

**Laurette & Or v Sullivan
(2004) SLR 65**

Wilby LUCAS for the Plaintiffs

Judgment delivered on 1 October 2004 by:

RENAUD J: The Plaintiffs are seeking an Order of this Court and to declare their entitlement to have an access road over the land of the Defendant and an Order for compensation to the Defendant if that is claimed by the latter.

It is not in dispute that the Plaintiffs are the registered owners of Title T2128 situated at upper Bougainville, Mahe having purchased it from S.D. Company (Proprietary) Ltd, represented by one of its Director Mr. Radley Sinon. (Exhibit P.1). Ms Lindy Monthy is the registered owner of an adjoining Title T2130 and has signified her consent for the Plaintiffs to build an access road by way of an easement dated 6 January 2003 and duly registered on 3 April 2003. (Exhibit P.4) The Defendant is the registered owner of Title T747 that is bounded with the main Bougainville road, and through which is the only possibility of starting an access road to the Plaintiff's land. The Plaintiffs aver that the construction of their dwelling house has been delayed for four years pending negotiation with the Defendant for an access road over the latter's property but this has not materialised. The Plaintiffs further aver that their land is completely enclaved as shown on (Exhibit P.5).

The Defendant did not file a Statement of Defence and on the date of the hearing Learned Counsel for the Defendant informed Court that the Defendant is not objecting and that the matter may proceed ex parte. The Court accordingly granted leave for the matter to proceed ex parte.

The First Plaintiff testified that at the time of purchasing the said property the Plaintiffs and Mr. Radley Sinon discussed with Defendant and his lawyer regarding the access road. The matter has not been concluded so far. However the Defendant by letter dated 22 August 2001 addressed to his lawyer and copied to Mr. Radley Sinon (Exhibit P.2), inter alia stated as follows:

In our discussion with Mr. Sinon we agreed to an access road as follows:

- (1) The road through our property will be the normal 3 metres with up to 2 metres for adequate drainage.
- (2) The road is to be located more to the South West of the proposed layout submitted by Mr. Sinon so that it passes on the lower side of the slope so as not to take the views available from the high ground on T.767. This proposed route has been marked with Mr. Rene Mondon and Mr. Michael Georges and they should be consulted prior to the marking and

earthworks commencing, (refer attached rough diagram)

- (3) No monetary compensation is requested from Mr. Sinon, however in exchange for the easement of the right of way through parcel T747 Mr. Sinon is required to extend the road through his parcel T1093 to the boundary of T747 (as per attached diagram as marked in red pen). This extension will possibly assist landholders to T1221; T1095 and T743.
- (4) In the event that Mr. Sinon does not comply with the road extension requirement as detailed in 3 above we will reserve our right to deny vehicle access through the right of way pending completion of the road.

The diagram referred to in paragraphs 2 and 3 above is (Exhibit P. 5) and the common demarcation for the proposed access is marked in red ink. The First Plaintiff in evidence stated that both the Plaintiffs and Ms. Lindy Monthy agreed to jointly give a 3 metre right of way over their respective property as borne out by Exhibits P4 and P5 - that is each of the two parties will grant a parallel 1.5 metres.

The relevant law applicable in the circumstances is Articles 682 and 683 of the Civil Code of Seychelles which state:

Article 682 (1) - The owner whose property is closed on all sides, and has no access or inadequate access on to the public highway, either for the private or for the business use of his property, shall be entitled to claim from his neighbours a sufficient right of way to ensure the full use of such property, subject to his paying adequate compensation for any damage that he may cause.

(2) - However, where the owner has been deprived of access to a public road, street or path in pursuance of an order converting a public road into private property, the person who has been granted such property shall be required to provide a right of way to the owner without demanding any compensation.

Article 683 - A passage shall generally be obtained from the side of the property from which the access to the public highway is nearest. However, account shall also be taken of the need to reduce any damage to the neighbouring property as far as possible.

On the basis of evidence before the Court I am satisfied that the property of the Plaintiffs is enclaved and the only practical possibility of having access to the main public road is across the property of the Defendant, namely Title T747. In the circumstances I declare that the Plaintiffs are entitled to a right of way over Title T747 and I order accordingly.

The Defendant had agreed, albeit with conditions, to allow the Plaintiffs and one Ms. Lindy Monthy to have a motorable access over his property, the right of way referred to

above shall be one and the same as the motorable access agreed to by the Defendant on the following conditions:

- (1) The motorable access road through the property of the Defendant, namely T747 will be the normal 3 metres with up to 2 metres for adequate drainage.
- (2) The said road is to be located more to the South West of the proposed layout so that it passes on the lower side of the slope so as not to take the views available from the high ground on T.767. This route is marked on the layout. Mr. Rene Mondon and/or Mr. Michael Georges should be consulted prior to the marking and earthworks commencing.
- (3) No monetary compensation is requested from the Plaintiffs, however in exchange for the easement of the right of way through parcel T747 the Plaintiffs are required to extend the road through their parcel T1093 to the boundary of T747 (as per attached diagram as marked in red pen).
- (4) In the event that the Plaintiffs do not comply with the road extension requirement as detailed in 3 above, the Defendant will reserve his right to deny vehicle access through the right of way pending completion of the road.

I make no order as to cost.

Record: Civil Side No 284 of 2003