

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC13/2014

[2019]SCSC 451

HUA SUN
Plaintiff

Versus

DR ASHRAF ELMASRY
First Defendant

ELENA KOZLOVA
Second Defendant

Heard:

Counsel: Mr. Basil Hoareau for Plaintiff
Mr. Frank Elizabeth for Defendants

Delivered: 29 May 2019

JUDGMENT

F. ROBINSON, J

1. The plaintiff is Mrs. Hua Sun, also known as Margaret Sun. Mr. Nabil El Masry of Woodland Fairview, La Misère, Mahe, Seychelles, represented the first and second defendants, pursuant to powers of attorney, dated the 20 August 2015, D1 and D2, respectively.
2. It is not in dispute between the plaintiff and the defendants that, on the 19 September 2011, the plaintiff and the defendants entered into an agreement, titled "*SHARE PURCHASE*

AGREEMENT in relation to 100 ordinary shares in SUNSHINE-CONSTRUCTION MATERIALS & SALES (PROPRIETARY) LIMITED", ("Agreement").

3. It is also not in dispute between the plaintiff and the defendants that, at the time the Agreement was entered into, the leasehold interest in the land comprised in title no. H8288 (*"leasehold interest"*), being leased from the Government of Seychelles, was the only immovable property and principal asset of Sunshine Construction Materials & Sales (Proprietary) Limited, (*"Company"*).
4. It is also not in dispute between the plaintiff and the defendants that, on the 11 February 2013, the Government of Seychelles acquired the leasehold interest.
5. The case for the plaintiff is that the Agreement, in which it was agreed that the plaintiff would purchase all the shares that the defendants had in the Company at the price of United States Dollars ("\$\$") 2,000,000/-, was terminated, and that the defendants became jointly and/or severally liable to refund to the plaintiff the sum of \$1,830,398/- in terms of the Agreement.
6. The plaintiff averred that, after several requests by the plaintiff, on or about the 14 January 2014, the attorney-at-law, Mr. Pesi Pardiwalla, for and on behalf of the defendants or the first defendant, refunded the sum of \$1,169,970/- to the plaintiff.
7. The plaintiff averred that despite repeated requests the defendants have refused and/or failed to refund the remaining balance of \$660,428/- to the plaintiff, which sum is still due and owing. The plaintiff averred that the defendants are jointly and/or severally liable to pay interest at four percent on the unpaid sum of \$660,428/- from the date of the letter of demand, dated the 16 January 2014, until the date of payment.
8. The plaintiff also claimed moral damage to the sum of 200,000/- rupees as a result of the defendants' failure to refund the sum of \$660,428/-, which she claimed the defendants are jointly and/or severally liable to pay to her.
9. The plaintiff, accordingly, prays for a judgment ordering the defendants:

- "(i) to jointly and/or severally pay the sum of \$660,428/- with interest at the legal rate of 4 % from the 16th of January 2014 until the date of payment of the entire sum of \$660,428/-;*
- (ii) to jointly and/or severally pay moral damage in the sum of SR200,000 plus interest at the rate of 4 % thereon, from the date of judgment until payment of the entire sum of SR200,000; and*
- (iii) make any other order which is just and fair in the circumstances of the suit."*

10. In relation to the case for the defendants, with respect to the allegation of the plaintiff that, by the 30 June 2012, fulfillment of all the contractual obligations, as per the Agreement, could not be achieved, because of circumstances beyond the control of the plaintiff and the defendants, for the reason that the Government of Seychelles was taking steps to acquire and/or cancel the leasehold interest, and which decision had been communicated to the plaintiff and the defendants, the defendants response was as follows. The defendants contended that the contractual obligations contemplated under the Agreement could not be achieved, by the 30 June 2011, because the plaintiff had acted in breach of the Agreement. In support of their contention that the plaintiff had acted in breach of the Agreement, the defendants stated, in their amended defence, that the plaintiff: *"4... had not paid the entire purchase price as agreed"*. The amended defence added that: *"4 ... it was then rumoured that the Government intended to purchase or acquire the leasehold interest"*. (Emphasis supplied)
11. With respect to the allegation of the plaintiff that, by the 31 December 2012, the contractual obligations, as per the Agreement could not be achieved, including the transfer of shares in the Company to the plaintiff because the Government of Seychelles intended to acquire the leasehold interest, and that by notice, dated the 17 December 2012, the Government of Seychelles had issued notice of intended acquisition, in respect of the leasehold interest, in terms of the Acquisition of Land in the Public Interest Act, (the *"Act"*), and that, therefore, the failure to achieve all the contractual obligations was not for any reason attributed to her, the defendants made the following points. The defendants contended that the contractual obligations contemplated under the Agreement could be achieved, and that,

although the Government of Seychelles had intended to acquire the leasehold interest and by notice, dated the 17 December 2012, had issued notice of intended acquisition, this could not have prevented the implementation of the Agreement. In their plea, the defendants relied on the following averment in support of their contention that the plaintiff had acted in breach of the Agreement, namely:

"8... The Defendants aver that the plaintiff failed to pay the entire purchase price by the extended date and is in breach of her obligations under the Agreement, and therefore liable to a forfeiture of 20 % of the contract price to the Defendants (clause 4 of Agreement).

12. Paragraph 12 of the amended defence also averred that: *"[...] [the defendants] are and have been prepared and willing to refund any balance due to the Plaintiff after subtracting (a) the amount forfeited in terms of clause 4 of the Agreement [...] and (b) the amount claimed in paragraph 4 of the counterclaim, but the Plaintiff will not accept such payment"*.

13. The counter claim contended that, because the plaintiff had acted in breach of the Agreement, twenty percent of the price (\$400,000/-) should be forfeited to the defendants in terms of the Agreement. In that regard, the counter claim averred that:

"4. The plaintiff had the use of and occupation of the land since the 19th September 2011 up to January 2014 (3 years and 3 months), on the understanding that the Agreement would be fulfilled. Having breached her obligation the Plaintiff is therefore liable to pay an indemnity for the use of the property amounting to SR139,500.00 per month."

14. The defendants, accordingly, pray for a judgment asking this court to:

"(i) Dismiss the plaintiff's claim for payment of USD 660,428 with interests as prayed for,

(ii) Dismiss the Plaintiff's claim for moral damages in its entirety.

(iii) Give judgment in favour of Defendants as follows:

(a) in the sum of USD 400,000 as stated in paragraph 3 of the counterclaim,

and

(b) the sum of SR5,440,500.00 as stated in paragraph 4 of the counterclaim.

All with costs."

15. The plaintiff denied the claims of the defendants contained in the counter claim. The plaintiff by way of further answer stated that she is not liable to pay any indemnity whatsoever because she [the plaintiff], with the consent and/or knowledge of the defendants:

- placed the steel structure on the land, which she intended to use to build a building on the said land; and
- built temporary workers accommodation, to house workers who were to build the said building.

The reply to the counter claim also averred that, in the event of all the contractual obligations, as per the Agreement were achieved, by the 30 June 2012, or by the 31 December 2012, and planning permission being granted by the Town and Country Planning Authority, to construct the said building. The reply to the counter claim added that the defendants jointly and/or severally, at all material times, stored and/or caused to be stored containers on the parcel of land.

16. Much documentary and oral evidence have been ushered in by these parties in relation to their respective contentions. Arguments on the issues have also been offered in the written submissions offered on behalf of the defendants. This court has considered all the evidence and the written submissions with care.

17. This court is satisfied that the plaintiff was determined to give it her best recollection; and

that her recollection had not been coloured by the passage of time and by the standpoint from which she was seeking to recollect matters. This court has set its assessment of the impression made by the oral evidence of the plaintiff against the conclusions to be drawn from the Agreement, the written agreement, dated the 12 July 2012, P16, (paragraph [19 (f)] of the judgment, refers), and other miscellaneous documents ushered in evidence by the plaintiff and the defendants. This court observed that the representative of the defendants tried his utmost to maintain the position put forth by the defendants in their pleadings, however, when confronted with the Agreement and the other miscellaneous documents ushered in evidence, he could not ignore the obvious conclusions drawn from them.

18. The plaintiff and the defendants are agreed that the plaintiff paid a total sum of \$1,830,398/- to the defendants, part of which payment was effected to the attorney-at-law, Mr. Pesi Pardiwalla, who was at all material times acting for and representing the defendants in respect of the Agreement. This court, upon the joint application of the plaintiff and defendants, has to determine whether or not the contractual obligations under the Agreement could not be achieved for reasons attributed to the plaintiff.
19. An examination of the documentary and other evidence showed that the relevant facts were as follows:
 - (a) the Agreement expressly provided that:
 - (i) ninety nine shares of the Company were held by the first defendant and the remaining one share by the second defendant;
 - (ii) the completion date of all the transactions contemplated in the Agreement (namely the payment of the entire purchase price by the plaintiff and the transfer of all the shares by the defendants to the plaintiff) was the 30 June 2012, at 15:00; and

- (iii) if completion was not achieved by the 30 June 2012, the Agreement was to be terminated, unless its validity was extended by the Agreement of the plaintiff and the defendants, and any payment effected was to be refunded to the plaintiff, unless the transfer of the shares to the plaintiff could not be executed for a reason attributed to the plaintiff, in which case twenty percent of the price would be forfeited to the defendants. (Clause 6 of the Agreement, refers).
- (b) With reference to the Agreement, the representative of the defendants stated that the Company was the owner of the leasehold interest, as per the lease dated the 12 June 2009.
- (c) With reference to the Agreement, the representative of the defendants agreed to the suggestion of Counsel for the plaintiff that: *"even though it was a share purchase, [...] the ultimate aim of the plaintiff was to purchase shares to gain control over the leasehold interest"*, and that: *"it is on this basis that this agreement for the purchase of shares which is Exhibit P2 was entered into"*.
- (d) It is not in dispute between the plaintiff and the defendants that the last payment made by the plaintiff to the defendants under the Agreement was on the 6 June 2012.
- (e) The plaintiff testified that by the 30 June 2012, the shares had not been transferred to her because the Government of Seychelles was taking steps to acquire the leasehold interest, which decision was communicated to the plaintiff and the defendants, by a letter, dated the 13 June 2012, emanating from the then Minister of Land use and Habitat, (P14). P14 reads:

"

*Republic of Seychelles
Ministry of Land Use and Habitat*

The Minister

13th June 2012

*Dr A EL Masry
Sunshine Materials and Sales Pty Ltd
C/O Sunshine House
Providence*

*Re: Temporary Site Structure on Ile Perseverance Parcel H8288.
Revocation Order.*

Pursuant to section 13 of the Town and Country Planning Act, the application DC/1325/11 has been reviewed. As we have previously communicated to the lessee of H8288, the state requires the land for other development of national importance. In line with this we have initiated steps for the return of the property.

In accordance with the above, the construction of the temporary site structure cannot proceed. You are hence notified that the approval conveyed on the 5th May 2012 is hereby revoked. Please ensure no work is commenced.

Yours faithfully

*C Liomet
Minister for Land use and Housing*

*Cc: Margaret Sun,
FADA Construction – Hari Flat, Plaisance"*

- (f) It is not in dispute between the plaintiff and the defendants that the completion date of the Agreement was extended to the 31 December 2012, by a **written agreement, dated the 12 July 2012**, signed by the plaintiff and the defendants, (P16). P16 reads:

"This Agreement made on the 12th day of July 2012

Between

Dr. Ashraf Elmasry

Mrs. Elena Kortova

As vendors

And

Mrs. Hua Sun

As Purchaser

WHEREAS the parties have entered into a Share Purchase Agreement dated 19th September 2011 (Share Purchase Agreement)

AND WHEREAS due to circumstances beyond the control of both parties completion could not be achieved on that date.

It is hereby agreed as follows:

- 1. In terms of clause 6 of the Share Purchase Agreement, the parties' hereby agree to extend the completion date which is hereby extended to the 31st December 2012...".*

(Emphasis supplied)

With reference to P16, the plaintiff testified that completion of all the contractual obligations could not be achieved due to circumstances beyond her control and that of the defendants. According to her evidence, the Government of Seychelles was taking steps to acquire the leasehold interest.

- (g) A letter, dated the 12 July 2012, written by the attorney-at-law, Mr. Pesi Pardiwalla, (P17), is to the following effect:

*"Pardiwalla Twomey Lablache
Attorney-at-Law & Notary Public*

12th July 2012

*Mrs. Hua Sun
Victoria, Mahe
Seychelles*

Dear Madam,

As you are aware the completion date for the Share Purchase Agreement dated 19th day of September 2011 have been extended to the 31st December 2012 in view of circumstances beyond the control of both parties.

Dr. Ashraf Elmasry has instructed me to confirm to you that should it become impossible due to Government action by the extended date, to proceed with the Share Transfer, then the whole amount already paid (2 million USD) will be refunded to you.

All works carried out by you so far, ... in accordance with the law, have to be valued at the relevant date and paid by the Government.

The extended date is a safety net, and the parties could proceed to completion or termination as soon as the Government's action become clear and definite.

Yours sincerely

*Pesi Pardiwalla
Attorney-at-law"*

(Emphasis supplied)

With respect to the sum of \$2,000,000/-, referred to in P17, the plaintiff testified that she did not pay that sum, but she paid the sum of \$1,830,398/- to the defendants.

- (h) On the 17 December 2012, the Government of Seychelles had issued notice of intended acquisition, in respect of the leasehold interest, in terms of the Act, (P18). P18 reads in part:

"ACQUISITION OF LAND IN THE PUBLIC INTEREST ACT, 1996 CAP 1A

NOTICE UNDER SECTION 4(1)

I, CHRISTIAN LIONNET, Minister for Land Use and Housing, in exercise of the powers conferred on me by section 4 (1) of the above mentioned Act, hereby give notice that I intend to acquire the leasehold interest in the land described in the Schedule (hereinafter referred to as "the land") in the public interest, namely for defence and security purposes, and that it is intended that the leasehold interest in the land will be acquired within 60 days from the date of publication of this notice in the Official Gazette.

SCHEDULE

DESCRIPTION OF THE LAND

An area of land of approximately 55,800 sq.m, situated at Ile Perseverance, surveyed as parcel H8288 and leased to SUNSHINE-

CONSTRUCTION MATERIALS & SALES (PROPRIETARY) LIMITED for a term of 99 years from 12 June 2009 and registered at the land registry on 30 June 2009 in registration Volume II FOLIO NO. 350, which land is more fully described in survey diagram which can be inspected in the office of the Director Land Acquisition, Valuation and Sales, 2nd Floor, Independence House.

Dated this 17th day of December 2012

.....

Christian Lionnet

MINISTER FOR LAND USE AND HOUSING".

In the light of P18, the plaintiff stated that the contractual obligations, in accordance with the Agreement could not be achieved, including the transfer of shares in the Company to the plaintiff because the Government of Seychelles intended to acquire the leasehold interest.

- (i) The plaintiff testified that the failure to achieve all the contractual obligations was not for any reason attributed to her or the defendants. She stated that the Government of Seychelles acquired the leasehold interest, on the 11 February 2013, by notice of acquisition issued in terms of the Act. D3 reads in part:

"Official Gazette

[...]

Government Notices

The following Government Notices are published by the Order of the President.

No. 143 of 2013

*ACQUISITION OF LAND IN THE PUBLIC INTEREST ACT, 1996
NOTICE UNDER SECTION 6 (1)*

WHEREAS on the 11th day of February, 2013 the Minister of Land Use and Housing certified under section 5 (8) of the Acquisition of Land in the Public Interest, namely for the defence and security purposes and that it is not expedient to comply with Section 5 (1) of the said Act.

Now therefore I, CHRISTIAN LIONNET as the Minister of Land Use and Housing in exercise of the powers conferred on me by Section 6 of the above mentioned Act, do hereby acquire the land described in the Schedule (hereinafter referred to as "the land") in the public interest, namely for the purpose of defence and security.

SCHEDULE

DESCRIPTION OF THE LAND

An area of land of approximately 55,800 sq.m, situated at Ile Perseverance, surveyed as parcel H8288 and leased to SUNSHINE-CONSTRUCTITON MATERIAL & SALES (PROPRIETARY) LIMITED for a term of 99 YEARS FROM 12 June 2009 and registered at the land registry in registration Volume II FOLIO 350 as more fully described in the survey diagram which can be inspected in the Office of the Director of Land Acquisition, Valuation and Sales 2nd Floor Independence House

Dated this 11th day of February, 2013

No. 144 of 2013

ACQUISITION OF LAND IN THE PUBLIC INTEREST ACT, 1996
CERTIFICATE OF THE MINISTER S 5 (8)

I, CHRISTIAN LIONNET, Minister of land Use and Housing in exercise of the powers conferred by Section 5 (8) of the above Act, do hereby certify that there is an urgent need for acquiring the land described in the schedule (hereinafter referred to as the "land") in the public interest namely for the defence and security purposes and that it is not expedient to comply with Section 5 (1) of the said Act.

SCHEDULE

DESCRIPTION OF THE LAND

An area of land of approximately 55,800 sq.m, situated at Ile Perseverance, surveyed as parcel H8288 and leased to SUNSHINE-CONSTRUCTITON MATERIAL & SALES (PROPRIETARY) LIMITED for a term of 99 YEARS FROM 12 June 2009 and registered at the land registry in registration Volume II FOLIO 350 as more fully described in the survey diagram which can be inspected in the Office of the Director of Land Acquisition, Valuation and Sales 2nd Floor Independence House".

- (j) In view of the above, the plaintiff stated that the Agreement was terminated, and that the defendants became jointly and/or severally liable to refund to her the sum of \$1,830,398/- in terms of the Agreement.
- (k) The plaintiff added that the defendants had refunded only the sum of \$1,169,970/- that was paid to the attorney-at-law, Mr. Pesi Pardiwalla, (P13). P13 reads in part:

*"Pardiwalla Twomey Lablache
Attorneys-at-Law & Notary Public
[...]*

14th January 2014

Dear Mrs Sun Hua,

Thank you for your letter dated 13th January 2014 and our subsequent discussion.

I have passed on your letter to Dr Ashraf Elmasry, the vendor. He has instructed us to pay to you the sum of USD 1,169,970.00, which reflects the exact sum which was paid by instalments, to Dr. Elmasry through our account. This was in respect of the purchase of shares in Sunshine Constriction Materials and Sales (Proprietary) Limited.

He has instructed that he will deal directly with you for the amount that you have paid directly to him. You may contact him in that respect.

Could you please provide me with your Bank details so that I might effect the payment above mentioned.

Yours sincerely

Pesi Pardiwalla"

- (l) The plaintiff stated that the defendants refused to return the outstanding sum of \$660,428 to the plaintiff.
- (m) Notices of "*mise en demeure*", dated the 16 January 2014, and 20 January 2014, are before this court as P19 and P20, respectively.

20. This court observes that the plaintiff and the defendants formally knew of the Government of Seychelles' intention to acquire the leasehold interest on the 13 June 2012, (P14, refers). Hence, it is not clear to this court why the defendants, in their plea, had suggested that it was not true that the Government of Seychelles had intended to acquire the leasehold interest. The letter written by the attorney-at-law, Mr. Pesi Pardiwalla, dated the 12 July 2012, to the plaintiff, (P17), (paragraph [19 (g)] of this judgment, refers), upon the instruction of the defendants and the written agreement, P16, (paragraph [19 (f)] of the judgment, refers) not only indicated the plaintiff's and the defendants' understanding of what had been agreed, but it made it clear to the plaintiff what that understanding was. In addition that letter did not raise any issue in relation to any breach of the Agreement by the plaintiff. That letter informed the plaintiff that the: *"completion date for the Share Purchase Agreement dated 19th day of September 2011 have been extended to the 31st December 2012 in view of circumstances beyond the control of both parties."* Hence, it follows that the contention of the defendants that the obligations contemplated by the Agreement could not be fulfilled because the plaintiff had allegedly not paid the full contract price by the 30 June 2012 and by the extended date, i.e., the 31 December 2012, clearly does not hold water. In the light of the aforementioned, this court concludes that the contentions of the defendants contained in their pleadings are clearly inconsistent with the documentary evidence ushered in by the plaintiff and the defendants.
21. It stands to reason that the obligations contemplated by the Agreement could not be fulfilled by both the plaintiff and the defendants, by the extended date, because the Government of Seychelles intended to acquire the leasehold interest. It is plain that the Government of Seychelles acquired the leasehold interest on the 13 February 2013. In that regard, in the light of the common intention of the plaintiff and the defendants, the Agreement was terminated. Accordingly, Article 1134 of the Civil Code of Seychelles Act, which refers to the true intention of parties to a contract and reiterates the obligation of good faith in the context of contractual obligations, applies to this case.

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22. Clause 6 of the Agreement provides:

"6. TERMINATION

"Subject to the provisions of this Agreement, if Completion is not achieved by the 30th June 2012 this Agreement shall be terminated, unless its validity is extended by agreement of the Parties and subject to Clause 3 any advance payment under Clause 2 shall be forthwith refunded to the Purchaser with the liquidated damages as specified in Clause 3 above."

23. This court interprets clause 6 of the Agreement to mean that, because the true intention of the plaintiff and the defendants is that the Agreement is terminated: *"if completion is not achieved by the 30th June 2012"*, by the same token, the true intention of the plaintiff and the defendants, is that the Agreement is terminated if completion is not achieved by the extended date, i.e., the 31 December 2012. The true intention of the plaintiff and the defendants is clearly consistent with the wording of the letter, written by the attorney-at law, Mr. Pesi Pardiwalla, dated the 12 July 2012, (P17), (paragraph [19 (g)] of this judgment, refers), reproduced here, in part:

"[...] As you are aware the completion date for the Share Purchase Agreement dated 19th day of September 2011 have been extended to the 31st December 2012 in view of circumstances beyond the control of both parties.

Dr. Ashraf Elmasry has instructed me to confirm to you that should it become impossible due to Government action by the extended date, to proceed with the Share Transfer, then the whole amount already paid (2 million USD) will be refunded to you.

All works carried out by you so far, [...] in accordance with the law, have to be valued at the relevant date and paid by the Government.

The extended date is a safety net, and the parties could proceed to completion or termination as soon as the Government's action become clear and definite."

(Emphasis supplied)

24. This court concludes upon a proper construction of the Agreement reached between the plaintiff and the defendants that the plaintiff had not acted in breach of the Agreement, and that the Agreement reached between the plaintiff and the defendants is terminated, and that as a result, the defendants must refund the remaining balance of \$660,428/- to the plaintiff.

25. The plaintiff claimed the sum of 200,000/- rupees for moral damage. The plaintiff testified that, after she had received the letter from the Government of Seychelles to the effect that the latter intended to acquire the leasehold interest, she [the plaintiff] and the representative of the defendants, Mr. Nabil El Masry, and the first defendant discussed the issue. She testified that the first defendant persistently refused to return the money owed in spite of their discussions. She mentioned that she went to the Company on numerous occasions "*for chasing the money*", but to no avail. The plaintiff testified that, as a result of the defendants persistent failure to return to her the money owed, she suffers from a lack of sleep. She also testified that she has a three year old daughter, whom she cannot not look after because of the prejudice suffered. The plaintiff also testified that the first defendant shouted at her. As a result of being shouted at, she cannot sleep. She keeps thinking about the incident. Eventually, the first defendant told her to go and see the attorney-at-law, Mr. Pesi Pardiwalla, who returned to her part of the money owed. That money was returned to her more than one year after it should have been returned.
26. This court has taken into account that there is no evidence that the plaintiff, a business woman, lost other opportunity of contracts because of the dispute with the defendants. Otherwise, the evidence of the plaintiff as to the prejudice which was caused to her as a result of the defendants' failure to return the money owed appears to be credible and this court is prepared to act thereon. This court considers that an award of 100,000/- rupees is reasonable in that connection.

Counter claim

27. The defendants contended in the counter claim that the plaintiff should forfeit twenty percent of the price (\$400,000/-) because she has acted in breach of the Agreement reached between the plaintiff and the defendants. According to the defendants, it was understood by the plaintiff and the defendants that the Agreement will be fulfilled. This court pauses here to state that it is at a loss to understand the contention of the defendants in the counter claim, in the light of the documentary evidence, that the real position of the plaintiff and the defendants, at the material time, was that the Agreement will be fulfilled. The letter

written by Mr. Pesi Pardiwalla, dated the 12 July 2012, (P17), (paragraph 19 (g) of this judgment, refers), indicated the true understanding of these parties to be as follows:

"[...] As you are aware the completion date for the Share Purchase Agreement dated 19th day of September 2011 have been extended to the 31st December 2012 in view of circumstances beyond the control of both parties.

[...]

The extended date is a safety net, and the parties could proceed to completion or termination as soon as the Government's action become clear and definite.

[...]."

28. Be that as it may, having concluded that the plaintiff had not acted in breach of the Agreement, this court does not allow the sum of \$400,000/- claimed by the defendants.
29. Next the defendants contended that the plaintiff is liable to pay to the defendants the sum of 5,440,500/- rupees because she has occupied the land as from the 19 September 2011, "up to January 2014". As this court understands it, this liability, in the light of the counter claim, has arisen because the plaintiff had allegedly acted in breach of the Agreement.
30. It is not clear to this court why the defendants are claiming the sum of 5,440,500/- rupees from the plaintiff. The representative of the defendants admitted reluctantly, when cross-examined, that the plaintiff occupied the land with the consent of the defendants. He also admitted reluctantly, when cross-examined, that there was no rent agreement between the plaintiff and the defendants in relation to the land. Having considered paragraph 4 of the counter claim (referred to in paragraph [13] of this judgment), in the light of the conclusion of this court that the plaintiff had not acted in breach of the Agreement, and the evidence of the plaintiff and the representative of the defendants, this court concludes that there is no basis upon which it could make an award. Hence, this court does not allow the sum of 5,440,500/- rupees claimed by the defendants.

Decision

31. This court's judgment is in the following terms:

- (a) the defendants shall jointly and/or severally pay the sum of \$660,428/- with interest at the legal rate of four percent from the 16 January 2014, until the day of payment of the entire sum of \$660,428/-.
- (b) the defendants shall jointly and/or severally pay moral damage to the plaintiff in the sum of 100,000/- rupees plus interest at the rate of 4 percent thereon, from the date of judgment until payment of the entire sum of 100,000/- rupees.
- (c) the counter claim is dismissed.

With costs in favour of the plaintiff.

Signed, dated and delivered at Ile du Port on 29 May 2019



F. Robinson

Sitting as a Judge of the Supreme Court