

**THE REPUBLIC OF SEYCHELLES**  
**IN THE SUPRME COURT OF SEYCELLES AT VICTORIA**

Civil Suit No. 176 of 2011

Sunset Beach (Pty) Ltd=====Plaintiff

Versus

Dorsi Raihl=====Defendant No.1

Richard Raihl=====Defendant No.2

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*Basil Hoareau for the Plaintiff*

*Frank Ally for the Defendant*

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**RULING**

**Egonda-Ntende, CJ**

- 1 This ruling is in respect of a plea in *limine lites* argued for the defendants that the plaint in this case does not disclose a reasonable cause of action against the defendants and ought to be struck off with costs. The plaintiff is the owner of a hotel on Parcel H1149 at Glacis, Mahe. The defendant is the owner of Parcel H1534 which adjoins Parcel H1148 a parcel owned by the plaintiff. This parcel H1148 is located between H1149 and H1534. All these properties are connected by a beach.
- 2 The plaintiff intends to extend his hotel to H1534 and among its plans are a greater privacy of the beach. The plaint states in part,

‘7. The plaintiff avers that:

- (i) presently the defendant is preparing to commence the construction of a dwelling house on parcel H1584; and
- (ii) presently there are no private houses nor any other buildings, apart from that of the hotel, that has been built along the beach.

8. The Plaintiff avers that if the Defendant is allowed to proceed with the constructions of the house and complete the said house, the house will have the following negative effect on the plaintiff’s hotel.

### **Particulars of negative effect**

(i) Noise from the private dwelling house will disturb the hotel guests; and

(ii) furthermore, the construction of private dwelling house in that location will spoil the unique atmosphere of the hotel, its design will not blend in with the general architecture and it will affect the business as the clients of the hotel particularly appreciate the tranquillity of this secluded beach, thus affecting the marketing potential of the hotel resulting in a reduction of income.

Wherefore the plaintiff prays this Honourable Court to be pleased to make the following orders;

(i) Order that the defendants to jointly and severally cease the construction of the dwelling house and declare that the development shall not construct a dwelling house or any other building on parcel H1584;

(ii) make any other order it deems fit and necessary.’

- 3 Mr Frank Ally, learned counsel for the defendants, submitted that this court has jurisdiction to strike out a pleading under section 92 of the Seychelles Code of Civil Procedure, (hereinafter referred to as the SCCP), that discloses no reasonable cause of action. The legislature did not restrict these class of cases to those that do not disclose a cause of action but a reasonable cause of action. An action may disclose a cause of action but still run counter to this provision. He submitted that the plaintiff’s action is a *trouble de voisinage* that was a faute in law. What the plaintiffs seek in this action is to deny the defendant their constitutional right to enjoy their property. This is clearly unconstitutional. He prayed that this plaint should be struck out.
- 4 Mr Basil Hoareau, learned counsel for the plaintiff submitted that it is true that the plaintiff’s action was based on *trouble de voisinage* but not on the basis of a faute under article 1382 of the Civil Code. The current cause of action is based in French jurisprudence. He referred to the cases of Boodhoo v Prefumo 1987 MR 191 and Ramgutty v Hanumathadu 1981 MR 340. He submitted that lawful actions of a defendant owner of land can lead to actionable results on a neighbour’s land. This was at the heart of an action based on a *trouble de voisinage*.
- 5 In so far as the description of an action founded on *trouble de voisinage* Mr Hoareau is correct. It is not founded on article 1382 but rather seems to lie in French Jurisprudence. This is clear from a line of cases by Supreme Court of Mauritius;

Boodhoo v Prefumo 1987 MR 191, Ramgutty & Co Ltd v Hanumathadu 1981MR 340 and Hermic Limited v Compagnie Des Magasins Populaires Limitee and Anor 1981MR183.

- 6 This is what Moollan S.P.J., had to say about it in Hermic Limited v Compagnie Des Magasins Populaires Limitee and Anor at page 186,

‘It must be admitted, however, that the construction works must have entailed a certain amount of inconvenience to all around and in particular to the plaintiff who now seeks remedy; but before it can obtain it, **it must be established, over and above the relation of cause and effect, that the inconvenience was beyond that which an adjoining owner or occupier is expected to endure in the circumstances.** No development and no new venture would be able to be undertaken unless a certain amount of give and take attitude were to be displayed by all who may be, temporarily and within reasonable limit, affected. **In the present state of jurisprudence, it is only beyond a certain amount of reasonable tolerance that an action will lie.** It does not appear to me from the evidence on record that the defendant’s action were such as to justify the complaints made. ....  
Even if I were to conclude that the defendants were responsible for the loss registered **I hasten to add that I would have found that the defendants were still not liable as I am of the view that the plaintiff should have put up with the reasonable use of its property by the defendants in the circumstances.**’ [Emphasis is mine.]

- 7 In Ramgutty and Co Ltd v Hanumathadu [supra] the court observed at page 343,

‘The practice of the French Court appears to us founded on reason and good sense, and while in particular cases differences in environment and social conditions may lead us to adapt or modify their solutions, in general we consider that the practice provides us with valuable guidelines. Thus our Courts, while not unmindful of the needs of industrial growth, **will seek to preserve the quality of life, and protect the house-holder against an intolerable level of noise. On the other hand, we shall not encourage the vexatious litigant who complains of inconveniences unavoidable in the circumstances they occur:** .....  
In the present case, the facts found by the trial judge clearly show that there was that degree of abnormal inconvenience which entitles the plaintiff to be protected’

- 8 Boodhoo v Prefumo [supra] followed Ramgutty and Co Ltd v Hanumathadu [supra]. Following from the foregoing it is clear that for an action *trouble de voisinage* to lie the activities of the defendant complained of must be resulting in an abnormal

inconvenience, be it noise or smell or whatever, that is over and above that which is normal or ordinary or unavoidable in the circumstances between the two neighbours.

- 9 Clearly what is cast upon the defendant by paragraph 8(1) falls short of the standard established in cases of this nature. The plaintiff is alleging that there will be noise from a private dwelling house that will disturb the hotel guests. This is not sufficient to cause an action to lie against the defendant. It is not such inconvenience as is over and above what one would expect between the 2 neighbours. That is what is actionable and not just any noise as has been contended in the plaint. Secondly the point is moot. The plaintiff has not built his hotel. Neither is the defendant alleged to have built his house. This is a pre-emptive strike if ever there was one.
- 10 The foregoing applies to the second so-called negative particular set out in paragraph 8(ii) of the plaint. It is not actionable. A difference in architectural design or the claim that the defendant's architectural design will not blend with that of the plaintiff and will affect the business of the plaintiff in so far as the clients of the hotel appreciate the tranquillity of the secluded beach. This would affect the marketing potential of the hotel resulting in a loss of income. This is speculative hullabaloo! Beaches and or the seashore are part of the public domain by virtue of article 538 of the Civil Code of Seychelles and cannot be alienated as private property. The plaintiff has no actionable right to demand exclusive use of the public domain.
- 11 Section 92 of the Seychelles Code of Civil Procedure, hereinafter referred to as the SCCP, allows the court to strike out a pleading that discloses no reasonable cause of action and to dismiss the action. It provides,

‘92. The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleading to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or may give judgment on such terms as may be just.’
- 12 Though a cause of action is not defined in the SCCP comparative case law is of persuasive value and may be helpful. In Auto Garage v Motokov [1971] E A 514 the Court of Appeal for East Africa considered the meaning of cause of action. After a

review of a number of English decisions on the subject, Spry VP, defined it in the following words at page 519,

‘I would summarize the position as I see it by saying that if a plaintiff shows that the plaintiff enjoyed a right, that has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed.’

13 It appears to me that the plaintiff in this matter has failed to show on the plaint that it has a right that has been violated, or will be violated in the future, for which it can hold the defendants liable. The plaintiff is no doubt entitled to develop its property Parcel H1148, anytime it wishes, in accordance with the laws of Seychelles. But so are the defendants entitled to develop their property. The plaint has failed to show in what way, known to the law, that the defendant has caused the plaintiff such injury as would entitle the plaintiff to relief it wishes imposed upon the defendant. The particulars of paragraph 8 fail to establish any nuisance that is actionable.

14 But perhaps of even greater consequence is the relief claimed by the plaintiff. For this court to order the defendants not to develop their property. I am afraid that is no relief available to the plaintiff or against the defendants on a claim of this nature. The defendants have constitutional protection vide article 26 of the Constitution, to their right to property. This right cannot be extinguished by an order of court at the behest of an owner of adjoining property whose dream is to have no neighbours.

15 I am satisfied that the plaint in question fails to disclose a cause of action or a reasonable cause of action. I strike out the plaint with costs to the defendants.

Signed, dated and delivered at Victoria this 16<sup>th</sup> day of November 2012

FMS Egonda-Ntende  
**Chief Justice**