

# **IN THE SUPREME COURT OF SEYCHELLES**

MARGUERITE MAY ISIDORE

**PLAINTIFF**

**VERSUS**

BRIAN QUILINDO

**DEFENDANT**

Civil Side No 61

of 2007

Mr. F. Ally for the Plaintiff

Mr. Elizabeth for the Defendant

## **JUDGMENT**

**B. Renaud J**

On 23<sup>rd</sup> February, 2007 the Plaintiff entered a plaint claiming a total of SR65,000.00 from the Defendant for trespass, loss of enjoyment and use of property and moral damages.

The Defendant was duly served with summons and plaint on 4<sup>th</sup> May, 2007 to attend Court on 8<sup>th</sup> May, 2008. The Defendant failed to attend Court either in person or by Counsel on that day. Upon application of Plaintiff's Counsel the Court granted leave for the matter to proceed exparte. On 19<sup>th</sup> July, 2007, the date that the matter was fixed for ex-parte hearing, the Defendant did not put up appearance. However the hearing of the case was aborted and the matter was fixed for hearing on 25<sup>th</sup> October, 2007 and the Defendant was duly notified. On 16<sup>th</sup> October, 2007 the Defendant entered a Notice of Motion seeking an order that the exparte hearing

be set aside for reasons shown in the supporting affidavit. The Court granted the motion and the Defendant entered his statement of defence. The matter was fixed for hearing inter-parties on 18<sup>th</sup> and 22<sup>nd</sup> February, 2008. The case was not heard on those dates and 13<sup>th</sup> June, was then fixed for hearing. On that date neither the Defendant appeared nor his Counsel. The matter was heard ex-parte and the Plaintiff adduced evidence which stands uncontroverted.

The Plaintiff is and was at all material time the proprietor of the land comprised in title V6721 situated at Belvedere, Mont Fleuri, Mahe and the Defendant is the son of Marcel Quilindo and Helena Quilindo, the occupants of a parcel of land adjoining the Plaintiff's title V6721.

On Sunday 28<sup>th</sup> January, 2007 the Defendant came to his parent's house and without any lawful cause or excuse insulted, intimidated and threatened violence to the Plaintiff.

On Monday 29<sup>th</sup> January, 2007, the Defendant without the permission and consent of the Plaintiff unlawfully entered the Plaintiff's said land and built or erected or caused to be built or erected a small brick wall on the Plaintiff's land.

The Plaintiff has on numerous occasions expressed objections to the encroachment and trespass as the encroachment burdens the Plaintiff's title V6721 and deprives the Plaintiff from fully enjoying her said land and also may cause rainwater to flow into the Plaintiff's house during rainy season and cause her loss and damage.

Despite repeated request from the Plaintiff's the Defendant has failed, refused and ignored to cease and remove the encroachment that continues to burden the Plaintiff's title V6721.

The evidence of the Plaintiff stands uncontroverted. On the basis of that evidence I made my findings which are as follows:-

I find and declare that the Defendant has encroached and trespassed onto the Plaintiff's property and that the behaviour of the Defendant and the encroachment and trespass are unlawful and wrongful, and amount to a faute in law, for which the Defendant is liable to cease and remove the encroachment and pay the Plaintiff damages in sum of Sr15,000.00, as follows-

- |     |  |                     |
|-----|--|---------------------|
| (a) | <i>Trespass</i>  | <i>Sr. 2,000.00</i> |
| (b) | <i>Loss of enjoyment and use of property</i>                                   | <i>Sr. 3,000.00</i> |
| (c) | <i>Moral damage for anxiety, distress and<br/>Inconvenience and continuing</i> | <i>Sr.10,000.00</i> |

This Court enters judgment in favour of the Plaintiff and against the Defendant as follows:

- (i) *I hereby order that the Defendant removes the encroachment forthwith;*

*I order the Defendant to pay the Plaintiff the sum of Rs15,000.00 with interest and cost of this suit.*

.....

B.RENAUD

**JUDGE**

Dated this 16<sup>th</sup> day of October 2008