

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC/03/2018

[2018] SCSC 322

Hairu Investment Management Services (Private) Ltd

Applicant

versus

Faiz Ali Mubarak

Respondent

Heard: 9 March 2018

Counsel: Mr. Bernard Georges and Ms. Tania Berlouis for applicant
Mr. Anthony Derjacques for respondent

Delivered: 3 April 2018

JUDGMENT

M. TWOMEY, CJ

[1] This is an application for a writ *habere facias possessionem* to issue against the Respondent to quit, leave and vacate the vessel *Sea King* belonging to the Applicant which possession the Respondent presently enjoys at Port Victoria, Mahe.

[2] The application is supported by the affidavit of Zainul Abdeen Mohamed Hairu of Ninvatur, Sri Lanka who is the director of the Applicant.

- [3] He avers that a subsidiary of the Applicant, Hairu Fisheries Management (Comoros) SA, which is itself a subsidiary of Hairu Group of Companies purchased an 18.5m fishing vessel named *CFC-01* on or about 10 February 2015 which was registered in the Comoros. This is supported by the attachment (marked 1) and the provisional registration certificate (marked 4) to the affidavit.
- [4] Soon after, it sailed to Seychelles for refrigeration repairs and to examine possible fishing activities in Seychelles. Again this averment is supported by the permission to sail from the Comoros to Seychelles issued by the Maritime Affairs Department of the Comoros (attachment 5). The Applicant thereafter entered into a written partnership agreement on 4 March 2015 with Baba Ali, a business name, represented by its sole proprietor, the Respondent, to venture into an Indian Ocean fishing and marketing program based in Seychelles (attachment 6).
- [5] The terms of the agreement were, inter alia, that the Applicant would contribute towards the venture by providing the vessel, *CFC-01*, fishing gear and crew while the Respondent would provide its expertise, contacts, goodwill and credentials in relation to incorporating a new legal entity and then facilitating the identification of prospective buyers for chilled fish.
- [6] It was inter alia a further term of the agreement that the Applicant and Respondent would provisionally register the vessel owned by the Applicant under the name of the Respondent only to obtain tax incentives and duty free concessions to carry out fishing activities with the vessel being transferred to the new legal entity, Hairu Fisheries (Seychelles) Company Limited once incorporated but no later than 10 April 2015.
- [7] The vessel was subsequently registered bearing registration number 50238 under Baba Ali BRN 8413977 but was not transferred as agreed to Hairu Fisheries (Seychelles) Company Ltd.
- [8] The partnership was dissolved in consequence and in further disagreement on the management of the venture. Subsequently, the Respondent executed a Bill of Sale transferring rights, title and interest in the vessel to the Applicant but has refused to complete de-registration and treated the vessel as its own and even pledged the vessel as

collateral for a facility amounting to SR475,000 with interest of 14% with the Bank of Ceylon in Seychelles.

- [9] The Applicant has averred that it requires possession of its vessel.
- [10] In his affidavit in reply the Respondent denies the existence of the Hairu Group of Companies and states that he owns the vessel, Sea King and states that he bought it and registered it to his name Baba Ali Brn 8413977. He adds that he is paying the purchase price of the vessel to its manufacturer by monthly instalments and attaches his receipts.
- [11] He states that he imported the vessel into Seychelles and insured and registered it in Seychelles in December 2015 and that he has a partnership agreement to manage the vessel with the Applicant which is still in force. He admits that the vessel is pledged by himself to the Bank of Ceylon.
- [12] He refers to a previous decision of the Supreme Court against Baba Ali in CS 47/2017 dated 25 October 2017 in which the court had ruled that Baba Ali had a valid defence to the application.
- [13] In the course of oral submissions at the hearing of the application it was pointed out by Mr. Georges, Counsel for the Applicant that the bill of sale relied on by the Respondent to show his ownership of the vessel was witnessed and notarised by none other than the Respondent's wife. It is trite that the notarisation of a document by a family member is not acceptable and renders the document null and void (see section 14 of the Notaries Act).
- [14] I have studied the two bills of sale, one is dated 10 February 2015 and the other 3 March 2015, both from the same company but in relation to CFC-01 and Sea King respectively. The authenticity of the second of these documents is in question while the first has not been challenged.
- [15] I also have had sight of an import permit dated 10 February 2015 of an 18.5 metre vessel into Seychelles with HS Code 89020000. I note the advisory note on the document which states that "It is advised that current ownership and mortgage details be confirmed from the Registrar of Shipping". Such confirmation has not been produced by the Respondent.

- [16] I also note that the Respondent in his affidavit confirms that the CFC-01 is indeed the one and the same as Sea King as he states that the vessel is managed under the partnership agreement which is still in force. If he was the owner of the vessel, why were these averments not made in CS27/2017 and the bill of sale as concerns his ownership of the vessel not tendered? If he agrees in a partnership agreement dated 4 March that the Applicant will provide a vessel for the joint venture and which he admits is the Sea King, why does he attempt to prove his ownership of the same vessel by a bill of sale dated 3 March 2015, that is a day before the agreement with the Applicant?
- [17] Affidavits are evidence as sworn by the deponents. They can be treated with belief or disbelief as are testimonies in court. I do not believe the statements in the Respondent's affidavit and there are serious and concerning issues in relation to the appendices to his affidavit as described above.
- [18] Ultimately, the Respondent has been unable to prove title to the possession of the boat. He appears to be holding on to the vessel for compensation under the partnership agreement. While this is a claim he may wish to make it gives him no right of retention of the vessel as such detention is not permitted in the particular circumstances of this case under the Civil Code of Seychelles.
- [19] As in the leading case of *Delphinus Turistica Maritama SA v Villebrod* (1978)SLR 121), I find therefore that the Respondent has no serious defence to make to the application.
- [20] In the circumstances, I Order the Respondent to quit, leave and vacate forthwith the vessel Sea King formerly known as CFC-01 and should he fail to do so a writ *habere facias possessionem* shall issue. I further Order the Seychelles Maritime Safety Authority through the Registrar of Ships to assist the Applicant in the completion of the process of deregistering the vessel which title vests in the Applicant.

Signed, dated and delivered at Ile du Port on 3 April 2018.

M. TWOMEY
Chief Justice