

IN THE SUPREME COURT OF SEYCHELLES

GUNTER FRITZ AWEGE & OR PLAINTIFF

VS

CHRISTINE LAPPE & ORS DEFENDANT

Civil side no: 323 of 2007

Mr. Hoareau for the Plaintiffs

Mr. Bonte for the Defendants

RULING

Burhan, J

Learned counsel for the 1st and 2nd defendants and learned counsel for the 3rd defendant on the closure of the case for the plaintiffs made submissions in respect of the plea in limine raised by the defendants that both the 1st and the 2nd plaintiffs, not been the owners or tenants of the property concerned, had no legal rights and therefore had no locus standi to proceed with their plaint.

The plaintiffs' case as set out by the evidence led upto date, is

that the 1st plaintiff was given permission by the 3rd defendant to construct a walkway leading from the premises occupied by both plaintiffs to the sea beach. The 1st plaintiff's contention is that such permission was given to him personally and subsequent to such permission being granted, he had constructed the said walkway leading up to the beach which both he and his common law wife the 2nd plaintiff had used. In his evidence he states the 1st and 2nd defendants had thereafter caused damage to the said walkway resulting in its destruction and thereby causing loss and damage to the 1st plaintiff as he had constructed the said walkway at his own expense and with his own funds. It is also borne out by the evidence led so far that the 2nd plaintiff being the common law wife of the 1st plaintiff had been residing with him for a considerable length of time and the said walkway was built leading from the premises they lived to the beach, in order that the 2nd plaintiff could obtain easy access to the beach as she had been convalescing after a hip operation and therefore could not walk over the rocks to the nearby beach. It is apparent that her claim is based on the fact that she has been deprived of the right to use the beach by the 1st and 2nd defendant's actions in damaging the walkway, which the plaintiffs aver was built legally with the permission and

consent of the 3rd defendant the public authority concerned.

It is pertinent to mention that at no time did learned counsel for the plaintiffs base the claim of the plaintiffs, as owners of the property they were residing on. Furthermore it is clear from the evidence of the plaintiffs that the said walkway which was constructed by the 1st plaintiff with the permission of the public authorities concerned namely the 3rd defendant was over the public's access to the beach and not built over the property they resided on or any private property or over any private access to the beach concerned. The damages claimed by the plaintiffs are based on the damage caused to the walkway built by the 1st plaintiff on the public's access to the beach. Hence ownership of the property on which they reside is not a relevant factor in determining the issues in this case.

Section 107 of the Code of Civil Procedure CAP 213 reads as follows;

“All persons may be joined in one suite as plaintiff in whom the right to any relief claimed is alleged, whether jointly severally or in that alternative, in respect of the same cause of action and judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as they or he may be entitled to, without any amendment but the defendant though unsuccessful, shall be entitled to his costs

occasioned by so joining any person who is not found entitled to relief, unless the court in disposing of the costs of the suite otherwise direct."

Considering all the aforementioned facts and circumstances before court at present, relating to the cause of action in the plaintiffs' case, this court is inclined to rule that considering the nature of their claim, both plaintiffs do have locus standi to proceed with this case, eventhough they may not be the owners of the land they reside on and maybe joined together as their claims are based on the same cause of action.

M. BURHAN
JUDGE

Dated this the 29th day of March 2010