

**THE REPUBLIC OF SEYCHELLES**  
**IN THE SUPREME COURT OF SEYCHELLES**

Jannine Thyroomooldy  
Plaintiff

Versus

Michel Hanon  
Defendant

Civil Side 60 of 2008

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Mr. Frank D. R. Ally for the Plaintiff

Ms Lucie Pool for the Defendant

**FMS Egonda-Ntende, CJ**

**JUDGMENT**

1. The plaintiff is the registered proprietor of the land comprised in title no. H 6440 situated at Quincy Village, Mahe. The defendant is the registered proprietor of the land comprised in title no. H5355 situated at Quincy Village, Mahe. The said two pieces of land are adjoining.
  
2. It is contended by the plaintiff that on a date unknown to the plaintiff in or around 2004/2005 the defendant without the permission and consent of the plaintiff entered on the plaintiff's land referred to above and unlawfully built thereon 2 buildings which encroach on the said land. Despite repeated protests by the plaintiff the defendant has refused to cease the said trespass and remove his encroachment that continues to burden the plaintiff's land.
  
3. The plaintiff further contends that the defendant's encroachment and trespass are unlawful and wrongful, and amount to a faute in law for which the defendant is liable to cease the trespass; remove the encroachment; and pay to the plaintiff damages in the sum of SR 50,000/= for trespass and encroachment.

4. The plaintiff seeks a declaration that the defendant has encroached and trespassed on to the plaintiff's land; an order that the defendant removes the encroachment forthwith; an injunction to restrain the defendant from further or continuing encroachment on the plaintiff's land, payment of the sum of SR 50,000/- with interest and costs of the suit.
5. In his defence the defendant admitted that the plaintiff is the owner of the adjoining property to his land. He denied that he encroached on the plaintiff's land as alleged. He contended that both buildings were on land owned by the defendant. He denied that he had inflicted any loss or damage upon the plaintiff and prayed that this court dismisses this action with costs.
6. At the trial the plaintiff testified and called one witness, a land surveyor. The defendant testified in his defence and called no other witness. The unchallenged witness of the land surveyor, Mr. Michel Leong, established that there are 2 buildings straddling the boundary line between Parcel H 6440 and H 1798. The said parcels of land are separated by 2 beacons PL906 and NS63. The drawing that he submitted shows that the larger of the 2 buildings is 8 metres into the Parcel H 6440 which include 3 metres that comprise the right of way to Parcel H5355. The smaller building is mostly within the 3 metre right of way to H5355 but slightly protruding outside of the right of way on H 6440. The right of way is on H 6440.
7. The plaintiff testified that she did not know when the defendant started construction but this was most probably in 2004 and 2005. Initially she thought the defendant was constructing on his land. However when she contacted the person who had sold the land to both her and the defendant, a surveyor was retained who determined that the buildings had been partly constructed on the plaintiff's land.
8. One of the buildings is made up of corrugated iron sheets and the defendant lives in this building. The other which is not completed was constructed using blocks. She approached the defendant personally with a view to discussing the matter. The defendant refused to talk to her. She then instructed an Attorney to write to the defendant with a view to reaching an agreement on this matter but the defendant refused to cooperate.
9. The plaintiff further testified that she is able to see the buildings from her house. She is disturbed by the music played at high volume late at night. She had quantified her

damage with her lawyers to SR 50,000/-.

10. The defendant is a sea man. In his testimony he admitted that he built the said buildings after he had bought the said land. Part of his house is on her sister's land. He passes on her sister's land to get to his house. He built his houses long before the plaintiff built her house. From his house he is able to see the plaintiff's house and the plaintiff should be able to see his house from her house.
11. Mr. Frank Ally for the plaintiff submitted that that judgment be entered for the plaintiff and that the defendant be ordered to demolish the houses on the plaintiff's land. He prayed for damages to be awarded as claimed in the plaint.
12. As was conceded by Ms Lucie Pool, learned counsel for the defendant, the plaintiff has proved encroachment by the defendant. In which case Article 555 of the Civil Code of Seychelles is applicable, particularly paragraph 2 thereof. It states in part,

‘(1) When plants are planted, structures erected, and works carried out by a third party with materials belonging to such party, the owner of the land, subject to paragraph 4 of this article, shall be empowered either to retain their ownership or to compel the third party to remove them.

(2) If the owner of the property demands the removal of the structures, plants and works, such removal shall be at the expense of the third party without any right of compensation; the third party may further be ordered to pay damages for any damage sustained by the owner of land.’

13. The plaintiff, the owner of the land in question, seeks the removal of the structures that the defendant erected on her land. She is entitled to that order in the circumstances of this case. The defendant is ordered to remove the structures that he erected on H6440 at his own cost.
14. In addition given the size of encroachment I will award SR 15,000/- for trespass, loss of enjoyment and use of property. In addition I will award moral damage for anxiety, distress and inconvenience in the sum of SR 10,000/-

15. In conclusion, I grant the declaration sought by the plaintiff to the effect that the defendant unlawfully encroached on the plaintiff's land comprised in Parcel H 6440. The defendant is ordered to remove the buildings that he has built on the Parcel H 6440. An injunction shall issue to restrain the defendant from further encroachment on the Parcel H6440. Damages are awarded as above with interest and costs of the suit.

Signed, dated, delivered at Victoria this 9<sup>th</sup> day of November 2009

FMS Egonda-Ntende

Chief Justice