

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 01/2018
(arising in CS 95/2016)

[2018] SCSC

Between:

Marie Rosine Georges

Plaintiff

Versus

Clifford Benoit

1st Defendant

Charles Lucas

2nd Defendant

Land Registrar

3rd Defendant

CS 95/2016

And in the matter of this application:

Charles Lucas

Applicant

Versus

Marie Rosine Georges

1st Respondent

Clifford Benoit

2nd Respondent

Land Registrar

3rd Respondent

MA 01/2018

Heard: 2 February 2018
Counsel: Mr. Chang-Sam Attorney at Law for the 1st Respondent/Plaintiff
Mr. Charles Lucas the Applicant/ 2nd Defendant
Mrs. Lansinglu Rongmei Assistant Principal State Counsel for the 3rd
Respondent/ 3rd Defendant
Delivered: 6th February 2018

ORDER

Burhan J

- [1] By motion dated 27th December 2017, Mr. Charles Lucas the 2nd defendant /applicant (hereinafter referred to as the applicant), filed a motion seeking the recusal of the Hon Chief Justice Mathilda Twomey (hereinafter referred to as the Hon Chief Justice/ Hon Trial Judge) from case CS 95 of 2016. The said motion was supported by an affidavit from the applicant.
- [2] The background facts are that in the main suit CS 95/2016, the plaintiff Marie Rosine Georges had filed a plaint against three defendants Clifford Benoit (1st defendant), Charles Lucas (2nd defendant) and the Land Registrar (3rd defendant) seeking the following reliefs:
- a. *An order preventing the 1st defendant and any person claiming title under him from using the right of way until the Court finally determines this matter and requiring the 3rd Defendant to comply with the order of the Court;*
 - b. *An order requiring the 1st and 2nd Defendant, jointly and severally, to compensate the Plaintiff in full for the loss and damage, as specified under paragraph 14, she has suffered;*
 - c. *An order declaring the Grant of Easement to be fraudulent and cancelling and ordering the Land Registrar to forthwith cancel the Grant of Easement.*

d. *Such other order as the Court may deem fit in the circumstances including but not limited to an order for costs in favour of the Plaintiff.*

[3] During the hearing of the aforementioned matter, the plaintiff was represented by Mr. Chang-Sam, Attorney at Law, the 2nd defendant represented himself and the 3rd defendant was represented by State Counsel Mrs. Ebrahim. A perusal of the said record and the proceedings indicate that trial had been concluded on the 17th of November 2017 and the case fixed for judgment on the 20th of February 2018.

[4] Thereafter, the applicant by motion dated 27th December 2017, moved for the recusal of the Hon Trial Judge, the Hon Chief Justice. In his affidavit dated 29th December 2017, the applicant Charles Lucas avers that it had come to his knowledge that Mr. Chang-Sam Attorney at Law has been instructed by the Hon Chief Justice, to act on her behalf in Supreme Court case SPC-00-CV-MC- 0050-2017 between Antony Gerard Derjacques v Dr. Mathilda Twomey which is a matter pending before the Supreme Court and in another matter before the Constitutional Appointments Authority and therefore, he is apprehensive that this would compromise her impartiality as trial Judge, as Mr. Chang-Sam is also the Counsel for the plaintiff in this instant case against him.

[5] He further stated that he had communicated his fears to the Hon Chief Justice. By letter dated 12th December 2017 (annexure A3), the Hon Chief Justice/ Hon Trial Judge has replied his letter dated 4th December 2016, stating she is unable to entertain his request for her recusal from case CS 95/2016. She has further stated that she has no personal bias or prejudice towards the applicant nor has she any personal knowledge of the facts in the case and that she is bound by her Constitutional Oath, to be impartial in the decisions she makes and will continue to administer justice without fear and favour.

[6] He further avers in his affidavit that having regard to all the circumstances set out in his affidavit, there is a real danger and possibility of the Hon Trial Judge delivering a judgment that may or is likely to be, influenced by her personal and legal relationship with her counsel, thus impairing her independence, impartiality which will in any event be perceived as bias, conscious or unconscious.

[7] Prior to analysing the above mentioned grounds set out by the applicant in regard to recusal, it would be appropriate to set out the law in relation to the factors that should be considered in deciding the issue of recusal. Applications for recusal are mainly based on the maxim that Judges are independent and charged with the duty of impartiality in administering justice. In the Seychelles this was discussed in the landmark cases of ***The Government of Seychelles & Anor v The Seychelles National Party & Ors and Viral Dhanjee SCA CP 3 &4 of 2014.***

[8] The test to apply as set down by various authorities is whether a fair minded and informed observer having considered the facts, would conclude that there was a real possibility that the tribunal was biased. The factors to be considered by a Judge challenged with recusal in deciding his partiality or impartiality include whether the Judge:

- a) has personal interest or personal knowledge in respect of the case,
- b) has a personal interest in the outcome of the case.
- c) is related to a party or attorney in the case.
- d) is a material witness in the case.
- e) has previously acted as an attorney for either party.

[9] It is apparent from the facts stated in the affidavit of the applicant and in the reply of the Hon Chief Justice that none of the above factors exist in this instant application for recusal.

[10] It would be pertinent at this stage for the benefit of the applicant, to set down the Constitutional Oath referred to in the said letter (Annexure 3) as set out in the 1st Schedule of the Official Oaths Act.

“I do swear that I will well and truly serve the Republic of Seychelles in the office of and that I will do right in accordance with the Constitution of

Seychelles as by law established, and in accordance with the laws of the Republic without fear or favour, affection or ill will.

SO HELP ME GOD.”

[11] The main purpose of a Judge taking this oath peculiar to his office at the time of appointment, is to ensure that the said Judge acts in an independent and impartial manner in the conduct of his official duties as Judge, whoever the appointing authority may be. It is the considered view of this Court that one should not treat this oath of office lightly. In the absence of factors for the recusal of Judge as set out in paragraph 8 herein, this sacred oath is of paramount importance in the discharging or performing one’s official duties as a Judge. To give any other interpretation in the absence of any evidence to the contrary, would undermine the sacred official oath taken under the Constitution.

[12] I also observe that the applicant has not referred to a single instance in the hearing and conduct of the trial by the Hon Trial Judge which is supportive of his claim of perceived bias. I also observe that although he refers to a personal and legal relationship, this reference is baseless. A Judge like every other citizen, has every right to consult a lawyer as and when required to do so when facing litigation. This cannot be referred to as a personal or legal relationship. Further, Mr. Chang–Sam is not a party or litigant in CS 95/2016 case but only appearing in his professional capacity for the plaintiff as her Counsel.

[13] It would be pertinent at this stage to refer to the case ***Livesey v New South Wales Bar Association (1985) L.R.C (Const) – 1107*** it was held;

“-----, it would be an abdication of judicial function and an encouragement of procedural abuse for a Judge to adopt the approach that he should automatically disqualify himself whenever he was requested by one party so to do on the grounds of possible appearance of prejudgment or bias. (emphasis mine) regardless of whether the other party desired that the matter be dealt with by him as the Judge to whom the hearing of the case had been entrusted by the ordinary procedures and practice of the particular Court.”

[14] I am satisfied having considered all the aforementioned circumstances set out by the applicant, that a fair minded and informed observer having considered all the circumstances peculiar to this case, would not come to the conclusion that there was a real possibility of the Hon Trial Judge being biased ***Re Medicaments No 20 [2001] 1 LWR 700 and The Government of Seychelles & Anor v The Seychelles National Party & Ors and Viral Dhanjee (supra)***.

[15] I therefore proceed to decline the application for recusal, in respect of the Hon Chief Justice, the Hon Trial Judge in the said case.

Signed, dated and delivered at Ile du Port on 6th February 2018.

M Burhan
Judge of the Supreme Court