

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side No.: 118/2014**

**[2018] SCSC 1019**

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**JOHN DAVID AHWAN**

Plaintiff

Versus

**ANGELINE LAURENCE**

Defendant

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Heard: 22<sup>nd</sup> day of October 2018

Counsel: Mr. B. Hoareau for Plaintiff

Defendant Absent/Unrepresented

Delivered: 9<sup>th</sup> day of November 2018

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**JUDGMENT**

**EX-PARTE**

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**ANDRE-J**

[1] This matter arises out of a Plaint filed by John David Ahwan (“Plaintiff”), of the 9<sup>th</sup> day of December 2014 wherein Orders are being sought from this Court against the Defendant inter alia, for the issue of a writ of mandatory injunction, compelling the Defendant to remove and demolish the building from the property of the Plaintiff and vacate the property; and to make any order it deems just and necessary in all the circumstances of the case.

[2] The Respondent was duly served with summons and counsel also notified of the date for the hearing and both failed to appear before the Court without due cause, (albeit noting a

statement of defence and counterclaim of the 17<sup>th</sup> November 2015), hence the hearing proceeding ex-parte.

- [3] The Plaintiff it is to be noted filed defence to counterclaim of the 20<sup>th</sup> January 2016 denying the counterclaim and moving for dismissal thereof.
- [4] The Plaintiff testified in support of his Plaint in essence that at all material times he was and is the registered proprietor of a parcel of land registered as H 1952 (“Property”) (*Exhibits P1 and P2*).
- [5] That the Defendant without the consent and authority of the Plaintiff, illegally built or caused to be built, entirely on part of the Property, a house in which the Defendant is residing (“the building”).
- [6] The Plaintiff further testified that he wishes the Defendant to remove and demolish the building from his Property and to vacate the Property.
- [7] The Plaintiff further testified that the illegal construction of the building was never consented to by him as owner of the Property and he continues to deny same and the Plaintiff has the right to fully enjoy his Property.
- [8] The plaintiff denied the counterclaim of the defendant claiming acquisitive prescription and also vehemently denied droit de superficie on the Property hence moving for dismissal of the counterclaim and that the defendant vacates his Property as prayed for in the plaint.
- [9] As highlighted above, the Defendant failed to turn up for the hearing albeit the Court noting the averments in Statement of the Defence (*supra*) which are denials of the averments of the Plaint and which denials remain unsubstantiated by way of evidence and further the Defendant also filed a counter-claim which also remains unsubstantiated and again the latter cannot be adjudicated upon in the absence of evidence which is not present in this cause through default of appearance of the Defendant and Counsel and hence the counterclaim is dismissed in that regards.

[10] It follows thus, in my analysis of the uncontested testimony of the Plaintiff whom the Court believes to have been very cogent and reliable, that this Court finds that the Plaintiff is the owner of the Property as claimed (*Exhibits P1 and 2*), and that the Defendant has as per the Plaintiff's testimony which is believed by this Court, has without Plaintiff's consent and authority illegally built or caused to be built entirely on part of the property a house in which the Defendant resides.

[11] To meet the ends of Justice and in view of the above, since the Plaintiff is the owner of the Property and is entitled to full rights of ownership of the Property and enjoyment of same without unlawful hindrance, I enter Judgement in favour of the Plaintiff as follows:

(i) I hereby grant a writ of mandatory injunction, compelling the defendant to remove and demolish the building from the Property of the Plaintiff and vacate the property; and;

(ii) Costs of proceedings is further awarded to the Plaintiff.

(iii) Copy of this Judgement is to be served on the Defendant accordingly.

Signed, dated and delivered at Ile du Port on 9<sup>th</sup> day of November 2018.

S. Andre  
Judge of the Supreme Court