

**Adrienne v Pillay
(2002) SLR 24**

Charles LUCAS for the Plaintiff/Applicant
Philippe BOULLE for the Defendant/Respondent

Ruling delivered on 16 May 2002 by:

KARUNAKARAN J: This ruling relates to the motion dated 22 February 2002 filed on behalf of the Plaintiff in this matter.

It transpires from the pleadings that since 1989 the Plaintiff has been and is in occupation of a dwelling house situated at Cerf Island. The land, on which the house stands, previously belonged to one Jeanne Annette Wilson. In July 2000, the Defendant herein purchased the said land from its previous owner presumably, subject to the tenancy in favour of the Plaintiff. Soon after the purchase, the Defendant, the new owner applied to the Rent Board and obtained an order of eviction against the Plaintiff, whereby the Board ordered the Plaintiff to vacate the house on or before 30th of April 2002. However, the said eviction order has not yet been complied with or executed. In February 2002, the Plaintiff instituted a suit before this Court seeking inter alia, a declaration that the Plaintiff has a right to remain in possession of the said dwelling house until such time that the Defendant pays the Plaintiff R100, 000 towards the value of the investments the Plaintiff has allegedly made on renovation and reconstruction of the said house. This suit is still pending for determination.

Following the commencement of the suit, the Plaintiff has now -by way of motion-applied to this Court for an interlocutory injunction ordering the Defendant not to evict the Plaintiff from the house pending the determination of the suit. According to the Plaintiff, he has a "droit de superficie" on the Defendant's land and hence has a right of retention of the house until the Plaintiff is reimbursed for his investments. The Plaintiff now fears that the Defendant may at any time before the determination of the suit, evict him from the house in dispute as the former has already obtained the eviction order in his favour. Therefore, the Plaintiff seeks in his motion a writ of injunction against the Defendant pendente litem. The Defendant on the other side vehemently resists this motion in essence, on two grounds namely:

1. The Rent Board has already made an order of eviction against the Plaintiff the suit-house and therefore, this Court has no jurisdiction to countermand that eviction order; and
2. The Plaintiff's claim of ownership of the house has already been settled before the Rent Board. Hence, the Plaintiff cannot raise this issue again in this suit as he is estopped by the principle of res judicata.

In support of his contention on ground No: 2, the learned counsel for the Defendant Mr Boule argued that the question of ownership of the house should have been determined by the Rent Board, the competent forum when it heard the application for eviction but not now by this Court particularly, in this suit. In the same breath, however, he contended that the issue of ownership becomes *res judicata*, since the Board has already made an order for the eviction of the Plaintiff from the house. Further, Mr Boule submitted that article 555 relied upon by the Plaintiff to base his claim in this matter, can be pleaded only in defence as a shield but not as sword to prosecute a claim in a plaint. Moreover, he contends that "droit de superficie" claimed by the Plaintiff in this suit has nothing to do with article 555 of the Civil Code and hence the suit is according to him, misconceived. Therefore, he urges this Court to dismiss the Plaintiffs motion for interlocutory injunction.

I gave careful thought to the arguments advanced by the counsel on both sides, for and against this motion. For the sake of convenience, I shall first deal with ground No: 2 above. To my mind, the points canvassed by Mr Boule under this ground, with due respect to his views do not seem to be relevant to the merits or otherwise of the motion under consideration. Besides, it is also not proper for this Court to consider them in this motion as any finding thereof at this stage, would in effect dispose of the main suit pending before the Court for determination. Therefore, I do not wish to take up ground No: 2 into consideration for the purpose of the determination of this motion.

Now, I will move on to the issue of jurisdiction raised under ground No: 1 above.

Starting from first principle, though the procedural aspect of granting or refusing an interlocutory injunction is set out in Section 304 and 305 of the Seychelles Code of Civil Procedure, it is a trite law that the power to grant such injunction has been jurisprudentially inherited from the jurisdiction of the High Court of England. The principles that govern the exercise of this jurisdiction in this respect be summarized as follows:

The interlocutory injunction is a discretionary remedy and falls within the equitable jurisdiction of this Court in terms of section 6 of the Courts Act. It is a prerogative power that may be exercised by this Court though sparingly, when no other legal remedy is available to a person in order to prevent an irreparable injury, which is substantial and could not be adequately remedied or atoned for by damages. Moreover, he who comes before this Court for equity should come with clean hands and bona fide claim. In matters of such injunction, the Court for granting or refusing it, should also equally consider the balance of convenience and hardship of the parties. Where the Plaintiff's legal right is doubtful, the burden is on him to show that the inconvenience he will suffer by a refusal is greater than that which the Defendant will suffer by the grant of the injunction. Finally, I shall add that the exercise of equitable jurisdiction is subject to equity, justice and good conscience and the Court whilst exercising it, acts as a "Court of Equity", whereas the exercise of legal jurisdiction is subject to laws and

laws only and the Court acts as a Court of Law.

Therefore, the question as to jurisdiction underground No: 1 is to be determined not on the basis, whether granting of such injunction would countermand or affect the order of any authority but primarily on the basis whether granting of such injunction is necessary for the ends of justice in the given set of facts and circumstances. At the same time, the claim for injunction must be one of substance and not made speciously for the purpose of founding the jurisdiction of the Court. See *Watson & Sons v Daily Record (Glasgow) Ltd* [1970] 1 KB 853. However, the Court ought to exercise that jurisdiction within the parameters of the governing principles and practice, which have evolved from precedent to precedent as well as without losing sight of the recent developments in *Anton Piller* [1976] Ch 55 to *Mareva* [1980] 1 All ER 213. Therefore, I find that this Court has unfettered jurisdiction under equity and grant injunction even to countermand or stay the order of the Rent Board or any other tribunal for that matter, provided the governing principles are observed and no error of law is committed in the exercise of this jurisdiction. On the other hand, if a narrow interpretation is given to the equitable jurisdiction of this Court stating that this Court has no jurisdiction to issue an injunction that would affect or countermand the order of any authority, then in my view, the very purpose of conferring equitable jurisdiction on this Court would be defeated. Therefore, I decline to agree with the submission of the learned counsel Mr Boule in this respect.

In any event, whatever be the arguments advanced by the Defendant against the motion, the fact remains that the main relief sought by the Plaintiff in the pending suit is to retain his possession of the house until he is reimbursed for his alleged investments. A clear danger now faced by the Plaintiff is that the Defendant may dispossess him of the suit-house by executing the eviction order at any time- during the inevitable interval between now and the determination of the suit- and so prevent the Plaintiff from realizing the fruits of any judgment the Court may give in his favour. In that event, the suit becomes anfractuous and the Plaintiff will undoubtedly, put to irreparable loss, hardship and inconvenience. Therefore, refusal of injunction in this matter would in my view, cause more injustice to the Plaintiff than the one caused to the Defendant by granting it. Hence, I allow the motion and grant a writ of injunction ordering the Defendant not to evict the Plaintiff from the suit-property – the dwelling house situated at Cerf Island – until the determination of the suit in Civil Side No: 36 of 2002 in this matter.

Record: Civil Side No 36 of 2002