

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 336/2016

(Arising in CS95 of 2016)

[2017] SCSC 102

IN THE MATTER OF MARIE ROSINE GEORGES

versus

CLIFFORD BENOIT & OR

Heard: 30 January 2017

Counsel: Mr Changsam and Mr ChangLeng for Plaintiff
Mr Charles Lucas in Person
Ms Ste Ange for the Land Registrar

Delivered: 30 January 2017

ORDER

M. TWOMEY, CJ

- [1] The Plaintiff has by notice of motion applied for an injunction under section 304 of the Seychelles Code of Civil Procedure and an order of inhibition under section 76 of the Land Registration Act to prevent any dealings with parcel V16827.
- [2] She has supported her application by an affidavit in which she has deponed that a registered document dated 16th December 2015 purporting to grant a right of way in favour of the owner of parcel V16827 contains a forged signature.

- [3] She states that she has stopped using the name Benoit since the decree absolute of her marriage in May 2012 and reverted to her maiden name Georges. She has supported this statement with annexures inter alia her national identity card and her passport.
- [4] The Defendants have been served the application as this is an inter partes suit. The First Defendant has filed no affidavit in response. The Second Defendant has stated that he takes no stance on the matter.
- [5] Injunctions are equitable in nature. In ***Techno International vs Georges unreported 147 of 2002*** the Supreme Court held that in such cases the court will be guided by 3 considerations.
- 1) When there is a serious issue to be tried.
 - 2) Whether the damages would be adequate by redress to redress the harm caused by the grant of the injunction.
 - 3) Whether on the balance of convenience it would be just to grant rather than refuse the order.

In ***Dhanjee vs Electoral Commission SCA 20 of 2011*** the court interpreted the balance of convenience test to include a consideration of whether

- (i) More harm would be done by granting or refusing the injunction.
 - (ii) Whether the risk of injustice would be greater if the injunction was granted rather than refused.
 - (iii) Whether the breach of the parties's right would outweigh the rights of others in society.
- [6] Having considered the evidence so far adduced in this case and in the light of the considerations above I am of the view that more harm than good would be caused by the refusal to grant an injunction.

- [7] I am not convinced that irreparable harm will be occasioned to the Defendants by the granting of the injunction.
- [8] I am satisfied that the grant of an injunction in this case will preserve the status quo until the main suit from which this application arises is disposed of.
- [9] In the circumstances I issue a writ of injunction against parcel V16827 prohibiting the use of the right of way by any person through parcel V16827 over parcels V3849 and V6494.
- [10] The applicant has also applied for an order of inhibition against parcel V16827 until the hearing and disposal of the action in suit CS95 of 2016.
- [11] I am satisfied that the exercise of my discretion under section 76 of the Land Registration Act would maintain the status quo until the matter of the right of way is settled by this court.
- [12] I therefore order that the registration of any dealings with parcel V16827 be inhibited until the final disposal of suit CS95 of 2016 or until any further order of this court.
- [13] The cost of this application will abide the result of the main suit.

Signed, dated and delivered at Ile du Port on 30th January 2017

M. TWOMEY
Chief Justice