

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC ..1083
CS 141/2019

In the matter between:

MRS MICHEL BURFORD

Plaintiff

(rep. by John Renaud)

and

JEAN-PAUL LESPERANCE

Defendant

(rep. by Brian Julie)

Neutral Citation: *Burford v Lesperance* (CS 141/2019) [2022] SCSC ..1083..... (.....
December 2022).

Before: Pillay J

Summary: Trespass

Heard:

Delivered: 7th December 2022

ORDER

[1] The Plaintiff is dismissed.

[2] Each side shall bear their own costs.

JUDGMENT

PILLAY J:

[1] The Plaintiff seeks an order of this Court restraining the Defendant, his assigns, his agents or servants from trespassing on parcel V3772.

- [2] The Plaintiff claims she is the owner of a portion of land, Parcel V3772, situated at Sans Soucis, Mahe. The Defendant is her son. On 28th September 2005 she gave the Defendant a specific power of attorney for the purpose of charging her property in order to construct a dwelling house on the said property. The Defendant charged the property on 10th April 2007 in favour of Seychelles International Mercantile Banking Corporation Limited to secure a loan of SCR 157, 000.00. She also sent money to the Defendant through his bank at Barclays. On her return to Seychelles she found that the Defendant had failed to construct the house save to lay a foundation. On 1st March 2018 she revoked the specific power of attorney and fully constructed her house at her own expense. She claims that it has become impossible to live in the house with the Defendant as he has started to turn violent against her, threatening to hit her.
- [3] The Defendant admitted that the Plaintiff is his mother. That she voluntarily gave him permission to build a house on Parcel V3772. He admitted that he charged the property for a loan of SCR 157, 000.00 and that the loan was insufficient to complete the house. He further admits that the Plaintiff sent money through his bank at Barclays in order to complete the house as was the verbal agreement between them when they were on good terms. He further admitted that the Plaintiff plastered the walls, installed sliding door and sliding windows, putting in burglars bar, roofing etc...
- [4] The Defendant however denied that the house had not been constructed. He stated that the house was not completed. He further denied sabotaging workers, annoying the Plaintiff, threatening her or being violent towards her. He stated that the Plaintiff had already moved out.
- [5] On the day of the hearing neither the Defendant nor his counsel appeared. The matter proceeded without either one with the Plaintiff's evidence following which counsel closed his case and left the matter to the Court to decide.
- [6] In my humble opinion there is a glaring issue in the Plaintiff's case. She claims in her plaint that on her return to Seychelles she found that the Defendant had failed to construct the house save to lay a foundation to the value of SCR 25, 000.00. She claims that she fully constructed her house at her own expenses; such as plastering of walls, installing sliding

door and sliding windows, putting burglars bars, roofing... The two claims to my mind are contradictory in that had there been only a foundation, she could not have plastered walls. One would think she would have had to put the walls up first of all. On the face of it however, it would seem that what she did was the finishing.

- [7] In any event her evidence was to the effect that the Defendant is her son. He lives in her house, the house in question while she lives with her friends. She tried to have him move out of her house because he “did too much disaster.” He broke her cement boards to pieces, cut her vegetables, her chainsaw, her hoover and steamer. She had to leave and move in with her friend because the Defendant tried to fight her.

- [8] The Plaintiff testified that she also lives in England. She sent money for the Defendant to build the house. She granted him a power of attorney in order to handle her affairs concerning the house but she revoked it because she needed her property back. When she is in the house the Defendant shouts and swears. Even if she speaks nicely to him he breaks things in the house. She tried to seek help from the Police but they let her down.

- [9] She produced a letter addressed to the Defendant dated 10th April 2019, to vacate the premises. There is no mention of threats of violence in the said letter. What appears to be the issue is the son’s untidiness and lack of cleanliness.

- [10] She further produced the specific power of attorney dated 28th September 2005 as well as the revocation of the said power of attorney dated 11th January 2018. She additionally produced a revocation of the permission to build dated 1st December 2017. She also produced a part bank statement in the name of one Mr. P Burford showing that £1,000 was transferred on 17th October 2011, another £1,100 was transferred on 14th November 2011,

on 23rd November 2011 a third transfer of £1,000 was made and 13th December 2011 another payment of £900. It is unclear where these payments were sent to.

[11] On 25th February 2016 the sum of £872.6 was sent to one Kinsley Brian Volcere in Seychelles by Peter James Burford. On 5th March 2016 a sum of £219.00 was sent to the same person in Seychelles by Peter James Burford.

[12] It is noted that the payments are not in issue as the Defendant admitted that the Plaintiff sent him money to complete the house.

[13] What is the issue then?

[14] The Plaintiff wants the Defendant restrained from trespassing on her property as a result of threats of violence she claims he has made against her.

[15] Is there evidence of threats of violence by the Defendant against the Plaintiff?

[16] The Plaintiff testified that the Defendant does too much disaster, breaking her cement boards into pieces, cutting her chainsaw, hoover and steamer. She testified that she got

permission to build another house. She suggested that the Defendant did something so she could not build the house but did not really explain whatever it was that the Defendant did.

[17] She further testified that when she is in the house the Defendant swears all the time and gets drunk.

[18] Other than the Plaintiff's testimony there is no supporting evidence that indeed the Defendant caused the damage alleged and threatened violence towards her.

[19] With that in mind I find that the case against the Defendant has not been made out and I dismiss the Plaintiff.

[20] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on ...*7th*... *December* 20*22*



Pillay J