

SUPREME COURT OF SEYCHELLES

Reportable

MC 81/2022

In the matter between:

RALPH NORIS FONTAINE

(rep. by Karen Domingue with Mr Uranie)

Applicant

and,

SYLVAIN DUGASSE

(rep. by Ms. Marguerite)

Respondent

Neutral Citation: *Fontaine v Dugasse* (MC81/2022) (December 2023)

Before: Burhan J

Heard: 18 September 2023

Delivered: 14 December 2023

JUDGMENT

BURHAN J

- [1] The Applicant Ralph Noris Fontaine filed an application dated 08 November 2022 (filed 23.11.2023) against the Respondent Sylvain Dugasse seeking an order requesting the Respondent to quit, leave and vacate the Applicant's house situated on land parcel H821. He further moved that should the Respondent fail to do so, a writ of habere facias possessionem be issued against the Respondent.
- [2] The application for writ of habere facias possessionem is supported by an affidavit of the Applicant dated 08 November 2022. In his affidavit Mr Fontaine avers that he is the son of the late Frederic Fontaine, also known as Frederick Fontaine, and the late Germaine Fontaine. In proof he has attached a copy of his birth certificate as RF1. He further avers that Frederick Fontaine and Germaine Fontaine hereinafter referred to as "the deceased" were the co-owners and fiduciaries of land parcel H821 situated at Glacis, Mahe. A copy of the Certificate of Official Search of the land parcel H821 was produced as RF2. It is

further stated that both Frederick and Germaine died intestate and their shares in Title H821 divulged on to their 14 children. Copies of the Certificates of Death were produced as RF3. It is stated by the Applicant that around 30 years ago, the deceased granted Marie Therese Dugasse verbal permission to build a two-bedroom dwelling house on land parcel H821. The said house was built on parcel H821 by Marie Therese Dugasse but never completed however she occupied the house until 2019. It is admitted in the affidavit that the Respondent Sylvain Dugasse is the son of Marie Therese Dugasse who lived in Canada and had come back to Seychelles in 2018 and occupied the house with his mother. In 2019, due to her old age and frail health, Marie Therese Dugasse moved permanently to Praslin where she is still living at present.

- [3] On 13th December 2021, Marie Therese Dugasse sold the incomplete house for a sum of Seychelles Rupees 25,000 to the Applicant. A copy of the receipt signed by Marie Therese Dugasse and given to the Applicant was produced as RF4. Upon the sale of the house by Marie Therese Dugasse to the Applicant, she gave her son the Respondent three months to vacate the house. The Respondent failed to comply with the instructions of his mother to vacate the house within the said period. On several occasions the Applicant has also verbally requested the Respondent Sylvain Dugasse to vacate his house, however the Respondent has failed and neglected to comply with his request.
- [4] The Applicant further avers in his affidavit that on 17th July 2022, the Respondent assaulted the Applicant by hitting him with a piece of wood, causing him to suffer a laceration to his head whilst he was replacing a broken door lock of an unoccupied room in his house. A copy of the complaint made by the Applicant to the Seychelles Police was produced as RF5. On 10th August 2022, the Applicant wrote to the Respondent requesting that he vacates the house within thirty (30) days of the date of the letter. A copy of the letter dated 10th of August 2022 was produced as RF6. The Respondent failed, neglected and refused to comply with the request of the Applicant.
- [5] The Applicant avers that he is informed by his Counsel and verily believes that any rights the Respondent had to occupy the two-bedroom dwelling house on land parcel H821, ceased and extinguished upon the sale of the house by his mother Marie Therese Dugasse

to the Applicant as it now belongs to the Applicant. It is the Applicant's contention that the Respondent has no right or consent or permission to remain in the Applicant's house and the Respondent is no more than a trespasser and a squatter in the house of the Applicant.

- [6] The Applicant admits he has done his utmost to evict the Respondent from his house, but the Respondent has failed and refused to leave the house. The Applicant further avers that he has no option and therefore as a last recourse, he prays for Court to issue a writ habere facias possessionem against the Respondent who has no right to be or remain in his house.
- [7] The Respondent filed his objection to the application dated the 06 March 2023. In his affidavit in reply the Respondent Sylvain Dugasse of Glacis states he is the only child of Marie Therese Dugasse. A copy of his birth certificate is produced as SD1. He too admits that the parcel H821 is owned by the late Frederick Fontaine and Germaine Fontaine and further states that Germaine Fontaine is his maternal aunt and sister of his mother. His mother he states has occupied the land legally having been granted permission more than 30 years ago by Frederick Fontaine and Germaine Fontaine to construct a house for herself and her family. This fact is admitted by the Applicant.
- [8] He further states that his mother cared for her sister and his aunt Germaine Fontaine for many years until Germaine Fontaine passed away in 2015. The Respondent further states that Marie Therese Dugasse has lived on parcel H821 at Glacis in a house that was built with funds he contributed and his mother has lived on the said property. He states that his mother had added value to the land by planting fruit trees and flowers as well as constructing a retaining wall and a house with funds he sent from his work-pay in Canada.
- [9] The Respondent further states that he has occupied the house on a full-time basis since 2018 and that in 2019, his mother moved to her sister on Praslin and left him to take care of her house. The Respondent further states that he has been advised by Counsel and verily believes that his mother has a droit de superficie over parcel H821. He further states that to his knowledge, the house is still owned by his mother and he verily believes that the Applicant's claim of sale of the house is incorrect and a tactic to get him to move out of the house so that he can take control of it. The Respondent further states that should there have been any sale of the house, he would be aware of it since it was built with funds that he

contributed and therefore he has permission to occupy it and has occupied it for the past 5 years.

- [10] The Respondent further alleges that the Applicant himself in the demand letter dated 10th August 2022 avers that the Respondents' mother moved out because she was senile and thus the Respondent doubts his mother sold the house and any production of documents produced to prove the sale of the house he has reason to believe are fraudulent. He further states and verily believes that the receipt is not sufficient proof of the sale of a house.
- [11] The Respondent states that he was never given any instructions to vacate the house by his mother and the Applicant's claims of assault is unfounded and that in reality, it is the Applicant who constantly harasses him and, on several occasions, the Applicant has come to the house and destroyed his property.
- [12] He further states that the Applicant's claim and need for possession is not genuine, as it is his view that the Respondent has never lived in the house and as the Applicant has a place to stay, the matter before Court is not of an urgent nature; If the Court were to grant the Applicant's motion he would be placed in a position of extreme hardship with no other place to live; The Respondent further moves that this application is vexatious and should be dismissed by the Court.
- [13] The Applicant thereafter filed another motion dated 21st June 2023 requesting to file further affidavits in regard to document they did not have when their application was first submitted. The motion was granted as the Respondent had no objections and did not want to submit any further reply. Accordingly, the Applicant filed a further affidavit dated 21 June 2023 together with annexures RFA to RFB which was accepted by Court.

The Law

- [14] The Court generally decides the application of a writ habere facias possessionem by the affidavit evidence of the Applicant and the Respondent. Issuing of the writ habere facias possessionem is a special remedy available to anyone who is dispossessed otherwise than by a process of law and it is available to a party whose need is of an urgent nature and who has no other equivalent legal remedy at his disposal.

[15] In Maryliane v Nolin v Nelson Samson Civil Side No.171 of 1996 Bwana J held:

‘It is the law that a writ habere facias possessionem (the writ) is granted in the following three aspects-

(1) To eject a person occupying property merely on the benevolence of the owner, or if he is a trespasser. Such a person has neither title nor right over the property. (2) If it is the only legal remedy available. (3) If the respondent has no serious defence to make. Should there be one, then the writ is not granted. Instead, the parties are left to resolve their dispute in a regular action. It was further stated by this Court in the case of Denise Voycey v Philibert Loizeau (CS208/94) that the three principles stated above should always be considered all together and not separately.’

In the Court of Appeal case of Amade v Mousmie (SCA 10/2009) SCAR 105 Hodoul JA stated at [13]

The guiding principle should be that if an objective evaluation of the affidavit material leads to the inevitable and compelling conclusion that the respondent “does not stand any chance of success” in regular action, the writ should be granted; however, if the conclusion is that the respondent “may have a case” the application should be refused.’

At [7]

‘to succeed in obtaining a writ of such nature, an owner has to meet a threshold test: to show that he has a clear title to the property in lite. An unclear and ambiguous title would not avail. This aspect is often misunderstood. The law speaks of title and not title deed. If an applicant proves his clear and unambiguous title, the burden shifts on the respondent to show that he has ownership or occupational rights over the property. (Emphasis added)

Analysis of Affidavit Evidence and Submissions

- [16] Learned Counsel for the Applicant Mr Uranie maintained the background facts of the case as set out in his affidavit and supported his submissions with the annexures attached therein. He maintained the fact that on the 10th of August 2022, a formal letter of demand was issued to the Respondent requesting him to vacate the house within a period of 30 days, however, the Respondent failed, neglected and refused to comply with the request. He submitted Mr. Ralph Fontaine is the proprietor of the house that the Respondent is currently occupying on land parcel H821 and any right for Mr. Sylvain Dugasse and his mother Marie-Therese Dugasse had to occupy this house was extinguished upon the sale of the house to Mr Ralph Fontaine. The Respondent has no right or consent or permission of the owner to reside in the house and he is merely now a trespasser and a squatter. Mr. Ralph Fontaine has done his utmost to amicably request the Respondent to vacate the house but he has failed and refused to do so and he is therefore praying this court to issue a writ habere possessionem against the Respondent who has no right to remain in the house.
- [17] Learned Counsel denies the Respondent's contention that he has a right through his mother, a droit du superficie, and states that the consent or permission to build was given by the Applicant's mother personally to Ms. MarieTherese Dugasse and there was no condition attached in regards to family members. It is the view of this Court that when the Respondent's mother Marie Therese Dugasse sold her house, all the rights she had to the building, ceased to exist. The fact that the building was sold by her to the Applicant is corroborated by the evidence in the affidavit of the Applicant, the annexure RF4 and the subsequent affidavit dated 19th June 2023 tendered by Marie Therese Dugasse herself. Ms. Marie-Therese Dugasse in her affidavit also states details of the sale of the house and that her niece May-lys Joubert witnessed the sale. She states she had no obligation to inform her son the Respondent of the sale. Her son had not contributed in any way towards the house. The only obligation that she had towards him was to inform him that he had to vacate the house. She states she had no intention of claiming a droit de superfice on the land from the heirs of her late sister and further states, quite correctly in the view of this

Court, that if such right exists it belongs to her in her personal capacity. She further waives her right to claim it. The proof the sale of the house is further evidenced by the affidavit dated 19th June 2023 of the witness to the sale May-lys Joubert who states in her affidavit that she witnessed the sale of the house and Ms Marie Therese Dugasse signing the said receipt for SCR 25,000 prepared by her. In the light of the sworn affidavit evidence of both the Applicant, the seller and the witness to the sale and the annexed receipt corroborating same, I am unable to accept the wild un-substantiated allegation by the Respondent that this sale was fraudulent.

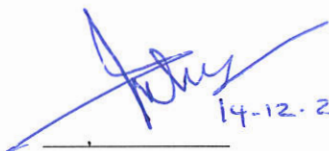
- [18] Learned Counsel for the Respondent Ms Michelle Marguerite contends that the Respondent Mr Sylvain Dugasse contributed towards the construction of the house that his mother built and occupied. However, there are no supporting documentation to support such a claim whereas the Applicant's further affidavit dated 21 June 2023, contains an attached affidavit from Ms. Marie-Therese Dugasse wherein his mother Therese Dugasse under oath states that no contribution was made towards the construction of the house by Mr. Sylvain Dugasse while he was residing in Canada. I therefore cannot accept the contention of the Respondent that he had made any contribution towards the construction of the house.
- [19] Lastly, in his affidavit in reply, the Respondent Mr. Sylvain Dugasse states that he would suffer extreme hardship and will have no other place to live should this application be granted. He further contends that the Applicant has failed to show that he requires the premises as a matter of urgency. It is the Applicant's contention that when it comes to the matter of urgency in regards to the writ being granted, with the main affidavit for Mr Ralph Fontaine, there is a police statement whereby an assault was reported to the police where Mr Sylvain Dugasse assaulted Mr Ralph Fontaine from behind with a piece of wood and he ended up suffering a laceration on his head and this has caused Mr Ralph Fontaine, not to access the house that he has purchased, as a measure to maintain the peace until this matter has been heard and dealt with before the Supreme Court. It is clear that up to date for several years, the Applicant has not been in enjoyment of his rightful property due to the conduct of the Respondent.

- [20] It is the considered view of this Court that the Respondent has had sufficient time to seek alternative accommodations since December 2021 when Ms. Marie Therese Dugasse sold the house to Mr. Ralph Fontaine. Further even prior to the case being filed, he had been given notice through a letter of demand for him to vacate the property. It is clear that the conduct of Respondent by his conduct in not vacating the premises over several years has deprived the Applicant of enjoying his right to own property and it has now become necessary for the Applicant as a matter of urgency to file this case to have the Respondent evicted from the premises. Further the Respondent cannot complain of hardships that would be caused to him if he vacates the said premises, as it is clear from the evidence that sufficient time and notice has been given to him to find alternative accommodation. Further his mother states that he is in receipt of a pension from Canada and therefore he can afford to rent a place of his own.
- [21] It was held in *Delphinus Turistica Maritim v Villebrod* [1978] SLR 28, an owner must show clear title not just a title deed to the property. This Court is satisfied that in this case, Mr. Ralph Fontaine has shown that he does have title through his purchase of the house and he is also an heir to the property through succession. It is the onus of the Respondent to show his ownership and occupation rights over the house, once the Applicant has shown proof of ownership. However, no serious defence has been raised by the Respondent in this matter and nothing of what he stated in his affidavit has been supported by any documentary evidence. A simple denial of title by the Respondent is not a valid defence as was raised in the affidavit in reply. The Respondent has not shown any sufficient grounds why such a writ should not be granted to the Applicant. The Respondent has not been able to establish to this Court that he has any title to the land or that he personally has a droit de superficie in operation over the land nor has he been able to produce a single receipt or any bank statement to establish he has made any contribution to the construction of the house. Although he states that he is staying on the property with the consent of his mother Marie Therese Dugasse, her affidavit evidence already considered by this Court indicates otherwise i.e that she has herself asked him to vacate the premises.

Determination

- [22] Giving due consideration to the submissions of learned Counsel for the Applicant and the Respondent, I cannot agree for reasons set out in [14] to [21] herein that the Respondent has a serious or bona fide defence. He has absolutely no title to the house. This Court is satisfied that the Respondent has no right to be allowed to continue to stay in the premises. He has deprived the Applicant of his right of lawful possession by his occupation of the premises without having any title or right to the said property for a considerable length of time since the sale in 13 December 2021. He cannot complain now of any hardships in having to leave the premises as he has been asked to vacate as far back as the 10th of August 2022. His refusal to go, his violent conduct towards the Applicant supported by the contemporaneous statement made to the police by the Applicant, indicate the difficulties the Applicant had to undergo whilst being deprived of his property by the Respondent hence the urgency of his application.
- [23] Therefore, this Court finds that in the circumstances of this case, the Respondent has no serious defence to make to the application of the writ of habere facias possessionem. I order the defendant to quit, leave and vacate the Applicants house on land parcel H821 and should the Respondent fail to abide, that a writ habere facias possessionem shall issue.

Signed, dated and delivered at Ile du Port on 14 December 2023.


14-12-2023

M Burhan J

