

IN THE SUPREME COURT OF SEYCHELLES

- 1. JULIANA, ALISE BARBE**
- 2. JOSEPH, ANDRE SINON**

APPLICANTS

VERSUS

- 1. RAYMOND ANAMOLE**
- 2. PETER ANAMOLE**
- 3. DESSILA ANAMOLE**
- 4. ROBBY ROSE**

RESPONDENTS

Civil Side No 8 of 2007

Mr. S. Rajasundaram for the Applicants

Mr. W. Lucas for the Respondents

JUDGMENT

Perera J

This is an application for a writ habere facias possessionem, seeking an order that the respondent quit, leave and vacate the residential house and property comprised in Title H 552 in Union Vale, Mahe. The Applicants aver that they are the joint owners of the said property by virtue of having purchased it on 16th October 2006. It is averred that they now occupy one house on that land, while the respondents have entered into another house on the same land and are refusing to vacate the same. The Applicants further avers that the respondents have no legal rights on the property, nor do they pay any rent for the house they occupy, and that hence they have no serious defence to offer.

The 3rd Respondent has filed an affidavit dated 12th March 2007 wherein she has made counter averments on her own behalf, as the daughter of Raymond Anamole (*1st Respondent*), her brother Peter Anamole (*2nd Respondent*) and his partner Robbie Rose (*4th Respondent*). It is averred that they are occupying the house on Parcel H 552 by virtue of a last Will and Testament executed on

27th January 1986, which is duly registered, whereby one Lydie Anamole bequeathed the residential house together with the surrounding area on Parcel Title H. 552, to Therese Labrosse nee Anamole and Allen Anamole, the aunty and brother respectively of the 3rd Respondent. It is further averred that after the death of Lydie Anamole, the Respondents discovered that a deed of transfer dated 18th November 2002, had been executed, purported to have been signed by the late Lydie Anamole transferring the said property in favour of Juliana Alise Barbe (*1st Applicant*) and one Sylvette Hoareau. The Respondents aver that, they have, on behalf of their brother Allen Anamole filed case no 29 of 2007 challenging the validity of the said deed of transfer to the 1st Applicant and Sylvette Hoareau. That case is still pending disposal before this Court.

The Respondents further aver that since filing that case it was discovered that a further deed of transfer has been executed on 16th October 2006 transferring the said property in the names of the first and second Applicants, by Sylvette Hoareau.

The Respondents therefore aver that those transfers have been effected to defeat their claims and to have them evicted.

It was further disclosed that the 1st Applicant Juliana Barbe and Sylvette Hoareau, the transferees of Parcel Title H 522 in the deed dated 18th November 2002, which is being sought to be impugned in case no. 29 of 2007, have filed case no. 190 of 2006 seeking eviction of the 1st Respondent Raymond Anamole, and one Clarence Anamole from the same house and property which forms the subject matter of the instant application.

It is settled law, that when summary procedure is invoked to obtain a writ Habere facias possessionem, all relevant facts must be disclosed in the supporting affidavits, as the decision of the Court will be based on these facts. The writ is available to a party whose need is of an urgent nature, and who has

no other equivalent legal remedy at his disposal to evict the Respondents who have no right or Title to occupy the property. This writ cannot be used as an instrument to evade the necessity of pursuing a regular action. When the Respondents disclose a serious or arguable defence, the writ must be refused, leaving the Applicant to pursue a regular action. (*Pike v. Vardin* CS 18 of 1992)

In the present case, the Applicants claim ownership of the land by virtue of the sale by one Sylvette Hoareau upon a deed of sale dated 16th October 2006. The Respondents claim ownership by virtue of the last Will dated 27th January 1986. They also contest the deed of transfer dated 18th November 2002 whereby Sylvette Hoareau obtained ownership. Hence if that deed is declared null and void in case no. 29 of 2007, the transfer by Sylvette Hoareau to the Applicants may also become invalid. Moreover Sylvette Hoareau and the 1st Applicant in the present case, seek to evict the 1st Respondent and another in case no. 190 of 2006. Hence, in these circumstances, there are serious and arguable issues to be decided in these pending cases. Consequently, the present application for a writ Habere facias possessionem necessarily fails.

There will be no order for costs.

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A.R. PERERA

JUDGE

Dated this 28th day of June 2007