

**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 made to his detriment in an affidavit filed by the Defendant. The Defendant.

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

...the Supreme Court gave judgment against Jean Claude Esparon in my favour in the sum of R54,793. The judgment debtor has 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 debt. That I have reason to believe that the said Jean Claude Esparon may attempt to sell, transfer or alienate the said land before the enforcement of the judgment. That in view of the plaintiff's interest in Title S 1187 and T 266 which I must protect and enforce.

The Plaintiff gave evidence that he owns Parcel T 266. The Defendant and had no prior encounter with her with respect to the restriction. The Defendant has not obtained any judgment against him and the allegations that respect are fallacious. The Plaintiff explained that he was not aware of the order placed on his land by the Defendant. Under cross examination he testified that he intended to sell his land to his brother in law when he came to the court 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.

or false allegations  
n is resisted by the

of land situated at  
1997, the Defendant  
and with the Land  
Registrar, inter alia,

Esparon and in  
presently no  
the land there  
the judgment  
de Esparon  
erty before  
I have an  
judgment is

oes not know the  
proceeding in Court.  
allegations made in  
ed by the restriction  
the Plaintiff added  
at the Land Registry

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

The Defendant has admitted being aware of the existence of the name Jean Claude Esparon at the time she caused the registration. Accordingly, it was incumbent on her to ascertain the correct person to be registered. To the extent that the affidavit refers to the person as Jean Claude Esparon and further states that there is cause to believe that Jean Claude Esparon is the proprietor of land Parcel T 266, may attempt to sell or alienate the land, 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: "I was going to take everything out of me. In my mind I go crazy because I have a 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 made to the Registrar under s 86(1) of the Land Registration Act (Cap 107:01) 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**

She explained that the Plaintiff was going through with the registration of the land of the Plaintiff Jean Claude Esparon, as the proprietor of the property, the Plaintiff. Accordingly, I find liability against the Defendant to be established on a balance of probabilities.

Persons bearing the name Jean Claude Esparon are not the proprietor of the land of the Plaintiff. Accordingly, I find liability against the Defendant to be established on a balance of probabilities.

The Plaintiff is mostly exaggerating the detriment suffered by the Plaintiff. 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 made to the Registrar under s 86(1) of the Land Registration Act (Cap 107:01) thereof. For reasons above, I assess the resulting damages at R5000 with costs taxed at the Magistrates' Court level.