

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: XP 05/2018

[2018] SCSC 359

In the matter of

**JULIAN LEBON
SHEILA MARIE**

VERSUS

THE ATTORNEY GENERAL

Heard: 21 March 2018
Counsel: Mr. S. Rajasundaram for petitioner
Mrs. C. Cesar Asst. State Counsel for the Attorney General
Delivered: 9 April 2018

RULING

Vidot J


- [1] The Petitioners have filed a petition seeking permission to cause an easement in the form of a right of way to be registered against land title H430 in favour of land title H861.
- [2] Land Title H430 belongs to Brenson Graig Larsen and Lynn Anne Larsen, both minors and respectively born on 31st March 2016 and 17th March 2003. The minors are the children of Brandt Francis Peder Larsen, deceased and the 2nd Petitioner. At the time of his death the deceased owed land title H 430 and the Petitioners were appointed joint executors of the estate of the deceased and the property is now registered in the names of

the minors. The 1st Petitioner is the fiduciary of the said land title as per a Judgment By Consent registered as a judgment of the Court dated 23rd March 2017 in Supreme Court case CS EXP97/2016.

- [3] The Petitioners prays to Court to allow the grant of right of way measuring 23.50 square meters over parcel H430 in favour of H861 belonging to Mr. Ramachandran Naidoo. The 1st Petitioner testified that the grant of the right of way shall not in any way inconvenience the enjoyment of the H430. The witness produced a sketch plan (Exhibit P2) which demarcates the area where the right of way will run. He confirmed that the right of way will not prejudice the enjoyment of the property by the owners of parcel H430. The right of way will grant access to the owner of parcel H861 to the main road. The 2nd Petitioner added that the right of way could be of benefit to owners of the servient land who could also make use of that access.
- [4] I note that it is averred that the 1st Petitioner is the fiduciary. As such in terms with Article 825 of the Civil Code of Seychelles, he should administer the property "*honestly, diligently and in a business-like manner*". That means that he should do everything possible to ensure that the property maintains or improve on its value and that nothing should be done to cause inconvenience to the co-owners or that the property which should not be unnecessarily encumbered. Since the Petitioners are guardians of the minor, they should ensure that the grant of the right of way does not unnecessarily affects the enjoyment and future development of the property by the minors.
- [5] I note that the Attorney General, appearing as *ministère publique* submitted that the Petition was not being objected to.
- [6] I find that the grant of the right of way will not affect the use, enjoyment and development of parcel H430. It was submitted in evidence that the right of way will be of benefit to the owners of parcel H430 as they would be allowed use of the same.
- [7] Therefore, I accede to the petition and thereby approve the grant of the right of way as per exhibit P2, of an area not exceeding 23.5 meter square, over land parcel H430 in favour of land parcel H861. The owner of the latter parcel shall bear all costs of the right

of way and shall at all times maintain the same in a good state of repairs. The right of way shall be surfaced with concrete or bitumen and make provisions that rain water does not flow over land parcel H430. The owner(s) of land parcel H430 shall also have uninterrupted use of that right of way. The owner of parcel H 861 shall bear all cost associated with preparation and registration of the right of way.

Signed, dated and delivered at Ile du Port on 9 April 2018



M. Vidot
Judge of the Supreme Court