

## **CHURCH v BONIFACE**

**(2011) SLR 260**

W Hermine for the applicant  
B Hoareau for the respondent

### **Ruling delivered on 29 July 2011 by**

**EGONDA-NTENDE CJ:** This is an application for a writ of habere facias possessionam in which the applicant is seeking the eviction of the respondent from a piece of land at Glacis, Mahe. This application is by notice of motion with an affidavit sworn by the applicant before her attorney Mr William Hermine. This is the point of objection by Mr Basil Hoareau, counsel for the respondent.

Mr Basil Hoareau submitted that this affidavit was insufficient to support this application as it was void by reason of having been sworn before the counsel for the applicant. He cited the applicable law as Order 41 rule 8 of the Supreme Court of England as there was no provision in the Seychelles Code of Civil Procedure.

Mr William Hermine, counsel for the applicant did not reply to this submission. He was content for the matter to be decided on the basis of the papers he had filed.

Section 17 of the Courts Act states -

in civil matters whenever the laws and rules of procedure are silent, the procedure, rules and practice of the High Court of Justice in England shall be followed as far as practicable.

Order 41 rule 8 of the Rules of the Supreme Court of England states -

Without prejudice to the Commissioners for Oaths Act, 1889, no affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that solicitor.

The objection by Mr Basil Hoareau raised a valid point long ignored in this jurisdiction. This practice of an attorney acting for a party accepting to swear an affidavit is clearly contrary to the law of this land and ought to stop. For my part I shall not encourage it.

I find that affidavit filed in support of this application is void and of no effect. As the application is not supported by evidence it stands dismissed with costs.

**Record: Civil Side No 204 of 2010**