

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact
[2026]
CS72/2023

In the matter between:

SELBY LIME
(rep. by S. Rouillon)

Plaintiff

and

MERINA RACHEL LIME

1st Defendant

NILCEY ETIENNE MOREL
(rep. by E. Almeida)

2nd Defendant

Neutral Citation: *Lime v Line & Anor* (CS72/2023) [2026] (7th April 2026).

Before: E. Carolus J

Summary: Claim to ownership of house on the basis of contribution to its construction by siblings and their mother – Injunction for occupants to vacate house – Claim for damages.

Heard: 05th & 06th June 2025

Delivered: 7th April 2026

ORDER

The plaintiff is dismissed and each of the parties shall bear their own costs.

JUDGEMENT

E. Carolus, J

Background and Pleadings

- [1] This judgment arises from a dispute between the plaintiff Selby Lime and his sister Merina Rachel Lime (1st defendant) and the 2nd defendant's concubine Nilcey Etienne Morel, in respect of ownership of a house situated mainly on parcel S13098 and encroaching on two adjoining parcels at Cascade, Mahe.

- [2] In his amended plaint dated 4th June 2024, the plaintiff avers that he is and was at all material times a resident of Cascade, and that since his childhood he has lived on land currently registered as parcel S13098 with his parents and siblings.
- [3] He avers that in 1998 and 1999 he demolished the family house on parcel S13098 where he was living and built a six-bedroom house in its place. He avers that he funded the entire reconstruction at his own cost, save for the electronic appliances, which were purchased by the 1st defendant. The plaintiff avers that after the house had been re-constructed, he lived in it with his family including the 1st defendant. However, after his mother's death in 2002, the 1st defendant went to live elsewhere with the 2nd defendant. In 2016, the defendants moved back into the house with their three children.
- [4] The plaintiff avers that in 2021, the defendants acquired the neighbouring land parcel S13097, while continuing to occupy the house on parcel S13098 together with the plaintiff. He avers that since 2021 they have been a nuisance and repeatedly engaged in anti-social conduct, including: (i) denying the plaintiff access to the kitchen and bathroom; (ii) disconnecting the electricity supply causing loss of refrigerated foods; (iii) playing loud music at odd hours at night; (iv) failing to maintain basic hygiene and tidiness in and around the house; and (v) making malicious complaints to the police. He avers that such conduct constitutes unlawful interference with his ownership of the house and a violation of his right to peacefully enjoy his property, which has caused him moral damages, for which the defendants are jointly liable to make good. The damages are particularised as "*[L]oss of amenities, distress estimated to date at Rs 100,000.000*"
- [5] The plaintiff avers that his several demands to the defendants to refrain from such conduct have been to no avail and only resulted in further abuse and aggravation from them. He therefore prays for:
- (i) *a declaration that the Plaintiff is the Proprietor of the house on parcel S13098;*
 - (ii) *an injunction compelling the Defendants to vacate the house on parcel S13098 and restraining them from further violating the Plaintiff's right to property in that house;*

(iii) an order compelling the Defendants, jointly, to pay the Plaintiff damages in the sum of Rs 100,000.00 (One Hundred Thousand) aforesaid, with interest at the legal rate; and

(iv) such further or other order as is just in the circumstances.

- [6] The defendants have filed a Statement of Defence dated 2nd September 2024 in which they raise the following pleas in limine litis.

A. PLEA IN LIMINE LITIS

- i. The Plaintiff discloses no reasonable cause of action and is bad in law and must be struck out in favor of the Defendants with costs.*
- ii. The Plaintiff lacks Locus Standi to file this matter and the Plaintiff must be dismissed with costs.*
- iii. The Supreme Court has no jurisdiction to hear this matter as the Plaintiff has been filed in the wrong forum and should be dismissed with costs.*

- [7] In their defence on the merits, the defendants admit that during the plaintiff's childhood he lived at Cascade in the house which is partly situated on land parcel S13098, with his parents and his siblings including the 1st defendant, but aver that the plaintiff has not resided in that house since 2006.

- [8] The defendants deny the plaintiff's claim that he demolished and reconstructed the house on parcel S13098 at his own cost and puts him to strict proof thereof. The 1st defendant avers that the plaintiff did not build the six-bedroom house and does not own the house or the land. She avers that the house was built by her mother, the 1st defendant herself and her brother Willis Lime. She avers that she further obtained a loan from the Seychelles Housing Development Corporation ("SHDC") for the purpose of contributing to the building of the house and also received additional help from the Cascade District Administrator's Office, which assisted her with building the said house. The defendants also accept the plaintiff's averment that the 1st defendant paid for all costs associated with the electronic appliances for the house.

[9] The defendants admit that after reconstruction of the house was completed, the plaintiff, the 1st Defendant and the rest of the family lived in it. However they aver that the 1st defendant was forced to leave the house temporarily due to physical assault and verbal threats by the plaintiff towards her. They admit that they returned to reside in the house with their three children in 2016, and aver that this was when the plaintiff went to prison, and that they still live there to date.

[10] The defendants admit that they are the registered proprietors of land parcel S13097 and still reside in the house on S13098. However they deny that the plaintiff still resides in the house and puts the plaintiff to strict proof of the same. They aver that the plaintiff does not reside in the house but temporarily comes to the house and harasses them.

[11] The defendants further deny the plaintiff's averments of nuisance and anti-social conduct on their part and puts him to strict proof thereof. They aver that the averments are false and that the plaintiff, although having access to the house, does not reside therein but comes back to cause nuisance and disturbs the defendants. They further aver that:

10.1 the Plaintiff comes to the house despite not residing thereon and on several occasions threatens to poison the Defendants;

10.2 the Defendants do not disconnect the electricity and water supply as they reside in the house;

10.3 the 2nd Defendant pays for all the utilities including electricity and water supply on the Land and the Plaintiff does not contribute to any utilities nor does the Plaintiff contribute to the house on the Land in any other way as he does not reside on the Land;

10.4 The Defendants are the only persons maintaining the Land and house thereon; and

10.5 police complaints made by the Defendants were as a result of threats from the Plaintiff towards the Defendants.

[12] They deny any unlawful interference with the plaintiff's ownership of the house and violating any right to his peaceful enjoyment of property and further that any damages has been caused to him, and put him to strict proof thereof. They further aver that the plaintiff

has no ownership rights over parcel S13098 or the house thereon and has no lawful right to claim any loss of amenities and distress.

[13] They deny being liable to make good to the plaintiff any damages and put the plaintiff to strict proof thereof, and aver that they have in no way caused the plaintiff damages. They further deny that the plaintiff made any demands for them to refrain from their alleged anti-social conduct, or that such alleged demands have only resulted in further abuse and aggravation from them, and put the plaintiff to strict proof thereof. They aver that on the other hand, they have tried to maintain peace with the plaintiff but he has refused all such attempts, causing the defendants to seek help from the police on several occasions because of his threats and behaviour.

[14] The defendants pray for the following remedies from this Court:

- i. *Declare that the house on the Land is not owned and was not built by the Plaintiff;*
- ii. *Declare that the Plaintiff has no lawful rights in the Land or the house thereon;*
- iii. *Declare that the house on the Land was built and is owned by the 1st Defendant, the parties' mother and Willis Lime;*
- iv. *Declare that the Defendants do not have to vacate the house on the Land;*
- v. *Declare that the Plaintiff does not reside in the house on the Land and must not approach the house nor the Defendants;*
- vi. *Declare that the Defendants have not violated the Plaintiff's rights;*
- vii. *Declare that the Defendants do not owe the Plaintiff damages and interest;*
- viii. *Dismiss the case with cost; and*
- ix. *Any other order the court sees fit in the circumstances.*

The Evidence

Testimony of Selby Lime (Plaintiff)

[15] The plaintiff Selby Lime ("Selby") confirmed that the 1st defendant Merina Rachel Lime ("Merina") is his sister and the 2nd defendant Nilcey Etienne Morel ("Nilcey") is his sister's concubine. and testified that all three of them live in the house located on Title S13098 at Cascade. He further confirmed that during his childhood, he and his siblings lived with their mother and father in the same place, but in a corrugated iron sheet house belonging to their mother Marie-Therese Nicette née Lime ("Mrs. Nicette"), and that he has continued living on that land ever since.

- [16] He explained that Title S13098 used to form part of a bigger plot of land, which in 1983, belonged to his mother's great aunt, but was later acquired by the Government. The plot was subsequently subdivided to form Titles S13097 and S13098, the latter plot currently belonging to the Government.
- [17] He stated that around 1998 or 1999, he had the house completely demolished and reconstructed using cement blocks. After reconstruction, the house was bigger than the original had been to have enough room to accommodate the whole family: it now has six rooms and a bigger living room. He had to break some rocks at the back of the house to make space for the bigger house.
- [18] Selby testified that he obtained permission from Mr. Charles Decommarmond from the District Administration ("DA") office to carry out the reconstruction works as the land belonged to the Government. He did not receive written permission from any of the family members, but his father gave his verbal permission to go ahead with the reconstruction and told him to provide his mother with a home as she was paralysed. He stated that none of his siblings or his mother objected to the reconstruction.
- [19] Selby testified that he used his savings to fund the reconstruction of the house as well as his earnings from his job with Peugeot. His mother who had been an SPPF activist in 1988 also obtained money during the political campaign which was used to fund the construction. "*Tarmac money*" she had received for working on the construction of roads also contributed to funding the construction. The labour work was done by the plaintiff with the help of his friends.
- [20] After the house was completed, Selby, his father and bedridden mother lived in the house, together with the plaintiff's siblings namely Marie-France, Rolly and Merina (1st defendant). Merina's concubine (2nd defendant) only moved in the house two months before the death of their mother Mrs. Nicette. Marie-France eventually moved out and Mrs. Nicette passed away leaving only Selby, Rolly, their father and the defendants in occupation of the house. Currently only Rolly, the defendants and their children as well as the boyfriend of one of their daughters live in the house.

- [21] Selby testified that the major electronic appliances such as the fridge, freezer and the television were jointly financed by Merina and himself, who each paid half of the purchase price of those appliances. Appliances for his personal use such as fans were purchased with his earnings.
- [22] Sometime after the house had been reconstructed, around 2002, Selby sought Nilcey's help to construct a shed at the back of the house for him to use to make his fish traps, as he had learnt that Nilcey was in the construction business. At Nilcey's request, Selby gave him SCR4,500 to buy corrugated sheets, wood and metal poles but instead of using the money for that purpose he came back drunk with only a wheelbarrow. This led to an argument which in turn led to the defendants leaving the house. At the time Selby was in the police force and his mother Mrs. Nicette had already passed away.
- [23] Selby testified that from July to September 2016 he was on remand. Just prior to his release, the defendants moved back in the house where they are still living up to now. He also returned to live in the house after his release. He states that at the time his father was still living in the house and being taken care of by his girlfriend Rafaela Medor, with whom he had been in a relationship since 2010.
- [24] Selby stated that prior to the subdivision of the land where they lived into Titles S13097 and S13098, he had backfilled the part which later became S13097 to make it flat. He had built a shelter there, where he kept three tortoises. After he was released from remand, Merina told him that she was going to build a house on that part of the land following which the defendants got the Government which owned the land to subdivide it. After the subdivision, title S13097 was allocated to the defendants whereas title S13098 on which the house in which the parties were living remains in the Government's ownership.
- [25] He testified that he had attempted to prevent the subdivision from being carried out, as he wanted to have the land where the house was, to be registered in his name. He had gone to see the then Minister for Lands, Minister Charles Bastienne and later Minister Charlette, for that purpose. Minister Charles Bastienne had advised him to sue the Government to obtain ownership of the land, but he did not do so.

- [26] Selby testified that ever since the defendants moved back in 2016, there have been problems between the defendants and him. He stated that after he was released from remand, he stayed with Rafaela for two days at Les Cannelles before returning to the house at Cascade. When he got there, the defendants and their three children were living there, and they were wary of him because of his previous issues with the 2nd defendant.
- [27] Selby explained that the house did not have a kitchen as he had planned to build an outside kitchen next to where his bedroom was. The defendants used what was meant to be Rolly's bedroom as a kitchen, and he was not allowed in that kitchen or in the bathroom. The defendants did not want him to come in the living room either, and he had to retire to his bedroom every day at around 7:00 or 8:00p.m.
- [28] He stated that the defendants disconnected the electricity supply to the socket in his room where his fridge, freezer, fan and washing machine were plugged in, by removing the fuse box which supplied electricity to the whole house. This caused all his refrigerated goods to spoil. Currently, he is still not getting any electricity in his room for those appliances, and only the light switch works. He stated that the Public Utilities Corporation sent a person to carry out an inspection, who advised him that the problem is being caused by a seal in the meter which has been tampered with. Selby further claims that he had seen the 2nd defendant fiddling with the electricity meter outside.
- [29] Selby further testified that once, he had just come from fishing and noticed that the freezer was not connected. He proceeded to switch it on and heard an explosion in the freezer. He did not want to fiddle with the electricity and started to get ready to go to work but was then arrested for interfering with the electricity fuse and had to spend the night in a police cell.
- [30] He also claims that the defendants disturbed him by playing loud music at all hours of the night, and by playing the television and speaking loudly.
- [31] He testified that the house, both in and outside, was dirty, unhygienic and untidy. He stated that the defendants kept chickens and dogs and that there were chicken droppings and dog

poop everywhere outside. The dog was also aggressive and wanted to bite him every time he came close.

- [32] Selby testified that the parties had been before the Family Tribunal four times in regards to their problems, and that he had been advised by the Tribunal to make a complaint to the police. He did not do so because they took too long every time he requested for assistance from them. The Family Tribunal finally advised them to bring a case before the Supreme Court.
- [33] He explained that he was advised by his previous counsel to claim SCR100,000 in damages, for the loss he had suffered for his freezer which had stopped working and the goods stored therein which had spoilt. He states that both defendants are liable to pay him that sum.
- [34] He further claimed that he had asked the defendants to stop their anti-social behaviour towards him but that they have not done so.
- [35] Selby denied the defendants' claim in their statement of defence that he has not resided in the house since 2006, and stated that they are lying.
- [36] He also denied their claims that the house was built by the 1st defendant, her mother and brother Willis Lime, and stated that the house was built from contributions from 3 sources. He strenuously denied that the defendant obtained the funds used to build the house from an SHDC loan and from the Cascade DA's office stating that the latter was intended for his mother as a political activist. He stated that it was his mother who obtained the funding and that he told her that he would help with the construction.
- [37] Although in the complaint he had averred that the electronic appliances for the house were purchased by Merina, he denied that she had solely paid for the same, and reiterated that the appliances purchased before the defendants moved out in 2002 were purchased jointly by Merina and himself although the receipts were in her name. He stated that when she left to go and live with the 2nd defendant at Baie Lazare, she took the appliances with her.

- [38] He also denied that the defendants were forced to leave the house because he physically assaulted and verbally threatened Merina, claiming that they left because he was seeking the return of the money he had given to Nilcey to buy the materials to build a shelter for him. He agreed that they returned when he was not living in the house and reiterated that at the time he was being remanded in police custody.
- [39] He agreed that Merina is the registered owner of S13097 which the Government sold to her, and that the house occupied by the parties is situated on Government land which he unsuccessfully tried to purchase from the Government.
- [40] As for the defendants' claim that he only came back to the house to cause problems, Selby stated that he has lived there all his life. Further that he has been trying to file a case before the Supreme Court for 2 years now, and in the meantime has been living at the house of a lady who is prepared to put him up for a fee. However, he is not comfortable there and does not sleep well.
- [41] As to their claim that he has no right over either title S13098 or the house and therefore has no right to make any claim in respect of either, he stated that he has contributed everything that is on the land, including flattening the part where the defendants want to build their house.
- [42] Selby also denies the defendants' claim that they want and have tried to keep the peace with him.
- [43] In regards to the declarations sought by the defendants that the house is not owned or built by the plaintiff and that he has no right therein, and further that the house is owned by Merina, her mother's heirs and Willis Lime, Selby stated that the land was previously owned by the heirs of the family after which the Government obtained ownership of it, and that he then constructed the house on it. Further that Rafaela has lived with him and his father in the house for 10 years and that she can confirm what he is saying. He also stated

that he has two witnesses, Andy and Hedson, who were there when he was reconstructing the house.

- [44] In regards to the declaration sought by the defendants that they do not have to vacate the house, Selby stated that they are making a lot of issues on the land and they have destroyed all of his things.
- [45] As to the declaration for Selby not to reside in the house and not to approach them or the house, he states that he has tried his very best to stay far away from them, that he does not even want to be in the same room as them, and that just the day before they tried to take pictures of him while he was using the toilet.
- [46] As to the declaration that the defendants have not violated Selby's rights, he feels that a lot of his rights were violated.
- [47] In regards to the declaration that the defendants do not owe Selby any money, damages and interests, he stated that they destroyed all the electronic appliances he has in the house and changed the fuse box.
- [48] In cross-examination Selby stated that the property which has now been subdivided into Titles S13097 and S13098 used to belong to his parents. He confirmed that the house where he lives stands on what is now Title S13098 as shown by the Location Plan of S13097 (**Exhibit D1**) which shows both S13097 and the surrounding plots including S13098. He also confirmed that the house encroaches on the neighbouring parcel S9962, and that his room is located at the back of the house on parcel S9962. He further confirmed that there are no constructions on S13097.
- [49] A Certificate of Official Search dated 4th June 2025 in respect of Title S13098 was admitted as **Exhibit D2** through Selby which shows that Title S13098 is a subdivision of S7369 and its proprietor is the Government of Seychelles. He was asked whether he agreed that he could therefore not be the owner of Title S13098, and he replied that he did not own any land.

- [50] The plaintiff confirmed that the house on Title S13098 belonged to his mother Mrs. Nicette. He disagreed with his own averment at para 6 of his Amended Complaint that "*he funded the entire reconstruction at his own costs*", denying that he had ever made such a statement. He stated that part of his contribution towards the reconstruction of the house were funds he had received when he worked at Peugeot. Further that the "*tarmac funds*" his mother had received also contributed towards reconstruction of the house.
- [51] As to why he did not have any documentary proof of his contributions to the reconstruction of the house, Selby explained stated that at the time he and Merina were both living in the house and he did not think to keep any receipts. He denied that the reason was because the reconstruction was funded solely by his mother, the 1st defendant and Willis Lime, stating that Willis Lime never contributed to such reconstruction.
- [52] Selby further confirmed that he had obtained verbal permission to reconstruct the house from Mr. Charles Decommarmond at the DA's Office. Further, that Terence Camille, an architect, had also told him that he could proceed with the works as it was only the reconstruction of an existing house. He conceded that he had not obtained the proper permission but stated that this was the way things were done at that time, and maintained that the DA's Office gave him verbal permission to go ahead with the construction.
- [53] Selby confirmed her testimony in chief that Merina not bought all the electronic appliances for the house, contrary to what is stated in the Amended Complaint. He stated that however when she went to buy the appliances she put the receipts solely in her name.
- [54] He confirmed that he is no longer living at the house but sleeps at the house of a lady who offered him a place to stay pending determination of the court case, although he still goes to the house from time to time. He stated that the house is currently occupied by Rolly Lime, the defendants and their two daughters and son. One of the daughter's boyfriend and child also live at the house. He also sees other people around but does not know if they live there or not.
- [55] Selby confirmed that his mother passed away on the 13th of August 2002. At that point both defendants were living in the house: Merina had been living there since childhood,

and Nilcey had moved in two months prior to her death. The defendants left the house two weeks after Mrs. Nicette's death in 2002. Selby reiterated that the reason they left was because of the money that he had given Nilcey to buy materials to build a shed and which he had not done. He denied that they left because he was harassing Merina, and stated that she was misleading the court by saying so.

[56] Selby admitted that at some point he was remanded for a period of two months for a drug related offence, and that it was during that time that the defendants came back to live in the house. He denied that they came back because they felt safe as he was no longer there to harass them, stating that he never done so.

[57] It was put to him that Merina still came back to take care of their father during the time when she had to forcefully leave the house they grew up in. He admitted that she visited their father but insisted that it was Raphaella who had taken care of him and not Merina. Further that there had been a period of three years during which Merina did not come to the house.

[58] It was further put to Selby that earlier he had denied that it was Merina, Willis Lime and their mother who contributed to building the house, and he replied that only their mother had contributed thereto with her "*tarmac money*". He was shown **Exhibit D3(a)** – Home Improvement Loan Agreement dated 23rd May 2002 between the Seychelles Housing Development Corporation ("SHDC") as the lender and Merina Lime as the borrower, with Francois Lime as the Guarantor and signed by all the parties. The loan is for improvement of a house located at Talbot, Cascade and is for a sum of SCR25,000.000, interest free, and repayable by monthly instalments of SCR500 until full repayment thereof. The agreement was registered at the Land Registry on 25th June 2004 in Register A50 No.4181. Attached to the Agreement is **Exhibit D3(b)** - a receipt dated 5th June 2025 for the sum SCR300 received from the 2nd defendant by the Housing Finance Company (the successor of the SHDC) for a copy of the agreement. Selby agreed that **Exhibit D3(a)** was a home improvement loan agreement between the SHDC and Merina dating back to 2002, but stated that the loan could not have been for the reconstruction of the house, as in 2002 the house had already been constructed and their mother who died in 2002 had lived in that

house for a long time before she died. He intimated that the loan agreement was a fraudulent document. He further stated that the agreement does not state that the loan was to reconstruct the house.

- [59] Selby explained that after the house was demolished, it was reconstructed so that everyone could have a room: there was a room each for himself, his parents, Rolly, Willis, Merina and Marie-France as well as a toilet and a living room. Before it was demolished, the original house had a kitchen but after it was reconstructed, the space where the kitchen used to be was replaced by Rolly's room.
- [60] It was put to him that he did not contribute in any manner to the construction of the house and he said that he "*contributed 100% towards the house*". As to why he had not produced any proof of such contributions, he reiterated that he never thought that there would be a court case, and at the time he was only was trying to improve their living conditions.
- [61] It was put to him that even now, it is the defendants who are contributing and paying for everything in the house, including the electricity and water bills. He stated that it was their mother who used to pay for the water. It was further put to him that after their mother passed away, the defendants were the ones paying for electricity, water and everything else to which he replied that they could not have, as they had not lived there for a period of 13 years.
- [62] Selby agreed that he had claimed in his plaint that the defendants disconnected the electricity supply to his room causing loss of refrigerated foods in the freezer that was in his room, but admitted that the light switch in his room was working. He admitted that he could not say whether the electricity in the house was working and had not been disconnected as averred in the plaint, explaining that he had not been to the house in a while. However he stated that Rolly had told him that the socket in his room does not have any electricity and there are parts of the house that he knows do not have any electricity. In his room only the light switch worked. He insisted that he was not lying when he said that the defendants had disconnected the electricity supply, and reiterated that when he came back from fishing he switched on the freezer which made an exploding sound and stopped working. Upon checking, he noticed that the fuse box had a problem with it and

remembered having seen Nilcey fiddling with the meter outside. He said that Nilcey must have been responsible because there had been no problems with the electricity and the problem occurred only after he changed the fuse box. It was after that, that the issue with the freezer occurred and the appliances in his room stopped working.

[63] He said that although he has not been living in the house for the past two years, the claims he is making are not false, and that he is making them to put the issues between himself and the defendants to rest. He denied that making such claims against people who actually live in the house, while he lives elsewhere, makes the claims malicious.

[64] It was further put to him that it is his malicious conduct towards the defendants which made them call the police to deal with him. He replied that if there was any justification, the police would have made a criminal case against him, that it is the defendants who are being malicious towards him, and that he does not know what kind of contact they have with the police.

[65] Selby stated that he was advised by his counsels to claim the sum of SCR100,000 with interest in damages for loss of amenities, distress, after he had explained to them what he had been going through. He confirmed that the sum was to compensate for everything that the defendants had caused to stop working in the house and everything that spoilt in the freezer.

[66] He further denied that the defendants were the ones solely paying for the electricity bills. He explained that before Nilcey came to live there, he had introduced a system whereby each person living in the house contributed towards the electricity bill in equal shares. Further, that he is still paying for his share of the electricity bill even though he is not living in the house, and that he has witnesses to prove the same.

[67] Selby stated that when he switched on the freezer and it exploded, all the electrical appliances in his room stopped working. He claims that this was as a result of Nilcey changing the fuse box. When this happened Merina called the police who arrested him and kept him in a cell for the night. He reiterated that before the fuse box was changed, there were no such issues with the electricity.

- [68] It was further put to the plaintiff that he had brought no proof to support his claim of damages in the sum of SCR100,000. He replied that the proof was that his appliances no longer worked. As to whether he had asked someone to inspect these items to establish the cause of the damage, he stated that a young man from PUC had done so but had not given him a written report. The young man had told him to retain the services of an electrician but that he has no money to do so. Moreover, if he had asked an electrician to carry out an inspection or fix what had gone wrong, this might have caused more problems with the defendants. Under further cross-examination, he stated that an electrician from PUC came and carried out an inspection and stated that there was an issue with the seal on the main meter outside the house which caused issues with the electricity coming inside into the house. However there is no report confirming this.
- [69] As to whether he has any receipts for the appliances which he claims were damaged, he stated that he did not keep them, but maintained that that he had purchased his freezer, his refrigerator and other appliances. Further that he tried to retrieve documents from BODCO but was told that they could not do so as too much time had passed.
- [70] Selby acknowledged that he had not provided any documents to show that he had built the house on land parcel S13098, but stated that this is because he had not kept any. It was put to him that he could not therefore claim that he is the proprietor of the house, to which he replied that he has witnesses. It was also put to him that that he cannot justify the claim in his plaint, to which he replied that all his things such as his fridge have been affected, and that they are still at the house. It was further put to him that his rights have not been violated by the defendants, and that in fact it is he who harasses them by coming back to the house. He maintained that his rights were violated as he was denied access to the toilet and the living room and as soon as he went to these places police officers were called, and he was accused of coming to look at 1st defendant and her daughters. He stated that Raphaela could confirm that the 1st defendant once called the police claiming that he was watching her daughter while she was in the bathroom.
- [71] It was put to him that in these circumstances, he could not ask the defendants to vacate a property which he did not build, and where he does not even live anymore, whereas Merina

has brought proof of a loan which she took to build the house along with her mother and Willis Lime, which he denied. He further explained that he has been unable to live in the house for the past two years because of the ongoing disturbance by the defendants.

[72] In re-examination, Selby stated that the electronic items which were in the house and that Merina took when she left the house after their mother's death, were purchased by both of them. After she left, he purchased all the appliances that he needed.

[73] He stated that the police were called by the defendants to the house on multiple occasions to deal with him. When he told them that the place was his, they asked him for his documents, and said that if they heard from him again, they were going to arrest him which they did. He stated that he does not know whether Merina has any connection with the police, but that they come as soon as she calls them.

Testimony of Mr. Andy Esparon

[74] Mr. Andy Esparon is a truck driver working with GS Pillay and lives at La Gogue. He testified that he knows Selby and both defendants in this case, as he did not live far from Selby and Merina when they were growing up, and they are like family to him.

[75] He remembers doing some works with Selby on the house where Selby grew up, when he was 15 years old. The original house which was made of corrugated iron sheet was completely demolished, and another one with 6 rooms in total constructed with cement block. Mr. Esparon lent a hand as he did not live far and was friends with the family. He helped with bringing wood and other materials to the site, assisting the carpenter and helping with mixing the cement. He also went to buy materials. Apart from Selby and his brother Rolly, there were other workers carrying out the works.

[76] Mr. Esparon stated that he was there only as a casual labourer and does not know anything about how payments were made for the construction. He received about a hundred Rupees from Selby for the work he did, since he slept at the house and also ate there. He does not recall how long it took to rebuild the house although it did not take years. He did not work on the site every day but simply helped out.

[77] He also recalls the plaintiff blasting rocks next to the house that was being rebuilt.

[78] In cross-examination Mr. Esparon confirmed that he was not at the house every day, and stated that he did not know who funded the reconstruction of the house. He stated that the house belonged to Marie Therese and Willy Lime, the parents of Selby and Merina. He further stated that he was present when aggregate and crusher dust were bought, and gave a hand to bring those materials on site.

[79] In re-examination he clarified that he was not present when the materials were being purchased and paid for, but was only present on the site to unload the materials.

Testimony of Mr. Hedson Paul

[80] Hedson Pascal Paul of Pointe Aux Sel used to be a construction worker but is now self-employed. He knows the parties. He testified that Selby sought his services to construct a house for him at Cascade. Mr. Paul did the works on the house together with his uncle and another gentleman. They demolished an existing house made of corrugated iron sheet to rebuild a new one using cement blocks. He does not remember how many rooms the house has as it has been a long time but believes it was three rooms.

[81] He stated that it was Selby who paid him and the other two workers for their work. He does not remember how long it took to complete construction of the house but believes that it was more than a year, and states that he was there from the start to completion. He stated that he did the cement block work but that Selby did the roofing on his own.

[82] In cross-examination, Mr Paul stated that he does not know the parcel number of the land on which the house was built. Further that he does not know who owned the house, although four or five people including Selby, Merina and their paralysed mother, lived in it. He is not aware who funded the construction but reiterated that Selby was the one who came to seek their services and who paid them although he does not know where this money came from or who provided the materials to build the house.

Testimony of Ms Raphaella Medor

[83] Raphaella Medor currently lives at Les Canelles and is unemployed. She testified that she had been in a relationship with Selby which started in 2010 and lasted 10 years. It is going on three years since they separated. During the time they were together, she lived at the

house at Cascade, Talbot for over 2 years, alternating between the Cascade house and her home at Les Canelles. At the time only Selby, his brother Rolly and his father were living there and the defendants had not moved back there yet. When she started living there, the house especially the toilet and bathroom had been a bit dirty, but she kept it clean since she was also living there.

- [84] Rapahella recalls meeting Merina for the first time while she was living at Cascade, when Merina came to visit her father. Raphaella introduced herself and they spoke. Thereafter Merina came a few times but always left afterwards. She stated that they got on well at the beginning.
- [85] Rapahella testified that at one point Selby was incarcerated for 2 months, and that she went back to live at Les Cannelles and only returned to Cascade when the plaintiff was released. During the time of Selby's incarceration, Merina had moved into the house at Cascade. Raphaella stated that the problems between them and the defendants started after the plaintiff was released. They were not allowed access to the living room and even to the toilet and bathroom at times. They cooked in a small kitchen inside Selby's bedroom. There was also a refrigerator in the bedroom. There was a door through which they had access to the bathroom and the toilet from the bedroom. Merina sometimes prevented them from accessing the bathroom and toilet by putting salt on the floor. At those times, they had to bathe in the bedroom. Sometimes they had to use a box as a toilet. She stated that during the time that she was living at the house all the electrical appliances were in working order.
- [86] Raphaella stated that during the day the atmosphere in the house was peaceful, but at night the three children made a lot of noise playing loud music. During the weekends, Merina's sister sometimes came by and they played songs intended to show her that she was not welcome at the house.
- [87] She recounted an incident where one evening at around 8 or 8:30 p.m. Merina's daughter was having a shower, and she and the plaintiff were waiting to use the shower. At around 10:00 p.m. Selby went to check if she had finished showering but she was still in the bathroom, and Merina accused him of watching her daughter in the shower and called the

police. The police were about to arrest Selby and she had to intervene and tell them that the accusations against him were false.

- [88] Raphaella stated that whenever Selby reported anything to the police they never took any action, but every time Merina made any complaints to them, they would take her side and sometimes even arrest Selby. She recalled one occasion when Merina called them and said that Selby was attacking her with weapons and they arrested him. Raphaella remained in the bedroom and could not even come out of the house because Rolly had a machete and was threatening to kill her if she came out. She had to call the police and her brother for assistance for her to be able to get out of the house. She left the house after that incident and never went back, although Selby would sometimes come to her place. She also filed a case before the Family Tribunal, which ordered Merina, Rolly and herself not to threaten each other and to keep the peace.
- [89] Raphaella stated that she kept the house clean prior to Merina moving back in, but she was unaware of the condition of the house after that, as she had no access to the other parts of the house.
- [90] In cross-examination, Raphaella confirmed that her relationship with Selby began in December 2010 and ended in 2021, and that when they met she was living at Les Cannelles where she had lived since birth. She could not recall how long after meeting the plaintiff that she moved to Cascade, but maintains that she lived with him at Cascade for a period of 2 years, which she thinks might be from 2011 to 2012. During those two years she would go back and forth from Cascade to Les Cannelles. She confirmed that during the 10 years of her relationship with the plaintiff, she spent more time at Les Cannelles.
- [91] Under further cross-examination she stated that after she met the plaintiff in 2010, she started living at Cascade in 2012 and stayed there for two years. During that time, she would go back to Les Cannelles for a day. She kept all her belongings at Les Cannelles and only brought clothes and other things that she would need on a daily basis to Cascade. She therefore agreed that during that 2 years' period she was residing at Les Cannelles but would spend some time at Cascade.

- [92] Raphaella also admitted that at one point in their relationship, the plaintiff resided with her at Les Cannelles on a long term basis, but stated that during that time, he still went to Cascade every day and sometimes slept there although never for more than three days. During that time, he lived mostly at Les Cannelles.
- [93] Raphaella reiterated that during the two years that she was going back and forth between Cascade and Les Cannelles, the house at Cascade was occupied by Selby, Rolly and their father. Further, that during that time, she had met and introduced herself to Merina. She also met Nilcey when the defendants came to the house to visit Willy Lime (Selby and Merina's father). She does not know how old Willy Lime was at that time but agreed that he could have been past 60 years old. She also stated that she never knew if Merina was his carer as when Raphaella first started coming to Cascade she never saw her there, and that it was she Raphaella who helped cook Willy Lime's meals. Raphaella was not working at the time and it was Selby who maintained her.
- [94] During that time, Raphaella would spend the whole day at Cascade and she would also spend the night there when the plaintiff was not working the night shift. When he worked nights she would leave together with him at 6:00 p.m. and go to Les Cannelles.
- [95] Raphaella stated that she did not know why Merina had left the house at Cascade to go and live elsewhere, and that Selby had never informed her of the same. She stated that prior to the plaintiff being incarcerated Merina did visit, but only returned to live at Cascade when the plaintiff was incarcerated, although she does not recall what year that was. She is also not aware why Merina only came back to live at Cascade when the plaintiff was not there. She further stated that the allegations by Merina that prior to his incarceration Selby threatened her, whether verbally or otherwise, are not true. However, she admitted that during the time that she lived at Cascade, there were times both before Selby was incarcerated and after his release, that Selby and Merina were at the house and she was not present. She would therefore not be aware of anything that happened between them at such times.

- [96] Raphaella confirmed that the issues of restrictions to using the bathroom only started after Selby was released and the house was being occupied by Merina, Nilcey and their children as well as Rolly.
- [97] She explained that they were prevented from accessing the bathroom because salt had been put on the floor, and there was something burning and emitting smoke. However, she conceded that this did not prevent her from having access to the bathroom as such, but rather that it made her uncomfortable to do so. She stated that furthermore the bathroom lacked privacy because there were no locks and anyone could walk in when she was using the shower or toilet. Finally, Raphaella admitted that the bathroom was accessible but that she did not feel comfortable using it.
- [98] She reiterated that during the two years that she was staying at Cascade, all electronic appliances in the house were working.
- [99] She further confirmed that the place was peaceful during the day, but that in the evening the defendants' children made noise, which she admitted was normal for children. However, she stated that the music was too loud. As to why the neighbours did not complain about the noise, she explained that the people living in that area are all family members.
- [100] Raphaella confirmed that there was a matter before the Family Tribunal involving her, Rolly Lime and Merina which resulted in an order by the Family Tribunal to maintain peace towards each other. As to whether this implied that there were issues on the part of all parties, she stated that she did not look for any trouble from them but that she filed that case after the incident where Rolly threatened to kill her with a machete if she came out of the house. She stated that the Family Tribunal sent Rolly a letter telling him to maintain the peace, but although she was also sent a letter, she was not told to keep the peace.
- [101] She stated that she recalls only one occasion while she was staying at Cascade that Selby was arrested by the police pursuant to a complaint by Merina.
- [102] She admitted that she never had any issues with Nilcey, and that in general he did not cause any issues at the house.

Testimony of Nilcey Morel - 2nd defendant

[103] Nilcey Morel aged 54 years is a director of Vision Security Agency and also a contractor. He lives at Cascade with Merina who has been his concubine for the last 24 years.

[104] He testified that the house which Selby claims to have built and to own in the present case is situated on land parcel S13098 at Cascade, and encroaches on two neighbouring parcels one of which is S9962. Land parcel S13098 belongs to the Government. He confirmed that he currently lives in that house together with the Merina, their three children, a baby and Rolly Lime. He does not know whether Selby's claim that he reconstructed the house and that it belongs to him is true or not.

[105] He stated that the defendants previously resided in the house but that they moved to Baie Lazare at one point. They then returned to live in the house during the time that Selby was not around for Merina to take care of her father, as there was no one to do so. Nilcey stated that it has been about 8 years since they moved back into the house.

[106] He stated that he does not know who built the house as he was not there when it was being built. By the time he moved in, only the tiling in the toilet and the bathroom remained to be done, which he did using tiles which were provided to him.

[107] Nilcey stated that since he has been residing in the house Selby has not been sleeping there, and he does not know where Selby currently resides. He does not know whether Selby has any items remaining in the house either as he does not have access to his room. He stated that most of the time he is out at work during the day, but that when he is at the house he sees Selby come and go, although he does not know why he comes to the house.

[108] Nilcey confirmed that he pays for the electricity and water bills for the household. He stated that the electricity and water meters are registered in the name of Willy Lime (Selby and Merina's late father), but that he pays the bills because he is living in the house and using the utilities. As proof that he paid the utility bills, he produced as **Exhibit D4** a bundle comprising Public Utilities Corporation electricity bills/invoices in the name of Willy Lime, Talbot Cascade for the sums of SCR1870.02 (May/June 2025); SCR3234.21 and SCR1,503.58 (May 2024); and SCR2,289.08 and SCR1,342.86 with attached proof of payment. He claims that he paid some of the bills with his debit card and others at the Cable

Kiosks, although it is not possible to ascertain from the exhibits who actually made the payments. He further stated that one of the documents exhibited (for May 2025) shows a deduction of SCR13 from the bill and that he does know who paid that sum, but that this is the only time this has happened. He confirmed that otherwise he is the one who has been paying for the utility bills for the household. Nilcey testified that he also provides the money for food for the household which is purchased by both he and Merina. Further that Selby has never contributed any provisions in the house.

- [109] He agreed that the defendants and their three children moved back into the house at Cascade in 2016. He stated that at that point Selby was not living at the house but he did not know where he was, and whether he was in police custody or not. The defendants moved back at that specific time for Merina to take care of her father, for whom she had been working as a carer even before then. He stated that prior to moving back into the house, Merina went to the house daily to take care of her father, except on weekends. On the weekends that he was available, he would bring food for Merina's father.
- [110] Nilcey further admitted that he and Merina acquired the neighbouring land parcel S13097, but yet continue to live in the house on S13098. He explained that they have started to work on their architectural plan which is yet to be completed.
- [111] Nilcey stated that the defendants were not responsible for the electricity supply being disconnected which resulted in the loss of refrigerated goods belonging to Selby, and claims that this was due to a technical issue (probably a short in a line, possibly in a socket) which caused the breaker system to blow up, and which also damaged the defendants' freezer and refrigerator. He stated that PUC had to intervene and got him to replace the old breaker system with a new one. Further that everything that was fixed now works, but that there are certain areas in the house where the electricity does not work. There are other areas like Selby's bedroom to which he does not have access and therefore does not know if the electricity works.
- [112] Nilcey denies that the defendants denied Selby access to the kitchen and bathroom and stated that as soon as Selby reaches the house he goes to the toilet. As for the kitchen, he states that they have separate kitchens. He further clarified that while Selby does not

actually reside in the house at Cascade, he still comes to and uses the facilities in the house like he used to when he was living there.

- [113] As for Selby's allegation that the defendants play loud music at odd hours during the night thereby causing nuisance, he stated that they only play music during the day. He stated that it is Selby who used to insult him whatever he did (*"if ... I cooked ... he would insult my cooking, if I sneeze he would insult me, if I cough he would insult me"*) and that he never responded. Even now, he never reacts and if the situation gets out of control and Selby starts getting aggressive, he calls the police. He explained that when Selby gets aggressive, he insults, swears at and harasses the defendants. When he does that, Nilcey records him using his phone or a camera. Nilcey also has a camera at the rear of the house as well as one inside the house, and he shows the recordings to the police, when they come to the house.
- [114] Nilcey stated that sometimes he goes to cut wood on the property he has purchased, and Selby takes photographs and reports him to the Planning Authority or sometimes to the police. When he does not get the support of the police Selby does other things, but Nilcey maintains that he never responds or reacts.
- [115] Nilcey states that at no point in time have either of the defendants been arrested by the police for any misconduct towards Selby.
- [116] He also denies the defendants fail to maintain basic hygiene and tidiness both inside and outside the house. He stated that he has four grass cutters which he uses to cut grass outside the house, and that Merina usually sweeps the cut grass afterwards. He says that she also cleans inside of the house and that he cleans the driveway.
- [117] He states that he has received a lot of threats from Selby in various forms. Selby insults him, calls him a thief and sometimes even invites him to fight although he takes no notice of him. When the defendants cross paths with him, Selby spits on the floor or on him but as a former member of the police force he is aware of what to do in order not to break the law.

- [118] He stated that Selby has no access to the defendants' belongings or their food and that everything is locked inside their room because he had threatened to poison their food several times.
- [119] Nilcey denies that the Selby has made any formal demands for the defendants to refrain from any abusive conduct towards him. As to whether there has been any abusive conduct on their part, he only recalls that there was a case involving Selby and Merina at the Family Tribunal where they were ordered to maintain the peace. He states that he himself has never been taken into custody by the police as a result of any acts towards Selby, but that he witnessed an incident where Selby hit Merina in the face while she was in the shower, although he does not know what set off the argument. He has also witnessed many incidents of violence by Selby, both physically and verbally, towards Merina.
- [120] In regards to Selby's claim for loss of amenities and distress in the sum of SCR100,000, Nilcey states that nothing was done to him for him to be entitled to anything. He stated that the loss caused to Selby because of issues with the electricity was not his fault but was due to a technical issue, and furthermore that Selby did not suffer any moral damages. Nilcey further states that he will not pay any damages unless Selby substantiates the damages being claimed with documentary proof.
- [121] As to Selby's prayer that he is declared the proprietor of the house on land parcel 13098, he states that the property belongs to the Government, that the house belongs to the family and that the family is living there. As for the defendants vacating the said house, he said that he will not move out now but that he will do so when construction of his house is completed, although he will comply with any order of the Court to move out. He further denies that the defendants have violated Selby's right to property.
- [122] He confirmed that the defendants are seeking a declaration from this Court that they do not have to vacate the house; that Selby does not reside in that house; and that he must not approach the house or the defendants, stating that the place belongs to them.
- [123] He further stated that despite Selby's aggressive behaviour, he has tried to maintain the peace, and that at the moment there is some peace as he is not around.

[124] In cross-examination, Nilcey stated that he does not know how often Selby comes to the house as Nilcey is not around all the time, and he only sees Selby when he is there. He does not know whether Selby comes every day.

[125] He confirmed that payment of the electricity bills is not shared between the occupants of the house and states that he pays the bill when it is delivered. He has been doing this since he has come to live in the house. He conceded that contrary to what he had stated in examination in chief, the house belongs to the family, and not solely to the defendants.

[126] In re-examination, in regards to his statement that he was not aware of each time that Selby came to the house as he was not always there, Nilcey explained that he leaves to go to work in the morning and comes back at around 7 to 8 p.m. He stated that he is however at the house every evening, as he resides there with the Merina and their children, but that he has not seen Selby at the house in the evenings. He added that he would not necessarily know if the plaintiff came to the house in the evenings because they occupy separate parts of the house and that he cannot see at the back of the house where the plaintiff accesses the house.

[127] He further clarified that Selby and the defendants have separate cooking facilities. They each have their own kitchen inside the house. Selby's kitchen is located at the back of the house where he accesses his room, and is separate from his bedroom.

Testimony of Merina Lime -1st Defendant

[128] The 1st defendant Merina Rachel Lime works as a security manager with Vision Security and resides at Talbot, Cascade, with her partner (2nd defendant), their three children and her youngest brother Rolly Lime. They are the only people living in the house at Talbot.

[129] She confirmed that the house they are occupying is partially located on parcel S13098. She produced **Exhibit D5** - a webGIS image showing the land parcels on which the house is located together with the neighboring parcels. She pointed out the parcels on which the house is built, the major part of the house being on S13098 with encroachments on S167 and S9962. She confirmed that the proprietor of parcel S13098 according to Exhibit D2 (Certificate Official Search) is the Government of Seychelles.

- [130] Merina testified that the construction of the house was financed with funds she obtained from a loan she had borrowed and the "*tarmac money*" that her mother received. She stated that she and her sister Marie France Lime had also sought assistance from Mr. Charles De Commarmond from the DA's Office and were given wood, corrugated iron sheets, crusher dust, and aggregate for construction of the house.
- [131] She confirmed that she borrowed the loan from the agency responsible for housing although she does not remember its name as it has now changed, and identified Exhibit D3(a) as the Home Improvement Loan Agreement between herself and the Seychelles Housing Development Corporation dated 23rd May 2002 for the sum of SCR25000, as the agreement that she signed for the loan. She stated that the loan was to assist with the construction of the house.
- [132] Merina confirmed that before the construction of the existing house, there had been a corrugated iron sheet house in its place, which was demolished. She does not know who the corrugated iron sheet house belonged to, although she and her siblings grew up in that house with their parents.
- [133] She confirmed that she, her sister and her mother contributed to the reconstruction of the existing house. She further stated that before the reconstruction of the house, during the time that it was still made of corrugated iron sheets, her brother Willis Lime built the toilet and the bathroom. She denied that the house was reconstructed by Selby.
- [134] As to whether Selby, being one of the siblings, had helped with the actual construction works on the house, she stated that they had to get other people to help with the construction. She remembers that Selby engaged the services of Brian, Xavier, and Hudson, whose surnames she does not remember who were paid with the "*tarmac money*" contributed by their mother. She testified that she gave the money to Selby to pay them for their services. She emphasised that at no point in time did Selby provide any funds for the reconstruction of the house, and that the money to pay the workers came from their mother.
- [135] Merina denied Selby's averment in his plaint that he funded the entire reconstruction of the house at his own cost. As to his claim that Merina's only contribution had been the

electrical appliances which she had purchased, she stated that they received assistance from Mr. Decomarmond to purchase certain appliances such as a refrigerator, and that they purchased the other electrical appliances themselves.

[136] Merina confirmed that after the reconstruction of the house, Selby, Merina, their siblings and their parents lived together in it. Their mother passed away on 13th August 2002. At that time only their elder brother Willis Lime was not living in the house, and Nilcey had moved in although the defendants did not have any children yet.

[137] After her mother's death, Merina moved out of the house together with Nilcey to go and live at his house at Baie Lazare. She explained that she moved out because of an argument with Selby regarding money their mother had supposedly left behind. She recounted that one week after their mother's funeral, Selby came to claim a share of that money from her, whereupon she told him that their mother had not left any money. After that incident, while she was taking a shower, Selby punched the bathroom door which flew open as it did not have a lock and hit her in the eye, injuring her. He did that because he had overheard a conversation between Merina and their other sister who was also living at the house at the time, in which the sister had expressed her intention of leaving the house, and Merina had told her that she could leave if she wanted to but that she Merina was staying. During that time Selby had been urging the defendants to leave the house. She stated that she reported the matter to the police station at Cascade. She also told her father that she would be leaving the house to avoid any further such incidents.

[138] Merina testified that after the defendants moved out of the house to live at Baie Lazare, she came to visit her father every now and then although she had to check whether Selby was around before she came. Selby and their youngest brother continued living with their father in the house.

[139] She stated that each time Selby and the defendants crossed paths either on the road or in the bus, he would speak what is called "*koze mirak*" in Creole.

[140] She testified that Selby left the house in the year 2006 to live at Les Cannelles at Raphaella Medor's place and that he lived there for a long time, although she could not say for how

long. During that time she continued living at Baie Lazare but would still come to visit her father.

[141] In 2016, the defendants moved back to the house at Cascade with their three children. At the time Selby was not living at the house which was occupied by Willy Lime (the father), Rolly Lime (the younger brother) and Willis Lime (the elder brother). Merina believes that Selby had been arrested and was in police custody at the time. Since then, the defendants and their children have been living in the house at Cascade and Merina has been her father's carer. She further stated that even before 2016 when she was not living at Cascade she had been taking care of him, and visited him daily for that purpose.

[142] Merina confirmed that the defendants have acquired the neighboring land parcel S13097, but admits that nonetheless they continue to occupy the house on S13098. She states that this is because that there is no house on S13097 and in any event the house on S13098 is not on anybody's name and it is just there. She stated that contrary to what Selby claims, he does not own or live in the house on S13098. When he left in 2006, he would still come and go to the house, but nowadays he does not stay there at all although she does not know where he lives.

[143] She stated that since she has moved back to the house, she has been told that he comes to the house during the day to use the toilet, and also indulges in superstitious practices such as burning herbal materials. However, she has not seen him herself.

[144] She testified that it is Nilcey who provides money to pay for the utility bills and to buy food for the household, and that to the best of her knowledge he is the only one who has been paying the bills during the time that they have been residing in the house.

[145] She denied Selby's claim that since 2021 the defendants have been a nuisance to and engage in anti-social conduct towards him, denying him access to the kitchen and bathroom, and stated that the bathroom and toilet do not have locks on them, and further that the house remains open and anyone can enter it if they want to. She also stated that she does not prevent him from having access to the house even if he does not live there as the house is not in anybody's name.

- [146] Merina confirmed the averment in the defendants' defence that the house was reconstructed by her late mother, her brother Willis Lime and herself, and that she is therefore claiming that the house belongs to them. She reiterated that Selby does not own the house.
- [147] She denied Selby's claim that the defendants disconnected the electricity supply causing refrigerated foods to spoil, and explained that there was an issue with the electric installation itself.
- [148] She also denied playing loud music in the middle of the night, stating that she also needs to sleep.
- [149] She further denied that the defendants do not maintain basic hygiene and tidiness inside and outside the house, stating that Nilcey cuts the grass on the property while she cleans inside the house.
- [150] As for Selby's claim that the defendants make malicious complaints to the police about him, she explained that Nilcey has chronic sinusitis and when Selby used to live at the house every time he coughed or sneezed, Selby swore at them. She admitted having complained to the police on those occasions but stated that this is no longer an issue as Selby no longer resides at the house and has not done so for the past three years.
- [151] In addition to the time when Selby was physically violent towards her and she reported the matter to the police, Merina stated that he also threatened her when the surveyor and other workers came to place the beacons for parcel S13097. There was a hammer in his hand and he threatened to hit her with it if she didn't make them go away. After they left he kept on insulting her. Other than that, when they cross paths he would speak what is called "*koze mirak*" in Creole and threaten to hit her.
- [152] Merina testified that the defendants have to store their food supplies inside their bedroom and that everything containing food including the refrigerator and the freezer are also kept inside their bedroom. This is because he does not trust Selby, and even if he does not live there he does come to the house every now and then.

- [153] Merina denied that Selby was entitled to the damages claimed. She reiterated that the damage to his refrigerator was due to an issue with the electricity installation. She also denied causing him any stress or moral damage and stated that it was he who caused her stress. By way of illustration, she stated that she did not feel comfortable leaving her children in the house when she went to work, while he was in the house. When the children were underage, they were also afraid to stay in the house with him around.
- [154] She refuses to vacate the house on the basis that Selby does not have any documentary proof that the house belongs to him.
- [155] Merina further confirmed that at no point did the defendants receive any verbal or written demand from Selby asking them to refrain from abusive conduct towards him. She stated that they have tried to maintain peace with him, that when they went to the Tribunal they were ordered to maintain peace but that it is Selby who does not want to maintain peace.
- [156] Under cross-examination Merina stated that although Selby had signed the home improvement loan agreement (Exhibit D3) as guarantor to the loan she had borrowed, he made no contribution at all towards rebuilding the house. She stated that Selby had nothing to do with the loan but had merely signed the agreement as a guarantor. She further agreed that at the time they were on good terms, and looking forward to and working together towards, the reconstruction of the house, which was funded with the "*tarmac money*" belonging to their late mother. She confirmed that she had finished paying the loan.
- [157] It was put to Merina that correspondence with the DA's Office (which has not been exhibited and therefore cannot be relied on) indicated that Selby appeared to have been very active in dealing with the Government for getting part of a "Bureau branch loan", whereas Merina had stated that all assistance from the DA's Office had been sought by her and her sister. She responded that Selby never went to the DA's Office, and that only she and her sister Marie-France Lime did. Further that Mr. Charles Decomarmond could not even go to visit Merina's lawyer because he was afraid that Selby would swear as he is used to. She also stated that there is an issue with the road for which only she and her sister have sought assistance from the DA's Office.

- [158] Merina stated that her mother had authorised her to have access to her bank account and to withdraw money therefrom on her mother's behalf. However, she only started withdrawing money from the account when her mother got sick and could not do anything as she was paralyzed and Merina had to take care of everything for her. She added that she was carer to both her mother and later her father and that no-one else (presumably her siblings) did anything to assist them.
- [159] She stated that she does not recall exactly how much her mother's "*tarmac money*" amounted to, but further stated that it was to be distributed amongst the five siblings. It is likely that she was referring to the portion of the "*tarmac money*" left in her mother's account after her death.
- [160] Merina stated that Selby only looked for workers to build the house namely Xavier, Brian, and Hedson, but that he did not assist with the construction of the house at all. As to Hedson's testimony that he was paid by Selby, she stated that she withdrew money and gave it to Selby to pay Hedson. When she was asked whether Selby did not so much as lift a brick, she admitted that he had done a few things. As to whether he had contributed from his own salary, she stated that she does not know what he did with his salary but that each time he needed money he would ask her.
- [161] She stated that she sometimes sees Selby at the house, but that he no longer sleeps there.
- [162] It was put to her that although she claims that Selby has no share in the house, Nilcey had testified that he has a room at the back to which the access is different from the defendants' access to the house. She replied that Selby built the bedroom "*from way back*" when the house was constructed, and that the entrance is at the back, but that she does not know when or if he enters the bedroom, although she did see Selby when the incidents involving him that she has testified to happened.
- [163] She confirmed that the defendants have never written to Selby asking him to stop harassing them, but stated that they only went to the Family Tribunal to ask him to maintain the peace. She admitted that Selby filed a counter application against Merina to maintain the peace as well.

- [164] It was further put to Merina that given that the "tarmac money" was supposed to be split among her mother's five children, and that it was used to build the house, the defendants cannot now tell Selby that he must not approach the house. She agreed but stated that he should keep to his area of the house and not come to the part of the house that they occupy and do the things that he does including taking photographs of their children.
- [165] She further confirmed Nilcey's testimony that once the defendants have built their house on the parcel that the Government has sold them, they will be moving there. However, she stated that as long as the house on S13098 is there, she will still go back there if she needs to, unless the Government states in writing that the house or property now belongs to Selby.
- [166] In re-examination, Merina stated that although Selby was a guarantor for the Seychelles Housing Development Corporation loan, he did not help to repay the loan which was repaid solely by her.
- [167] She also agreed that her mother was still alive during the time that the house was being reconstructed, and agreed that the "tarmac money" therefore belonged to her at that time and not to her children in their capacity as her heirs. She stated that nonetheless all her children agreed for the tarmac money to be invested in the house.

Submissions

- [168] Counsels for both parties filed written submissions in respect of the pleas in *limine litis* as well as the merits of the case, which has been considered with care and will be referred to as appropriate in the analysis below

Analysis

- [169] In terms of his complaint, the plaintiff claims that he funded the reconstruction of the house on S13098, and on that basis seeks (1) to be declared the proprietor of the house on parcel S13098; (2) an injunction compelling the defendants to vacate the house on parcel S13098 and restraining them from further violating his right to property in that house; (3) the payment of moral damages (loss of amenities and distress) in the sum of SCR100,000.00 (Seychelles Rupees One Hundred Thousand) with interest at the legal rate; and (4) any other appropriate order in the circumstances of the case.

[170] In their Statement of Defence, the defendants have raised three pleas in *limine litis*: (1) that the plaint discloses no reasonable cause of action and is bad in law and must be struck out with costs; (2) that the plaintiff lacks locus standi to file this matter and the plaint must be dismissed with costs; and (3) that the Supreme Court has no jurisdiction to hear this matter as the plaint has been filed in the wrong forum and should be dismissed with costs. However, they have abandoned the first two pleas in *limine litis*. In the submissions made on behalf of the defendants, their counsel states that they will not be pursuing the first two pleas in *limine litis* which only leaves the third for this Court's consideration.

[171] On the merits, the defendants deny that the plaintiff owns the house claiming that he made no contributions towards its reconstruction. They plead that the reconstruction of the house was funded by the 1st defendant, by Selby and Merina's mother with her "tarmac money" and by their brother Willis Lime. The defendants therefore pray for declarations from this Court that (1) the house is not owned and was not built by the plaintiff; (2) the plaintiff has no lawful rights in the land (S13098) or the house; (3) the house was built and is owned by the 1st defendant, by the mother of Selby and the 1st defendant, and by Willis Lime; (4) the defendants do not have to vacate the house; (5) the plaintiff does not reside in the house and must not approach the house or the defendants; (6) the defendants have not violated the plaintiff's rights; and (7) the defendants do not owe the plaintiff damages and interest. The defendants further pray for dismissal of the case with costs; and any other order deemed fit by the court in the circumstances. It is noted that although some of the remedies sought by the defendants would require them to do so by means of a counterclaim they have not filed one.

Plea in Limine

[172] This Court will first deal with the point of law raised by the defendants, namely that the Supreme Court has no jurisdiction to hear this matter as the plaint has been filed in the wrong forum and should be dismissed with costs.

[173] It is submitted on behalf of the defendants that given that the plaintiff's ownership rights to neither the land nor the house has been established, the main contention of the plaint is the antisocial conduct and nuisance on the part of the defendants towards the plaintiff. It is submitted that it is the Family Tribunal which has jurisdiction to determine matters

pertaining to such anti-social conduct and nuisance among family members, and it is only if there is an appeal from the decision of the Family Tribunal that the Supreme Court can hear such matters in its appellate jurisdiction, which avenue has not been exhausted. Counsel for the defendants further submits that the Family Violence (Protection of Victims) Act further extends the Family Tribunal's jurisdiction to grant protection orders to persons exposed to family violence and as such, the remedies sought by the plaintiff for the defendants to refrain from abusive conduct towards him should be dealt with by the Family Tribunal. On that basis it is submitted that this matter should be dismissed with costs in favour of the defendants as pleaded.

[174] Counsel for the plaintiff has not dealt with this issue in his submissions but has instead addressed the 1st and 2nd pleas in *limine litis* which were subsequently dropped. His submissions are therefore not particularly helpful in that regard.

[175] At this point I have not made any determination on the issue of the plaintiff's ownership rights to the land namely title S13098 or the house thereon. However, even if I had found that the plaintiff had not established his ownership rights to the title S13098 or the house thereon, as contended by the defendant, and that the only remaining issue to be determined in this case involves a family dispute involving anti-social conduct and nuisance between family members, I do not agree with the defendants that in those circumstances, those remaining issues are matters which cannot be heard by this Court and ought to be heard by the Family Tribunal.

[176] The cause of action in this case stems from a dispute between the parties over ownership of the house based on their respective contributions to its construction. The plaintiff claims that the house belongs to him, while it is the defendants' contention that he has no rights therein. They claim that the house was reconstructed by the 1st defendant, her brother Willis Lime and their mother and seek a declaration *inter alia* that the house was built and is owned by the aforementioned three persons. It is also part of the plaintiff's case that the alleged anti-social conduct of and nuisance caused by the defendants, which led to him leaving the house, is an interference with his ownership of the house and violates his right to peacefully enjoy his property and caused him moral damages. It is on that basis that he

claims damages from the defendants as well as other remedies, namely (1) a declaration that he is the proprietor of the house, and (2) an injunction ordering the defendants to vacate the house and restraining them from further violating his right to property in the house. It is clear that the issues arising in the case are intertwined and that it would not make sense for some of them to be determined by this Court and for the others to be dealt with by the Family Tribunal. If the Court determines that the plaintiff's ownership rights to the house have been established, it can then move on to ascertain the veracity of the plaintiff's claims of antisocial conduct by the defendants, and consequently whether the damages and the injunctive relief sought are justified. In those circumstances, I find that the entirety of the plaintiff's claim was properly filed before this Court which has the jurisdiction to hear and determine all issues arising therefrom.

- [177] Furthermore, it would appear from the evidence, that the parties have been before the Family Tribunal a few times but that nonetheless the issues between them remain unresolved.

On the Merits

Ownership of or any other rights in S13098

- [178] On the merits, the first issue for this Court's determination is the ownership of, or any other rights in parcel S13098, by the plaintiff.
- [179] It is not disputed that parcel S13098 is currently owned by the Government of Seychelles ("the Government") as confirmed by **Exhibit D2** (Certificate of Official Search for S13098) although it is not known when the Government acquired the property and by what means. Although the plaintiff testified that parcel S13098 which is a subdivision of a bigger parcel, which used to belong to his family, before its acquisition by Government, he did not bring any evidence of the same.
- [180] It is noted that according to **Exhibit D2**, parcel S13098 is registered in the name of the Government with an absolute title and that no encumbrances are registered against such title. It is further noted that the plaintiff testified that he obtained permission from Mr. Charles Decommarmond from the DA's Office for the reconstruction of the house but he brought no documentary evidence of a *droit de superficie* on that title or any authorisation

or permission to build thereon. It is also not disputed that Mr. Charles Decommarmond from the DA's Office provided certain construction materials for the reconstruction of the house. All this gives rise to the inference that the reconstruction was done, if not with the express written permission of the Government, at least with its knowledge and tacit approval.

- [181] It is clear that neither the plaintiff nor the defendants have ownership rights in parcel S13098, but that the house was reconstructed on that parcel with the tacit approval of the Government. **Exhibits D1** (Location Plan of S13097) and **D5** (WebGIS image of location of the house) also show that although the major part of the house is built on parcel S13098, the structure also encroaches on two other parcels namely S9962 and S167, although no evidence was adduced as to the ownership of these two parcels.

Ownership of the house situate on S13098, S9962 and S167

- [182] Having found that the Government of Seychelles is the proprietor of parcel S13098, this court has to make a determination as to the ownership of the house the substantial part of which is located on parcel S13098, and which encroaches slightly on parcels S9962 and S167. Such ownership will depend on who contributed to the reconstruction of the house. It is not necessary for this Court to consider who contributed to the purchase of electrical appliances to be used in the house. It is also irrelevant for the purpose of determining who contributed to the reconstruction of the house, by whom the utility bills were paid in the past or are currently being paid.

- [183] Insofar as it concerns the 2nd defendant, it is clear that he had nothing to do with the reconstruction of the house, whether in terms of providing funds or otherwise. He himself testified that he does not know who built the house as he was not around at that time. Further that he first moved into the house to cohabit with the 1st defendant two months before the death of her mother which occurred on 13th August 2002, by which time the reconstruction had long been completed and the plaintiff, 1st defendant and their parents and siblings had been living there for quite some time. According to him, when he moved in, he only did the tiling in the toilet and bathroom with tiles which were provided to him. In any event he does not appear to consider this as a contribution on his part to the

reconstruction of the house. It is also noteworthy that in their statement of defence the defendants seek a declaration that the house was built and is owned "*by the 1st defendant, the parties' mother and Willis Lime*" with no mention of the 2nd defendant.

[184] The 2nd defendant was also unable to throw any light as to who funded the reconstruction of the house: he testified that he did not know whether plaintiff's claim that he reconstructed the house and that it therefore belongs to him is true or not. However, after confirming in examination in chief that the defendants are seeking a declaration that they do not have to vacate the house, that the plaintiff does not reside in and must not approach the house or the defendants, and stating that this is because the place belongs to the defendants, he conceded in cross-examination that the house belongs to '*the family*' and not solely to the defendants. I take it that by '*the family*' he meant the plaintiff, the 1st defendant and their siblings.

[185] In his plaint, the plaintiff avers that he demolished the original corrugated iron house built on parcel S13098, and built a six bedroom house in its place. He averred that he funded the entire reconstruction of the house and on that basis seeks to be declared the proprietor thereof. The defendants on the other hand plead that the plaintiff did not build the six bedroom house and does not own it, and that the house was built by the 1st defendant, her mother and her eldest brother Willis Lime. They aver that the 1st defendant further obtained a loan from the SHDC to contribute to building the house, and that she also received additional help from the Cascade DA's office for that purpose.

[186] In his testimony before this Court, the plaintiff stated that he contributed to the rebuilding of the house both in terms of labour works as well as to the funding thereof.

[187] In terms of his contributions to the works, he stated in examination in chief that he broke rocks at the back of the house to create more space to make the new concrete block house bigger than the original corrugated iron sheet house had been. This was confirmed by Mr. Andy Esparon who testified having witnessed the plaintiff carrying out these works. I find no reason to doubt Mr. Esparon's testimony.

[188] The plaintiff further testified that the labour work to reconstruct the house was done by him with the help of his friends. However, the 1st defendant denied that the plaintiff had made any contributions to such reconstruction in terms of labour, stating that the construction works were done by workers namely Brian, Xavier and Hedson, whose services she concedes were retained by the plaintiff, although she made it clear that they were paid with the "*tarmac money*" contributed by their mother and that at no point did the plaintiff provide any funds for the reconstruction of the house. However, I note that under cross-examination, she did admit that the plaintiff contributed in terms of labour works.

[189] Mr. Andy Esparon's testimony tends to confirm that both the plaintiff and his younger brother Rolly contributed to carrying out the works, along with other workers including Mr. Hedson Paul who worked in the construction industry at the time. According to both the plaintiff and the 1st defendant as well as Mr. Hedson Paul himself, Mr. Paul's services were sought by the plaintiff, which confirms that the plaintiff was involved not only with the actual construction itself but at the initial stage even before construction began. Mr. Paul further testified that while he and other workers carried out the cement block work the plaintiff did the roofing on his own.

[190] In view of the above, and despite the 1st defendant's contention to the contrary, I have no doubt that the plaintiff contributed quite substantially in terms of labour work to the construction of the house.

[191] In terms of financial contributions, the plaintiff testified that he used his savings to fund the reconstruction of the house and his earnings from his job with Peugeot which he held at the time. However he further stated that his mother also contributed to the funding of the reconstruction of the house with money she had received for political campaigning, as well as the "*tarmac money*" she received for her work on the construction of roads, and under cross-examination agreed that the house belonged to his mother, thereby contradicting his own pleadings that "*he funded the entire reconstruction at his own costs*". Under cross-examination he further stated that he had never made such a statement, and confirmed his testimony in chief that his monetary contributions consisted of funds he earned while working at Peugeot. It is also noted that the plaintiff did not bring any evidence of such

contributions or give any indication of how much he contributed, although given that the reconstruction of the house took place as far back as 1998, it is understandable that such evidence is no longer available. Furthermore it is understandable that the family being on good terms at the time, the plaintiff did not anticipate that he would need to keep track of such evidence.

[192] Mr. Andy Esparon testified that he was paid for his work for the reconstruction of the house by the plaintiff. This is echoed by Mr. Paul who stated that it was the plaintiff who paid him and the other workers although he added that he does not know the source of those funds. The 1st defendant, on the other hand, claims that it was she who provided the plaintiff with money to pay Mr. Esparon, Mr. Paul and the other workers, from her mother's "*tarmac money*", although she has brought no evidence of the same.

[193] Neither the plaintiff nor the 1st defendant have brought documentary evidence substantiating their claims as to the source of the funds for paying the workers. However, on the strength of the testimony of both Mr. Esparon and Mr. Paul testimony that the workers were paid by the plaintiff although I am mindful that Mr. Paul stated that he is unaware of the source of those funds, I am inclined to believe that at least some of the labour costs (i.e. payment of the workers), was borne by the plaintiff from his own funds and that the remainder was paid from the "*tarmac money*" of Mrs Nicette - the mother of the 1st defendant and the plaintiff.

[194] In her oral testimony, the 1st defendant sought to support the defendants' pleadings in regards to the funding of the reconstruction of the house (see paragraph [185]). She testified that the funds were obtained from the loan of SCR25,000 she had borrowed from SHDC evidenced by the loan agreement Exhibit (Exhibit D3(a)), and her mother's "*tarmac money*" although she could not say how much the "*tarmac money*" amounted to or how much of it was used for that purpose. She also stated that the DA's office provided them with construction materials in the form of wood, corrugated iron sheets, crusher dust and aggregate at the request of the 1st defendant herself and her sister Marie-France Lime. As for Willis Lime's contribution, she explained that he had built the bathroom and toilet while the original corrugated iron sheet house was still in existence and before the reconstruction

took place. Presumably these are the rooms which the 2nd defendant claims were tiled by him. As stated the 1st defendant denied that the plaintiff provided any funds for the reconstruction of the house.

[195] Despite the plaintiff's pleadings that he solely funded the rebuilding of the house, I note that he admits that his mother contributed her "*tarmac money*" thereto. There does not appear to be any dispute between the plaintiff and the 1st defendant as to their mother's contribution, but as previously noted, it is only the amount of the "*tarmac money*" and how much of it was used in the reconstruction of the house that is unclear.

[196] In Court, the plaintiff denied that the 1st defendant used funds obtained from the SHDC loan to build the house, stating that the loan had been borrowed in 2002 as shown by the loan agreement (**Exhibit D3(a)**), by which time the construction of the house had been completed and the family had been occupying it for a while. I agree with the plaintiff that it seems unlikely that the loan was used for the actual reconstruction of the house given the date of the agreement namely 23rd May 2002, by which time reconstruction of the house would already have been completed. However, I note that the purpose of the loan was for the improvement of the house, and although no details are provided as to what these improvements are, it is my view that they must have added value to the house and should therefore be considered as a contribution by the 1st defendant to its value. I further find no merit in the defendant's claim that the agreement is a fraudulent document especially as he admitted signing it as a guarantor. Furthermore Exhibit D3(b) is evidence that the copy of the loan agreement exhibited was obtained from the HFC –the successor of the SHDC – making it highly unlikely that that the document was fraudulent.

[197] Insofar as it concerns the assistance provided by the DA's Office in terms of provision of construction materials for the rebuilding of the house, the plaintiff admitted that such assistance was provided but stated that such assistance was provided to his mother for her activities as a political activist and was not due to the 1st defendant's efforts. In my view it is neither here nor there whether the materials were provided to the mother or at the request of the 1st defendant. In either case it cannot be considered as a direct contribution of the 1st defendant as it came from the Government.

- [198] The plaintiff further denied that his brother Willis Lime contributed to the reconstruction of the house. It seems from the evidence that Willis Lime left the house, subject matter of the dispute between the parties, a while back. He is not a party to this case nor was he called as a witness. Other than the testimony of the 1st defendant, there is no evidence to support her contention that he built the toilet and bathroom, although it is plausible that being the elder brother, he did so before the reconstruction of the house while the family was still occupying the original corrugated iron sheet house. However in the presence of conflicting testimony of the plaintiff and the 1st defendant, and in the absence of any other independent evidence supporting the 1st defendant's claim that Willis Lime built the toilet and bathroom, I am unable to make a finding to that effect.
- [199] As stated, ownership of the house depends on the contributions of the parties to its reconstruction. Insofar as it concerns the 2nd defendant, this Court has found that he made no contributions to the reconstruction of the house. The Court has further found that the plaintiff contributed to the reconstruction of the house both in terms of labour work and by way of monetary contributions. In terms of labour, he contributed by breaking rocks to enlarge the site for the construction of the house. He also carried out some of the actual works such as the roofing and I have found that he contributed substantially in terms of labour works. As for his monetary contributions, he paid for at least part of the labour costs of the workers. As for the 1st defendant's contributions to the reconstruction of the house, other than the loan of SCR25,000 from SHDC, which this Court found should be considered as contributing to the value of the house, the plaintiff has not brought any evidence of any other contributions, financial or otherwise, to the reconstruction of the house. As seen from the above, I have also found that the mother of the plaintiff and the 1st respondent contributed to the reconstruction of the house with her "*tarmac money*" and that the DA's office gave some construction materials for the reconstruction. On that basis, I find that both the plaintiff and the 1st respondent have contributed to the reconstruction of the house or at least to its current value, although I am of the view that the plaintiff contributed substantially more than the 1st defendant who has only been able to show a contribution of SCR25,000. I also find that a substantial part of the reconstruction costs which would include cost of the materials over and above those contributed by the DA's office were borne by their deceased mother.

[200] Hence I find that, on the basis of their contributions, neither the plaintiff nor the 1st respondent can be considered as having sole ownership of the house. I note in that regard that the plaintiff prays *inter alia* for a declaration that he is the sole proprietor of the house, while one of the remedies sought by the defendants is a declaration that the house is owned by the 1st defendant, the parties' mother and Willis Lime to the exclusion of the plaintiff. Both the plaintiff and the 1st respondent, having contributed to the reconstruction of the house, have a claim to ownership of a share of the house according to their contributions. It is also important to note that the contribution of their late mother by means of the "tarmac fund" should benefit all her children equally.

[201] However the difficulty lies with the fact that, except for the contribution of the SCR25,000 of the 1st defendant, the court has no knowledge of the exact extent or amount of the financial contributions of the plaintiff or the late mother. It is also noted that there is not even an estimate of the current value of the house. It is therefore impossible, on the evidence available, to determine the share of the house to which each of the parties would be entitled based on their contributions. At best the Court can only make a finding that both the plaintiff and the 1st defendant own a share in the house on the basis of their own contributions, and that they and their siblings also own a share therein on the basis of their mother's contributions. The plaintiff and the 1st defendant therefore both have the right to occupy the house.

Anti-social conduct & Nuisance

[202] The third point for this Court's determination on the merits is whether the plaintiff has substantiated his claims of anti-social conduct and nuisance by the defendants towards him which would justify the grant of an injunction to make them vacate the house or prevent them from violating his rights in the house, and conversely whether the defendants' claims that the plaintiff causes nuisance and disturbance to them are justified. It is noted that in their Statement of Defence the defendants have prayed *inter alia* for declarations that they do not have to vacate the house on the land and that the plaintiff does not reside in the house and must not approach the house or the defendants. I further note that the remedies sought by them are mostly the reverse of the remedies sought by the plaintiff. For instance,

the plaintiff seeks a declaration that he is the proprietor of the house, while the defendants seek a declaration that the house is not owned by him and that he has no lawful rights therein. However, I am of the view that the other remedies which fall outside that category, for instance a declaration that the plaintiff must not approach the house or the defendants, cannot be sought or granted in the absence of a counterclaim for the same.

[203] It is further noted that both the plaintiff and the 1st defendant own a share in the house and therefore have a right to occupy it. However what they have no right to do is engage in antisocial behaviour towards or cause nuisance to each other.

[204] The plaintiff avers in his Amended Complaint that since 2021 the defendants have been a nuisance and repeatedly engaged in anti-social conduct. These include denying him access to the kitchen and bathroom, disconnecting the electricity supply causing loss of refrigerated foods, playing loud music at odd hours at night, failing to maintain basic hygiene and tidiness in and around the house and making malicious complaints to the police. He avers that such conduct constitutes unlawful interference with his ownership of the house and a violation of his right to peacefully enjoy his property, which has caused him moral damages in the sum of SCR100,000, which are particularised as *loss of amenities and distress*, for which the defendants are jointly liable to make good.

[205] This is denied by the defendants in their Statement of Defence. They aver that although the plaintiff has access to the house, he no longer resides there, but comes there to harass, cause nuisance to and disturb the defendants. They also aver that the plaintiff has on several occasions threatened to poison them. In regards to the complaints they made to the police, they aver that they had to make the complaints because of the threats that the plaintiff made towards them. They aver that they have had to seek police assistance on various occasions because of threats from, and the behaviour of, the plaintiff towards them. They further deny disconnecting the electricity and water supply as they also live in the house. In regards to the alleged poor maintenance of the house and grounds, the defendants aver that they are the only ones taking care of the same.

[206] It is not disputed that after the house was reconstructed, it was occupied by the plaintiff, the 1st defendant and their siblings together with their parents. The 2nd defendant moved

into the house in 2002 shortly before the death of the mother of the plaintiff and 1st defendant which occurred on 13th August 2002. Shortly after that in 2002, the defendants moved out to live elsewhere.

[207] In their Statement of Defence the defendants plead that they left due to physical assaults and verbal threats by the plaintiff towards the 1st defendant. The 1st defendant testified that they moved out of the house because of a dispute between her and the plaintiff about money that the latter claims their mother left behind whereas she claims no such money was left, and also because the plaintiff wanted the defendants out of the house and the 1st defendant refused to leave. She claims that after the plaintiff overheard a conversation between her and Marie-France in which Marie-France had said she was leaving and the 1st defendant had said that she would not leave, there was an altercation between the plaintiff and the 1st defendant which resulted in her being injured in the eye when the plaintiff slammed the shower door hitting her in the face, which she reported to the police. The 2nd defendant confirms that this incident did occur. The plaintiff denies that he physically assaulted or verbally threatened the 1st defendant. His story is that he gave the 2nd defendant money to buy materials to do some construction work for him but that the 2nd defendant came back drunk and did not buy the materials which led to an argument which resulted in the defendants leaving. Although Rafaella stated that the 1st respondent's allegations of physical and verbal abuse by the respondent are untrue, she admitted that she was not present at the house with them at all times.

[208] It is also not disputed that the defendants returned to live at Cascade in 2016, at the time that the plaintiff was in police custody. The defendants claim that they returned in 2016 for the 1st respondent to take care of her father as the plaintiff had been incarcerated and there was no one to take care of him. After the plaintiff was released from custody in September 2016 he returned to live at the house. It appears that the issues between the parties got worse after that. The animosity especially between the plaintiff and the 1st defendant was evident at the hearing of the case, the 2nd defendant appearing more calm and measured in his demeanour.

[209] It would seem that the house is currently occupied by the defendants, their children, and Rolly Lime (plaintiff's and 1st defendant's younger brother). The plaintiff no longer lives at the house after having moved out two or three years ago. He claims he moved out because of the alleged antisocial behaviour of the defendants towards him including constantly reporting him to the police, although he still has his bedroom and a kitchen to which the defendants claim they have no access. He is currently paying for accommodation at a lady's house but it is obvious that he wants to return to live in the house at Cascade as he stated that he is not comfortable at his current accommodation. The defendants both testified that even if the plaintiff no longer resides at the house he still sometimes comes there. The 1st defendant stated in examination in chief that she has been told that he still comes to the house during the day to use the toilet and also burns herbal materials as superstitious practices, although she herself has not seen him. However in cross examination she stated that she sometimes sees him at the house. The 2nd defendant's testimony is also somewhat contradictory in that regard. In examination in chief, he stated although the plaintiff no longer resides at the house, he still comes to use the facilities in the house as if he was still living there. Further that when he is at the house he sees the plaintiff come and go although he does not know what he comes to do. Under cross-examination the 2nd defendant stated that he does not know how often the plaintiff comes to the house as he (2nd defendant) goes out to work for most of the day and only sees plaintiff when he (2nd defendant) comes home. However, in re-examination he stated that he leaves for work in the morning and returns at 7.00 or 8.00 p.m. and that he has not seen the plaintiff there at night. He further explained that he would not necessarily see the plaintiff if he comes at night as he does not see the place where the plaintiff accesses the house, and furthermore they occupy separate parts of the house. The plaintiff's testimony appears to confirm that he still goes to the house from time to time, although he denies harassing or causing nuisance to the defendants.

[210] The 2nd defendant testified that whenever the plaintiff gets aggressive and insults, swears at and harasses the defendants he records him and if matters start getting out of hand he never responds but calls the police and shows them the recordings. I note that these recordings would have gone a long way towards proving the claims of insults, harassment and nuisance on the part of the plaintiff but was never produced by the defendants.

[211] In regards to the disconnection of electricity supply, in examination in chief the plaintiff first testified that the defendants disconnected the electricity supply to the socket in his room which all his electronic appliances were plugged into, by changing or removing the fuse box which supplied electricity to the whole house, which caused all the food in his refrigerator to spoil. The plaintiff stated that a person sent by PUC advised him that this was caused by tampering with a seal in the meter, and that he, the plaintiff had previously seen the 2nd defendant fiddling with the meter. Still in examination in chief, he then testified that once, after switching on the freezer, he heard an explosion in the freezer and since then his freezer is damaged and does not work. Under cross-examination he further stated that the explosion also caused all electrical appliances to stop working and stated that this was because the 2nd defendant changed the fuse box. It is unclear whether he is claiming that the issue was caused by an issue with the fuse-box or the meter. I note that no evidence was adduced confirming the cause of the problem with certainty: the person from PUC was not called as a witness. When the plaintiff was asked under cross-examination whether any inspection of the items had been carried out to determine the cause of the damage to them he stated that the young man from PUC had done so but had not given him a written report. Further he was unable to follow the young man's advice to seek the services of an electrician as he had no money. The defendants, on their part say that the electrical problems were not caused by them but were due to a technical fault. The 2nd defendant testified that this caused the breaker system to blow up and is what damaged the plaintiff's electrical appliances. He stated that the breaker has now been replaced but that there still areas in the house where the electricity does not work although he does not know if it works in the plaintiff's room as he does not have access thereto. It is also noted that Rafaella Medor the plaintiff's ex-girlfriend stated that during the time that she stayed over at the house, all the appliances were in working order. The plaintiff has provided no evidence that the electrical issues which resulted in damage to his electronic appliances were due to the 1st defendant's interference with the electricity installation. In the circumstances I cannot find the respondents responsible for the same.

[212] The plaintiff testified that the defendants disturb him with noise. They play loud music at all hours, play their television loudly and speak loudly too. Rafaella confirmed that the defendants' children played loud music at night. The 2nd defendant however testified that

the defendants only play music during the day which is confirmed by the 1st respondent who stated that she also needs to sleep at night. Although it is noted that people occupying the same house will invariably disturb each other to some extent, and therefore need on the one hand to respect each other and on the other hand to have a certain degree of tolerance towards each other, this issue of noise seems to be the word of the plaintiff against the defendants, with no independent evidence of the same.

[213] In regards to his claim of poor hygiene in and outside the house, the plaintiff stated that there were chicken droppings and dog poop from the animals kept by the defendants everywhere outside. The defendants on the other hand claim that they are the only ones who keep the house clean, that the 1st defendant cleans the inside of the house whilst the 2nd defendant mainly takes care of the grounds with some help from her. I note that the plaintiff's own witness, his ex-girlfriend Raphaella Medor testified that when she first started staying over at the house at Cascade before the defendants moved back in, the house especially the toilet and bathroom had been a bit dirty but that she kept it clean. In my view the plaintiff cannot be heard to complain about cleanliness and hygiene of and around the home when even his girlfriend noticed that during the time that only he, his brother Rolly and his father lived there, the house was not clean. It is noteworthy that no request was made for the Court to visit the house which would have permitted it to ascertain whether the house was well kept or not.

[214] As to being prevented from having access to the bathroom and kitchen, under cross-examination, the plaintiff stated that as soon as he goes to any part of the house other than his room the defendants call the police, and that he was even accused of watching their daughter while she was having a bath and the police was called. Rafaella confirmed in her testimony that she and the plaintiff were not allowed access to the living room and sometimes even to the toilet and bathroom and they had to bathe in the bedroom and use a box for their sanitation needs. She explained that they could not have access to the toilet and bathroom as the 1st respondent sprinkled salt on the floor and burnt some substance which produced smoke, which I assume is some kind of superstitious practice. She also stated that the bathroom had no locks but conceded under cross-examination that all this did not prevent them from having access but rather made her uncomfortable to use the

bathroom and toilet. The defendants deny that the plaintiff was ever denied access to the kitchen and bathroom. The 1st defendant pointed out that the bathroom and toilet doors do not have locks and that anyone can come in the house as it remains open. Further that she does not prevent him from having access to the house as it is in no one's name. The 2nd defendant stated that in any event they have separate kitchens and that even now that the plaintiff is no longer residing at the house, he still uses the facilities as if he is still living there, although as noted his testimony regarding the plaintiff visiting the house although he has moved out is somewhat contradictory.

[215] With regards to the incident where the defendants accused the plaintiff of watching their daughter in the bathroom, Rafaella testified that the defendants' daughter spent a long time in the bathroom while they were waiting to use it and when the plaintiff went to check whether the bathroom was free, the 1st defendant accused him of watching her daughter and called the police. The police would have arrested him but for Rafaella who told them that the accusations were not true. She confirmed the plaintiff's testimony that the police usually took the side of the 1st defendant when she reported the plaintiff to them, but stated that she can recall only one incident when the plaintiff was actually arrested which is when the 1st defendant said that he had attacked her with a weapon. It is during this same incident that Rafaella had to seek police assistance to get out of the house as Rolly threatened to kill her with a machete if she came out. Pursuant to this incident she moved out of the house for good and filed a case before the Family Tribunal.

[216] On the basis of the evidence adduced, I cannot find that the plaintiff was physically denied access to the common areas of the house. However, I do note that if arguments arose almost every time that the plaintiff ventured in such common areas, with the threat of the police being called in whenever there was a disagreement between them, this would deter the plaintiff from using such areas. As stated, the animosity between the plaintiff and the 1st defendant was evident at the hearing of the case, which makes it very likely that there were often heated arguments between them, which would in turn lead to complaints to the police.

[217] As to the reason behind these arguments, independent evidence of the police regarding the reports made to them, any arrests and their observations would have clarified matters

considerably, and also assisted the court in determining whether there is any merit in the allegation of malicious complaints against the plaintiff to the police by the defendants and the allegations of harassment, nuisance and disturbance by the plaintiff of the defendants. However, no such evidence was adduced. Similarly, although it is clear that cases were filed before the Family Tribunal regarding the issues between the parties, there is not enough information or evidence before this court regarding these cases which would have thrown much-needed light on the allegations of anti-social conduct and nuisance. Only a little diligence would have been required to produce relevant documents to this Court to provide a clear and informed picture of the exact nature of the cases before the Tribunal, the parties to these cases and more importantly the findings of the Tribunal and the basis for such findings. Unfortunately this was not done and this Court is somewhat in the dark as to what transpired in these cases.

[218] Although, as stated the Court observed a deep-seated hostility between the plaintiff and the 1st defendant, and hence has no doubt that there are issues existing between them, I do not find that sufficient evidence has been adduced to tilt the scales solely in favour of either party insofar as it concerns which of the parties – the plaintiff or the respondents – are responsible for creating these issues.

[219] It is noted that it is up to the plaintiff to prove his case in accordance with the maxim ‘who avers must prove’, and I find that he has failed to do so insofar as it concerns the averments of antisocial conduct and nuisance of the defendants.

Damages

[220] The plaintiff has claimed SCR100,000 as moral damages for loss of amenities and distress. In examination in chief he stated that the damages claimed is for the loss he suffered when his freezer stopped working and the refrigerated items in the refrigerator spoilt. Under cross-examination, he further stated that the sum was to compensate for everything that stopped working, presumably the appliances. However, he has adduced no reliable evidence of what caused the refrigerator or other appliances to stop working, their purchase price or cost of repairs or replacement, or what items were in the refrigerator which were spoilt and their cost. Even if the Court had found the defendants liable, in the absence of

such evidence, it would have been unable to make a finding as to the quantum of damages. I further find that the plaintiff has not substantiated his claim for damages insofar as it concerns distress. I therefore find that the plaintiff has failed to prove his claim for moral damages.

Decision

[221] In terms of remedies, the plaintiff prays firstly for a declaration that he is the proprietor of the house on parcel S13098. Based on my findings above, it is clear that this Court cannot make a finding that he is the sole proprietor of the house. On the basis of my findings, I therefore hold that both the plaintiff and the 1st defendant own a share in the house on the basis of their own contributions, and that they and their siblings also own a share therein on the basis of their mother's contributions. For the reasons given, the exact share to which each of them are entitled cannot be ascertained by this court.

[222] Secondly the plaintiff prays for an injunction compelling the defendants to vacate the house on parcel S13098 and restraining them from further violating the plaintiff's right to property in that house. This Court cannot grant an injunction for the defendants to vacate the house on the basis of the ownership of the house, as the plaintiff does not have sole ownership thereof, and he and the 1st respondent as well as their siblings all have a share in the house and the same rights, albeit to a greater or lesser extent depending on their share.

[223] In the circumstances of this case, this Court could have granted the injunction sought by the plaintiff if it had found his claims of the defendants' anti-social conduct & nuisance towards him justified. However as stated in the analysis above and for the reasons given, this Court has found that neither party has succeeded in convincing it that the other is solely responsible for the issues between them, and that the plaintiff, on whom it was incumbent to prove his claims of anti-social conduct & nuisance by the defendants, has failed to do so. On that basis the Court declines to issue the injunction sought.

[224] The third remedy sought by the plaintiff are moral damages in the sum of SCR100,000, which this Court has found that the plaintiff has failed to substantiate, and which claim ought to be dismissed.

[225] **For these reasons, the plaint is dismissed, and each of the parties shall bear their own costs.**

[226] However, I wish to make the following, which being merely observations, are not binding. I note the unfairness of the situation where, although this Court has found that the plaintiff owns a bigger share of the house than the 1st defendant on the basis of their contributions to its construction, the plaintiff has to continue paying a third party for accommodation whilst the 1st defendant continues occupying the house with her family free of charge.

[227] It is also not advisable for the parties to resume living in the same house as not only would the same issues arise given the animosity existing between them, but furthermore the 1st defendant would be occupying the bigger part of the house of six rooms with her partner and her children while the plaintiff would be relegated to one room at the back of the house and a kitchen, which given the share of the house which he owns, would be unfair to say the least. Having said that there is nothing to prevent the plaintiff from moving back in the house on title S13098.

[228] It is further noted that while the defendants have purchased and own title S13097 since 2021 on which the 2nd defendant stated they intend to build their home, the plaintiff has no property of his own and is currently paying to live at a third party's home. At the time of hearing of the case (5th and 6th June 2025), almost 10 months ago the 2nd defendant testified that the defendants have started working on an architectural plan for their house which is yet to be completed. He also stated that they will move out once their house is completed, although he would comply with any order of the Court. It is noteworthy that the 2nd defendant is a building contractor. In examination in chief, the 1st defendant testified that they continue to occupy the house on title S13098 as they have not built a house on title S13097 yet. She stated that in any event the house is not in anyone's name, and furthermore the plaintiff does not own or even live in the house on title S13098 anymore, failing to take into account that the plaintiff claims that he moved out of the house because of the issues between the parties. In cross-examination she reiterated what the 2nd defendant had said that once their house on title S13097 is completed they will move there, but added that unless the Government states in writing that the house belongs to the plaintiff, she will still

go the house on title S13098 as long as she needs to. I also note that both defendants claimed that they moved back into the house for the 1st defendant to care for her father Willy Lime who is now deceased.

[229] In view of the above, fairness dictates that the defendants do their utmost to start and complete construction of their house on title S13097 and vacate the house on title S13098 once their house on title S13097 is completed, so that the plaintiff would be free to move to the house on title S13098, subject to any claims for compensation by the 1st defendant and/or any of the plaintiff's siblings for their ascertainable share therein. To avoid any further issues, it would be prudent for the plaintiff to also regularise the issue of ownership of title S13098 with the Government.

Signed, dated and delivered at Ile du Port on 7th April 2026.



E. Carolus