

**BARBADOS.**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**Civil Jurisdiction**

**No. 2087 of 2003**

**BETWEEN**

**VERNON HARRIS**

**Plaintiff**

**AND**

**LEMUEL FORDE**

**First Defendant**

**FLORA FORDE**

**Second Defendant**

**Before the Honourable Madam Justice Margaret Reiter, Judge of the High Court.**

**2007: June 19, 20;**

**July 27, 30;**

**2008: February 13;**

**September 04.**

**Mr. Gregory Nicholls, of George Walton Payne & Co., attorneys-at-law for the Plaintiff.**

**Mr. Amiri Dear in association with Miss. Gail Prescott of Thompson & Associates, attorneys-at-law for the Defendants.**

**DECISION**

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THE CLAIM

- [1] This is a claim in private nuisance in which the plaintiff property owner is principally seeking an injunction and damages from his neighbours.
- [2] The parties are the owners of adjoining properties in a rural setting, lots 4 and 3 respectively, serviced by a narrow unpaved road approximately 13 feet wide, at the end of which sits the Plaintiff's property, both parties having the right to pass and re-pass over the said road. Thus, the Plaintiff as the last property owner at the end of this cul-de-sac, must pass the Defendants property to get to his own.
- [3] The Plaintiff's claim addresses three separate occurrences as follows:
- (i) A continuing nuisance allegedly occurring about 3 evenings per week, commencing around June 2001 in which the defendants "have wrongfully caused or permitted the said road in common to be obstructed by parking their vehicles in the said road in common and by causing or permitting the motor vehicles being driven by their visitors to be parked in the said road in common and thereby preventing the Plaintiff and/or his visitors from enjoying the right to pass and re-pass

through or over the said road in common." (see

paragraph 4 of the Statement of Claim). The

Statement of Claim further speaks to two separate incidents of alleged obstruction occurring on the 27h August 2003 and the 28h October 2003 respectively. This cause of action is pleaded as a breach of the covenant to be found in the parties' conveyance, not to restrict the right to pass and for re-pass through and/or over the road in common; and in the tort of

private nuisance (as is 2 and 3 below) for the

wrongful and substantial interference with the Plaintiff's enjoyment of his property.

(ii) The existence of a number of breadfruit trees on the

Defendants property which have encroached on electric and telephone wires transmitting service to the Plaintiff's property and causing a considerable nuisance when the leaves and rotten branches fall on the Plaintiff's property.

(iii) The encroachment of a number of vines and

overgrowth originating on the Defendants' property

on the Plaintiff's wire fence erected between the two