

**Albert v Jorre de St Jorre
(2002) SLR 30**

Karen DOMINGUE for the Plaintiff
Charles LUCAS for the Defendant

Ruling delivered on 9 May 2002 by:

KARUNAKARAN J: This ruling relates to a point of law and the Defendant herein has raised this point as a plea in limine litis in case was heard on the merits, the parties have agreed that the point of law should be determined first and hence is this ruling.

prescription. The defence. Before the point of law should be

By a plaint dated 6 April 2001, the Plaintiff in this case claims against the Defendant, his former common law wife as compensation for unjust enrichment. The facts averred in the plaint are these:

claim of R1 million from the Defendant for unjust enrichment. The

The parties lived together as man and wife for about 27 years. Since then, the Plaintiff has no fixed place of abode. On the other hand, the Defendant owns two parcels of land and four apartments built thereon property - situated at Beau Vallon. According to the Plaintiff, he contributed a sum of R1 million towards the purchase of both parcels of land and the said apartments. Despite such contribution, the Plaintiff never received either a share from the rentals of the apartments or any other benefit from the Defendant. In the circumstances, the Plaintiff alleges that the Defendant has been unjustly enriched in the said sum and he is correspondingly impoverished. Therefore, the Plaintiff claims compensation for unjust enrichment from the Defendant for his contribution.

separated in 1996. and, the Defendant thereafter called the Plaintiff to contribute a total of R1 million for the construction of the said apartments. The Plaintiff alleges that he never received compensation from the Defendant is unjustly enriched to the extent of such sum from the Defendant for his

The Defendant now resists the Plaintiff's claim pleading prescription. It is not in dispute that the alleged cause of action in this matter is unjust enrichment. According to the Defendant, the cause of action is an act of unjust enrichment, that should have arisen in 1992, as he was evicted from the property of the Defendant following the Court's order on the instance of the present Defendant (then Applicant) in Civil Case No: 164 of 1992. Therefore, the Defendant contends that the Plaintiff's claim is barred in terms of Article 2271 of the Civil Code of Seychelles which prescribes after a period of five years. Hence, the Learned Counsel for the Defendant Mr C Lucas submits that this action is not maintainable in law and should be dismissed. On the contrary, the Plaintiff contends that the cause of action in this matter arose only in 1996 as and when the parties ceased cohabitation, not in 1992 as submitted by the Defendant. Therefore, according to the Plaintiff, the plaint has been filed within the five-year period of the statutory limitation. Moreover, the learned counsel for the Plaintiff Miss Domingue submits that the eviction order made by the Court in 1992 in favour of the Plaintiff and against Defendant does not mean that the parties separated.

in limine litis. It is rounded on unjust enrichment had arisen from an act of unjust enrichment when the Plaintiff was evicted from the property of the Defendant, made at the Court's order, made at the Court's order No: 164 of 1992. Therefore, the Plaintiff's claim in this matter is now time barred as the rights of action are barred by the five-year period for the Defendant to claim for the Defendant is liable to be dismissed. On the contrary, the Plaintiff contends that the cause of action in this matter arose only in 1996 as and when the parties ceased cohabitation, not in 1992 as submitted by the Defendant. Therefore, according to the Plaintiff, the plaint has been filed within the five-year period of the statutory limitation. Moreover, the learned counsel for the Plaintiff Miss Domingue submits that the eviction order made by the Court in 1992 in favour of the Plaintiff and against Defendant does not mean that the parties separated.

Further, she went on to submit that since the subject matter is immovable property, the period applicable to attract prescription is five years as canvassed by the Defendant. Therefore, she urges the Court to dismiss the plea in limine raised by the Defendant and to proceed with the merits.

pleaded in this claim is five or 20 years, not 5 years. The Court is urged to dismiss the plea in limine of the suit on the merits.

I gave diligent thought to the submissions made by the counsel for both sides. I carefully perused the pleadings and the documents produced by the Defendant in support of his contention. Now, the question before this Court for determination is:

Whether the Defendant is entitled to a writ of habere facias possessionem in this matter?

When did the cause of action arise on the alleged unjust enrichment in this matter?

ment in this

Admittedly, the Plaintiff and the Defendant had been living in concubinage for more than two decades. Therefore, both should have been in joint occupation of the property during that period. It is not in dispute that the Defendant came before this Court in 1992 and applied for a writ of habere facias possessionem seeking the eviction of the Plaintiff. Accordingly, the Court on 22 September 1992, made an order of eviction against the Plaintiff, which reads thus:

Concubinage for a period of more than two decades, possession, use and occupation of the property during that period. It is not in dispute that the Defendant came before this Court in 1992 and applied for a writ of habere facias possessionem seeking the eviction of the Plaintiff. Accordingly, the Court on 22 September 1992, made an order of eviction against the Plaintiff, which reads thus:

This is an application for a Writ habere facias possessionem. I am informed that the Respondent (now the Plaintiff) has left the premises as a precautionary measure, I will grant the application and order that the Respondent should not return to the premises.

The Court is informed that the Respondent (now the Plaintiff) has left the premises as a precautionary measure, I will grant the application and order that the Respondent should not return to the premises.

Therefore, the Plaintiff has in the eye of law, parted with his joint possession, use and occupation of the property as from 22 September 1992 and the Defendant thereon has acquired exclusive possession, use and occupation. Thus, the Plaintiff has suffered a detriment whereas the Defendant gained a benefit from the event of eviction. Suffice it to say that if the Plaintiff had contributed towards the purchase of the property, then he should have been unjustly impoverished and the Defendant should have been correspondingly enriched as from the day of eviction. Therefore, as I see it, the cause of action on unjust enrichment if any had arisen, it did so as from the day of eviction that is, 22 September 1992 and so I find. Evidently, the plaint has been filed in April 2001 that is, nearly 8 years after eviction. In the circumstances, it is clear that the Plaintiff's claim herein is time barred. Therefore, I uphold the submission of Mr C Lucas in this respect.

Indeed, all rights of action are subject to prescription after a period of five years except as provided in article 2262 and 2265 of the Civil Code. The Plaintiff's claim herein is not a real action in respect of rights of ownership of land or other interest therein in order to attract article 2262 or 2265. The instant action is simply based on unjust enrichment. Therefore, as rightly pointed out by the learned counsel Mr C Lucas, I too find that articles 2262 and 2265 are not applicable in this matter. Even if one assumes for the sake argument that the Plaintiff had continued to occupy the property until 1996 as

canvassed by the learned counsel Miss Domingue, in my view, such occupation is wrong and illegal, as the Court had already ordered eviction against the Plaintiff in 1992. In any event, the Plaintiff or anyone for that matter is not allowed to take advantage of his own wrong or self-created necessity and plead the same in his own interest to acquire the right of action or any other benefit in his favour - vide *Kish v Tailor* [1911]1 KB at 364. Therefore, the argument advanced by Miss Domingue in this respect, does not appeal to me in the least. In the circumstances, I conclude that the present suit is not maintainable in law as it is time barred. Accordingly, I uphold the plea in limine litis raised by the Defendant and dismiss the suit with costs.

Record: Civil Side No 121 of 2001