

**Gresle v Sophola & Or  
(2002) SLR 139**

Frank ELIZABETH for the Plaintiff  
Kieran SHAH for the Defendant

**Judgment delivered on 1 July 2002 by:**

**PERERA J:** This is a delictual action based on trespass to land and for consequential loss. The Plaintiff is a farmer, and the first Defendant is a security guard employed by the second Defendant. It is averred that on 13 April 1999, the second Defendant instructed the first Defendant to enter the Plaintiff's property to investigate a smell allegedly emanating from a pig-sty thereon, It is further averred that at that time, he was in Victoria to meet a butcher who had agreed to purchase 100 pigs for a total sum of R150, but that he had to rush back upon being informed of a trespass on his land. The Plaintiff avers that consequently he lost the contract, and hence claims R150 from the first and second Defendants jointly and severally. He also claims R50 for trespass on land and a further sum of R50 as moral damages.

The Plaintiff testified that he reported the alleged act of trespass to the Port Gland Police Station and that one Sergeant Andrew came to investigate. He further stated that one Nicole Hoareau, one of his workers, telephoned him that the first Defendant and another person had entered his property to investigate a smell from the pigsty, and that was when he abandoned his visit to the butcher to sign a contract. He denied that the first Defendant had previously informed him of his visit that day.

Police Sergeant France Andrew testified that on receiving a complaint of trespass, he went to the Plaintiff's land, but did not see any person. Then he went to the hotel, and the Defendant admitted that he entered the Plaintiff's land to investigate the smell. On being cross examined, he stated that he saw about 50 pigs in the sty but that he did not count them.

Edwin Jean-Baptiste, the butcher with whom the Plaintiff claimed that he had a contract to supply pigs testified that although the Plaintiff agreed to sell 100 pigs, he did not supply them, so he went to another supplier. He further stated that he had not purchased pigs from the Plaintiff before 13 April 1999 nor after that. In his cross examination, he stated that the agreement was to supply 10-15 pigs per week, and that the arrangement was that the Plaintiff would telephone him when he had pigs to sell, and then he would go to the Plaintiff's pig-sty to weigh the pigs before purchasing.

He further stated that he did not get any telephone call asking him to come, as he may not have had pigs to sell at that time. He also stated that even if the Plaintiff offered pigs for sale subsequently, he would have purchased them.

Nicole Hoareau, the Plaintiff's assistant testified that on 13 April 1999 two persons

wearing the uniforms of the Berjaya Hotel Security Guards, came to the Plaintiff's property and asked him to show the septic tank. Although they did not ask permission to enter, he showed them the septic tank. They asked him to tell the Plaintiff that the odor from the pig-sty was coming to the hotel, and left.

The first Defendant, Jean Sophola testified that he telephoned the Plaintiff about the smell coming from the pigsty to the hotel, and told him that he would come the following day to investigate. Then the Plaintiff told him that he had already received a complaint from the hotel and that he would come. The next day, 13 April 1999, he went there accompanied by the Front Officer Manager. They met a young boy whose surname was Hoareau, and on being informed that the Plaintiff had already been informed of their visit, they were taken to the septic tank. They found that the septic tank was uncovered and that there were gunny bags full of pig manure. On being cross-examined, he maintained that he telephoned the Plaintiff the previous day about the visit of the next day. But no particular time was fixed for the visit.

Mr Elizabeth Learned Counsel for the Plaintiff submitted that the telephone is listed in the 1999 directory under the name of the Plaintiff's wife and hence Sophola was not speaking the truth about calling the Plaintiff by reference to the directory. I have perused the 1999 telephone directory and found that the only Gresle in Port Glaud is listed as "A Gresle 378217". Sophola in his cross examination stated that he did not know the Plaintiff before the telephone call, but knew that it was one Gresle who was rearing pigs in that area. Hence, as only one Gresle was listed under Port Glaud, it could not be stated that he was being untruthful, as he may not have known whether the initial of the first name of the Plaintiff was first or "S". Hence I believe the evidence of the first Defendant that he entered the property of the Plaintiff after having given prior notice of his visit, although the exact name of the visit was not agreed.

### **Liability**

As regards "trespass to land", not every entry upon the property of another, gives right to a delictual claim. Delictual liability is based on damages caused by the Act or omission of a person. Hence, mere entry for a lawful purpose is nor actionable. So also, is entry with notice or with express or implied authority. Trespass is an invasion of privacy or of proprietary rights over property. However, if the dominant purpose of the entry is to cause harm or damage to the property, even if it appears to have been done in the exercise of a legitimate interest, would constitute a fault within the meaning of Article 1382 (3) of the Civil Code.

In the present case, the Plaintiff avers in paragraph 2 of the plaint that on the 13 April 1999, the second Defendant instructed the first Defendant to enter the Plaintiff's property to investigate the smell of pigs". The first Defendant stated that he entered the property accompanied by the Front Officer Manager of the hotel. Nicole Hoareau confirmed that two persons came that day in connection with the smell emanating from the pig sty. His evidence, and that of Sergeant France Andrew discloses that there was a foul odor in the pig sty and the septic tank to which the waste water from the septic tank flowed. If that smell did not reach the hotel, the first Defendant need not have

entered the property. Hence he had a legitimate interest and permission to enter the property of the Plaintiff. He did so after informing the Plaintiff of his visit. Also as there is no averment that the first Defendant caused any damage to the property, or entered the land with the dominant intention of causing harm or damage, the tort of trespass to land has not been established.

Although this finding is sufficient to dispose of the case, I shall proceed to consider the averment in the plaint and the Plaintiff lost a contract to sell pigs as the first Defendant entered the land without prior notice. The butcher Edwin Jean-Baptiste stated that the agreement was that the Plaintiff would telephone him when pigs were available for sale and that he would go to his pig-sty for weighing and purchasing. He did not get any such call from him. He had not purchased pigs from the Plaintiff before or after 13 April 1999. There is therefore no evidence to support the averment as regards to a frustration of a contract. In any event, such a claim would have failed for remoteness.

In these circumstances, the Plaintiff cannot maintain the action.

Accordingly, it is dismissed with costs.

**Record: Civil Side No 447 of 1999**