

COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 55 (25 August 2023)

SCA 15/2022

(Arising in MC 56/2013)

Pascal Leonel
(*rep. by Mr Hoareau*)

Appellant

And

Marie-Ange Hyacinth Turner
(*Ex-Parte*)

First Respondent

Jean-de-Dieu Leonel
(*rep. by Mr Hoareau*)

Second Respondent

Leonard Leonel
(*rep. by Miss Molle*)

Third Respondent

Louis Arsene Leonel
(*rep. by Miss Molle*)

Fourth Respondent

Alex Leonel
(*Ex-Parte*)

Fifth Respondent

Innocence Francis Leonel
(*rep. by Miss Molle*)

Sixth Respondent

Neutral Citation: *Leonel v Leonel & Others* (SCA 15/2022) [2023] SCCA 55 (Arising in MC 56/2013 (25 August 2023))

Before: Twomey-Woods, Robinson, Tibatemwa-Ekirikubinza, JJA

Heard: 7 August 2023

Summary: Division in kind – Appointment of Appraiser – Section 112 of the Immovable Property (Judicial Sales) Act (Cap 94)

Delivered: 25 August 2023

ORDER

We make the following orders —

- (i) As per section 12 of the Immovable Property (Judicial Sales) Act (Cap 94), we appoint Mr. Michel Leong of Kings Gate House, Room 36, Victoria, Mahe, Seychelles, to carry out an appraisal of the land comprised in title number V5147 situated at Belvedere, Mahe, Seychelles.
- (ii) Mr. Leong shall submit a report to the Court of Appeal complying with the above-mentioned provision, proposing partition of the land comprised in title number V5147, taking into account the "*droit de superficie*" of the Appellant. The plan must be submitted to the Court of Appeal on or before 31 October 2023.
- (iii) The Appellant is responsible for covering the costs of the appraisal.
- (iv) A copy of this order is to be served on the First and Fifth Respondents outside of the jurisdiction and Mr Michel Leong.

ORDER

Robinson JA

1. As the First, Fourth and Fifth Respondents did not appear in the Supreme Court after being served out of the jurisdiction, the Supreme Court proceeded with the hearing against them *ex-parte*.
2. The Court of Appeal proceeded *ex-parte* against the First and Fifth Respondents after having attempted to serve them outside of the jurisdiction.
3. The judgment dated 7 July 2022 arises from an application for division in kind filed by the Sixth Respondent, then Petitioner. The trial Judge made the following orders in favour of the Sixth Respondent —

"[34] [...]:

- (i) *The petition is granted with the subdivision as prayed by the petitioner to the portions proposed by the quantity surveyor Joalane Sinon on 26 May*

2016 (Exhibit P8).

(ii) *I further grant the prayer of the 4th respondent and order the 3rd respondent to demolish part of his building that has encroached onto the plot of the 4th Respondent.*

(iii) *No order as to costs is made given the circumstances."*

4. The Appellant, dissatisfied with the judgment of the trial Judge, has appealed to the Court of Appeal against the part of the judgment holding that he, the Appellant, in the exercise of his "*droit de superficie*", has encroached on the portion of parcel V5147, belonging to the Third Respondent, and ordering the Appellant to demolish part of the building constructed by the Appellant onto the portion of the Third Respondent. I do not need to state the grounds of appeal in this order.
5. The trial Judge considered *inter alia* the evidence of Joelane Sinon, a land surveyor of Sinon Surveys (Pty) Ltd, who prepared a proposed site layout for subdividing parcel V5147 into six plots. He prepared the proposed site layout following an order of the Supreme Court, which formed part of exhibit P8. In his letter dated 26 May 2016, addressed to the Supreme Court and included in exhibit P8, he proposed subdividing parcel V5147 into six plots as follows — four plots of 541 square meters each (plots 2, 4, 5 and 6), one plot of 576 square meters (plot 3), and another plot of 505 square meters (plot 1). Mr Sinon testified that parcel V5147 can be conveniently subdivided into six plots.
6. The proposed site layout illustrates how parcel V5147 will be divided into six plots, numbered 1 to 6. The reason for the six plots is that one of the documents given to him showed that there are six heirs. Plots 2 (Francis Leonard), 3 (Jean Leonard), and 4 show the locations of the houses. The Appellant has built his house on plot 4. According to the proposed site layout, plots 1, 5 and 6 are vacant.

REASON FOR THE NEW APPRAISAL AND REPORT PROPOSING PARTITION OF THE PROPERTY

7. Applications for division in kind are governed by the provisions of the Immovable Property

(Judicial Sales) Act (Cap 94). The present Petition is made pursuant to section 107 (2) of that Act.

8. Section 112 of the same Act provides as follows —

"112. The Judge may also, before deciding upon the demand, order an appraisalment (expertise) by an appraiser to be named by him.

In such case, the appraiser shall, within a delay to be fixed by the Judge, make and file in the registry his report which shall in a summary manner give a description of the property, the estimated value thereof, and the basis upon which such valuation is made. The report shall further state whether or not the property can conveniently be divided in kind, and if so divisible shall set forth the proposed lots in conformity with this Act and the provisions of the Civil Code of Seychelles.

In no case of appraisalment under the provisions of this Chapter shall it be necessary to administer an oath to the appraiser.

The parties to the division in kind shall be summoned, by a notice served upon them in person or at the domicile elected by them in accordance with section 110, four days at least before the day fixed for the appraisalment, to attend at the time and place where the said appraisalment is to be made."

9. At the hearing of the appeal, the Court of Appeal did not understand the proposed site layout prepared by Mr Joelane Sinon, which *ex-facie* contained errors. It was also unclear to the Court of Appeal whether the proposed site layout had taken into account the "*droit de superficie*" of the Appellant. The Second, Fourth and Sixth Respondents, through Counsel, did not object to the new division in kind or the appointment of an appraiser to carry out an appraisalment and submit a new proposal for subdivision of parcel V5147.

ORDER

10. We make the following orders pending the final disposal of the appeal.
11. In the circumstances, as per section 12 of the Immovable Property (Judicial Sales) Act (Cap 94), we appoint Mr. Michel Leong of Kings Gate House, Room 36, Victoria, Mahe, Seychelles, to carry out an appraisalment of the land comprised in title number V5147 situated at Belvedere, Mahe, Seychelles. Mr. Leong shall submit a report to the Court of Appeal complying with section 112 of the Immovable Property (Judicial Sales) Act (Cap

94), proposing partition of the land comprised in title number V5147, taking into account the "*droit de superficie*" of the Appellant. The plan must be submitted to the Court of Appeal on or before 30 October 2023.

12. The following exhibits are attached to this order —
- (i) the proposed site layout prepared by Mr. Sinon as part of exhibit P8 and related documents
 - (ii) "*Transcriptions Will/Testament*" Volume 85 No. 67 registered on 26 August 2009 (exhibit P2)
 - (iii) The Land Registration Act "*Permission to Build*" with respect to parcel V5147 (exhibit P3)
 - (iv) The Land Registration Act Transfer of Land "*Title No. 5147 (Bare ownership) (Undivided Share)*" (exhibit P4)
 - (v) the affidavit on transmission by death dated 3 August 2012 (exhibit P7)
 - (vi) the certificate of official search (exhibit P1)
 - (vii) other miscellaneous documents, including birth certificates and the death certificate of Mr Leonard Leonel.
13. The Appellant is responsible for covering the costs of the appraisal.
14. A copy of this order is to be served on the First and Fifth Respondents outside of the jurisdiction.
15. We order accordingly.



F. Robinson JA

I concur:-



Dr. M. Twomey-Woods JA

I concur:-



Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated and delivered at Ile du Port on 25 August 2023.