

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 279  
CS 102/2018

**SUZANNE MONCHERRY**  
*(rep. by Nichol Gabriel)*

**Plaintiff**

and

**JULIE ANNACOURA**  
*(rep. by Karine Dick)*

**Defendant**

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**Neutral Citation:** *Moncherry v Anacoura* (CS102 of 2018) [2020] SCSC 279 (15 May 2020).  
**Before:** Vidot J  
**Summary:** Right of a usufruct  
**Heard:** 10<sup>th</sup> and 13<sup>th</sup> February 2020  
**Delivered:** 15<sup>th</sup> May 2020

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**ORDER**

Plaint dismissed. Defendant has not breached her statutory right vis-a-vis the usufruct.  
Plaintiff ordered to desist all forms of insults and harassment against the Defendant.  
Plaintiff to pay costs of the suit to the Defendant.

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**JUDGMENT**

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**VIDOT J**

[1] The Plaintiff claims that she has a usufructuary interest in land parcel V10764 situated at La Misere, Mahe, on which stands a house. This is evidenced by exhibit P3, which is the Transfer of Land document, naming the Defendant as the bare owner of the land parcel. That document also named Mr. Patrick Marimba as the other usufruct. The house was built from a loan of SR495,000.00 secured on 01<sup>st</sup> October 2010 from the Housing Finance Company Limited. Both parties are named as the borrower of the loan. It is

alleged and not denied that the loan was being repaid by the Defendant. The Plaintiff nonetheless contended that she at times assisted the Defendant in repaying the loan when the latter faced financial difficulties, an allegation which was refuted by the Defendant.

[2] After the completion of construction of the house, the Plaintiff resided therein together with the Defendant and her family. The Plaintiff and the Defendants are mother and daughter. The land was initially in the name of the Plaintiff and her estranged partner, Patrick Marimba. Subsequently, the Plaintiff and the latter caused the property to be transferred into the sole name of the Defendant, whilst retaining usufructuary interests in the property.

[3] However, it is averred that at some point the mother – daughter relationship disintegrated. They started encountering problems in the household and the Plaintiff claims that she was forced to move out. However, she occasionally comes to the house to clean her room. This is so, so as to avoid problems. She insists that she was made to vacate the land and the house by the Defendant, despite her usufructuary interest.

[4] Due to the fact that she was forced to vacate the premises, she caused a letter to be sent to the Defendant (exhibit P4). In that letter dated 14<sup>th</sup> February 2018, her then Counsel, Mrs. Amesbury, alleges that the Defendant had agreed to move out of the property provided that the Plaintiff reimburses her the sum she already paid towards the property. I do not believe that to be a correct representation of the dispute between the parties, particularly since it was not pleaded and the evidence adduced does not support such allegations. In fact the Defendant caused a letter (exhibit P5) to be issued in reply denying these allegations. In that letter, Mr. Guy Ferley, then Counsel for the Defendant claims that that the Plaintiff has only a usufructuary interest in the land and has made no contribution towards the loan repayment. The Plaintiff adduced no documentary proof to support her averments that she contributed towards the loan repayment. However, the Plaintiff claimed that she paid for the foundation of the house in the sum of SR 50,000.00 which was built prior to the taking of the loan.

[5] The Plaintiff claims the following relief from the Court as per prayer of the Plaintiff;

- i. An order compelling the Defendant to allow the Plaintiff to enjoy her rights as a usufruct and unimpeded access to the said property;
- ii. Moral damage in the sum of SR100,000.00;
- iii. Issue a perpetual prohibitory injunction ordering the Defendant not to threaten, insult or harass the Plaintiff in any way whatsoever;
- iv. Cost of the suit to the Plaintiff; and
- v. Make any other order this Honourable Court deems fit and necessary to the circumstances of the case.

[6] Whilst not disputing that the Plaintiff has a usufructuary interest in the property and that she holds the bare ownership, the Defendant emphasized that she met the whole housing loan repayment. She denies that the Plaintiff was forcefully made to vacate the property. She gave evidence that the Plaintiff on her own volition vacated the premises and that she still has a key to the house, which is not denied by the Plaintiff.

[7] The Plaintiff gave evidence of a litany of complaints of wrongdoings perpetrated by the Defendant. In essence she complained that she cannot live in the house because the Defendant would break and throw away her belongings. She also complained that she is prevented from having any guests at the house and finds it impossible to live with the Defendant and her family. She describes one occasion where the Defendant called in the Police and after the Police came to the premises they asked her to report to the Police station where was reprimanded for her behaviour at the house. It is indeed the duty of the Police to maintain peace, and it was deemed necessary at that time due to ongoing problems perpetrated by the Plaintiff that the Defendant called for police assistance.

[8] The Defendant, whilst denying the complaints advanced by the Plaintiff, made complaints of her own stating that the Plaintiff is impossible to live with. She complains that the Plaintiff has on at least 2 or 3 occasions thrown salt all around the house and on her belongings and would light incense around the house when she knows full well that the Defendant has a child who is asthmatic. She said that they lived together until 2016

when the Plaintiff was allowing her brother to live at the house. She states that her brother is a delinquent. She complained about the situation to the Plaintiff and that started the problems between them. Since then the Plaintiff has refused to speak to her. The Plaintiff would purposefully place dirty items, including a broken toilet seat in the living room. The Plaintiff would cause inconvenience in the house such as opening all cabinet doors and leaving them opened just as a means to annoy her. In fact, observing the demeanour of the Plaintiff, I believed the Defendant.

[9] As stated above, it is not contentious that the Plaintiff has a key to the house. She comes in and out of the house as she pleases and has given evidence that she comes to the property now and again to clean her room and then leaves. Therefore, any allegations that the Defendant has caused her to be vacated from the house is without basis. Her right to the usufruct in that sense is being observed. She has undeniable access to the property. She has decided to stay away and the blame cannot be attributed to the Defendant. I also believe that the loan has been repaid by the Defendant only.

[10] As held in **Atkinson v Government of Seychelles [2002] SLR 39**, a usufruct is a right to enjoy property of another as if the holder was the owner: see Article 578 of the Civil Code. Any limitation placed on the right to the full enjoyment of the property of another does not create a usufructuary right but instead creates a limited usage right. Here the Plaintiff has been granted a usufructuary right, so that cannot be limited by not allowing her the right to welcome visitors. However, I do not consider that the Defendant has breached any statutory duty towards the Plaintiff by complaining that her brother comes to the house without making any contribution. It is correct to state that the Plaintiff is allowed to have her son around. Furthermore, there should be proper use of the property by the usufruct. The person enjoying the *jouissance* should not in my view seek to purposefully cause annoyance to the bare owner.

[11] Therefore, in the circumstances, I find that the case is not maintainable in law and on the facts. The Defendant is however, advised not to interfere with the Plaintiff's usufructuary rights. The Plaintiff can return to the premises at any time that she wishes to do so but is warned not to be a nuisance nor to destroy the Defendant's property. In any case,

pursuant to Article 605 of the Civil Code, she is duty bound to keep the property in a good state of repair. As the mother of the Defendant she should be showing more compassion to her daughter rather than engaging in insulting and denigrating behaviour, something she admitted to doing in Court. All forms of harassment by the Plaintiff should immediately desist.

[12] Therefore, the Plaint is hereby dismissed with costs to the Defendant.

Signed, dated and delivered at Ile du Port on 15<sup>th</sup> May 2020.

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Vidot J