

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 80/2014

[2018] SCSC 1129

WELLISON BAKER ALSO KNOWN AS WILSON BAKER
Plaintiff

versus

GISELLE WALTER
Defendant

Heard:

Counsel: Mr. France Bonte for Plaintiff

Mr. John Renaud for Defendant

Delivered: 12th December 2018

JUDGMENT

Nunkoo J

[1] This is an action where the plaintiff is complaining that the Defendant has carried out illegal construction on his land in close vicinity of plaintiff's land and thus causing severe erosion to a wall composed of earth. This act has thus created a real possibility of future damage to the Plaintiff's property.

- [2] The Plaintiff is urging this court that for the protection of his property the Defendant be restrained from carrying out any further works around the earthen boundary wall, except if she secures the boundary with a retaining wall.
- [3] He also complains that despite requests to stop all works on the land made by the planning department of the Ministry of Land Use and Housing, the Defendant has not complied and the situation is perilous.
- [4] The Plaintiff is therefore asking for a permanent injunction restraining the Defendant from carrying any work on the land for the purpose of preventing her from further eroding the land.
- [5] And, if necessary to order her at her own cost to build a secure boundary retaining wall and to repair the damage she has already caused to the parties boundary wall; and to make the new wall safe and secure for all parties and their respective properties for the future.
- [6] The Plaintiff deponed to say that an excavator was seen on the said spot where land had been removed and that some time later about two months, maybe, there was heavy rain and there was erosion of the land constituting the earthen party wall. He could not confirm who was operating the excavator nor could he confirm the date of the rainfall.
- [7] An officer from the Seychelles Planning Authority deponed on behalf of the Plaintiff and in the main he said that there was no risk of any erosion as the earthen wall had settled and grass and shrubs have grown on it. He also referred to a burst pipe that was leaking but which has been repaired. There was no problem that he foresaw and he also stated that such sites are regularly monitored by his department to ensure the safety of the properties found there.
- [8] The court visited the said spot. Both counsel were present. What we saw was far from the outcry of the plaintiff. The party wall was far from his house; the landscape which apparently stood the risk of erosion was well settled. The water supply pipe was there safe and inoffensive. No reasonable man would believe the plaintiff about any risk of potential erosion and damage to his land or his house.

[9] This a frivolous application. The plaint is dismissed with costs.

Signed, dated and delivered at Ile du Port on 12th December 2018.



S Nunkoo

Judge of the Supreme Court