

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 251/2016
ARISING OUT OF MC 97/2015**

[2017] SCSC

COLLIN TOMKING

Applicant
Versus

MONETTE MENEVIEVE MARIE
Respondent

Heard: 8th day of February 2017 (Pleadings closed)

Counsel: Mr E. Chetty for Applicant
Mr N. Gabriel for Respondent

Delivered: 31st day of May 2017

RULING ON MOTION

Govinden J

[1] This is a Ruling in MA 251 of 2016 filed on the 10th day of June 2016 and pleadings closed on the above-mentioned date and reinstatement of MC 97 of 2015 was granted on the 3rd day of November 2016, which latter Miscellaneous Application had been dismissed on the 18th day of May 2016.

- [2] Learned Counsel for the Applicant thereafter filed the current Motion duly substantiated by an Affidavit of the Applicant dated 10th day of June 2016 wherein this Court is being moved in terms of Section 17 of the Courts Act (Cap 52) (hereinafter referred to as the “Act”), as read with the provisions of Section 21 (1) of the Administration of Justice Act of 1969 of England incorporated as Section 33 (1) of the Supreme Court Act of 1981 of England.
- [3] The basis of the application of Section 17 of the Act, is that in view that the High Court of England enjoyed the power to order the inspection of property prior to the commencement of proceedings as at 1976, then in terms of Section 17 of the Courts Act, the Supreme Court of Seychelles also enjoys similar power and should exercise it in this instance.
- [4] The Respondent by way of an Affidavit dated the 18th day of January 2017, objects to the Application and objects to the valuation and inspection of Parcel Nos. J 2906 and J 2907, which properties are alleged to be duly registered in her sole name as registered owner and that the Applicant has no right to enter her property without her permission and it is further denied that the Applicant has no cause of action against her hence the Respondent moves for dismissal of the Application.
- [5] It is to be noted “*en passant*” that the Respondent has by virtue of most of the averments in her Affidavit responded to what I would consider “a pre-empted Plaint which is not yet before the Court and which the Applicant seeks to file only after the inspection as sought has been performed”.
- [6] To that end, this Court shall refrain from adjudicating on any “speculated averments relating to ‘facts’ of which it is not yet privy to in view of absence of a Plaint before the Court at present” and hence focus only on the averments of the Affidavit specific to the Application.
- [7] Having set out the issues involved in this case, I will start by setting out the position of the law vis-a-vis those issues.

- [8]** It is a general principle of the law of the Civil Procedure that commencement of ‘all civil actions and commercial suits, causes and matters shall be brought before the Supreme Court, save in cases where other provisions is made by law’. And that, ‘every suit shall be instituted by filing a plaint in the registry’, (Sections 22 and 23 of the Seychelles Code of Civil Procedure (Cap 213) (hereinafter referred to as the “Code”) refer.
- [9]** There is nowhere to be found in the Code express provisions relating to the ‘power of the Court to grant an Order for the inspection of property prior to commencement of proceedings by virtue of Articles 22 and 23 of the Code as cited’ (supra).
- [10]** Learned Counsel Mr. Hoareau, by virtue of the cited Motion is however moving this Court to exercise its powers by virtue of Section 17 of the Act to grant this Motion, in light of the above cited Section 21 (1) of the Administration of Justice Act of 1969 of England and further incorporated as section 33 (1) of the Supreme Court Act of 1981 of England.
- [11]** Sections 21(1) of the Administration of Justice Act of 1969 of England is to be noted should be read in line with Rules of the High Court namely Rule 38 (1) (3) of the Supreme Court of Judicature, England Procedure The Rules of the Supreme Court (Amendment No. 5) 1971, which Rules govern proceedings arising out of originating summons under Section 21 (1) (supra).
- [12]** Section 17 of the Act provides as follows:
- In civil matters whenever the laws and rules and procedure applicable to the Supreme Court are silent, the procedure, rules, and practice of the High Court of Justice in England shall be followed as far as practicable (I note more particularly by way of the marginal notes to section 17 as cited that the Practice and procedure of the High Court of Justice in England when to apply 8/13/1976).*
- [13]** The provisions of Section 17 of the Act I shall venture to say “in civil matters, whenever the laws and rules of procedure applicable to the Supreme Court are silent” is quite wide in terms of interpretation as to the extent of the powers of the Supreme Court and in terms of prescription as to applicability of the relevant Rules and practice as existing in

England and this contrary to certain Jurisdictions where a clear indication of the extent of the applicable law is clearly demarcated.

- [14] I also in the same light deem it fit to consider the provisions of Section 17 of the Act and read these together with the provisions of Sections 5 and 6 of the Act which provisions provide as follows:

Section 5 Jurisdiction in civil matters:

The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.

Section 6 Equitable powers:

The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.

- [15] In direct reference to this matter, Section 21 (1) of the Administration of Justice Act of 1969 of England (Chapter 58) entitled Powers of court exercisable before commencement of action clearly provides as follows:

On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say-

(a) the inspection, photographing, preservation, custody and detention or property which appears to the court to be property which may become the subject-matter of subsequent proceedings in the court, or as to which any question may arise in any proceedings.

As rightly pointed by Learned Counsel for the Applicant, Section 21 (1) of the Administration of Justice Act of 1981 of England has been replicated in section 33 (1) of the Supreme Court Act of 1981 of England entitled “Powers of High Court exercisable before commencement of action”.

[16] Now, having set out the provisions of our law regarding the powers of the Supreme Court “before commencement of action”, it is opportune to note, that in these proceedings as it would be revealed from pleadings filed more particularly, the Affidavit of the Applicant dated 6th day of November 2015 as read with the Affidavit dated 10th day of June 2016, that the basis of the institution of the proceedings by way of Motion is for “*an Order “authorising Stanley Valentin, in his capacity as an expert in evaluating properties, to inspect parcels J2909 and J2910 and/or the house situated thereon, for the purpose of evaluating the said parcels J 2909 and J 2910 and/or the said house, to ascertain their market value as at October 2014”* and at paragraphs 10 and 12 of the afore-cited Affidavit that, “*I aver that I intend to institute a suit against the Respondent either on the basis of a defacto partnership or unjust enrichment to claim for my monetary entitlement in the value of the said properties and hence it is essential that the said properties and the house be evaluated so as to ascertain their value”*.”

The Affidavit continues further at Paragraph 12:- “*On the basis of all the above the said properties would be the subject matter of the suit or the very least the value of the said properties would be an issue to be determined in the suit I intend to institute against the Respondent”*.”

Paragraph 11 of the same Affidavit further states that:- “*I have appointed Mr. Stanley Valentin as my expert to evaluate the said properties.”*”

[17] The Court further notes with regards to paragraph 11 of the said Affidavit a further Affidavit in support of Mr. Stanley Valentin Quantity Surveyor producing and exhibiting

copy of his certificate as Quantity Surveyor and agreeing to the appointment by the Applicant.

[18] Now, on the basis of the above illustration of the law applicable in Seychelles with regards to the powers of the Court exercisable before commencement of proceedings as provided at Sections 22 and 23 of the Code (supra), it is abundantly clear that the relevant provisions of the laws of England as cited are applicable by virtue of the Supreme Court having been vested with the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England with respect to jurisdiction in civil matters and additionally vested with equitable powers, authority and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.

[19] I find further that the Affidavits of the Applicant in support of the Application as per the stated Rule, disclose all the essential particulars displaying a full and frank disclosure as to what is required by way of the inspection and also the purpose for which the Order is required. It is also obvious that the Applicant is coming to this Court by way of necessity arising from the absence of any other practicable means of obtaining the essential information sought and this is corroborated by the Respondent objections in her Affidavit to allow same to be done.

[20] It follows and I find that the Respondent as per the Affidavit of the 2nd day of February 2016 and the 18th day of January 2017 is in fact contesting the basis of an “anticipated suit” yet to be filed before this Court following this Application and hence these objections are premature in terms of substance. Secondly the reason as cited at paragraph 14 of the latter mentioned Affidavit, that the basis of the objection is that the Applicant has no cause of action against the Respondent is also premature and devoid of merits at this stage of the proceedings for the above-stated reason.

[21] I find therefore, by way of direct illustration that as our Courts have exercised their Jurisdiction for Orders of “*discovery under the ‘Norwich Pharmacal principles’ as provided for in Rule 31. 16 of the Civil Procedure Rules of the Supreme Court of England (White Book)* and as clearly illustrated in the matters of **(MC 01 of 2014 Global Energy**

Horizons Corporation v/s Victoria Corporate Agent (Proprietary)Limited as registered Agent of Petro Sound Ltd of the 16th January 2014) and (Civil Side No. MC 8 of 2016 of the 15th day of February 2016 in Wavel Ramkalawan v/s The Agency of Social Protection), wherein the Supreme Court exercised its powers to grant such a relief by virtue Sections 5, 6 and 17 of the Courts Act (supra), I thus in the exercise of the powers and jurisdiction conferred upon this Court by virtue of Sections 5, 6 and 17 of the Act (supra), grant this Application and Order as follows:

- (i) Quantity Surveyor namely, Mr. Stanley Valentin in his capacity as an expert in evaluating properties, is to inspect parcels J2909 and J2910 and/or the house situated thereon, for the purpose of evaluating the said parcels and /or the said house, to ascertain their market value as at October 2014.
- (ii) The Respondent shall allow such an inspection as ordered by this Court in terms of the contents above-referred.
- (iii) Unless the Court orders otherwise, the Applicant shall bear all the cost associated with the inspection as sought and granted and costs associated to this Application and reasonable costs to the Respondent for complying with this Order.

Signed, dated and delivered at Ile du Port on 31st day of May 2017.

**Govinden-J
Judge of the Supreme Court**