

SUPREME COURT OF SEYCHELLES

Reportable

MC59/2023

In the matter of:

CLARA AGNEL VICTOR (born BONNE)
(Unrepresented)

Applicant

and

MARGUERITE VALMONT
(rep. by Mr. Serge Rouillon)

1st Respondent

TERRY VALMONT
(Unrepresented)

2nd Respondent

Neutral Citation: *Victor v. Valmont & Anor (MC59/2023)* [2025] (delivered on 24 January 2025)

Before: A. Madeleine, J

Summary: *Application for Writ Habere Facias Possessionem – Production of Relevant Documents for Court's determination of application and objections thereto*

Heard: 17th September 2024

Delivered: 25th January 2025

ORDER

Application for writ Habere Facias Possessionem and objections thereto are dismissed.

JUDGMENT

A. MADELEINE, J

Background

1. This is an application for the Court to issue a *Writ Habere Facias Possessionem* on the 1st and 2nd Respondents to quit, leave and vacate the house on land parcel C1933 situated at Sweet Escott, Anse Royale, Mahe.

2. The Applicant and the Respondents are related by blood. The Applicant is the niece of the 1st Respondent and the cousin of the 2nd Respondent.

Application

3. The Applicant has duly filed a notice of application supported by affidavit wherein she states that she is the registered owner of land parcel C1933 and house thereon situated at Sweet Escott, Anse Royale, Mahe (the "property"). The property was allegedly transferred to the Applicant by her late grandmother Mrs Francine Cataine nee Bonne on 22nd March 2017 in consideration of the sum of SCR500,000/-. The Applicant secured a loan from the Housing Finance Company (the "HFC") to pay the purchase price and she is still repaying the loan from her monthly salary as shown on the HFC's loan statement accounts produced in her affidavit.
4. The Applicant also states that she is the mother of two minor children Laticka Faith Maria ISMAEL born on 26 March 2015 and Tyler Monroe Antoine CESAR born on 14 January 2021 as per certificates of birth produced in her affidavit. Since 2017 she has been moving around with her family from houses of friends and acquaintances while the Respondents have been occupying the house on land parcel C1933 without her permission.
5. It is further stated that the Applicant gave the Respondents notice to quit on 19 May 2017 and have orally and repeatedly demanded that they vacate the premises to no avail.
6. The Applicant and her children have been staying with a friend for the past two years and the friend is now urging the Applicant to move out of her house. It is also stated that the Applicant and her family are struggling while the Applicant continues to repay a loan with the HFC. Furthermore, the property is closer to the Applicant's place of work at Mango.

7. The Respondents were both served with the application and appeared in court. Thereafter, only the 1st Respondent appeared and the 2nd Respondent preferred to be absent despite knowledge and notice of these proceedings.

Objection(s)

8. The 1st Respondent filed affidavit in response objecting to the application. In her Affidavit, the 1st Respondent states that the application is premature and without proper justification and she claims an interest in the property for having secured a loan at the HFC in the sum of SCR50,000/- for renovation in the 3-bedroom house and a further loan from ABSA in the sum of SCR89,000/- which she is still repaying for continued renovations to the property. The 1st Respondent states that she had lived on the property with her mother since 1988 along with her 9 siblings and her 4 children who also grew up on the property.
9. According to the 1st Respondent, her late mother Francine Cataine born Bonne left the property in 2014 to go and live with one of her sibling, Lisette Bonne who is the Applicant's mother. It is from this time that she became aware that her mother had transferred the property to the Applicant.
10. The 1st Respondent stated that there was a verbal agreement with the Applicant to give her a small portion of the property to build her home. They even went to the Ministry of Land Use and Housing but were informed that they could not do so at the time in view of the 7 years' restriction. Now that the 7 years' restriction has lapsed the Applicant reneges on her promise by filing the present application.
11. The 1st Respondent further stated that both the 2nd Respondent and herself have a bona fide and good cause of action in defence to the application. In addition, the application should fail as the Applicant has failed to file the necessary documents in support of her application including but not limited to her claim of ownership of Title C1933.

Further evidence of the Applicant

12. At the hearing of the application, the Applicant maintained her statements in the supporting affidavit. The Applicant further testified that she brought the property from her grandmother some 7 to 8 years ago. At the time of purchase, she instructed Attorney Morel to write to the Respondents to vacate the property. The Applicant later instructed Attorney Rajasundaram to write to the Respondents. In view that the Applicant has moved to different places over the years, she has lost copies of the letters written to the Respondents. The Applicant testified that the Respondents requested time to move out and to be refunded for the renovations made to the house. However, the Respondents did not move out from the property and avoided the Applicant.
13. After the filing of the present application and out of consideration that the Respondents are her family, the Applicant sought permission from HFC to allow the Respondents to build on the property. This request was refused by HFC. The Applicant stressed that it was unfair for her to continue paying off the loan for the purchase of the property and rent alternative accommodation while the Respondents are allowed to enjoy the use of the property.
14. The Respondents opted not to give any additional evidence.

Submissions

15. The 1st Respondent filed written submissions whilst the Applicant, who was not legally represented, relied entirely on her affidavit and further testimony despite opportunity being given to her to retain the services of an Attorney to assist her with legal arguments.
16. The 1st Respondent's submissions have been considered by the Court although not reproduced herein.

Law and Analysis

17. The principles governing applications for writ *habere facias possessionem* are settled. The jurisdiction of the Supreme Court to issue such writs are equitable and derived from arts. 806-811 of the French Code de Procedure Civile (Vide: *Delphius Touristica Maritima SA v Villebrod* (1978)). A writ *Habere Facias Possessionem* may be issued “on the application of an owner, the lessor of property, where the court is satisfied that the Respondent to the application has no serious defence” (Vide *Delphius Touristica Maritima SA* (*supra*)). In addition, the writ must be the only legal remedy available: (Vide: *Nolin v Samson* (1989)) and the application must disclose an element of urgency (Vide: *Mary Dubignon v Antonio Mann- Civil Side No: 9 of 1999*).
18. In *Pothin v Searles MC 162021 SCSC986* (2 September 2021) Dodin J made the following pertinent observations on the court’s determination of applications for writ *habere facias possessionem* –

“[8] Indeed as submitted by learned counsel for the Respondent, the Supreme Court of Seychelles derives its powers to determine an application for the issue of a writ *habere facias possessionem*, under Articles 806-811 of the French Code of Civil Procedure which has been assimilated into the jurisdiction of the Supreme Court. The Court makes this determination on the basis of Application and Affidavit of the Applicant and the Respondent's Affidavit in Reply. All relevant material evidence must be disclosed in the affidavits with the relevant documents in support attached. The Court may allow the parties to make oral or written submission, which was the case in this Application. The Respondent however did not make further final submission.”

(Emphasis added)

19. The requirement to produced relevant documents in Affidavits is settled in this jurisdiction. In *Lablache de Charmoy v Lablache de Charmoy* SCA MA8/2019 (17 September 2019) the Court of Appeal referred to the case *Re Hinchliffe, A Person of Unsound Mind, Deceased, [1895] 1 Ch. 117* to the effect that –

“any document to be used in combination with an affidavit must be exhibited to and filed with it. In the same light any document to be used in combination with an affidavit in support of an application to stay execution must be exhibited to and filed with it. Counsel for the applicant should be mindful that the affidavit stands in lieu of the testimony of the applicant.”

(Emphasis added)

20. I have carefully perused the application and the documents produced in the respective affidavits of the Applicant and the 1st Respondent. I find that the documents produced in the Applicant’s affidavit fall short of establishing a clean title to the property subject to the application, namely land parcel C1933 and house thereon. The Applicant did not produce any official documents to show that she has title to the said property. Whilst the 1st Respondent subtly admits a transfer of the property from her late mother to the Applicant in her affidavit in objection, the 1st Respondent also maintains that the application cannot succeed for failure to produce relevant documents including the document of title. I also find that the documents produced in the 1st Respondent’s Affidavit in objection to the application fall short of establishing clearly that the 1st Respondent has a serious defence to the application or a bona fide interest in the property. The loan statements produced by the Applicant and the Respondent respectively, merely establish that loans were borrowed but does not establish a link to the property.

Conclusion

21. It is insufficient to merely state that one is the owner of a property or that one has an interest in the property because he or she borrowed loans to renovate the property. In absence of documentary proof, this court cannot make any conclusion(s) on the ownership of the property by the Applicant nor on whether the Respondents have a serious defence to the application and a bona fide interest in the property.
22. By reason of the lack of relevant documents, the merits of the application and the objections thereto cannot be determined.

Order

23. Application for writ *Habere Facias Possessionem* and objections thereto are dismissed.

Signed, dated and delivered at Ile Du Port, Mahe on this 24th day of January 2025


A. Madeleine, J

