

# SUPREME COURT OF SEYCHELLES

---

## Reportable

MA259/2023

Arising in CS17/2022

In the matter between:

**TASIANA LOUISE**

*(rep. by Mr Basil Hoareau)*

**Applicant**

and

**BRIAN MARIA**

*(rep by Mr Joshua Revera)*

**Respondent**

---

**Neutral Citation:** Tasiana Louise V Brian Maria (MA 259/2023) (02 April 2024)

**Before:** Esparon J

**Summary:** Application for an order of inhibition pursuant to section 76(1) of the Land Registration Act.

**Heard:** 9 January 2024.

**Delivered:** 02 April 2024

---

## **ORDER**

Application for an order of inhibition pursuant to Section 76(1) of the Land Registration Act – Order of inhibition granted inhibiting the registration of any dealings with parcel V21775 and V21776 pending determination of the suit in CS17/2022 or pending further order of the Court.

---

**ESPARON J**

## **Introduction**

- 1) This is an Application by way of Notice of Motion of which the Applicant is seeking an order from this Court inhibiting any dealing with parcels V21775 and V 21776.

## **The Pleadings**

- 2) The Application is supported by the Affidavit of the Applicant, Tasiana Louise who avers inter-alia in her Affidavit the following;

‘4. In 2011, Brian Maria qualified for a parcel of government land, parcel V 17983 at Sans Soucis (hereinafter the property) where we currently resided.

5. I aver that I gave a sum of RS 89, 250.00 to Brian to purchase the property on an oral agreement with Brian that half of the property would be transferred into my name after expiry of the seven-year restriction against the sale imposed on the said property by the government

6. I aver that the said sum I gave was from the proceeds of sale of my land at La Misere.

7. Replying on the said agreement, I used the remaining proceeds of sale of my land and borrowed a loan from the bank under my business name in order to develop the property. I built several structures which included a house, an apartment and retaining and boundary Wall. The said structures were valued at a total sum of Rs 7, 725,000.

8. It was an implied term of the agreement that all constructions effected by me on the property were to belong solely to me and would become legally registered in my name upon the subdivision of the property

10. Brian did not assist me in financing the development of the property and after the relationship between me and Brian broke down about 2 years ago Brian started living in a bedsitter built by me on the property.

13. I have instituted a suit before the Supreme Court demanding that Brian transfers an undivided half share interest in the property, along with all constructions standing thereon to me. It is now shown to me, produced and exhibited hereto as TL1 a copy of the Plaint instituted by me against Brian before the Supreme Court.
14. Parcel V17983 has only been recently subdivided into the following parcels, namely V 21775 and V21776. The Respondent has expressed his intention to sell and transfer the said parcels of land without any regards to my rights.
15. On the basis of the above, in order to ensure that I can execute any judgment and/ or proper effect can be given to any judgment, that may be granted in my favour against Brian on the basis of the suit, it is in the interest of justice that an order be made by this Honourable Court inhibiting until further order of this Honourable Court, the registration of all dealings with parcels V21775and V21776 under the Land Registration Act’.
- 3) The Respondent in his Affidavit in reply has admitted that he was in a relationship and lived together but has denied all the other averments of which the Applicant is put to the strict proof and further avers that he is the sole proprietor of parcel V17983 situated at Sans Souci.
- 4) The Respondent further avers at paragraph 6 of his Affidavit in reply that the said amount referred to in paragraph 4 was not monies given to him by the Applicant as a loan or her contributions towards the purchase of his property but as a refund of monies the applicant owed to him.
- 5) He further avers at paragraph 11 of his Affidavit in reply that ‘after the purchase of the property namely V 17983, the applicant and I were living in concubinage and we separated sometime in the year 2019 where she left the property’.
- 6) The Respondent further denies paragraph 7 of the Applicant’s Affidavit and avers that work done on the property namely the stone retaining wall, building the house, boundary wall and concrete access road were from the revenue earned by him from hiring out a pickup truck.
- 7) The Respondent further denies at paragraph 13 of his Affidavit that he has any agreement with the Applicant to transfer half of the said property in her name after the expiry of the

7 years' restriction and further avers that the Applicant had borrowed RS 1,800,000 from credit union on her business name to build her business where she purchased five motor vehicles from excel motors.

- 8) The Respondent further avers in his Affidavit in reply that desiring to assist the Applicant, he mortgaged his property as a collateral so that the Applicant could be able to secure the above loan.
- 9) The Respondent avers in his Affidavit in reply that the Applicant defaulted the loan repayment borrowed from the bank reflected in the sum of RS 2, 105, 672.01, the bank had filed a commandment before the Supreme Court for seizure of the Land.
- 10) The Respondent avers at paragraph 22 of his Affidavit in reply that he had no option but to seek permission of the bank to subdivide the property into land parcel V21775 and V21776 wherein he sold V 21776 to a third party and used the proceeds of the sale to clear the loan arrears preventing the Judicial sale.
- 11) The Respondent further avers at paragraph 23 of his Affidavit in reply that the Applicant has filed this Application in bad faith with the sole intention of preventing the transactions of clearing the bank loan from taking place and the Respondent further avers that a grave injustice would arise should this Application be granted.
- 12) The Respondent further avers that this Application is frivolous and vexatious and ought to be dismissed in its entirety.

### **Submissions of Counsels**

- 13) Counsel for the Applicant relied on the law namely section 76 of the Land Registration Act. According to counsel the basis of the Application is the suit before the Court. Counsel for the Applicant relied on the Affidavit sworn by the Applicant in support of the Application. The Applicant submitted that while there was a suit before the Court, the Respondent subdivided the land parcel and attempted to sell the property without any regards to the rights of the Applicant and that the Respondent was not contesting this fact in his Affidavit in reply of which he has averred that he has sold it to a third party. Counsel for the Applicant further submitted that as regards to the application which is before the Court, the Court should not go into the merits of the Case.
- 14) Counsel further submitted to the Court that section 76 of the Land Registration Act gives a discretion to the Court of which the Court has to act judiciously. Counsel for the Applicant cited a number of cases from the Kenyan Courts of which counsel for the

Applicant submitted that the Land Registration Act of Kenya is similar to that of Seychelles namely the case of Falcon properties, a case of the high Court of Nairobi, environment and land case 450 of 2012 of which the court held that the Court should exercise its discretion when there are good reasons for doing so, namely to preserve the property and that there is no requirement that the Plaintiff must show a prima facie case before an inhibition order can be issued. Counsel for the Applicant cited the case of **Benoiton V/S Zarquani** which referred to the Kenyan case of the estate of Elijah Ngari, In re Estate of Charles Njeru Muruatenu, the case of Japhet Kaameyi M'ndatho of which the Court emphasized the necessity to preserve the status quo pending the hearing and determination of the case before the Court and that the suit property is at risk to being disposed and that the refusal to grant the inhibition orders would render the Applicant's suit nugatory and that the Applicant should show an arguable case.

- 15) Counsel further submitted that in the present case there are good reasons for doing so since there is a suit before the Court and that the Respondent has already admitted to have subdivided and sold the property when there is a pending suit before the Court.
- 16) Counsel further submitted that the Affidavit of the Respondent is defective in that the Respondent states at paragraph 2 that the facts the matter deposed herein are true, where the same are within my knowledge all are true to the best of my information and belief. According to Counsel for the Applicant, the Respondent in his Affidavit does not distinguish what is from his personal knowledge and what is from his information or belief. Counsel cited the case of **Mica Faure V/S the Republic** which relied on the case of **Union Estate property Management V/S Mittemayer** where the Court held that an Affidavit which is based on information and belief must disclose the source of the information and the grounds of his beliefs and that it is necessary for the validity of an Affidavit to distinguish what part of a statement is based on knowledge and what part is based on information and belief and as such the Affidavit of the Respondent should be disregarded by the Court.
- 17) He further submitted that even if the Court was to take this Affidavit into account, that the Applicant has established an arguable case and that the Applicant has established that there are good reasons to preserve the property pending final determination of the suit which if not granted will render any judgment in favour of the applicant nugatory.
- 18) On the other hand, counsel for the Respondent submitted to the Court that the Respondent has substantiated his averments in his Affidavit that the Respondent was the one who built the property and has given the reason why the Respondent had to subdivide the property and sell part of it since the bank had filed for foreclosure in CM 24 of 2022. Counsel for the Respondent relied on the case of **Julien Parcou V/S Jill Laporte** of which in this case the land was in serious state of dilapidation, infested with vermin and unfit for human occupation of which the court granted an order of removal of the inhibition order for these

reasons and likewise counsel urged the court that the Respondent did not act in bad faith due to the bank filing an action to fore close the said property.

- 19) Counsel for the Respondent also submitted to the Court that the Affidavit is not defective since all the averments were made within the Respondent's own personal knowledge. Counsel further submitted that the Applicant has not shown that she would suffer irreparable harm or damages.

## **The Law**

- 20) This Court hereby reproduces section 76(1) of the Land Registration Act and it reads as follows,

‘the Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge’.

## **Analysis and determination**

- 21) Before going to the merits of the case, this Court shall deal with the point of law raised by counsel for the Applicant in his submissions as to whether the Affidavit of the Respondent is defective for not distinguishing which part is within the personal knowledge of the Respondent and which part of the Affidavit is based on his information or beliefs.
- 22) This Court has meticulously considered the case of **Union Estate Management (Propriety) Limited v Herbert Mittermayer (1979) SLR** where the Court held that ‘an Affidavit based on information and belief must disclose the source of the information and the grounds of the belief. It is therefore necessary for the validity of an Affidavit that an Affidavit should distinguish what part of the Statement is based on knowledge and what part is based on information and belief and that the source of the information and grounds of a belief should be disclosed’.
- 23) Upon perusal of the Affidavit sworn by the Respondent, this Court is of the view that the averments mentioned in the Affidavit of the Respondent are mostly within the personal knowledge of the Respondent and where he has been advised by his Attorney he has so stated. As a result, this Court finds that the Affidavit sworn by the Respondent is not defective and I shall proceed to consider the Affidavit of the Respondent in determining the merits on the Application

24) On the merits of the Application, this Court is of the view that it is pertinent to seek guidance from local and foreign case law in order to interpret section 76(1) of the Land Registration Act which seems to offer no guidance in the provision itself. In the case of **Andre Leslie Benoiton and Ors V Sarah Zarquani Rene and Ors**, MA 284 2019 (2020), SCSC 264 ( 24<sup>th</sup> April 2020), the Court relied on the following cases of **In re Estate of Elijah Ngari** ( Deceased succession) **cause NO 30 of 2013**, 2019 KLR (7<sup>th</sup> February 2019), **In re Estate of Charles Njeru Muruatenu**, **cause No 1053 of 2002** (2020) KLR (28<sup>th</sup> January 2020), the case of **Fidelity Commercial Bank V Bedan Mwaura Irari and another FLC case No 835 of 2015**, ( 2016) KLR (16<sup>th</sup> September 2016) adopted the principles in the case of **Japhet Kaaimeyi M' ndatho and the Philip Mwangi githingi** relied upon in the Mwambeja Ranching company Limited (supra) Carolus J stated the following ;

‘The principles illustrated in these cases may be summarized as follows;

- (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 the hearing and determination of the dispute 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 the Applicant must satisfy in order to succeed in such an application is:
  - (i) That the suit property is at 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 said property’.

25) Carolus J. stated the following at paragraphs 68 to 70 of her judgment in the case of Andre Leslie Benoiton & ORS (supra);



‘As what is meant by an arguable case, as stated above, the applicant should have a sustainable claim over the suit property. The difference between prima facie standard of proof (applicable to injunctions) and an arguable case applicable to inhibitions was also illustrated in the Fidelity Commercial Bank case (supra) in which the court stated;

‘A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal’.

From the above description, it is evident that a prima facie case means more than an arguable case. The Applicant must show that his/her right has been infringed.

Further in Japhet Kaimenyi M’ndatho case (supra), the Court after reviewing the facts of the case made it clear that the chances of success of the applicant in the head suit is not a determining factor of whether an applicant has an arguable case or not. It stated:

The Applicant has therefore established that he has an arguable case, whether he would succeed or not is not material at this Stage, and as such orders of inhibition ought to be granted.

Having said that, it is also worth reiterating that while an ‘arguable case’ is lower standard than a ‘prima facie case’, the applicant must have good grounds to be granted an inhibition order’.

26) In the case of **Falcon Properties Limited V/S Tom Odiara and ORS**, High Court at Nairobi (Milimani Commercial Court) Environmental & Land case 450 of 2012, P. Nyamweya J. stated the following;

‘it is clear from these provisions that the power granted to the Court is discretionary, and is to be exercised when there is good reason to preserve, or stay the registration of dealings with respect to a particular parcel of land for a temporary period. There is no requirement that the plaintiff must show a prima facie case before an inhibition can issue, and the general principle that will apply is that the discretion is exercised judicially by exercised in good faith, for proper purpose, taking into account all relevant factors and is reasonable in the circumstances of the case’.

27) Having laid down the guiding principles above of which this Court has to consider in order to decide whether to grant an inhibition order. This Court has now to decide as to whether



the Applicant has met these requirements in order to grant an inhibition order in relation to parcels V21775 and V21776.

- 28) In the present case, the Applicant has averred in her Affidavit that she was in a concubinage relationship with the Respondent. She had obtained a loan on behalf of her business in order to fund the Respondent to purchase the parcel of land and build a house, apartment and certain retaining wall on the property and the Respondent has admitted to receiving the exact sum of which the Respondent had purchased the said property albeit according to the Respondent for another purpose. The Respondent has also admitted that he had been in a concubinage relationship with the Applicant and that he had to have the property subdivided and sold to a third party in order to avoid the judicial sale of the said property in order to pay the bank the outstanding amount owed by the applicant to the bank as loan of which he had mortgaged the said property as a collateral for the said loan.
- 29) This Court takes notice that there is a pending suit before the Court namely C.S 17/22 whereby the Plaintiff is asking the Court to Order the Defendant to perform his obligation under the agreement between the parties, and transfer a one half share in parcel V17983 to the Plaintiff, along with all constructions thereon.
- 30) Without going into the merits of the case, this Court has considered the submissions of counsel for the Applicant and counsel for the Respondent, the Affidavit sworn by the Applicant and that of the Respondent and the case laws cited above. This Court is of the view that since the Respondent has admitted in his Affidavit in reply that he had to have the property subdivided and sold to a third party in order to avoid the judicial sale, this Court finds that the suit property in lite is at risk of being disposed of or alienated or transferred to the detriment of the Applicant unless preservatory orders of inhibition are issued.
- 31) Since the Applicant in his main suit is seeking for an order of this Court in CS 17/22 to order the defendant to transfer a one half share in parcel V17983 to the Plaintiff, this Court is of the view that such a refusal to grant such an order of inhibition against the said properties would render the applicant suit nugatory in the event it is successful.
- 32) Since the Applicant has averred in her Affidavit that she was in a concubinage relationship with the Respondent, a fact admitted by the Respondent and that she had obtained a loan on behalf of her business in order to fund the Respondent to purchase the land and building a house , apartment and certain retaining wall on the property and the Respondent has admitted to receiving the exact sum of which the Respondent had purchased the said property albeit according to the Respondent for another purpose, without going into the merits of the case, this Court finds that the Applicant has an arguable case.

33) As a result of Paragraphs 30, 31 and 32 of this ruling, this Court is satisfied that the above amounts to good reasons for the Court to grant an order of inhibition against the properties in lite.

34) Counsel for Respondent has submitted to Court that this Application is frivolous and vexatious and ought to be dismissed in its entirety. In the case of **Kivanga Estate Ltd versus National Bank of Kenya Ltd Civil Appeal No. 217 of 2015**, it was observed that;

*“An action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expense.”*

35) For the reasons mentioned in paragraphs 30, 31, 32 and 33 of this ruling, this Court is of the view that such an application does not fit within the definition of being frivolous and vexatious as described above in the case of **Kivanga Estate Ltd (Supra)** and this Court finds that such an Application before the Court is not frivolous and vexatious and is made bona fides.

36) As a result of the above, I accordingly grant an order of inhibition inhibiting the registration of any dealing with parcel V21775 and V 21776 pending the determination of the suit in CS 17/2022 or pending further Order of this Court.

37) I further Order that the Registrar of the Supreme Court serves a copy of this order on the Registrar of Lands being the Registrar General of Independence House, Victoria, Mahe.

Signed, dated and delivered at Ile du Port on the 2<sup>nd</sup> April 2024.

.....

Esparon Judge

