

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA 68 17 December 2021

Consolidated numbers:

SCA CL 01/2021

SCA CL 02/2021

SCA MA 17/2021

(Appeal from CP 08/2018)

GOVERNMENT OF SEYCHELLES

(rep. by Mr. Frank Ally)

Appellant

And

PHILIPPE JUMEAU

(rep. by Mr. Wilby Lucas)

Respondent

THE ATTORNEY GENERAL

(rep. by Mrs. Nissa Thompson)

Respondent

PHILIPPE JUMEAU

(rep. by Mr. Wilby Lucas)

Cross-Appellant

and

GOVERNMENT OF SEYCHELLES

(rep. by Mr. Frank Ally)

1st Respondent

THE ATTORNEY GENERAL

(rep. by Mrs. Nissa Thompson)

2nd Respondent

Neutral Citation: *Government of Seychelles v Jumeau & Anor* (Consolidated numbers: SCA CL 01/21 – SCA CL 02/2021 and SCA MA 17/2021) [2021] SCCA 68 (Arising in CP 08/2018)
17 December 2021

Before: Fernando President, Twomey JA, Tibatemwa-Ekirikubinza JA, Dingake JA, Esparon JA

Summary: Compulsory acquisition of land – remedies under Part III of Schedule 7 to the Constitution; calculation of deductions- locus standi

Heard: 6 December 2021

Delivered: 17 December 2021

ORDER

- (a) The Appellant’s appeal succeeds and the impugned judgment of the court below is hereby quashed and set aside in its entirety.
 - (b) The Respondent’s cross-appeal is without merit and it is dismissed in its entirety.
 - (c) There is no order as to costs.
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JUDGMENT

DR. O. DINGAKE, JA

INTRODUCTION

- [1] This is an appeal against the decision of the Constitutional Court in which it held that the Respondent did not receive full and fair compensation for four parcels of land acquired before the 1993 Constitution and awarded the Respondent SCR 30,700,200.
- [2] The Respondent (Mr Jumeau) has filed a Cross-Appeal against part of the Constitutional Court’s decision and seeks relief specified in paragraph 3 of the Notice of the Cross-Appeal, namely that a Villa on one of the parcels of land acquired was not valued for the purposes of compensation.
- [3] The disposition of this matter turns on a very narrow compass. The questions that sharply fall for determination are whether: (i) the court below was correct to find as it did that the Respondent was not fully compensated for the compulsory acquisition of J320 at Port Glaud, Mahe and V1970 at Mont Fleuri, Mahe and (ii) with respect to parcels V370 and V375 at Beau Vallon, Mahe that the Respondent had locus standi to bring a claim under paragraph 14 of Schedule 7 to the constitution?

THE FACTS

- [4] The dispositive facts of this appeal bears stating briefly: the Respondent's claim arose following the Government of Seychelles (the Government) compulsorily acquiring four parcels of land from the Respondent, namely: J320, V1970, V370 and V375. Simply for convenience I refer to the Government of Seychelles throughout this judgment as the Government.
- [5] The said acquisition was done pursuant to the Lands Acquisition Act, 1977, prior to the coming into force of the 1993 constitution.
- [6] The Respondent aggrieved by the decision of the Government of Seychelles to acquire the parcels of land aforesaid brought proceedings before the Constitutional Court, contending that the Government of Seychelles contravened paragraph 14 of Schedule 7 to the constitution.
- [7] Before the Constitutional Court, the Respondent claimed, in relation to parcels J320 and V1970 that he was not compensated for the acquisition of the above parcels whilst the Government contended he was. In its pleadings the Government contended that the Respondent was given SCR 1,400.000 and parcel V5093 in part exchange as full and final compensation for the above parcels of land.
- [8] The Constitutional Court found that compensation in the amount alleged by Government was not effected and that even if it was, it would be inadequate. The court also held that the Respondent had locus standi to bring the claim, at the time he did, with respect to parcels V370 and V375.

CONSIDERATION

- [9] On the evidence filed of record and the Respondent's concessions in this court there is no need to interrogate the question whether the Government paid SCR 1,400.000 as alleged at length because before this court the Respondent has conceded receiving same. The failure to disclose this at all material times before the court below may well suggest that the Respondent litigated in bad faith and sought to mislead the court.

- [10] Ordinarily where a litigant is found to have deliberately withheld critical information to the court, adverse consequences for such conduct may follow. In this case such a finding cannot authoritatively be made. We nevertheless emphasise that litigants ought to litigate honestly at all times and aid the court in doing justice to the parties.
- [11] On the evidence filed of record we are satisfied that the Respondent was fully compensated for the acquisition of parcels J320 and V1970, in full and final settlement of the matter.
- [12] Nothing more needs to be said in relation the compensation with respect to the above pieces of land. The Respondent on the evidence availed to us is not entitled to any further compensation with respect to the acquisition of parcels J320 and V 1970, and we so hold.
- [13] We turn now to consider the issue of *locus standi* with respect to the other parcels of land.

LOCUS STANDI

- [14] The Constitutional Court found that the petitioner had sought compensation under the Lands Acquisition Act, 1977 for his properties even before the Constitution came into force on 21st June 1993. The Court came to this finding based on the various Letters in which the Respondent sought compensation (see paragraphs [37]-[40] of the Judgment). The letters make reference to parcels V370 and V375.
- [15] At paragraph 36 the court below found that parcels V370 and V375 were compulsorily acquired on the 7th of May 1985.
- [16] Paragraph 14 (1) (a) of Schedule 7 of the Constitution sets out the requisites for applications in relation to land that has been compulsorily acquired by the Government. It provides as follows:

“ 14.(1) the State undertakes to continue to consider all applications made during the period of twelve months from the date of coming into force of this Constitution by a person whose land was compulsorily acquired under the Lands Acquisition Act, 1977

during the period starting June, 1977 and ending on the date of coming into force of this Constitution and to negotiate in good faith with the person with a view to -....”

- [17] We have perused through the record with a fine comb. We could not find any evidence establishing that the Respondent brought the application contemplated under the above cited provision within the twelve months period stipulated therein or at any time thereafter.
- [18] We are also of the considered view that the Respondent failed to comply with rule 4 (1) (b) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution Rules. This is so because even if the Petitioner (Respondent) had sought compensation under the Lands Acquisition Act, 1977 for his properties, before the Constitution came into force on the 21st June 1993, negotiations appear to have continued between the Appellant and the Respondent after the coming into force of the 1993 Constitution.
- [19] In our view the above indicates that the State continued to consider the Petitioner’s applications as if made in accordance with Paragraph 14 (a) of Schedule 7 of the Constitution. What is of importance in this case is that the Petitioner did not bring his action after the breakdown of the negotiations between him and the State, within the prescriptive time period set out in rule 4 (1) (b) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules. On the evidence, it appears that there had been a total silence of nearly twenty (20) years.
- [20] It follows in our view that the Respondent having failed to meet the essential condition of the applications contemplated by the constitution, combined with his non –compliance with rule 4 (1) (b) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules is ill-suited to bring this application. The court below, having failed to consider the above, with respect, erred in holding that the Respondent had *locus standi* to bring the suit he did.

[21] The Respondent having failed to bring himself within the protective wings of the constitution, under which he sought refuge means he has no *locus standi* to bring the claims he did as contended by the learned Attorney General and we so hold.

CROSS-APPEAL

[22] The Respondent, in his cross-appeal complains, that the Constitutional Court failed to consider compensation for the Villa on land V1970; and pronounce itself on documentary evidence that the Villa attracted a monthly rent which is a guidance to assess the value of the Villa.

[23] He also complains that the court below failed to award compensation for a vehicular access road built on land V370 prior to its acquisition; consider loss of revenue for the rent of the Villa; enforce the order of 25th of February 2020 in which the Court ordered the Government to ensure and ascertain whether there are Government owned properties corresponding in value to parcels J320, V370, V375 and V1970.

[24] Lastly, the Respondent complains that the court below failed to transfer V1970 back to the Respondent for the reason that the purpose of its acquisition has been frustrated and remained undeveloped.

[25] There is no merit to any of the above grounds. In our view the issue of the value of the Villa is related to the issue earlier discussed about the parties hereto having entered into an agreement to settle the matter fully and in final terms.

[26] In a nutshell the Respondent has not established by any cogent and credible evidence that the value of the Villa was not taken into consideration in the agreement the parties executed when he accepted payment in full and final settlement in 1995.

[27] In the result the cross –appeal is liable to be dismissed as we hereby do

COSTS

[28] It is trite law that costs follow the event and that ordinarily the Appellant being the successful party in this litigation would be entitled to costs. However, the general trend is that in constitutional matters courts should not be too quick to condemn the losing party to costs. It is for this reason that we take the view that each party must pay its costs.

[29] In all the circumstances of this case we make the following formal orders:

- (a) The Appellant's appeal succeeds and the impugned judgment of the court below is hereby quashed and set aside in its entirety
- (b) The Respondent's cross-appeal is without merit and it is dismissed in its entirety
- (c) There is no order as to costs.



Dr. O. Dingake, JA

I concur

Fernando President

I concur

Dr. M. Twomey, JA

I concur

Dr. L. Tibatemwa-Ekirikubinza, JA

I concur

D. Esparon, JA

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