

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2013/0417

BETWEEN:

URIEL CALEB

Claimant

and

NATIONAL MORTGAGE & TRUST CO. LTD.

Defendant

Consolidated with:-

CLAIM NO. ANUHCV 2013/0719

BETWEEN:

URIEL CALEB

Claimant

and

- [1] ANTIGUA PUBLIC UTILITIES AUTHORITY**
- [2] ATTORNEY GENERAL OF ANTIGUA & BARBUDA**
- [3] MINISTRY OF AGRICULTURE HOUSING & THE ENVIRONMENT**

Defendants

Appearances:

Mr. Sylvester Carrott for the Claimant

Ms. Rose-Ann Kim for the Second Defendant

Ms. Carla Brookes-Harris with a watching brief for the Defendant National Mortgage & Trust Co. Ltd.

2017: January 31;
February 1;
May 8.

JUDGMENT

[1] **WILKINSON J.:** On 6th November 2013, Mr. Caleb filed his fixed date claim form and statement of claim in suit **ANUHCV2013/0719** against the Antigua Public Utilities Authority (hereinafter "APUA"), the Attorney General of Antigua and Barbuda, and the Minister of Agriculture, Lands, Housing and the Environment. Therein, Mr. Caleb alleged trespass by the three defendants on his land and which land is described in the land register as **Registration Section: Barnes Hill & Coolidge, Block No. 41 2094A Parcel 27**. The trespass he alleged started from 1991 and up to date of trial the situation continued to exist. He alleged that there was established on his land an 80,000 voltage high tension 69KV electrical tower and the electrical tower was further causing a nuisance as it had on it 300 feet of electrical power lines running across his land. Mr. Caleb sought by way of relief:

- "(1) Possession of his land,
- (2) Mesne profits in the sum of \$10,000.00 per month until the trespass and nuisance were removed from his land,
- (3) Damages in the sum of \$1,960,200.00 for unlawful and continuing use of his land from 1991,
- (4) Damages in the sum of \$990,000.00 for nuisance upon his land by running 300 feet of electrical power lines across his land and which devalued his land and prevented him from enjoying his land,

- (5) Damages in the sum of \$10,000.00 for a valuation and plans prepared for an apartment building,
- (6) Damages in the sum of \$270,000.00 for preventing him from completing the construction of his apartment building and the loss of an economic business opportunity,
- (7) Travel expenses in the sum of US\$54,000.00,
- (8) Court fees in the sum of \$350.00,
- (9) Costs,
- (10) Interest pursuant to section 27 of the Supreme Court Act Cap. 143, and
- (11) Any other relief as the Court deems fit."

[2] By his statement of claim Mr. Caleb specifically pleaded as follows:

"2. The First named Defendant Public Utilities Authority is a statutory authority body responsible for the supply of utility services in the state of Antigua and Barbuda with its main office situated at High Street & Independence Avenue, St. John's, Antigua.

3. The Second Named Defendant is the Attorney General, the Minister of Legal Affairs and is responsible for all claims made against the Government of Antigua and Barbuda by virtue of the Crown Proceedings Act. Cap. 121.

4. That the Third Named Defendant the Ministry of Agriculture, Lands and the Environment is responsible for the allocation and distribution of Crown lands on the advice of the Cabinet of Antigua and Barbuda¹.

5....

8. That the Government of Antigua and Barbuda through their agent erected the high tension tower for the sole use and benefit of the First Named Defendant Public Utilities Authority....

9. That the Claimant protested and wrote to the then government minister with responsibility for the Ministry of Agriculture. The Claimant was advised to choose land as compensation. The Claimant chose lands at Old Road in an area known as "Brookes Estate" and had the said lands valued....

10. The Government of Antigua and Barbuda through its agent unlawfully entered upon the Claimant's land and deprived the Claimant of the use and benefit of his land

¹ By an earlier order the third defendant was removed as a party.

and from enjoying (the) economic business activity of his apartments by virtue of the continued trespass and nuisance which they created upon the Claimant's land." (My emphasis)

[3] Mr. Caleb also filed suit **ANUHCV2013/0417 Uriel Caleb v. National Mortgage & Trust Co. Ltd.** Therein he alleged trespass by the National Mortgage & Trust Company Ltd. (hereinafter "NMT") on his land, the same land described in **ANUHCV2013/0719**, and that the NMT had trespassed on his land by way of the installation of a sewage treatment plant and installation of 4 sewage manholes and created a nuisance by burying 400 feet of sewerage pipes in his land. These actions he alleged brought about a devaluation of his land and made it impossible for him to develop a 2 storey apartment building apartment thereon. Mr. Caleb sought by way of relief:

- "(1) Damages in the sum of \$1,960,200.00 from 1995, and continuing for trespass to his land by way of installation of 4 manholes 5 feet long x 5 feet wide x 6 feet deep,
- (2) Damages in the sum of \$990,000.00 for unlawfully creating a nuisance upon the land by installation of a sewage treatment plant and running and burying 400 feet of 6 inch sewage pipes;
- (3) Damages in the sum of \$10,000.00 for valuations and preparation of an apartment building plan,
- (4) Damages in the sum of \$270,000.00 for preventing him from completing construction of his apartment building,
- (5) Mesne profits in the sum of \$10,000.00 per month from January 2013, until the trespass and nuisance are removed from the land,
- (6) Travelling expenses in the sum of US\$54,000.00,
- (7) Court costs \$350.00,
- (8) Costs,
- (9) Interest,
- (10) Any other relief the Court deems fit."

[4] In the consolidated suits on 22nd October 2015, there was entered a consent order and which amongst other matters it was ordered that:

- "(1) Judgment would be entered for Mr. Caleb against NMT and APUA with damages to be assessed,

- (2) The matter would proceed against the Attorney General and,
- (3) The assessment of damages would be stayed pending the outcome of the trial."

Issue

- [5] The sole issue is whether Mr. Caleb has proved the asserted agency relationship between the Government and APUA.

The Evidence

- [6] The facts are largely uncontested. Mr. Caleb on 27th May 1981, was registered as the owner of a lot of land described in the land register as measuring approximately 3 acres in the **Registration Section: Barnes Hill & Coolidge, Block No. 41 2094A Parcel 27.**
- [7] The APUA was established pursuant to section 3, **Public Utilities Act**, Cap. 359. Pursuant to section 3 is it a body corporate with perpetual succession, a common seal, with power to purchase, take, hold and dispose of land and other property, enter into contracts, sue and be sued in its name, and do all things necessary for carrying out its duties under the **Act**. The utilities provided by APUA are electricity, water and telephone.
- [8] According to Mr. Andre Matthias, the electricity business unit manager of APUA, in or about July 1998, APUA in striving to supply quality electricity service to its consumers decided to upgrade its 69KV transmission system to improve the voltage on the entire system. The project required steel towered interconnectors to be built between Cassada Gardens and Friars Hill. The most feasible route was through private lands. In this connection as transmission and distribution manager, Mr. Matthias said that he wrote letters to all the private land owners along the Cassada Gardens and Friars Hill route advising them of the Authority's plans. Mr. Caleb's land was one of the properties identified as being along the route. He was confident that he had written to Mr. Caleb although he was unable to locate a copy of the letter. By 2 letters dated 31st December 1998, Mr. Matthias said that he provided the Solicitor General with a drawing outlining the lands in the path of the 69KV transmission system and all of the lands which APUA intended to acquire but unfortunately, the

incorrect registration sections and block numbers were provided for some of the various parcels of land including that of Mr. Caleb and he inadvertently on a request from the Solicitor General confirmed that the schedule of lands was correct.

- [9] Mr. Matthias said that as a result of errors, the resolution passed in the House of Representatives contained incorrect descriptions of the land being acquired and that included that of Mr. Caleb. Mr. Caleb's Block was incorrectly recorded but his parcel number was correct. He wrote on 2nd March 1999, to all the landowners enclosing a copy of the **Statutory Instrument No 5. of 1999** and informed them of the acquisition of the land for the purpose of constructing the interconnectors between Cassada Gardens and Friars Hill.
- [10] On 24th March 1999, Mr. George Duberry of the Ministry of Agriculture, Lands and Fisheries was appointed as the authorised officer pursuant to section 3, **Land Acquisition Act**, Cap. 233. It was indicated to APUA that the duties of an authorised officer such as Mr. Duberry included the vetting of all documentation relating to the lands to be acquired to avoid any errors in the process. APUA proceeded on the assumption that the lands were properly acquired and vested in the Crown. APUA being of the view that the lands had been properly acquired proceeded to erect the 69KV transmission system.
- [11] According to Mr. Matthias he had expected Mr. Duberry in his vetting of the documents and in taking of possession and control of the various parcels of land on behalf of the Crown to ensure and double check that the lands were properly described. This did not happen.
- [12] Mr. Esworth Martin, general manager of APUA in his witness statement said that without prejudice to its defence and its options, APUA was prepared to consider paying compensation to Mr. Caleb along the lines and in accordance with the formula employed in **Claim No. ANUHCV2007/0598 Peter Abbott & Helen Abbott v. Attorney-General of Antigua and Barbuda, APUA.**
- [13] Aside from the historical dealings between Mr. Caleb, APUA and the Government recorded in the documents cited below, Mr. Caleb said that he spoke with several persons in Government about the trespass to his land.
- [14] One such occasion was a meeting where present were the Prime Minister, Mr. Baldwin Spencer who was also the Minister with responsibility for utilities, Mr. Esworth Martin of APUA, Mrs. Juliet

Samuel of NMT. At that meeting Mr. Caleb said that he was informed by the Prime Minister, Mr. Spencer that while he had a good case, the Government was strapped for money.

- [15] Mr. Caleb said that in his discussions with Prime Minister, Mr. Baldwin Spencer at January 2014, the offer of an exchange of land was made, reference was made to land at Brookes Estate and he asked to take some land at Brookes Estate and make up the difference elsewhere so as to reduce the Government's bill. His last discussion with Mr. Spencer was at approximately mid-August 2014²².
- [16] On another occasion Mr. Caleb said that he met with Mr. Edwards as directed by Mr. Hilton Baptiste to be shown land at Brookes Estate.
- [17] Mr. Caleb stated that during his meetings with Mr. Spencer and Mr. Edwards, the phrase 'agent of the Crown' never came up.
- [18] Under cross-examination the question of agency arose. Counsel for the Attorney General put to Mr. Caleb the following questions:

Counsel: - "Referring to paragraph 8, (cited), 1st sentence, you stating that the Government was principal and directed APUA when they built the tower?"

Mr. Caleb: - "I would have to accept what the lawyer put."

Counsel: - "You aware that APUA has accepted liability?"

Mr. Caleb: - "Yes."

Counsel: - "Having accepted that fact, do you still stand by your claim that the Government is responsible for the trespass to your property?"

Mr. Caleb: - "Yes."

Counsel: - "Mr. Caleb, could you please identify the Crown agent, Government person responsible for the trespass to your property?"

Mr. Caleb: - "Government, the Government have several people who work for them. I don't know. I cannot identify."

²² On this date, Mr. Spencer was no longer Prime Minister.

Counsel: - "Mr. Caleb, I suggest to you no agent, no one affiliated with the Government entered your property and trespassed, nor instructed anyone to trespass?"

Mr. Caleb: - "I can identify the Government, Ms. Samuel told me several times, APUA."

- [19] Under re-examination, Mr. Caleb when asked why did he say that the Government was responsible for the trespass, he responded that this was because all the Ministers of Agriculture had always said to him that they were willing to work with him and at no time did anyone ever say to him that APUA and NMT were responsible.
- [20] Mr. Kevin Edwards, Chief Lands Officer said that it was only in 2012, that he became aware of APUA entering Mr. Caleb's land and carrying out certain activities without his authority. He said that it was at the Minister of Agriculture, Lands and the Environment insistence that he met with Mr. Caleb to ascertain what he required of the Ministry and at that time Mr. Caleb told him that he wanted an alternative parcel of land. There then followed a Cabinet decision referring the matter to APUA. To expedite the matter there was a site visit and following that event, he wrote to Mr. Caleb on 7th December 2012.
- [21] Mr. Edwards said that at the time when he wrote the 7th December 2012, letter he held the mistaken belief that APUA was acting on behalf of the Government due to the fact that it is a statutory corporation and as a result of which he incorrectly said that APUA was an agent of the Crown.
- [22] Under cross-examination Mr. Edwards said that in order to allocate Government land, a Cabinet conclusion must be obtained. He added that notwithstanding the Cabinet conclusion to refer the matter to APUA, he was asked to assist, try and help Mr. Caleb. It was also after the Cabinet Conclusion that the site visit occurred.
- [23] Mr. David Matthias, a cousin of Mr. Andre Matthias, was an authorised officer pursuant to the **Land Acquisition Act** having been so appointed since 2004. Mr. Matthias added that as part of the process the authorised officer would cause a survey to be carried out and also demark boundaries for the purpose of identifying the value.

[24] Mr. Matthias said that the Government never acquired any of Mr. Caleb's land and the Government only acquired the lands described in **Statutory Instrument** No. 5 of 1999. He admitted that he made a number of errors. He admitted that Mr. Caleb's land was included in the list of land to be acquired but that he failed in 2006, to procure the Block number, and he did not take any action after receiving a copy of Ms. Carla Brookes-Harris letter dated 14th November 2006, to the Manager of APUA because the letter was not addressed to him. He said that it had been the intention of the Government to acquire Mr. Caleb's land for a public purpose, the construction of the electrical installation.

[25] A historical perspective of the facts is also gleaned from a number of the letters disclosed and exchanged between the Government and APUA, APUA and its Counsel and the Government and Mr. Caleb. The Court finds them helpful and so cites them.

[26] In a letter dated 29th June 1998, addressed to Mr. Clare Roberts of Roberts & Co, attorneys-at-law, APUA wrote:

"Dear Sir,

COMPLANT was awarded a contract by Antigua Public Utilities Authority to improve the 69KV Transmission System. Included in the project, is the upgrade of the interconnector between Cassada Gardens and Friars Hill. Various routes were checked to assess their feasibility in constructing the steel towered interconnector. The drawing outlines four different routes for the interconnector.....,

IV. Option 4. This is the most feasible route. It passes along a road close to Abbott's farm. Mr. Abbott was contacted and has since shown no inclination to permit APUA to use his property.... We have expressed to the Abbott family our intention to fully compensate for any lands utilised by the project.

Option 4 is the most feasible route and we are therefore seeking legal advice on the way forward in acquiring the lands. It should be noted that the designers are here in Antigua to finalize the design and are delayed because of Mr. Abbott's reluctance to permit the engineers to survey the area. Ideally we would have liked to select a route that only utilizes government owned lands, but this is not possible.

I anticipate an early response since further delays might increase the cost of the project.

Yours sincerely,

(signed)
Andre Matthias (Mr.)"

- [27] On 9th July 1998, APUA wrote to a number of land owners whose land fell under Option 4. Amongst the persons written to were Ms. Helen Daphne Abbott and Ms. Helen Agnes Abbott. APUA informed of its need to provide quality electricity service, the proposed 69KV transmission system, informed that preliminary studies showed that their land might be used for part of the construction and asked that the Abbotts contact APUA to discuss the project and the associated compensation package.
- [28] One and a half months later, 17th August 1998, Mr. Matthias wrote a letter to Mr. Lebrecht Hesse, Solicitor General in identical terms.
- [29] On 27th August 1998, Mrs. Gertel Thom, Legal Advisor of the Government wrote to Mr. Matthias as follows:

"Dear Mr. Matthias,

I write on behalf of the Honourable Attorney-General in response to your letter dated August 17th 1998.

Under section 8(2) of the Public Utilities Act the Authority is authorised to lay electric lines through, across, over and under private property after reasonable notice has been given to the owner or occupier....

I am not familiar with the size of the area of land nor the likely effect it will have on the land. If a large portion of the land would be affected so as to render it useless then the Authority may wish to consider complete acquisition of the land. Should the Authority wish to adopt this approach then the Authority would need to submit the matter to the Ministry of Agriculture and Lands for Government to compulsorily acquire the land under the Land Acquisition Act Cap. 233.

Should you need assistance with the preparation of the notice to the owner and occupier please contact us.

(signed)
Gertel Thom
Legal Advisor"

- [30] APUA on 12th October 1998, wrote to Mr. Radford Hill, Attorney-General as follows:

"Dear Sir,

Further to various communications relating to the 69KV Interconnector between Cassada Gardens and Friars Hill we have had several discussions with Landowners in the area and their legal representatives

Some of the landowners are still preventing APUA from proceeding with the project. We cannot continue to delay the project. APUA is now requesting the commencement of legal proceedings to acquire the lands required in the project....

I would be appreciative if legal means could be used to allow APUA and the Chinese to enter on these properties and continue the survey.

On completion of the survey we would be in a better position to indicate the exact size of lands that would be required.

The Chinese engineers have been very patient, but the delay has been too long. It's now time to get on with the project.

We anticipate your usual kind cooperation and assistance.

Yours sincerely,

(signed)
Andre Matthias
Elec.\ T & D Manager"

[31] On 15th October 1998, Counsel, Mr. Clare Roberts wrote to Mr. Matthias as follows:

"Dear Sir,

Further to our (Matthias/Roberts) conversation of this morning, I now confirm that I have been informed by the Minister responsible for APUA that Cabinet has taken the decision to acquire such lands as may be required for the electricity programme.

I am in touch with the Cabinet Secretariat and will pursue obtaining a copy of the decision for your files. I have also spoken with Mr. Hesse, the Solicitor General in an attempt to expedite the mechanics of the acquisition.

It seems to me that you may proceed with the Chinese program on the basis that the Abbott lands will be forthcoming.

I am available for further explanation.

Sincerely.

(signed)
Roberts & Co."

[32] On 19th November 1998, the Solicitor General, Mr. Lebrecht Hesse wrote to Mr. Matthias as follows:

"Dear Sir,

Your letter dated 12th October, 1998, which you addressed to the Honourable Attorney-General has been referred to me to reply. Your request to commence proceedings for the compulsory acquisition of certain lands needed by your Corporation has been noted.

The procedure for compulsory acquisition of land for a public purpose is clearly prescribed in the Land Acquisition Act Cap.233. Your first step is to obtain a Cabinet decision to acquire the land in question for a public purpose. Thereafter, this office will draft for the approval of Parliament a resolution to give effect to the Cabinet decision. This will be followed by a Gazette declaration containing the particulars below: ...

As soon as these particulars are provided this office will proceed to commence the acquisition proceedings.

In the circumstance, we advise that your Permanent Secretary should draft for your Minister a Circulation Note, inviting Cabinet to consider the acquisition of the said lands for a public purpose.

(signed)
Lebrecht Hesse
Solicitor General"

[33] On 16th December 1998, a Cabinet decision was issued and it read as follows:

"Acquisition of Lands at Friars Hill for a Public Purpose

32. Cabinet agreed that the Government of Antigua and Barbuda should proceed to acquire portions of certain lands at Friars Hill, in the parish of St. John belonging to the families of Peter Abbott, Phillip Abbott, Helen Abbott, Eric Challenger, Colin Scholar, Dalton Scholar, Cornwall Lawrence, Devan Shaw, Tyrone Winter, William Joseph, Kenneth Evason and others for a public purpose, namely the implementation of the 69KV Line Project by Antigua Public Utilities Authority (APUA).

33. The Ministry responsible for Lands in collaboration with the ministry of Legal Affairs and the Ministry of Public Works and Public Utilities to deal with this matter.

(signed)

Secretary to the Cabinet."

- [34] At 31st December 1998, Mr. Matthias wrote to Mr. Hesse and therein provided a drawing outlining the lands in the path of the 69KV transmission system and the land that APUA intended to acquire.
- [35] On 18th January 1999, and 2nd February 1999, the House of Representatives and the Senate respectively passed a resolution authorizing the Secretary to the Cabinet to cause a declaration to be made for the acquisition of certain lands along the proposed utility zone at Cassada Gardens and Friars Hill, the purpose was considered to be for public purpose namely the implementation of the 69KV transmission system by APUA. 58 Parcels of land were specified in the resolution, Mr. Caleb's land was not one of the parcels described therein.
- [36] On 11th February 1999, and 19th February 1999, **Statutory Instrument** No. 5 of 1999 about the acquisition of several lots of land was published in The Antigua and Barbuda Official Gazette. Mr. Caleb's land was not included in the lands stated to be acquired.
- [37] On 18th June 2002, Mr. Caleb wrote to the Minister of Agriculture as follows:

"Minister of Agriculture
Ministry of Agriculture

...

Attn. Hon. Vere Bird (Jr)

Dear Sir

I write in reference to lands owned by me at Cassada Gardens. Without my permission the Government installed poles to accommodate 80,000 volts of electricity and a sewage treatment plant across the property.

The two prominent entrances borders on my three (3) acres plot Over a period of the last 4 years, I have been seeking an amicable resolution to this infraction.

I have dealt with the Hon. Yearwood and other prominent officials who were in a position to resolve this matter. I was told by them to choose a plot elsewhere. The suggested spot being Cades Bay Estate.

In the process of time I checked with Mr. Duberry and he informed me that having chosen lands there, (it is available) in as much as there is now a squatter on it.

I am desperately in need of a settlement so that I can build my home. I am sure that you can help me bring closure to this matter. Your quick and kind response will be most highly appreciated.

Sincerely Yours

(signed)
Uriel R.M. Caleb"

[38] On 14th November 2006, Ms. Carla Brookes-Harris of the Attorney-General's Chambers wrote to the Manager of APUA as follows:

"Dear Sir,

Re: Acquisition of Lands by Government of Antigua and Barbuda

I write in respect of the captioned matter.

It has come to this office's attention that compulsory acquisition of certain lands described in **Registration Section: Cassada Gardens, Block No.: 42 1894 A³** for the implementation of the 69KV Line Project was not done properly. The reason for this, is that the lands (that) were used to erect the high tension towers were not correctly stated in the Statutory Instrument 1999 No. 4⁴ and consequently there was no compulsory acquisition of those lands.

Having recognized the problem Cabinet has agreed that these lands should be properly acquired by Government. It should be noted that before any compulsory acquisition of these lands can take place, a survey of affected lands has to be carried out. This would enable us to determine whether the whole or part of the lands should be compulsorily acquired.

We are in receipt of a list of names of persons whose lands in the area mentioned herein have been affected. A copy of this list is herewith enclosed. Kindly confirm the following: (a) whether the names and the lands stated in the list are correct; (b) whether these lands are the only lands that the high tension towers were erected on and if not whether the parties have been compensated.

....

Finally, we would also need to be advised on what arrangements are in place to compensate individuals whose lands would have been compulsorily acquired. It should be

³ Not Mr. Caleb's lot of land.

⁴ Should read Statutory Instrument No. 5

pointed out, that information in respect of persons who have already been compensated should also be forwarded to us.

In addition to the information needed above, I am hoping that we can meet to discuss the issues raised herein so as to enable us to reach a timely resolution of the matter.

Yours faithfully,

(signed)
Crown Counsel

CC. Chairman Public Utilities Authority Board”

[39] There was prepared for Mr. Caleb by Consulting Civil & Structural Engineers at 6th March 2012, a valuation report for land located at Brookes Estate. Therein Mr. John Bradshaw, a civil engineer, stated that land equivalent to Mr. Caleb's situate at Barnes Hill and Coolidge at Brookes would be 392,000 square feet with a value of \$1,568,000.00.

[40] On 2nd May 2012, the Permanent Secretary in the Ministry of Agriculture, Lands, Housing and the Environment wrote to Mr. Caleb as follows:

“Dear Mr. Caleb,

Request for Land Issue of Mr. Uriel Caleb be referred to Antigua Public Utilities Authority (APUA)

Please be advised that Cabinet at its meeting held on Tuesday 17th April 2012, agreed to the recommendation for the Antigua Public Utilities Authority (APUA) and National Mortgage and Trust Co. Ltd. to discuss the matter with Mr. Uriel Caleb concerning problems involving his land described hereunder:-

(description of land set out)

Sincerely,

(signed)
Permanent Secretary”

[41] On 10th July 2012, Cabinet Conclusion No. 92 recorded that Cabinet agreed to refer the land matters with reference to Mr. Caleb to APUA and NMT.

[42] On 10th October 2012, the Permanent Secretary in the Ministry of Agriculture, Lands Housing and the Environment wrote to Mr. Caleb as follows:

"Dear Mr. Caleb,

Request for Land Issue of Mr. Uriel Caleb be referred to Antigua Public Utilities Authority (APUA)

Please be advised that Cabinet at its meeting held on Tuesday 10th July, 2012 agreed to refer the land matters in reference to you in respect of land you own in Cassada Gardens with particulars as follows:

...

to the Antigua Public Utilities Authority (APUA) and the National Mortgage and Trust Co. Ltd.

Sincerely

(signed)
Permanent Secretary"

- [43] On 7th December 2012, Mr. Kevin Edwards, Chief Lands Officer (Ag) appears to record from the Government's side some of its dealings with Mr. Caleb and his claim about the use of his land. The letter read as follows:

"Dear Sir,

Re: Letter of statement – Settlement of land relocation for Mr. U Caleb

The Ministry of Agriculture, Lands, Housing & the Environment is currently reviewing case ALHE 46/149 pertaining to Mr. U Caleb in which his property (41-2094A, parcel #27) was encroached upon by the Antigua Public Utilities and the National Mortgage & Trust Co. Ltd., acting on behalf of the government of Antigua & Barbuda.

LEGAL PARTICULARS: The property is recorded in the Land Registry as –

Registration section: Barnes Hill & Coolidge

Block: 41 – 2094A

Parcel: 27

Area: 3.00 acres

In 1991⁵ the government through its agents installed a 69KV high tension tower & power line on Mr. Caleb's property. Additionally through another of its agents a sewer line was placed across the northern boundary to service the sewer treatment plant to the east of the parcel in question. Mr. Caleb then sought redress from the government for the loss in value to his property. The government discussed with Mr. Caleb the replacement of his lands due to the construction of the tower and sewer lines and in subsequent meetings with the government Mr. Caleb was asked to accept like value in land for his loss. Additionally monetary compensation was to be given after lands would have been identified and Mr. Caleb allocated a number of acres in a suitable location.

A site visit to Brooke's Estate at Cade's Bay on October, 23rd 2012 was undertaken by senior technicians within the Ministry of Agriculture, Lands, Housing & the Environment for preliminary assessment of a prospective site. The site visited is ideal for Mr. Caleb's needs and the Land Division is simply awaiting the Cabinet Decision for it to authorize the government's Survey Division to demarcate the appropriate quantity of lands. This report precedes any further action till that decision has been made. However, at a subsequent date the requisite valuation and assessment will be requested of the government's Land Valuation Department for the stipulated quantity as per Cabinet's directives.

The findings follows below-

(Set out was a description of the land, location of Brookes Estate, and an assessment about the part of Brooke's Estate under discussion)

Upon receiving the Cabinet Decision, the Surveys Division will be instructed to demarcate the appropriate quantity as per Cabinet's directives and the recommendation of the Lands Division. The Lands Division will contact you or your representative on island, to expedite a resolution. Thank you for your patience and understanding as we try to resolve this matter. (Emphasis is mine)

(signed)
Kevin Edwards
Chief Lands Officer (Ag)"

[44] At 13th February 2013, Counsel Mr. Lawrence Daniels wrote a demand letter on behalf of Mr. Caleb to Mr. Esworth Martin, General Manager of APUA. He recorded that since 2001, Mr. Caleb had protested the installation of the electrical facility by APUA on his land, and APUA had failed to remove the electrical facility and had failed to compensate Mr. Caleb. The letter demanded:

⁵ Should read 1999 when the letters of APUA are considered. The electrical facility was being considered at 1998 with contract awarded to COMPLAINT.

"(1) Compensation in the sum of \$6,500,000.00 representing damages for unlawful and continuing trespass and;

(2) That APUA remove the electrical facility from Mr. Caleb's land within 7 days."

[45] On 24th May 2013, the Chief Valuation Officer, Mr. Leroy Samuel issued a letter to the Permanent Secretary in the Ministry of Agriculture, Mr. Roberto Isaac. Therein he stated that he had enclosed a valuation report for 3 properties, the first at Barnes Hill and Coolidge, second at Christian Valley, and the third at Cassada Gardens and New Winthropes. In the attached valuation, Mr. Caleb's property was described as amongst other things as being:

"(1) Located in the Cassada Gardens community at Barnes Hill and Coolidge,

(2) Of approximately 3 acres,

(3) Without any encumbrances and

(4) Having a value of \$1,960,000.00. It was stated that the valuation was done without regard to the nuisance."

The Law

[46] Mr. Caleb having filed his claim against three Parties the Court found it instructive to cite his pleadings and did so above. In this regard, the Court recalls the role of pleadings under **Civil Procedure Rules 2000** "CPR" and refers to **McPhilemy v. Times Newspapers Ltd.** [(1999) 3 All E.R 775] where Lord Woolf M.R said that "Statements of case are required to make out the parameters of the case that is being advanced by each party. It is important that they should identify the issues and the extent of the dispute between the parties. They should state concisely the general nature of each party's case."⁶

[47] It is provided in section 37, **Public Utilities Act**, Cap. 359 that there will be a minister of Government who may give APUA such directions as to the policy to be followed by APUA in the performance of its functions in the interests of Antigua and Barbuda.

⁶ Civil Procedure Vol. 1 2003 paragraph 16.0.2

[48] Mr. Caleb grounded his claim against the Government in agency, he has pleaded that APUA was an agent of the Government.

[49] On the issue of agency, **Halsbury's Laws of England** (4th edn.) is instructive. Therein it is stated:-

"701. Nature of the relation of agency. The terms "agency" and "agent" have in popular use a number of different meanings, but in law the word "agency" is used to connote the relation which exist where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties.

The relation of agency arises whenever one person, called "the agent", has authority to act on behalf of another, called "the principal", and consents to so act. Whether that relation exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent. If an agreement in substance contemplates the alleged agent acting on his own behalf, and not on behalf of the principal, then although he may be described in the agreement as an agent, the relation of agency will not have arisen. Conversely the relation of agency may arise despite a provision in the agreement it shall not....

The essence of the agent's position is that he is only an intermediary between two other parties. So it is essential to an agency in this sense that a third party should be in existence or contemplated (Emphasis is mine)

....

715. Method of creation. The relation of agency is created by the express or implied agreement of principal and agent, or by ratification by the principal of the agent's acts done on his behalf. Express agency is created where the principal, or some person authorised by him, expressly appoints the agent, either by deed by writing under hand, or orally. Implied agency arises from conduct or situation of the parties, or by operation of law, for example from necessity.

An agency may also be created by statute...."

Findings and Analysis

[50] The Court must state at the outset that this matter has disturbed the Court greatly. Mr. Caleb's claim for compensation whether by payment of money or land or a mixture of both began in or

around 1998 based on his letter dated 18th June 2002, and indeed the approximate year of 1998 is supported by the APUA letters to the Government and other landowners in the vicinity. Measuring time from when Mr. Caleb's claim arose, it has been in excess of 15 years to the date that he filed his suit, and in excess of 18 years to the date when the trial occurred. There was no contest that Mr. Caleb was entitled to be compensated once APUA established the 69KV transmission system and the attendant electrical wires across Mr. Caleb's land.

[51] As regards Mr. Caleb's case against the Attorney General, it is circumscribed by his pleadings and in particular his claim against the Attorney General is that of agency. He says at paragraph 8 of the statement of claim that the Government through its agent, APUA erected the 69KV transmission system for the sole use and benefit of APUA and at paragraph 10 that the Government through its agent, APUA unlawfully entered upon his land.

[52] Bearing in mind that APUA is a legal entity created by statute and so could act independently of the Government, this brings the Court to assessing the facts under Halsbury's definition of:

- "(1) The nature of the relation of agency, and
- (2) The method of creating an agency."

[53] Using Halsbury's definition of an agency relationship, if the Court were to adopt Mr. Caleb's position, then the Government would be the principal, APUA the agent and Mr. Caleb the third party. In relation to the method of creation of an agency especially where, as here, there is nothing in writing, Mr. Caleb's position would have to be that that there was evidence to show that the Government ratified the actions of APUA which were done on its behalf.

[54] Looking at the evidence, it is clear that APUA made a decision in regards to its need to expand its power distribution capacity and to do so it was necessary to build the 69KV transmission system. Land was necessary for the construction.

[55] Historically, the correspondence show that APUA looked at 4 options for a site where it might be possible to construct the 69KV transmission system. For reasons stated it was decided that Option 4 was the best route. Option 4 involved the use of privately owned lands and which included Mr. Caleb's.

- [56] The early correspondence also show that it was APUA and not the Government that contracted with the Chinese company, COMPLANT to build the 69KV transmission system.
- [57] There was no evidence that the Government was involved with APUA's expansion plan to construct the 69KV transmission system or the final contract made between APUA and COMPLANT for construction of the 69KV transmission system.
- [58] The early correspondence also show that it was only when APUA proposed to view the land under Option 4 with COMPLANT personnel who were visiting Antigua at the time, that the landowners such as the Abbott family stated their objections to the use of their land.
- [59] It was APUA that wrote to the landowners such as Ms. Abbott wanting to discuss construction of the 69KV transmission system and compensation.
- [60] APUA's first resort when the landowners raised their objections was to its legal Counsel, Mr. Clare Roberts by letter dated 29th June 1998, and by that letter APUA stated that it was anxious for a resolution as delays were likely to increase the cost of construction of the 69KV transmission system.
- [61] In the Court's view, all of the evidence is contrary to an agency relationship between the Government and APUA. APUA and not the Government is under the **Public Utilities Act** charged with the responsibility of providing Antigua and Barbuda with electricity. APUA was seeking to expand its electrical power capability and to do so it needed to construct a 69KV transmission system, it needed land upon which to construct the 69KV transmission system. Having failed to reach agreements with the owners of the land upon which it wished to use to construct the 69KV transmission system, APUA sought the assistance of Government to help it achieve its goal through the process of acquisition of the lands. The Government merely acted as a facilitator by acquiring the land needed by APUA. APUA was to ultimately pay the landowners for their land and not the Government per se.
- [62] It was admitted by Mr. Andre Matthias and Mr. David Matthias that:
- “(1) It had been the intention to include Mr. Caleb's land with those described in Statutory Instrument No. 5 of 1999, and

- (2) That as a result of errors made by way of recording the details of Mr. Caleb's land throughout the process, his land was not acquired."

[63] The Court therefore finds that Mr. Caleb cannot succeed in his claim against the Attorney General as he has failed to prove an agency relationship between the Government and APUA, and in particular with the Government as principal and APUA as agent for the Government.

[64] Court's order:

- (1) Mr. Caleb's claim against the Attorney General is struck out.
- (2) The matter is to be fixed at the earliest for assessment of damages.

Rosalyn E. Wilkinson
High Court Judge



By the Court

A handwritten signature in black ink, appearing to be "Rosalyn E. Wilkinson", written over a horizontal line. Below the signature, the word "Registrar" is printed in a bold, sans-serif font.