

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 283/2015

(arising in CS250/2007)

[2017] SCSC115

MARIE FRANCE VIDOT BORN FAURE

Petitioner

versus

LOUIS CHRISTIAN HOAREAU

Respondent

Heard: 23 March, 25 May, 1 December 2016.

Counsel: S. Rajasundaram for petitioner

A. Amesbury for respondent

Delivered: 8 February 2017

JUDGMENT

Dodin J

[1] The Petitioner is the judgment creditor in case CS250 of 2007 and the Respondent is the judgment debtor. The said judgment was entered by the Supreme Court on 18th November, 2010 for the sum of SCR 550,000.

- [2] The Petitioner, in the current petition, is seeking a finding by this Court that the sale and transfer by the Respondent of a plot of land to his son, Keven Gonzague Hoareau, namely land parcel title C2461 on the 7th March, 2008 and registered on the 26th June, 2008, was done in bad faith by the Respondent with the sole aim of depriving the Petitioner the possibility of realising her judgment award by execution against the Respondent's property. The prayer of the Petitioner is for the civil imprisonment of the Respondent on account of his act of transfer of his property which effectively deprived the Petitioner the possibility to realise the fruits of her judgment.
- [3] The Respondent raised 3 issues by way of *plea in limine litis* namely:
- i. That the matter is *res judicata* as it has been litigated in the Supreme Court and the Court of Appeal and the Petitioner lost both action;
 - ii. That the continued litigation is an abuse of process and a waste of the time of the Court; and
 - iii. Under Article 18(15) of the Constitution a person cannot be imprisoned merely on the ground of the inability to fulfil a contractual obligation.
- [4] On the merit, the Respondent denied that the sale was made maliciously or deliberately to deny the Petitioner the possibility of executing the judgment which she yet had to obtain by the sale of his land to his son as the sale was made more than 2 years before the judgment was delivered in favour of the Petitioner.
- [5] The evidence of the Petitioner established that she was in relationship with the Respondent for over 23 years and 3 children were born out of the relationship. She obtained a judgment in the sum of SCR 550,500 plus interest and costs against the Respondent on 18th November, 2010. The case had been filed since 2007. Whilst the case was in Court, the Respondent transferred his plot of land to his son and the transfer was registered in 2008. During the time she was in the relationship with the Respondent she was aware that the Respondent had land and house and a boat at Anse Poules Bleues and all were transferred to his son whilst the Court case was going on. The Respondent is now paying the monthly sum of SCR3100.

- [6] The Respondent who also testified maintained that he is 67 years old and a pensioner he had granted his son permission to build on the land since 10th September, 1998 and that his son paid off the charge on the land completing the same in 2004. His son had built his house thereon. He transferred the land to his son in 2008. He denied that he transferred the land so as to deprive the Petitioner of the possibility of executing the judgment debt against him as judgment was only delivered in November, 2010.
- [7] Learned counsel for the Petitioner submitted on the plea *in limine litis* that this application being under section 253 of the Seychelles Code of Civil Procedure Act is not *res judicata* as it is not a fresh cause of action by way of plaint but only an application under the rules of enforcement of judgment. Consequently, learned counsel did not submit on whether it amounted to an abuse of the Court's process. Learned counsel submitted that this Petition is not for failure to meet a contractual obligation but for violation of section 253 of the Seychelles Code of Civil Procedure Act.
- [8] Learned counsel referred the Court to case Civil side No: 103 of 2012 which ruling was delivered on 10th May, 2013 by the Supreme Court and judgment given by the Court of Appeal in Civil Appeal SCA 21 of 2013 delivered on 28th August 2015 in support of the points of law raised in the plea *in limine litis*.
- [9] In case Civil side N0: 103 of 2012 the Petitioner, then Plaintiff prayed the Court to make:
- i. A declaration that the transfer deed dated the 7th March 2008 in respect of title C2461 to be null and void;
 - ii. An order directing the Land Registrar to revert the property C2461 in the name of the 1st Defendant, the Petitioner;
 - iii. Order the defendants not to alienate, transfer or dispose of the said property in detriment of the Plaintiff's recourse of recovering a judgment debt; and
 - iv. Any order as the Court deems fit in the circumstances of the case.
- [10] The Court ruled that the Plaintiff had no *locus standi* to bring such action as there was no privity of contract and the sale occurred before the Plaintiff became a judgment creditor and the Plaint was dismissed.

[11] The Ruling went on appeal and the Court of Appeal after making extensive reference to sections 251 and 253 of the Seychelles Code of Civil Procedure Act dismissed the appeal.

[12] Section 253 of the Seychelles Code of Civil Procedure Act states:

“If the judgment debtor does not appear at the time fixed by the summons or refuses to make such disclosures as may be required of him by the court or if the court is satisfied that the judgment debtor-

(a) has transferred, concealed or removed any part of his property after the date of commencement of the suit in which the judgment sought to be enforced was given or that after that date he has committed any act of bad faith in relation to his property with the object or effect of delaying the judgment creditor in enforcing his judgment or order; or

(b) has given an undue or unreasonable preference to any of his other creditors; or

(c) has refused or neglected to satisfy the judgment or order or any part thereof, when he has or since the date of the judgment has had the means of satisfying it, the court may order such debtor to be imprisoned civilly unless or until the judgment is satisfied.”

[13] Upholding the determination of the Supreme Court, the Court of Appeal concluded thus:

“The main action to which section 253 becomes auxiliary is the judgment sought to be enforced which means the execution action following the Summons After Unsatisfied Judgment (SAUJ). In this particular case, the decision in CS 250/2007 having been given on 18 November 2010 could not have been enforced before it was given.”

[14] The Petitioner in this case seeks civil imprisonment of the Respondent on account of him having deliberately deprived the Petitioner of the possibility of executing the judgment she obtained by having sold and transferred his land prior to the judgment being given. Whichever way one looks at the pleadings of the Petitioner, the cause of action, that is civil imprisonment is dependent on the Court finding that the Respondent sold the land to deprive the Petitioner of the possibility of executing the judgment against him.

[15] The Court of Appeal has already determined that section 253 could not have been invoked until after delivery of judgment and the failure of the Respondent to satisfy the

judgment debt. In other words, in the circumstances of this case, since judgment was delivered long after the Respondent had transferred his land (albeit whilst the case for which the Petitioner obtained judgment was before Court), the Petitioner cannot invoke section 253 of the Seychelles Code of Civil Procedure Act.

[16] Although I am of the view that this is a restrictive interpretation of section 253 of the Seychelles Code of Civil Procedure Act, it is clear that both Courts also considered whether there was sufficient evidence before them to show lack of good faith or deliberate deprivation of the Petitioner of the possibility of enforcing the judgment she subsequently obtained and found the same to be lacking. This finding of the Court of Appeal therefore clearly brings any matter about the sale of the land to a close.

[17] Therefore since the decision of this Court on whether to commit the Respondent to civil imprisonment depends on the finding that the sale of the land was in bad faith, deliberately aimed at depriving the Petitioner of her future fruit of judgment, this prayer cannot be granted.

[18] It is therefore not even necessary for this Court to consider the issues of *res judicata* or whether this case is an abuse of the Court's process. However I will note en passant that the Court would have found this Petition to be an abuse of process and the principles of *res judicata* would have been applicable in the following circumstances:

- i. the claim is based on the same transaction that was at issue in the first action;
- ii. the Petitioner seeks a different remedy, or further remedy, than was obtained in the first action;
- iii. the Petitioner seeks the same remedy already denied in the first action by law or on the merits for the same subject matter; and
- iv. the claim is of such nature as could have been joined in the first action.

[19] Hence once a final judgment has been handed down in a lawsuit, subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one will apply

the *res judicata* doctrine to preserve the effect of the first judgment or as in this case the judgment of the Court of Appeal.

[20] Consequently, as per my findings above, this Petition fails by reason of it being dependent on the same subject matter decided on in Civil side N0: 103 of 2012 and SCA 21 of 2013. For this Court to reach a different conclusion it must by necessity make an opposing finding and hence fail to preserve integrity of the judgments of the Supreme Court and the Court of Appeal. This Petition therefore fails and is dismissed accordingly.

[21] For the sake of clarity, the Petitioner is not prevented from initiating a similar claim should the Respondent subsequent to the judgment against him come into possession and ownership of sufficient means permitting him to meet the judgment debt and fails to do so. Otherwise a person who simply has no means cannot be committed to civil imprisonment. In this case the Respondent can only be ordered to continue to make the payments out of his income from the Pension Fund despite the same not being remotely sufficient or satisfactory to the Petitioner.

Signed, dated and delivered at Ile du Port on 8 February 2017

G Dodin
Judge of the Supreme Court