

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 58/2012

[2016] SCSC 954

PATRIC ANGELO
Plaintiff

versus

**MINISTRY OF LOCAL GOVERNMENT
ANSE BOILEAU DISTRICT ADMINISTRATOR
MR. ANDRE POOL
ATTORNEY GENERAL
LEWIS LEON
M. THERESE MOUSBE NEE ROSE
EDMEA SERVINA
THEORDORE CELINE NEE LABICHE
JOSEPH SERVINA
DANNY SERVINA**
Defendants

Heard:

Counsel: Mr. C. Andre for plaintiff

Mr. E. Chetty for defendants

Delivered: 29 November 2016

JUDGMENT

Renaud J

Introduction

- [1] The Plaintiff who claims to be the legal owner of an immovable property is suing the Defendants claiming damages for illegal construction of a road on his property thereby causing him loss and damages in the total sum of SR2,827,957.95 plus interests and costs. The Plaintiff also prayed the Court to make other orders.
- [2] The Plaintiff initially entered his Complaint on 20th April, 2012. A first amended Complaint was entered on 1st March, 2013. A second amended Complaint entered on 25th May, 2015 by which the instant suit proceeded.

The Parties

- [3] The Plaintiff claims to be the legal owner of Title S1965 located at Anse Boileau, Mahe. The 1st Defendant is a Government Ministry being the parent Ministry of the 2nd Defendant. The 3rd Defendant was at the material time the Member of the National Assembly for Anse Boileau District. The 4th Defendant is the Legal Adviser of the 1st and 2nd Defendant.

Plaintiff's Case

- [4] The Plaintiff alleged that he is the legal owner of parcel S1965 located at Anse Boileau, Mahe, (hereinafter "the property") on which the 1st Defendant has built a road without his permission.
- [5] By letter dated 7th September 2004 the 1st and the 2nd Defendants, informed the Plaintiff, that they had obtained way leave from one Mr. Theodore Servina to construct the road access on the property. The 1st and 2nd Defendant did not state whether Mr. Servina was the rightful owner of S1965 to authorize them to build the said access road on the property.
- [6] The 3rd Defendant by letter dated 19th April 2005 stated that he had known that Mr. Servina had lived in a house on the property for a very long time but did not state the legal rights that Mr. Servina had in the property and whether the latter was the legal owner of the property.

- [7] The 4th Defendant being the legal adviser to the 1st and 2nd Defendants did not to advise the other Defendants on the necessity to carry out proper search and the consequences of constructing a road on the property thereby reducing its commercial value or for the possibility of development by the legal owners.
- [8] According to a survey prepared by Quantity Surveyor Mr. Nigel Stanley Valentin the extent of the depreciation of the property is not less than SR649,957.95.
- [9] Despite numerous attempts to negotiate compensation, including by letter dated 25th October 2011, the 1st and 2nd Defendants only informed the Plaintiff's by a letter dated 2nd November 2011, that the matter has been forwarded to the 4th defendant, but to date no response has been received from the 1st, 2nd or 4th Defendants regarding this matter.
- [10] As a result the Plaintiff suffered loss and damages and the depreciation of the property and this is a faute in law committed by the 1st, 2nd, 3rd and 4th Defendants are jointly and severally liable to make good to the Plaintiff.
- [11] The particulars of loss are as follows:

Loss of Value of the property	SR649,957.95
Loss of enjoyment of the property	SR1,500,000
Travelling from UK to sort out matters	SR100,000
Loss of earnings whilst in Seychelles	GBP10,000@22.80
Moral damages	SR350,000
Total	SR2,827,957.95

Interest on the accumulated sum @ a rate of 10% per annum as from April 2001.

- [12] The Plaintiff prays this Court to make the following orders:

To pay the sum of Rs2,827,957.95

The access road built on S1965 and to use alternative access road to get to their property

To compensation to the plaintiff for by surveyor to be appointed

Plus interest @10% per annum for April 2001

Legal costs and to order

Any other order that the court deems fit.

Defendants' Case

- [13] By their Statement of Defence the 1st, 2nd and 4th Defendants (hereinafter the Defendants) raised the following plea in limine litis:

"The Plaintiff's cause of action against the 1st, 2nd and 3rd Defendants is incorrect in law and he does not have locus standi to initiate proceedings as at the material time he was not owner of the alleged property S1965, as the owners were Mrs. Maria Stella Da Cambra, Tollex Jean Ventigadoo Gangadoo and few others. The Plaintiff along with Sylvestere Marc Da Cambra received transfer the property on 24th September, 2008 and they were aware of the road that was present on the said property. As such, the Plaintiff does not have a reasonable cause of action the 1st, 2nd and 4th Defendants and they pray this Court to dismiss this Plaint against the 1st, 2nd and 4th Defendants with costs."

- [14] This plea cannot be determined on the basis of the pleadings. Evidence need to be adduced by the parties and in order to enable the Court to determine the issue raised. The pleas shall be considered together with the merits at the conclusion of the hearing.

On the merits

- [15] The Defendants otherwise denied all the other materials averments of the Plaintiff and put him to strict proof thereof.
- [16] The Defendants denied that the Plaintiff is the sole owner of the property and averred that during the material time when the road was constructed in 2002-2003 the Plaintiff was not the owner of the property. The Plaintiff along with one Mr. Sylvestere Marc Da Cambra

received the property by way of transfer only on 24th September, 2008 and the Plaintiff was aware of the road that was present on the property.

[17] The Defendants informed of his legal rights to Mr. Theodore Servina who was living on the property at the material time and the Plaintiff was not the owner then.

[18] The Defendants averred that the road provided essential vehicle access to the inhabitants and had increased the development value of the property.

[19] In any event the extent of the depreciation of the property is not more than SR271,000.00 and at its utmost SR508,000.00, but definitely not the sum claimed as loss by the Plaintiff which is too high.

[20] The Defendants at paragraph 7 of the Statement of Defence inter alia state that – “.... the Defendants herein taken (sic) all sincere efforts and willing (sic) to resolve the issues with regard to parcel S1965.”

[21] The Defendants maintained that they have not committed any faute in law and they acted in accordance with the law and they are not liable to the Plaintiff and as such sought the dismissal of the suit with costs.

Hearing

[22] Only the Plaintiff who lives overseas and who had travelled to Seychelles purposely for testifying in his case was allowed to do so in order that he may leave the jurisdiction. He testified on his own behalf and introduced 14 documents as his own Exhibits and through cross-examination admitted another 7 Exhibits. The Plaintiff did not adduce any other evidence from other witness. Following cross-examination and re-examination Learned Counsel for the Plaintiff closed his case.

[23] At the close of the case for the Plaintiff, Learned Counsel for the 1st, 2nd and 4th Defendant opted not to adduce any evidence on their behalf and instead relied on the plea in limine litis raised in their Statement of Defence.

[24] The 3rd Defendant although duly served did not put up appearance in person or by Counsel and despite being so informed he failed to attend Court or showed any interest in the proceedings.

Evidence of Plaintiff

[25] The evidence of the Plaintiff is based mainly on documents introduced as Exhibits.

[26] Exhibit P1 – Employment Certificate of Plaintiff in UK.

[27] Exhibit P2- Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011, between Mrs. Maria Stella Da Cambra as Transferor in consideration of SR1.00, transferred to Patrick Angelo and Sylvestre Marc Da Cambra as Transferees an undivided one-half share each of her undivided share in Title S1965.

[28] Exhibit P3- A letter dated 7th September, 2004 from 1st Defendant was addressed to the Plaintiff's Lawyer concerning access road following prior discussion they have had. It inter alia states that – *“The Ministry wishes to inform you that conception of the (access road) project was initiated in September, 2001. The District Administration secures Way Leave for road access on Parcel S1965 with Mr. Theodore Servina on the 10th May, 2001. Mr. Servina was the only person being order to live on the property by the Elizabeth's family. However, after obtaining Way Leave, it was only early this year that Mrs. Marie Stella Da Cambra approaches the Ministry claiming compensation of her land. It was only then that we discover through her documentation that this Parcel S1965 had been transfer to her on the 16th March, 2001. We would like to state that with the construction of this access road, this would add a substantial value to Mrs. Da Cambra's land and with potential development.”*

[28] Exhibit P4- Document dated 19th April, 2005 from 3rd Defendant, Mr. Andre Pool the then District's certifying as follows – *“This is to certify that I have known Mr. Theodore Servina living in that house on that plot of land for a very long time. I once questioned him on the matter and he informed me that it was in 1950 that Mr. John Elizabeth and Mrs. Ernestine Elizabeth gave him permission to build his house there with a promise that later*

on their house plot would be sold to them i.e. to Mr. Servina and family. I even once assisted that family with construction materials to repair their house."

- [29] Exhibit P5- An Invoice to the Plaintiff from Lebon Land Surveys dated 31st May, 2004 for SR13,529.40 for verification of boundary of parcel S1965.
- [30] Exhibit P6- A Survey Report from Lebon Land Surveys to Plaintiff dated 1st June 2004 after verification of beacons and boundary established that there have been encroachments on parcel S1965 by Mrs. Marie Therese Mousbe, Ms. Marie Theodore Labiche and access road by the 1st Defendant. These encroachments are shown on a plan attached to the Report.
- [31] Exhibit P7 – An Invoice from N S Valentin Consultancy to the Plaintiff dated 8th November, 2011 for SR6,300.00 for the valuation of encroachment on parcel S1965.
- [32] Exhibit P8 – Valuation Report by Quantity Surveyor Nigel Stanley Valentin to the Plaintiff dated 4th November, 2014 estimating all the encroachments on parcel S1965 to add up to SR649,957.95. 782 sqm of land for secondary roads estimated at SR357,843.38; 4sqm for road access from secondary road to house No.1 estimated at SR1,611.00; 18 sqm for road access from secondary road to house No.2 estimated at SR7,249.50; 50 sqm for road access from secondary road to house No.3 estimated at SR20,137.50; 90 sqm for road access from secondary road to house No.4 estimated at SR38,247.50. Encroachment by part of the house on an area of 7sqm estimated at SR2,819.25. Encroachment by car shed/garage by 7sqm estimated at SR4,833.00. 55 sqm for road access from secondary road to house No.5 estimated at SR22,151.15. Encroachment by Labiche' house No.1 of an area of 84 sqm estimated at SR122,436.00; encroachment by Labiche' house No.2 of an area of 15 sqm estimated at SR61,218.00. Encroachment by road access to Labiche's houses of an area of 33 sqm estimated at SR13,411.58. Each amount quoted is the market value of the land encroached.
- [33] Exhibit P9 – Letter dated 25th October, 2011 from Plaintiff's Lawyer responding to the letter from 1st Defendant dated 7th September, 2004, (Exhibit P3) whereby the Plaintiff's Lawyer inter alia emphasized that – "... *Mr. Theodore Servina is not and was not any point*

in time the registered owner of parcel S1965, nor was he giving authorization pursuant to a power of attorney given to him by the owners of parcel S1965. Building of the road is construed as illegal since no legal permission was granted or requested from the legal owners of S1965."

- [34] Exhibit P10 – Letter dated 2nd November, 2011 from 1st Defendant advising the Plaintiff's Lawyer that the case had been forwarded to the Attorney General's Office for legal advice.
- [35] Exhibit P11- A Statement drawn up by the Plaintiff setting out air fares for his travelling from UK to Seychelles on 12 occasions during the period 20th September, 2004 to 28th January, 2016 amounting to a total of 6,829.51 Sterling Pounds. The Plaintiff also set out his loss of earnings amounting to 145,280 Sterling Pounds.
- [36] Exhibit P12 – Photocopy of Plaintiff's Air Ticket for his travel from UK to Seychelles in October, 2007 amounting to 687 Sterling Pounds.
- [37] Exhibit P13 – Are extracts from Plaintiff's Passport showing the various dates of his travel from UK to Seychelles.
- [38] Exhibit P14 – Shows rates of pay for the job performs by the Plaintiff in UK to support his claim for loss of earnings.
- [39] Exhibit D1 – From ACCMA Chartered Certified Accountants in UK dated 10th July, 2014 stating – *"We act as accountants for Mr. Patric Angelo who is self-employed as Plumber, 276 Hattorn Road, Feltham, TW14 9QT. We provide all the accounting and taxation services to him. We confirmed Mr. P Angelo's Gross Sales for the last tax year ended 5th April, 2013 was 12,112.00 Sterling Pounds. We can make no assessment of our client's continuing income or future outgoings. If you need any further details please do not hesitate to contact us."*
- [40] Exhibit D2 – Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011 whereby Rollex Jean Ventigadoo Gangadoo as Transferor, in consideration SR12,950.00, transferred to the Plaintiff his undivided one-sixth share owned by the Transferor in the undivided one-ninth share in Title S1965.

- [41] Exhibit D3 Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011 whereby Thomas Jacky Ventigadoo Gangadoo as Transferor, in consideration SR12,950.00 transferred to the Plaintiff his undivided one-sixth share owned by the Transferor in the undivided one-ninth share in Title S1965.
- [42] Exhibit D4 Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011 whereby David Antoine Ventigadoo Gangadoo as Transferor in consideration SR12,950.00, transferred to the Plaintiff his undivided one-sixth share owned by the Transferor in the undivided one-ninth share in Title S1965.
- [43] Exhibit D5 Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011 whereby Rollex Jean Ventigadoo Gangadoo as Transferor, in consideration SR12,950.00, transferred to the Plaintiff his undivided one-sixth share owned by the Transferor in the undivided one-ninth share in Title S1965.
- [44] Exhibit D6 Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011 whereby Jeffrey Wilson Ventigadoo Gangadoo acting as Transferor in consideration SR12,950.00. transferred to the Plaintiff his undivided one-sixth share owned by the Transferor in the undivided one-ninth share in Title S1965.
- [45] Exhibit D7 Transfer Deed dated 24th September, 2008 and registered on 24th March, 2011 whereby Zita Marie Ventigadoo Gangadoo as Transferor, in consideration SR12,950.00, transferred to the Plaintiff his undivided one-sixth share owned by the Transferor in the undivided one-ninth share in Title S1965.

Plaintiff's Submissions

- [46] Learned Counsel for the Plaintiff did not make any written submissions on behalf of the Plaintiff, either on the plea in limine litis or on the merits.

Defence Submissions on the Plea in Limine Litis

- [47] The Defendants submitted that the Plaintiff is not the owner of Title S1965 (hereinafter "the property") during the time the road was built and even now he is not the absolute owner thereof. The Plaintiff is entitled to only half undivided share of the property and

previous owners ever raised any dispute with regard to the access road or the occupier who granted the consent. The Plaintiff cannot now challenge the construction of the access road which was constructed with consent prior to his becoming part owner of the property.

- [54] Survey Report Exhibit P6 Clauses 4.1 and 4.2 makes reference to encroachments and not about the road access. Valuation Report Exhibit P8 at Clauses 3.2 to 3.7 also makes reference to encroachments other than access road. Every access roads leading to each house was built by the individual owner and the Plaintiff alleged that he is contemplating taking separate action against them for their respective encroachment. Hence the Defendants are not liable for any encroachments other that the other access road built with the consent of the occupier.
- [55] The Valuation Report Exhibit P8 shows that the value of the land used by the Defendants for the construction of the access road is SR357,843.38.
- [56] The Plaintiff's claim for travelling costs to Seychelles with regard to this suit is untenable as he had and has other concerns in Seychelles that called for his presence here.
- [57] With regard to the claim for loss of earning whilst the Plaintiff was attending to the instant suit is also untenable and the amounts claimed is not verified by any proof and the amount claimed is wrong and excessive and without any basis.
- [58] Since the Plaintiff became partial owner of the property in issue he had not suffered any loss of enjoyment. The Plaintiff cannot claim any moral damage for something that happened prior to his acquiring of a share in the property. The Plaintiff when acquiring a half share he was fully aware of the burden on the property in the form of a road access that already existed thereon.

Findings

- [59] These findings encompassed the issues raised in limine litis as well as on the merits.
- [60] It is not in dispute that on 10th April, 2001, the 1st and the 2nd Defendant as per letter dated 7th September 2004, informed the Lawyers then representing the interest of the Plaintiff, that they had obtained way leave for the road access on Title S1965 from Mr.

more so it is not even shown whether the impugned access road built by the Government of Seychelles falls in his share or that he is entitled to compensation more so when he has not produce any authority nor pleaded in his Plaint.

[48] Moreover, the access road was built while the property was in the hands of other people and there was consent given by Mr. Theodore Servina the admitted power of attorney at the time.

[49] The Valuation Report contained in Exhibit P8 in respect of the access road constructed by the Government of Seychelles is only SR357,843.38 out of the total valuation of SR649,957.95.

[50] The Defendants also submitted that the Plaint is barred by limitation as the original Plaint was filed on 20th April, 2012 claiming compensation in respect of construction of access road on Title S1965 in 2001. Article 2271 of the CCSeY provides that all rights of action shall be subject to prescription after a period of five years.

[51] The Plaintiff became the owner of one half undivided share of the property only in the year 2008 and the registration effected only in 2011, hence the Plaintiff has no cause of action.

Defence Submissions on the Merits

[52] The thrust of the defence of the Defendants is that the Plaintiff admitted that he is the owner of only half share of the property, vide Exhibit P2. A Transfer Deed was drawn up on 24th September, 2008 and only registered on 24th March, 2011. The Plaintiff bought the shares of the other owners vide Exhibits D1 to D7. The effect is that the Plaintiff's share in the property is not demarcated hence he cannot absolutely claim that the impugned access road falls on his half share or that he is entitled to compensation more so when he has not produced any authority nor pleaded that he represents the other co-owner.

[53] The Plaintiff cannot have any cause of action regarding the access road whilst the property was in the hands of other people, especially where there consent was given for the building of the road by the occupier of the property by virtue of a Power of Attorney held by the occupier, Mr. Theodore Servina given by the then owners, vide Exhibit P9. None of the

Theodore Servina. However, it is not in evidence as to who gave Mr. Servina such authority to empower him to grant any easement on the property of another. Conversely, the Defendants being such that they are must have known from the public record kept in the Land Registry at the Office of the Registrar as to who was and/or is the rightful owner of any property in Seychelles. Moreover, from that same Office record of any person holding any Power of Attorney is kept for public information. It is therefore not excusable that the Defendants would take the easement granted by Mr. Servina as being valid and legal to empower them to trespass on Title S1965 and to permanently encroach on certain part of that property. The Defendants by so doing committed a fault in law and is liable to pay damages to the owners of the property in issue for any loss sustained as a result. So I find.

Damages

- [61] The Defendants advanced the argument that by virtue of its encroachment and trespass the value of the servient property has increased to the benefit of the owner thereof as the property is now more easily accessible and its development value has been enhanced. I find this to be obvious and logical in the circumstances of this case. However, this cannot be served to totally exonerate the Defendants from their liability but however can go to mitigate the amount of damages.
- [62] The encroachment by the Defendants must be limited to the extent of the area of land used for the construction of the road only and not the other feeder roads built by the other occupiers of the property.
- [63] The Defendant did not, in its Statement of Defence, state that it would remedy the faute by restoring the property to its original state in order to rectify the encroachment. On the other hand, the Plaintiff has not by its Complaint claimed for the restoration of its property to its original state obviously because of the benefit the motorable access road had brought to the property. This aspect must therefore be also taken into consideration in the circumstances of this case in assessing any damage caused.

- [64] The ownership of Title S1965 has been raised and made an issue as to whether the Plaintiff has any locus standi to alone pursue this suit as the sole owner of that property. I find that this easily resolved since the Plaintiff has and had an interest in the property even as a heir therein since his deceased mother was then a heir and co-owner of the property. However, the Plaintiff cannot claim to be the sole owner of the whole property at the material time when the encroachment took place. If the Plaintiff incurred considerable expenses to pursue the matter he has done this at its own risk and peril and cannot now claim for his benevolence done towards the other co-owners.
- [65] It is also evident that the encroachment must have taken place within the view and knowledge of the owners because there were no objections raised by any co-owners when the access road was overtly being built over a period of time before its completion. It was only after the access road was completed that the encroachment caused by building this access has become an issue.
- [66] The Defendants admitted using an area of 782sq m valued at SR357,843.38 on 14th November 2014 by Quantity Surveyor Nigel Valentin (Exhibit P8). Although the access road was built in 2001 the encroachment is a continuous one until today and as such is not time-barred for the purpose of this suit.
- [67] The shareholding of the Plaintiff in this suit is not clear. Exhibit P2 shows the Plaintiff to have acquired an undivided one-half share of the undivided share of the Transferor Mrs. Maria Stella Da Cambra on 24th March, 2011. What shareholding the Transferor had in S1965 is not stated. The Plaintiff also purchased the undivided one-sixth share of the undivided one-ninth share of 6 other co-owners in Title S1965. The Plaintiff is not the sole legal owner of Title S1965 therefore any compensation awarded by this Court has to be distributed according to law to all the other co-owners in Title S1965. So I find.

Conclusions

- [68] For reasons discussed above I find that the Defendants jointly and severally are liable to the Defendants for having unlawfully encroached on the property Title S1965 partly owned

by the Plaintiff which amount to a faute in law causing the Defendants to be jointly and severally liable to compensate the owners of Title S1965 for loss and damage.

[69] In assessing damages this Court cannot overlook the fact that even the Defendants had encroached by building an access road on Title S1965, they have not retained the encroached area for its exclusive use but rather are allowing the area encroached to be used by the members of the public as a public facility which are of benefit to everyone including the co-owners of the said property. Any compensation awarded ought to be adjusted accordingly.

[70] In my considered judgment the Defendants should jointly and severally compensate the Plaintiff as a co-owner jointly with all the other co-owners of Title S1965 half of the value of the land encroached, that is half of SR357,843.38 amounting to SR178,921.69 rounded to SR180,000.00.

[71] The Plaintiff is claiming from the Defendants various expenses he incurred in connection with this suit. In a suit for faute the party or parties at fault are liable only for expenses that have a causal connection to the liability. The extraneous expenses incurred by the Plaintiff in pursuance of the instant suit cannot be claimable from the Defendants. The following expenses amounting in total to SR19,529.40 are allowable:

Survey Report identifying encroachments (Exhibit P5) –	SR13,529.40
Valuation of encroachment (Exhibit P7)	<u>SR 6,000.00</u>
	SR19,529.40

rounded to SR19,530.00 which sum is due and payable by the Defendants to the instant Plaintiff only.


Order

[72] Following my findings and conclusions hereinbefore I enter judgment in favour of the Plaintiff as a co-owner and all the other co-owners of Title S1965 as against the Defendants jointly and severally and award them the total sum of SR199,350.00 as compensation for the loss and damage resulting from the faute of the Defendants.

[73] The sum awarded should be distributed in accordance with this judgment.

[74] I award interests and costs to the Plaintiff.

Signed, dated and delivered at Ile du Port on 29 November 2016



B. RENAUD
Judge of the Supreme Court