

IN THE SEYCHELLES COURT OF APPEAL

**MARIE HUNT**

**APPELLANT**

V/S

**JANE HUNT**

**RESPONDENT**

**SCA07/2010**

=====

*(Before: Fernando , Twomey and Msoffe, JJ*

**Counsel:** Mr F. Ally and Ms. N. Alton for the Appellant

Mr F. Bonte for the Respondent

**JUDGMENT**

**MSOFFE. J.A,**

This is an appeal from the decision of the Supreme Court of Seychelles (Renaud, J.) whereby judgment was entered in favour of the Respondent ,then Defendant, in an action instituted by the Appellant, then Plaintiff, on 6<sup>th</sup> March 2007 praying to the court:-

- (i) To declare that the document of assignment of lease is ineffectual , unlawful and fraudulent.*
- (ii) To annul and set aside the purported assignment of lease.*
- (iii) To order the Defendant to vacate the premises.*

- (iv) To order the Defendant to pay the Plaintiff damages in the sum SR.100,000.00*
- (v) Further and alternatively to prayers (i) to (iv):*
  - (i) To appoint three (3) experts to submit a report to the Court on the value of the lease at the time of the purported assignment or transfer;*
  - (ii) To declare that there is a lesion of more than one half of the value of the lease,*
  - (iii) To rescind the purported assignment and transfer of the lease to the Defendant on grounds of lesion, and*
  - (iv) To restore the Plaintiff as lessee of title V4603*
  - (v) To make such other order that the Court shall deem fit in the circumstances of the case, the whole with costs.*

At all material times, the parties have been a mother and a daughter, respectively. The Appellant has contended all along that she did not assign or transfer a lease of title V4603 to the Respondent and that she did not execute any document of transfer to or assignment of lease in the presence of Mr. Freddy Savy and Mr. France Bonte Attorney-at-Law or any Attorney-at-Law or Notary. She further contended that the document titled "Assignment of Lease" registered on the 13<sup>th</sup> September 2002 does not conform to the Land Registration Act and as such it is ineffectual to create or transfer any right or interest in Title V4603 in favour of the Respondent. She also pleaded that the document is unlawful and was fraudulently altered without her knowledge and consent. In her view, the

Respondent has been in occupation of the premises for a period of over two years without any right or title and should therefore be evicted therefrom.

On the other hand, the Respondent's case has always been that the Appellant asked her, as her daughter, to buy her lease rather than have it sold to an outsider. The Appellant agreed to sell her lease and the agreement to that effect was executed before Mr. Savy and Mr. Bonte with her full knowledge and consent. The hotel on the premises in question has been managed by several persons and the last persons to run it were Bernard and Rose Petit. The Appellant's instructions to her were to take the hotel once the "Petits" were out lest she would sell her lease to an outsider. Since April 2005 the "Petits" handed over the keys of the hotel to her. From that time she has invested a lot of money in the hotel but she is still struggling to make ends meet.

The appellant claimed to have suffered damages which she quantified as SR 100,000.00. Alternatively, she pleaded that the purported transfer or assignment should be rescinded on grounds of lesion.

The starting point is exhibits P1 and P2 titled "Assignment of Lease" and "Transfer of lease", respectively. Exhibit P1 reads:-

**THE LAND REGISTRATION ACT**

**ASSIGNMENT OF LEASE**

**Title No V.4603 (Four Six Zero Three)**

I, MARIE CELINE HUNT nee BERICHON of Sans Souci, Mahe, Seychelles, hereinafter referred to as the "TRANSFEROR" in consideration of Rupees Seven hundred thousand (Rs.700,000) payable by monthly instalments of Rupees Two thousand Five hundred (Rs,2,500) hereby assign to JANE MONICA HUNT of La Misere, Mahe, Seychelles, hereinafter referred to as the "TRANSFEE" the lease of the land comprised in the abovementioned title (the abovementioned lease was registered in volume TB.8 No 36 dated 10<sup>th</sup> May 1976 registration volume B.30 No 116, repertory Volume .33 no 26) and subject to the sub-lease with Rose Petit and Bernard Petit dated 12<sup>th</sup> February 2000, the benefit of which sub-lease is automatically transferred to the said JANE MONICA HUNT.

Dated this 22<sup>nd</sup> day of March 2002

TRANSFERORS

TRANSFEE

Signed by the said MARIE HUNT and JANE MONICA HUNT,  
who are known to me, in my presence:

And Exhibit P2 reads:-

**THE LAND REGISTRATION ACT**

**TRANSFER OF LEASE**

**Title No V.4603 (Four Six Zero Three)**

I, MARIE CELINE HUNT nee BERICHON of Sans Souci, Mahe, Seychelles, hereinafter referred to as the "TRANSFEROR" in consideration of Rupees Seven hundred thousand (Rs.700,000) payable by monthly instalments of Rupees Two thousand Five hundred (Rs,2,500) hereby assign to JANE MONICA HUNT of La Misere, Mahe, Seychelles, hereinafter referred to as the "TRANSFEE" the lease of the land comprised in the abovementioned title (the abovementioned lease was registered in volume TB.8 No 36 dated 10<sup>th</sup> May 1976 registration volume B.30 No 116, repertory Volume .33 No 26) and subject to the sub-lease with Rose Petit and Bernard Petit dated 12<sup>th</sup> February 2000, the benefit of which sub-lease is automatically transferred to the said JANE MONICA HUNT.

Dated this 22<sup>nd</sup> day of March 2002

TRANSFERORS

TRANSFEE

Signed by the said MARIE HUNT and JANE MONICA HUNT,  
who are known to me, in my presence:

As correctly found by the judge, although exh. P1 is titled "Assignment" it is actually a "transfer" of lease as the parties are referred to as "Transferor" and "Transferee". The judge made findings in relation to the law governing dispositions of land, particularly sections 57 (1), 60(1) and 68 (1) of the Land Registration Act (the LRA). He also observed that exhibit P1 is a substantial replica of exh. P2 except for a few notable differences which he duly set out in the judgment. At the end, he made the following findings:-

"It is evident that exhibit P1 is a document signed by the plaintiff in the presence of Mr. Frederick P.J Savy on 22<sup>nd</sup> March 2002. The Plaintiff admitted that a copy of what she signed was given to her. The same document was then signed by the defendant before a notary during the interval between 13<sup>th</sup> September 2002 when it was registered. The alteration in the heading of exh. P1 must have taken place during the interval. On the basis of evidence I find that this document was signed by the plaintiff in the presence of Notary Mr. Bonte.

In conclusion on the above point, the judge observed that exh. P1 and/or exh. P2 purporting to transfer or assign the lease of title V4603 is not a lease because it was not drawn up in compliance to section 60(1) of the LRA. He went on to hold that this was an agreement for a lease in terms of Article 1714 of the Civil Code of Seychelles.

With respect, the judge did not err in law. Section 57 (1) of the LRA is clear that every disposition must be effected by an instrument in the prescribed form. Under Section 60 (1) thereto the instrument evidencing a disposition and executed in Seychelles must be executed in the presence of a notary, barrister etc. The words used in both provisions is "shall" which is imperative that the function stated must be done. As stated in Francis v Pillay SCA 20/2004, LC 277, a lease which is not created in accordance to the LRA is ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or charge.

Having made a finding that the document was not drawn in line with section 60 (1) of the LRA the judge was correct in holding as follows:-

*Although the document entitled "Assignment of Lease" registered on the 13<sup>th</sup> September 2002 does not conform to the provisions of the Land Registration Act and such being ineffectual to create or transfer any real right or interest in title V 4603 in favour of the defendant, it is an agreement for lease which effectively confers personal rights onto the defendant in title V4603....*

It is also correct in law that, being an agreement for a lease, the agreement in question only conferred personal rights between the parties – See Article 1718 of the Civil Code of Seychelles and Francis v Pillay (*supra*).

It may also be worthwhile to mention here that further proof of the assertion that this was an agreement for a lease is implicit in the provisions of Article 1605 of the Civil Code in that the appellant as lessor delivered the property to the Respondent when she allowed her the keys of the building on the property. The Respondent's position is implicitly reinforced further by Article 1607 of the Code since the Respondent used the property with the consent of the appellant for a fairly long period of over two years before she took action. By her conduct, it is clear that the Appellant knew that this was an agreement for a lease to the Respondent.

Without prejudice to the foregoing, there is a very serious, fundamental and pertinent problem in the case. When the assignment/transfer of lease (Exh.P1 and Exh P2) was signed on 22<sup>nd</sup> March 2002 it was subject to the sub-lease with Rose Petit and Bernard Petit dated 12<sup>th</sup> February 2002 (exh.P3) which was "for a term of five (5) years with option to renew for a further three (3) years". After the assignment/transfer the Respondent continued to manage the property. In April 2005 the "Petits" handed over the property to the Respondent. The plaint was filed in court on 5<sup>th</sup> March 2007.

On 29<sup>th</sup> October 2008 the Appellant was cross-examined by Mr Bonte on the above aspect of the case thus:-



*Q. But by this document which says 22<sup>nd</sup> March 2002 it says that and you filed your case on the 5th March 2007?*

*A. Yes.*

*Q. 2002 went, 2003 went, 2004, 2005, 2006, 2007 that is when you decided to put the case into court? After 6 years.*

*A. I decided long ago but I didn't do it.*

*Q. You came to court 6 years later, 6 years your daughter entered the property to you live far from Mountain Rise hotel?*

*A. No.*

By the above sequence of events it follows that when the plaint was filed on 5<sup>th</sup> March 2007 there was actually no subsisting lease between the Appellant and the Respondent. The lease, if any, expired after the Appellant allowed the Respondent to occupy the property and to run it. In the process, she also continued to receive rent from the Respondent. In effect, it is also true that the lease expired on 12<sup>th</sup> February 2004 when the lease to the Petits (which was for five years) came to an end. Indeed, the law in Seychelles is clear that a lessee retaining possession after the termination of tenancy is a statutory tenant – See *Souris Vs. Pool* Civ 167/1994, June 1995. As it is therefore, since then the Respondent is a statutory tenant for which if the Appellant wished she could have

proceeded against her under Section 10(1) of the Control of Rent and Tenancy Agreement Act (Cap 47) by applying to the Rent Board for an order of ejection. The Appellant can still do so if she wishes. The remedy was/is not to file a separate suit for lesion as suggested by the judge in his judgment subject of this appeal.

The appeal is dismissed with costs.

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**J.H. MSOFFE**  
**JUSTICE OF APPEAL**

I concur:

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**T. FERNANDO**  
**JUSTICE OF APPEAL**

I concur:

.....

**M TWOMEY**  
**JUSTICE OF APPEAL**

***Dated this 31<sup>st</sup> August 20120, Victoria, Seychelles***