COMMONWEALTH OF THE BAHAMAS **2020/CLE/gen/1182**
IN THE SUPREME COURT

Common Law and Equity Division

IN THE MATTER OF Section 15 of the Acquisition of Land Act ("**the Act**") and the inherent jurisdiction of the Court or otherwise

AND

IN THE MATTER OF all that piece parcel or tract of land containing the aggregate sum of approximately 230,000 sq. ft. of property belonging to Lakeland Limited and Winterhaven Holdings Ltd. situate on John F. Kennedy Drive, Nassau. The Bahamas.

B E T W E E N

1) **WINTERHAVEN HOLDINGS LTD.**
2) **LAKELAND LIMITED**

Plaintiffs

AND

1) **THE HON. DR. HUBERT ALEXANDER MINNIS, Prime Minister of the Commonwealth of The Bahamas**
In his capacity as the Minister responsible for the Acquisition of Lands pursuant to the Acquisition of Land Act

2) **OFFICE OF THE ATTORNEY GENERAL OF THE BAHAMAS**

Defendants

Before: The Honourable Sir Brian M. Moree Kt.

Appearances: Ms. Raven Rolle for the Plaintiffs
Ms. Kenria Smith for the Defendants

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J U D G M E N T

1. This case related to the compulsory acquisition of land. All issues had been agreed by the parties except for the way in which interest under the proviso to section 18 (1) of the Acquisition of Land Act, Chapter 252 ("***the Act***") was to be calculated. On 29 July, 2022 I handed down my decision in this case with written reasons to follow. At that time I held that the 5% annual interest payable under the proviso to section 18(1) of the Act ("***the 5% Interest***") was to be calculated on the aggregate amount of the market value of the compulsorily acquired land and the 10% uplift under section 29 of the Act ("***the 10% Uplift***"). I now set out in this Judgment the reasons for my decision.

Introduction & Background

2. The Plaintiffs were the owners of various parcels and tracts of land located on John F. Kennedy Drive, Nassau, The Bahamas ("***the Property***") which were compulsorily acquired by the government under the Act to complete major road works undertaken by the Ministry of Works as part of the Airport Gateway Project.

3. Issues arose between the parties with regard to the amount of compensation payable to the Plaintiffs under the Act as a result of the compulsory acquisition of the Property.

4. Those issues were not resolved and accordingly this action was commenced by an Originating Summons filed on 1 December, 2020 seeking the following relief:

> **"1) An assessment of the total amount of the property compulsorily acquired by the Defendants;**
> **2) An Order that the First Defendant compensate the Plaintiffs for the compulsory acquisition of the Property in 2011;**
> **3) An Order that the First Defendant be made to pay interest from the date of publication of the Declaration of Intended Acquisition being 2 August, 2011 to the date of compensation at such rate pursuant to statute or as this Honourable Court deem just;**
> **4) Such further or other relief as this Honourable Court deem appropriate;**
> **5) An Order that the costs of these proceedings be paid by the Defendants."**

5. The Originating Summons was supported by the Affidavits of David F. Morley filed on 1 December, 2020 and 22 July, 2021 respectively. Mr. Morley is the President and a Director of Winterhaven Holdings Ltd., the First Plaintiff, and the Vice President and a Director of Lakeland Limited, the Second Plaintiff.

6. There was a Consent Order filed in this case on 19 May, 2021 providing, *inter alia*, that the compensation to be paid to the Plaintiffs under section 28 of the Act would be based on a market value of $10.00 per square foot for the Property. I was told by Counsel that it was subsequently agreed by the parties that (i) the size of the Property compulsorily acquired was 230,840.32 square feet; and (ii) the 10% Uplift would be calculated on the market value of the Property.

7. Therefore, at the time of the hearing before me the parties had agreed that the market value of the Property was $2,308,403.20 (230,840.32 x $10) and the amount of the 10% Uplift was $230,840.32. With regard to the 5% Interest, it was agreed by the parties that as of the date of the hearing such interest was payable for the period of 10 years, 5 months and 15 days. However, there was no agreement on the figure to be used for the purpose of calculating the 5% Interest. It was either the market value of the Property plus the 10% Uplift or just the market value. That was the issue which was before the Court for its determination.

Submissions & Discussion

8. The Plaintiffs contended that the 5% Interest was payable on the blended amount of the market value ($2,308,403.20) and the 10% Uplift ($230,840.32). On that basis their calculation as of the date of the hearing was as follows:

   Market Value of $2,308,403.20 + 10% Uplift in the sum of $230,840.32 = **$2,539,243.52**

   The Interest at 5% on $2,539,243.52 for 10 years, 5 months and 15 days = **$1,327,740.31**

   TOTAL - $3,866,983.83

9. Counsel for the Defendants submitted that the 5% Interest was payable only on the market value and not the 10% Uplift. Accordingly her calculation as of the date of the hearing was:

   Market Value of **$2,308,403.20**

   The Interest at 5% on $2,308,403.20 for 10 years, 5 months and 15 days = **$1,207,036.62**

   10% Uplift - **$230,840.32**

   TOTAL - $3,746,280.14

10. It was common ground between Counsel that the resolution of the issue before the court involved the statutory interpretation of the relevant provisions of the Act. The starting point was section 28 of the Act. That section provides that:

> **"28. In determining <u>the amount of compensation to be awarded under this Act</u> the magistrate or the court sitting with or without assessors, as the case may be, and any other assessor appointed under the provisions of this Act shall take into consideration the**

matters mentioned in paragraph (a) of this section and shall not take into consideration the matters mentioned in paragraph (b) of this section —

(a) (i) the market value of the selected land at date of the declaration made under section 6 of this Act;

(ii) the damage (if any) sustained by the persons interested at the time of awarding compensation by reason of severing such land from other land of the persons interested;

(iii) the damage (if any) sustained by the persons interested at the time of awarding compensation by reason of the acquisition injuriously affecting other property belonging to him whether real or personal in any other manner or his actual earnings;

(iv) if in consequence of the acquisition he is compelled to change his residence or place of business, the reasonable expenses (if any) of such change;

(v) any accommodation works offered by the promoters and the execution of which is to the satisfaction of the magistrate or of the court sitting with or without assessors secured to the persons interested;

(b) (i) the degree of urgency which has led to the acquisition;

(ii) any disinclination of the persons interested to part with the selected land;

(iii) any damage sustained by the persons interested which if caused by a private person would not constitute a good cause of action;

(iv) any damage which after the time of awarding compensation is likely to be caused by or in consequence of the use to which the selected land will be put;

(v) any increase in the value of the selected land likely to accrue from the use to which it will be put when acquired;

(vi) any increase in the value of unselected land likely to accrue from the use to which selected land will be put;

(vii) any outlay or improvements on selected land made, commenced or effected with the intention of enhancing the compensation to be awarded under this Act." [My emphasis]

11. Section 29 reads:

"29. In addition to the amount of compensation awarded under this Act the magistrate or the court, as the case may be, <u>shall further award</u> a sum of ten per centum on the market value of the selected land mentioned in subparagraph (i) of paragraph (a) of section 28 of this Act in consideration of the compulsory nature of the acquisition, but the provisions of this section shall not apply to any compensation given for any damage or loss sustained by reason of the taking of any selected land or by reason of severance." [My emphasis]

12. The provisions of section 18 (1) state:

"18. (1) Upon payment or tender of all the purchase money or compensation agreed or awarded to be paid and of all costs payable to the persons interested in respect of any selected land purchased or taken by the promoters; or whenever any of the respective cases shall happen wherein the money is herein authorised or directed to be paid to the Treasurer and such payment has been made to him, or, if in the opinion of the Minister it is necessary for a public purpose that possession of the selected land should be obtained by the promoters before such payment or tender, it shall be lawful for the Minister by notice in the Gazette to declare that the selected land has been appropriated for the public purpose mentioned in such notice and thereupon except as hereinafter in this section provided the selected land and the fee simple and inheritance thereof and all the estate, use, trust and interest of all parties therein shall thenceforth become vested in and become the property of the promoters for such public purpose, and the promoters may enter upon and take possession of the same, and in all cases in which delivery of possession shall be refused the magistrate may issue his warrant to any peace officer to enter upon the land the possession of which is refused or withheld and to take possession thereof and to deliver possession to such person as shall in the warrant be nominated to receive the same, being a person in that behalf appointed by the promoters, and such peace officer is

hereby authorised and required to take and deliver possession accordingly:

Provided that, if possession of the selected land be taken before such payment or tender, the promoters shall pay, in addition to the purchase money or compensation agreed to be paid or awarded to be paid, interest on such purchase money or compensation at the rate of five dollars per centum per annum from the time of the publication of such notice in the Gazette until payment of such purchase money or compensation."

13. Both Counsel referred to the case of **Collie v The Prime Minister [2012] 1 BHS J No. 18.** In that case, the applicant was seeking a declaration that he was the owner of a parcel of land in Andros which had been compulsorily acquired by the Water & Sewerage Corporation under the Act thereby giving him an entitlement to compensation under the Act. After disposing of a preliminary point and issues relating to the ownership of the property which had been compulsorily acquired, Justice Adderley identified three components to be included in the compensation payable under the Act:

> **"26. …….(1) The market value of the selected land on the date of publication in the Gazette of a Notice of Intended Acquisition pursuant to section 6 of the Act**
> **(2) ……a further 10% on the market value because of the compulsory nature of the acquisition and this premium is not to be added to any other head of compensation other than the market value (s 29).**
> **(3) If possession is taken prior to payment or tender of the compensation, interest at the rate of 5% per annum on the amount of compensation or tender from the date of publication in the Gazette of the Declaration of Vesting until payment (proviso to s 18)."**

14. At the end of his Judgment Justice Adderley set out his award in these terms:

> **"(1) Compensation in the sum of Fifty Two Thousand dollars**
> **(2) Interest at 5% per annum on that sum from 15 June 2009 until payment**
> **(3) A further sum of $5,200.00 pursuant to section 29 of the Act."**

15. It will be seen that Justice Adderley applied the 5% Interest to only the market value of the property and not to the aggregate sum of the market value and the 10% Uplift. This was in line with the submission of Counsel for the Defendants and she submitted that it was the correct approach under the Act.

16. The case of **Rolle v The Prime Minister and others [2012] 3 BHS J No. 14** was decided by Adderley J shortly after the **Collie** case. In the **Rolle** case the Government had compulsorily acquired approximately 24 acres of land in Great Exuma for the construction of Government Buildings and public utilities infrastructure. There were disputes in connection with the amount of the compensation to be paid and the party entitled to be paid under the Act. Justice Adderley referred to his earlier decision in **Collie** and specifically to the three components which are to be included in the compensation paid to the persons interested in the acquired property. The learned judge held that the market value of the property was $1,084,948.00 and at paragraph 40 he set out his calculation in this way:

> **"40 To this figure of $1,084,948 must be applied the 10% under the proviso to section 28 and the 5% to the value multiplied by the number of years since the filing of the Notice of Possession pursuant to section 16 of the Act. The calculations are set forth below:**
>
> > **Adding 10% because of the compulsory nature of the taking yields a total of $1,193,443. Adding 5 % of that from the date of vesting 26 July 2000 (12 1/3 years) yields $1,929,201."**

17. In **Rolle** the court calculated the 5% Interest on the blended amount of the market value and the 10% Uplift in line with the submission of Counsel for the Plaintiffs.

18. Justice Adderley, once again, addressed the subject of compensation under the Act in the case of **Arawak Homes Limited v The Attorney general and another [2012] 3 BHS J. No. 5.** In that case the Government compulsorily acquired three parcels of land in the Pinewood Gardens/Nassau Village area in New Providence now known as Sir Lynden Pindling Estates over a period of time for the construction of schools and a public highway. The proceedings related only to the subject of compensation under the Act leaving aside for a later date the question of who were entitled to receive the funds. There was a dispute over the methodology for assessing the market value of the property. After dealing with that issue and fixing the market value for the various parcels of land in paragraph 69 of his Judgment, Adderley J applied the 10% Uplift to the market value in each case and then in paragraph 72 calculated the 5% Interest on the blended amount of the market value and the 10% Uplift. This was in line with the approach in **Rolle** and with the submission of Counsel for the Plaintiffs.

19. Ms. Smith directed my attention to paragraph 70 of the Judgment of Adderley J. in **Arawak Homes Limited** which states:

> **"70. I now apply the applicable provisions of the Act outlined at paragraph 20 above under the discussion of The Law. It provides that because of the compulsory nature of the acquisition 10% must be added to the basic market value derived under s. 28, and to the basic value must also be added**

pursuant to the proviso to s 18 interest on the award at the annual rate of $5 per centum per annum from the date of publication in the Official Gazette of the Notice of Declaration of Vesting until payment of the compensation.

20. She submitted that paragraph 70 showed that the 5% Interest was only to be calculated on the "*basic value"* which she contended was the market value and the calculations by the judge in paragraphs 71 and 72 were in error and a "…*misapplication* [of] *the provisions of the Act."* Justice Adderley set out his calculations in paragraphs 69 – 73 of his Judgment when making the award. Those calculations were:

"**69 Applying the market value to the lots would realize the following values under section 28:**

Saddie Curtis Primary (103 lots x $8000)	**=**	**$ 824,000**
Cleveland Eneas Primary (20 lots x $8000)	**=**	**$ 160,000**
C W Saunders Highway (121 x $8000)	**=**	**$ 968,000**
Commercial Property	**=**	**$397,632.00**

70……..

71. Adding 10% (s 29) to the values yields:

Saddie Curtis Primary (824,000 +82,400) = $ 906,400
Cleveland Eneas Primary (160,000 + 16,000) = $ 176,000
C W Saunders Highway (968,000 + 96,800) = $ 1,064,800
Commercial Property = $437,395

72. Applying the s 18 proviso to the number of applicable years yields the following:

For Saddle Curtis Primary $ 906,400 plus 5% ($45,320) per annum for 13 1/2 years from 30 June 1999 equals $ 611,820

For Cleveland Eneas $ 176,000 plus 5% ($8800.00) per annum for 17 1/2 years from March 1995 equals $154,000

For Charles W Saunders Highway $1,064,800 plus 5% ($53,420) per annum for 13 1/2 years form 25 June 1999 equals $721,170

Commercial Property $437,395 plus 5% ($21,870) per annum for 17 1/2 years from March 1995 equals $328,725

73. I accordingly make the award for $4,400,310.00 comprised as follows:

	Award	Interest		Total
Saddie Curtis Primary	**906,400**	**611820**	**=**	**$1,518,220**
Cleveland Eneas Primary	**176,000**	**154000**	**=**	**$ 330,000**
C W Saunders Highway	**1,064,800**	**721170**	**=**	**$ 1,785,970**
Commercial Property	**437,395**	**328725**	**=**	**$ 766,120**
Total	**2,584,595**	**1,815,715**		**$4,400,310"**

21. There is no doubt that in applying the provisions of the Act relating to compensation in the **Arawak Homes Limited** case, Justice Adderley used the aggregate amount of the market value and the 10% Uplift to calculate the 5% Interest. One only needs to extract one example from the judge's calculations to demonstrate this point. In the case of the '*Saddie Curtis Primary*' property, the judge assigned a market value of $824,000.00. He then added the 10% Uplift of $82,400.00 giving a total of $906,400.00. At that point, he calculated the 5% Interest on the blended sum of $906,400.00 for the relevant period which was 13.5 years giving a total of $611,820.00. The result was to make an award of $1,518,220 ($906,400 + $611,820).

22. The decision of Justice Adderley in the **Arawak Homes Limited** case was appealed. The citation of the appeal is **Arawak Homes Ltd v. The Attorney General and another** [2014] 2 BHS J. No. 138. The Court allowed the appeal in part and certain of the market valuations were either adjusted or set aside and remitted for re-rehearing. Other parts of the appeal were dismissed. The calculation of the 5% Interest under the proviso in section 18(1) of the Act was not directly raised in the appeal as there was no objection taken to the general approach adopted by Adderley J in paragraph 72 of his Judgment when he calculated the 5% Interest on the blended amount of the market value and the 10% Uplift. There was no suggestion in the appeal that such an approach was either wrong in law or inconsistent with the judge's statement in paragraph 70 of his Judgment. Indeed, that approach seemed to be implicitly accepted by the Court of Appeal in the following paragraphs of the Judgment of the President when addressing the compensation payable under the Act in respect of a portion of the compulsorily acquired land:

> "**47. Subject to the respondent establishing that the appellant is not entitled to be compensated for the entire 10.766 acres of land, <u>the compensation for the land acquired in 1995 is as follows :-</u>**
> **Applying the market value to the property would realize the following values:**
>
> **Residential Property (40 lots x $8,565) = $342,600.00**
> **Commercial Property ($69,000 x 6.213 acres) = $428,697.00**

> **Adding 10 % to the market values pursuant to sec.29 of the Acquisition of Land Act yields:-**
> **Residential Property ($342,600.00 + $34,260.00) = $376,860.00**
> **Commercial Property ($428, 600.00 + $42,860.00) = $471,460.00**
>
> **48. The proviso to section 18 of the Acquisition of Land Act indicates that that where possession of the selected land should take place before payment the owners of the land shall receive in addition to <u>the awarded compensation</u> interest on such compensation at the rate of five dollars per centum per annum from the time of the publication of the notice of possession in the Gazette until payment of such compensation…….”** [My emphasis]

23. It is apparent from the above referenced paragraph 47 of the Court of Appeal Judgment that *“…the compensation for the land acquired…”* included both the market value and the 10% Uplift. Also, the sequence of the methodology outlined in the above two paragraphs seems to be, first, determine the market value, second, add the 10% Uplift and third, calculate the 5% Interest on the total amount of steps 1 and 2.

24. Counsel for the Defendants, Ms. Smith, also contended that the words “*purchase money*” are used interchangeably with the word “*compensation”* in the Act and specifically in sections 15 and 16. Ms. Rolle did not accept that position and submitted that ‘*purchase money’* was a separate and distinct term to ‘*compensation’*. She equated the term ‘*purchase money’* with ‘*market value*’ as agreed by the parties or determined by the Court under the Act and contended that ‘*compensation’* was the market value of the land plus any interest and additions thereon in accordance with the proviso to section 18 and sections 28 and 29.

25. Further, Ms. Smith submitted that ‘*compensation*’ is defined in section 28 and only includes the matters listed therein and does not include the 10% Uplift. The riposte by Counsel for the Plaintiffs was that section 28 does not define ‘*compensation*’ but outlines certain additional factors to be considered once the market value of the land is determined.

26. Counsel for the Plaintiffs cited the Privy Council case of **Bethel and Others v The Attorney General [2013] UKPC 31** in support of her contention that the 5% Interest is calculated on the blended sum of the market value and the 10% Uplift. That was a case where the appellants were challenging under the Act and the Constitution the legality of the compulsory acquisition of property belonging to them. When dealing with the Act, Lord Carnwath, writing for the Board, stated:

> **“5. Section 28 deals with <u>the principles on which compensation is to be assessed, generally based on market value (increased by 10% under section 29) and other consequential losses</u>, but**

> **disregarding certain specified matters, such as the degree of urgency of the acquisition and any increase in value due to its use after acquisition…..“** [My emphasis]

27. Counsel for the Plaintiffs submitted that the above statement of Lord Carnwath recognizes that compensation under section 28 includes the 10% Uplift and “other consequential losses.” She contended that the proviso in section 18(1) of the Act should be read in that way thereby calculating the 5% Interest on the total of the market value and the 10% Uplift.

Decision & Disposition

28. Given the limited scope of this Judgment, it is only necessary to generally summarize certain provisions of the Act. Under section 7, land can be acquired by either a private agreement to purchase, in which case the agreed ‘purchase money’ would be paid, or by compulsory purchase, in which case the compensation determined by the Court under the provisions of the Act would be paid. In cases which do not involve a private purchase and the value of the land exceeds $4,000.00, the value of the land to be compulsorily acquired and the amount of compensation to be paid for all interests therein is determined by the Court under section 15 of the Act. Section 28 provides that certain matters are to be considered while others are to be disregarded in determining the amount of compensation to be awarded under the Act. Section 29 provides for the 10% Uplift having regard to the compulsory nature of the acquisition. The provisions of section 18 govern when the ‘promoters’ can take possession of the acquired property and requires the payment of the 5% Interest if possession is taken before the payment or tender of the agreed purchase money or the compensation awarded by the Court, as the case may be. Section 36 provides that when land is vested in the promoter under section 18, a declaration of such vesting shall be made by the promoter and recorded at the Registry of Records.

29. I considered all of the provisions of the Act and specifically the above mentioned sections together with the submissions of Counsel in determining whether the 5% Interest is calculated on the market value alone or on the combined figure of the market value and the 10% Uplift.

30. I also considered the submission by Ms. Smith that the term ‘*purchase money’* is used interchangeably with the word ‘*compensation’*. It was my view that both of those expressions related to the money which must be paid upon the acquisition of the land in one or the other of the two scenarios set out in section 7; viz. a purchase by private agreement where the amount of the ‘*purchase money’* is agreed or a ‘*compulsory purchase’* where the ‘*compensation*’ (i.e. the amount to be paid by the promoters) must be assessed under the Act.

31. I did not accept the submission that ‘*compensation*’ is defined in section 28 of the Act. As stated by the Privy Council in **Bethel and Others v The Attorney General**, that section sets out the principles on which compensation is to be assessed based on certain matters and disregarding certain other specified matters. When read together with section 29, I was satisfied

that the compensation payable to the persons interested in compulsorily acquired land is the '*award'* assessed in accordance with the principles set out in section 28 together with the "*award"* of the 10% Uplift under section 29. Section 28 refers to the "*...the amount of compensation to be awarded under this Act…"* while section 29 provides that, "[i]*n addition to the amount of compensation awarded under* [the] *Act……the court…. shall further award a sum of ten per centum on the market value of the selected land."* [My emphasis]

32. Under section 2 of the Act the word '*award*' means *"the amount of compensation awarded under this Act by a magistrate either as magistrate or acting as umpire or by the court sitting alone or with assessors."*[My emphasis]. Consequently, the award under section 28 and the award under section 29 are both '*compensation awarded under* [the] *Act….'* and therefore the 5% Interest is calculated on the total amount of the two awards.

33. Counsel for the Defendant invited the Court to read the word '*compensation'* in the proviso in section 18(1) of the Act as meaning only the market value; in this case $2,308,403.20. In that case, the 10% Uplift - $230,840.32 - would not be included in the '*compensation*' awarded by the court. The first difficulty with that position is that, as I stated in paragraphs 31 and 32 above, the 10% Uplift is expressed in section 29 to be an *'award'* and under section 2 an *"award means the amount of compensation awarded under* [the] *Act…."* Secondly, if that same meaning was given to the word '*compensation*' throughout section 18, it would, in my view, lead to certain incongruities. For instance, it would mean that when that section requires that '*compensation*' is to be tendered or paid, it would not be necessary to tender or pay the 10% Uplift. Therefore, for example, under section 18(1) the promoters could take possession of the compulsorily acquired land by paying or tendering the market value (and any other amounts awarded in accordance with section 28) but not the 10% Uplift. Similarly, in the proviso itself when it states that the 5% Interest is payable *"….if possession of the selected land be taken before* ***such*** *payment or tender…"* it would mean before the payment or tender of only the amounts awarded in accordance with section 28 and not the 10% Uplift. If that were the case, the promoters could pay the 10% Uplift 10 or 20 years later without paying any interest at all under the Act. I saw no basis for such an interpretation.

34. I understood section 18(1) to work in this way. In the following three instances the Minister by notice in the Gazette can declare that the land to be compulsorily acquired has been appropriated for the public purpose mentioned in the notice and except as otherwise provided in section 18, the title and interest in that land is vested in the promoters and they may take possession of the land :

(i) upon payment or tender of all

(a) purchase money agreed if the land is to be acquired by private agreement; or

(b) compensation awarded meaning the aggregate amount of all 'awards' under

sections 28 and 29 if the land is being acquired by compulsory purchase[1]

together with all costs payable to the persons interested in the selected property; or

(ii) when the money is authorized to be paid to the Treasurer and it has in fact been paid; or

(iii) if in the opinion of the Minister it is necessary for a public purpose that possession of the land should be obtained by the promoters before the payment or tender under (i) or (ii) above.

If there is difficulty in getting possession of the land the court is empowered to issue a warrant to a peace officer to enter the land and take and deliver possession to the promoters or their nominee.

Where possession is taken in circumstances falling under (iii) above, the promoters shall pay an additional 5% interest per annum on the purchase money agreed or compensation awarded (meaning all amounts which are the subject of an award under sections 28 or 29) as the case may be, for the period specified in the proviso.

35. The proviso in section 18(1) of the Act applies when the promoters have taken the land and not tendered or paid the money which the previous owner was entitled to receive under the Act. In that situation, the previous owner does not have the land and he does not have the money which he must be paid under the Act. In those circumstances, the proviso 'kicks in' to provide the previous owner with interest on the money which is due to him under the Act until it is paid. The interest is to compensate the owner, at least partially, for the deferred payment of money which he is entitled to upon either the private sale or compulsory acquisition of the land. That is commercially efficacious and I saw no basis in the Act to interpret the proviso as only requiring interest to be paid on a part of the outstanding money and not all of it.

36. Therefore, I concluded that compensation in section 18(1) includes all awards by the court under both sections 28 and 29 of the Act. In this case, it was agreed by the parties that the 5% Interest was payable under the proviso. Accordingly, based on my reading of the Act, the **Rolle** case, the **Arawak Homes Limited** Judgments in the Supreme Court and the Court of Appeal and the general guidance in the **Bethel and Others v The Attorney General** case**,** I held that the 5% Interest was to be calculated on the sum of $**$2,539,243.52** representing the blended amount of the market value and the 10% Uplift. I did not follow the way in which the award was calculated in **Collie** as I regarded it as inconsistent with the other authorities.

37. As stated earlier in this Judgment, the parties had agreed that as of the date of the hearing the 5% Interest was payable for the period of 10 years, 5 months and 15 days. In the absence of

[1] See section 7 of the Act.

the parties agreeing on another arrangement, that time period will have to be adjusted to comply with the terms of the proviso with regard to the period when interest is payable.

38. I also ordered the Defendants to pay the costs of the Plaintiffs to be taxed if not agreed.

Dated 27 January, 2023

Sir Brian M. Moree Kt. KC