

SUPREME COURT OF SEYCHELLES

Reportable
MA201/2023
(Arising in CS60/2013)
SCSC 697

In the matter between:

MA GUI YUN
(rep. by Frank Elizabeth)

PETITIONER

and

ANNE LISE CHURCH
(rep. by William Herminie)

RESPONDENT

Before:	Dodin J
Heard:	26 June 2023
Delivered:	15 th September, 2023

RULING

DODIN J

[1] The Applicant is a businessman and the Respondent is the Proprietor of two parcels of land namely H8692 and H8694 located at Glacis, Mahe, Seychelles. The Applicant avers that at or around July 2019, the Applicant expressed his interest to purchase the parcels from the Respondent. The Applicant further avers that the Applicant did not see or negotiate with the Respondent directly but through the Respondent’s agent, Mr Peter Esparon. The Applicant avers that the Respondent’s agent was charged with carrying out searches and completing the necessary procedures to enable the sale of the parcels to take place.

[2] The Applicant avers further that at or around August 2019, the Respondent informed the Applicant that parcel number H8692 has an extent of 164 square metres, and parcel number H8694 has an extent of 3550 square metres. The Applicant avers that on the 30th August 2019, relying on the Respondent’s representations, the Applicant entered into a

Promise of Sale to purchase the parcels for the sum of Seychelles Rupees Four Million Five Hundred Thousand.

- [3] The Applicant avers that on the 31st August 2019, by way of WhatsApp messenger, the Respondent's agent provided the Applicant with two Certificates of Official Search, dated 27th August 2019, for parcels H8694 and H8692 respectively. The Applicant further avers that a Certificate of Official Search showed a declaration had been registered as an encumbrance against parcel H8692; and that a declaration and a court order was registered as encumbrances against parcel H8694.
- [4] The Applicant avers that on the 2nd September 2019, the Applicant applied to the Department of Legal Affairs Registration Division for a copy of the court order and declarations registered as encumbrances against parcels H8692 and H8694. The Applicant avers that at or around 7th September 2019, the Respondent's agent provided the Applicant with two new certificates of official search. The Applicant avers that both Certificates of Official Search, dated 6th September 2019, confirmed that parcels H8692 and parcel H8694 were free of encumbrances. The Applicant further avers that the certificates of official search showed that parcel H8692 has an extent of 164 square metres, and Title H8694 has an extent of 3550 square metres.
- [5] The Applicant avers that at or around 7th September 2019, the Respondent accepted the Applicant's deposit of Seychelles Rupees One Million Nine Hundred Thousand only (SCR1,900,000.00). The Applicant further avers that the Respondent agreed to purchase goods and services from the Applicant's company, Ma Sun Trading Ltd. to the value of Seychelles Rupees One Hundred Thousand only (SCR100,000.00). The Applicant avers that at or around February 2020, together with the Respondent's agent and land surveyor, Mr. Ah-Kong, the Applicant visited the parcels. The Applicant further avers that during the visit, the Applicant was informed by the occupier of a dwelling on parcel H8694 that part of parcel H8694 had been awarded to her by the Supreme Court of Seychelles.
- [6] The Applicant avers that on the 13th February 2020, via WhatsApp, the Respondent's agent informed the Applicant that 400 square metres belonged to the occupier. The Applicant avers that at or around July 2020, the Applicant obtained a copy of the

judgement of the Supreme Court dated 27th July 2016 in civil side CS60/2013 [2016] SCSC 536. The Applicant avers that in the judgement dated 27th July 2016, it was held that 560 square metres of parcel number H8694 is to be extracted from parcel H8694 and registered in Bernadette Boniface's name.

- [7] The Applicant avers that by a letter dated 19th August 2020, the Applicant notified the Respondent that the Applicant had learnt that the Respondent has misrepresented the size of Title H8694 and wished to amend the sale price to take into account the deduction of 560 square metres from parcel H8694, as ordered in the judgement. The Applicant avers that in a letter dated 24th September 2020, the Applicant wrote to the Respondent offering to purchase the parcels for Seychelles Rupees Three Million Eight Hundred Thousand only (SCR3,800,00.00); or to have the Applicant's deposit refunded to him. The Applicant avers that to date, the Respondent has failed and or refused to consider, reply and or accept either of the offers.
- [8] The Applicant further avers that in breach of the express and implied terms of the agreement, the Respondent's acts and or omissions amount to material breaches that was accepted by the Applicant at or around October 2020.
- [9] The Applicant avers that the actions and or omissions of the Respondent, the Respondent's agents, servants or employee's amount to breaches of contract in law and accordingly the Applicant is entitled to and claims the sum of SCR1,900,000.00 with interest and costs.
- [10] The Applicant moved the Court for an order ordering the Respondent to pay the Applicant the sum of SCR2,600,000.00 or alternatively to declare that the Promise of Sale has been frustrated and order rescission of the Promise of Sale and order the Respondent to pay the Applicant the sum of SCR1,900,000.00 and the sum of SCR1,000,000.00 as damages together with interest and costs.
- [11] The Respondent objected to the claim of the Applicant in the Complaint and the case was set for hearing which started on the 27th April 2023. After the Applicant had completed his

testimony learned counsel for the Applicant moved the Court for leave to amend the Plaintiff.

[12] The proposed amendments Start from paragraph 15 of the Plaintiff and read as follows with the additions in bold:

*“15. The Plaintiff avers that to date, **the Defendant’s agent, Mr. Peter Esparon has agreed to accept the sum of SCR4,000,000.00 as purchase price for the two parcels of land for and on behalf of the Defendant.***

*16. The Plaintiff further avers that in breach of the express and/or implied terms set out in paragraph 3, and 4 above, the Defendant’s acts and/or omissions, above-stated in paragraphs 12, 13 and 14 amount to material breaches **of the promise of sale** that was accepted by the Defendant at or around October 2020.*

*17. The plaintiff avers that the actions and/or omissions of the Defendant, the Defendant’s agents, servants or employee’s described above, amount to breaches of contract in law and accordingly the Plaintiff is entitled **to the remedy of specific performance of the contract and damages.***

PARTICULARS

Damages for breach of contract **SCR4,000,000.00**

Calculated as twice the deposit paid

By the Plaintiff to the Defendant.

*WHEREFORE, the Plaintiff prays to this Honourable Court to enter judgment in favour of the Plaintiff **in the sum of SCR4,000,000.00** and make the following orders:-*

1. *declare that Mr. Peter Lesperance was acting in his capacity as agent of the Defendant in law throughout the negotiations with the Plaintiff to purchase Titles H8694 and H8692.*
2. *make a finding that there has been a variation of the terms and conditions of the promise of sale in that the purchase price agreed upon in the promise of sale between the Plaintiff and the Defendant was subsequently varied from SCR4,500,000,000.00 to SCR4,000,000.00 as the land area was much smaller than the size originally agreed by the Plaintiff and the Defendant due to the extraction of 560 square meters in favour of Bernadette Boniface as per the court order.*
3. *declare that there has been a sale of Titles H8694 and H8692 from the Defendant to the Plaintiff for the sum of SCR4,000,000.00 by operation of law.*
4. *order the Defendant to pay the Plaintiff the sum of SCR2,000,000.00 three months after the date of the judgment of the Supreme Court.*
5. *order the Defendant to transfer title numbers H8694 and H8692 to the Plaintiff upon receipt of the sum of SCR2000,000.00 from the Plaintiff to the Defendant.*
6. *Failing which, order the Registrar of Lands to rectify the land register by registering title numbers H8694 and H8692 in the name of the Plaintiff upon proof of payment of the sum of SCR2000,000.00 from the Plaintiff to the Defendant.”*

[13] The Respondent objected to the amendments stating that she has been advised by her Attorney that the proposed amendments are contrary to law and in particular to the provisions of section 146 of the Seychelles Code of Civil Procedure in that the proposed

amendments are intended to convert a suit of one character into a suit of another and substantially different character. The Respondent further avers that the Applicant is attempting to convert a suit with a cause of sale into a different suit and cause of action based on the remedy of specific performance.

[14] The Respondent further averred that she has been advised by her attorney that the proposed amendments are not being sought in good faith, they would cause her prejudice, she would not be compensated by costs and it would alter the nature of the suit as was found in the case of *Petit Car Hire v Mandelson [1977] SLR 68, 72-73*. She further aver that the proposed amendments are not necessary for the determination of the real questions in controversy between the parties as these questions were never raised during the course of the examination of the Applicant.

[15] In his submission learned counsel for the Applicant submitted this application is made under Section 146 of the Seychelles Code of Civil Procedure which provides that the Court may allow any amendments to be made to pleadings. There are two issues that the Court has to consider under Section 146 in the interest of justice. The Court can allow or can grant leave to amend pleadings if it may be just to do so. The Court has to be guided by what is in the circumstances in the interest of justice and secondly, whether the amendments would help the Court to determine what are the real questions in controversy between the parties.

[16] Learned counsel submitted further that there is a proviso to Section 146 where the Court may not allow the amendment which is if the amendment would convert the suit from one character into another of substantially different character. This is the only reason that the Court may decide not to grant leave to amend pleadings. Learned counsel submitted that the amendments that are being proposed will not convert the suit from one character into a substantially different character because the crux of the matter remains the same. At the heart of this case is an allegation by the Applicant in this motion against the Respondent of a breach of contract and the prayer remains the same for a specific performance of the contract.

- [17] Learned counsel referred the Court to the cases *of Mechanism Development Manager vs. Yangtze Construction Company Pty Limited - MA 340 of 2015* and *Yussuf Darwish and Anor vs. Eco Villas - CS 66 of 2021* in support of his submission.
- [18] Learned counsel for the Respondent submitted that in his view the amendments would change the suit from one character into one of another character. Learned counsel referred the Court to the case of *Petit Care Hire vs. Mandelson 1997 SLR 68*. He argued that initially the Plaintiff was requested to refund the deposit and damages. The amendments move away from this to specific performance. This has altered the suit and it should not be permitted.
- [19] Learned counsel submitted that in certain instances an amendment can be permitted if it is necessary for the real question in controversy between the parties to be determined. The original plaint is very clear on refund and paying of damages moving for specific performance is clearly a different cause of action.
- [20] Learned counsel further submitted that in the Plaint the price that was originally agreed between the parties was SCR4,500,000 but now the Plaintiff is asking this Court to order specific performance and he is proposing payment of SCR3,800,000. There is no need to amend the plaint in order to determine the case, it is straight forward; a deposit was made and the Plaintiff says requesting originally to have the money back and damages.
- [21] Article 146 of the Seychelles Code of Civil Procedure Act provides for amendment of pleadings as follows:

“146.The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that a plaint shall not be amended so as to convert a suit of one character into a suit of another and substantially different character.”

[22] The Ugandan case of Okello Wilbert v Obel Ronald MA No: 97/2020 arising in CS No. 157/2017 has been referred to by this Court in the case of University of Seychelles American Institute of Medicine vs The Attorney General MA19/2022 arising from (CS131/2019). The Court in reference to Order 6 Rule 19 of the Civil Procedure Rules which is similar to article 146 and empowers the Court to grant leave to a party to amend their pleadings at any stage of the proceedings gave the following elaborations:

“The principles that have been recognized by the courts as governing the exercise of discretion to allow or disallow amendment of pleadings have been summarized in a number of decided cases and they boil down to the following:

- a. Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities.*
- b. An amendment should not work an injustice to the other side. An injury that can be compensated by an award of damages is not treated as an injustice.*
- c. Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.*
- d. An application that is made malafide should not be granted.*
- e. No amendments should be allowed where it is expressly or impliedly prohibited by any law.*
- f. The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.*

[23] In the same case of University of Seychelles American Institute of Medicine (supra) this Court also stated:

“The Seychelles jurisprudence has adopted a similar liberal application in respect to amendment of pleadings as has been referred to by both learned counsel in their submissions. See Petit Car Hire v Mandelson [1977] SLR 68 and Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd SCA 10/2014 [2016] SCCA 4.”

Indeed in this case, the amendment being sought has the effect of asking for an additional remedy of specific performance which was not originally pleaded. Otherwise, the cause of action remains the same, being breach of the promise of sale. The variation of the outstanding price is a matter for the Court to determine if the Plaintiff’s case is successfully established.

[24] The case of Multichoice Africa Ltd v Intelvision Network Ltd & Ors (Civil Appeal SCA 45/2017) [2019] SCCA 1 (09 April 2019) the following analysis were made in respect of the cases of Petit Car Hire and Fisherman’s Cove Limited :

“The two most instructive cases in the domestic jurisprudence relating to amendments to pleadings are the following:

1. Petit Car Hire v Mandelson [1977] SLR 68, 72-73, in which Sauzier J stated that an amendment to a plaint before the close of one’s case should not be refused (1) if sought in good faith, (2) would not cause prejudice to the other party, (3) would not be compensated by costs and (4) did not alter the nature of the suit. He added that apart from the specific prohibition in the proviso to section 146, the provision was couched in very wide terms and must be given a liberal meaning.

2. Fisherman’s Cove Limited v Petit and Dumbleton Limited (1978) SLR 15, 18 in which Sauzier J stated that an amendment sought would be permitted where it was necessary for the real questions in controversy between the parties to be determined once and for all. He permitted an additional cause of action in the alternative.”

In both cases Sauzier J. was correct reflecting the wider context and spirit of article 146 of the Seychelles Code of Civil Procedure which was intended to be applied liberally. Unless the amendment materially changes the nature of a case from one cause of action

into another or would result in injustice, or is likely to cause unacceptable prejudice to a party that cannot be compensated, the amendment should be allowed.

[25] Having considered the amendments proposed in the Motion, I am satisfied that they do not convert the existing suit into another. I find that they expand the pleadings and make clearer the issues in controversy between the parties and expand on the scope of remedies claimed. The proposed amendments are also not prohibited by law and have not been made *mala fide*. There is no prove or any ascertained notion of bad faith.

[26] Consequently, I rule in favour of the Applicant and I make the following orders.

- i. The Applicant is granted leave to amend its pleadings in CS 25 of 2021.
- ii. The Applicant shall file the amended plaint within 14 days from the date of this Ruling.
- iii. The Respondent shall then be given time to file amended defence as and if deemed appropriate.
- iv. The Respondent may also be granted leave to recall any witness who has already testified for further cross-examination if so required.
- v. The costs of this application shall follow the outcome of the main suit.

Signed, dated and delivered at Ile du Port on 15th day of September 2023.

G. Dodin

Judge