

IN THE SEYCHELLES COURT OF APPEAL

Reportable

[2021] SCCA 65 17 December 2021
SCA 38/2019 SCSC 428 (arising in
CS 18/2016)

In the matter between

MARYVONNE MOREL
(rep. by Kelly Louise)

Appellant

and

YU PING LEE
(rep. Serge Rouillon.)

Respondent

Neutral Citation: *Morel v Yu Ping Lee* ([2021] SCCA 65 17 December 2021 SCA 38/2019
(Arising in CS 18/2016) SCSC 428

Before: Fernando, PCA, Twomey JA, Robinson JA

Summary: Appeal against the decision of Supreme Court, which granted a right of way to respondent – enclaved land- existing secondary road- qualifications regarding usage of existing secondary road

Heard: 3 December 2021

Delivered: 17 December 2021

ORDER

The appeal is dismissed with costs.

JUDGMENT

TWOMEY JA,

Introduction

[1] This is an appeal against the decision of the Supreme Court, which granted Yu Ping Lee (the Respondent) a right of way across Parcel V12365, Maryvonne Morel’s (the Appellant) property, to access her property, Parcel V12546, from the public road.

Background to this case

[2] The Respondent and the Appellant owned neighbouring properties, but the Respondent’s property, Parcel V12546 was enclaved. There already existed a secondary motorable road

from the public road across the Appellant's property, Parcel V12365 to the Respondent's land. That road running along the northern boundary of the Appellant's and continuing west of both parties' properties had been built and maintained by the government to serve the residents of Bel Eau Flats.

[3] The Respondent sued the Appellant for the use of the existing secondary road as a right of way to her property. It was the Appellant's defence that the Respondent had never approached her for a right of way and that the latter had been in any case using the secondary road as a right of way in an unreasonable way causing it to deteriorate. She prayed for a dismissal of the Respondent's action

[4] In her 'personal answers', the Appellant made judicial admissions regarding, inter alia, the enclavement of Parcel V12546, the existing right of way and its continuous use by others for over 30 years. The Supreme Court thereafter ordered, in pursuance of the provisions of Article 682 and 683 of the Civil Code, that a right of way across Parcel V12365 be permitted to access V12546.

[5] From this decision the Appellant has appealed to this Court on the following two grounds:

(1) The learned judge erred in holding that the access road used by the inhabitants of the Bel Eau Flats is a "public road" when in fact this road was to be used only by the Bel Eau Flats inhabitants and their guests and not the public at large.

(2) The learned judge erred finding that the nature and ordinary function of the appellant's property was commercial and that the commercial activities may be carried out on the property as a result, when in fact the property and the surrounding neighbourhood is residential by nature and therefore activities should be confined to those of a residential nature.

[6] It was conceded by Counsel for the Appellant at the appeal, that since the Respondent's land was enclaved and that there was an existing right of way which was both direct and near her land, the orders of the court were in accordance with the provisions of the law and could not be faulted.

Submissions of parties on the appeal before this court

- [7] With respect to the grounds of appeal raised, Ms. Louise, Counsel for the Appellant submitted that the right of way granted to Yu Ping Lee was a road built by the government only to serve the residents of Bel Eau flat and their visitors. She maintained that the Respondent had never approached the Appellant to use the road.
- [8] She also submitted that the court had erred in finding that commercial activities could be carried out on the Appellant's land when the surrounding neighbourhood was residential.
- [9] Mr. Rouillon, Counsel for the Respondent, submitted that the Respondent was entitled to a right of way by operation of the law on the side of the Appellant's property by which access would be the shortest and cause the least damage. The existing secondary road provided such access.

The applicable law

- [10] The law as correctly referred to by the court below is found in the provisions of Articles 682 and 683 of the Civil Code:

Article 682

1. The owner whose property is enclosed on all sides, and has no access or inadequate access on to the public highway, either for the private or for the business use of his property, shall be entitled to claim from his neighbours a sufficient right of way to ensure the full use of such property, subject to his paying adequate compensation for any damage that he may cause.

...

Article 683

A passage shall generally be obtained from the side of the property from which the access to the public highway is nearest. However, account shall also be taken of the need to reduce any damage to the neighbouring property as far as possible.

Discussion

- [11] In light of the clear provisions of the law set out above, and the concession made by Ms. Louise with regard to the evidence in this case, there is little for this Court to add.

[12] Neither of the grounds of appeal has any bearing on the central issue of this case, which is whether a right of way should be granted to enclaved land. As the answer is a resounding yes, whether there are qualifications to the use of the existing secondary road by third parties or whether the Respondent is carrying out commercial activities on her property are of no consequence.

The decision of this court

[13] This appeal was ill-advised, as was the action in the court below given the clear provisions of the law and the unfavourable evidence in the Appellant’s case. The appeal is devoid of merit.

Order

[14] The appeal is dismissed with costs

Signed, dated, and delivered at Ile du Port on 17 December 2021.

Dr. Mathilda Twomey, JA

I concur

Anthony Fernando, President

I concur

F. Robinson, JA