THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES

Civil Side No 178 of 2010

Jose Hetimier Applicant

Versus

Donata Gandini Respondent

Charles Lucas for the applicant

Basil Hoareau for the respondent

RULING

Egonda-Ntende, CJ

[1] This is an application for a writ of habere facias possessionem sought by the applicant to order the respondent to quit, leave and vacate a house situate at Anse Petit Cour, Praslin belonging to the applicant. The applicant is co-owner of PR4044 and PR4045 with his wife Farida Hetimier. He acts as the fiduciary .

[2] The applicant states in his affidavit in support that,

> '2. For the past six years my wife and I have been close friends of the respondent, who is an Italian national, with whom we were very close. In the year 2005 the respondent expressed her wish to us that she wanted to have her own house in Seychelles as she was a frequent visitor. In that context we agreed to her proposal that she would pay for the cost of the house to be built on our above mentioned property and thereafter occupy as it as her own.
> 3. We were unaware of the legal implications of our act of consent for her

to pay to pay ,build and occupy the house on our land in her capacity and status as a non-Seychellois. The planning permission and approval were issued in the name of Farida Hetimier (Exhibit P2) because she is not the owner of the land. The quotation for the construction of the house was given by D & M Construction for the contract price of SR320,000 on the 26 January 2006 issued to my wife. (Exhibit P3). Thereafter the Respondent supplied the funds for the project which endured for six months from April to September 2006 (letter of 31/03/06- Exhibit P4)
4. Around October 2006 the Respondent entered into occupation as agreed and continued uninterrupted occupation until September 20009 when her pattern of behaviour and our relationship became sour. She had turned into a nuisance and she disturbed us and our business as guest house operator during the night with loud music and parties. Subsequently we requested her to leave our premises but she refused to vacate by claiming that she had the right to occupy her own house for which she had paid.'

[3] The respondent has sworn an affidavit in which she more or less echoes the applicant's main story that they agreed that she builds a house on the land in question for her occupation and that she was unaware of the law of Seychelles. She claims the current value of the house which was estimated by a Surveyor to be SR 550,000.00 and that until the applicants are able to pay this money she is entitled to continue occupying the house she built. She states that she is advised by her attorneys that she has a 'droit de superficie' over the portion of the land on which she has built the house. And that she would be entitled to compensation in terms of Article 555 of the Civil Code of Seychelles, hereinafter referred to as CCS, if asked to vacate by the applicant.

[4] [1] The law with regard to the grant of a writ of *habere facias possessionem* is well settled in this jurisdiction. Bwana J., (as he then was), restated those principles upon which a writ of *habere facias possessionem* will issue in Maryliane Nolin v Nelson Samson Civil Side No. 171 of 1996 (unreported) in the following words,

'It is the law that a Writ Habere Facias Possessionem is granted in the

following three aspects-
(1) To eject a person occupying property merely on the benevolence of the owner, or if he is a trespasser. Such person has neither title nor right over the property.
(2) If it is the only legal remedy available.
(3) If the respondent has no serious defence to make. Should there be one, then the writ is not granted. Instead, the parties are left to resolve their dispute in a regular action.'

[5] No doubt the applicant is both a co owner and fiduciary of the land upon which the respondent's house is. This house was built with the consent of the applicant and if the applicant is to be believed with their active involvement at all stages. The house was built solely on funds provided by the respondent. The agreement was that it was for her occupation. Clearly the respondent is not a trespasser as she developed the property with the consent of the owners and occupied it with their agreement.

[6] It is now contended that for the applicant this agreement was void by reason of Section 4(1) of the Immovable Property (Restriction of Transfer) Act, hereinafter referred to as the Act, which barred the transfer of immovable property or any right therein, or the lease of immovable property or any right without the sanction of the Minister. The said provisions are unequivocal. I take it that the parties, all of whom have pleaded, ignorance of this law, were acting in good faith at the time. And if such good faith continued to exist, it is open to them to seek the sanction of the Minister now, under section 9(1) of the said Act, which, if granted, would confer retrospective validity to the transaction of the parties bringing their transaction within the law. Whereas the transaction may be deemed illegal there is a window of opportunity that the parties could take to seek retrospective validity.

[7] None of the parties have advanced this possibility and I will proceed no further

with the same except to note that it is not too late for the parties to come with in the provisions of the Act. This is one possible remedy.

[8] The respondent asserts among other possible defences that she is entitled to compensation in terms of Article 555 of the CCS and that she is to be presumed to have acted in good faith in terms of Article 555(5) of the CCS. Whether or not this defence may succeed or whether the respondent is entitled to indemnity from the Applicant, it is not possible to try the same on the present proceedings. It is only possible in an ordinary action.

[9] I am satisfied that the writ applied for in this case is not the only legal remedy available to the applicant or the parties. It is still open to the parties to seek retrospective validation by the Minister of the transaction between them. If not , the applicant can proceed by ordinary action to bring their relationship to an end. Thirdly the respondent has articulated defences that are sufficient to signify that the application for a writ should not succeed. Accordingly I reject this application. It is dismissed with costs.

Signed, dated and delivered at Victoria this 18th day of February 2011

FMS Egonda-Ntende
Chief Justice