

**MAGNAN v DESAUBIN**

**(2012) SLR 58**

Karen Domingue for the plaintiff  
Frances Bonte for the defendant

**Judgment delivered on 29 March 2012 by**

**EGONDA-NTENDE CJ:**

The plaintiff, Rosy Magnan, brings this action against the defendant, Charles Desaubin, seeking an order to evict the defendant from the plaintiff's house on property parcel S3273. The plaintiff seeks a further order to restrain the defendant from entering the said plaintiff's property. The plaintiff seeks a further order that the defendant has no claim whatsoever in the house on property S3273, and costs of this suit.

It is contended for the plaintiff that the parties lived together in a state of concubinage for a period of 35 years. During this period the plaintiff and defendant built a house at Brilliant on a parcel of land registered as S3273 belonging to the plaintiff. The plaintiff is sole owner of the said piece of land. The plaintiff further contends that following the defendant's unbearable and unreasonable behavior towards the plaintiff she was forced to vacate the said house and move elsewhere.

The plaintiff further contends that the defendant constructed on the said piece of land a workshop in which for the last 22 years the defendant has conducted all his work. It is the contention of the plaintiff that the defendant has lived rent-free on the said property and that he has operated his businesses rent-free on the said property for the last 22 years and that as a result the defendant has received in full his contribution to the house on plot S3273. The plaintiff wishes to return and occupy her house and is therefore seeking the eviction of the defendant from the house.

The defendant opposes this action vigorously. The defendant admits that they lived together in concubinage but denies that the plaintiff ever contributed to the building of the house on the land in question. The defendant contends that the defendant built the house in question with the plaintiff's full authorization from his sole funds and savings and a loan that he took from SHDC. He contends that the plaintiff could not have contributed to the building of the said house as she was unemployed at the time. The defendant further contends that the plaintiff left the house on her own accord to go and live with somebody else. The defendant further contends that the value of the house is R 560,000, the value of the carport is R 26,460 and the value of the retaining wall is R 198,028. The defendant prays that the plaint should be dismissed with costs and that the plaintiff be ordered to pay the defendant the sum of R 784,488 as per the valuation of the property in question.

At the hearing of the case, the plaintiff testified in person and called no other witnesses. The defendant testified in person too and called one other witness, a quantity surveyor. From the evidence adduced in this case, it is clear that the facts are not largely in dispute. What I can gather is that it is not in dispute that parcel S3273 is owned by the plaintiff solely and was so owned at the time both the plaintiff and defendant chose to go and live on the said land. The defendant largely constructed the two bedroom house and outbuildings that now exist on the property in question. The plaintiff did make some contributions as she paid a sum of R 2,500 that was the balance of a loan of R 25,000 that the defendant had taken out to build this house.

All in all, the plaintiff's contribution could not have exceeded 10% of the cost of construction of the house and outbuildings on the plot in question. She paid only R 2,500 which was the balance on the loan of R 25,000 taken out by the defendant to support construction of the house. This is only 10% of the loan amount. But the house must have cost much more. The defendant testified that he used the money he got from the house he sold at Takamaka to finance the construction of this house plus the loan.

At the time of building the said property it is clear that the intention of the parties had been that they would occupy it and live on the said property. Unfortunately, that objective has now fallen apart as it appears, at least according to the plaintiff, that she is no longer willing to share the property with the defendant.

What are the rights of the parties in such a situation? It has been contended for the plaintiff that this action is based on article 1381 of the Civil Code of Seychelles and it is for unjust enrichment. It is contended that her patrimony has been impoverished where at the same time the patrimony of the defendant has been unjustly enriched. The defendant disagrees. The defendant contends that the doctrine of unjust enrichment does not apply to the plaintiff. She has not been impoverished in any way.

Case law in this jurisdiction is clear that concubinage creates no legal rights or relationship. The partners' contributions either in terms of consortium or household chores or looking after children in a concubinage relationship is not taken into account and confers no value or benefit to one or the other party. Regardless of whether or not the reasoning that gives rise to this widely held view in the jurisprudence of this jurisdiction is sound or not, this, it must be accepted, is the law of the land.

Living together in a non-marital relationship and raising a family is so widespread and common place in Seychellois society today that it is questionable if it can be judged by the morality of 19<sup>th</sup> century Europe which adjudged it be immoral and continues to hold so today. This is so regardless of whether this standard of morality has been abandoned in Europe. I suppose the position is so firmly established in our law that it now requires legislative action to bring the law in line with the lives, morality, and culture of the nation.

The only limited relief parties to such a relationship have been allowed by the law is the use of the doctrine of unjust enrichment. Where one party has made a contribution, for instance to the development of property, and that property is owned by the other party, the extent of the contribution can be reimbursed to the other party on the basis of an action in '*de rem verso*' or unjust enrichment pursuant to article 1381 of the Civil Code of Seychelles hereinafter referred to as the CCS.

There are two cases of the Court of Appeal which are apparently in conflict over whether article 555 of the CCS could apply in cases involving parties that have been in a concubinage relationship. These are *Elfrida Vel v Selwyn Knowles* SCA No 41 of 1998, and *Octave Arrissol v Stephenie Dodin* SCA No 6 of 2003.

The relevant facts of *Elfrida Vel v Selwyn Knowles* are that the parties cohabited together for 17 years. In the course of this time the plaintiff purchased a house and registered in it her name. She did so with funds from the defendant. The defendant made substantial financial contributions toward the house and participated in the construction of the house. The plaintiff had taken a loan that was partially paid. The plaintiff subsequently moved out of the house. She later brought an action seeking to be declared the rightful owner of the house and land, an order for eviction of the defendant, and an injunction restraining the defendant from occupying the plaintiff's house.

The trial court ordered the defendant to refund to the plaintiff the amount of money she had paid on the loan, and ordered the plaintiff to re-convey to the defendant the plot of land. The plaintiff appealed. The Court of Appeal held that the trial court could not re-formulate the case for the parties after listening to the evidence. The court could not adjudicate on issues not raised by the parties and in particular the re-conveyance of property. The court held that the plaintiff was the registered owner of the land and the defendant would be entitled to compensation under article 555 of the CCS.

The facts of *Octave Arrissol v Stephenie Dodin* are that the parties had cohabited for 14 years. They had acquired property in their own names. The plaintiff claimed that the property registered in the defendant's name was acquired as joint property in the course of their cohabitation. She brought an action for unjust enrichment. The trial court found that the plaintiff had suffered impoverishment while the defendant had been unjustly enriched. The court awarded damages. The Court of Appeal on appeal by the defendant reaffirmed the decision of the trial court, grounded in unjust enrichment. It stated in part -

The learned trial judge rightly held that the plaintiff could not have brought a real action for a right of co-ownership as she had no legal right to the land, which was registered in the sole name of the the defendant. On the question of the alleged remedy available under Article 555 of the Civil Code of Seychelles, with due respect to the views of Mr Hodoul this Article is not all relevant to the case on hand as there is a world of difference between the rights and obligations of a third party, who has erected buildings or structures on another's land and that of a concubine, who has contributed in cash or kind to her cohabiter. The trial judge rightly, therefore, rejected the contention of the defendant in this respect.

On the face of it *Arrissol Octave v Stephenie Dodin* suggests that a concubine or common law partner cannot found a claim under article 555 of the Civil Code of Seychelles. However on a closer examination of the foregoing passage in the judgment of the Court of Appeal, it appears to me that all the Court of the Appeal is saying is that a person, be it concubine or otherwise, who has only contributed cash to the person that has made the development on land, is not entitled to claim under article 555. It is only a person who has erected a building or made the developments in question that would be entitled to claim under article 555 and this could well include a cohabiter. Read this way *Arrissol Octave v Stephenie Dodin* is not in conflict at all with *Elfrida Vel v Selywn Knowles*. Both decisions in effect are in agreement.

Secondly, if a concubinage creates no legal relationship, it is rather perplexing how concubinage in itself can disqualify a party from claiming relief under article 555 of the CCS in event that such party was entitled to such relief. In my view regardless of whether one has been in a concubinage or not, a party may be entitled to relief if the conditions set out in article 555 of the CCS are fulfilled, where such party has developed property of another which is consistent with *Elfrida Vel v Selwyn Knowles*.

It is clear that the plaintiff is the sole owner of S3273 and the defendant has no claim to the said land. The defendant developed the house in question with the express permission of the plaintiff. The defendant occupied the said house with the express permission of the plaintiff. The plaintiff has now changed her mind. She desires to evict the defendant.

The defendant's defence, effectively in the form of a set-off, is basically that he should not be evicted unless the plaintiff pays him the value of the house that was erected by the defendant on the plaintiff's land with her permission. This value has been assessed at the sum of R 784,488 only by Ms Bastille a quantity surveyor that testified in this court.

I am satisfied that in the circumstances of this case, it is untenable for the plaintiff to claim that since the defendant has been living in this house for 22 years that should be transformed into rent and debited against the defendant so as to wipe out the value of improvements or the value of the development of the property. There was never a landlord tenant relationship at any one time between the parties. The question of rent due from defendant to plaintiff cannot arise. If the plaintiff wants to evict the defendant it is only equitable that the plaintiff pays to the defendant the value of improvements to the land in question which has been valued at R 784,488, less 10% which I find to have been her contribution to the development of the property.

I have decided to anchor this decision in article 555 of the CCS, following the Court of Appeal decision in *Elfrid Vel v Selywn Knowles*, rather than article 1381 of the CCS as pressed upon me by the plaintiff's attorney. Article 1381 does not apply in my view in light of the fact that the patrimony of the plaintiff has actually not been impoverished but in real terms has been improved by the defendant's construction of a house on parcel

S3273. As the plaintiff wants to take advantage of the development of S3273 made by the defendant, the plaintiff must pay to the defendant the value of improvement of the said property prior to excluding the defendant from possession.

I hasten to add that even if article 555 of the CCS may not be applicable, it would be sufficient to ground this decision in the doctrine of equity as it would be inequitable for the plaintiff to evict the defendant without compensation for the improved value that that the defendant has brought to this property with the permission and consent of the plaintiff.

In the result I will allow the action for the plaintiff only on condition that she pays the sum of R 784,488 less 10% to the defendant. The defendant shall vacate the said property one month after receipt of the said sum of money.

Each party shall bear its own costs of these proceedings given the fact that it is estrangement from a rather intimate relationship that has given rise to the proceedings.