

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact

[2026]

MA213/2024

Arising in CS113/2024

In the matter between:

HANSELL CHETTY
(rep. by F. Elizabeth)

Applicant

and

ANNIE GONTHIER
(rep. by K. Domingue)

Respondent

Neutral Citation: *Chetty v Gonthier* (MA213/2024) [2026] (4 February 2026).

Before: E. Carolus J

Summary: Application for plea in Limine Litis to be heard prior to hearing of the principal suit on the merits – Section 90 of the Seychelles Code of Civil Procedure.

Delivered: 4th February 2026

ORDER

The application for the plea in *limine litis* to be heard prior to the hearing of the principal suit on the merits is dismissed. The costs of this motion shall be borne by the applicant.

RULING

E. Carolus, J

Background and Pleadings

- [1] Annie Gonthier, plaintiff in CS113/2024 (the “principal suit”) is suing Hansell Chetty the defendant in the principal suit for unjust enrichment. She has filed a plaint seeking *inter alia* a declaration that he has been unjustly enriched at the plaintiff’s expense and that the plaintiff has been correspondingly impoverished.

- [2] The claim of unjust enrichment arises from the part financing by the plaintiff of the construction of an extension to the defendant's mother's house, which the parties occupied with their daughter upon its completion. The plaintiff avers in her plaint that the defendant started the construction but ran out of funds, following which funds to complete and furnish the same was obtained by means of an initial and an additional home loan from Seychelles Commercial Bank, as well as a further loan from the Housing Finance Company, the latter being repaid solely by the plaintiff. The plaintiff avers that she paid for the house and structural plans, as well as for a valuation of the construction and that her family also helped her with the expenses for the house. She avers that she bore most of the parties' expenses including household expenses and housing and car loan repayments, during the time of their cohabitation, as the defendant changed jobs frequently and remained unemployed in between jobs. The parties' relationship ended in November 2019 when the plaintiff and their daughter moved out of the house and the plaintiff stopped repaying the housing loan with the Seychelles Commercial Bank and the defendant took over the loan repayments. The plaintiff avers that the respondent refuses to compensate her for her contributions to the construction, as a result of which the defendant has been unjustly enriched at the expense of the plaintiff who has been correspondingly impoverished.
- [3] The defendant filed a Statement of Defence in which he raises the following pleas in *limine litis*:
1. *The Defendant through Counsel, raises a preliminary objection that the Plaint filed herein is defective and ought to be struck out.*
 2. *Section 71 of the Seychelles Code of Civil Procedure requires that a plaint shall contain "a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action."*
 3. *The Plaint filed by the Plaintiff offends section 71 in that:*
 - a. *It is prolix, repetitive and fails to provide a concise statement of the material facts;*
 - b. *It contains evidentiary matters and narrative that are irrelevant to the pleadings;*
 - c. *It does not plead with precision the material facts necessary to sustain a cause of action in unjust enrichment; and*

d. It fails to disclose whether the Plaintiff has no alternative cause of action available to her under the law”.

4. Accordingly the Defendant prays that the Plaintiff be struck out as defective and disclosing no reasonable cause of action against the Defendant.

[4] In his defence on the merits, the defendant essentially denies the claim of unjust enrichment, and that the plaintiff has any proprietary interest in the house. He further avers that both parties jointly contributed to the construction and that the plaintiff's claims in regards to her contributions are disproportionate and exaggerated. He prays for the Court to uphold the plea in *limine litis* and to strike out the plaint as being defective and disclosing no reasonable cause of action against the defendant. Alternatively, he prays for dismissal of the action with costs for want of merit. He further prays for such relief as this Court deems fit.

[5] The defendant in the principal suit, Hansell Chetty, and applicant in this motion, has now filed a Notice of Motion (in MA213/2024) seeking leave for the plea in *limine litis* raised in his Statement of Defence in the principal suit (CS113/2024) to be heard and determined prior to the hearing of the principal suit on the merits. Leave is sought under section 90 of the Seychelles Code of Civil Procedure (SCCP) on the ground that the point of law, if upheld, will substantially dispose of all issues in the principal suit, resulting in the plaint being struck out as defective and disclosing no reasonable cause of action against the applicant/ defendant.

[6] The motion is supported by an affidavit sworn by the applicant/ defendant. The averments in the affidavit are basically a reproduction of the pleas in *limine litis* raised, while also setting out the applicable law. He avers that the plaint in the principal suit offends section 71 of the SCCP in that it is -

“prolix, repetitive and fails to provide a concise statement of the material facts; it contains evidentiary matters and narrative that are irrelevant to the pleadings; it does not plead with precision the material facts necessary to sustain a cause of action in unjust enrichment; and it fails to disclose whether the Plaintiff has no alternative cause of action available to her under the law”.

- [7] On that basis, he avers that the plaint should be struck out as defective and disclosing no reasonable cause of action against him.
- [8] The applicant/ defendant further avers that under section 90 of the SCCP, the Court may grant leave for a point of law to be set down for hearing and determination before the trial of the main case.
- [9] Further that the point of law raised in *limine litis*, if successful, will substantially dispose of all the issues in the principal suit, resulting in the plaint being struck out, thereby avoiding the need for a full hearing on the merits. Hence that it is just and expedient for the point of law to be heard first in order to save time and costs of the parties and the Court.
- [10] The respondent/ plaintiff opposes the motion and has filed an affidavit in reply denying that the plaint in the principal suit is defective.
- [11] Insofar as it concerns the alleged non-compliance of the plaint with section 71 of the Seychelles Code of Civil Procedure, the respondent/ plaintiff avers that -

“... the cause of action in my case arose when I started incurring expenses for the construction of the house at Rochon, the loans I took and repaid ... up to the time that the Applicant and I separated as well as my efforts to obtain some form of compensation from the Applicant thereafter. the facts which I pleaded in my Plaint are material facts which are necessary to sustain the cause of action before the Court.

- [12] She further avers that:

- *The Plaint is neither prolix and/or repetitive.*
- *The Plaint contains a plain and concise statement of the material facts which are necessary for my case otherwise, ... the Applicant may object to certain evidence coming in by me in that the Applicant may state that these matters are not pleaded. All the facts pleaded are necessary to sustain my cause of action before the Court.*
- *The Plaint does not contain evidentiary matters and narrative that are irrelevant to the pleadings. In fact, ... all matters pleaded in the Plaint are necessary to my cause of action in order for me to be able to sustain it.*
- *... all the facts as pleaded ... clearly outline all material facts necessary to sustain my cause of action for unjust enrichment and it is clear that I have no alternative cause of action but for unjust enrichment.*

- [13] In response to the applicant/ defendant's averment that the plaint discloses no cause of action and should be struck out, the respondent/ plaintiff further avers that:

... my Plaint is neither defective nor does it fail to disclose a reasonable cause of action against the Applicant. In fact... my Plaint is one where the other party, namely the Applicant, will know precisely the case that he is up against as is required by the law. I am further advised and verily believe that given that my case is one wherein the cause of action arose before the new Civil Code whereby the rights of common law husbands and wives are now recognised, the only remedy available to me under the old Civil Code is that of unjust enrichment.

- [14] In regards to the present application, the respondent/ plaintiff avers that:

... As rightly pointed out in ... Section [90] if there is no consent of the parties, which consent I am not giving, as I am objecting to the Applicant's motion, the point of law must be taken together with the hearing of the case. Further the Court has not ordered that the application may be set down for hearing and disposed of at any time before the trial. It is a fact that the law empowers either party to apply to the Court for the point of law to be heard and disposed of at any time before the trial. I state that in the present case, it would be premature for the point of law to be heard prior to the case especially as it is a case of unjust enrichment necessitating evidence being led. Unless the Plaint does not contain a cause of action or a cause of action which is known to the law and/or on the face of the pleadings it can be seen that there is no need for evidence to support the point of law then it is submitted with respect that the Court ought not to grant such a hearing prior to the hearing of my Plaint.

- [15] As to the point of law substantially disposing of all the issues in the main case, thereby avoiding the need for a hearing on the merits, she states –

... my Plaint contains a cause of action which must be heard by bringing evidence before the Court. ... the Plea in limine litis will not substantially dispose of the main case, as there is a need for evidence to be led before the Court can address its mind to striking out the Plaint. In any event if the Applicant and his Counsel were convinced that the Plaint is defective they would not have filed a Defence on the merits. The very fact that they did so shows that the Plaint cannot be defective and that it contains a cause of action. Therefore, I strenuously object to the proposition and averment made by the Applicant

- [16] Finally she denies that it will be just and expedient to hear the point of law first in order to save time and costs. She avers that she tried to save both time and costs by writing to the applicant/defendant and constantly seeking to settle the matter out of Court, but that he ignored all such attempts and never even put in an appearance for any of the mediation sessions. Consequently, he cannot now be heard to complain about justice, expediency, saving time and costs. The respondent/plaintiff goes on to refer to correspondence purportedly exhibited to her affidavit as **AG 1** but which have not been attached,
- [17] Counsels for the parties were granted time to file their written submissions but neither one of them have done so.

Analysis

- [18] At this stage the Court only has to determine whether the pleas in *limine litis* raised by the defendant should be dealt with prior to hearing of the case on the merits. It does not have to make a determination on the merits of the pleas in *limine litis* themselves.
- [19] The law applicable to this issue is found in section 90 of the SCCP which provides:
- 90. Any party shall be entitled to raise by his pleadings any point of law; and any point so raised shall be disposed of at the trial, provided that by consent of the parties, or by order of the court, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.*
- [20] Section 90 lays down the rule that points of law raised in pleadings “*shall be disposed of at the trial*”. However it also provides by way of exception that a point of law may be heard and determined before the trial on the merits in two instances: first where the parties consent to the same and second where the Court makes an order to that effect upon the application of either party.
- [21] In the present case, the defendant in the principal suit has made an application for the points of law he has raised in his Statement of Defence to be heard and disposed of before the trial on the merits. This is opposed by the plaintiff. There is therefore no consent of the parties on the issue, which the Court therefore has to make a determination on.
- [22] As stated, neither party have filed submissions to support their respective positions in this application. I note that the applicant/ defendant in his affidavit in support of the motion has

merely repeated the points of law raised in his Statement of Defence and set out the law applicable thereto. The only additional averments in the affidavit which do not appear in his Statement of Defence are that the points of law will, if successful, substantially dispose of all the issues in the principal suit, thereby avoiding the need for a full hearing on the merits and saving the time and costs of the parties and the Court. It is the view of this Court that this statement, without more, is not sufficient for this Court to make a determination on the point in issue. The applicant/ defendant should have at least expounded on this argument to support his position, and this could and should have been appropriately dealt with in his submissions.

[23] Given that counsel representing the applicant/defendant who made the application did not file his submissions, and that to allow more time for the same will only delay hearing of the case on the merits further, this Court is not prepared to waste further time by granting any adjournments for that purpose.

[24] The pleas in *limine litis* will therefore be heard together with the merits of the principal suit.

Decision

[25] In the circumstances, I dismiss the motion. The costs of this motion shall be borne by the applicant/defendant.

Signed, dated and delivered at Ile du Port on 4th January 2026.



E. Carolus