

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 266
MC16/2022

In the matter between:

SHEILA BAKER
(rep by Ms Lucie Pool)

Applicant

and

PAUL COUCHENE
(rep by Mr Brian Julie)

Respondent

Neutral Citation: *Sheila Baker v Paul Couchene* (/2021) [2023] SCSC266 (06 April 2023)
Before: Esparon J
Summary: Application for a writ Habere Facias Possessionem
Heard: 8 February 2023
Delivered: 6 April 2023

JUDGMENT

ESPARON J

Introduction

1. This is an Application seeking an order from this Court for a writ habere facias possessionem by way of Notice of Motion.
2. On the 6th January 2023, both counsels were present and the case was fixed for hearing on the 30th January 2023. On the said date fixed for hearing, the Court noted that no reply to the Application had been filed by counsel for the Respondent despite his undertaking to do so. Since counsel for the Respondent and the Respondent were both absent on the said hearing date, the Court granted leave to the Applicant to proceed with the matter ex-parte with notice to counsel for the Respondent and fixed the matter for ex-parte hearing on the 8th February 2023.

The Pleadings

3. The Application is supported by the Affidavit of Sheila Baker who avers in her Affidavit inter-alia;
- i) That she is the registered owner of title PR 4884
 - ii) That Edouard Mark Couchene has passed away and the usufructuary Interest has been removed.
 - iii) That the Respondent's father, the late Edouard Mark Couchene brought a case before the Supreme Court against me to claim ownership of title PR 4884 but the case was dismissed on 6th November 2017.
 - iv) That the Respondent acting as the executor to the estate of his late father Edouard Mark Cushion appealed to the Court of Appeal against the judgment of the Supreme Court given on the 6th November 2017, but the Court of Appeal found in my favour that I am the sole owner of the Property title PR 4884.
 - v) The Respondent has refused to vacate the property despite the finding of the Court in the above judgments.
 - vi) The Applicant avers that the Respondent is in unlawful occupation of the property in as much that he has no right, cause, justification or capacity in law to remain on the property.
 - vii) The Respondent has no bona fide defence to this Application.
 - viii) In the circumstances, it is urgent and necessary that this Honourable Court grants a writ of Habere Facias Possessionem to evict the Respondent from the property Title PR 4884, with an Order for Cost.

Evidence

4. The Applicant gave evidence on Oath that she is the owner of title PR 4884 and produced the certificate of official search of which the Court admitted it in exhibit and marked it as exhibit A1 showing that there is an encumbrance namely a usufructuary interest in favour of Edouard Mark Cushion.

5. She gave evidence to the fact that Edouard Mark Cushion has passed away on the 20th May 2018 of which she produced the said death certificate which the Court admitted it in exhibit and marked it as exhibit A2.
6. The Applicant testified to the fact that there was a judgment given in her favour and subsequently the Respondent Appealed against the said Judgment to the Court of Appeal of which judgment again was given in her favour to the effect of which the land belonged to her.
7. The Applicant produced the said Judgments of which the Court admitted the said Judgments as exhibit and marked them as exhibit A4 and A5 respectively.
8. She further testified that the Respondent, Mr Paul Couchene is presently occupying the property and that she has asked him to vacate the property but he is still there and he refuses to vacate the property.
9. She also states that Mr Couchene is in unlawful occupation of her property in as much as he has no right or justification or capacity in law to remain on the property and that the Respondent has no bona fide defence to this Application.

The Law

10. The general principles governing writs of habere facias possessionem has been laid down in the case of **Lesperance V Intour (2001) SLR 28**, whereby the Court laid down the following guiding principles;
 - a) The Court in granting relief acts as a Court of equity and exercise its equitable powers in terms of section 6 of the Courts Act;
 - b) Those who come with equity should come with clean hands;
 - c) There should not be any other legal remedy available to the Applicant who seeks an equitable remedy;
 - d) The remedy is available to the Applicant whose need is of an urgent nature and to whom any delay in the remedy would cause irreparable loss and hardship;
 - e) The Court should be satisfied that a Respondent has no bona fide and serious defence to make; and

- f) If the remedy sought to eject a Respondent who is occupying the property merely on the benevolence of the Applicant, then that Respondent should not have any right or title over the property.
11. In the case of **Lesperance V Vidot SCA 25/2007, LC 316**, the Court held the following;

“To succeed in obtaining a writ of habere facias possessionem, the owner must show clear title to the property in lite. The law needs title, not title-deed, because a person may hold a title deed with a questionable or dubious title”.

Analysis and determination

12. This Court takes into account that the matter had been fixed for Ex-parte hearing and the Respondent had filed his Affidavit in reply one day after the matter was fixed for Ex-parte hearing which was dated the 31st January 2023 without making any application for leave to set aside the Ex-parte hearing and for the Respondent to file his defence in accordance with the law and up to the hearing date nothing had been done to take any step to ask for leave of this Court. As a result of the laches of both counsel for the Respondent and the Respondent, this Court shall proceed with this ruling as if the said Affidavit had not been filed.
13. The Applicant at the hearing of the matter had produced two judgments namely in CS 87 of 2016 and in SCA 11/2019 which both Judgments confirm the ownership of the said land by the Applicant. Hence this Court is satisfied on the balance of probabilities that the Applicant has a clear title to the property in lite of which such title is not one that questionable and dubious.
14. This Court is also satisfied that since the Applicant has obtained a judgment in the Supreme Court which was confirmed by the Court of Appeal as to her ownership and the Respondent is not a tenant of which the Applicant could seize the jurisdiction of the Rent Board as regards to the matter, this Court finds that the Applicant has no other legal remedy available to her apart for seizing the equitable jurisdiction of this Court.
15. This Court also takes note after reading the judgments in CS 87 of 2016 and SCA 11/2019 and is of the view that the issue which had been decided by the Court had nothing to do with the rights of the Respondent as an heir to the estate of his father the late Edouard Mark Couchene but concerned the sale by the said Edouard Mark Cushion to the Applicant of the bare ownership for valuable consideration of which there is a judgment confirming the ownership of the Applicant of the said property.

Hence, this Court finds that the Respondent has no bona fide and serious defence to make. Furthermore, I note that in the judgment in CS 87/2016 at paragraph 7 of the said judgment, the Court made a finding from the evidence adduced by the Respondent himself that the Respondent never lived with his father but had been brought up by his father's first wife.

16. Further it appears from the said above mentioned judgment that the Applicant had built two bedsitters on the said property. As a result, this Court further finds that the remedy being sought by the Applicant is one of an urgent nature and to whom any delay in the remedy would cause irreparable loss and hardship to the Applicant.
17. In the Circumstances, it is just and equitable that I allow the Application and grant the writ habere facias possessionem as prayed for by the Applicant and I accordingly order that the Respondent Paul Couchene leave, quit and vacate parcel number title PR 4884 and any house or bedsitter which is situated on the said parcel of land by the 6th July 2023.
18. I make no further order as to cost.
19. I further Order that a copy of this judgment be served on the Respondent Mr. Paul Couchene of Grand Anse Praslins, Seychelles and on counsel for the Respondent Mr. Brian Julie.

Signed, dated and delivered at Ile Du Port on 6 April 2023



Esparon J

