

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2019] SCSC  
MC 92/2018

In the matter between

**MARY-MAY FATIMA LESPERANCE**  
*(rep. by Mr. Camille for the Applicant)*

**Applicant**

and

**DANNY FAURE**  
*(rep. by Mr. Georges for the Respondent)*

**Respondent**

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**Neutral Citation:** *Lesperance v Faure* (MC 92/2018) [2019] SCSC

**Before:** 09 September 2019  
Govinden J  
**Summary:** Application for a writ '*habere facias possessionem*'  
**Heard:** 26 June 2019  
**Delivered:** 09 September 2019

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**JUDGMENT**

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**GOVINDEN J**

[1] This is an application for a writ '*habere facias possessionem*'. The Applicant is the Owner of Title PR 4399 by virtue of title to the property being on his name as the Owner. This parcel is referred to hereinafter as 'the property'. The supporting affidavit to the application is sworn by the Applicant herself. In there she avers that the Respondent is in illegal occupation of a 3 bedroom house found on the property and that the Respondent has been repeatedly asked to vacate the property and that he has so far failed and or refused to do so.

- [2] The Applicant avers further that it is urgent for her to take possession of her property for her own use, occupation and enjoyment and that the Respondent have no right or legal interest in the property and that accordingly he is a trespasser.
- [3] According to the Applicant, whatever license or authority to occupy the said parcel that had been given by her to the Respondent have been expressly withdrawn by her. In support of this averment of withdrawal of rights of occupation, the Applicant has produced a document entitled “*Notice of revocation of authority to occupy parcel PR 4399*” in which she apparently explicitly withdrew the authority for the Respondent to occupy the property on the ground of lack of consideration, and based on the fact that she claims that her present homelessness is caused by violence from the Respondent which has led her to run away from the property.
- [4] On this basis the Applicant accordingly applies for an order from this Court that the Respondent be ordered to quit, leave and vacate the property and should he fail to do so to issue a writ of ‘*habere facias possessionem*’
- [5] On the other hand, we have the Respondent, the ex-concubine of the Applicant. He does not dispute the registered title of the Applicant, he however dispute the right of the Applicant to evict him based on the averments in the application. In that respect he has filed an affidavit in reply in which he puts forward the following defences:-
- [6] He avers that he has lived with the Applicant as a man and a wife for over 33 years and that he has 4 children with the Applicant of which 2 were living with him at the time of filing of his response. The Respondent avers that as such he cannot be in illegal occupation of the property, moreover the Respondent avers that the Applicant had given him an irrevocable permission to occupy the property when she voluntarily left him in order to marry a foreigner. On the strength of these averments the Respondent avers that he has a legal right to the use and occupation of the property and he is not a mere licensee and that further he has a right which merits a full *inter partes* hearing in respect of the property rights and also a right to be compensated, in the event that he has to be made to leave the property.

[7] As such the Respondent puts forward a defence in law. He claims that he has a '*droit d'habitation*' over the property and in the alternative that he must be compensated under Article 555 of the Civil Code of Seychelles.

[8] The law with regards to the grant of a '*habere facias possessionem*' is well settled in this jurisdiction. The general principles governing this writ can be summarized as follows:-

- a) The Court in granting the relief acts as a Court of equity and exercises its equitable powers in terms of Section 5 and Section 6 of the Court's Act.
- b) Those who comes to the Court in equity should come with clean hands.
- c) There should not be any other legal remedy available to the Applicant who seeks such an equitable remedy.
- d) This remedy is available to an Applicant whose need is of an urgent nature and to whom any delay in the remedy will cause irreparable loss and hardship.
- e) The Court should be satisfied that the Respondent has a *bona fide* and serious defence to make.
- f) If the remedy sought is to grant a Respondent, who is occupying the property merely on the benevolence of the Applicant, then that Respondent should not have any right or title over the property.

***Lesperance Estate vs Intours (2001)***

***SCR Page 28***

***Belize vs Belize SCR (2004) Page 37***

- [9] I have given thorough consideration to the law and the legal principles applicable in this matter in the light of the contested facts of the case. In this matter the Respondent claims a defence in law, he says that he has a right in pursuant to Articles 625 onwards to Article 634 of the Civil Code of Seychelles as well as under Article 555 of the said Code.
- [10] This is a serious and *bona fide* defence that he is putting forward, which has to be adjudicated on the facts. These defences needs to be elicited before a Tribunal of fact. *Prima facie*, in this matter, the Respondent does not appear as a mere Trespasser. He has lived with the Applicant for 33 years and they have 4 children together. These are facts that have not been denied by the Applicant. I cannot summarily dismiss his response, and order him to leave, quit and vacate that property on this basis.
- [11] The Respondent has a right of fair hearing under Article 19(7) of the Constitution. This Court is compelled to accord him his right to fair hearing in accordance to law on the merits of his defence. The law has settled an established procedure before the Supreme Court in the event that he satisfies this Court, that he has a serious and *bona fide* defence in his case that needs to be adjudicated on the merits. It is on the merits needs to be adjudicated in factual testimonies before another forum, before any further orders can be made regarding the total disposal of the case before the Court.
- [12] I will accordingly grant him the opportunity and the right to exercise this defence in an *inter partes* proceeding on a plaint before the Supreme Court and on this basis I will accordingly deny the applicant the writ of '*habere facias possessionem*' that she has applied for in this matter, and I therefore dismiss the application before the Court.
- [13] In exercise of the powers of equity under Section 5 and 6 of the Court's Act, I advise the Applicant to file a plaint before the Supreme Court forthwith as this is a remedy that is available to her *ex facie* her application. I say this without making any pronouncement on the merits of the case. I make no order as to cost.

Signed, dated and delivered at Ile du Port on 09 September 2019

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Govinden J

Judge of the Supreme Court