

**SUPREME COURT OF SEYCHELLES**

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Reportable  
[2023] SCSC 319  
MA 236/2022

In the matter between:

**GREGOIRE PAYET**  
*(Represented by Ms. Edith Wong)*

**Applicant**

versus

**BRIGITTE PAYET**  
*(Represented by Mr. Guy Ferley)*

**Respondent**

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**Neutral Citation:** *Payet v/s Payet* (CO35/2022) [2023] SCSC 319 27 April 2023

**Before:** D. Esparon

**Summary:**

**Heard:** 27<sup>th</sup> April 2023

**Delivered:** 27<sup>th</sup> April 2023

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**RULING**

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**D. Esparon, Judge.**

Introduction

- [1] This is an Application seeking an order from this Court for an injunction pursuant to section 304 of the Seychelles Code of Civil Procedure.

The Pleadings

- [2] The Application is supported by the Affidavit of Emmanuella Hassan being the Assistant Hotel Manager of La Digue Island Lodge who avers that she is duly authorised to swear this Affidavit.
- [3] The deponent avers the following in her Affidavit inter-Alia;

- “2. That the Respondent is the daughter of Gregoire Payet and the owner of 0.01 percent of the entire issued shareholding in the Applicant and that the Applicant is the owner of land parcel LD23.
4. On the 5<sup>th</sup> September, 2020, the Respondent came to the premises of the hotel and caused commotion in front of the guest. As a result, on the 21<sup>st</sup> September, 2020, the Respondent was informed by way of a letter from Counsel for the Applicant that she was not permitted to enter the hotel without the permission of the Applicant.
5. Despite the 1<sup>st</sup> letter, on the 30<sup>th</sup> October, 2020, the Respondent illegally moved into a house on the Hotel premises (herein after the ‘ manager’s House’). When she was requested to vacate the ‘manager’s House’, the Respondent reacted aggressively and began to insult me in front of the hotel guest.
6. Thereafter the Respondent continued to come to the premises of the hotel from time to time and reside in the manager’s house irrespective of the fact that she had no permission to do so.
7. On the 20<sup>th</sup> day of August, the Respondent, unbeknownst to the Applicant illegally caused one of the hotel’s staff to change the locks on an office door meaning that she alone would have access to that office.
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8. On the 26<sup>th</sup> August 2022, she called the hotel and spoke to me and began to verbally abuse me on the phone as well as verbally abusing her father, Mr Gregoire Payet
9. Furthermore, I have been informed by several of the hotel employees that on the 27<sup>th</sup> of August 2022, the Respondent did the following acts:
- a) entered the hotel reception and began screaming and shouting and causing a scene in front of the hotel guest;
  - b) entered the office of Mr. Gregoire Payet and swore at him and insulted him;
  - c) entered the shop known as Gregoire’s shop and made rude remarks to the workers therein;
13. That these commotions may cause serious reputational damage to the hotel as they are witnessed by guest and which reputational damage cannot be compensated by damages.
14. Owing to the increase in severity of the Respondent’s action, it is now urgent to remove the Respondent and prevent her from accessing the Applicants properties including the premises of the hotel”.

- [4] The Respondent has filed an Affidavit in reply and has averred in paragraph 3 of her Affidavit that on the 25<sup>th</sup> September 2020, she had been unlawfully removed as a director of the said company of which the matter is being heard by the Supreme Court in MC No 87 of 2020 and that the said house situated on parcel LD 23 has always been used and treated as the family home by her and her family members.
- [5] She further avers at paragraph 7 of her Affidavit that on the 5<sup>th</sup> day of September 2020 she was entering the family home which she had been residing since 2017 when Miss Manuella Hassan, an employee of the Applicant attempted to prevent her from accessing her home and that this conversation did not take place before the hotel guest.
- [6] The Respondent further avers in paragraph 8 of her Affidavit that on the 31<sup>st</sup> day of October 2020, she was in her family house when Miss Hassan came with the security team to forcefully remove her from her said home of which she was showering and in her bath robe which made her very angry.
- [7] The Respondent avers in her affidavit that she has never changed the locks of the office door and that the lock broke possibly to old age when the said employee opened the door for her.
- [8] She further avers in her Affidavit that she was simply informing both Miss Hassan and her father that if they were aware what they were doing was wrong and that she never entered Grégoire's shopping complex to make remarks about the Applicants employees or her father of which she also maintains that none of the alleged incidences took place before the clients and guests of the Applicant's company.
- [9] The Respondent avers at paragraph 13 of her Affidavit that following the dismissal of an application for a writ habere facias possessionem before the supreme court which was filed against her, the employees and officers of the Applicant broke into her said home and removed all her belongings therein without her permission and further blocked access to her home and some of her belongings were destroyed in the process and that the Applicant had her electricity disconnected by PUC of which all her food in the refrigerator went bad.

#### Submissions of Counsels

- [10] Counsel for the Applicant in her submissions has relied on the case of Intendance Retreat Limited V Hill View Resorts (Seychelles) Limited CS 132/2020 which relied on the case of D'offay V The Attorney General (NO. 1) 1975 SLR 18. Counsel for the Applicant also relied on the case of Ex Parte: Betine Ah- Kong trading as Villa Authentique CS No 36 of 2019 which relied on the case of Danjhee V/S Electoral Commissioner SCA 20/2011 which considered the test for balance of Convenience.

- [11] Counsel for the Applicant submitted to the Court that in the present case there is a serious question of law to be tried namely whether or not the Respondent is a trespasser owing to her actions on the premises owned by the Applicant. Secondly that the actions of the Respondent is causing reputational harm to the Applicant's hotel business since these altercations is done in the presence of guests of which given that the hotels rely on reputation which are not quantifiable and that damages would be difficult to not only ascertain, but repair.
- [12] Counsel for the Applicant further submitted to the Court that the Respondent has failed to show how she would be inconvenienced should the injunction be granted since she has admitted in her Affidavit that she lives at Carana and not La Digue and that this is an instance where the Applicant is seeking to ascertaining its rights over its own property against a visitor on the property and hence the balance of convenience is in favour of the Applicant.
- [13] On the other hand, Counsel for the Respondent has relied on the law namely section 304 of the Seychelles Code of Civil Procedure and on the case of Adrienne V/s Pillay SSC 36/2022 and submitted to the Court that a Court would exercise its discretion to grant an interim injunction;
- a) To restrain the defendant in such action from repetition or continuance of a wrongful act; or
  - b) To prevent irreparable injury, which is substantial and could not be adequately remedied or atoned for by damages.
- [14] Counsel for the Respondent submitted to the Court that since none of these allege incidences had taken place before the guest of the hotel and as such, the Applicant has failed to prove that it has sustained serious reputational damages and that the Respondent has committed no wrongful act towards the Applicant.
- [15] Counsel for the Respondent further submitted to the Court that such incidences arose as a result of the Continuous harassment, persecution and provocation caused by the Applicant's employees and officers to the Respondent.
- [16] Counsel for the Respondent submitted to the Court that when one compares the prayers in the plaint and the remedies sought in the Application, it is evident that the Applicant is seeking the same remedy sought for in its Plaint, in its Application and hence if the injunction is granted this would defeat the purpose of the Plaint.

#### The Law

- [17] Section 304 of the Seychelles Code of Civil Procedure provides that 'it shall be lawful for the plaintiff, after the commencement of his action and before or after judgment, to apply

to the Court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said Court upon such terms as to duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.’

[18] Section 5 of the Courts Act provides that ‘the supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the high Court of Justice in England.’

[19] Section 6 of the Courts Act provides that ‘the Supreme Court shall continue to be a court of equity and hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the laws of Seychelles’.

[20] The effects of the provisions of section 5 and section 6 of the Courts Act is that the Supreme Court being invested with all powers which is vested or capable of being exercise by the High Court of justices in England and by virtue of that is a Court of equity and as such to do all act for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided for by the laws of Seychelles including writ of injunctions. Section 304 of the Seychelles Code of Civil Procedure reinforces the powers of the Court in cases where there is the repetition or continuance of the wrongful act or breach of contract or injury of the like kind.

[21] The case of Ex Parte Rodionov (CS 121 2021), E. Carolus Judge Stated that 'in determining whether to grant an injunction or not, this court is guided by the Case of American Cyanamid Co V Ethicon AC 396, 1975 that requires;

- i. A serious question to be determined in the main suit.
- ii. Inadequacy of damages to compensate the Applicant
- iii. The balance of convenience.

[22] The Court in ex parte Podionov also relied on the case of Nathalie Lefevre V Beau Vallon Properties and Ors (MA154/2018) where Twomey then CJ stated the following regarding the factors to be considered in deciding whether or not to grant an injunction;

'Injunctions are equitable remedies in nature and in such applications the Court is guided by three considerations;

- i) Where there is a serious issue to be tried,
- ii) Whether damages would be inadequate to redress the harm caused by the grant of injunction,
- iii) and on a balance of convenience it would be best to grant rather than deny the injunction. (see techno International VS Georges unreported CS 147 of 2002)

[23] Further in the case of Danjee V/S Electoral Commission (2010 SLR 141) the Court interpreted the balance of convenience test to include the consideration of the following factors;

- i. Whether more harm would be done by granting or refusing the injunction,
- ii. Where the risk of injustice would be greater if the injunction was granted, than the risk of injustice if it was refused
- iii. Where the breach of the parties' rights would outweigh the rights of others in society.

#### Analysis and determination

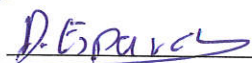
[24] This Court has considered the Affidavit filed by the Applicant and the Respondent, the documents attached herewith to the Affidavits and submissions of both Counsels for the Applicant and that of the Respondent in the matter and the cases cited above as authorities.

This Court takes note that there has been a Plaintiff filed in the supreme Court in CS 112 /2022 alleging that the action of the Defendant amount to a fault of trespass of which such averments has been pleaded in the Affidavit in support of the Application. Hence this Court finds that there is a serious issue to be tried before this Court.

- [25] The Applicant has averred in his Affidavit at paragraph 13 that these commotions may cause serious reputational damage to the hotel as they are witnessed by guests and which reputational damage cannot be compensated in damages. Although this has been denied by the Respondent in her Affidavit averring that such incidents did not take place before the hotel guest, this Court finds it hard to believe that such incidents may have occurred outside the view of the hotel guest since both the said family home or the management house was located on the hotel premises and so was the said office which the lock was allegedly broken to gain access to of which it is apparent that such arguments were with such intensity. Since this is a hotel where its survival is based on its reputation in the eyes of its hotel guest, I would agree with the submissions of Counsel for the Applicant that the actions of the Respondent is causing reputational harm to the Applicant's hotel business since these altercations happened in the presence of guests of which given that the hotels rely on reputation which such cannot be quantifiable and that damages would be difficult to not only ascertain, but repair.
- [26] As a result of the above, this Court is satisfied on a balance of probabilities that such a remedy such as an injunction is necessary in the present case in order to prevent irreparable injury, which is substantial and could not be adequately remedied or atoned for by damage of which that is to prevent harm from being caused or continually being caused to the reputation of the business.
- [27] After making a finding as to the above, this Court has to now draw the attention as to the issue of balance of convenience in the present matter. This Court draws its attention to paragraph 13(b) of the Affidavit in reply of the Respondent averring that 'on the 24<sup>th</sup> day of December 2020, the Applicant filed an application for a writ of habere Facias Possessionem, namely MC No 115 of 2020 against me. On the 4<sup>th</sup> day of June 2022, the Honourable Judge dismissed it in my favour. I state that following the said dismissal, the employees, and officers of the Applicant broke into my said home and removed all my belongings, therein without permission and further blocked access to my home.'
- [28] The above facts has not been denied either by Applicant in her Affidavit nor in the submissions of Counsel for the Applicant showing that the Respondent was in possession and in occupation of the said house and that the Applicant had taken the law in its own hands to evict the Respondent in the said house, a fact that this Court would not condone easily.

- [29] This Court shall apply the test as laid down in the case of *Danjee V/S Electoral Commission* (2010 SLR 141) and as a result of the above paragraphs 27 and 28 of this ruling, this Court finds that the risk of injustice would be greater if the injunction was granted, than the risk of injustice if it was refused. Hence this Court is of the view that the balance of convenience is in favour of the Respondent in not granting the injunction.
- [30] Furthermore the remedy that the Applicant is seeking before this Court being an injunction is an equitable remedy. It is trite law that those who come to equity must come with clean hands (see the Case of *Roman Catholic Mission V Macgaw* (1980) SLR 56, the case of *Lesperance V Intour* (2001) SLR 28, the case of *Barbe V Belize* (2004) SLR 39.
- [31] This Court is of the view that failure of the Applicant to bring to the attention of the Court that an Application for a writ habere Facias Possessionem filed by the Applicant had been dismissed by the Supreme Court in MC No 115 2020 and that subsequently the Applicant had taken the law in its own hands by evicting the Respondent whilst the Respondent was in possession and occupation of the said house situated on the Applicant's property, that the Applicant has not come with clean hands in seeking such an equitable remedy. This Court further notes that the Applicant is silent in her Affidavit in support as regards to the case of MC 87 of 2020 which has been filed before the Supreme Court as averred by the Respondent in paragraph 3 of her Affidavit in reply of which this Court is of the view that the Applicant has failed in its duty to make full and frank disclosure of the material facts to the Court to assist the Court in making its determination.
- [32] As a result of the above, this Court shall decline to grant the injunction sought by the Applicant and I accordingly dismiss the Application with cost.

Signed, dated and delivered at Ile du Port on the 27<sup>th</sup> April 2023.



Esparon J

