IN THE SUPREME COURT OF SEYCHELLES

JEANNE LESPERANCE **APPLICANT**

VERSUS

LUCINE VIDOT

RESPONDENT

Civil Side No 443 of 2006

Mr F. Chang Sam for the Applicant
Miss K. Domingue for the Respondent

JUDGMENT

Perera J

This is an application for a writ habere facias possessionem. The Applicant, seeks an order to evict the Respondent, her sister, from the land bearing Title No. C. 1665 and the house thereon.

The Applicant avers that she is the absolute owner of the said property together with the house standing thereon. The Respondent acknowledges that the Applicant is the owner of the land, by right of purchase, but avers that the house was partially built by one Nelly Hasant, her stepfather Neze Vankiersbilck, her mother Desire Vidot and her other siblings and herself, excluding the Applicant. She therefore avers that the house does not belong to the Applicant. She further avers that in the transfer deed signed by the Applicant and her stepfather, there is no mention of a dwelling house.

The Applicant avers that the land originally belonged jointly to the said Neze Vankiersbilck and Nelly Marie Harsant, and that the house was built by Nelly Harsant for the use of her brother Neze. There is therefore a dispute between the parties as to who built the house. The Applicant further

avers that Mrs Desire Vidot, her mother, and that of the Respondent, came to live on the property with Neze Vankiersbilck, and that they lived in concubinage. She also avers that she, the Respondent, and other children of Mrs Vidot also lived on the property from time to time. Subsequently after the death of Mrs Vidot on 29th August 1999, Neze came to live with the Applicant and was looked after by her She avers that the half share was transferred to her for a symbolic sum of Re1- in gratitude for her services.

The Applicant avers that the Respondent moved into the house on Parcel V. 1665 when both Neze and Mrs Vidot were living, and that Neze left the house due to ill treatment by the Respondent and came to live with her. She further avers, that the Respondent is only a licensee, while she is the lawful owner of the land and the house.

It is not in dispute that the Respondent and five other brothers and sisters filed case no. 74 of 2005 before this Court, against the present Applicant seeking an order on her to subdivide the half share of the land she obtained from Neze, and to transfer a portion to those who do not own any other land. This prayer was based on an alleged agreement by Neze, that he would transfer his half share to the present Applicant who was the eldest child, so that she would later subdivide and transfer a portion to the other brothers and sisters. The present Applicant filed answer denying those averments, and averred that she was the only person who cared for Neze Van Kiersblick. The rest of the averments were basically the same as those in the present Application before this Court. When that case (case no 74 of 2005) came up for hearing on 21st July 2006, Mr Brian Julie stood in for Mrs Domingue who was Counsel for the plaintiffs, and moved for an adjournment. However, the case was adjourned sine die, at the instance of the Court. Subsequently, a motion was filed to reinstate the case, and that motion is due to be heard on 31st July 2007. The present application for a writ habere facias possessionem was filed on 5th December 2006, while case no 74 of 2005 had been adjourned sine die.

In the case of **Pike v. Vadin Cs 18 of 1992,** the Court held that a writ Habere facias possessionem is available to a party whose need is of an urgent nature, and who has no other

equivalent legal remedy at his disposal to evict the respondents who have no right or title to occupy the property. It was also held that this writ cannot be used as an instrument to evade the necessity of pursuing a regular action, and that when the respondents disclose a serious or arguable defence, the writ must be refused, leaving the applicant to pursue a regular action.

The pleadings filed in case no 74 of 2005, which have been attached to the instant application as exhibit 9 show that the respondent has an arguable case, and she is not a squatter or trespasser who could be evicted summarily. In the present application, the respondent has filed a serious defence which cannot be decided in proceedings of this nature. The disputed issues between the parties must necessarily be decided in a regular action. Hence in these circumstances, the application for a writ Habere facias possessionem is dismissed with costs.

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A. R. PERERA

JUDGE

Dated this 20th day of July 2007