

SUPREME COURT OF SEYCHELLES

Reportable

MA 29/2025

(Arising in DV 16/2024)

In the matter between:

RITA LYDVINE POINTE
of
English River, Mahe
Seychelles
(Represented by Mr Guy Ferley)

Applicant

and

GREGOIRE CHRISTIAN PAYET
Of
Anse Reunion
La Digue
(Represented by Ms Edith Wong)

Respondent

Neutral Citation: *Pointe vs Payet* (MA 29/2025) (13 August 2025)

Before: Adeline J

Summary: Inhibition order in terms of Section 76 (1) and (2) of the Land Registration Act – Immoveable properties to be inhibited are registered on the Respondent, as a natural person, and on a company, as an artificial person, which are two separate legal entities.

Heard: By written submissions.

Delivered: 13 August 2025

FINAL ORDER

In accordance with Section 76(1) of the Land Registration Act, Cap 107, an inhibition order is made inhibiting the registration of any dealing with Land parcels LD 926, LD 927, LD 1014, LD 1350, LD 1061 and LD 1060 until further order of this court.

RULING ON MOTION

Adeline, J

FACTUAL AND PROCEDURAL BACKGROUND

- [1] This is an application, brought by way of notice of motion supported by an affidavit by one Rita, Lydvine Pointe, formerly Payet, (“the Applicant”) of English River, Mahe, Seychelles against one Gregoire Payet of Anse Reunion, La Digue (“the Respondent”). By this application, the Applicant applies to this court for an order inhibiting the registration of any transfer, lease or other dealings in respect of several parcels of land some of which are registered in the sole name of the Respondent, and others in the name of Gregoire’s Company Ltd, an artificial person and a separate entity.
- [2] The factual basis for the application as averred in the supporting affidavit to the application sworn by the applicant/deponent herself, is that she has a petition before the Supreme Court seeking for a property adjustment order under the Civil Code of Seychelles Act, read together with the Matrimonial Causes Rules, and is of the view, that there is a real and imminent risk that the Respondent, either personally, or through his attorney, ACM Associates limited will dispose of, or otherwise deal with the said properties to her detriment and thereby renders nugatory any judgment which the court may enter in her favour should she be successful in her application.
- [3] In his answer to the application, the Respondent opposes the same, and *inter alia* contends, that several of these parcels of land which the Applicant seeks to have them inhibited, are owned by a company registered and incorporated as Gregoire’s Company Ltd, a third party which is not a party to these proceedings, and are not owned by him personally. The Respondent also avers, that amongst the other parcels of land that are owned by him personally, some are burdened by legal charges in favour of different financial entities rendering their disposal impossible.
- [4] It is averred by the Respondent in his pleadings in answer to the application, that the parcels of land that are owned by him are LD1230, LD 1247, LD 1248, LD 1015, LD 923, LD 1352 all of which are charged properties, thus encumbered by charges, save LD 1245, LD 926, LD 927, LD 1014, LD 1350, LD 1061, LD 1060.

- [5] It is also averred by the Respondent that parcels LD 23, LD 152, LD 153, LD 216, LD 223, LD 128, LD 917, LD 919, LD 980, and LD 1041 are all owned by Gregoire's Company Limited, a third party, which is not a party to these proceedings.

ARGUMENT OF THE PARTIES BY WAY OF WRITTEN SUBMISSIONS

- [6] The Applicant submits, that she is the Petitioner in a petition before this court against the Respondent for a property adjustment order filed as DC 16/2021. The Applicant also submits, that proceedings are ongoing, and that by this application, she is seeking for an order of this court inhibiting any dealings against the parcels of land stated in paragraphs 10 and 16 of the affidavit in support of the application. The said parcels of land are registered in the name of the Respondent, Mr Gregoire Payet, and in the name of the company registered and incorporated as Gregoire's Company Limited and its predecessor, Gregoire Company (Proprietary) Limited.
- [7] The Applicant also submits, that she married the Respondent in 1960, the divorce was made absolute in 2022, and was initially the main provider as a self-employed seamstress while the Respondent worked as a prison warden. In 1965, they moved to La Digue, operating "*Laboutik Balo*" and later developing land parcel LD 216 into Gregoire's Boutique, Gregoire's Bar, a bakery, and their family residence, under Gregoire's Management Company (Pty) Ltd. In 1978, they purchased land parcel LD 92 and opened a restaurant now operating as "*La Digue Lodge*." In 1987, they expanded into hospitality through Gregoire's Management Company, with shareholding later distributed among themselves and their children. In 1998, they formed Gregoire's Company (Pty) Ltd, transferring the business and placing 999 shares in the Respondent's name and one share in their daughter's name, allegedly for operational convenience while the children studied abroad.
- [8] The Applicant further submits, that she has instituted a petition for the adjustment of matrimonial property, which remains pending before the Court. She asserts that she has a strong claim to recover at least half of the matrimonial properties and believes that the Respondent, either personally or through his proxy and attorney, ACM Associates Limited, will dispose of the specified lands, thereby frustrating any judgment in her favour. This belief is supported by the disposal of parcel LD1057, evidenced by a transfer deed dated

13 January 2023 executed by ACM Associates Limited to a third party, marked as “Exhibit 26”.

- [9] The Applicant seeks the inhibition pursuant to section 76 of the Land Registration Act, which provides as follows:

“(1) The court may make an order (herein referred to as an inhibition) inhibiting for a particular time or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition, under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.”

- [10] The Applicant cites the case of Benoiton & Ors v Rene & Ors (MA 284/2019 (arising in CS 37/2019)) [2020] SCSC 494 (23 April 2020) (Benoiton & Ors v Rene & Ors) where the law applicable to inhibition orders was thoroughly examined by Carolus J in and held at para 67 that:

“The principles illustrated in these cases may be summarised as follows:

(a) Inhibition orders are in the nature of prohibitory injunctions in that they restrict the registered owner and any other persons from having their transactions regarding the land registered against the title. They act to maintain the status quo and preserve the suit property pending hearing and determination of disputes between the parties relating to the suit property.

(b) Before granting an inhibition order the Court must be satisfied that there are good reasons to do so. The threshold for granting orders for inhibition and which the applicant must satisfy in order to succeed in such an application is:

(i) that the suit property is at risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued;

(ii) that the refusal to grant the orders of inhibition would render the applicant's suit nugatory; and

(iii) that the applicant has an arguable case. For example, the applicant should have a sustainable claim over the suit property."

The Learned Judge further cited Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria [2012] eKLR which held that: "The applicant has therefore established that he has an arguable case, whether he would succeed or not is not material at this stage, and as such orders of inhibition ought to be granted."

Further at para70, the Learned Judge further held:

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

[11] It is the submission of the Applicant, that she meets the threshold set out in Benoiton and Ors v Rene and Ors (Supra) and that the suit properties are at risk of being disposed of. If the inhibition is not granted, the Applicant's case would be rendered nugatory. The properties, including those registered under the name of the two companies, are suit properties in that the Applicant has legitimate interests therein by virtue of her claim to matrimonial property in her pending petition.

[12] It is contended by the Applicant, that the risk extends to all the properties identified in paragraph 10 and 16 of her affidavit, including those forming the operational base of Gregoire's Company Limited, such as LD 92 (the site of the La Digue Lodge), LD 1247 and LD 1248 (incomplete chalets operated by the Company), LD 1014 and LD 1015 (housing a large supermarket, pizzeria, offices, holiday apartments and a residence), and LD 923 (chalets operated by La Digue Lodge). She further refers to parcels in her own residential use or historic matrimonial use, such as V5664 at English River, and to other parcels forming part of the investment and hospitality portfolio acquired during the marriage, including LD 945 and LD 1245 at Cap Barbi, LD 1230 at Anse Réunion, and LD 1060 and LD 1352.

- [13] The Applicant contends, that if the inhibition is not granted, her case for adjustment of matrimonial property will be rendered nugatory, as the Respondent will be at liberty to alienate the properties beyond her reach before the conclusion of the proceedings.
- [14] On the basis of the foregoing, the Applicant respectfully submits that there are good reasons for this Court to grant an inhibition order in respect of all the properties identified in her affidavit, in order to preserve the status quo and protect her proprietary interests pending final determination of the matrimonial property petition.

SUBMISSIONS BY THE RESPONDENT

- [15] In its submissions, the Respondent objects to the application on the basis that the parcels of land that are the subject of the notice either;

“(a) do not belong to the Respondent and therefore ought to not be a part of the application and;

(b) are already charged in favour of financial institutions and therefore cannot be transferred in any event.”

- [16] The Respondent cites the case of Benoiton & Ors v Rene & Ors (Supra) also relied upon by the Applicant, it was stated that, *“Before granting an inhibition order the court must be satisfied that there are good reasons to do so. The threshold for granting orders for inhibition and which the applicant must satisfy in order to succeed in such an application is;*

- (i) that the said property is at risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued*
- (ii) that the refusal to grant the order of inhibition would render the applicant’s suit nugatory*
- (iii) that the applicant has an arguable case.”* [Respondent’s emphasis]

- [17] The Respondent submits, that the Applicant has submitted that all the properties attached in the certificates of official search to her application ought to be subject to an order of inhibition. The Respondent also submits, however, as demonstrated by those very certificates, it is clear that most of the properties do not belong to the Respondent and the properties are all encumbered by charges in favour of a banking institution or creditors with restrictions placed thereon. Therefore, the Respondent humbly submits that any property which is subject to such restrictions in favour of a financial institution or creditor cannot be at risk of disposal.
- [18] Moreover, and which the Respondent submits even more importantly, the majority of the parcels are in the name of a party other than the Respondent. That party being Gregoire's Company Limited. Therefore, the concept of separate corporate personality of Gregoire Company Limited and the Respondent shows, that to inhibit the property of another party not involved in the matter would be contrary to that third party's right in the land.
- [19] It is the submission of counsel for the Respondent that the concept of separate corporate legal personality means that even if the Applicant is successful in obtaining an order of matrimonial division, this Honourable Court would not be able to grant her a right over the company's parcels of land. This means, that the third requirement under Benoiton & Ors v Rene & Ors (Supra) is not satisfied either. The Applicant, if she is to be awarded anything, would be in the company itself as shares, and would not be in the land owned by the Company. Accordingly, the Applicant's application over those parcels are misconceived.
- [20] The Respondent humbly and respectfully submits that the Application ought to be dismissed as the Applicant has not demonstrated that she can fulfil all the conditions stated in Benoiton for the granting of such an order of inhibition. This is because (1) the properties are already encumbered and cannot be transferred and so are at no real risk of being alienated and (2) the majority of the parcels that the inhibition order would affect do not even belong to the Respondent and in any event, even if they were disposed of would not render the Applicant's relief nugatory as she could never obtain relief over those properties in any event.

COURTS REASONING AND ANALYSIS

[21] In the Kenyan case of Falcon Properties Limited versus Tom Chore Odiara & Ors. Environmental & Land Case 450/2012 [2013] KLR (18 February 2013), at page 3 thereof, in which the Court with reference to section 68 of the Kenyan Land Registration Act of 2012, states the following:

*“There is no requirement that the Plaintiff must show a prima facie case before an inhibition can issue, and the general principle that will apply is that the **discretion is exercised judicially by being exercised in good faith, for a proper purpose, takes into account all relevant factors and is reasonable in the circumstances of the case.**”* [own emphasis added].

[22] Further to the paragraphs mentioned above, in the case of Benoiton & Ors v Rene & Ors (Supra) at para 61 the Court held that *“What then is the threshold for the grant of an inhibition order? Seychelles case law and the provisions of the Land Registration Act relating to inhibitions are unfortunately not clear on this issue. Unlike the provisions relating to cautions and restrictions which require certain conditions to be met by the applicant, the provisions relating to inhibitions are quite general, potentially giving courts wide discretion in determining whether an inhibition order should be granted. Similarly, local case law does not provide clear guidance on the threshold to be applied for inhibition orders.”*

[23] Section 76 of the Land Registration Act grants the Court the discretion to make an order inhibiting the registration of any dealing with land, a lease, or a charge, either for a fixed time, until a particular event, or generally until further order. While the statutory wording does not restrict the category of potential applicants, the jurisprudence in Seychelles establishes that an applicant must demonstrate an interest in the property sought to be preserved, a risk of alienation to their detriment, and an arguable case in relation to that property.¹

[24] The doctrine of separate corporate legal personality is a significant consideration when the property sought to be inhibited is registered in the name of a company. As established in

¹ *Benoiton & Ors v Rene & Ors (MA 284/2019 (arising in CS 37/2019)) [2020] SCSC 494 (23 April 2020).*

Salomon v A Salomon & Co Ltd [1897] AC 22 (HL), a company is a distinct legal person from its shareholders, and its property belongs to the company itself. Applying this principle, the wife of a shareholder has no automatic proprietary interest in company-owned land. The effect of the decision in Salomon v. Salomon & Co. Ltd (Supra) was to uphold the concept of a company as an independent legal entity, or an artificial “person”, separate and distinct from its members (shareholders) and its directors. The basic premise of the judgment remains unaltered today: a limited liability company is a legal person, separate and distinct from its members or directors it.

- [25] In the United Kingdom case of Prest v Petrodel Resources Ltd [2013] UKSC 34, the Supreme Court declined to pierce the corporate veil in matrimonial proceedings but held that company property could be transferred to the wife where it was established that the companies held the land on trust for the husband. The Court reasoned that beneficial ownership, once proven, allows the property to be treated as part of the matrimonial estate. The Court held at para 43 that “...that the only basis on which the companies can be ordered to convey the seven disputed properties to the wife is that they belong beneficially to the husband, by virtue of the particular circumstances in which the properties came to be vested in them. Only then will they constitute property to which the husband is “entitled, either in possession or reversion.”
- [26] Further, in the case of Jones v Kernott [2011] UKSC 53 the Court held at para 52 that “The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct.”
- [27] In Falcon Properties Limited v Tom Chore Odiara & Ors (Supra), the Court held that there is no requirement for an applicant to establish a prima facie case before an inhibition can be issued, but that judicial discretion must be exercised in good faith, for a proper purpose, and reasonably in the circumstances. In Japhet Kaimenyi M’ndatho v M’ndatho M’mbwiria (Supra), the Court stated that “arguable case” is a lower threshold than “prima facie case” but nonetheless requires good grounds for claiming an interest in the property.

[28] Taking into consideration the submissions of both parties, the statutory provisions under section 76 of the Land Registration Act, and the principles distilled in Benoiton & Ors v Rene & Ors (Supra), it is evident that the Applicant must establish;

- (i) a risk that the subject property will be alienated to her detriment
- (ii) that refusal to grant inhibition would render her claim nugatory and
- (iii) that she has an arguable case in relation to the property sought to be preserved.

[29] The evidence before the Court demonstrates that the majority of the parcels identified in the Applicant's affidavit are not registered in the Respondent's name but in the name of Gregoire's Company Ltd, a separate legal entity. The doctrine of separate corporate personality, as affirmed in Salomon v A Salomon & Co Ltd (Supra), which dictates that the assets of a company belong to the company itself and not to its shareholders, even where the shareholder is a spouse in matrimonial proceedings.

[30] In addition, the official searches reveal that several of the parcels, whether held by the Respondent personally or by the company, are subject to **registered charges and encumbrances in favour of financial institutions**. Such legal charges, by their nature, restrict dealings with the property and render alienation without the lender's consent impossible. This significantly weakens the Applicant's averments that there is a real and imminent risk of disposal.

[31] Furthermore, even if the Court were to accept that the Applicant has an arguable case in relation to some of the Respondent's personally held properties, the blanket inhibition sought covering all parcels listed in paragraph 16 of her affidavit extends to assets over which she has no demonstrated proprietary claim. Granting an inhibition over such third party or encumbered property would not be consistent with the equitable nature of this remedy, which is **designed to preserve the status quo** only where a real legal interest and risk of alienation are proven.

[32] Accordingly, applying the threshold as held above, the Applicant has not satisfied all three conditions for the imposition of an inhibition against all the parcels of land against which

the order is sought. In particular, she has failed to demonstrate that the properties are genuinely at risk of alienation to her detriment given the existing charges and corporate ownership structure and that any refusal of inhibition would render her claim nugatory since the remedy she ultimately seeks lies if at all in the adjustment of shares rather than direct proprietary rights over land owned by the company.

HOLDINGS AND IMPLICATIONS

- [33] Nonetheless, although the Applicant has failed to demonstrate that she has a beneficial interest in the parcels of land registered in the sole name of Gregoire Payet by way of a constructive trust, for example, and the basis for her belief that she has an arguable case about ownership of those parcels of land, in order to act fairly and equitably, *prima facie*, I am inclined to infer a possible constructive trust that is yet to be determined on account of the merits of the case proper.
- [34] In accordance with Section 76(1) of the Land Registration Act, Cap 107, an inhibition order is made inhibiting the registration of any dealing with Land parcels LD 926, LD 927, LD 1014, LD 1350, LD 1061, and LD 1060 until further order of this court.
- [35] Pursuant to Section 76(2) of the Land Registration Act, Cap 107, the Registrar of the Supreme Court shall cause a copy of the inhibition, under the seal of the court, to be served on the Land Registrar by way of service of a copy of this ruling.

Signed, dated and delivered at Ile du Port 13th August 2025.

Adeline J