

SUPREME COURT OF SEYCHELLES

Reportable

MA 358/2023

(Arising in CS 128/2022)

In the matter of:

MARY ANNE THERESE LOW-LAM

1st APPLICANT

MARGUERITE-MARIE MARIMBA

2nd APPLICANT

Acting in their capacity as the joint executrices
of the Estates of the late Innocent Bacharie and the late
Mrs Aricie Bacharie born Agripine

And

RAVICHANDRAN PILLAY

RESPONDENT

Neutral Citation: *Low-Lam & Anor v Pillay* (MA 358/2023)

Before: Carolus J

Summary: Application for an inhibition order, section 76 (1) of the Land and
Registration Act

Delivered: 30th January 2024

RULING

CAROLUS J

- [1] The Applicants have filed a civil suit by way of plaint against the Respondent in CS 128/2022, alleging breach of a promise of sale on the part of the Respondent. The present proceedings arises from a Notice of Motion filed on 13 October 2023 by the 1st Applicant in which she seeks an inhibition order on parcels V21057, V21058 and V20159 pursuant to Section 76 (1) of the Land Registration Act. The Motion is supported by an affidavit sworn by the 1st Applicant, which avers that it is just and necessary for this Court to grant an inhibition order until the hearing and determination of the civil suit between the parties. It is averred that that there is a real likelihood that the Respondent might dispose of the

property and cause irreparable loss and damage. It is further averred that there is no prejudice that would be caused to the Respondent if the Court grants an inhibition order. The Respondent does not object to the Application.

[2] The 1st Applicant through her counsel has submitted some authorities to assist this Court in coming to its determination on the inhibition order, namely *Finesse v Cesar* (SCA 47 of 2019) [2022] SCCA 21 (29 April 2022) and *Hackl v Financial Intelligence Unit & Anor* (CP 1 of 2009) [2010] SCCC 1 (2 June 2010). It was submitted that these authorities show how the Court has wide discretion when deciding on whether or not to grant an inhibition order taking into account to a case's distinct facts and whether justice demands such an order to be made.

[3] In *Benoiton & Ors v Rene & Ors* (MA 284/2019 (arising in CS 37/2019)) [2020] SCSC 494 (23 April 2020), this Court noted that Section 76 (1) of the Land Registration Act gives a discretion to the court to grant or refuse an inhibition order and that such discretion must be exercised judicially and in good faith. Upon a consideration of a number of authorities, this Court also highlighted the applicable principles and stated at paragraph [67] that:

- a. *Inhibition orders are in the nature of prohibitory injunction in that they restrict the registered owner and any other persons from having their transactions regarding the land in question registered against the title; they act to maintain the status quo and preserve the suit property pending hearing and determination of disputes between the parties relating to the suit property.*
- b. *Before granting an inhibition order the court must be satisfied that there are good reasons to do so. The threshold for granting orders for inhibition and which an applicant must satisfy in order to succeed in such an application is:*
 - i. *that the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.*
 - ii. *That the refusal to grant orders of inhibition would render the applicant's suit nugatory.*
 - iii. *That the applicant has an arguable case. For example, the applicant should have a sustainable claim over the suit property.*

- [4] In the present proceedings, the parties have a case before this Court for determination on whether the Respondent is in breach of a promise of sale. If the Court in CS 128/2022 determines that the Respondent is in breach of the promise of sale, then the judgment would be in favour of the 1st Applicant which may result in several orders including that ownership of the property be returned to the Applicants. In such a case, if the property is disposed of by the Respondent before the determination of CS 128/2022, it would be detrimental to the Applicant. The case made by the Applicant in CS 128/2022 is also an arguable case to the extent that she does have a sustainable claim on the properties by virtue of being the executrix of the estates of the late Innocent Bacharie and the late Mrs Aricie Bacharie.
- [5] For the aforementioned reasons I find that it is necessary to grant an inhibition order pursuant to Section 76 (1) of the Land Registration Act to prevent any further dealings with parcels V21057, V21058 and V20159 and maintain the status quo until resolution of the disputes between the parties in CS 128/2022.
- [6] In terms of section 76(2) of the Land Registration Act, a copy of this order is to be served on the Land Registrar, who shall register the inhibition in the appropriate register.

Signed, dated and delivered at Ile du Port on 30th day of January 2024.



E Carolus J