

IN THE SEYCHELLES COURT OF APPEAL

NORBERT MALVINA

APPELLANT

VERSUS

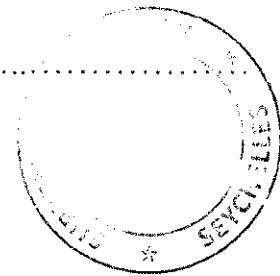
VIOLETTE LOUISE

RESPONDENTS

Civil Appeal No. 14 of 1997

(Before: Silungwe, Ayoola & Adam JJA)

Mrs. A. G. Antao for the Appellant
Mr. P. Boulle for the Respondent



JUDGMENT OF THE COURT

Delivered by Silungwe, J.A.

This is an appeal from a ruling of Amerasinghe, J., wherein he rejected the appellant’s application and ruled that the respondent had a usufructuary interest over the appellant’s land, i.e., parcels T.775, T776 and T.777.

The synopsis of the case is that the respondent is the daughter of Mrs. Viola Malvina who owned parcel T326. By a deed (exhibit X1) dated April 17, 1980, Mrs. Malvina authorised the defendant to live on the said parcel of land “and to enjoy it exclusively as if it were her own.” Subsequently, parcel T326 was subdivided into T775 (on which stands the respondent’s dwelling house), T776 and T777.

On August 28, 1990, the subdivisions of land were altogether sold to Mr. Emmanuel Mathew Malvina who in turn sold them to the appellant on April 30, 1992.

In his plaint, the appellant averred, inter alia, that the respondent was staying on his land, cultivating vegetables and rearing animals without his authorisation or compensation. Paragraph 6 of the Plaint reads:-

“The Plaintiff avers that he had several times requested the defendant to purchase the said

Parcel T775 or to pay him some form of compensation but she has refused.”

He prayed for an order, inter alia, that the respondent removes her house from his land or, alternatively, that she buys the parcel of land on which her house stands.

Although initially two grounds of appeal were filed in this case, the first one has now been withdrawn. The remaining ground alleges that -

“The learned judge erred in law in that he did not consider the provisions of the Land Registration Act and that the plaintiff is a bonafide purchaser for value without notice due to the fact that the document the respondent relied on was not registered.”

In urging us to uphold the learned judge’s ruling, Mr. Boule, learned counsel for the respondent, submits that the ruling of the learned trial judge was restricted to the narrower issue of whether the right conferred by a document - Exh. X1 at page 27 of the record - was a mere “permission to build” or a “usufructuary interest”.

Mr. Boule is entirely right in his submission. Although the Land Registration Act was adverted to by both learned counsel in their respective arguments, this was not a matter upon which the court was invited to make a ruling. In point of fact, it was counsel for the appellant who had specifically moved the trial court to consider whether the right conferred upon the respondent by the appellant’s predecessor in title was a mere “permission to build” or a “usufructuary interest” and to make a ruling thereon. The request was framed thus:-

“However, my learned friend and I were negotiating a settlement but there is one point only that we need the court to thrash for us and that is whether this document has created a rather than a mere permission to build which would go under Article 555 whether it does create a usufructuary interest. That is all we need the court to decide.”

In his ruling, Amerasinghe, J, said (inter alia):

“Although the parties to this action have negotiated for an amicable settlement, the disagreement on the force and effect of the document X1 has prevented them from arriving at a settlement. Hence the parties have sought the opinion of the court. The resolution of the dispute will be directed towards determining whether interests of the parties are based on the application of Article 555 or Article 578 of the Civil Code. Mr. Bonte for the plaintiff contends that in spite of the authority given in X1 for the defendant to live on land parcel T326 and to enjoy it exclusively as if it were her own, the construction of a house by the defendant on the said land with the authority of the owner who is her mother creates only an interest in the house and therefore Article 555 applies. Mr. Boule on the other hand finds that the intention of the defendant’s mother as expressed in her writing before a Notary in exhibit X1 creates a usufruct. He quotes Article 579 of the Code and submits that -A usufruct is created by law or the will of the parties.”

Article 578 of the Civil code defines “usufruct” as “the right to enjoy property which belongs to another as the owner himself, but subject to the obligation to preserve its substance.” And in the words of Professor Chloros in his Codification in a Mixed Jurisdiction - The Civil and Commercial Law of Seychelles - 1977 Edition at page 79:-

“In essence the usufruct is often equivalent to a life interest, but it may, of course, be created for a shorter period and, in the case of a legal person, it cannot extend beyond thirty years.”

Amerasinghe, J., accepted Mr. Boule’s argument that exhibit X1 which pertains to Parcel T326 and authorises the defendant (respondent) “to live on

the said land and to enjoy it exclusively as if it were her own" provides all the ingredients necessary to create a usufruct in accordance with the Civil Code.

We are satisfied that Amerasinghe, J. was not at all in error by confining himself to the only issue upon which he had been invited to make a ruling. Thus, his pronouncement to the effect that exhibit X1 created a usufructuary interest in the respondent's favour is impeccable. In any event, this was simply a ruling on a preliminary and specific issue submitted to the trial court for the sole purpose of seeking its guidance with a view to facilitating the parties' negotiations for a settlement.

It follows from what we have said above that the appeal must fail. Accordingly, the appeal is dismissed with costs in the cause.

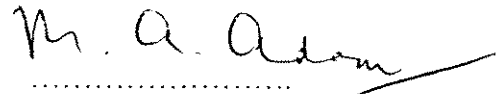
Dated at Victoria this 5th day of December, 1997.



.....
A.M. SILUNGWE
JUSTICE OF APPEAL



.....
E.O. AYoola
JUSTICE OF APPEAL



.....
M. A. ADAM
JUSTICE OF APPEAL

Handed down

Adam J A