IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 00334/2004

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| BETWEEN | BERESFORD ALLEN | 1ST CLAIMANT |
| AND | LEONIE MARSH | 2ND CLAIMANT |
| AND | ALPHANSO STERLING | 3RD CLAIMANT |
| AND | KENNETH MURRAY | 4TH CLAIMANT |
| AND | VIRGINIA HECTOR | 5TH CLAIMANT |
| AND | MINISTER OF WATER AND HOUSING | 1ST DEFENDANT |
| AND | THE ATTORNEY GENERAL OF JAMAICA | 2ND DEFENDANT |

Mr. Bert Samuels instructed by Bert Samuels & Co. for Claimants.

Ms. K. Francis & Ms. T. Francis instructed by Director of State Proceedings for Defendants.

**Heard 24th February, 26th and 31st March and 21st April 2004**

**Campbell, J.**

Background

The Claimants are squatters. They had at differing times over a period of years entered unto Crown lands, situated at a place called Honey Hill, Constant Spring Grove in the parish of St. Andrew. Over the years the community grew until there were some two hundred and three residents, by the count of the Ministry. Substantial structures, some containing all the amenities one would

expect in a middle-class home, were erected on the land. The residents naturally availed themselves of the social amenities such as schools that were situated in the adjoining area. They contend that sums of hundreds of thousands of dollars were invested in these homes, which naturally represents substantial investments for persons in their situations.

The Ministry contends that it had evicted squatters from the land in 1990. Persons who subsequently came onto the lands were periodically served with notices. Stop orders were served on persons who were found to be constructing homes, and some 40 unfinished and unoccupied houses were demolished. The Ministry commissioned socio-economic survey to determine how the remaining residents should be relocated. That study revealed that some basic infrastructure was not present on the land. There was no proper sewage or proper drainage in place. Such roads as existed were not in accordance with any subdivision plans; this made policing of the area by the security forces difficult by the security forces and raised health concerns. The decision was taken to relocate the remaining residents to an area known as Quarry Hill in the parish of St. Catherine, and further to provide them with a sum of money, $30,000.00, to facilitate their relocation. The majority of the residents have taken up the offer of relocation. The Claimants are part of a group of twenty-six persons who have rejected the Government's offer.

On the 31st December 2003 the Claimants were served with notices to deliver up possession of the premises on or before the 15th January 2004. That date passed uneventually and a second notice dated the 19th January demanded that they vacate the premises on or before the 29th February 2004. They retained legal Counsel, Bert Samuels, who wrote several letters to the relevant department, but complained they were not graced with a response. Thus, it was that a Fixed Date Claim Form was filed on behalf of the Claimants seeking a Declaration among others that the Ministry of Water and Housing should comply with the procedure set out under the provisions of the section 89 of the Judicature (Resident Magistrate) Act and sought Mandamus to direct the Ministry to so comply with that section.

Before the Court, Mr. Samuels admitted that the squatters had no legal or equitable right to the lands in question. He phrased it thus, "they have no proprietary interests and they went there without permission." The squatters contended no promise or legitimate expectation to being kept in possession. They contend no claim of right, no leave or licence.

The Law

Section 89... provides;

> "When any person shall be in possession of any lands or tenements without any title thereto from the Crown or from any reputed owner, or any right of possession prescript or otherwise, the persons legally or equitably entitled to the said lands or tenement may lodge a plaint

in the Court for the recovery of the same and thereupon a summons shall issue..."

Mr. Samuels submitted that the word 'may' ought to be construed as mandatory or as the word 'shall', because the statute directs the doing of an act which inures to the public good. He relied on an excerpt from *Words and Phrase* – Judicially Defined, Volume 111 (I–N), where at pg. 342 it is stated; Mandatory "*where a statute directs the doing of a thing for the sake of justice or the public good, the word may is the same as the word shall: thus 23 Hen. 6 (Stat. (1444-5) Hen. 6, c 9 (repealed)) say, the sheriff may take bail; this is construed, he shall; for he is compellable so to do*" R.V Barlow (1693) 2 Salk. 609, per cur. at p. 609. Mr. Samuels submitted that the attempt to demolish by means of self-help in the absence of the procedure outlined in Section 89 is likely to lead to chaos and violence; therefore the use of the section would prevent such chaos and violence and is therefore for the public good.

The excerpt is unhelpful as to the offence charged for which the sheriff may take bail. It should be noted however that at common law refusal or delay by any judge or magistrate to bail any person bailable is at common law an offence against the liberty of the subject. (See Archibald – Fortieth Edition para. 290).

Section 89 is a permissive or enabling provision. In cases where a person is empowered to do an Act it is becomes his duty to exercise it. There is however a strong presumption against interpreting the section to impose a mandatory duty.

To construe the Act in the manner urged by the Claimants would have the effect of compelling all landowners to employ the procedures in S89 in order to recover lands in possession of a squatter. Such an interpretation would result in an alteration to the law of significant proportions. A court of construction leans against such a construction that is not in accord with established legal principles.

A squatter is a trespasser. The common-law has long provided that the person entitled to possession has the self-help remedy of expulsion. A person entitled to the land may request the trespasser to leave and if he refuses to leave, may remove him from the land, using no more force than is reasonably necessary. If the entry on the land was otherwise than peaceable, the trespasser may be removed without a request from the person entitled to possession. A building erected by the trespasser might be pulled down although it is occupied by the trespasser. See Halsbury Laws of England Fourth edition, para. 1400 at page 640.

The construction urged by Mr. Samuels would remove this ancient remedy from the arsenal of the landowner. In Artemiou v Procopiou (1960) 1 Q.B. 878 per Danckwerts at p. 888. "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available." The preferable construction is that Section 89 is enabling and permissive section which provides the landowner with an option to apply to the Court or not to apply.

Moreover, such a construction would impute rights to the squatter where none existed before. It is a well known rule of statutory interpretation that rights will not be conferred by mere implication from the language used in a statute Conferment of such rights on a squatter would require the clearest and most unequivocal statement on the part of the Legislature. Rights are not conferred by side-wind. See the Claim of the Viscontess Rhonda (1922) 2 A.C. 339.

The applications are dismissed. Costs to the Defendants to be agreed or taxed.