

**Clarisse v Sophola
(2005) SLR 96**

France BONTE for the Plaintiff
Somasundaram RAJASUNDARAM for the Defendant

Judgment delivered on 1 December 2005 by:

PERERA J: This is an application for a writ habere facias possidendi. The Applicant avers that he is the owner of a property bearing Parcel V. 105 on which stands a dwelling house. He further avers that the said property is occupied by him and his family, but the Respondent has refused to vacate despite repeated requests to do so. It is also averred that the Respondent has never been given whatever leave, licence, permission or authority which may have been required for her to vacate despite repeated requests to do so. It is now a trespasser, and her occupation is unlawful.

The Respondent in her defence has averred by an affidavit that she is the law wife of one Donald Clarisse by whom she had two children, leaving the house on the property, the subject matter of this petition, to live until their deaths. She avers that Parcel V. 1052 is a sub division of the parent land bearing Title No. V. 3538 originally belonging to the late Mrs Pool née Berlouis, and that Mrs Jeanne Cecile Poussou, the Respondent, acting for and on behalf by virtue of a Power of Attorney, transferred the property jointly in her name and that of Donald Clarisse. Deed of transfer dated 19 November 1996 duly registered at the land Registry has been produced. The Respondent she invested funds in improving the standard of the house and in the property, as she is presently living in the premises with the children of Donald Clarisse.

The Respondent has also produced a copy of a plaint filed before this Court in case no. C.S. 107/02 wherein he has averred that the present Respondent who was his concubine is in occupation of the premises without permission or lawful authority and that he therefore prayed for an order of this Court ordering her to quit the premises and vacate the said house". That case was withdrawn, as the Applicant had sought his remedy before the Rent Board,

The Rent Board decided that as there was no lesser – lessee relationship between the parties, the application for eviction on the ground of requirement of own use should be set aside.

The Respondent has submitted that the present application is barred by the principle of res judicata as the same matter, between the same parties was canvassed before this Court in case No C.S 107/02, which was withdrawn. In Seychelles, this principle is contained in Article 1351 of the Civil Code. For the principle of res judicata to operate, there should have been a final determination of the dispute between the parties. Hence

the Respondent is now a trespasser, and her occupation is unlawful. The Applicant avers that he is the owner of a property bearing Parcel V. 105 on which stands a dwelling house. He further avers that the said property is occupied by him and his family, but the Respondent has refused to vacate despite repeated requests to do so. It is also averred that the Respondent has never been given whatever leave, licence, permission or authority which may have been required for her to vacate despite repeated requests to do so. It is now a trespasser, and her occupation is unlawful.

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where a plaint filed before a competent Court has been withdrawn, that principle does not operate. Hence a Plaintiff may commence a new action for the same cause, to which such withdrawal will be no defence: *Reid v London & N Staffs Insurance Co* (1883) 49 LJ 468.)

The present Application before Court turns on a different consideration. It is settled law that a writ of this nature may be issued on the Application of an owner of property, when the Court is satisfied that the Respondent to the Application has no serious defence to make thereto: *Delphinus Turistica Maridtima SA v Villebrod* (1978) SLR 121. The defence in the present case discloses, prima facie, that

1. Donald Clarisse, the concubine of the Respondent held a 1/2 share of Parcel V. 3538, while the other 1/2 was held by his mother Jeanne Cecile Poussou.
2. The Applicant is a son of Donald Clarisse, and a grandson of Jeanne Cecile Poussou.
3. Donald Clarisse left two children. Pursuant to Article 757 of the Civil Code natural children have the same rights as legitimate children.
4. The two children are 6 years and 7 years old respectively According to the birth certificates produced, only one child has been acknowledged by Donald Clarisse.
5. The Respondent was the concubine of Donald Clarisse, and the mother of his children. She is in occupation with the leave and licence of the late Donald Clarisse who owned a share of the parent property.

In the present case, another issue would be the ownership of at least the percentage share of the property, as Donald Clarisse has left natural children.

A writ habere facias possessionem is a quick executory remedy available to an owner of a property to evict a squatter, trespasser or any person in occupation thereof without any permission, leave or licence or any right. Although the Respondent as a concubine may not have any right of succession to the property of Donald Clarisse, yet the minor child with whom she is living would have legal rights, and she herself may have a claim for improvements to the property.

In that respect, the Respondent on her own behalf and as guardian of the children has a serious defence to the Application. The Applicant has therefore to seek his remedy in a civil action. Consequently, the Application is dismissed with costs.

Record: Civil Side No 159 of 2005