

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC ...
MA299/2022
Arising of CS144/2022

In the matter between:

ELKE SABINE TALMA
(Represented by Mr. Frank Elizabeth)

APPLICANT

versus

LE REFUGE DU PECHEUR
*(represented by its Director Mr. Guy Adam with
Its registered office situated at 2nd floor, Allied
Building, Victoria, Mahe, Seychelles)*

1ST RESPONDENT

THE REGISTRAR GENERAL
*(Mrs. Wendy Pierre, Independence House,
Independence house Avenue,
Victoria, Mahe Seychelles)*

2ND RESPONDENT

Neutral Citation: *Talma v/Le Refuge du Pecheur & Or* (MA299/2022) [2023] SCSC 30
January 2023
Before: D. Esparon
Summary: Application for an Interim Writ of Injunction
Heard: 30th January 2023
Delivered: 30th January 2023

ORDER

Application under section 304 of the Seychelles Code of Civil Procedure read with section 5 and 6 of the Courts Act – Order granted – Interim Writ of injunction issued against the Respondents.

RULING

D. Esparon, Judge.

Introduction

- [1] This is an Application by way of Notice of Motion seeking an Order of this Court to issue an interim writ of Injunction against the Respondents namely seeking an Order from this Court stopping, prohibiting and preventing the Respondents and any or all of them from selling, disposing, registering or otherwise dealing with parcel number PR2552 pending the determination of the main action in CS 144 of 2022 or until further Order of this Court.

The Pleadings

- [2] The Application is supported by the Affidavit of Elke Sabine Talma who avers in her Affidavit that ‘she is and was the owner and proprietor of a parcel of land registered as title number PR 2552 situated at Anse Lazio, Praslin.’
- [3] The deponent avers in her Affidavit that ‘I purchased PR2552 from my father, Alwyn Percy Talma, on the 31st October 2005 for the sum of SCR 5,000,000.00.’
- [4] The deponent further avers in her Affidavit that ‘her father Alwyn Percy Talma purchased two parcels of land in 1986 and 1992 from Mr Richard A. Soames and in 1996 caused his property to be surveyed under the Land Registration Act and registered on the new land register as parcel PR 2552.’
- [5] The deponent avers in her Affidavit that ‘on the 30th July 1996, Le Domaine Limited erroneously sold title number PR2552 to le Refuge du Pecheur for the sum of one rupee and that on the 25th January 2004, the 2nd Respondent issued a Notice of first registration to the 1st Respondent erroneously confirming that PR 2552 had been registered with a qualified title in the name of the 1st Respondent.’
- [6] The deponent averred in paragraph 9 of her Affidavit that ‘on the 31st October 2005, Mr Guy Adam, acting on behalf of Le Refuge du Pecheur swore an Affidavit before the notary public Francis Chang Sam wherein they confirmed that PR2552 belongs to Alwyn Talma.’
- [7] The deponent avers in paragraph 13 of her Affidavit that ‘at paragraph 3 of the said Affidavit, Mr. Guy Adam and Alwyn Talma explained further that it was in recognition of the mistaken registration of PR 2552 in the name of Le Refuge du Pecheur Limited and with the intention of correcting the mistake and the endeavouring to have Mr. Alwyn Talma registered as the proprietor of PR2552, that Corvina Investment Limited and Mauritius Commercial Bank (Seychelles) Limited, agreed to discharge the charge entered against PR2552.’

- [8] The deponent avers in her Affidavit that ‘ at paragraph 4 of the said Affidavit, Mr. Guy Adam and Mr Alwyn Talma consented for the Registrar of Lands to apply section 83 of the Land Registration Act for the rectification of the Land Register in respect of title number PR 2552 by the deletion of Le Refuge du Pecheur Limited and substituting Mr. Alwyn Talma of Glacis as proprietor of PR2552 and that on the 31st October 2005, PR2552 was rectified and Alwyn Talma was registered as the owner of title PR2552.’
- [9] The deponent further avers in her Affidavit that ‘I have obtained a certificate of official search dated 6th June 2022 wherein Le Refuge du Pecheur Limited is again shown to be the owner of title PR2552 and that I have not sold or disposed of parcel PR2552 to the 1st Respondent or any other person or company at all.’
- [10] The deponent avers in paragraph 18 of her Affidavit that ‘the registration of the 1st Respondent as registered owner of PR2552 is a mistake and it is now necessary for this Honourable Court to issue a writ of injunction pendent Lite ordering the Respondent not to sell, register, effect change of ownership, dispose of or otherwise deal with Parcel No. PR2552 until further Order of the Court and as such to issue a writ of prohibitory injunction.’
- [11] The deponent further avers that ‘I am concerned and worried that unless this Honourable Court issue a writ of interim prohibitory injunction pendent lite preventing the Respondents from dealing with the property, there is a danger and real likelihood that the 1st Respondent might dispose of the property.’

Submissions of Counsel

- [12] Counsel for the Applicant relied on the case of American Cyanamid Co V Ethicon Ltd (1975) AC 396 where the Court laid down the general principles which govern Application for a writ of injunction which were applied in the case of Pest control V Gill (1992) SLR 177, Delorie V/s Dubel (1993) SLR 193, Techno International V George SSC 147 2022, Dhanjee V/s Electoral Comissioner (2011) SLR 141 and the case of suffers paradise self-catering chalets Ltd and ors v/s BGM Accountants and Ors MA No 255 of 2022 and such principles were summarized in the case Exerter Trust Company v/s Indian Ocean Tuna Limited (253 of 2009), 2010.
- [13] Counsel for the Applicant submitted to the Court that this case is fit and proper one for granting of the injunctive relief pendent Lite since the Affidavit and supporting documents clearly shows that the Respondents have committed an error or mistake when the 2nd Respondent registered parcel PR2552 in the name of the 1st Respondent.
- [14] Counsel for the Applicant further submitted to the Court that unless the Court intervenes and makes the Orders as prayed for by the Applicant, the Applicant is at risk of being

permanently deprived of her property contrary to her Constitutional right to property under Article 26 of the Constitution. Hence counsel for the Applicant further submitted to the Court that her case is not frivolous and vexatious and that there is a serious question to be tried, that it has merits and a very high likelihood of success and that she has come to the Court with clean hands.

- [15] Counsel for the Applicant submitted to the Court that the balance of convenience lies in favour of granting the interim relief and that unless the Court grants the Orders as prayed for by the Applicant, the 1st Respondent would continue in its error of conduct by withholding the Applicant's property indefinitely causing the Applicant to suffer irreparable loss and damages by being deprived permanently of the ownership of her property. Furthermore there is a high risk that the 1st Respondent would sell, dispose of or otherwise deal with the property in such a way that the property is alienated and the Applicant is deprived permanently of the ownership of her property.

The Law

- [16] 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.'
- [17] 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 bought 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.'

[18] 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.,

[19] The effect 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 has the power to do all acts 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 issuing a writ of injunction. 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.

[20] In determining whether to grant an injunction or not, this court is guided by the principles as laid down in the the case of American Cyanamid Co V Ethicon AC 396, 1975 that requires the following to be present;

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

[21] In 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)’

[22] 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.

Determination

[23] This Court finds that Ex- facie the Affidavit and in the light of the authorities above, this Court finds that there is a serious issue to be tried and that the Applicant appears to have a bona fide claim against the Respondents in the main action or suit. I am also further satisfied that unless this Court grants the interim writ of injunction sought by the Applicant in this matter, the Applicant may suffer substantial and irreparable loss, hardship and inconvenience in the event that judgment is given in her favour as there is a high risk that the 1st Respondent may sell, dispose of or otherwise deal with the property in such a way that the property is alienated and that the Applicant may be deprived permanently of the ownership of the property.

[24] As a result of paragraph 23 of this Ruling, this Court shall make the following Orders;

- i) I hereby issue an interim writ of injunction against the 1st Respondent namely Le Refuge du Pecheur Limited and 2nd Respondent namely the Registrar-General pending the final disposal of the main action or suit or until further Order of this Court namely;
 - a. Prohibiting the 1st Respondent namely Le Refuge du Pecheur and the 2nd Respondent namely the Registrar-General from selling, disposing, registering or otherwise dealing with the parcel number PR2552 pending the hearing and

determination of main action or suit namely in Civil side 144/22 or until further Order of this Court.

- b. I Order the Registrar of the Supreme Court to Serve a Copy of this Order on 1st the Respondent namely Le Refuge du Pecheur Limited herein represented by its Director Mr. Guy Adam at its registered office situated at 2nd Floor, Allied Building, Victoria, Mahe.
- c. I further Order the Registrar of the Supreme Court to serve a copy of this Order on the 2nd Respondent namely the Registrar-General of Independence House, Independence Avenue, Victoria, Mahe, Seychelles.

Signed, dated and delivered at Ile du Port on the 30th January 2023.

Esparon J