

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2019] SCSC 1068  
MC 52/2019

In the matter between

**1. MAGDA AGATHINE**

**2. CAROLE AGATHINE**

**3. MICHAEL AGATHINE**  
(rep. by Basil Hoareau)

**Applicants**

and

**NORCY DUBOIS**  
(rep. Nichol Gabriel)

**Respondent**

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**Neutral Citation:** *Agathine & ors v Dubois* [2019] SCSC 1068 MC 52/2018

**Before:** Twomey CJ

**Summary:** writ *habere facias possessionem* -when granted- absence of reasonable defence

**Heard:** 6 November 2019

**Delivered:** 27 November 2019

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**ORDER**

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**TWOMEY CJ**

[1] The Applicants have applied for a writ *habere facias possessionem* to be issued against the Respondent ordering him to quit, leave and vacate Parcel H5224 which they claim he is illegally occupying.

[2] In their joint affidavit they have averred that they jointly own in equal portions Parcel H5224 and are also the fiduciaries of the same. They have attached the documentary evidence supporting the same. They also aver that the Respondent is illegally and without any colour of right occupying a dilapidated and derelict corrugated iron shelter located on

Parcel H5524 and that he is therefore a squatter thereon and despite requests has refused to leave and vacate the land.

- [3] In his affidavit in reply, the Respondent has averred that he is not in unlawful occupation of the shelter located on Parcel H5524 and has been living on the said land since 1993 when his brother was granted permission to live there by the Roman Catholic Mission. He has further averred that his brother has since left to live elsewhere, that he is not a squatter and that he has acquired a *droit de superficie* on the land.
- [4] The Respondent's averment that his brother was granted leave of the Mission to live on the land is supported by a letter from one Sister Elisabeth in which she stated that she was approached by one Jean Dubois who wanted to work with the Foyer Nazareth and asked for permission to live in the little house on the land. Such permission she states in the letter is granted but that Mr. Dubois has undertaken to leave without difficulties when asked.
- [5] It would appear that the thrust of the Respondent's case is that he has a right to remain on the land as may be inferred from the licence given to his brother.
- [6] A suit for a writ *habere facias* is brought under the old French Civil Procedure Code, articles 806-811 (*la procédure de référé*) which is the fastest way, entailing little proceedings to bring an action where a remedy is urgently required.
- [7] As I have stated before in *Tamboo v Pillay and Anor* (MC 107/2016) [2016] SCSC 480 (08 July 2016), the law in Seychelles on this issue is settled and I do not see any reason why we should depart from established precedents. Principles for the grant of this writ were established by Sauzier J in *Delphinus Turistica Maritima SA v Villebrod* SLR 1978 121, the Court of Appeal in *Pike v Vardin* CS 18/1992, *Casino des Seychelles v Compagnie des Seychelles (Pty) Ltd* SCA 2/1994, *Thailapathy v Tirant* SCA 28/1994, *Emerald Cove v Intour SRL* SCA 5/2000 and in *Amade v Mousmie* SCA10/2009. These authorities generally establish that a writ *habere facias possessionem* will only be granted if the following conditions are met:

(i) *No serious or bona fide defence can be made to the application.*

*(ii) There are no serious issues to be tried.*

*(iii) There is no alternative legal remedy.*

*(iv) There is urgent need for the writ and delay would cause irreparable loss and hardship.*

[8] In examining the conditions above in relation to the present case, I do not find that the Respondent has established first of all that the property, the subject of this suit, was indeed also not shown how his brother's licence transferred to him.

[9] In addition, he has also *ex facie* not demonstrated how he has a *droit de superficie* over the land. Although the *droit de superficie* is indeed a right in rem, at the creation of the right in this particular case, only a right in *personam* was conferred to Jean Dubois.

[10] For all the reasons above I am therefore unable to find that the Defendant has acquired a right of retention or that he has a *droit de superficie* on Parcel H5224. His defence does not stand scrutiny. I therefore find that he is in unlawful possession of Parcel H5224 and I issue a writ against him to vacate the same forthwith.

Signed, dated and delivered at Ile du Port on 27 November 2019.

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M Twomey CJ