

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA
CIVIL SIDE NO. 81 OF 2010

EX PARTE: SANDRA GAMAL

APPLICANT

Guy Ferley for the Applicant

RULING

Egonda-Ntende CJ

1. This is an application for discharge of a charge made under Section 45(1) of the Land Registration Act, hereinafter referred to as the Act. The applicant, Sandra Gamal, states in her application that she was a foster child of one Ida Moustache. She was bequeathed parcel number S2802 in a will made by Ida Moustache. Ida Moustache passed away on 13 November 2007. Applicant claims to have attached a copy of the will to her application but there was no such attachment.

2. The applicant states in her supporting affidavit that she has attached a copy of the death certificate of Ida Moustache. None was attached to the affidavit. She was registered as the sole proprietor of the said land on 10th April 2008. She found that there was a charge in favour of one Mohammad Altaf registered in respect of the same land on 16 April 2005 to secure a sum of United States Dollars Seventy thousand lent to the deceased.

3. The applicant contends on her affidavit that Mohammad Altaf was living with the deceased and herself. The deceased had met him in Dubai and brought him back to Seychelles. It is alleged that Altaf abused and manipulated the deceased who was smitten by him and would do everything that he asked her to do. Altaf was entirely dependent on the deceased for financial support.
4. Altaf was expelled from Seychelles and barred from returning in 2006. His current whereabouts are unknown to the applicant. The applicant desires to use her property to raise a loan and develop the same. She believes that the charge was obtained by fraud, hence this application to cancel the same.
5. Mr. Guy Ferley, learned counsel for the applicant, submitted that this application should be allowed so that the applicant may be able to utilize her inheritance.
6. This application has been made under Section 45 (1) of the Act. It states,

‘A charge shall be discharged by an order of the court or by an instrument in the prescribed form, or, in the case of a legal charge, by an order of court or upon the application in writing of the officer or person referred to in Section 43.’
7. Section 45 does not contain grounds upon which an order of court in this regard, may be made. Assistance may be sought, at least by analogy, if not available for direct application, from Section 89 of the Act which provides for rectification of the land Register by order of court. It states,

‘(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud, mistake or substantially contributed to it by his act, neglect or default.’

8. For a party, other than the person who registered the charge, to invoke the jurisdiction of this court to cancel the charge, he must allege grounds as weighty as fraud or mistake. In this particular instance the applicant has alleged fraud, not directly on her affidavit, but on her application. On her affidavit there is no proof provided to support the allegation of fraud. What is provided is a speculative belief only. The applicant called one witness who orally testified in the matter. He added nothing of value to the applicant’s theory of how the charge was procured.
9. To cancel a charge on the land register is a serious matter. It must proceed on some ground. And notice of the application ought to be given to the affected or adverse party, in this case, the person who registered the charge, Mr. Mohammad Altaf. It has been said that the applicant is unaware of his whereabouts. That does not relieve a party of the need to ensure that there is service on a person adversely affected by this proceeding. It triggers other avenues of service in law other than personal service.
10. I am satisfied that this application has no merit. It is dismissed.

Signed, dated, delivered at Victoria this 30th day of July 2010

FMS Egonda-Ntende

Chief Justice