

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**

[2020] SCSC 132

XP 187/19

In the ex parte matter of:

**DORICIA MARIELINE SAMSON**

*(rep. by Serge Rouillon)*

**Petitioner**

and

**DANIEL HERMITTE**

*(rep. by Nichol Gabriel)*

**Respondent**

---

**Neutral Citation:** *Samson v Hermitte* (XP 187/19) [2020] SCSC 132 (18 February 2020)

**Before:** Andre J

**Summary:** Demand for sale by licitation – Objection to licitation - Conditions of sale or nullities - Sections 98, 102 and 103 of the Immovable Property (Judicial Sales Act) (Cap 94)

**Heard:** 13 December 2019

**Delivered:** 18 February 2020

---

**ORDER**

The following Order is made:

The Objections of the Respondent are dismissed and cost of objections is to be borne by the Respondent being the unsuccessful party in line with the provisions of Section 86 of the Immovable Property (Judicial Sales Act) (Cap 94)

---

**RULING**

**ANDRE J**

**Introduction**

[1] This Ruling arises out of an objection to a Petition for a demand for a sale by licitation by virtue of Section 98 of the Immovable Property (Judicial Sales Act) (Cap 94) (“the Act”).

## **Petition**

[2] Doricia Marieline Samson (“Petitioner”), filed a Petition to the above effect, on 20 September 2019, duly endorsed by myself as Judge in Chambers, on 30 September 2019 at 11:30 in the forenoon and Memorandum of charges filed on 9 October 2019, and case was first called on 23 October 2019, and there were subsequent mentions to allow the Respondent to seek Counsel and file objections if any.

## **Objection to the Petition**

[3] Daniel Hermitte (“Respondent”), filed objections to the Petition on 10 December 2019, objecting firstly, to the *mise a prix* being fixed in respect of parcel S 2103, with the house thereon (cumulatively “the property”), at One Million and Seventy Thousand Seychelles Rupees S.R.1,070,000/-, on the ground that the Quantity Surveyor grossly undervalued the property, and if allowed to stand, it would severely prejudice the Respondent, in that the judgement creditor would obtain one property with a house thereon for less than the market value and could result in him still owing the judgment creditor after the property is adjudicated to him. Secondly, that the mandatory provisions regarding the process and procedures set out under the Act had not been complied with and adhered to in that it is lacking in the endorsement by the Judge.

[4] The Petitioner vehemently objects to the objections and duly supports the same by written submissions of Learned Counsel Mr Serge Rouillon of 11 December 2019. Learned Counsel for the Respondent also filed written submissions and the Court has taken due cognizance of the same for the purpose of this Ruling.

## Legal analysis

[5] The Court in deciding the objections as raised by the Respondent has considered the provisions of sections 98 and section 103 of the Act which provides as follows.

[6] Section 98 of the Act entitled Demand in licitation sets out the procedure for the initiation of a demand for a sale by licitation as follows:

*In any case where according to law, the sale by licitation of an immovable property can only take place under judicial authority (en justice) the demand in licitation shall from henceforth be made ex parte, by petition to a Judge setting forth a summary description of the property sought to be licitated, and the respective names, places and abode, and callings of the several parties against whom the licitation as to be prosecuted.*

*The Judge shall, upon the petition being presented to him, note thereon the day and hour when the same has come to his hands.”*

[7] Section 102 of the same Act, entitled **Objection to licitation. Conditions of sale or nullities**, on its part, provides that:

*“Within thirty days, after the expiry of the period for notice prescribed in section 102, , any defendant in the licitation, or any inscribed Judgment creditor may, if he thinks fit, object to the licitation,, or to any of the causes or conditions of the memorandum of charges, or to any nullities on the memorandum of charges, or to any nullities in the proceedings, such objections shall be made, heard and determined in like manner and subject to the same rules as are hereinbefore prescribed ins sections 85 and 86 , the provisions of which said sections are hereby extended and applied to the proceedings.”*

[8] Now, I shall move on to consider the objections as raised by the Respondent in the order above-referred.

[9] Firstly, vis-à-vis the *mise a prix*, which the Respondent considers to be a gross undervaluation of the property.

[10] I note in that respect that there are two valuations reports as part of the pleadings one of 9 August 2014 drawn up by Quantity Surveyor and Property Consultant, Nigel Antoine Roucou on behalf of the Petitioner, and setting the value of the property at Seychelles Rupees One Million and Sixty Thousand S.R. 1,060,000/-. A second valuation of 4 July 2019 drawn up by Quantity Surveyor Jacques Renaud on behalf of the Respondent, valuing the property at Seychelles Rupees One Million and Sixty Eight Thousand S.R. 1,068,000/- The Respondent argues that the *mise a prix* as per the Memorandum of Charges in the sum of Seychelles Rupees One Million and Seventy Thousand S.R. 1,070,000/-, is grossly undervalued.

[11] The Court noting the valuations presented as attachments to their respective pleadings as above-illustrated find no gross undervaluation in the *mise a prix*, which in effect is higher than even the valuation conducted by the quantity surveyor hired by the Respondent himself, hence that ground of objection fails accordingly.

[12] With respect to the second ground of objection, in that the procedures and process for endorsement of a Judge which is mandatory under Section 98 of the Act have not been followed hence the validity of the petition and memorandum of charges invalid. I refer to the Petition of the Petitioner as filed on 20<sup>th</sup> September 2019 and thereon it is clearly shown the endorsement of the Judge being myself of 30 September 2019 at 11:30 a.m. in the forenoon, hence the preconditions to the validity of the Petition has been duly abided to by the Petitioner as per Section 98 of the Act. It follows, that the second ground of objection also miserably fails in the circumstances and thus dismissed accordingly.

## **Conclusion**

[13] It follows thus, based on the above analysis and findings, that the objections as raised the Respondent, are hereby dismissed and cost of objections is to be borne by the Respondent being the unsuccessful party in line with the provisions of Section 86 of the Immovable Property (Judicial Sales Act) (Cap 94).

Signed, dated and delivered at Ile du Port on 18 February 2020.

---

Andre J