

**Rose v Monnaie & Or
(1997) SLR 186**

Philippe BOULLE for the Plaintiff
Bernard GEORGES for the Defendants

Ruling delivered on 27 January 1997 by

BWANA J: The main issue before Court is that of trespass. The defendants are being sued for having trespassed to the plaintiff's land by firstly, unlawfully causing works to be carried out on parcel PR319 and constructing a retaining wall which encroaches on the plaintiff's land. Secondly, that the defendant has continuously trespassed on parcel PR319 by walking and/or driving motor vehicles thereon to reach parcel PR320.

In the course of examination in chief of the defendant, a question was raised as to whether he had trespassed into the land of the plaintiff by building a wall and a drive way on there without permission. To that, Mr Boule, counsel for the plaintiff, objected on the ground that consent to build is a juridical fact or juridical event which may never be proved orally. A number of authorities were cited, including article 1341 of the Civil Code.

In his reply Mr Georges, counsel for the defendant, submitted that article 1341 does not apply to cases of tort as in the instant case. Oral evidence is allowed in all cases of tort without exception.

It is my considered view that the principle governing the issue at hand is clearly discussed by Sauzier J in his booklet Introduction to the Law of Evidence in Seychelles. In chapter 2 thereof, it is stated:

Sometimes the two are mixed up. In that case oral evidence of the "fait material" is admissible, whereas the "fait juridique" must be proved by a document. Eg someone who builds on someone else's land with his permission. The fact of building without

hindrance may be proved by oral evidence but the giving of permission to build must be proved by a document if oral evidence is objected to. One cannot presume permission from the fact of building without hindrance. When it is impossible to distinguish "le fait material" from "le fait juridique" in a situation known as "fait complexe", then documentary proof is required ...

Also, I have taken note of the provisions of articles 688 to 695 of the Civil Code and come to the conclusion that at the present stage of examination-in-chief, should Mr Georges wish to proceed with the desired question, that the defendant was "given permission", then there is need for documentary proof.

Record: Civil Side No 245 of 1995