IN THE SEYCHELLES COURT OF APPEAL

ANTONIO MORIN **APPELLANT**

VERSUS

MARY DUBIGNON **RESPONDENT**

Civil Appeal No: 7 of 1999

[Before: Ayoola, P., Pillay & Matadeen, JJ.A]

.....

Mr. P. Pardiwalla for the Appellant
Mr. A. Derjacques for the Respondent

JUDGMENT OF THE COURT

(Delivered by Pillay, J.)

There was an application made by the respondent to the Supreme Court for a writ habere facias possessionem against her son, the appellant, on the ground that the latter was illegally occupying a house over which the respondent enjoyed usufructuary rights, by reason of his licence to stay therein having been revoked by the respondent.

The appellant, for his part, claimed that he had a bona fide and serious defence since –

(1) he was a lessee under the Control of Rent and Tenancy Agreements Act (Cap 47) and the Supreme Court had consequently no jurisdiction to grant the relief sought by the respondent; and

(2) he had «a droit of superficie» in respect of the house he was occupying, having paid for its construction and renovation.

The trial Court granted the application. It rejected the second claim of the appellant regarding his «droit de superficie» and said, in respect of

the first claim of the appellant that he was a lessee of the respondent, the following –

> «As regards the claim of tenancy raised by the respondent in his affidavit, I find it to be only a self-serving averment that is proved to be untrue and incorrect. In fact, while he testified the respondent in the court below admitted that he was not occupying the house as a tenant. Hence I find on evidence that the respondent is not a tenant of the house but only a licensee for all legal intents and purposes» (the underlining is ours).

For the purposes of this appeal, we need only consider the submissions of learned Counsel for the appellant who contended that, by virtue of the underlined part of the judgment of the trial Court quoted above and Section 2 of Cap. 47, the appellant was a lessee in that he enjoyed "the use and occupation of the dwelling-house" whether an indemnity was payable or not and consequently was in lawful occupation of the house and had a serious and bona fide defence. Counsel also, in this connection, referred to **Barbe v Ernesta (1986) SLR 69** where the Court of Appeal held that the summary procedure of habere facias possessionem before the Supreme Court is not appropriate insofar as a lessee of a dwelling house is concerned, as defined in Cap 47.

We consider that the submissions of learned Counsel for the appellant are well-taken in the circumstances. We allow the appeal, quash the order made by the trial Court, and substitute therefor, one dismissing the application.

E. O AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 17 day of December 1999.