

BARBADOS

[Unreported]

No. 217 of 2001

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

BETWEEN:

IBRAHIM NOUMEH

**(Plaintiff)
AND**

AWADSOOKRAM

(Defendant)

Before the Honourable Mr. Justice Carlisle Payne, Judge of the High Court

2003: October 16

Mr. Deighton Rawlins for the Plaintiff

Mr. Hal Gollop for the Defendant

Reasons for Decision

[1] In January 2001 the Plaintiff filed an Ex-Parte Originating Summons to restrain the Defendant from inter alia trespassing on the Plaintiff's land and dumping garbage thereon.

[2] The summons was served on the Defendant on 7th February, 2001.

[3] The summons was heard before Greenidge J., on 5th June, 2001. The Defendant did not appear in person but was represented by Mr. Steve Gollop. No point was taken that the wrong person was sued or served.

[4] After hearing counsel for the Plaintiff and the Defendant, the injunction sought was granted.

[5] By Notice of Motion filed in May, 2003, the Plaintiff sought the committal of the Defendant to prison for failing to comply with the order. This was supported by affidavit from the Plaintiff, paragraphs 3 to 5 of which were as follows:

"3. On the 7th September, 2001, the Defendant was personally served

with the said Order, a copy of the Affidavit of Service is attached and marked Exhibit "B".

4. The Defendant has never complied with 1 of the said Order and since the making of the said order, constructed a Bar and the door referred to in the Order is opened from the Bar to the public onto my property situate at Suttle Street, Bridgetown, the subject of the said restraining order.

5. On the 9th May, 2003, at approximately 11:20 am. Mr. Deighton

K. Rawlins and myself visited the site and the following vehicles were parked on my said property MA-6113, ME-979, MA-7121, MN-945, M-7666, also what appeared to be a fresh load of sand and quarter inch stone was on the said property."

[6] The Notice of Motion and affidavit were personally served on the Defendant on 21st May, 2003.

[7] No affidavit in reply was filed on behalf of the Defendant.

[8] The Motion came on before me on 16th October, 2003, and Mr. Hal Gollop appeared for the Defendant. Mr. Gollop contended that his client had not been served with the order of Greenidge J. However, in light of the affidavit of service on file, and the absence of any affidavit on behalf of the Defendant, this contention was rejected.

[8] Mr. Gollop also submitted that there was an appeal pending against the order of Greenidge J. There was however no stay of execution,

and the appeal does not operate as a stay.

[9] I therefore made an order that the Defendant be committed to prison for 21 days for failing to comply with the order of Greenidge J.

Carlisle Payne

Judge of the High Court.