SUPREME COURT OF SEYCHELLES

Reportable
[2026]
MA93/2026
(Arising in CS 28/2026)

In the matter between:

KATHLEEN FONTAINE **Applicant**
(rep. by Anthony Derjacques)
and

RB CONSTRUCTION (PROPRIETARY) LIMITED Respondent
(rep. by Frank Elizabeth)

Neutral Citation:	*Fontaine v RB Construction (Pty) Ltd.* (MA93/2026) [2026] (28 July 2026)
Before:	Carolus J
Summary:	Interlocutory Mandatory Injunction
Heard:	23 July 2026
Delivered:	28 July 2026

ORDER

CAROLUS J

Background

[1] The present application MA93/2026 is for an interim injunction. The application is made by way of a Notice of Motion dated 20 May 2026, supported by an affidavit sworn by the applicant Kathleen Fontaine on the same date. In terms of the Notice of Motion, the applicant seeks the following orders:

a) That this motion is heard and disposed of as of extreme urgency.
b) That a provisional order of injunction be issues as against the Respondent as follows;
i) An Order that the Defendant should vacate the construction site, namely land parcel V21237, situated at Le Niole, Mahe, forthwith, with all the all movables belonging to Defendant including a lift, a roller and an unknown covered object.

[2] The application arises from Civil Suit No. 28 of 2026, in which the applicant/plaintiff seeks, among other relief, an order requiring the respondent/defendant to vacate parcel V21237 and remove its equipment therefrom. In her affidavit in support of the application, the applicant avers that she is the owner of the parcel and that she engaged the respondent to construct a dwelling house on it pursuant to agreements entered into in July and August 2023.

[3] According to the applicant, the respondent failed to complete the construction works within the agreed period or within a reasonable period thereafter. She states that the respondent eventually stopped all construction works, notwithstanding repeated requests that it complete the project. She consequently terminated the agreement on 30 April 2025.

[4] The applicant further avers that, despite the termination of the agreement and her requests that the respondent leave the premises, the respondent has continued to occupy or exercise control over the construction site and has left its machinery and equipment on the parcel. She contends that this prevents her from engaging another contractor and resuming construction of her home.

[5] The applicant states that the partially constructed structure is exposed to deterioration and that an award of damages would not adequately compensate her for the same and the delay in completing her home. She maintains that she is suffering hardship and will continue to do so and that the balance of convenience lies in her favour.

[6] Counsel for the respondent was afforded at least two opportunities to file an affidavit in reply to the application but failed to do so. Accordingly, there is no affidavit evidence before the Court contradicting the material facts deposed to by the applicant.

[7] At the mention of 23 July 2026, counsel for the respondent acknowledged that the respondent had previously undertaken to remove its equipment from the site but had not done so. Both counsel confirmed that such an undertaking had been given, although it was not made before this Court. Further, counsel for the respondent did not place before

the Court any evidence or legal basis upon which the respondent claimed an entitlement to remain on the applicant's land.

[8] Although the application is expressed as one for an interim injunction, the order sought would require the respondent to take positive steps by vacating the parcel and removing its equipment. The relief is therefore in the nature of an interlocutory mandatory injunction. The question for this Court's determination is *whether the circumstances justify the grant of such relief pending the final determination of the principal suit.*

Applicable Law and Analysis

[9] Section 304 of the Seychelles Code of Civil Procedure empowers the Court, after the commencement of an action, to grant or refuse an injunction on such terms as appear reasonable and just. The jurisdiction is discretionary and equitable and is exercised together with the powers conferred by sections 5 and 6 of the Courts Act.

[10] In determining whether to grant an interlocutory injunction, the Court is guided by the principles enunciated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. The Court has to consider whether there is a serious question to be tried, whether damages would provide an adequate remedy, where the balance of convenience lies and whether there are any special factors affecting the exercise of its discretion.

[11] In *Lefevre v Beau Vallon Properties Ltd & Ors* (MA 154/2018), Twomey CJ (as she then was) stated that injunctions are equitable in nature and that in such applications the Court is guided by three considerations: whether there is a serious issue to be tried; whether damages would be inadequate to redress the harm; and whether, on a balance of convenience, it would be better to grant than to deny the injunction.

[12] Since the order sought in the present case is mandatory in nature and would require the respondent to alter the existing position, a higher degree of caution is required. The principles that govern the grant of a mandatory injunction were stated in Halsbury's Laws of England (4th ed) Vol 24, paragraph 948, as follows:

> *"A Mandatory Injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be*

granted. However, if the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can be easily remedied, or if the Defendant attempts to steal a march on the Plaintiff, a Mandatory Injunction will be granted on an Interlocutory application."

[13] In *Salgaocar v Radia & Ors* (MA 158 of 2015) [2015] SCSC 238, the Court quoted *Shepherd Homes Ltd v Sandham* [1971] Ch 340, wherein Megarry J recognized that an interlocutory mandatory injunction is ordinarily granted only where the case is unusually strong and clear, especially where the order may confer substantially the same relief as that claimed at trial. In *Locabail International Finance Ltd v Agroexport* [1986] 1 WLR 657 the Court of Appeal approved that approach, holding that such an injunction should not ordinarily be granted unless the court feels a high degree of assurance that at the trial it will appear that the injunction was rightly granted

[14] Further, in *Films Rover International Ltd v Cannon Film Sales Ltd* [1987] 1 WLR 670 Hoffmann J (as he then was) explained that the governing principle is that the court should adopt the course which appears to carry the lower risk of injustice if it should turn out to have been wrong, and that the requirement of a high degree of assurance is a reflection, and not a displacement of that principle. Where withholding a mandatory injunction would in fact carry the greater risk of injustice, there is no rational basis for withholding it.

[15] This Court will now consider the facts of the present case in light of the principles discussed above.

Serious question to be tried

[16] The Applicant has averred that she is the registered owner of parcel V21237, and her title to the same is not challenged. As proprietor of the land, she has a right to the possession and enjoyment of her land, which right is protected under Article 26 of the Constitution.

[17] The respondent entered upon that land, by virtue of a construction contract and for no other reason. Whatever right of occupation the respondent enjoyed was derived from that

contract. On the applicant's uncontroverted evidence the contract was terminated on 30 April 2025, fifteen months before the hearing of this application, and the respondent has neither resumed the works nor removed its equipment therefrom.

[18] The question whether the termination was lawful, and which party was in breach, is a matter which must be dealt with at the hearing stage and not in this application.

[19] Furthermore, I find the respondent's undertaking that it would remove its plant, as acknowledged by its counsel, significant. While I do not treat that undertaking as an admission by the respondent of the applicant's allegations of breach of the respondent's contractual obligations, I find that it undermines any suggestion that the continued keeping of the equipment and machinery on the land is necessary either to protect a subsisting right or otherwise. I note that despite being given time to remove the items, the respondent has not done so.

[20] I am therefore satisfied that there is a serious question to be tried.

Whether damages would be an adequate remedy

[21] In my view damages would not provide an adequate remedy to the applicant if the relief sought is not granted. Although some financial loss caused by delay may be calculated, the applicant is presently prevented from resuming construction and from exercising ordinary control over land intended for construction of her home. The alleged continued deterioration of the incomplete structure, the obstruction of performance of works by another contractor replacing the respondent and the continuing loss of use of the parcel will not be satisfactorily compensated for by a later award of money alone.

[22] Conversely, the question of whether damages would adequately compensate the respondent should the order sought be made and the respondent ultimately succeed at trial, ought also to be asked. The answer to that question is in the affirmative. The order sought does not require the respondent to give up anything permanently, to dismantle anything or to undo any completed work. It only requires the respondent to move three items from the applicant's property. Should the respondent succeed at trial, the items can

be returned and the whole of its loss would consist of the cost of transport, storage and any hire lost in the interval, all of which are readily ascertainable in monetary terms.

The balance of convenience

[23] In *Dhanjee v Electoral Commission* (2011) SLR 141, the Court explained that the balance of convenience test includes consideration of whether more harm would be done by granting or by refusing the injunction; where the risk of injustice would be greater if it were granted, than the risk of injustice if it were refused; and whether the breach of the parties' rights would outweigh the rights of others in society.

[24] Applying the factors identified in *Dhanjee*, it is clear that more harm would be done by refusing this injunction than by granting it. On the one hand lies the indefinite restriction of continuing the development on the applicant's land, the continuing deterioration of a structure she has paid for to construct and the prolongation of a state of affairs which has persisted since April 2025. On the other hand lies the inconvenience and cost to a construction company of relocating a lift, a roller and one covered object.

[25] In an application of this kind, the Court weighs the competing hardships to the respective parties. The respondent was represented by counsel and was in a position to identify any hardship or countervailing interest of its own. None was identified and no basis for remaining upon the land was advanced. Where one party puts no hardship into the scale at all, the scale can only tip one way. That is not a penalty for its default but rather the necessary consequence of the Court being able to consider only what is before it.

[26] Furthermore no wider public interest weighs against the making of the order. If anything, public interest lies in the timely completion of residential construction and in proprietors being able to enjoy the land they own.

[27] The balance of convenience therefore lies in favour of the applicant.

Whether the higher threshold for mandatory relief is satisfied

[28] It remains to consider whether the applicant has met the more exacting standard applicable to interlocutory mandatory relief. Three matters persuade me that she has.

[29] First, the act required is, in the words of Halsbury's Laws, a simple and summary one which can easily be remedied. The respondent is not required to demolish anything, to construct anything or to perform any continuing obligation calling for the supervision of this Court. It is required to move its own equipment from land which is not its own. If the order should prove to have been wrongly made, the position can be restored substantially as it was, and the respondent's loss compensated.

[30] Secondly, I have considered with care the fact that the order sought substantially overlaps with the first prayer in the plaint, which requires restraint when considering whether to grant such order. However, I take into account that such an order is not conclusive insofar as it concerns the issues to be determined in the principal suit. The proposed order does not determine the financial account between the parties, or direct payment of any disputed sum, or determine if there is any breach and liability for the same. It merely requires the respondent to remove its own movable property from land which, on the present uncontroverted evidence, belongs to the applicant, leaving all substantive issues in the principal suit to be determined at trial.

[31] Thirdly, the relief sought is consistent with the course which the respondent had itself indicated that it would take. Both counsel confirmed that the respondent had undertaken to remove the equipment, although that undertaking was not given before this Court. Although I do not treat such undertaking as an admission of liability or as determinative of the application, it is nevertheless relevant to the assessment of prejudice, and makes it unlikely that removal of the items will cause an injustice to the respondent. Applying the approach in *Films Rover*, I am satisfied that the risk of injustice arising from refusing the order is materially greater than the risk arising from granting it.

Decision

[32] On the basis of the foregoing, I am satisfied that the threshold applicable for the grant of the injunction sought has been met. The applicant has established that there is a serious question to be tried, that damages would not be an adequate remedy if the injunction is not granted, that the balance of convenience favours the grant of relief, and the more exacting standard applicable to mandatory interlocutory relief is satisfied.

[33] The application for interlocutory mandatory injunction is therefore granted. Accordingly the respondent is ordered to, **forthwith**:

(i) vacate parcel V21237; and

(ii) remove from the said parcel, at the cost of the respondent, all movable property belonging to the respondent namely equipment and machinery including a lift, a roller and an unidentifiable covered object.

[34] Each party shall bear their own costs of this application.

Signed, dated, and delivered at Ile du Port on 28th July 2026

Carolus

E Carolus J