

SUPREME COURT OF SEYCHELLES

Reportable [2017] SCSC 657
MC53/2017

In the matter between

AARON BARRADO
(rep. by France Bonté)

Applicant

and

BABHRA LABONTÉ
(rep. by Wilby Lucas)

Respondent

Neutral Citation: *Barrado v Labonté* (MC 53/2017) [2019] SCSC 657 (31 July 2019).
Before: Twomey CJ
Summary: Division in kind – approval of proposed subdivision –order accordingly
Heard: 10 July 2019
Delivered: 31 July 2019

ORDER

The subdivided plots of land as proposed by the Land Surveyor are allocated as follows: Plot No 1 to the Respondent and Plot No 2 to the Applicant. Mr. Yvon Fostel to proceed with the subdivision of Parcel T1359 as proposed and to have the same approved and registered after the payment of his fees by the parties.

RULING

TWOMEY CJ

1. Section 107(2) of the Immovable Property (Judicial Sales) Act (Cap 94) provides that:

“Any co-owner of an immovable property may also by petition to a judge ask that the property be divided in kind or, if such division is not possible, that it be sold by licitation.”

2. In this regard, the Applicant applied in August 2017 for the partition of Parcel T 1379 in which he had an undivided half share with the Respondent. His application is comprised of only four paragraphs, namely that:

1. *The Applicant is the only son and sole legal heir to the estate of his late father Joseph Anthony Barrado who died in Seychelles on 29 April 2009.*
 2. *The Respondent was in a common-law relationship with the Applicant's deceased father.*
 3. *Following a Supreme Court judgment in CS No 113/2010, it was ordered that the Parties owned an undivided half share each in property T1359 (sic).*
 4. *The Applicant no longer wishes to remain in a state of indivision with the Respondent.*
3. The following prayers follow these averments:
- (a) *A division in kind ordering that Parcel T1359 be subdivided and to carve his ½ share therefrom;*
 - (b) *value and pay the Applicant his half share of the rental value as loss of use and enjoyment of the said property;*
 - (c) *and any order that the court deems fit in the circumstances with costs.*
4. It must be noted that this matter was not commenced by petition as it should have been. That alone should have resulted in the dismissal of the application but I now disregard this point as it was overlooked by my brother Nunkoo J who presided over the matter at the commencement of proceedings and upon whom I do not sit in judgment.
5. The matter was called on numerous occasions before Nunkoo J. What followed were Kafkaesque procedural twists and turns with the parties ignoring the basis of the application and both parties filing bizarre pleadings, the likes of which I have never seen before or in any case not in compliance with any civil procedural rules or forms. I took over the matter on the 29 May 2019 on my brother's departure from the jurisdiction by which time the Respondent had had a change of Counsel.
6. I find that the court on the request of the parties appointed a mutually agreed Land Surveyor Mr. Yvon Fostel to survey Parcel T1359 and to make recommendations for its

partition into two equal halves. He duly reported on 5 December 2017 with a proposed sub-division allowing each of the parties to have their respective houses on separate plots of land, namely that the Applicant be allocated Plot 2 and the Respondent Plot 1.

7. I asked Counsel for each party on 10 July 2019 if they accepted the proposals of the Land Surveyor and they both indicated their approval.
8. The additional proposals for the division of movables as proposed by the parties never formed part of the claim as is clearly visible from the application above. It is only raised in prayer (b) which remains unsupported by any cause of action. I do not propose to rule on these as they would be *ultra petita*.
9. In the circumstances I make the following orders:
 1. *I allocate the subdivided plots of land as proposed by the Land Surveyor (copy plan attached - Plot No 1 to the Respondent and Plot No 2 to the Applicant)*
 2. *I order Mr. Yvon Fostel to proceed with the subdivision of Parcel T1359 as proposed and to have the same approved and registered after the payment of his fees by the parties*

Signed, dated and delivered at Ile du Port on 31 July 2019

Twomey CJ