

# IN THE SUPREME COURT OF SEYCHELLES

Romeo Teofilo Simeon of

Mont Buxton, Mahé

**Applicant**

Vs

Danette Louis Marie of

Takamaka, Mahé

**Respondent**

**Civil Side No: 91 of 2007**

Mr. W. Lucas for the Applicant

Mrs. Antao for the Respondent

**D. KARUNAKARAN, J**

## **RULING**

This is an application for a writ *Habere Facias Possessionem*. The applicant Romeo Teofilo Simeon in this matter seeks the Court for the writ ordering the respondent to quit, leave and vacate a dwelling-house on the immovable property registered as parcels V1408, hereinafter called the “property”, situated at Mont Buxton, Mahé. The applicant purchased the property from its previous owners namely, the *Cedrases*, by a transfer deed duly registered with the Land Registry on 19<sup>th</sup> July 2006. The applicant alleges that the respondent is now occupying the said house, illegally without any colour of right and refusing to move out. Therefore, the applicant herein prays this Court to issue the writ first-above mentioned to get the respondent ejected from the property.

According to the applicant, before he purchased the property its previous owners - the *Cedrases* - had agreed to sell the property to one Mr. Christopher Hamblem, a foreigner, who in turn had agreed to give an half undivided share in the said property to his Seychellois-concubine, who is none else than the respondent in this

matter. Since the said Christopher Hamblem was a non-Seychellois, he had initially intended to purchase the property in the name of his concubine, who would subsequently transfer her half undivided share to Christopher Hamblem once he obtains the necessary Seychellois nationality or sanction from the Government of Seychelles required under the Immovable Property Transfer Restriction Act. In view of this arrangement, the previous owner had given permission for Mr. Christopher Hamblem to occupy the property pending completion of the sale. Since the respondent was then his concubine, she was also allowed with him to occupy the property.

However, following the breakdown of the relationship between Mr. Christopher Hamblem and his concubine (the respondent), the previous arrangements as to the purchase of the property in the name of the concubine and the intended transfer of undivided half share never materialized nor could Mr. Hamblem obtain the necessary nationality or sanction from the Government. In fact, before all the said arrangements could materialize, Mr. Hamblem was convicted of the offence of "Unlawful Wounding" by the Magistrates Court upon a complaint made by the respondent. Subsequently, Mr. Hamblem cancelled his previous arrangements, vacated the property and left the Republic as he was declared a prohibited immigrant in Seychelles. The owners subsequently, sold the property to the present applicant by a duly registered transfer deed hereinbefore mentioned. However, the respondent, who entered the property while she was the concubine of the said foreigner, still continues to occupy the house and now refuses to move out. Besides, it is the contention of the applicant that respondent was granted only a licence to occupy the house as she was the concubine of the previous intended purchaser. Their relationship has already ended. The license has now been revoked and the respondent is presently a trespasser in the eye of law. In the circumstances, the applicant, being the lawful owner of the property has come before this court with the instant application for a *writ* ordering the respondent to quit, leave and vacate the property.

On the other hand, the respondent, though admits that she is presently in occupation of the property, resists this application on the ground contending that the house in question was given to her by the said foreigner, who had agreed to give her the money to purchase the property in her sole name and later on give her a half share in the property. According to her, the said agreement was made before the Notary Mr. Wilby Lucas. Hence, she claims that she has half share in the property and so refuses to move out. Thus, the respondent in effect, challenges the title of the applicant to the property and therefore, claims that she has *bona fide*

right to occupy the house. In the circumstances, the respondent requests the Court to dismiss the instant application.

I meticulously perused the affidavit, the counter-affidavit and other documents adduced by the parties in this matter. Needless to say, the general principles governing the writ of Habere Facias Possessionem are well settled by our case laws. As I have observed in ***Mary Dubignon V Antonio Mann- Civil Side No: 9 of 1999***, following are the cardinal principles normally considered and applied by the Court in determining the writs of this nature: -

1. *The Court in granting the writ Habere Facias Possessionem acts as a Court of equity rather than a Court of law, in exercise of its equitable powers conferred by Section 6 of the Courts Act- Cap52.*

*The one who comes for equity should come obviously, with clean hands. There should not be any other legal remedy available in law to the applicant who invokes an equitable remedy.*

*An equitable remedy is available to the applicant whose need is of an urgent nature and any delay in obtaining the remedy would cause irreparable loss, hardship, or injustice to him.*

*Before granting the writ Habere Facias Possessionem , the Court should be satisfied that the respondent on the other hand has no serious defence to make; and*

*If the remedy sought by the applicant is to eject a respondent occupying the property merely on the benevolence of the applicant then that respondent should not have any lawful interest, right or title over the property in question.*

Bearing the above principles in mind, I carefully analyzed the evidence adduced by the parties through affidavits and other relevant documents on record. On the face of the affidavits, it is evident that the respondent does not claim any right based on tenancy or any contract with the applicant in respect of the property in question. The applicant's *predecessor-in-title* has evidently, permitted the respondent to use and occupy the house on account of her personal relationship with Mr. Christopher Hamblem, who had originally intended to purchase the property with a view to give half share to the respondent. Admittedly, Mr. Hamblem has later changed his mind due to turn of events that occurred subsequent to breakdown of their relationship. Indeed, the permission granted by the *predecessor-in-title* for the couple to use and occupy the house pending finalization of the sale, cannot in my view, create any

legal right or obligation either contractual or otherwise in favour of the respondent. The permission thus granted only amounts to a license with a *condition-subsequent* and the respondent had been in use and occupation of the house simply as a *licensee* in the eye of law. Now, the licensor namely, the applicant, the *successor-in-title* to the property has expressly revoked the license. Therefore, the respondent's continued occupation of the house is obviously illegal and so I find.

As regards, the respondent's claim that she has an interest or right in the property is not supported by any evidence except the unregistered transfer deed dated 17<sup>th</sup> February 2006, which has been cancelled by the same notary, who has registered the subsequent transfer in favour of the present applicant. On the contrary, however, there is sufficient evidence on record to show that applicant is the lawful owner of the land registered as parcels V1408 on which the house stands. In fact, the *predecessor-in-title* has legally transferred the land to the applicant as evidenced by the *transfer deed registered on the 19<sup>th</sup> July 2006*. It is a well known principle that if one sells land on which a house stands, the sale of the land includes that of the house and it is not necessary to specify that the house is included ***vide the Judgment of A. Sauzier Ag CJ in Colette Gillieaux Vs. Gilbert Hoareau Civil Side Case No. 29 of 1980.*** It could be true that the house in question had previously been occupied by Mr. Christopher Hamblem with whom the respondent had a relationship as well as an agreement for the transfer of half-share in the property. However, the fact remains that the applicant is presently the lawful owner of the property, not Mr. Hamblem. It is true that Mr. Hamblem had agreed to give half share in the property in question to the respondent. However, he was not the owner of the property either at the time he made such agreement with the respondent or at any point in time before or after that agreement. ***Nemo dat quid non habet.*** *No one can give who does not possess.* In the absence of any tangible evidence to rebut the presumption of legality attached to the transfer deed, which has been duly registered with the land registry, this Court cannot and should not attempt on any speculation to invalidate that transfer and find that the respondent might have a bona fide right to reside in the house. Moreover, I note there is no evidence on record to show that the respondent entered the property as a tenant or by virtue of any agreement with the applicant at any point of time before or after the applicant purchased the land from the previous owner. In the circumstances, I find that the respondent is presently in illegal occupation of the property and

without any colour of right.

Undoubtedly, the applicant is currently the lawful owner of the property in question and that he should be treated as such until the contrary is proved. However, the respondent has been occupying the house illegally since revocation of license by the applicant. Despite repeated requests, the respondent has failed to vacate the property. Needless to say, the respondent is now a trespasser who is liable to be evicted, as she has no serious and bona fide defense to make in this matter. In my judgment, the claim made by the respondent in her counter-affidavit is not tenable either in law or on facts. On the face of the averments contained in the affidavits, simple justice demands that this application should be granted. Indeed, no owner should easily be deprived of his right to have possession and enjoyment of his property, especially when **right to property** is a fundamental right guaranteed by the Constitution of Seychelles.

In fact, when an applicant applies for possession by summary procedure of application for the writ *Habere Facias Possessionem* and his affidavit shows prima facie entitlement to that writ, it behoves the respondent to such application to condescend to details in showing by his counter affidavit that he has a real defence to the claim for possession **vide Casino des Seychelles Limited Vs. Companie (Seychellois) Pty Limited SCA No: 2 of 1994 per Ayoola J.** As I see it, the respondent in this case has failed to show in her counter-affidavit that she has a real and serious defence to the claim for possession.

In the final analysis therefore, I find that the respondent does not have a serious defence to make to this application. I therefore, allow the application, grant the writ and order the respondent to leave, quit and vacate the house situated on Title V1408 at Mont Buxton, Mahé on or before 31<sup>st</sup> December, 2009 and deliver vacant possession of the same to the applicant thenceforth. Having regard to all the circumstances of this case, I make no order as to costs.

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**D. KARUNAKARAN**  
**JUDGE**

**Dated this 24<sup>th</sup> Day of September 2009**