

**Supreme Court Registry
Demerara**
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IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

(REGULAR JURISDICTION)

2023 – HC – DEM – CIV – FDA – 1183

BETWEEN:

- 1. MARK GORDON
- 2. SHENIKA SIMPSON
- 3. LUCRECIA GEORGE

APPLICANT

-and-

- 1. THE ATTORNEY GENERAL
- 2. COLLIN CROAL
MINISTER OF HOUSING & WATER
- 3. GUYANA SUGAR CORPORATION

RESPONDENTS.



Jointly and severally

INFORMATION FOR COURT USE

1. This Proceeding is commenced as a:

- Statement of Claim
- Fixed Date Application

2. This Proceeding falls under the High Court's

- Appellate Jurisdiction
- Admiralty Jurisdiction
- Commercial Jurisdiction
- Criminal Jurisdiction
- Regular Jurisdiction

3. The proceeding is a(n):

- Admiralty Proceeding in personam
- Admiralty Proceeding in rem
- Probate Proceeding
- Proceeding for Judicial Review
- Proceeding for relief under the Constitution
- Proceeding for other Administrative Order
- Proceeding for Administration
- Proceeding commenced under the Summary Jurisdiction (Appeals) Act Cap (3:04)
- Other proceeding



4. I certify that the above information is correct, to the best of my knowledge.

08/18/2023

.....
Date

A handwritten signature in blue ink, appearing to read "Vivian M. Williams".

.....
Vivian M. Williams
Attorney-at-Law

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IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
CONSTITUTIONAL AND ADMINISTRATIVE DIVISION
PROCEEDING FOR ADMINISTRATIVE ORDER

BETWEEN

1. MARK GORDON
2. SHENIKA SIMPSON
3. LUCRECIA GEORGE

Applicants,

- and -

1. THE ATTORNEY GENERAL
2. COLLIN CROAL
MINISTER OF HOUSING AND WATER
3. GUYANA SUGAR CORPORATION

Respondents.

Jointly and severally

FIXED DATE CLAIM

2023-HC-DEM-CIV-FDA-



MG-FDA001

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants is set out in the following pages.

THIS APPLICATION will come on for a hearing on 9 (day),
October (date), at 3:00pm (time), at the High Court of the Supreme Court
of Judicature, Avenue of the Republic, Georgetown Guyana.

*Before the Hon. Madam
Chief Justice R. George*

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Attorney-at-Law acting for you must forthwith prepare an Affidavit in Defence in Form 10C prescribed by the Civil Procedure Rules 2016 and as subsequently amended, serve it on the applicants' Attorney-at-Law or, where the applicants do not have an Attorney-at-Law, serve it on the applicants, and file it, with proof of service, at a Registry, AT LEAST (TWO or FOUR, as applicable) DAYS before the date fixed for the hearing of the application, and you or your Attorney-at-Law must appear at the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER OR JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

THIS NOTICE OF APPLICATION has no validity unless it is served on you at least (seven or four, as applicable) days before the date fixed for the hearing of the application.

Date: 18-8-23

K. Bond
Signature of Registry
Issued by: Kenneth Bond
Avenue of the Republic
Georgetown, Demerara

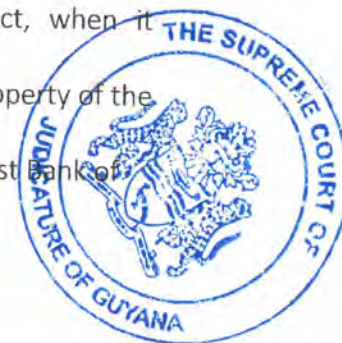
TO:

1. The Attorney General
95 Carmichael Street, Georgetown
2. Collin Croal - Minister of Housing and Water
41 Brickdam & United Nations Place, Georgetown
3. Guyana Sugar Corporation
La Bonne Intention (LBI) Estate
East Coast Demerara



APPLICATION

1. Mark Gordon, Shenika Simpson, and Lucrecia George (the Applicants) -
make application and pray for the following orders pursuant to Part 56 of
the CPR:
 - a. A declaration that the Central Housing and Planning Authority
(CH&PA) acted ultra vires and in violation of its mandate and
provisions of the Central Housing and Planning Act, when it
demolished the homes and destroyed the personal property of the
applicants and other residents at Cane View on the East Bank of
Demerara on or about January 5, 2023.



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- b. A declaration that the decisions and actions by the CH&PA and the second named respondent with respect to demolition of homes at Cane View on or about January 5, 2023, are unlawful and invalid.
- c. A declaration that CH&PA and the second named respondent's resort to self-help to demolish the Applicants' home and destroy their personal property, infringes the Applicants' right to natural justice and protection of the law as guaranteed and protected by Article 144 of the Constitution of the Co-operative Republic of Guyana and the International Bill of Human Rights.
- d. A declaration that the conduct of CH&PA and the second named respondent, their servants, agents and contractors, breached the Applicants' property rights as guaranteed and protected by Article 142 of the Constitution of the Co-operative republic of Guyana.
- e. A declaration that the way employees, servants, agents and or contractors of CH&PA and the second-named respondent, trespassed and demolished the Applicants' home without a court order or warrant, infringes the Applicants' right against arbitrary entry of their home, guaranteed by Article 143 of the Constitution of Guyana.
- f. A declaration that the way employees, servants, agents and or contractors of CH&PA and the second named respondent demolished the Applicants' home, destroyed their personal



possessions and treated the Applicants, is an infringement of the Applicants' protection from inhuman and degrading treatment guaranteed by Article 141(1) of the Constitution of the Co-operative Republic of Guyana.

- g. A declaration that Article 141(1) of the Constitution of the Cooperative Republic of Guyana, placed a positive obligation on the State to prevent ill-treatment and debasement of a citizen of Guyana in resolving disputes over occupation and ownership of government or State land regardless of whether ownership of the land is resolved in the government's favor.
- h. A declaration that section 3(2) of the Title to Land Act as amended in 2011 does not extinguish, retroactively or retrospectively, any prescriptive right that accrued in favor of the first-named Applicant before the amendment took effect.
- i. More than \$100,000.00 (one hundred thousand dollars) in damages for breach of each of the Applicants' fundamental right to protection from deprivation of property as guaranteed and protected by Article 142 of the Constitution of the Cooperative Republic of Guyana.
- j. A declaration that the conduct of the second named respondent and CH&PA is a breach of the first-named respondent's legitimate expectation, as recognized at common law.



- k. An order of prohibition enjoining the Respondents from conveying, using, occupying, or erecting any structure on 11 Cane View, or further altering the land.
- l. An order of mandamus directing the second and third named respondents to transfer fee simple title to 11 Cane View to the first named respondent.

Joinder for Other Relief

Pursuant to Part 56.03 of the CPR, included herein is a joinder of claims for additional relief and remedies arising out of or related to the subject matter as follows:

2. A declaration that:
 - a. The first named Applicant is the fee simple owner of 11 Cane View by operation of law, or
 - b. the conduct and interactions between the first-named Applicant and employees, servants and agents of the CH&PA created a licence with equity in favour of the first named applicant with respect to the land identified as 11 Cane View, Mocha/Herstelling, East Bank Demerara, which remained in force and effect at the time the Respondent demolished the Applicants' home.
3. An award of more than \$100,000 (one hundred thousand dollars) in damages for trespass to the Applicants' property by the second-



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named respondent, CH&PA and or their agents, servants, or contractors on or about January 5, 2023.

4. More than \$100,000,000.00 (one hundred million dollars) for Damage to property at the land known as 11 Cane View, Mocha/Herstelling, East Bank Demerara by servants and agents of the Government of Guyana on or about 5th January 2023.
5. More than \$50,000,000.00 (fifty million dollars) for loss and damage suffered by the Applicants because of the actions of the servants and agents of the Government of Guyana in forcibly removing the Applicant and his family from the land known as and referred to as 11 Cane View, Mocha/Herstelling, East Bank Demerara.
6. An award of more than \$100,000,000.00 (One Hundred Million) as exemplary damages.
7. Costs and legal fees.
8. Such further or other order as to this Honourable Court may seem just.
9. **AND TAKE NOTICE** that the grounds for the application are:
 - a. The CH&PA and the second-named respondent, acted ultra vires authority conferred upon them in demolishing homes at Cane on or about January 5, 2023, by virtue of the following:
 - i. Neither CH&PA nor the Ministry of Housing & Water was the holder of legal title or properly vested with authority over Cane View, also known as block, lettered 'X'



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- Plantation Herstelling, situate on the East Bank of Demerara.
- ii. CH&PA declared that GUYSUCO is the title holder of Cane View, and it exercises control of Cane View on behalf of GUYSUCO, the third-named respondent.
 - iii. GUYSUCO is a corporation that falls under the purview of the Ministry of Agriculture such that it is separate and distinct from CH&PA and outside of the remit of the Ministry of Housing & Water.
 - iv. Neither the Ministry of Housing and Water nor CH&PA were conferred with authority over the assets and affairs of GUYSUCO, including Cane View. Further, CH&PA did not acquire Cane View from GUYSUCO.
 - v. GUYSUCO had actual or constructive knowledge of the representations and actions of CH&PA pertaining to Cane View and did not object or intervene to prevent the harm the Applicants suffered.
 - vi. CH&PA is a creature of the Central Housing & Planning Act which at section 11, limits CH&PA's power to acquire land to acquisition for the purpose of an approved housing scheme and restrains it from using land so acquired for any other purpose.

- vii. Further, sections 22(1) limits the power of CH&PA to demolish buildings, to areas declared slum clearance areas and sets forth the procedure that must be followed.
- viii. Cane View was never declared a slum clearance such that CH&PA never acquired the authority to issue a demolition order for Cane View.
- ix. Further, CH&PA did not follow the procedure set forth in section 22(1) of the Act for the issuance and execution of a demolition order, so that a demolition order never became operative.

b. Unfairness, Abuse of Power and Protection Under the Law

- i. CH&PA violated the first-named applicant's right to protection of law guaranteed by Article 144 of the Constitution of Guyana.
- ii. CH&PA and the second-named respondent deprived the first-named applicant of an opportunity to be heard before demolishing his home and evicting him from 11 Cane View despite actual or constructive knowledge of the first-named applicant's legitimate claim as the putative owner in possession of lot 11 Cane View.



- iii. The first-named Applicant had at least, the following three meritorious bases to support a claim as the putative owner of lot 11 Cane View:
- a. The first named Applicant has prescriptive rights that accrue before the 2011 amendment of the Title to Land Act that were NOT extinguished by any retroactive or retrospective effect from the passage of the Act: or
 - b. The first named Applicant acquired a license with equity to 11 Cane View on account of the expenditure of significant funds to build a substantial structure on the land with the awareness, acquiescence, and encouragement of CH&PA and the Ministry of Housing and Water, and without their objection: or
 - c. The first named Applicant had a substantive legitimate expectation to conveyance of transported title to the land because the Respondents, their servants, employees, and or agents promised to convey title to the land to the Applicant and took positive steps in furtherance of the promise.



- iv. CH&PA violated the statutory requirements set forth in the Central Housing and Planning Act (the Act) for it to demolish a community.
- v. The Act sets forth three steps to be followed before a demolition order is issued, namely, declaration of an area as a slum clearance area; issuance of a demolition order; and publication of the demolition order.
- vi. CH&PA did not declare Cane View a slum clearance area and did not issue and publish a demolition order prior to the demolition of the homes in Cane View.
- vii. By virtue of the decisions and steps taken by CH&PA and the Ministry of Housing and Water and declarations made, Cane View is an approved scheme.
- viii. Section 36(1) of the Act requires service of a 28-day notice to quit to be served upon occupants of an approved scheme and section 36(2) requires CH&PA to obtain a warrant from a magistrate if the occupant fails to comply with the notice to quit.
- ix. The applicants were occupants of an approved scheme and no notice and warrant from a magistrate was served upon them.

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- x. The way the second named respondent, his employees, servants, agents, and contractors, resorted to self-help to demolish the Applicants' home, destroy their personal possessions and the land they asserted ownership to, breached the Applicants right to protection of law and was not procedurally fair.
- xi. Legal precedents in the Commonwealth Caribbean establish that where there is continuous/uninterrupted occupation upon which a reasonable claim to ownership to occupied land is made, the resort to Self-help by the State or a person claiming ownership is unlawful and in breach of natural justice and procedural fairness.

c. **Retrospective Effect of Title to Land Act**

- i. The first-named applicant's prescriptive rights to 11 Cane View accrued before the 2011 amendment to the Title Land Act.
- ii. It is well established within common law jurisdictions that a statute is presumed NOT to have retrospective effect.
- iii. It is a fundamental rule that the presumption against retrospective effect of a statute is only disturbed when the statute's intent to have retrospective effect is clearly stated in the Act.



- iv. The Title to Land Act as amended in 2011 does not clearly state that section 3(2) has retrospective effect such as to extinguish rights that accrue before it came into effect.
- v. Further, the right to prescriptive title to land is a property right as conceived and protected under the Constitution.
- vi. Article 142 of the Constitution of Guyana guarantees protection against the taking of property without just compensation and due process.
- vii. Any retrospective effect that extinguishes property rights that accrued in favor of the applicant before section 3(2) of the Title to Land Act took effect, amounts to the taking of property without just compensation and due process.
- viii. The established common law rule with respect to retrospective effect of a statute and the guarantees of Article 142 and 144 of the Constitution compel a determination that section 3(2) of the Title to Land Act as amended in 2011 cannot be interpreted as having retrospective effect.
- ix. The resort to self-help by the second named respondent, deprived the first named Applicant the right to challenge the applicability of section 3(2) to his putative ownership claim to 11 Cane View, such that the first named



applicant's right under Articles 141 and 144 of the Constitution were infringed.

d. Licensee with Equity

- i. A Licensee with equity is a legal status with respect to occupation of land that has been recognized and enforced by this court and the wider Commonwealth Caribbean.
- ii. It is trite law that if the owner of land encourages or allows an occupant to expend money on the land under an expectation of continued occupation, a licence with equity is created. Further, it is for the court to decide how the equity that accrues to a licensee with equity will be satisfied.
- iii. Even if the court finds that the first-named applicant is not the putative owner of 11 Can View, a license with equity was created in his favour because the Respondents were aware of the first named Applicant's occupation and expenditure of money on the land and allowed, encouraged, requested, and acquiesced to the first named Applicant's expenditure of significant funds on the land.



- iv. CH&PA and the second and third-named respondents deprived the first named applicant the right and opportunity to have a court determine the issue of a licence with equity and how it ought to be satisfied. There is precedent in the Commonwealth Caribbean that in the circumstance, the license with equity should be satisfied by the grant of fee simple title to the first-name applicant.

e. Substantive Legitimate Expectation

- i. It is now settled law that a substantive legitimate expectation is created when an agent of the state or public authority makes a clear and unambiguous promise of a substantial benefit that is devoid of relevant qualification, to an individual.
- ii. The Applicant is a 47-year individual who has been an adult at all material times.
- iii. At all material times, residents of Cane View have been a well-defined and specific group.
- iv. CH&PA and or employees, agents, and or servants of the Ministry of Housing and Water made a clear and unambiguous promise to residents of Cane View as a well-



defined group, to convey plots of land occupied in Cane View to the respective occupants.

- v. CH&PA and or employees, agents, and or servants of the Ministry of Housing and Water made a clear and unambiguous promise to the first-named applicant, to convey title/transport to 11 Cane View to him.
- vi. The promise to convey title to the applicant and residents of Cane View is devoid of any relevant qualifications.
- vii. The Applicant acting upon the terms and conditions of the undertaking by the State of Guyana, expended significant funds to build solid and expensive property on the land and invest his life savings.
- viii. The resort to self-help by CH&PA and the second named respondent, their employees, servants, agents and or contractors, to demolish the Applicant's home, destroy his possession and force him off 11 Cane View, violates his legitimate expectation of a substantial benefit, without due process.

f. Inhuman and Degrading Treatment

- i. Article 141(1) of the Constitution of Guyana protects the Applicants from inhuman and degrading treatment.
- ii. Guyana subscribes to international treaties and conventions that obligate the state to protect individuals



from inhuman and degrading treatment and it is trite law that a constitutional value that underpins citizenship is the right not to be subjected to inhuman and degrading treatment – “especially if one is in a vulnerable or disadvantaged position”.

- iii. Article 141(1) of the Constitution of the Cooperative Republic of Guyana places a positive obligation on the State to prevent ill-treatment and debasement of citizens in resolving disputes.
- iv. The Applicants are citizens of Guyana by birth who are entitled to the protection of the Constitution and at all material times were in a vulnerable and disadvantaged position, residing in the community known as Cane View Mocha/Herstelling, East Bank Demerara (Cane View).
- v. Cane View was at all material times a vulnerable community.
- vi. On or about January 5, 2023, the Respondents, their employees, servants and or agents demolished the first named Applicant’s home which was the sole residence of the Applicants and contained all their personal possession.



- vii. In the process of demolishing the Applicant's home, the Respondents, their servants and or agents destroyed all the Applicants personal possession.
- viii. Respondents used heavily armed police to restrain the Applicants from accessing their home to retrieve their personal possession.
- ix. The second named respondent, his servants, agents and or contractors used heavy-duty industrial machinery to destroy the bridges that connect Cane View to the main access road, thereby preventing access and egress to homes in Cane View such that the Applicants were without means to retrieve their personal property.
- x. With the assistance of heavily armed police, the second-named respondent, his servants, agents and or contractors caused the Applicants to stand and watch the boom of an excavator, repeatedly struck and destroy their homes and personal possession.
- xi. The Applicant was forced to watch until he broke into uncontrollable tears, as his home was dismantled from the force of the boom of an excavator, crushing two of his specially bred dogs (12-year-old Janah and 6-year-old Small Girl) that were trapped under the house.



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- xii. Despite being informed by the first named Applicant of the presence of the dogs trapped under the house, agents, servants and or contractors of the second named respondent proceeded to demolish the home and restrain the Applicant from rescuing Janah and Small Girl.
- xiii. After the demolition of the Applicant's home, the agents, servants and or contractors of the second named respondent, proceeded to use the boom of an excavator to smash the personal property of the Applicants that were not yet shattered into pieces.
- xiv. Agents, servants and or contractors of the second named Respondent dug a huge pit on the land where the Applicants home stood, buried what was left of the Applicants' possession in the pit, cover the pit with dirt and then covering the entire land with a huge layer of mud.
- xv. The second named respondent, his servant, agents and or contractors destroyed essential medication for the third named Applicant, depriving her of essential medication and the means to acquire a fresh supply.
- xvi. The conduct of the second named respondent, including the deprivation of essential medication, caused the third



named applicant to suffer drastic deterioration in health, requiring the first named applicant to rush her to the hospital about 2am on January 6, 2023 (the morning after the demolition).

g. Award of Damages

i. The particulars of general and special damages are particularized in the supporting affidavits of the applicants.

ii. The Particulars of Exemplary damages

a. Respondents conduct was calculated to cause significant or maximum injury to the Applicants.

b. Respondents engaged in arbitrary and oppressive conduct intended to drive the Applicants out of their home in violation of constitutionally protected rights.

c. Respondents' conduct was calculated to cause injury over and beyond what the Applicant could recover as general damages.

d. Respondents' acts and omissions were calculated to punish the Applicant and they pursued this course by violating the Applicants constitutional and common law rights.

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10. The determination of this matter by the High Court is in the public interest.

- a. It pertains to the violation of constitutionally protected rights of persons in a vulnerable and disadvantaged position and a vulnerable community.
- b. The suffering caused by the complained of conduct is ongoing and would be made exponentially worse with time such that there would be no adequate remedy at law.
- c. It raises important and subsisting issues of law that are of utmost public interest.
- d. The factual issues raised by these proceedings involve facts which are likely to be matters of formal record and therefore not likely to be in dispute.
- e. In the premises the Applicant claims against the respondents for the Orders and/or reliefs set out in Paragraph 1 above.


11. The following documentary evidence will be used at the hearing of the application:

- a. Affidavit of the applicants with the exhibits attached thereto.
- b. Affidavit of Rudolph Adams, Chairman of Mocha/Arcadia NDC
- c. Affidavits of Lelon Saul, former CEO of CH&PA
- d. Affidavit of Noma Flue-Bess, Parliamentarian with responsibility for the Cane View area

MG-FDA021



(Date of issue) _____



Vivian M. Williams
Attorney for Applicant

The Registry is located at The Law Courts, Avenue of the Republic
Georgetown, Demerara. The office is open to the public between 8:30
a.m. and 3:30 p.m. Mondays to Thursdays and 8:30 a.m. and 2:30 p.m. on
Fridays, except holidays.



MG-FDA022