

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA
CIVIL SIDE NO. 213 OF 2009

Veronique Servina nee Desaubin Applicant

Versus

Julita Hoareau Respondent

William Hermine for the Applicant

Bernard Georges for the Respondent

RULING

Egonda-Ntende C.J.

- 1] This is an application for a writ of *habere facias Possessionem*. The Applicant is a fiduciary acting on behalf of the co-owners of the property known as parcel T2781. The supporting affidavit to the application avers that the respondent is occupying the property illegally. She has been asked to vacate and she had declined to do so. It is contended that she has no right or legal interest in the property. And the owners of the property want the property for their own use, occupation and enjoyment.

- 2] The respondent does not dispute title of the applicant. She disputes the right of the applicant to evict her. She contends on oath that she is on the land legally having been granted permission 33 years ago by the applicant's predecessor in title, Mr. Gaetan Desaubin, to construct a corrugated iron house for her to live in with her parents. She has lived on the said property since then, planting fruit trees and flowers as well as

repairing the house with the consent of Mr. Desaubin.

3] The respondent asserts 3 defences to the writ. Firstly that she is a third party in good faith (*tiers de bonne foi.*) Secondly that she is now possessed of a *droit de superficie* over the land she occupies. And in the alternative that she must be compensated in terms of Article 555 of the Civil Code of Seychelles for any construction and plantation before she can be evicted from the property.

4] The law with regard to the grant of a writ of *habere facias possessionem* is well settled in this jurisdiction. Bwana J., (as he then was), restated those principles upon which a writ of *habere facias possessionem* will issue in Maryliane Nolin v Nelson Samson Civil Side No. 171 of 1996 (unreported) in the following words,

‘It is the law that a Writ Habere Facias Possessionem 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 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.’

5] In answer to the writ the respondent has claimed a defence that she has right in the form of a *droit de superficie* that was granted by the applicant’s predecessor’s in title and that in the alternative she would be entitled to continued occupation until compensation for her developments on the land is paid in accordance with Article 555 of the Civil Code of Seychelles. A *droit de superficie* is a right that is created by agreement. It may be for a limited period of time or in perpetuity depending on the intention of the parties. See Albert v Stravens 1976 SLR 158.

- 6] Whether the respondent does indeed enjoy such a right of *droit de superficie* cannot be determined on affidavits or upon a hearing of a writ of *habere facias possessionem*. By raising it in these proceedings the respondent is asserting that she has a defence to the claim. On the other hand the applicants claim that whatever interest or right that the respondent may have had on the land in question was terminated by them.
- 7] On the face of it the respondent's claim of a *droit de superficie* and in the alternative entitlement to compensation for her developments under Article 555 of the Civil Code of Seychelles raise a defence to resist eviction and or a claim for indemnity against the applicant. See Coelho v Collie 1975 SLR 78. In those circumstances an arguable defence appears to exist which would incline to the view that the current dispute is not properly suited to the current proceedings of a writ of *habere facias possessionem*.
- 8] Mr. William Hermine, learned counsel for the applicant, contended that if the respondent had any right as she claimed she should commence proceedings against the applicants. That may well be possible. Nevertheless it does point to the fact the current proceedings for a writ *habere facias possessionem* cannot be sustained. The applicant too can enforce her rights by regular action. The writ *habere facias possessionem* is not the only legal remedy available to the applicant.
- 9] In light of the foregoing, in agreement, with Mr. Bernard Georges, learned counsel for the respondent, I find that this application cannot succeed. The writ is denied and the application is dismissed with costs.

Signed, dated and delivered this 3rd day of May 2010

FMS Egonda-Ntende
Chief Justice