the phrase,* ***whatever else it may mean, must include a purpose, that is, an object or aim, in***

which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned." *(emphasis mine)*

[35] Chief Justice Byron, who wrote the judgment, with which the other members concurred distinguished the United States Supreme Court decision of **Missouri PAC. RL. Co. v State of Nebraski (1896) SCR 17 130** on which the appellants before him relied to demonstrate violations of the Constitution brought about by compulsory taking for private benefit of individuals as opposed to a public purpose for the general interest of the community. In the Missouri PAC RL case, the petitioners did not succeed because the Supreme Court found, in the words of Gray J.

> **"The petitioners were merely private individuals voluntarily associated together for their own benefit.** They do not appear to have been incorporated by the state for any public purpose whatever, or to have themselves intended to establish an elevator for the use of the public. To require the railroad company to grant to the petitioners a location on its right of way for the erection of an elevator for the specified purpose of storing from time to time the grain of the petitioners and of neighboring farmers, is to compel the railroad company, against its will, to transfer an estate in part of the land which it owns and holds, under its charter, as its private property and for a public use, to an association of private individuals, for the purpose of erecting and maintaining a building thereon for storing grain for their own benefit, without reserving any control of the use of such land, or of the building to be erected thereon, to the railroad company, for the accommodation of its own business, or for the convenience of the public." (emphasis mine)

Gray J reasons for the refusing the petitions are apposite, and I would respectfully adopt as mine

[36] Chief Justice Byron in distinguishing Missouri, found that the land in that case as in the case before me was for the private use of the individual petitioners. He further found that "no public use was alleged or stated". The alleged use of the land before this court according to the claimant is for an improvement scheme, however Mr. Shoucairs, discloses the reason for the "improvement scheme". At paragraph 10, of his affidavit,

> "That if there is strict compliance with the judgment of this Honourable court, hundreds of persons and their families will be dispossessed and serious social and economic turmoil may result. That the Minister of Housing has decided to exercise his statutory powers under the Housing Act and the Land Acquisition Act to resolve this matter for the benefit of all the parties ."

The stated or alleged purpose of the claimant is not for general interest of the community but merely for private individuals voluntarily associated together for their own benefit. It has not been demonstrated how the compulsory acquisition of his land will resolve the matter for the benefit of the defendant .

[37] I find that the squatters whom the claimants represents are merely private individuals voluntarily associated for their own benefit .That benefit being to acquire an interest in the respondent's land. Their association is devoid of any public purpose. That the Minister's declaration is not compliant with the Order of the Supreme Court as contained in the judgment of McIntosh J. Its admitted purpose is to prevent the dispossession of the families in occupation, consequent on the Order of McIntosh J, and to prevent the serious social and economic upheaval which Mr. Shoucair perceives would follow the implementation of that Order.

[38] There can be no public purpose or furtherance of the general interests of the community as opposed to the particular interests of the individuals, requiring the respondent to locate these families on its land in flagrant breach of the Orders of this court. There is no public purpose benefit in compelling the respondent

against its will to transfer an estate in part of the land which it owns and hold as its private property to a voluntary association of private individuals for the purpose of erecting and maintaining their houses and buildings thereon for their own benefit. For the reasons outlined, the claimant has not satisfied this court that there are serious issues, or any issue at all to be tried in this matter.

[39] Nonetheless, in the event I am wrong I turn my attention to the balance of convenience. The purpose of an interlocutory injunction is to improve the chance of the court to do justice after a determination of the merits at trial. At the interlocutory stage, the court must therefore assess whether granting or withholding is more likely to produce a just result should the injunction be granted, the respondent will experience an expansion in the buildings and the number of illegal occupants on its lands. The community will be aware that the efforts made by the respondent to evict the occupants from the land, although successful before the Supreme Court has been resisted by the occupants, who have succeeded in obtaining from the same court a restraint on the respondent from evicting them.

[40] The Respondent's efforts to secure its borders from new interlopers, whilst being restrained from interfering with the current occupants currently occupying the land, will therefore be more difficult. The cost of consumption of the utilities such as, electricity and water will be for the account of the respondent, in the event of non-payment by the illegal occupants of his land over whom he has no control.

[41] The inability or unwillingness of the occupants to comply with the orders for damages and cost in the earlier matter, and the absence of the usual undertaking for damages by the claimant, places the respondent at a disadvantage. Should the claimant's application fail, and they succeed on the substantive matter, there is the threat of eviction from the respondent's lands and the eventual demolition of their buildings. The occupants have however remained undaunted by that threat since McIntosh J, order. The claimant has alleged that there are likely to

be social and economic upheaval. The balance of convenience lies in favour of refusing the application. Application refused.

The Claimant's conduct

[42] That disposes of the claimant's application; nonetheless, I would be minded to refuse the application based solely, on the conduct of the claimant. The claimant must come to equity with clean hands. See **Malone v Metropolitan Police Commission** [1980] QB 49 at page71 and **Shell U.K Limited v Lostock Georges Limited** 1976 W.L.R. 1387. The claimant's conduct in this matter has been less than fair. On the 6th April 2012, McIntosh J, judgment was delivered on New Falmouth claim, which had been filed in 2007. The court ordered the occupants to give up possession and pay damages and cost.

[43] There was no appeal of this decision. On the 16th April 2012, the claimant caused a valuation to be done of the respondent's property by a firm of valuators. The report dated 20th April 2011 was completed by the firm Allison Pitter & Co. There is no explanation under what authority such a valuation was done. The Housing Act does not authorize any such valuation of the respondent's land. There is no evidence that a declaration that the subject land is required for a public purpose and that such declaration has been published in the Gazette in accordance with the Lands Acquisition Act.

[44] The court on the 20th April 2012, heard the occupants application for injunctive relief and stay of execution which was refused by McIntosh J, on the 4th May 2012. The court ruled the application iniquitous, and devoid of sincerity. The written judgment noted, the presence in chambers of legal officers of the Housing Agency and a copy of the Orders was handed to these officers .The Court had before it, as this court has, the Ministers intention to acquire the lands, and all the facts that are presently before me. On the 15th May 2012, the Minister's declaration constituting the subject lands an "improvement area" was Gazzeted.

[45] In affidavit dated the 18th May 2012, Simone Morris-Rattray, as authorized agent of the claimant indicated that the claimant "has an interest in the matter as it touches and concerns the occupation of lands of which a significant community of person have been in possession. Paragraph 23, explains that strict compliance with the court order, will cause social turmoil. The affidavit proceeds to explain that the applicants are seeking to regularize their occupation of the respondents land through a "scheme of arrangements" with the Minister and Commissioner of Lands and the Housing Agency of Jamaica Limited. Mr. Shoucair's affidavit of 7th June 2012, paragraph 18;

> "That the Ministers objectives are complementary to the national policy on housing and development especially as it relates to provide security of tenure to the working poor."

[46] The Housing Act and The Land Acquisition Act do not provide for the compulsory acquisition of privately owned land in order to transfer an interest to a community of persons who have occupied those lands despite the efforts of the owner to evict, and in defiance of Orders of the Supreme Court. I share the view of my brother McIntosh J, that the application of the claimant is insincere and iniquitous. The Constitution protects private property, and does not provide cover for the acquisition of private property in order to regularize the unlawful occupation of squatters.

[47] I have not been shown any authority that imposes an obligation on a private landowner to make available his land to a community of persons in unlawful occupation in order to prevent those persons bringing on social unrest. The Constitution does not reserve the right to ownership of large tracts of land to persons of any particular social class, colour or creed. McIntosh J, was driven to describe the earlier application on behalf of the occupants **as insincere and iniquitous,** no doubt because of the total disregard for the defendants fundamental rights**.** This court has formed the view that the hardship that has

been visited on the defendant appears to be a consequence of a view, on which public officials and the claimant seemed to have acted, that Mr. Chisholm not being from a line of traditional large landowners, has no right to ownership of such relatively large tracts of land. If I am correct in that view, the remedy to that malady is an emancipation of those minds so enslaved.

[48] The claimant's application is dismissed. The defendant's application to strike out the claim is granted. Cost to the defendant to be assessed on an indemnity basis. The cost ordered in this claim and the cost and damages awarded by McIntosh J, be paid before any further step be taken in this matter.