

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS57/2014**

**[2016] SCSC 374**

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**YVONE OTAR OF ROCHE BOIS, MAHE**

Plaintiff versus

**BRINA OTAR OF ROCHE BOIS, MAHE**

1<sup>st</sup> Defendant

**THE GOVERNMENT OF SEYCHELLES HEREIN REPRESENTED BY THE  
ATTORNEY GENERAL OF NATIONAL HOUSE VICTORIA MAHE  
SEYCHELLES.**

2<sup>nd</sup> Defendant

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Heard: 16<sup>th</sup> day of March 2016  
Counsel: Mr. J. Camille for plaintiff  
Mr. B. Julie for 1<sup>st</sup> defendant  
Ms. B. Confait for the 2<sup>nd</sup> defendant  
Delivered: 30<sup>th</sup> day of May 2016

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**RULING**

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Govinden J

[1] Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this case have raised a “plea in limine litis” dated the 4<sup>th</sup> day of November 2014 and the 29<sup>th</sup> day of September 2015 respectively.

[2] The 1<sup>st</sup> Defendant’s plea in limine litis is in essence to the following effect:

1. *The Plaintiff’s action should be struck off or dismissed on the ground that it discloses no reasonable cause of action against the 1<sup>st</sup> Defendant and/or the pleadings are shown to be frivolous and vexatious, as the purported cause that gives rise to the Plaintiff’s claim is an ongoing dispute between the Plaintiff and the 2<sup>nd</sup> Defendant.*

2. *This action amounts to an abuse of right and of the process of the Court by the Plaintiff in all the circumstances of the case against the 1<sup>st</sup> Defendant.*

[3] The 2<sup>nd</sup> Defendant’s plea in limine litis in a gist is as follows:

1. *The plaint discloses no cause of action against the second Defendant.*

2. *The Plaintiff does not have legal capacity to bring this action by virtue of the fact that she is not the registered owner of land parcel V538 at Roche Bois, Mahe.*

[4] Learned Counsels for the Plaintiff and Defendants as above-referred, filed written submissions on behalf of their respective clients as to their legal stance vis-a-vis the points of laws raised on the 1<sup>st</sup> day of September 2015, 2<sup>nd</sup> day of December 2015 and 2<sup>nd</sup> day of March 2016

respectively of which contents have been duly considered by this Court for the purpose of this Ruling.

- [5] A brief history of the facts of the case giving rise to the plaint as transpired on pleadings filed thus far, reveals that the 2<sup>nd</sup> Defendant in the year 2013 had started construction of a motorable access road onto part of Plaintiff's property, namely land parcel V4874 without having obtained her prior consent for the said construction onto her land. It is further alleged that as a result of the actions of the 2<sup>nd</sup> Defendant as referred, the beacon demarcation of the Plaintiff's property namely V4874 were interfered with and/or removed, the result of which the exact demarcation of her property vis a vis the 1<sup>st</sup> Defendant cannot now be ascertained on site and in law hence allegedly rendering the actions of the 2<sup>nd</sup> Defendant as 'a faute' in law in which the 2<sup>nd</sup> Defendant must make good to the Plaintiff.
- [6] The pleadings also admittedly reveals that the 1<sup>st</sup> Defendant is owner of an adjoining parcel of land to that of the Plaintiff's land as averred being namely parcel V11514.
- [7] It is not disputed either that the 2<sup>nd</sup> Defendant started the construction of a motorable access road in the year 2013 but it is however averred by the 2<sup>nd</sup> Defendant in rebuttal that all necessary prior consents of all parties affected by any intended encroachments were duly notified.
- [8] Now, this Court notes that points of law raised by both Defendants are twofold by nature and each stands on their own and should any one of them be upheld then the whole case will be disposed of hence the redundancy of the other remaining grounds as a result.
- [9] It follows, therefore that I will thus treat the first plea in limine litis in respect of both Defendants separately namely, as to whether the plaint discloses any reasonable cause of action as against the Defendants. I

will further for sake of clarity then move on to treat the second limb of the 2<sup>nd</sup> Defendant's plea in limine litis as above-illustrated.

- [10] Vis-a-vis the first plea in limine litis as raised by both Defendants namely that the plaint discloses no reasonable cause of action as against the Defendants, it is to be noted that our local case law, is very clear in that respect, specifying and without room for ambiguity, that in determining whether or not a plaint discloses a reasonable cause of action, ***it is the obligation of the Court to look only at the pleadings and not the evidence as such.*** (Vide: inter alia, the cases of **Gerome v Attorney General (1970)**; **Albest v Stravens (No. 1 (1976))**; **Oceangate Law Centre v Monchouguy (1984)** and **Get High (Pty) Ltd and Ors v Steve Gerrad and Ors (Commercial Case No. 08 of 2012)**).

(Emphasis in mine).

- [11] Section 92 of the Seychelles Code of Civil Procedure (Cap 213) (hereinafter referred to as "the Code"), allows the Court to strike out a pleading that discloses no reasonable cause of action and to dismiss the action. It provides that:

*"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, the Court may order the action to be stayed or dismissed, or may give judgement on such terms as may be just."*

- [12] A cause of action is not defined in the Code but of persuasive authority and value in that respect is the Ruling in the case of **Auto Garage v Motokov [1971] EA 514**, wherein the Court of Appeal for East Africa considered the meaning of cause of action and after a review of a number of English decisions on the subject, **Spry VP**, defined it in the following words at page 519 thereof, that: *"I would summarize the position as I see it by saying that if a plaint 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] Now, in the instant case, the first Defendant comments in her submissions on the first plea in limine litis that the Plaintiff’s claim is an ongoing dispute between the Plaintiff and the 2<sup>nd</sup> Defendant only hence no reasonable cause of action against her.

[14] In that light, the Court refers to the provisions of section 109 of the Code which section provides that, *“all persons may be joined as Defendants against whom the right to any relief is alleged to exist, whether jointly, severally or, in more of the Defendants as may be found to be liable, according to their respective liabilities, without any amendment”.*

[15] The stated provision of the Code renders it as a mandatory pre-requisite that **“the right to any relief is alleged to exist”** and this is to be closely read together with the provisions of section 71 of the Code in respect of particulars to be contained in a plaint more particularly at its sub-sections (d) and (e) thereof which provides thus:

*“Section 71: The plaint must contain the following particulars:*

*(d) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to substantiate the action”;* and

*(e) “a demand of the relief which the Plaintiff claims”*

[16] A very careful scrutiny of the Plaint vis-a-vis the 1<sup>st</sup> Defendant simply refers to the 1<sup>st</sup> Defendant as the owner of parcel of land V11514 which parcel adjoins parcel of land V 4874 belonging to the Plaintiff and subject matter of the Plaintiff’s cause of action as against the 2<sup>nd</sup> Defendant. Further, is clear that no **“faute is alleged and or**

**averred”** and or “ **any right of relief is alleged to exist”** as against the 1<sup>st</sup> Defendant in the Complaint as filed.

[17] It follows therefore on the basis of the above analysis, that this Court finds that there is a l'égard to the first Defendant no reasonable cause of action hence the complaint is hereby dismissed against her.

[18] In respect of the 2<sup>nd</sup> Defendant on the basis of the first plea in limine litis, the Court deems it important to emphasise at this juncture, that ***‘where the non-existence of a reasonable cause of action is not beyond doubt ex-facie the pleadings, the pleading ought not to be struck out’*** (Vide: the above-cited case law in that regard).

[19] Attempts at adducing evidence contrary to the basic Rules of evidence by way of attachments to written submissions as filed by the 2<sup>nd</sup> Defendant is contrary to legal practice and basic tenets of civil procedure law hence shall not be condoned and or entertained by the Court. In that respect therefore, I shall disregard the attachments to the submissions of the 2<sup>nd</sup> Defendant for reasons stated.

[20] I also carefully examine the Complaint and finds that as per the averments at paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 thereof, that the first plea in limine litis as raised by the 2<sup>nd</sup> Defendant cannot be dealt with at this point unless evidence is led and considered by the Court accordingly. There is in my opinion a plain and concise statement of the circumstances constituting the cause of action and of the material facts necessary to sustain same and a demand of the relief as against the 2<sup>nd</sup> Defendant for the purpose of the pleadings as per the provisions of Section 71 of the Code as illustrated (supra), hence, such a plea cannot be entertained at this stage but rather to be considered after the hearing of the case on the merits proper.

[21] It follows therefore in the light of the above analysis that the first plea in limine as raised by the 2<sup>nd</sup> Defendant is overruled accordingly.

- [22] In furtherance to paragraph [9] of this Ruling, this Court will now move on to consider the second limb of the 2<sup>nd</sup> Defendant's plea in limine litis to the effect that *"The plaintiff does not have legal capacity to bring this action by virtue of the fact that she is not the registered owner of land parcel V538 at Roche Bois, Mahe"*.
- [23] In considering the latter point of law, the Court further reiterates its Ruling at paragraphs [18] and [19] thereof and further rules that the basis of the Plaint as filed is in respect of Parcel V 4874 and not V538 as rightly argued by Learned Counsel for the Plaintiff in his written submissions hence rendering the plea in limine litis devoid of merits. In that same respect however, the Court further makes the observation that errors of this kind at the stage of pleadings are technical by nature and might necessitate amendments at the motion of the relevant parties for it does not in the specific facts of this Plaint render the Plaint "null and void ab initio". However, the proper procedure for amendment is to be followed by way of Motion and not by way of written submissions as done by Learned Counsel Mr Camille.
- [24] It follows thus that the second limb of the plea in limine litis of the 2<sup>nd</sup> Defendant is also found to be devoid of any merits and is overruled accordingly.
- [25] In the end result, the Court rules that the Plaint as against the first Defendant is dismissed as ruled at paragraph [17] thereof as against the first Defendant only and the Pleas in limine litis as raised by the 2<sup>nd</sup> defendant are both overruled accordingly for reasons given. Hence the matter shall proceed for hearing on the merits as against the 2<sup>nd</sup> Defendant.

Signed, dated and delivered at Ile du Port on 30<sup>th</sup> day of May 2016.

Govinden J  
Judge of the Supreme Court