SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 575
CS 37/2020

In the matter between:

FRED FAURE **Plaintiff**
(rep. by Danny Lucas)

and

THE GOVERNMENT OF **Defendant**

THE REPUBLIC OF SEYCHELLES

Represented by the Attorney General

(rep. by George Thatchett)

Neutral Citation: *Faure v Government of Seychelles* (CS 37/2021) [2021] SCSC 575 (8th September 2021).
Before: Pillay J
Summary: Lease agreement - breach - damages
Heard: 16th November 2020, 17th November 2020 and 14th December 2020
Delivered: 8th September 2021

ORDER

[1] Judgment is entered in favour of the Plaintiff.

[2] The Defendant shall pay the Plaintiff the sum of SCR 1, 452, 185.16 with interest from the date of filing plus costs.

JUDGMENT

PILLAY J

[3] The Plaintiff in this case seeks an order of the Court ordering the Defendant to transfer the leasehold interest in Parcel No. B4857 and part of parcel B6952 to the Plaintiff and to order the Defendant to pay to the Plaintiff the sum of SCR 13, 049, 919.82 for the loss, damage and prejudice occasioned to the Plaintiff.

[4] The Plaintiff claims as follows

> *2. The Plaintiff and the Defendant in the year 2000, entered into an agreement whereby the Plaintiff would lease from the Government, on its usual long-term lease an agricultural property, part of Title No. B1347 (per amendment made on 17/11/20) to the extent of 15, 499m2.*
>
> *3. Pending the formalisation of the leasehold agreement, the Defendant authorised consented and allowed the Plaintiff to move unto, take possession, custody, control and command and develop the property, inclusive of construction of his home thereon, and carry put the business of a farmer.*
>
> *4. The Plaintiff avers that on the basis of and in reliance of that lease and pending the execution of the lease agreement, at his own cost and in order for him to start his farming business, he commenced and completed developments on the property.*
>
> *5. The Plaintiff avers that despite continuously requesting the Defendant finalise and execute the lease agreement, he was told that the matter was being dealt with and he would be informed accordingly.*
>
> *6. The Plaintiff avers that on or around 2015, he was requested by the Defendant to reduce and cut down on his business activities.*
>
> *7. In breach of the lease agreement, the Defendant, in 2015 illegally terminated the Plaintiff's leasehold and although the property was a developed property the Plaintiff was required to quit and vacate the property in return for compensation.*
>
> *8. Prior to the aforesaid termination the Plaintiff was never informed of any case filed for the return of the compulsorily acquired property and therefore denied the Plaintiff the right and opportunity to be heard.*

9. *The Plaintiff in 2017, filed a complaint with the Office of the Ombudsman. The Ombudsman Report dated the 30th July 2018, ruled that the Plaintiff was a Lessee of the Defendant and that, inter alia, the Plaintiff was entitled to fair and reasonable and adequate compensation.*

10. *In the meantime, the Defendant offered the Plaintiff, an agricultural plot of land Parcel B4847, and that part of land parcel No B6952 and a sum of Seychelles Rupees One Million Four Hundred and Fifty One Thousand One Hundred and Eighty Five Cents Sixteen Only (SR 1, 451, 185.16) which same, given inter alia, the scope of the works done and the scale of the development of the Property by the Plaintiff and the Plaintiff's business, was, not acceptable to the Plaintiff.*

11. *The Plaintiff agreed in principle to the offer of the two parcels of land but asked the Defendant to increase its offer in respect of economic loss compensation and to include compensation in respect of the accommodation which he would have to construct anew and the construction of an access road from the main road to the property.*

12. *The Plaintiff commissioned expert reports in respect of the above matters and forwarded his claim to the Defendant.*

13. *The Defendant, despite requests for improved offers and fair and acceptable compensation, has to date refused, neglected, omitted or failed to agree and to pay the Plaintiff the sums claimed and to execute the transfers or lese on agreed terms and conditions to the Plaintiff.*

14. *By reason of the matters aforesaid the Plaintiff has suffered, loss, prejudice and damage.*

<u>Particulars of Loss Damage and Prejudice</u>

1.	*Loss of Earnings, Profits, Loss of Materials, Plants Equipment, Loss of Earnings, Survey Fees Economic Loss*	*SR 10, 374, 419.82*
2.	*Construction of Equivalent House on Parcel B6952*	*SR 815, 500.00*
3.	*Construction of Road to Parcel B4857*	*SR 660, 000.00*
4.	*Moral damage, Pain and Suffering*	*SR 1, 200, 000.00*
	Total	***SR 13, 049, 919.82***

15. The Plaintiff avers that the Defendant has to additionally transfer the leasehold interests in the agricultural plot, Parcel B4857 and transfer that part of the residential parcel No B6952 to the Plaintiff and pay the Plaintiff the sum of SCR 13, 049, 919.82.

[5] Though it admitted that the Plaintiff was offered a lease of then parcel B1347 to an extent of 1000 square meters for a horticultural project, the Defendant denied that there was a written lease. It is the Defendant's position that the Plaintiff alone is responsible for the delay due to encroachments and breaching of conditions of the offer letter. The Defendant denied that it had committed any fault or breached the Plaintiff's rights asserting that the Plaintiff had not suffered any loss, damage or prejudice and even if he had the monetary claims are manifestly exorbitant and without any legal or factual basis.

[6] Mrs. Tirant-Gherardi, the Ombudsman, produced her report and the recommendations she made in regard to this case following investigations her office made. She recommended that in addition to the valuation of farm assets that will be lost during relocation, the immovable assets need to be included and a minimum period of one year be given for relocation.

[7] Mr. Peter Estico testified that he is a Senior Project Officer at the Ministry of Local Government for Environment and Emergency. He graduated and specialised in agriculture research in Kenya in 1994 after graduating from horticulture in Cuban in 1982. In 2019 he prepared an assessment report for the Plaintiff in respect of his property at La Misere. It took him a week to go throughout the Plaintiff's farm. He categorised the plants he came across. He explained the process to come to his conclusions. He used the market value for the crops based on information gathered from the Plaintiff.

[8] The Plaintiff testified that he lives at La Misere, Mahe and is a farmer carrying on the business of agriculture, horticulture and other farming activities. He was carrying these activities on agricultural land he had leased from government. In 2000 he applied for a property at La Misere for him to undertake his agriculture and horticulture activities. He went to the Ministry of Agriculture and Ministry of Land Use. The place was identified and he was shown the plot B1347. He was shown the land which was about 4 acres. They

gave him a long term lease with conditions. He was granted early entry by letter dated 15th November 2000. He moved onto the property and built a shelter to live in.

[9] It was his evidence that he never had any difficulties with the Defendant with regard to the extent of land he was cultivating. In 2015 he was informed to scale back his activities as a result of an ongoing court case to give back the property to the Morels. He was offered compensation and a residential plot of around 1002 square metres of land for the consideration of 1 rupee. He accepted the offer subject to subject to the payment of compensation being made.

[10] He stated that he has been in a state of uncertainty since 2015. He doesn't want to work, he cannot function and it is like he is crazy. Each time he tried to knock on doors it seemed that they remained closed and even after seeing the Ombudsman she told him she could not do anything for him.

[11] Gustave Larue a quantity surveyor testified that he prepared a valuation for the Plaintiff for his house at La Misere. He produced a report dated 4th June 2019 for the existing house at La Misere and another dated 2nd July 2019 to estimate the cost of a new house at Helvetia. According to his evidence the calculation for the value of the house was based on SCR 3850 per square metre for the house at La Misere resulting in a value of SCR 385, 000 and the road at SCR 550, 000. He valued the cost of building a similar house at Helvetia at SCR 750, 000, SCR 60, 500 for drainage and the access road at SCR 660, 000.

[12] It was his testimony that he took into account the market value of the house.

[13] Gretel Issacc testified on behalf of the Defendant in her position as Senior Information and Communication Officer at Seychelles Agriculture Agency. As part of her duties she works with insurance in calculating crop insurance value based on an evaluation template vetted by Food and Agriculture Organisation and SACOS and H Savy Insurance. She explained the process by which she made her calculations with information from the Plaintiff vetted by the Ministry of Environment including a 20% coefficient to cover losses

[14] In cross examination she explained the international standard used that caters for a percentage of loss. She stated that in production of crops there is no 100% yield. She explained that various crops can be affected by bats, rats, birds or wind. In order to ensure continuous production the Plaintiff would have had to change the position he plants the different crops.

[15] Aubrey Hortere testified on behalf of the Defendant that he is Senior Lands Officer at Seychelles Agricultural Agency joining the Agency in 2013. He stated that he knows the Plaintiff and aware of the case before the court. The Plaintiff approached the Agency in 2015 and was offered the plot at Helvetia on 30th March 2015 which he accepted on 27th April 2015 subject to payment of compensation so he could start cultivation. There was a footpath on the property but provision was made to build a road which the SAA has already started.

[16] Farida Afif also testified on behalf of the Defendant. She is working with the Ministry of Land and Housing. She knows the Plaintiff and the issues regarding the matter. She confirmed that the Plaintiff requested a plot of land for his horticultural project. Plot B1347 was identified and he was to be granted 1000 square metres, for which he applied for early entry and he was granted. She further confirmed that conditions were imposed by the Ministry of Environment and also that no permanent infrastructure was to be erected on the property. Site visit was conducted and he was found to be developing 2000 to 2044 square metres of land scattered over 10, 000 square metres. It was agreed that he would have the land surveyed to extract 10, 000 square metres so he lease could be drawn up. She explained that a lease could not be done because the land had not been surveyed yet. There needs to be title before lease can be drawn up.

[17] The issues for the Court:

(1) Is there a contract between the Plaintiff and Defendant for the lease of part of parcel B1347?

(2) If yes, was the contract breached?

(3) Is the Plaintiff entitled to any compensation?

[18] To the first issue at hand; *is there a contract between the Plaintiff and Defendant for the lease of part of parcel B1347*?

[19] Counsel for the Defendant submitted that there is no reasonable cause of action against the Defendant nor is the Plaintiff entitled for the alleged loss, damages and prejudice or relief claimed.

[20] It is Defendant's contention that the alleged cause of action of illegal termination of lease agreement cannot stand given that the Plaintiff was never in occupation of parcel B1347 by way of lease agreement a result of which there was no termination as alleged.

[21] The Defendant submitted that by letter dated 15th November 2000 along with the letter containing the conditions dated 23rd October 2000 the Plaintiff was granted early entry on part of parcel No. B1347 at La Misere for his horticultural project. The Defendant further submitted that there was no challenge from the Plaintiff as to the evidence of Mrs. Afif regarding the extent of 1000 square metres to be originally occupied by him.

[22] Article 1134 of the Civil Code stipulates:

> *"Agreements lawfully concluded shall have the force of law for those who have entered into them.*
> *They shall not be revoked except by mutual consent or for causes which the law authorizes.*
> *They shall be performed in good faith."*

[23] As was found by Twomey CJ in the case of **Barra & Anor v The Government of Seychelles (CS 36/2017) [2020] SCSC 29 (20 January 2020);** a contract is concluded when an offer is made and an acceptance is conveyed.

[24] In the case of **Barra**, the Defendant, the Government of Seychelles, offered to sell to the Plaintiff three small parcels of land adjacent to his property at a price of SCR 17, 500.00 which he accepted after initially asking the Government to reconsider the price. He was given early entry on the property for planning purposes. He started making plans, cleaned

the property but the transfer was never made. Subsequently the Government informed him that he would only be sold two of the three plots of land.

[25] In deciding if there was a contract between the parties CJ Twomey considered "the distinct stages in a contract. [That a] promise of sale of land, for example, as pointed out by Sauzier J in *Abdou v Wistanley* (1978) SLR 62 consists of three distinct stages: first, the buyer offers to buy the land without an acceptance of the offer by the owner. This offer is known as *pollicitation.* Secondly, the sellers accept the offer. At this stage, it is still a unilateral promise to buy, an option to purchase. Thirdly, both parties bind themselves to this agreement, the promise to buy and the promise to sell. This is a bilateral agreement. It is at this third stage that Articles 1583 and 1589 of the Civil Code, relied on by Counsel for the Defendant has application. These provisions state in relevant part:

> *"1583 1. A sale is complete between the parties and the ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid.*
>
> *1589 A promise to sell is equivalent to a sale if the two parties have mutually agreed upon the thing and the price."* (Emphasis added)

[26] She went on to find that there was an offer by the Government which was accepted by the Plaintiff, in spite of an early plea for a reconsideration of the price, and with their meeting of mind a contract was created.

[27] In the case at hand, from the letter dated 23rd October 2000 and the one dated 15th November 2000, there was an offer for the Plaintiff to be leased a part of plot B1347 for a horticultural project. The Plaintiff was granted early entry on that basis. He was found not to be occupying the area originally allocated to him and he was notified to comply with the offer that was made by letter dated 19th January 2004. On his failure to comply the offer was withdrawn on 11th March 2005. The offer was subsequently revived at some point after as evidenced by the letter dated 15th November 2006 seeking the views of the Ministry of Natural Resources before the lease is finalised. After some back and forth, the

parties settled on an agreement for the Plaintiff to be leased 10, 000 square metres of parcel B1347 as per letter dated 6th June 2008.

[28] It is my finding that the laches in not getting the lease agreement finalised was not solely due to delays from the Defendant but partly due to the actions of the Plaintiff. However on the basis of **Barra** and my findings above I find that there was a valid lease agreement between the Plaintiff and the Defendant for the lease of part of parcel B1347 to the extent of 10,000 square metres.

[29] The question now is this; *was there a breach of that agreement rendering the Plaintiff entitled to compensation and damages*?

[30] So what is the breach? The Plaintiff claims the Defendant breached the lease agreement by illegally terminating the lease in 2015 in that the Defendant negotiated the return of the acquired property to its original owners without excluding that part which had been developed by the Plaintiff.

[31] It is the Defendant's position that the Defendant had to return the land occupied by the Plaintiff to the ex-owner of the property by virtue of a judgment by consent dated 15th July 2014. The Defendant further submitted that the return of the land pursuant to a judgment of the Court cannot give rise to any cause of action and further the "Court of Appeal judgment which even quashed the transfer of part of the land acquired, shows that the land occupied by Plaintiff by way of early entry could not be salvaged from being returned to the ex-owner."

[32] By the said submission the Defendant in my view is attempting to use the Court as a scapegoat for its termination of the lease agreement. However the judgment that the Defendant's counsel speaks of was not a decision rendered as a result of assessment of the evidence but as a result of the Defendant submitting to the demands of the other party, being the previous owner of the property. As for the Court of Appeal matter the Defendant's counsel refers to, it is dated 2016 whereas the Plaintiff was put on notice that he had to leave the property in 2012 and in 2015 was formally informed to phase down

his activities for relocation. In addition DE8 shows that the negotiations with the original owner of B1347 started in 2007.

[33] Article 1147 of the Civil Code provides that,

> *"The debtor shall be ordered to pay damages, if any, either by reason of his failure to perform the obligation or by reason of his delay in the performance, provided that he is unable to prove that his failure to perform is due to a cause which cannot be imputed to him and that in this respect he was not in bad faith."*

[34] Article 1148 of the Civil Code provides that

> *"1. Damages shall not be due when, as a result of an act of God or an inevitable accident, the debtor was prevented from giving or doing what he has only partly become impossible by an act of God or by an inevitable accident and if the Defendant is also at fault, the liability of the Defendant shall be reduced in proportion to his share of the responsibility.*
>
> *2. If the literal performance of a contract is possible but, owing to a complete change of circumstance which could not have been anticipated when the agreement was concluded and which is outside the control of the parties, it no longer fulfils the common design of the parties, the contract shall be rescinded. However, the person who stands to lose from the rescission may apply to the Court for the appointment of an arbitrator who shall be at liberty to modify the terms of the contract. If the parties agree to nominate an arbitrator, it shall not be necessary for the Court to make the appointment. This paragraph shall not apply to any contracts for the sale of specific goods which perish, whether or not the risk passed to the buyer before the date of perishing, or to any charter party except a time charter party or a charter party by way of demise, or to any contract for the carriage of goods which, according to commercial practice, is normally covered by insurance."*

[35] The agreement was frustrated by the Defendant's own decision to return the land instead of paying compensation to the previous owner. The Defendant cannot now attribute its termination of the agreement to the judgment of the court.

[36] Furthermore when the Defendant entered into the agreement with the Plaintiff in 2000 it should have foreseen the likelihood of the land being returned to its original owner since

the coming into force of the Constitution of 1993. With that said I find the Defendant liable to pay damages for breaching the agreement.

[37] It terms of damages the Defendant submitted that the Plaintiff has not suffered any loss out of his gratuitous occupation of the land and the Defendant is not liable for any alleged development of the land proposed to be leased or on the encroached portion and the Plaintiff did the same at his own risk and peril. The Defendant submits that the claim is exaggerated. Having accepted that the Plaintiff was granted early entry to 1000 square metres of land subject to a survey being carried out and lease finalized I am at a loss to understand how the Defendant can now say it is not liable for any development on the land proposed to be leased.

[38] The Plaintiff's counsel for his part submitted that the only issue outstanding and subject to years of negotiations was that of quantum. Essentially on his submission there was no issue of liability before the Court.

[39] How the Plaintiff came to the conclusion that there was no issue of liability before the Court is beyond me. In both its original Defence filed on 2nd July 2020 as well as its amended Defence filed on 6th November 2020 the Defendant disputed the Plaintiff's claims both on the issue of liability and quantum.

[40] In any event Article 1149 of the Civil Code provides that

> *1. The damages which are due to the creditor cover in general the loss that he has sustained and the profit of which he has been deprived, except as provided hereafter.*
>
> *2. Damages shall also be recoverable for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss of any of the amenities of life.*
>
> *3. The damages payable under paragraphs 1 and 2 of this article, and as provided in the following articles, shall apply as appropriate to the breach of contract and the activity of the victim.*

[41] Article 1150 of the Civil Code provides that:

1. The debtor shall only be liable for damages with regard to damage which could have been reasonably foreseen or which was in the contemplation of the parties when the contract was made, provided that the damage was not due to any fraud on his part.

2. A stipulation which tends to exonerate in advance the debtor of his liability for fraud or negligence shall be null. This rule shall not apply to insurance contracts. However, the parties may agree to shift the burden of proof of any fraud or negligence from one party to the other."

[42] On the above the Plaintiff may claim for actual loss, loss of profits, moral damages as well as damages which could have reasonably been foreseen.

[43] Let us start with his claim for loss of earnings, profits, loss of materials, plants equipment, survey fees economic loss.

[44] In examination in chief the Plaintiff explained that he had intended to move to another farm "quite a while ago" because where he was it was full. The court requested the Plaintiff to clarify his statement and he explained that on 2013 or 2014 where he is currently located was already full. So he approached officers at the SAA for another property. He saw the Helvetia property and had ambition to put workers there to work. He was however informed that he could not have two farms. From his evidence he identified the plot at Helvetia which he has now been given.

[45] It is noted that the Plaintiff is on the other side of the hill and no longer the 40 year who started a horticultural farm in his 40s.

[46] It is noted that in his evidence in chief the Plaintiff stated that the condition for the lease of the property was that he would be given a long term lease and "then there were regulations by the Environment what I was supposed to do and what I was not supposed to do." On the record, the only evidence of conditions imposed by Environment is in the letter dated 23rd October 2000. The letter makes specific reference to the area to be leased and their conditions for the lease.

[47] The said letter dated 23rd October 2000 makes reference to "existing coffee clover and Muscat trees [which] are to be protected." For all my research I could not find any tree

with the name “coffee clover” though my research showed that the “muscat tree” is also known as nutmeg. The Plaintiff along with his claim for loss of his flowers and seasonal crops also claims for losses for 20 clove plants and 1 allspice plant. To my mind those trees were not planted by him but he found them on the land when he entered the land for his horticultural project.

[48] On record there are two evaluations for the Plaintiff’s farm. The evaluation from the Seychelles Agricultural Agency (SAA), DE1, was to the tune of SCR 1, 451, 185.16. There is also the report from Mr. Estico, PE10, which came to SCR 10, 372, 419.82. Going through the two evaluations, I find the one produced by the SAA to be more realistic though on the conservative side. I find the evaluation of Mr. Estico quite unrealistic.

[49] According to Mr. Estico’s report the Plaintiff cuts 600 flowers weekly with a net total of SCR 288, 000.00 per year. Bearing in mind the time that it takes for a shoot to come out and mature enough to be cut I do not understand how the Plaintiff could be harvesting 600 cut Alpinias each week. Crops like cucumber that yields seasonally cannot be harvested weekly. With the surface area we saw, when we attended the locus, it is close to impossible for the Plaintiff to be producing all those crops ready for harvesting every week without a break in between allowing for new growth and new crops.

[50] In cross examination when asked if the exact same number of tomato plants would be there still after 1 and a half years Mr. Estico could literally not commit to answering a yes or no. His reasoning for failing to give a yes or a no was because he hadn’t been to the place since he made the report. Yet he went on to state that the lifespan of a tomato plant is 6 months to a year depending on whether it is a determinate or indeterminate one. It was his evidence that no matter the variety the yield would be the same. Furthermore in evidence in chief Mr. Estico testified that he used information from the Plaintiff for his calculations. If indeed he used the Plaintiff’s actual income per plant for his calculations why weren’t there invoices and receipts attached? I take no pleasure in saying that Mr. Estico was evasive in cross examination.

[51] In terms of the actual report he produced in 2019 when compared to the one produced in 2015 by the SAA, the number of plants were exactly the same. Both for the long term and short term crops; both reports showed 138 bananas plants, 12 coconut plants, 17 papaya plants, 180 pineapple plants. He described banana as a biennial plant meaning its lifecycle is two years. I take notice that a banana plant produces only one batch of fruit and then it needs to be cut back. From the remaining rhizome another plant or more will grow. It is difficult to understand how it is then that in 2019 there is the exact same number of banana plants on the farm as there were in 2015.

[52] Further doubt was cast on his report in terms of the surface area taken up by watercress, tomatoes, chilli, parsley, cabbage which were exactly the same in both reports though it is noted that in eggplant and thyme there was a difference in area cultivated. With regard to pumpkin and chayote Mr. Estico explained that they are creepers. When pushed on the impossibility of those creepers keeping to the same exact surface area after a period of five years, instead of accepting or disputing the suggestion put to him he chose to focus on whether or not they were short term or long term crop.

[53] There were too many inconsistencies in Mr. Estico's report for it to be believed. According to his report the price of watercress was at SCR 600 per kilo. When queried as to the how he got to that price for the watercress he stated that it depended on the market that the farmer is tapping. When asked which market he had taken into consideration he stated that he "normally, … took the market from different places. SMB's market, the daily market where they go and eventually he is the one actually getting the price because he goes around to see his price." This is in total contradiction to what he stated in examination in chief that "the market value is based on what actually gathered from Mr. Faure actually his income per plant." In fact he accepted that SCR 600/- was far-fetched then pivoted to say that it wasn't.

[54] Furthermore I take note that one tree of wax jambu (jamalac) cannot be producing a harvest every week as it's a seasonal fruit; the same for mangoes and guava. One would have thought that by the nature of the evaluation, the evaluer would have gathered financial information from the Plaintiff based on his past earnings; invoices and receipts

for the sale of the flowers and crops. I also fail to understand why Mr. Estico did not make provision for financial losses in an industry as fickle as the agricultural industry. One would expect that losses would occur from pest invasion or environmental changes well beyond the Plaintiff's or for that matter the Defendant's control which Mr. Estico accepted can happen and agreed that it could reduce the yield.

[55] In attempting to explain how he got to the figures he did for annual losses Mr. Estico realised there was a mistake in his calculations and rejected his own report. In re-examination he attempted to explain where the mistake was and correct the number. However no clear calculations were given but a "rough" number of SCR 500, 000. According to Mr. Estico the problem was that he made his calculations on the basis of 0.05 margin of inflation instead of a margin of 0.5. It was his evidence that all that needed to be done was to deduct from the expected losses the difference between the expected losses and the annual revenue. Basically he was disregarding the expected losses and relying on the figure he got for annual revenue as being the actual figure reflecting the expected losses. That to my mind in no way explains the mistake he made with the margin for inflation.

[56] With his evasiveness, contradictions and mistakes I find Mr. Estico's evidence unreliable and decline to consider his evidence.

[57] Miss Issaac on the contrary was clear and concise and explained that her report was compiled based on a template vetted by the Food and Agriculture Organisation. The template also accounts for a 20% co-efficient for losses due to pests, disease, losses or damage during harvesting amongst others. She further explained that during the harvesting period the yield will be different for different crops depending on a number of factors including maturity of the plant, heat or rain. In my view these losses and fluctuations in yield are natural and reasonably expected in agriculture. With that said I found her to be clear and concise in her explanations of how she came to the figures she did. I found her to be credible and have no hesitation in accepting her evidence.

[58] According to the letter dated 15th November 2000, PE3, early entry was allowed for the purpose of a horticultural project. In cross examination Mr. Estico defined horticulture as

referring to “flower cropping, fruit cropping, that sort of horticultural cropping.” Collins dictionary defines horticulture as “the art or science of cultivating gardens”. According to Britannica, “horticulture**,** [is] the branch of plant agriculture dealing with garden crops, generally fruits, vegetables, and ornamental plants. The word is derived from the Latin *hortus*, “garden,” and *colere*, “to cultivate.” As a general term, it covers all forms of garden management, but in ordinary use it refers to intensive commercial production. In terms of scale, horticulture falls between domestic gardening and field agriculture, though all forms of cultivation naturally have close links.” With that in mind, the Plaintiff was within his rights to be cultivating vegetables as well as ornamental plants and should be compensated for same.

[59] Having rejected the valuations made by Mr. Estico I am left with only that produced by the Defendant. In as much as I find that their valuation is on the conservative side I find myself unable to make any adjustments since as I noted earlier no receipts or invoices were attached which would allow this Court to make any adjustments inspite of Ms Issaac explanations that she used the average price between that provided by the National Bureau of Statistics and that provided by farmers individually.

[60] It is noted that Ms Issaac explained that the valuation and one year time frame given for the Plaintiff to relocate to Helvetia took into account that he would be paid for the one year that he would be relocating but that also during that time he would still be harvesting the crops on B1347. As per her explanation the Plaintiff would get revenue from the crops on B1347 and also the money from the Defendant to start over at Helvetia.

[61] The evidence further shows that after the Plaintiff was informed in 2015 that he had to scale down his operations and move to the other plot at Helvetia, he proceeded to extend the house to include two more rooms.

[62] As regard the road, Ms. Isaac testified that when she visited the site in 2015 for the purpose of compiling the valuation report there access road was a dirt road. At some point after that the Plaintiff concretised the road. To my mind both these expenses were such that should not have been undertaken if the Plaintiff genuinely did not have the funds to start his development of the parcel at Helvetia that had been allocated to him. In

any event on the site visit it was clear that provision was being made for a road to service that whole area of Helvetia and the Court was informed by Mr. Hortere that provision was being made for the road to be built to that part of B6952 that had been earmarked for the Plaintiff.

[63] It is noted that the Plaintif was informed by letter dated 24th July 2012 that the ex-owner of parcel B1347 had petitioned the Court for the return of the land and "the most likely outcome will be for the area being occupied by [the Plaintiff] to be vacated." As early as 2012 he had been put on notice. By letter dated 19th March 2015 the Plaintiff was informed that the he would be allocated Parcel B4857 which he had already been shown and was informed to phase down his agricultural activities on B1347 and start any new cultivation on his new plot.

[64] Having been informed since 2012 that it was "most likely" that he would have to "vacate" the site and on 19th March 2015 that he would be relocated, the Plaintiff failed to mitigate his losses. Indeed it was his testimony in cross examination that when he started the farm at La Misere he propagated the flowers. He planted them and transferred them. Why did he not start that process for the new plot at Helvetia; propagation of the plants ready for transplanting as soon as he moved to the new plot?

[65] It is noted that during the length of his occupancy of the land parcel B1347 at La Misere, the Plaintiff did not pay any rent (though it is noted that no invoice was raised) and makes no proposal for offsetting the rent against any compensation due.

[66] With regard to the claim for a house of equal value at Helvetia; Mr. Larue gave the valuation of the property in terms of the market value of the house. To my mind if one wishes to be compensated for the cost of replacing a house like for like then it is not the market value of the house that is in issue but the construction cost of the house. Mr. Larue looked at the value of the house in terms of value that it would fetch if sold. He explained that in valuation "we compare to other houses of similar kind of construction', "we take the whole thing, the age, the condition of the structure, the finishing, these kinds of features". I fail to see the relevance of the age, condition and finishing of the house when one is considering the construction cost of building a new house similar to the one

already in use. He went on to explain that for the new house at Helvetia he used the rate of 7000SCR per square metre which is the current rate used for an iron sheet house, which got the price of SCR 700, 000.00 for a new house to be built. On a comparison of the two reports he produced however, PE21 and PE22, provision has been made for the new house at Helvetia which is not found in the current house such as fibre cement partitioning and ceiling as well as ceramic tiles in bathroom and kitchen.

[67] It was his testimony that the house is in good habitable condition and was extended in 2017 from a two bedroom house to a three bedroom house, from 80 square metres to 100 square metres. With his calculations in mind the house value would be 80 x 3850 = SCR308, 000 a little over the SCR 100, 000 over the valuation provided by the Defendant.

[68] The evaluation from the Defendant, in addition to making provision for compensation for the farm house also make provision for compensation for the road. According to the evidence the road has or is being built to service the plots allocated or to be allocated. In my view then the compensation for the road will offset the compensation for the house bringing it within the range provided by Mr. Larue. In any event it was the evidence of Miss Issaac that the house was demountable. This is in line with the condition of the lease that the Plaintiff was not to build any permanent structures on the land.

[69] With regard to the claim for moral damage, pain and suffering, in as much as I feel for the Plaintiff, on the whole I find that the situation is partly of his own making. Having been granted early entry to 1000 square metres of land he proceeded to develop 10, 000 square metres of land. When he was informed to have the land surveyed to extract 10, 000 square metres of land he had it surveyed to extract in excess of 13, 000 square metres of land. After being informed of the likelihood of his relocation he proceed to make further developments on the property instead of mitigating his losses. On the evidence I decline to make any orders for moral damage, pain and suffering.

[70] The Plaintiff further prays the Court to order the Defendant to transfer the leasehold interest in Parcel No. B4857 and transfer that part of parcel No. B6952, the residential parcel, to the Plaintiff. It is noted that the Plaintiff was offered part of parcel B6952

measuring around 1002 sq. m valued at SCR 250, 000/- as a residential plot for the sum of SCR1/- as part of his compensation. In my view the Plaintiff had and has no right to B4857 nor to a part of B6952 under the agreement for lease. These were part of the compensation package that was offered to the Plaintiff which he accepted subject to the monetary compensation being increased. This Court cannot order the transfer of the said parcels or interests there being no entitlement in law to them. As for the agricultural plot, is noted that Mr. Hortere informed the Court that the parcel B4857 had already been allocated to the Plaintiff and in fact it is in evidence that his current agricultural licence for the period 2020 to 2021 is for the development of the said parcel.

[71] On the basis of all the above in enter judgment in favour of the Plaintiff. The Defendant shall pay the Plaintiff the sum of SCR 1, 452, 185.16 with interest from the date of filing plus costs.

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

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Pillay