

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ... 937
MC 61/2021

In the matter between:

RITA DARIELLA ARRISOL
(rep. by Karen Domingue)

Applicant

and

RICHARD ANDREW JULES
(rep. by karine Dick)

Respondent

Neutral Citation: *Rita Dariella Arrisol v Richard Andrew Jules* (MC61/2020) [2021] SCSC 937
(15 December 2021).
Before: Vidot J
Summary: Writ habere facias possessionem; Applicant not having clear title
Heard: 29-12-20, 17-03-21 & 20-05-2021
Delivered: 15 December 2021

ORDER

The Application is denied.

RULING

VIDOT J

- [1] This is an application for a writ Habere Facias Possessionem seeking an order of this Court to order the Respondent to quit, leave and vacate land parcel S2153 on which stands a house (“the property”) which allegedly belonged to the Applicant’s parents. In her affidavit attached to the application she claims that after the death of her late mother, Ezilda Jules

(born Esparon) she, together her siblings and her father Joseph William Jules ("the deceased") inherited the property. The property belonged to her grandmother.

- [2] It is averred that the deceased died testate leaving behind a Will (Exhibit P3) dated 31st July 2017, whereby he devised and bequeathed his estate "*being a house and a plot of land surveyed as parcel S2153 and all..... interest therein*" to his children jointly and in equal shares. The children named in the Will are Maryona Nichole Tirant, Rose-May Marie-Pierre Jules, Rita Deriella Arrisol, Ermay Michael Jules and Wheeler Antonio Jules. That Will revoked a former one dated 14th March 2017, in which the deceased bequeathed his entire estate to the Respondent.
- [3] The Applicant avers that not only had she orally requested the Respondent to vacate the property but engaged the services of Mr. Joel Camille, Attorney-at-Law to write a letter to him requesting that he ceased all construction works that he was carrying on the property and that she and her siblings object to the occupation of the property by him. She claims that the Respondent has no right of claim and no consent or permission to the property and despite the requests to vacate, he refuses to vacate therefrom.
- [4] The Respondent filed an affidavit in reply in which he does not dispute that he has been in possession and occupation of the property. He avers that the Applicant does not represent the whole estate that owns parcel S2153 something which is admitted by the Petitioner in a further affidavit filed on the 06th November 2020. He adds that the late Joseph William Jules, his grandfather gave him authority to reside on the property and in fact he had been living with him since he was 7 years old, an averment that is disputed by the Applicant. He also avers that he was given permission to renovate the house and he has invested substantially in upgrading of the premises. He was told by the deceased that that he could treat the house as his own. In fact, as stated above, on 14th March 2017, Mr. Jules made a Will through Bernard Georges, Notary, whereby he devised and bequeathed S2153, which he described as his property, to the Respondent. As, we know that Will was subsequently revoked.
- [5] In fact, the Respondent appears to be alleging that the Applicant does not have any claim of right to that parcel of land and that he has a defence to the application. In fact he is

averring that he is a lessee over the property and therefore insists that the action should have been one within the jurisdiction of the Rent Board and that the Applicant does not have an action for a writ habere facias possessionem.

[6] The Applicant avers that after the death of his father she was appointed executrix of his estate. This was in Civil Case XP217/2019 [2020] SCSC 137 (Exhibit P1). Actually, by Order of the Court she was confirmed as executrix in terms with Article 1025 of the Civil Code of Seychelles. after her father had nominated her as such in his Will. She says that together with her siblings she inherited the land title S2153

[7] The requirements for a writ habere facias possessionem as established in cases such as **Cecile v Adrienne [1988] SLR 97** and **Thailapathy v Tirant SCA 28/1994, LC 86** are;

- i. An owner must show clear title; not just the title deed to the property;
- ii. If the owner proves title, the onus is on the defendant to show ownership or occupation rights over the property;
- iii. If the defendant raises a serious and bona fide defence, the writ will not be granted;
- iv. Simple denial of title is not a valid defence; and the defence must relate to real rights and not personal rights

[8] Furthermore, these general principles that guide a writ habere facias possessionem are laid down in accordance with rules of equity as established in numerous cases, such as **Lesperance v Intour [2001] SLR 28** and **Barbe v Belize [2004] SLR 39**. These general principles are;

- i. The Court in granting such relief acts as a court of equity and exercises its equitable powers in terms in section 6 of the Courts Act;
- ii. Those who come to equity should come with clean hands;

- iii. There should not be any other legal remedy available to the applicant who seeks an equitable remedy;
- iv. The remedy is available to an applicant whose needs an urgent remedy and to whom any delay in the remedy will cause irreparable damage or loss and hardship;
- v. The court should be satisfied that the respondent does not have any bona fide or serious defence to make; and
- vi. If the remedy sought is to eject the respondent who is occupying property merely on the benevolence of the applicant, then that respondent should not have any right or title over the property.

[9] Therefore, in order to establish a writ *habere facias possessionem* will only be issued where a claimant or owner must show a clear title of the property and once the owner proves title, the onus is on the respondent to show ownership or occupation rights over the property; see: **Voysey v Loizeau [1994] SLR 168**, **Emerald Cove v Intour SCA 5 of 2000, LC 182** and **Dhanjee v Habib Bank [1989] SLR 169**. So, a writ *habere facias possessionem* will entitle an owner of property to reassert right over a property from a person who has no legal right or title. Therefore, such a writ provides an applicant with a quick remedy. In **Lafortune v Pillay [1992] SLR 131**, **Perera J** noted that “*a writ habere facias possessionem will only issue where there is no equivalent legal remedy available to the Applicant and when the Court is satisfied that the Respondent has no serious and bona fide defence. Once the Court is satisfied that a valid defence has been raised, the Application must be refused and the Applicant is left to pursue an alternative remedy.*”

[10] The Applicant has filed the application in her personal name. In fact in the caption of the application she clearly indicates that the application is being brought in her personal name. She does not mention at all that she is acting as executrix on behalf of the estate of Jules Sifflore. In paragraph 1 of her affidavit, she states as follows; “*I am the Applicant above named and the daughter of Ezilda Justine Jules, nee Esparon, and the late Joseph William Jules, hereinafter referred to at the “deceased.”*” Though in paragraph 4 of the affidavit

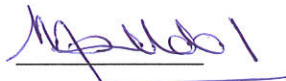
she avers that on 17th February 2020, in a Ruling (Exhibit P1) the Supreme Court confirmed her appointment, she does not make any averments that she acts in an executrix capacity.

- [11] The Applicant should have instituted this application in the name of the estate of her father Joseph William Jules. Once, her father passed away the father's estate is transferred via an Affidavit of Transmission By Death to the heirs and subsequently distributed according to the Will. As per the Will his estate, which he identifies as being property S2153 is transferred to all his children in equal shares. That means that they will be co-owners. Co-owners of land are considered not to have real rights over the property. The right is a personal one, see **Jumeau v Anacoura [1978] SLR 180**. The application was thus defective as the applicant could not have instituted this case in her personal name.
- [12] A writ habere facias possessionem is only available to a claimant or owner who has shown a clear title of the property and once the owner proves title then the onus is on the respondent to show ownership or occupation rights over the property. The remedy is not available to a person who has no clear title or no legal rights over the property. It is axiomatic that the Applicant does not hold such a title over land title S2153.
- [13] Furthermore, as noted above, the Applicant's claim is against land parcel S2153. When the Applicant was deposing before Court, she testified that that parcel had been subdivided. A certificate of Official Search dated 07th May 2021 (Exhibit P15) shows that land title was registered in the names of several people which included Heirs Jules Siflore (Senior) and nine others. Another certificate of the same date (Exhibit P13) shows that Title S10000, a sub-division of S2153, is registered in the name of Heirs Jules Siflore. However, despite such sub-division, the Applicant did not amend the application. So, by the time that the case was heard Parcel S2153 did not exist anymore. In any case, the Applicant could not have made a request for such writ habere facias possessionem, as that parcel had many other co-owners. Despite that sub-division from that mother parcel, S10000 was registered in the name of Heirs Jules Siflore (senior) and not in the name of the Applicant nor in the name of the deceased. It has to be reminded that the Applicant is executrix to the estate of Joseph William Jules. Again, it shows that the Applicant did not have clear title over parcel S2153. Therefore, the remedy being sought for is not available to her.

- [14] In fact, the Applicant made heavy weather on the fact that she was the executrix of the estate of Joseph William Jules Siflore that she testified that she gave instructions to Mr. Joel Camille, Attorney-at-Law, to write to the Respondent to request that he ceases from making improvements to the house, which was occupied by her father and the Respondent. In fact, Michel Jules, father and brother respectively of the Respondent and the Applicant testified that he did not give such instructions. Be that as it may, that letter is dated 20th March 2017, dates before Joseph William Jules made his second Will and before the Applicant was confirmed executrix. Nonetheless, that letter was written on the instruction of Heirs Ezilda Justine Jules, the Applicant's mother, at a time when Joseph William Jules was still living.
- [15] That letter serves to reinforce my belief that the Respondent was affecting renovations / refurbishment on the house when the Applicant's father was still alive. I do believe the Respondent that the deceased granted him permission to effect those renovations and refurbishment. This, to my mind is why the deceased then decided through a Will dated 14th March 2017, (exhibit P2) to devised and bequeath his estate which he states included parcel S2153, to the Respondent. That Will was subsequently revoked. In any case, the Will was not in accordance with the law as William Joseph Jules left no reserved portion for his children and the parcel was not registered in his name then. Be that as it may, the Respondent incurred substantial cost, as per Exhibit P7, to make improvements on the house and property. However, the Respondent did not attempt to make a case for unjust enrichment.
- [16] The Respondent raised a defence that he was a lessee, thus his occupation was lawful. He has however, not established that defence. He has not produced sufficient evidence to establish that defence. However, he is not a trespasser on the property. He has been granted a right to occupy the house
- [17] However, since I have already found that the Applicant does not have clear title to land title S2153 and neither to title S10000, the remedy is not available to her. She does not have real rights to the land parcels. The Applicant has equally failed to show that the case is urgent.

[18] Therefore, the application is denied. Each party to bear its own cost.

Signed, dated and delivered at Ile du Port on 15 December 2021


Vidot J