

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MC107/2016**

**[2016] SCSC 480**

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France Tamboo

Applicant

versus

1. Macdonald Pillay
2. Anne Pillay

Respondents

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Heard: Affidavits submitted on 31<sup>st</sup> March 2016 and 18th April 2016

Counsel: Frank Elizabeth for applicant  
France Bonté for respondents

Delivered: 8<sup>th</sup> July 2016

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**ORDER ON MOTION**

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**M. TWOMEY, CJ**

[1] This is an application for a writ *habere facias possessionem* by the Applicant, France Tamboo. He supports his application by an affidavit in which he depones that the Respondents have without his authorisation entered into unlawful and illegal occupation of his house for the past two years.

[2] He has further averred that that he has tried to get the respondents to leave amicably without success although they had promised before the police to vacate by 31<sup>st</sup> March 2016. He has attached a letter dated 3<sup>rd</sup> March 2016 from his attorney to support his affidavit.

- [3] The 1<sup>st</sup> Respondent has filed an affidavit in response in which he avers that he and the 2<sup>nd</sup> Respondent were given permission to live in the house in issue by the Applicant. He adds that permission was given subject to them doing renovation works to the house at their own expense. In support of his affidavit he has attached invoices dated 16 April 2016 for work done on the house.
- [4] The parties were invited to have a hearing for this matter but declined, both expressing the wish to have this matter summarily dealt with on the affidavits and documentation supplied to the Court.
- [5] A writ *habere facias possessionem* is a quick executive remedy available to an owner of property to evict a squatter. The suit for such a remedy brought under the old French Civil Procedure Code, articles 806-811 (*la procédure de référé*) is the fastest way, entailing little proceedings to bring an action where a remedy is urgently required.
- [6] The law in Seychelles on this issue is settled and I do not see any reason why we should depart from established precedents. Principles for the grant of this writ were established by Sauzier J in *Delphinus Turistica Maritima SA v Villebrod* SLR 1978 121, the Court of Appeal in *Pike v Vardin* CS 18/1992, *Casino des Seychelles v Compagnie des Seychelles (Pty) Ltd* SCA 2/1994, *Thailapathy v Tirant* SCA 28/1994, *Emerald Cove v Intour SRL* SCA 5/2000 and in *Amade v Mousmie* SCA10/2009.
- [7] These cases establish that a writ *habere facias possessionem* will only be granted if the following conditions are met:
- (i) No serious or bona fide defence can be made to the application.
  - (ii) There are no serious issues to be tried.
  - (iii) There is no alternative legal remedy.
  - (iv) There is urgent need for the writ and delay would cause irreparable loss and hardship.
- [8] Moreover a writ *habere facias possessionem* is an equitable remedy only available where there is no legal remedy. It is therefore granted judiciously and most circumspectly.

[9] In the circumstances and as this is a summary action, the Court has had sight of the affidavits to see if they demonstrated the principles outlined above.

[10] In the present case, there are several discrepancies in the written evidence submitted which defy explanation by the parties as they have sought not to support their respective cases by oral evidence. For instance, I note that although the Applicant states the Respondents occupy his property without his permission, the letter he has attached from his Counsel contains the following statement:

“In addition, we are instructed to request you to take all your belongings and return the said premises in the state that it was given to you, including settling of any outstanding bills (Emphasis mine).

The Applicant is therefore equivocal on whether permission for occupation of the premises was granted to the Respondents.

[11] The 2<sup>nd</sup> Respondent has not defended the suit. The 1<sup>st</sup> Respondent claims that he has done work for which he is owed money. However, the invoices he submits are addressed to the Applicant and not to him. They are in any case not receipts and no proof that he carried out any works at his own expense with the permission of or at the request of the Applicant. Further, he impliedly accepts in his affidavit that he has to move out asking for a grace period until January 2017 to vacate the house.

[12] I am guided by the conditions necessary for the grant of the writ as established by the authorities above. The issue of a writ *habere facias possessionem* is not barred by the fact that initial permission was given and subsequently withdrawn. This is clear from the authority of *Casino des Seychelles v Compagnie des Seychelles (Pty) Ltd* (supra).

[13] Having studied the evidence available, I come to the irrefutable conclusion that permission was indeed given and then withdrawn. In terms of whether the conditions are met to grant a writ in the present matter I note that there is neither a serious nor a bona fide defence to the application and that there are no serious issues to be tried in this case.

[14] The 2<sup>nd</sup> Respondent has not defended the action and the 1<sup>st</sup> Respondent despite averring that he has done work on the house has failed to produce any evidence to support the same. In any case it would not have amounted to a defence to the application for the writ.

[15] There is also no other alternative legal remedy available to the Applicant to remove the Respondents from the house in which they are trespassing.

[16] Further, the Applicant has averred and it is not disputed that he has to pay the sum of SR 9000 monthly for alternative accommodation for himself and his daughter as they are unable to live in his house which is occupied by the Respondents. There is therefore an urgent need for the writ and delay in granting it may well cause irreparable damage and hardship to the Applicant.

[17] In the circumstances, I hereby order the Respondents to quit, leave and vacate forthwith the residential house on the Applicant's land namely Title B282 at La Misère, Mahé, failing which a writ *habere facias possessionem* shall issue forthwith against the Respondents to do so.

Signed, dated and delivered at Ile du Port on 8<sup>th</sup> July 2016.

**M. TWOMEY**  
Chief Justice