

**SUPREME COURT OF SEYCHELLES**

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**Reportable/**  
[2023] SCSC ...  
MA 260/2023  
(Arising in CS67/2023)

In the exparte matter between:

**Paula Govinden**  
(rep. by Ms. Gill)

**Applicant**

and

**The Estate of the late Juliana Servina**  
**C/o Marie Celine Hypolite**

**1st Respondent**

**The Estate of the late Michel Hypolite**  
**C/o Marie Celine Hypolite**

**2nd Respondent**

**Marie-Celine Hypolite**

**3rd Respondent**

**Neil Hypolite**

**4th Respondent**

**Aubrey Hypolite**  
(unrepresented)

**5th Respondent**

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**Neutral Citation:** *Govinden v. Estate of the late Julien Servina & Ors* (MA260/2023 arising in CS67/2023) [2023] SCSC (21st July 2023)

**Before:** A. Madeleine, J

**Summary:** *Application for Interlocutory Injunction*

**Heard:** 14th July 2023

**Delivered:** 21st July 2023

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**ORDER**

- (1) The Respondent shall forthwith remove all obstruction (including banana leaves and chicken waste) from the passageway over land parcel V3548 used by the Applicant and the other occupiers of her household to access land parcel V3547 from the main road and vice versa and shall refrain from further obstructing the said passageway until the final determination of the main case in *CS67/2023 Paula Govinden v The Estate of the late Juliana Servina & Ors* or until further order of this Court.
  - (2) This order should be served on the Respondents who may apply to the Court to vary or discharge the said order.
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**RULING**

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## **MADELEINE, J**

### *The Application*

1. This Ruling arises from the application of Paula Govinden, the Applicant herein and Plaintiff in case *CS No. 67 of 2023, Paula Govinden v. The Estate of the late Julien Servina & Ors* (hereinafter referred to as the “main case”) for the following reliefs –
  - a. to hear the application ex-parte and as a matter of extreme urgency;
  - b. that the Respondents unblocks the right of passage on parcel V3548 which leads to the Applicant’s property;
  - c. that an interlocutory injunction is granted against all the Respondents which will restrict the Respondents from further blocking the Applicant’s right of passage on parcel V3548.

### *Applicant’s Affidavit*

2. The application is supported by the Applicant’s Affidavit made on 30th June 2023. The Affidavit states in essence that –
  - a. The Applicant is a pensioner and the owner and occupier of land parcel V3547 and house built thereon;
  - b. She has been in occupation of the property since 1980;
  - c. Her property is adjacent to land parcel V3548 being occupied by the 3rd, 4th and 5th Respondents;
  - d. The 1st and 2nd Respondents are the registered proprietors of land parcel V3548 who are deceased;
  - e. The 3rd Respondent is the heir of the 1st and 2nd Respondents and the 4th and 5th Respondents are the sons of the 3rd Respondent;
  - f. She has been residing at Belveder for over 41 years and has been making use of a right of passage over land parcel V3548 to access the public road for the 41 years after having obtained verbal permission from the original owners - the 1st and 2nd Respondents - who are now deceased;

- g. The right of passage was given to herself, her deceased husband and her children and has been lawful, continued and uninterrupted, peaceful, public and unequivocal for more than 20 years;
- h. Her property, parcel V3547 is enclosed on all sides and had inadequate access to the public road and to her home for private use and therefore the only practicable possibility of having access to the main public road and to her home is through the right of passage comprised in title V3548 and V5203 as it presents the shortest route to the public road for her;
- i. The alternative right of passage to the public road is impracticable to use due to her current medical pain if she walks through a flight of stairs leading to the main road as confirmed by her medical certificate annexed to the affidavit;
- j. The 3rd, 4th and 5th Respondents have refused to allow her and her son, Travis Govinden, to access the right of passage to the main road and to her home in that they block the passageway by planting vegetation alongside it;
- k. The 3rd, 4th and 5th Respondents plant vegetation like cassava and dig holes on their parcels which also falls along the boundary of her property making it very difficult for her to use the right of passage to and from her home which she can only do on foot by using that particular route because of her health condition;
- l. The 3rd, 4th and 5th Respondents have put numerous banana leaves along the right of passage making it difficult for her to make it to and from her home though the right of passage that she has been using for the past 41 years as shown on photograph produced in the affidavit;
- m. On 22nd February 2023, her son fell inside a hole on parcel V3548 as he was making his way to the main road for work by using the right of passage. Her son was greatly inconvenienced as he had to return home to shower and get ready for work;
- n. It was later found out that three holes had been dug along the right of passage being used by herself and her son and she could have been injured had she been the one walking along the right of passage at the time;

- o. On 3rd May 2023, the 3rd and 4th Respondents placed chicken faeces outside the kitchen window of her home and despite police assistance the chicken faeces were only removed about 8 days later;
- p. On 14th May 2023, the 3rd and 4th Respondents yelled at her son Travis Govinden as he made his way home thought the right of passage;
- q. The 3rd Respondent yells at the Applicant because of the right of passage and makes uncouth remarks about her son due to his sexual orientation;
- r. The 3rd, 4th and 5th Respondents do this to prevent her from using the right of passage to get to her home by foot;
- s. Despite requests, the 3rd Respondent and 4th Respondent have refused to cease and desist from blocking the passage;
- t. She has filed a breach of peace application against the 3rd and 4th Respondents so that they allow her to continue making use of the right of passage until the final determination of the matter;
- u. The balance of convenience lies in her favour as without an interlocutory order of injunction preventing the 3rd, 4th and 5th Respondents from blocking her right of passage through their land, on parcel V3548, she will not be able to make her way home and back from the main road which she needs for her medical checkups and attending church;
- v. The 3rd, 4th and 5th Respondents will not suffer any inconvenience of hardship whatsoever as their property is quite large, their house very far away from the right of passage she uses and therefore there is no interaction between her and the Respondents unless they are to come to the right of passage itself. The 3rd, 4th and 5th Respondents have ample space to plant their vegetation which would be far from the right of passage she uses to go to and from her home;
- w. Her health condition will deteriorate, and she will suffer irreparable injury to her legs if she has to stop using the right of passage through parcel V3548 and made to use an alternative;
- x. She has obtained legal advice that this court has equitable powers to order an interlocutory injunction preventing the 3rd, 4th and 5th Respondents from

blocking the right of passage over parcel V3548 given that there is a serious question to be tried and damages are inadequate to be awarded on either side;

- y. She has obtained legal advice that she has a reasonable chance of success in her claim for a right of way and therefore it is in the interest of justice that the application is heard as a matter of extreme urgency, that the 3rd, 4th and 5th Respondents unblock the right of passage on parcel V3548 which leads to her property and the interlocutory injunction is granted restricting the said Respondents from further blocking the right of passage on V3548.

#### *Evidence of further incidents*

3. At the hearing of the application, leave was granted on motion of Applicant's Counsel for the Applicant to testify as to further incidents that have taken place since the filing of the present application.
4. The Applicant deponed that during the previous week (from the date of hearing), the Respondents have been putting chicken waste in the passageway. She reported the matter to the Mont-Fleuri police station and had to obtain police assistance to access her property through the passageway. The Applicant also produced a photograph taken by her son showing chicken waste and original extract investigation diary confirming that she reported the incident to the Mont-Fleuri police station on 10th July 2023.
5. The Applicant clarified to the court, that the passageway was still blocked as at the date of the hearing and her son had to assist her to go over the obstructions in the passageway so as to access the main road and attend court for the hearing. The Applicant further clarified that the other available pathway built by the Government that runs from Belveder to Rochon was not conducive for her as she underwent surgery for a torn muscle in one leg and had a knee-cap replacement in the other leg and cannot climb the steps to reach the road.

#### *Submissions on behalf of Applicant*

6. Counsel for the Applicant relied on the case of *Surfers Paradise Self Catering Chalet Ltd & Ors v. BGM Accountants & Anor (MA 255 of 2022) [2022] SCSC 1088 (9 December 2022)* and on the case of *American Cyanamid Co. v Ethicon Ltd [1975]* and submitted that the order of interlocutory injunction sought is an equitable remedy which the court can grant. There is a serious issue as per the plaint, namely a right of way. Damages is not an adequate remedy as the Applicant is not seeking damages but seeking a right for her to reach her property. The balance of convenience lies favour of the Applicant because without a right of passage, she will have no way for her to move from her property to go to the public road. It is difficult for the Applicant to use the other access road as it is lengthier and not conducive for the Applicant's medical condition.
7. It was further submitted that the Supreme Court has granted interim orders of injunctions ex-parte in cases of urgency. The application is a fit case for the court to grant an interim injunction, ex-parte, pending the final determination of main case.

### *Law and Analysis*

8. Pursuant to section 304 of the Seychelles Code of Civil Procedure ("SCCP"), the court may (on application) grant orders of injunction to restrain a defendant in a main case 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. This power is enhanced by sections 5 and 6 of the Courts Act which invests in the Supreme Court "*all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England*"<sup>1</sup> and equitable jurisdiction<sup>2</sup>. Thus, in deciding whether to grant such equitable remedies, the Supreme Court should also be guided by the precedents of the Courts of England: *D'offay v Attorney General (1975) SLR 118*; *Laporte & Anor v Lablache [1956-1962] S.L.R 274*.

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<sup>1</sup> Section 5 Courts Act;

<sup>2</sup> Section 6 Courts Act;

9. Applications for interim injunctions may be heard *ex-parte* in cases of urgency: *Bonte v Innovative Publication (Pty) Ltd* [1993] SLR 138 relying on *Pickwick International Inc (G.B) Ltd v Multiple Sound Distributors Ltd* (1972) 1WLR 1213. I am satisfied that there is urgency in present application warranting an *ex-parte* hearing subject to serving any order made on the Respondents so that they may (if they wish) apply to vary or remove any such orders made.
10. In determining whether an applicant has an adequate case for the granting of an interlocutory injunction, Courts in this jurisdiction have consistently applied the guidelines laid down by the House of Lords, per Lord Diplock, in *American Cyanamid v Ethicon Ltd* [1975] AC 396.<sup>3</sup> These guidelines are as follows –
- (i) *Whether there is a serious question to be tried in the main case?*
  - (ii) *Whether if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would not be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendants continuing to enjoy what was sought between the time of the application and the time of trial?*
  - (iii) *Whether the balance of convenience lies in favour of granting the order of injunction?*
  - (iv) *Whether there are special cases?*
11. In *Exeter Trust Company v Indian Ocean Tuna Limited* (253 of 2009) [2010] SCSC 89 (26 May 2010), the Supreme Court, per Karunakaran J, held that –

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<sup>3</sup> Vide: *Laporte & Anor v Lablache* [1956-1962] S.L.R 274, *Pest Control Services Limited v Gill & Or* [1992] SLR 177, *Delorie v Dubel* [1993] SLR 193, *Natalie Lefevre v Beau-Vallon Properties* MA154/2018 (arising CC8/2017), and *Surfer's Paradise Self Catering Chalet Ltd & Anor v BGM Accountants & Anor* (MA 255 of 2022) [2022] SCSC 1088 (9 December 2022)

*“[I note] in matters of interlocutory injunctions, the Court must be satisfied prima facie that the claim is bona fide, not frivolous or vexatious; in other words, that there is a serious question to be tried vide: American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 at p. 510. Unless the materials available to the court at the hearing of the application for an interlocutory injunction, disclose that the petitioner has a real prospect of succeeding in his claim at the trial, the court should not go on to consider whether the balance of convenience lies in favour of granting or refusing the interim relief that is sought. In considering the balance of convenience, the governing principle is whether the petitioner would be adequately compensated by an award of damages, which the respondent would be in a financial position to pay, and if so, the interim injunction should not be granted. Where there is doubt as to the adequacy of remedies in damages available to a party, the court would lean to such measures as are calculated to preserve the status quo...”*

(emphasis added)

12. The plaint filed in the main case has not been exhibited to the Affidavit in support of the present application. It is trite that documents to be used in combination with an affidavit must be exhibited as the affidavit stands in lieu of the testimony of the applicant: *D.L. de Charmory v. P.L. de Charmory, SCA MA 08/2019 (17 September 2019)* referring to the case of *Re Hinchliff, A person of Unsound Mind, Deceased, [1895] 1 Ch 11*.
13. I have taken judicial notice of the plaint filed by the Applicant in the main case on court file *CS67/2023 Paula Govinden v The Estate of the late Julianna Servina & Ors* attached to the present application. In the main case, the Applicant averred that she has been making use of a right of passage over the Respondent’s land to and from the public road for the last 41 years after having obtained verbal permission from the original owners. The permission was given to herself, her late husband and her children. Their use of the right of passage has been lawful, continued, uninterrupted, peaceful, and unequivocal for more than 20 years. Furthermore, her property is enclosed on all sides and has inadequate access to the public road and to her home for private use of her property. These



averments have also been made in the Applicant's affidavit in support of the application. In the main case, the Applicant prays for a declaration that she has a right of way over parcel V3548, for registration of the right of way by the Land Registrar, an order preventing the Respondents herein from obstructing the right of way of the Plaintiff including any orders that shall be deemed fit in the circumstances.

14. Having considered all the above, I am satisfied ex facie, that there are real questions to be tried in the main case. I further find that unless an interim writ of injunction is issued, the Respondents will continue to obstruct the alleged passageway used by the Applicant for the last 41 years in order to access the main road from her property and vice versa. I am reinforced in this view by the Applicant's statements in her supporting affidavit and evidence on oath that breach of peace application has had to be filed against the Respondents and by the recent incident of 10th July 2023 recorded in the extract of police investigation diary. Damages will not adequately compensate the Applicant for the inconvenience that will ensue if an interim injunction is not granted and the main case is ultimately decided in the Applicant's favour. Hence, the balance of convenience lies in favour of granting the order of interim injunction against the Respondents to preserve the status quo by the removal of all obstruction (including banana leaves and chicken waste) from the passageway and prohibiting any further obstruction of the said passageway until the final determination of the main case or until such earlier time that this court orders the variation or discharge of this order on the application of the Respondent.

*Order*

15. Accordingly, I hereby make the following order of interim injunction–

- (3) The Respondent shall forthwith remove all obstruction (including banana leaves and chicken waste) from the passageway over land parcel V3548 used by the Applicant and the other occupiers of her household to access land parcel V3547 from the main road and vice versa and shall refrain from further obstructing the said passageway

until the final determination of the main case in *CS67/2023 Paula Govinden v The Estate of the late Juliana Servina & Ors* or until further order of this Court.

- (4) This order should be served on the Respondents who may apply to the Court to vary or discharge the said order.

Signed dated and delivered at Ile du Port on 21st July, 2023.

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A. Madeleine, J