

**SUPREME COURT OF SEYCHELLES**

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**Reportable/Not Reportable/Redact**  
[2023] SCSC ...  
CS35/2021

In the matter between:

**CARLO PEROLARI**  
*(rep. by Karen Domingue)*

**Plaintiff**

and

**SOPHIE PEROLARI**

**1<sup>st</sup> Defendant**

**GAIA PEROLARI**  
*(rep. by Frank Elizabeth)*

**2<sup>nd</sup> Defendant**

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**Neutral Citation:** Perolari v Perolari & Anor (CS35/2021) [2023] SCSC ..... (03 February 2023).

**Before:** Carolus J

**Summary:** Plea in Limine Litis – The plaintiff has no locus standi to bring the case against the defendants – The plaint discloses no reasonable cause of action and is frivolous and vexatious.

**Delivered:** 03 February 2023

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**ORDER**

This Court finds that to determine the pleas in limine litis raised by the defendants prior to hearing the case on the merits would be premature. It would be more appropriate for the points of law to be disposed of at the hearing of the matter.

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**RULING**

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**E. CAROLUS, J**

[1] This is a ruling on a plea in limine litis. The plaintiff filed a plaint dated 9<sup>th</sup> April 2021 against the two defendants on 16<sup>th</sup> April 2021. The defendants handed their defence thereto and a counterclaim dated 30<sup>th</sup> June 2021 into Court on 30<sup>th</sup> July 2021. This was

followed by a request for further and better particulars of the counterclaim filed on 8<sup>th</sup> September 2021 by Ms. Domingue counsel for the plaintiff. Mr. Elizabeth representing the defendants filed his reply thereto on 29<sup>th</sup> September 2021. On 19<sup>th</sup> November 2021 Mr Elizabeth filed a motion (MA307/2021) for leave to amend the defence of the defendants to include therein the particulars contained in the reply to the plaintiff's request for further and better particulars. This would simplify the pleadings and include in the defence all material facts to prove the defendants' case instead of having some matters in the defence and others in the reply to the request for further and better particulars. No objections were made by the plaintiff and the motion was granted on 24<sup>th</sup> November 2021. The amended defence and counterclaim dated 17<sup>th</sup> November 2021 was filed on 16<sup>th</sup> December 2021. The defence did not contain any points of law pleaded in *limine litis*. The plaintiff's defence to the counterclaim was filed on 9<sup>th</sup> February 2022 and the case was fixed for hearing on 13<sup>th</sup> and 14<sup>th</sup> June 2022 which was vacated on 13<sup>th</sup> June and new hearing dates fixed for February and March 2023.

[2] On 17<sup>th</sup> June 2022 Counsel for the defendants filed a Notice of Motion (MA41/2022) for “an order that the plea in *limine litis* **filed** by the defendants be heard before the hearing proper set for the 28<sup>th</sup> of February 2023 and 2<sup>nd</sup> March 2023” (see para 2 of Notice of Motion). The Notice of Motion was supported by an affidavit of the 2<sup>nd</sup> defendant to which no documents were exhibited. On the same date 17<sup>th</sup> June 2022 Counsel for the defendants filed a “Plea in Limine Litis” in the main case. It is to be noted that not only had no plea in *limine litis* been raised in the amended defence, but leave to file the “Plea in Limine Litis” filed on 17<sup>th</sup> June 2022 had neither been requested nor granted by the Court. It is pertinent that section 90 of the Seychelles Code of Civil Procedure provides that points of law are to be raised in the pleadings.

[3] It cannot be argued that the Notice of Motion in MA41/2022 was for leave to file a plea in *limine litis* in addition to having it heard prior to the hearing of the case on the merits. The use of the word “filed” at para 2 of the Notice of Motion which I have highlighted at paragraph [2] hereof gives the impression that a plea in *limine litis* had already been filed and that the motion was for a supposedly already filed plea in *limine litis* to be heard

before the case was heard on the merits. Furthermore no copy of a “Plea in Limine Litis” intended to be filed was exhibited to the 2<sup>nd</sup> defendant’s supporting affidavit.

[4] In her affidavit in support of the motion the 2<sup>nd</sup> defendant averred that –

3. *I am advised by my attorney, Mr. Frank Elizabeth, that it is necessary **for me to file** a plea in limine litis in this case and that the said plea should be heard as a matter of urgency before trial as it substantially disposes of the whole cause of action.*
4. *I aver that it is necessary and in the interest of justice for **the point of law raised** to be set down for hearing and disposed of at any time before the trial.*
5. *I aver that by setting the point of law down for hearing before the trial, the Court would be saving the parties, time, expense and legal costs.*

[5] Paragraph 3 of the affidavit gives the impression that no plea in *limine litis* had been filed by the defendants yet but that they wanted to do so. This paragraph is therefore at variance with paragraph 2 of the Notice of Motion. I note however that similarly to para 2 of the Notice of Motion, para 4 of the affidavit seems to suggest that the point of law had already been raised.

[6] This Court being misled by the wording of the Notice of Motion into believing that a plea in *limine litis* had already been properly filed only sought to ascertain from plaintiff’s counsel whether she had any objections to the plea in *limine litis* being heard before the case on the merits. Counsel for the Plaintiff agreed to the same and on 5<sup>th</sup> October 2022 the Court granted the motion for a plea in *limine litis* which had not been raised in the pleadings and for which the Court had never granted leave to be filed, to be heard. The Court should not, strictly speaking, consider the plea in *limine litis* as the manner in which it was filed was not procedurally correct. Whether this was done intentionally or not Counsel is cautioned that this Court will not take such matters lightly in future. However given that the matter has already been fixed for ruling and in light of the 2<sup>nd</sup> defendant’s averment in the affidavit in support of MA41/2022 that the plea in *limine litis* substantially disposes of the cause of action, I will proceed to consider it. The plea in *limine litis* is as follows –

PLEA IN LIMINE LITIS

1. *The Plaintiff has no locus standi to bring this action in law as his interest in the property is not that of an owner but consists of a usufructuary interest only.*
2. *The application discloses no reasonable cause of action against the Applicants and is frivolous and vexatious*

[7] Mr. Elizabeth for the defendants filed written submissions in regards to the plea in *limine litis* but none was forthcoming by Ms Domingue for the plaintiff. I have considered Mr Elizabeth's submissions which will be referred to as appropriate.

[8] The case for the plaintiff who is the father of both defendants, is that he gave permission to the 1<sup>st</sup> defendant to occupy his apartment in Bel Ombre which she did up to August 2020, when she left Seychelles for England without informing the plaintiff of her departure or surrendering the apartment to him. Following the 1<sup>st</sup> defendant's departure, the 2<sup>nd</sup> defendant "came and went to" the apartment, but in December 2020 she left the apartment open and cats, insects and rodents entered it and spoilt the furniture. Consequently the apartment required a thorough cleaning. The plaintiff wrote to the two defendants requesting that they vacate the apartment which they refused to do. He avers that the 1<sup>st</sup> defendant has, by her conduct, self-terminated and/or revoked the permission to occupy the apartment given to her by the plaintiff; that except for her personal belongings which remain therein, she has physically vacated the apartment; and that the second defendant is occupying the apartment illegally and without any permission from the plaintiff. The plaintiff seeks an orders from the Court that the permission he gave to the 1<sup>st</sup> defendant to occupy his apartment has come to an end and/or has been terminated and/or revoked by the 1<sup>st</sup> defendant and/or the plaintiff; and that the second defendant is occupying the apartment illegally. He prays for an order that the 1<sup>st</sup> and 2<sup>nd</sup> defendants vacate his apartment situated on Titles J2442 and J2443; that the 1<sup>st</sup> defendant collects or makes arrangements for the collection of her personal belongings from the apartment; for the defendants to pay the costs of this suit; and any other orders that this Court deems fit.

[9] In their amended statement of defence the defendants aver that they are joint proprietors of Titles J2442 and J2443 – on which the apartment in question is located. According to the defence, the apartment is located beneath the family dwelling which the 1<sup>st</sup> defendant

had occupied with the plaintiff prior to going to England to study when she was instructed by the plaintiff to move into the apartment. The 1<sup>st</sup> defendant avers that the plaintiff knew when she left for England, and she was not aware that she had to surrender the flat before doing so. The 1<sup>st</sup> defendant denies the plaintiff's averment that she has self-terminated and/or revoked the permission to occupy the apartment by her conduct, and pleads in the alternative that even if the plaintiff can successfully establish that he granted her such permission, he has never specified the conditions or the duration of such permission.

[10] As for the 2<sup>nd</sup> defendant she claims that she was already a resident of the flat before the 1<sup>st</sup> defendant left for England and the plaintiff was aware of the same. In fact the plaintiff had instructed both defendants to occupy the apartment as he did not want them residing in the dwelling house, thereby giving them permission to occupy the apartment. The 2<sup>nd</sup> defendant was therefore not occupying the apartment illegally. Furthermore the 2<sup>nd</sup> defendant kept the apartment properly secured and free from pests and animals.

[11] In reply to the plaintiff's letters requesting that they vacate the apartment, the defendants responded through their lawyer that they would not do so without an Eviction Notice from the Rent Board.

[12] The defendants further aver that the relationship of the parties is that of a father and his children, that no commercial or other agreement exists between the parties that dictate their living arrangements, and that they moved into the flat out of fear and to avoid further confrontation with the plaintiff. Further because the plaintiff and the defendants are estranged there has been no opportunity for the defendants to discuss their living arrangements with the plaintiff.

[13] In terms of the Counterclaim the defendants/counterclaimants aver that except for when they were living abroad, they have always lived on Title Numbers J2442 and J2443 at Bel Ombre. They aver that prior to studying in the UK the defendants occupied the family dwelling together with the plaintiff but that the plaintiff made them move to the flat underneath. Further that due to the strained relationship between them and their father they have been unable to discuss their living arrangements with him.

- [14] The defendants/counterclaimants also claim that they together with Alessia Perolari are the joint proprietors of Title Numbers J2442 and J2443 of which the plaintiff only has a usufructuary interest. They are willing to occupy the family dwelling and permit the plaintiff to reside in the flat. In the alternative they aver that the plaintiff is in no need of the usufructuary interest as he resides on Eden Island and owns other immovable property. They on the other hand cannot afford other accommodation on their earnings and continue to live in the flat.
- [15] The defendants/counterclaimants aver that until the plaint was filed the plaintiff has done nothing to prevent the family dwelling from falling into disrepair but at the same time refused the defendants access to the house to upkeep it. Furthermore he has maliciously destroyed and/disposed of certain assets in the house. They also aver that the plaintiff has harassed, verbally abused and threatened them.
- [16] The defendants/counterclaimants seek orders from this Court that the plaintiff's usufructuary interest in Title Numbers J2442 and J2443 is extinguished forthwith; that the plaintiff collects or makes arrangements for the collection of his personal belongings from the dwelling house; for a prohibitory injunction against the plaintiff preventing him from harassing the defendants/counterclaimants and using any form of violence against them; for moral and material damages; that the plaintiff bears the costs of this suit; and any other orders deemed fit by this Court.
- [17] In terms of the first plea in limine litis, the defendants are asking this Court to make a finding that the plaintiff has no locus standi to bring the present suit on the basis that he only has a usufructuary interest in the land on which the property subject matter of the plaint – the apartment - is located. Throughout the plaint the plaintiff refers to the apartment as “his” apartment but does not state how the apartment came to be “his”. The defendants on the other hand have stated that they, together with Alessia Perolari are the bare-owners of the land on which the apartment stands and that the plaintiff only has the usufructuary interest therein. Apart from the legal aspect, a determination of the plea in limine litis will require this Court to ascertain the ownership of the various properties in question, and to the extent that it may be relevant, the manner in which such ownership

was acquired. The Court can only do so relying on evidence led by the parties – which at this stage of the proceedings has not yet been done. This is not a case where the point of law raised can be determined on the pleadings alone. I further note that in his submissions Mr. Elizabeth makes reference to and relies on factual matters which have yet to be proved, and which this Court cannot rely on.

[18] As for the second plea in *limine litis* that the plaint discloses no reasonable cause of action against the defendants and is frivolous and vexatious, Counsel for the defendants has submitted lengthily and in great detail as to the definitions of the phrases “reasonable cause of action” and “frivolous and vexatious” making reference to the relevant case-law. Suffice it to say that on the face of the pleadings it is not beyond doubt or plain or obvious to this Court that the plaint discloses no reasonable cause of action. See *Bessin v Attorney General* (1950) SLR 208. As for the action being frivolous and vexatious, this Court would be loath to make a finding at this stage and solely on the pleadings that the plaint has no reasonable chances of success and was filed only to annoy the defendants.

[19] For the reasons given above, I find that to determine the pleas in *limine litis* raised by the defendants prior to hearing the case on the merits would be premature. In my view it would be more appropriate for the points of law to be disposed of at the hearing of the matter, when the Court has heard evidence as indicated above.

Signed, dated and delivered at Ile du Port on 3<sup>rd</sup> February 2023.

E. Carolus J