

IN THE SEYCHELLES COURT OF APPEAL

MR. CEDRIC PETIT
MR. GEORGES LEFEVRE

1ST APPELLANT
2ND APPELLANT

versus

MRS. MARGITTA BONTE

RESPONDENT

Civil Appeal No: 36 of 1998

[Before: Ayoola, P., Pillay & De Silva, J.J.A]

Mr. P. Boulle for the Appellant
Mr. F. Elizabeth for the Respondent



JUDGMENT OF THE COURT

(Delivered by Ayoola, P.)

By a document dated 29th day of May 1997 titled "EXPARTE MARGITTA Bonte – Applicant" to which was attached an affidavit, Margitta Bonte, the respondent in this appeal prayed for declaration that property described as Parcels J203 and J204 belongs to her by virtue of a promise of sale made between her and one Mr. Georges Lefevre, her former husband and that she has "sole right of possession and occupation" of the said property "as against Mr. Cedric Petit and anyone else claiming any such right through him in the light of the judgment of the Seychelles Court of Appeal."

At the Supreme Court, the ensuing proceedings were treated both by that Court and Learned Counsel for the respondent as a motion for the declarations sought. After hearing argument of counsel for the respondent and advertng to the documentary evidence in support of the motion the Supreme Court ruled as follows:-

“I therefore declare that Mr. Georges Lefevre having divested himself any interest in parcels J203 and j204 that Mrs. Margitta Bonte is the sole owner thereof by virtue of the above. Accordingly she not only has exclusive right of possession but ought to be registered as the rightful owner of the said parcel in terms of Section 75 of the Land Registration Act.”

By way of consequential order, the Registrar General of Land was directed to register the respondent as the rightful and sole owner of the parcels “to the exclusion of the world.”

The entire proceedings in the Supreme Court were conducted ex parte. Neither Georges Lefevre who was alleged to have made a promise of sale nor Mr. Cedric Petit against whom the respondent had sought a declaration of “sole right of possession and occupation of the said property” were made parties to the proceedings.

By order made by this Court Mr. Georges Lefevre and Mr. Cedric Petit were granted leave to appeal as interveners from the decision of the Supreme Court.

The issues which are decisive of this appeal are (I) whether proper procedure has been adopted by the respondent in initiating proceedings in the Supreme Court and (ii) whether it was proper for the proceedings to have been conducted ex parte. In regard to the former, Mr. Boule, learned counsel for the 1st appellant, argued that the proceedings had no basis in law and are foreign to the procedural laws of Seychelles or to the inherent jurisdiction of the Supreme Court. Mr.

Elizabeth, learned counsel for the respondent, conceded that he was not aware of any law which permitted such proceedings to be initiated by a motion. In regard to the latter, Mr. Boulle argued that the proceedings are flawed as they violated the constitutional rights of fair hearing guaranteed by Article 19(7) of the Constitution and the audi alteram partem rule. Respondent's counsel's feeble response to the latter point is that the evidence on which the Supreme Court had relied was overwhelming.

It is evident that the issues on this appeal do not require a consideration of the cogency of the evidence before the Supreme Court, the paramount question being whether what had been initiated had been proper proceedings within the law. There being no argument that the proceedings had been commenced pursuant to any statutory provisions that directed such to be commenced by motion, recourse must be had to the Seychelles Code of Civil Procedure (the Code) to determine the main question. Section 23 of the Code provides that every suit shall be instituted by filing a plaint in the registry. Section 26 of the Code provides that on receipt of the plaint the Registrar shall enter specified particulars of the parties in the register of Civil and Commercial suits. By Section 30 of the Code summons are issued by the Registrar after the plaint shall have been so entered. By virtue of Section 121 of the Code, incidental demands may be made by motion, but these proceedings do not concern incidental demands. The Statute books abound with instances when originating applications or petitions can be made to the Court, but this particular case in which declaratory reliefs are sought has not been shown to fall within any of those instances.

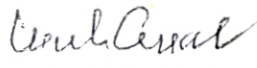
The result is that the procedure adopted by the respondent to invoke the jurisdiction of the Supreme Court to grant a declaratory


relief is not only unknown to the law but also contrary to the clear provisions of Section 23 of the Code. Besides it is clear that such proceedings which may affect the rights and interests of others should not have been conducted ex parte. It is not enough to say that the others have no title, rights or interests or that they may have no reasonable defence to the action. Once there is a dispute regarding the subject-matter of litigation, all parties who may be affected by the decision of the Court must be made parties thereto and given an opportunity of being heard. It is for the Court and not for the plaintiff or applicant to determine whether or not the other parties have any reasonable defence. In the recent case of David v Land Register (Civil Appeal No. 36 of 1997 – 9.4.98) this Court held that an application to the Supreme Court for rectification of Land Register dealt with without notice to anyone including the appellant was heard in breach of the audi alteram partem rule and in contravention of the right of fair hearing guaranteed by Article 19(7) of the Constitution. The same conclusion must be reached in this case.


We feel no hesitation in upholding the contention of the appellants on both issues earlier stated. The proceedings before the Supreme Court are a nullity because they were commenced by procedure unknown to law and because the persons whose interests may be affected were neither made parties nor given an opportunity of being heard. In the result the appeal must be allowed and the decision of the Supreme Court set aside. The entire proceedings are struck out.

We do add, of course, that the respondent is at liberty to initiate appropriate proceedings in the proper manner and against the proper parties. In the eventuality of her doing so it is expedient that such suit be expeditiously disposed of so that this long standing matter be speedily resolved.

Be that as it may, the appeal is allowed. The decision of the Supreme court is set aside and the entire proceedings are struck out. The appellants are entitled to costs of the appeal.


E.O. AYoola
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 13th day of April 1999.