

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS58/2014

[2016] SCSC395

YVONE OTAR OF ROCHE BOIS, MAHE

Plaintiff versus

RUTH HOAREAU OF ROCHE BOIS, MAHE

1st Defendant

BONNEAVENTURE MOREL OF ROCHE BOIS, MAHE

2nd Defendant

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

3rd Defendant

Heard: 23rd day of March 2016
Counsel: Mr. J. Camille for plaintiff
Mr. B. Julie for the 2nd Defendant
Ms. B. Confait for the 3rd Defendant
Present/Unrepresented 1st Defendant
Delivered: 9th day of June 2016

RULING

Govinden J

- [1] The First and the Third Defendants in this case have raised a “plea in limine litis” dated the 25th day of November 2014 and 21st day of September 2015 respectively.
- [2] Both the first and the third Defendants have raised a first similar plea in limine litis which in its essence is *‘that the Plaintiff does not disclose a reasonable cause of action as against them.*

The 2nd Defendant, though did not raise a plea in limine litis per se, by way of written submissions of the 16th day of February 2016 adopts the same first point of law as raised by the first and third Defendants. In that same respect, it is to be noted that Learned Counsel for the Plaintiff in his written submissions of the 2nd day of March 2016 recognises the submissions on the point of law as argued by Learned Counsel for the 2nd Defendant hence it also stands “uncontested” for the purpose of this Ruling.

In the same light this Court further finds that albeit not raised in the second Defendant’s Statement of defence, ***‘A Court or Tribunal should not ignore a point of law even if not raised by the parties, if to ignore it would mean a failure to act fairly or to err in law’*** (Vide the case of **Banane v Lefevre (1986) SLR 110 and Bogley v Seychelles Hotels (1991) Ayoola 231/15**). In view of the specificities of this matter, it is considered that the Court should not ignore the above-said first point of law in regards to the second Defendant either.

- [3] The first Defendant further raises a second plea in limine litis to the effect that *‘the Plaintiff as against the 1st Defendant should be struck out for being frivolous and vexatious’.*
- [4] The third Defendant on its part together with the first plea in limine litis as illustrated above, further raises a second point on law in 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 V 538 at Roche Bois, Mahe'.

[5] 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 law as raised on the 16th and 17th day of February 2014 and 2nd day of March 2016 respectively of which contents have been duly considered for the purpose of this Ruling.

[6] In a gist, the facts of the case giving rise to the Plaintiff as transpired on the pleadings filed thus far, reveals that the 3rd Defendant in the year 2013 had started construction of a motorable access road onto ***'allegedly' part of Plaintiff's property, namely land parcel V538 without having obtained her prior consent for the said construction on her land.*** It is further alleged that as a result of the actions of the 3rd defendant, as alleged, the beacon demarcation of the Plaintiff's property namely V538 were interfered with and/or removed, the result of which the exact demarcation of her property vis a vis the 1st and 2nd Defendants cannot now be ascertained on site and in law hence allegedly rendering the actions of the 3rd Defendant as 'a faute' in law in which the 3rd Defendant must make good to the Plaintiff.

(Emphasis is mine).

[7] The pleadings admittedly reveal that the 1st and 2nd Defendants are both owners of adjoining parcels of land to that belonging to the Plaintiff.

[8] It is not disputed either that the 3rd Defendant started the construction of a motorable access road in the year 2013 but it is however strenuously denied by the 3rd Defendant in rebuttal that the said road construction was not on any part of the Plaintiff's property and therefore no prior written consent of the Plaintiff was required and

further that all necessary prior consents of all parties affected by any intended encroachments were duly notified.

- [9] Now, this Court notes that the points of law as raised by the 1st Defendant though appearing to be twofold by nature can be consolidated into one for it simply relates to the same issue in substance and in pursuance to a single Section of the Seychelles Code of Civil Procedure (Cap 213) (hereinafter referred to as the “Code”), more particularly at its Section 92 thereof. As to the Third Defendant, the points of law as raised are different in nature for the second plea in limine relates to the locus standi of the Plaintiff vis-à-vis the Plaintiff hence the grounds shall be treated separately but however should the second point of law be upheld, the basis of the first becomes redundant as a result. But for the sake of convenience I shall treat both grounds separately.
- [10] The law with reference to the plea in limine litis as raised by the 1st and 2nd Defendant as per Section 92 of the Code is clearly rehearsed in inter alia the case of **Gerome v Attorney General (1970)**, wherein it was decided that in the process of adjudicating on same, ***‘it is the obligation of the Court to look only at the pleadings and not the evidence as such’***.
- [11] Section 92 of the Code, allows the Court to strike out a pleading that discloses no reasonable cause of action or is frivolous and vexatious and to dismiss the action, stay or give Judgement on such terms as may be deemed fit.
- [12] Now, in the instant case, the First and Second Defendants submitted that the Plaintiff’s claim is an ongoing dispute between the Plaintiff and the Third Defendant only, hence no reasonable cause of action against them.

- [13] 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”***.
- [14] The stated provision of the Code renders it of paramount importance that ***“the right to any relief is to be 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.
- [15] A careful examination of the Plaint in the light of the above-mentioned provisions of the Code, it is abundantly clear as admitted by the Plaintiff in the Plaint and written submissions, that the 1st and 2nd Defendants are simply adjoining owners of a parcel of land allegedly belonging to the Plaintiff namely Parcel V 538 **and subject matter of Plaintiff’s cause of action** as filed. Further, it is clear that no ***“faute is alleged and or averred”*** and or ***“right of relief is alleged to exist”*** as against the 1st and 2nd Defendants.
- [16] It follows therefore as against the 1st and 2nd Defendant as illustrated, that this Court cannot but find that there is no reasonable cause of action as against the said Defendants at this stage of the proceedings ex facie the pleadings hence the Plaint is hereby dismissed as against both the 1st and the 2nd Defendants accordingly.
- [17] In respect of the 3rd Defendant, I shall treat the second plea in limine litis first for its outcome will have a direct consequence on the first plea in limine litis as raised. The second plea in limine litis reads thus ***“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.”

In support of this averment, Learned Counsel for the 3rd Defendant as per written submissions of the of the 17th February 2016 submits in essence that the Plaintiff has no locus standi to file this suit on the ground that the Plaintiff has no sufficient interest and or standing in the subject matter of the suit in that the Plaintiff is not the registered owner of the Parcel V538. It is submitted further that the said parcel does not exist in view of a subdivision hence closure of same in the Land Register kept at the Land Registry.

In further support of the submissions, Learned Counsel attached thereto official copies of the Official Search Certificates of the Parcel V538 and its subdivisions after closure (of which the Court takes Judicial Notice for the purpose of this Ruling) and it is abundantly clear that neither is the parcel prior to or after subdivision being owned by the Plaintiff as alleged in the Plaint.

[18] Plaintiff through Learned Counsel Camille’s written submissions of the 2nd day of March 2016 **admits** to not being the registered owner of Parcel V538 as averred at paragraph 1, 3, 5 and 7 of the Plaint. It is to be noted in that respect, ***‘that the cause of action of the Plaintiff rests solely on the ownership of Parcel V538’*** and as a result as decided in the case of **Allied Builders v/s Fregate Island (2011) SLR, ‘Civil litigation may only be instituted by the filing of a Plaint based on an existing cause of action. Therefore, the cause of action must have been in existence prior to the filing of the Plaint’.**

[19] In the instant matter the basis of the cause of action as against the 3rd Defendant relies largely or if not solely as indicated earlier on the ownership of Parcel V538 by the Plaintiff and same was and is not

owned as per entries in the Land Registry relevant to the specific parcel, to the Plaintiff, hence the Plaintiff having no locus standi to file this action as against the 3rd Defendant.

[20] It follows as a direct result of the Ruling on the second point of law as raised by the 3rd Defendant that without need for any “extra mental gymnastic” by this Court, that the first plea in limine litis succeeds accordingly for there being no reasonable cause of action as against the 3rd Defendant.

[21] In the end result, the Court rules that the Plaint as filed as against the First, Second and Third Defendants stands dismissed as ruled at paragraph [17], [20] and [21] thereof for reasons given (as against all Defendants).

Signed, dated and delivered at Ile du Port on 9th day of June 2016.

Govinden J
Judge of the Supreme Court