**Esparon v Joubert**

**(2001) SLR 170**

John RENAUD for the Plaintiff

Frank ELIZABETH for the Defendant

**Judgment delivered on 18 January 2001 by:**

**JUDDOO J:** The Plaintiff claims damages in the sum of R50,000 for false allegations made to his detriment in an affidavit filed by the Defendant. The claim is resisted by the Defendant.

There is no dispute that the Plaintiff is the owner of a parcel of land situated at Bougainville and registered as Parcel T 266. On 21October 1997, the Defendant caused to be registered a restriction against the said parcel of land with the Land Registrar. In her affidavit supporting the application the Defendant averred, inter alia,

...the Supreme Court gave judgment against Jean Claude Esparon and in my favour in the sum of R54,793. The judgment debtor has presently no other sources of income and if he is permitted to dispose of the land there will be no possibility of the judgment creditor recovering the judgment debt. That I have reason to believe that the said Jean Claude Esparon may attempt to sell, transfer or alienate the said property before enforcement of the judgment. That in view of the above, I have an interest in Title S 1187 and T 266 which I must protect until judgment is enforced.

The Plaintiff gave evidence that he owns Parcel T 266. He does not know the Defendant and had no prior encounter with her with respect to any proceeding in Court. The Defendant has not obtained any judgment against him and the allegations made in that respect are fallacious. The Plaintiff explained that he was worried by the restriction order placed on his land by the Defendant. Under cross examination the Plaintiff added that he intended to sell his land to his brother in law when he called at the Land Registry and learnt of the restriction order.

The Defendant testified that she knew one Jean Claude Esparon against whom she had obtained a judgment. She instructed her lawyer to register a restriction against the property of the said judgment debtor. The Defendant added that "... when the same was to be registered, I was informed there were two Jean Claude Esparon…..” and explained that it was not her intention to register any restriction against anyone other than the judgment creditor. Under cross-examination, she agreed that she had sworn the affidavit in support of the restriction order and added that she had reason to believe that the judgment debtor would attempt to sell or transfer his properties before the enforcement of the judgment delivered in her favour.

One Peggy Bamboche gave evidence on behalf of the Defendant. She explained that she had called at the Land Registry and obtained information that Land Parcel T 266 belonged to Jean Claude Esparon. Under cross-examination, she claimed that she was satisfied that the said "Jean Claude Esparon" was the very person against whom the Defendant had obtained a judgment in her favour.

The Defendant has admitted being aware of the existence of two persons bearing the name Jean Claude Esparon at the time she caused the restriction to be registered. Accordingly, it was incumbent to ascertain the correct person before going through with the registration. To the extent that the affidavit refers to the parcel of land of the Plaintiff and further states that there is cause to believe that Jean Claude Esparon, as the proprietor of land Parcel T 266, may attempt to sell or alienate the property, the averment is a fallacious statement made to the detriment of the Plaintiff. Accordingly, I find liability against the Defendant to be established on a balance of probabilities.

However, on the other hand the evidence of detriment suffered by the Plaintiff is mostly exaggerated as revealed by the following statement under cross-examination "... you were going to take everything out of me. In my mind I go crazy when I think of my piece of land. I wanted to do something with it but you have taken it, you have put a restriction on it….” A reasonable inquiry into the matter with the Land Registrar would have revealed that there was an obvious mistake as to the identity of the proprietor of the restricted land and an application for rectification could have been duly made to the Registrar under s 86(1) of the Land Registration Act (Cap 107)or to the Court under s 86 (2) thereof. For reasons above, I assess the resulting damages at R5000 with costs taxed at the Magistrates’ Court level.

**Record: Civil Side No 30 of 1999**