

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 602
CS 19/2019

In the matter between:

Roch Chang-Time
(rep by F Bonte)

Plaintiff

and

Aubrey Lucas
(rep by E Chetty)

Defendant

Neutral Citation: *Chang-Time v Lucas* (CS 19/2019) [2021] SCSC 602 (17th of September 2021).

Before: Govinden C J

Summary: Land survey; court order adjoining owner to grant access to surveyors of the Plaintiff.

Heard: 16th November 2020; 10th December 2020.

Delivered: 17th September 2021

ORDER

- (a) The Defendant grant access to the Plaintiff's land surveyors on parcel S227 in order to allow them to carry out their survey work as instructed by the Plaintiff.
 - (b) A Prohibitory Injunction against the Defendant restraining and prohibiting him or his agent from interfering with any survey works to be carried out by the land surveyors on boundary beacons between parcel S227 and S226 by the Plaintiff's land surveyor.
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JUDGMENT

GOVINDEN CJ

Background

- [1] The Plaintiff is the owner of Parcel S226 and the Defendant is the owner of the adjoining parcel S227. The Plaintiff claims that the latter has constructed next to the boundary line as a result of which he engaged the service of a Land Surveyor in order to verify and relocate beacons of the common boundary. According to the Plaintiff, though the Defendant was formally notified by way of a letter, when the Land Surveyor came on site for the survey work, they could not do the job, as the site was inaccessible due to the existing party wall; fencing and the fact that the Defendant had stacked building material obstructing access. As a result, he avers that the refusal by the Defendant to allow his Surveyor access onto the Defendant's land has prevented him to complete the surveying exercise. Hence, he request that this court orders that the Defendant grant access unto S227 in order to complete the survey and that the court issues an injunction restraining the Defendant from refusing access that would prevent the survey work.
- [2] On the other hand, the Defendant does not deny that he owns Title S227 and that he had built next to the boundary. He however denies any encroachment and avers that he had also hired his own Land Surveyor, whose report reveal no such encroachment exist. The Defendant denies that he is refusing access to the Plaintiff's Land Surveyors. He insists on the fact that the Defendant wants to move boundary beacons and that he is refusing to alter the location of beacons as this had been put in place by Government agencies and that at any rate this would lead to a reduction of the size of his property.

The facts

- [3] The Plaintiff testified that he owns parcel S226 whilst the Defendant owns parcel S227 and that the reason why he has sued the Defendant is that he needs to have the court permission in order for his parcel to be surveyed. That the Defendant had already surveyed his through the Land Surveyor Mr Ah Kong and now he wanted to survey his own. His own surveyor was however denied access unto the Defendant's property as a lady closed the gate and prevented the surveyor going unto the Defendant's property despite this exercise being vital to the surveying exercise. The Defendant even ignored a

letter written by his lawyer in an attempt to have access for the survey. He denies any allegation that his surveyor was to move the boundary beacons.

- [4] James Chang-Tave was also called by the Plaintiff. He worked at the Seychelles Planning Authority as the Chief Development Control Officer. He was part of a team that monitored a development on the Defendant's property. He advised both the Plaintiff and the Defendant to seek to survey his property as he found the development too close to the boundary line. He is unaware whether this was done.
- [5] Mr Michel Leong testified that he surveyed for the Plaintiff of which he produced its report. He was requested to verify beacons MA726 and MA800 of Parcel S226 as these are on the common boundary between S226 and S227. However, he could not have access to the Defendant's property, given that the owners of S227 were not happy with their presence and also given that beacon MA726 was under a lot of building material he could not do the relocation. He was aware that prior to him being commissioned a colleague of his had carried out such a survey on behalf of the Defendant, though he was unaware whether the Survey Division had approved it. However, a prior survey of the beacons would not stop the Plaintiff from doing a new one.
- [6] The Defendant's wife Bessy Lucas gave evidence for the Defendant. Her evidence is that both herself and the Defendant own parcel S227. She admits to have been present on her property on the day that Mr Michel Leong and her team came to do the survey work. However, she says that she refused to open her gate in order to allow the surveyor in as she was informed by one of Mr Leong workers that they were going to move the beacon. Prior to this she had engage Mr Ah Kong to do her own survey after she had received a letter from the Ministry of Lands and Housing. Mr Ah Kong produced a Survey Report following his work, which was approved by the Survey department of the Ministry responsible for lands. When he did this survey, both the Plaintiff and the Defendant were present and they signed a beacon relocation certificate. This witness testified that the fact that he did a survey for the Defendant would not prevent from doing his own counter survey.

The Law

[7] I find that the provisions of Section 12 and 14 of the Land Survey Act, Cap 109, to be quite pertinent to the facts of this case. They provide as follows;

12. (1) *All owners of land whose rights may be affected by a survey shall have a right to be present at such survey.*

(2) *A land surveyor before performing a survey shall summon such owners to attend the survey at a place, date and time to be specified in the summons. The summons shall be sent by registered post to the last known address of the owner in Seychelles and shall be posted seven days before the day of the survey. The owner of the land under survey at whose instance the survey is to be performed need not be summoned as provided under this subsection.*

(3) *The duty imposed upon a land surveyor by the provisions of subsection (2) shall be carried out by him with all due diligence. Failure on his part to summon any such owners or failure on the part of any such owners to be present at the survey shall not preclude the land surveyor from performing the survey and shall not invalidate such survey*

(4) *No summons need be sent as provided under subsection (2) in the case where-*

(a) *any owner who should be summoned:-*

(i) *agrees in writing to be present at the survey; or*

(ii) *agrees in writing to the survey being performed in his absence; or*

(iii) *a beacon or boundary deemed under section 21 to have been lawfully established is being resurveyed for purposes not involving an alteration in the position of such beacon or boundary.*

14. (1) *The owner of the property under survey or a contiguous owner may object to beacons and boundaries in the following cases and in such others as may be prescribed-*

(a) *when a survey is carried out of any previously unsurveyed beacon or boundary;*

(b) *when a survey is carried out of a period which abuts on to a parcel the survey of which has not been approved by the Director;*

(c) *where a sub-division is carried out of a parcel the survey of which has not been approved by the Director;*

(d) *when, in the course of an original survey abutting on a previous survey or of a re-survey or of a division survey, the data derived from the later survey differs beyond the prescribed limits from the data derived from the previous survey; and*

(c) *when a survey is carried out for the purpose of settling a boundary dispute, when such dispute has been resolved and diagrams resulting from such survey are to be approved.*

Discussions and determination

[8] This case does not concern an encroachment. It does not even involve a claim for damages. It is simply about an action to compel the Defendant to give access to the agent of the Plaintiff, being land surveyors, so that the latter can carry out their duties under the Survey Act. The court will therefore limit its determination to the following issues;

[9] First, whether there exists a right in law for the Land Surveyors commissioned by the Plaintiff to go onto the Defendant's land in order to carry out their duties and was there a corresponding legal duty on the part of the Defendant to allow them onto his land in law.

Secondly, if this 1st question is in the positive, did the Defendant prevent the Plaintiff's Land Surveyors to come unto his land and as a result breach this duty.

[10] I have scrutinised the pleadings in light of the evidence led in this case. I have taken note of the demeanours of the several witnesses. I have given careful consideration to the evidence of witnesses, including their credibility as tested through cross-examinations. I have also appraised myself with the law and legal principles applicable to the facts of this case.

[11] On the issue of credibility, I find that the evidence given by Mrs Bessy Lucas to be evasive, uncertain and not forthright. The Defendant failed to testify. His wife the co-owner did but she was not clear as to why she closed the gate on the Plaintiff's Surveyors. I find her evidence that the latter informed that they were going to change the boundary beacons to be untrue in light of the evidence of Surveyor, Michel Leong and the other testimonies in the case. I am of the view that she purposively closed the gate to the property S227 in an attempt to prevent the agents of the Plaintiff from carrying out their survey works. This was totally uncalled for given that she had carried out the same survey with the full co-corporation of the Plaintiff.

[12] The agents and surveyors of the Plaintiff had complied with the requirements of Section 12 of the Survey Act. That being the case, I find that there exists a right in law for the Land Surveyors commissioned by the Plaintiff to go unto the Defendant's land in order to carry out their duties. This also created a corresponding legal duty on the part of the Defendant to allow them unto his land. The Defendant's recourse was for him to object to the result of the survey on one of the several grounds set out under Section 14 of the Act. Instead of doing this, his wife prevented them from executing their statutory duties. I therefore find the 1st and 2nd question left for my determination answered in the positive in this case. The Defendant, through his wife, has prevented the agents of the Plaintiff to carry out their lawful duties under the law.

Order

[13] I accordingly make the following orders;

(c) I order that the Defendant grant access to the Plaintiff's land surveyors on parcel S227 in order to allow them to carry out their survey work as instructed by the Plaintiff.

(d) I issue a Prohibitory Injunction against the Defendant restraining and prohibiting him or his agent from interfering with any survey works to be carried out by the land surveyors on boundary beacons between parcel S227 and S226 by the Plaintiff's land surveyor.

Signed, dated and delivered at Ile du Port on day 17 of September 2021

Govinden CJ