IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA), A. Fernando (J.A), M. Twomey (J.A)**]**

Civil Appeal SCA15/2015

(Appeal from Supreme Court DecisionCS 211/2011)

Marie-Claire Lesperance — Appellant

Versus

Jeffrey Larue — Respondent

Heard: 29 November 2017

Counsel: Mr. B. Hoareau for the Appellant

Mr. N. Gabriel for the Respondent

Delivered: 07 December 2017

JUDGMENT

A. Fernando (J.A)

1. The Appellant has appealed against that part of the judgment of the Supreme Court whereby the Court stated that it **"**declined to grant the order prayed for, namely issue a mandatory injunction against the Defendant (*the Respondent in this case*) ordering him to vacate parcel V 5247 and the house situated thereon. The reason for my refusal [was] that in the circumstances the Defendant may have acquired a right as a statutory tenant and as such it [would] fall for the Rent Tribunal to assess the situation in finer details and to consider whether an order for eviction [was] warranted**."** The reason stated by the learned

Trial Judge for reaching this conclusion is that: “the Defendant has been and is still in occupation of the house thereon”. (verbatim). The Respondent has not cross-appealed against the learned Trial Judge’s finding that he **“**has no claim as a successor to the estate of late Venance, either through her mother or grandmother and as such has no claim of right in the co-ownership of parcel V 5247.**”**

2. The Appellant had filed a Plaint in the Supreme Court in hercapacity as fiduciary of land parcel V5247 and the house situated thereon, which was co-owned by her and M. S. Y. Esther, M. Constance, L.E. Bethew and Georgis Etienne Constance, by virtue of having inherited a half share of the said parcel from their mother, Maud Ingelburge Constance, and a half share from their uncle, Francois Venance Laurette. The Respondent had been in illegal occupation of the said parcel V5247 and of the house situated thereon according to the Appellant. The Appellant had brought the action before the Supreme Court seeking a mandatory injunction against the Respondent ordering the Respondent to vacate land parcel V 5247 and the house situated thereon.

3. The Respondent in his Defence filed before the Supreme Court had admitted that the Appellant was the fiduciary of land parcel V5247 and the house situated thereon but challenged how she became the representative of one of the four persons mentioned by the Appellant, namely Georges Etienne Constance and also as to how the Appellant and the four others became co-owners of the half share of their deceased uncle. It had been the position of the Respondent that he is not in illegal occupation of the said land parcel V5247 and the house situated thereon and that the Appellant has no right to have him evicted as he had inherited the share of his mother Marie-Therese Larue, the daughter of one Jeannette Larue who was beneficiary of a last will and testament executed by Francois Venance Laurette, the owner of a half share of parcel V 5247. The Respondent had therefore prayed for the dismissal of the plaint. It is clear therefore that the Respondent had claimed ownership to land parcel V 5247 and the house situated thereon on the basis of succession and not on the basis of statutory tenancy.

4. Exhibit P 1 produced by the Appellant, which is a Certificate of Official Search at the Land Registry shows that the Appellant and the four persons mentioned in the plaint and referred to at paragraph 2 above are the co-owners of land parcel V 5247.

5. The Appellant's grounds of appeal are as follows:

   "The learned trial judge erred in law on the evidence in holding that the Respondent may have acquired the right as a statutory tenant, in that:

   i. The Respondent never pleaded that he was a statutory tenant;
   ii. There was no evidence adduced to establish that the Respondent was a statutory tenant; and
   iii. The issue of statutory tenant was not a live issue before the court as such the Appellant did not have the opportunity to address the court on that issue and as such the right to a fair hearing of the Appellant has been breached." (verbatim)

6. There is not very much to be said about this appeal as the Appellant has to succeed without much ado, since all the issues raised in the grounds of appeal have merit. It was incumbent, on the Respondent, if he was to rely on been a statutory tenant, for him to have pleaded that he had become a statutory tenant of the premises by virtue of having retained possession of the leased premises despite the original contract coming to an end in view of the provisions of section 12 of the Control of Rent and Tenancy Agreement Act. It is clear from the Defence filed that the Respondent had not pleaded that he was a statutory tenant. This falls foul of **section 75 of the Seychelles Code of Civil Procedure** which states: "*The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim…*" In the case of **Tirant VS Banane [1977, SLR 219]** it was held that in civil litigation each party must state his whole case and must plead all facts on which he intends to rely, otherwise he cannot at the trial give evidence of facts not pleaded, and the defence of an act by a third party in a motor vehicle collision case, not having been pleaded, could not be considered. The

whole purpose of pleadings is so that both parties and the Court are made fully aware of all issues between the parties.

7. The material facts the Respondent pleaded on which he relied to meet the claim of the Appellant was one of inheritance. That is, he was not in illegal occupation of the said land parcel V5247 and the house situated thereon and that the Appellant has no right to have him evicted as he had inherited the share of his mother, Marie-Therese Larue, the daughter of one Jeannette Larue, who was beneficiary of a last will and testament executed by Francois Venance Laurette, owner of half share of parcel V 5247.

8. On the issue of 'inheritance' this what the learned Trial Judge said:

" In the final analysis I find that the Defendant (*Respondent in this case*) has no claim as a successor to the estate of the late Venance, either through his mother or grandmother and as such has no claim of right in the co-ownership of parcel V 5247". The basis for this conclusion as stated in the judgment is: **"**There are in evidence Exhibits P3 and P4. Exhibit P3 shows that the late Jeanette Larue (*grandmother of the Respondent*) passed away on 22nd May, 2004 and Exhibit P4 shows that the late Venance passed away on 24th December, 2005. The obvious conclusion is that the beneficiary under the Will and Testament, namely, the late Jeanette Larue predeceased the Testator of the Will, namely, the late Venance. **Article 1039 of the Civil Code of Seychelles** provides thus: "*Every testamentary disposition shall be null if the person in whose favour it was made does not survive the testator*". On the basis of the evidence before this Court I find that is what actually happened because the grandmother of the defendant passed away before the testator, Venance. In the circumstances the grandmother of the Defendant, Jeanette Larue, did not benefit under the Will and as a consequence she could not transmit any succession to the mother of the Defendant (*Respondent in this case*), Thelma (*nickname of Marie-Therese Larue according to the evidence of the Appellant*), who herself pre-deceased her. It therefore follows that the Defendant has no status as a successor to the estate of the late Venance who passed away on 24th December, 2005. So I find. Since the late Venance had no issue to benefit from his succession and neither were any of his

parents being alive, his estate on parcel V 5247 passed on to his collaterals, namely, his nephews and nieces who are represented in this case by the Plaintiff (*Appellant in this case*) as the Fiduciary**"**. (verbatim)

9. As stated earlier the Respondent had not pleaded that he was a statutory tenant nor can it be said on a perusal of the averments in the statement of defence that it was covered by implication. Thus he was not only debarred from giving evidence of facts not pleaded as stated in Tirant VS Banane, but had not adduced any evidence to establish that he was a statutory tenant. As correctly stated at ground (iii) of the present appeal the issue of statutory tenant was not a live issue before the court.

10. The Seychelles Code of Civil Procedure is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to float the settled fundamental rules of civil procedure. The object and purpose of pleadings is to ensure that the litigants come to trial with all the issues clearly defined and to prevent cases being expanded or grounds being shifted during trial or judgment. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called 'Any Other Business' in the sense that points other than those specified may be raised without notice. Therefore the Court could not have, on finding that the Defendant (Respondent herein) had not made out the case of succession put forth by him, grant him some other relief.

11. In his book "**The Present Importance of Pleadings" by Sir Jack Jacob, (1960) Current Legal Problems, 176**; the outstanding British exponent of civil court procedure and the general editor of the White Book; Sir Jacob had stated: **"***As the parties are*

adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice...**"**(emphasis added by me)

12. In **Blay v Pollard and Morris (1930), 1 KB 628, Scrutton, LJ** that:**"***Cases must be decided on the issues on record, and if it is desired to raise other issues they must be placed on record by amendment. In the present case, the issue on which the judge decided was raised by himself without amending the pleading, and in my opinion he was not entitled to take such a course*.**"**

13. In the case of **Farrel v Secretary Of State [1980] 1 All ER 166 HL at page 173Lord Edmund Davies** made the following observation:-**"***It has become fashionable these days to attach decreasing importance to pleadings, and it is beyond doubt that there have been many times when an insistence on complete compliance with their technicalities put justice at risk, and, indeed, may on occasion have led to its being defeated. But pleadings continue to play an essential part in civil actions ……. for the primary purpose of pleadings remains, and it can still prove of vital importance. That purpose is to define the issues and thereby to inform the parties in advance of the case they have to meet and so enable to take steps to deal with it*.**"**

14. In the case of **Nandkishore Lalbhai Mehta VS New Era fabrics Pvt. Ltd. &Ors. [Civil appeal No 1148 of 2010]** the Supreme Court of India said that the question before the court was not whether there is some material on the basis of which some relief could be granted. The question was whether any relief could be granted, when the Appellant had no opportunity to show that the relief proposed by the court could not be granted. When there was no prayer for a particular relief and no pleadings to support such a relief, and when the Appellant had no opportunity to resist or oppose such a relief, it certainly led to a miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

15. In the present case the Respondent had pleaded that he had inherited the parcel V 5247 and the house situated thereon and not pleaded that he had acquired a right as a statutory tenant to such property and the only issue before the Court was one of title or ownership, but the Court on its own had considered the issue whether the Respondent "may have acquired a right as a statutory tenant", which is not permitted.

16. In the case of **Bachhaj Nahar VS Nilimamandal &Anr [2008] 17 SCC 491 the Supreme Court of India** dealt with the issue as to whether court can go beyond what is pleaded in pleadings for adjudication. It was held that no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A Court cannot make out a case not pleaded. The court should confine its decision to the question raised in the pleadings. It cannot grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint. The Court went on to say that "*A perusal of the plaint in this case showed that the entire case of the plaintiffs was that they were the owners of the suit property and that the first defendant had encroached upon it. The plaintiffs had not pleaded, even as an alternative case, that they were entitled to an easementary right of passage over the schedule property. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out an easementary right. A suit for declaration of title and possession relates to the existence and establishment of natural rights which inhere in a person by virtue of his ownership of a property. On the other hand, a suit for*

enforcement of an easementary right, relates to a right, possessed by a dominant owner/occupier over a property not his own, having the effect of restricting the natural rights of the owner/occupier of such property… A court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence."

17. The same could be said of the instant case. The entire case of the Respondent (*defendant before the Supreme Court*) as pleaded in the defence had been that "he is not in illegal occupation of the said house and land and the Plaintiff (*Appellant herein*) has no right to evict him there from. He inherited the share of his mother Marie-Therese Larue, the daughter of one Jeanette Larue who was beneficiary of a last will and testament executed by Francois Venance laurette, owner of a half share of parcel V5247." The Respondent had not pleaded, even as an alternative case, that he was a statutory tenant. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out a right as a statutory tenant.

18. The Court of Appeal in Kenya in the case of **Housing Finance Company of Kenya VS J.N. Wafubwa Civil Appeal 102 of 2013** cited **Galaxy Paints Co. Ltd VS Falcon Guards Ltd [2000] EA 885** where it was held: **"***The issue of determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issues arising from the pleadings or such issues as the parties framed for the court's determination. Unless pleadings were amended, parties were confined to their pleadings. Gandy V Caspair 91956) EACE 139 and Fernandes V People Newspapers Ltd (1972) EA 63***"**. A similar decision was made in the Kenyan case of **Mwaniki VS Mwaniki Civil appeal No. 176 of 1995**. In the Wafubwa case, reliance was also placed on the judgment of the Malawi Supreme Court of Appeal case of **Malawi Railways Ltd VS Nyasulu Misc. Civil Appeal No. 13 of 1992**.

19. This Court said in the case of **Tex Charlie VS Marguerite Francoise, Civil appeal No. 12 of 1994**: **"***The system of civil justice in this country does not permit the Court to formulate a case for a party after listening to the evidence and to grant relief not sought by either of the parties that such evidence may sustain without amending the plaint. In the adversarial procedure the parties must state their respective cases on their*

*pleadings...***"**In that case the Respondent had sued the Appellant on the basis she had a proprietary right in the matrimonial home. Having held that she had no such right, the trial Judge had awarded compensation to her the basis of unjust enrichment, which had not been pleaded. Charlie VS Francoise was quoted by this Court in the case of **Vel v Knowles SCA 41/1998, 42/1998, SCAR 1998-1999, 157,** where it was said that a court cannot formulate a case for a party after listening to the evidence or grant a relief not sought in the pleadings and that a Judge cannot adjudicate on issues which have not been raised in the pleadings.

20. This Court also held in the case of **Vandagne Plant Hire Ltd VS Camille [SCA 03/2013] 2015, SCCA 17**:**"***In terms of procedure and pleadings, the rule bears no repetition that parties are bound by their pleadings and that they may not ask nor can the Court grant any relief which goes beyond the four corners of the plaint and the pleadings. Nor may it consider any issue any more than grant a remedy flowing from that issue when that issue was not joined by the parties in the first place. Contributory negligence in this case was never part of the plaint nor the pleadings. As such, it was incorrect for the Court to proceed to a judicial excursion for the purposes of considering, deciding the issue of contributory negligence which had not been pleaded and granting a relief thereon: In the case of Boulle v Mohun [1933 MR 242], the Court held that contributory negligence should be first raised as an issue in the pleadings before the Court may pronounce itself thereon. This principle was endorsed in the jurisprudence of Seychelles, as early as 1977 in the case of Tirant and Anor v Banane 177 SLR 1977. see Tirant v Banane 1977 SCA 219; Therese Sophola v Antoine Desaubin SCA 13 of 1987; Andy Confait v Sonny Mathurin SCA 39 of 1994; Equator Hotel v Minister of Employment and Social Affairs SCA 8 of 1997; Georges Verlacque v Government of Seychelles SCA 8 of 2000; Kevin Barbe v Jules Hoareau SCA 5 of 2001; Etienne Gill v James Gill SCA 4 of 2004.***"***

21. The learned Trial Judge by deciding the case in favour of the Respondent on the basis that he "<u>may</u> have acquired a right as a statutory tenant", when such was not pleaded by the Respondent and when it was not a live issue before the Court; had certainly breached

the Appellant's right to a fair hearing enshrined and entrenched in article 19(7) of the Constitution, as she was not given an opportunity to address the Court on that issue.

22. I therefore allow the appeal and hold with the Appellant on all the grounds of appeal raised.

23. We find however that the Respondent had been living in the premises for a considerable period of time with his wife and son in the mistaken belief that the last will by which Venance Laurette had bequeathed the property to his grand-mother Jeannette Larue, gave him proprietary rights through his mother, who was the daughter of Jeannette Larue and also because the Appellant had failed to succeed in an application for a Writ of Habere Facias Possessionem filed against him. In consideration of the time the Appellant has lived in the premises with his family, we asked Counsel for the Appellant at the hearing of this appeal whether his client would be agreeable to give the Respondent some time to vacate the premises. Having checked with the Appellant, Counsel said that the Appellant was willing to do so and left it in the hands of the Court to determine the time when the Respondent should vacate the premises. We therefore order that the Respondent vacate land parcel V 5247 and the house standing thereon within one year and six months of this judgment. This concession should not however be construed as recognition of any rights in the Respondent.

A.Fernando (J.A)

I concur:. **…….** F. MacGregor (PCA)

I concur:. **…….** M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on07 December 2017