

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 40/2018**

**(Arising in CM 37/2017)**

**[2018] SCSC 232**

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**IN THE MATTER OF SEYCHELLES INTERNATIONAL MERCANTILE  
BANKING**

Applicant

versus

**JAMES LESPERANCE & OR**

Respondent

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Heard: 5<sup>th</sup> March 2018

Counsel: Ms. Manuella Parmantier for the Applicant

Mr. Basil Hoareau for the 2<sup>nd</sup> Defendant

Delivered: 5<sup>th</sup> March 2018

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**RULING**

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R. Govinden, J

[1] The applicant in this matter has lodged an application for rectification of a nullity in the proceedings pursuant to Section 68 of the Immovable Property Judicial Act and it is duly supported by an affidavit in support sworn by the Director of the applicant. In there the applicant avers that the memorandum of charges was read in this case on the 12<sup>th</sup> of

January 2018 and that after the filing of the memorandum of charges on the 12<sup>th</sup> of January it came to be known that there was a inscribed creditor, namely the DBS with a first and second line mortgage over the land parcel V1298, who had not been given notice of the proceedings.

[2] According to the applicant he is advised and he believed that due to an existing nullity in the proceeding antecedent to the reading of the charges an application can be made for the proceeding to be resumed to the last valid step.

[3] And thereafter the nullities alleged to exist in the proceedings subsequent to the reading of the memorandum of charges and all matters incidental and connected with the sale and adjudication of the property shall be shown before a Judge eight days at the least before the date appointed for the sale and that he believes that will be in the interest of justice for rectification to be effected and to notify the inscribed creditor of the proceedings above mentioned.

[4] Mr. Basil Hoareau for the inscribed creditor strenuously objected to this application. According to his submission it will be against the right to fair hearing of his client if Section 68 of the Immovable Property Judicial Sales Act is to be apply *stricto sensu*. According to him, what Section 68 says is that if objection are held good the Judge shall set aside all proceedings subsequent to the reading of the memorandum of charges and shall appoint a further date for the sale and adjudication. According to Counsel in so doing this will breach the right to fair hearing of inscribed creditors because that would effectively correct a mistake in the nullity of the procedure whilst at the same time not afford the inscribed creditor a chance for him to be heard before matter is set for sale in adjudication.

[5] After hearing the submissions of both Counsels in the, light of the motion and affidavit filed by the applicant, the Court is of the following opinion:

- a) I believe that Section 68 has to be read within the context of the rights and freedoms found in chapter III of the Constitution of the Republic of Seychelles.

b) The Immovable Property Judicial Sales Act on which the application is made is subject to the constitution and as such has to be given the right and proper interpretation in the light of the Constitution rights of parties. Article 19 (7) of the Constitution grants to any civil authority or Court exercising its Civil jurisdiction the obligation to hear both parties and to adjudicate on their respective competing interest before making a final determination. Section 68 apparently does not permit this to happen.

[6] Accordingly, I am of the view that in this case we cannot just appoint a further date for the sale and adjudication. I think the inscribed creditor needs to be served with the proceedings and pleadings in this matter and we will have to go back to the *status quo* that we were prior to the reading of the memorandum of charges namely Section 28 of the Immovable Property Judicial Sales Act. The documents of the Applicant has to be filed with the Registry and also served upon the inscribed creditor in this case and then we will proceed to the reading of the memorandum of charges under Section 29 and this will allow the inscribed creditor to take any objection, if need be.

Signed, dated and delivered at Ile du Port on 5<sup>th</sup> March 2018.

R. Govinden, J  
Judge of the Supreme Court