

IN THE SUPREME COURT OF SEYCHELLES

Civil Side No: 28 of 2017

[2018] SCSC 157

Ex-parte:

**TERRENCE BELLE OF 107 DRYSDALE AVENUE
NARRE WAREEN NORTH, VICTORIA
3804, AUSTRALIA
(HEREIN REPRESENTED BY MR GILBERT ELIZA
OF MA CONSTANCE, MAHE, SEYCHELLES**

Heard: 6th day of February 2018

Counsel: Ms. A. Benoiton for the Petitioner
Mr. B. Hoareau for the Respondent-Absent and unrepresented

Delivered: 20th day of February 2018

RULING ON OBJECTION TO PETITION FOR SALE BY LICITATION

Govinden S -J

[1] This Ruling arises out of an Objection to Petition for sale by Licitation of the 30th January 2017 and filed on the 16th February 2017 by Terrence Belle (“Petitioner”) praying for the sale of the land comprised in Parcel V1875 with a building standing thereon (“Immoveable Property”) belonging to the Petitioner and Respondent (in indivision), having inherited the immoveable property from the late Eugene Belle as per his Last Will and Testament registered on the 4th May 2006 and transcribed on the 4th May 2006 in Volume 84 No.34.

[2] The Respondent Mr. Daniel Belle filed an Objection to Petition on the 4th April 2017 (“Objection”) and which *Objection in essence objects to the Petition on grounds of nullity of proceedings; conditions of the Memorandum of Charges and that the Property can be conveniently subdivided hence moving this Court for dismissal of proceedings for the sale as prayed for and or alternatively stay of the proceedings in licitation and order for the division in kind of Parcel V1875 between the Petitioner and Respondent.*

- [3] The relevant factual and procedural background to this Application is in essence as follows.
- [4] As above-referred, the Petition was filed as well as an accompanied Memorandum of Charges (“Memorandum”) on the 28th February 2017 in relation to the Immoveable Property and Objection filed contesting the Petition and Memorandum (supra).
- [5] It is to be noted at this juncture, that upon the consent of the parties the hearing was adjourned on a few occasions to enable settlement of this matter namely in terms of the alternative prayer of the Respondent but to no avail hence the hearing proceeded ex-parte on the above-mentioned date in the absence of Counsel for the Respondent following Ruling of the Court and also upon the Respondent seeking leave of the Court not to attend the proceedings in person.
- [6] As per the Petition, the Petitioner is a co-owner of the Immoveable Property situated at Bel Air, Mahe, Seychelles, with a building standing thereon as per Certificate Official Search *Exhibit P2*.
- [7] The Petitioner owns as per *Exhibit P2*, an undivided 4/6 share of the Immoveable Property and the Respondent 2/6 share and that the Petitioner desires to proceed to sale by licitation in terms of the Memorandum namely in respect to conditions of sale as per Articles 1 to 7 thereof (“Conditions of Sale”).
- [8] The Petitioner testified in favour of his Petition on the above hearing date and stressed that he had agreed to a settlement of this matter with the Respondent as per a proposal of the 25th January 2018 in terms of the alternative prayer of the Respondent’s Objection but same has been to no avail hence his proceeding with the Petition as originally filed.
- [9] Mr. Stanley Valentin Quantity Surveyor and Building Services Consultant, further testified in favour of the Petition and Memorandum, by producing of *Exhibit P1* of the 12th January 2016, being a valuation of the Immoveable Property (inclusive of the land and all Developmental works situated thereon), in the sum of Seychelles Rupees Three Million Seventy-Nine Thousand Two Hundred and Twenty-Five (S.R. 3,079,225.00) and this as per the indicated description of the Immoveable Property, description of Title Deed and *Mise a prix* on the Memorandum as filed.
- [10] *The Respondent as per Objection raised three main grounds for nullification of proceedings as instituted, namely, firstly, nullities of proceedings in that the sale of licitation as prosecuted by the Petitioner has not complied with the mandatory provisions of the Immoveable Property (Judicial Sales) Act (“Act”), in that in the place of abode of the Respondent has not been set out; the property has not been summarily described as per Section 5 of the Act; and that the Memorandum has not particularized the name and place of business of the Attorney at law of the Respondent. Secondly, as to the conditions of the Memorandum, that the Petitioner avers that the Mise a prix is that of Seychelles Rupees Three Million Seventy-Nine Thousand Two Hundred and Twenty-Five*

(S.R. 3,079,225.00) and same is too low and does not reflect the market value of the Immoveable Property. Thirdly, that the property can be conveniently subdivided.

- [11] As indicated at paragraph [4] of this Ruling (supra), the Respondent decided not to prosecute his Objections in this case by walking out of Court and hence not calling any witnesses to support the Objections as raised and or exercising his sacrosanct right to cross-examination of the Petitioner and or his witness whose evidence had direct effect on the Petition and the Memorandum.
- [12] Noting the summary of background of proceedings, I shall now move on to set out the legal standards and its analysis thereto.
- [13] The relevant provisions of the Act specific to this Petition are namely, sections 98, 101 and 103 of the Act entitled in order of precedence, (*Demand in Licitation*), (*Commencement of Proceedings. Memorandum of Charges*) and (*Objection to Licitation. Conditions of Sale or Nullities*).
- [14] Now, in view of the non-contest of the evidence of the Petitioner and his witness Quantity Surveyor Mr. Stanley Valentin as to the *Mise a Prix*, his evidence remains uncontroverted and I thus find that the second objection as raised by the Respondent (supra) has no basis and is dismissed accordingly.
- [15] As to the third ground of objection as raised, in that the property can be conveniently subdivided, again, I find that reasonable efforts have been exercised by the Petitioner and the Court to enable the alternative prayer of the Respondent but to no avail due to lapses and disagreements of the Respondent himself hence leading to a non-Judgment by consent as agreed before Court originally. In that light, the Court cannot and shall not allow the abuse of process of the Court geared towards a settlement which is not forthcoming and hence delaying the procedure for sale by licitation as duly set out in the Act itself. On that basis, the third ground of objection similarly fails.
- [16] With respect to the first ground of objection, to the extent of alleged nullity of proceedings, which has direct link to the provisions of Sections 89 entitled "*Demand in licitation*" and 101 of the Act entitled "*Commencement of Proceedings. Memorandum of Charges*", I find that grounds of Objections as raised do not hold good, in light of the summary description of the property in the Memorandum and further the description of the address of the Respondent which has also been clearly described and it is to be noted that the word "*abode*" as provided in the Act, should not be overstretched in terms of definition just to nullify proceedings under the Act on mere technical objections as to address certainty. In this case, the Respondent was duly served with the Petition and Memorandum hence appearance before Court hence his objections as to unclear description of place of abode is untenable in the specific circumstances of this case and is to my mind a mere technicality which shall not have the effect of nullifying the proceedings as per filed Memorandum.

[17] Further, I note also in the same respect, that no undue prejudice has been suffered and or caused to the Respondent in any way whatsoever. The same analysis is applied to the objection as to “*non-description and or failure to state the name and place of business of his attorney*” and in that respect it is to be noted additionally, that Subsection (ii) of Section 101 of the Act, applies not to the Respondent’s Attorney but Petitioner’s Attorney. It follows, therefore, that the third ground of Objection also fails.

[18] In the light of the above analysis, that I find that the procedures adopted and contents of the Petition and Memorandum as filed by the Petitioner, are in line with the provisions of Sections 98 and 102 of the Act as indicated (supra) and hence dismisses the Objection of the Respondent *in toto*, and thus allows the Petition to proceed for sale by licitation accordingly. Henceforth, the formalities are to be followed as prescribed under Sections 104 and 105 of the Act respectively.

[19] I so order.

Signed, dated and delivered at Ile du Port on 20th day of February 2018.

S. Govinden
Judge of the Supreme Court