

**SUPREME COURT OF SEYCHELLES**

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**Reportable/ Not Reportable / Redact**  
[2020] SCSC 518  
MC 80/2018

In the matter between:

**JEAN-CLAUDE POOL**  
(rep. by Daniel Cesar)

**Plaintiff**

and

**GARETH ESPARON**  
(rep. by Nichol Gabriel)

**1<sup>st</sup> Respondent**

**MYRA POOL**  
(rep. by Nichol Gabriel)

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Pool v Esparon and Anor* (MC 80/2018) [2020] SCSC 518 (31<sup>st</sup> July 2020)  
**Before:** Pillay J  
**Summary:** Write Habere Facias Possessionem  
**Heard:** 14<sup>th</sup> July 2020  
**Delivered:** 31<sup>st</sup> July 2020

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**ORDER**

A writ habere facias possessionem is issued ordering the Respondents to quit, leave and vacate the property, land parcel V1334, belonging to the Applicant

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**ORDER ON MOTION**

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**PILLAY J**

[1] By way of a notice of motion filed on 13<sup>th</sup> November 2018, the Applicant moved the Court to order the Respondents to quit, leave and vacate the property registered as land parcel V1334, situated at Greenwich, Mahe, Seychelles and should they fail to do so to issue a Writ Habere Facias Possessionem.

- [2] The Respondents were given time to respond but no affidavit in reply was forthcoming. The matter was scheduled for hearing on 14<sup>th</sup> July 2020 and the Respondents were requested to file their affidavit in reply before that date. On the said date Learned counsel informed the Court that he had been unable to file the affidavit in reply since his client, Mrya Esparon, on detox treatment. The Court refused to accept the said excuse since sufficient time had been given for the affidavit to be signed and filed before the hearing date. The matter proceeded ex parte thereafter.
- [3] Learned counsel for the Applicant relied on his affidavit with attached documents wherein the Applicant averred that he is the proprietor of parcel V1334, by virtue of a transfer dated 8<sup>th</sup> April 1975. That the Respondents are his grandson and daughter respectively. He has revoked their permission to reside in the said premises by way of letters addressed to the respondents individually dated 5<sup>th</sup> July 2018 but they refuse to leave. He prays for a writ ordering them to quit, leave and vacate the said premises.
- [4] In an application of Writ Habere Facias Possessionem, according to Hodoul JA in the case of **Ferina Amade v Edouard Mousmie and Sonny Sauzier SCA 10/09** where he re-iterated the findings in **Jeanne Lesperance v Lucine Vidot SCA 46/2008**, in order for an Applicant “to succeed in obtaining a writ of such nature, an owner has to meet a threshold test: to show that he has clear title to the property in lite.” Once an Applicant proves title the burden shifts on to the Respondent to show that he has a serious and bona fide defence.
- [5] Furthermore as was found in the case of **Tambo v Pillay and Ano. (MC 107/2016) [2016] SCSC 480 (08 July 2016)** “[t]he issue of a writ *habere facias possessinem* is not barred by the fact that initial permission was given and subsequently withdrawn. This is clear from the authority of *Casino des Seychelles v Compagnie des Seychelles (Pty) Ltd* (supra).”
- [6] The nature of a writ habere facias possessionem action is that it is meant to be a quick remedy available to an owner of a property to evict a squatter, trespasser or any person in occupation thereof without any permission, leave or licence or any right.

[7] This Court is satisfied on the basis of the affidavit of the Applicant that he is the owner of the property land parcel V1334. He has withdrawn the permission he gave to the Respondents and they are now trespassers.

[8] Being satisfied that there is no other legal remedy available to the Applicant a writ habere facias possessionem is accordingly issued ordering the Respondents to quit, leave and vacate the property land parcel V1334 situated at Greenwich, Mahe, Seychelles, belonging to the Applicant, forthwith.

Signed, dated and delivered at Ile du Port on ...

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Pillay J