

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT No. 530/2000

IN THE MATTER of an application for
an injunction

AND IN THE MATTER of Articles 841
and 850 (17) of the Code of Civil
Procedure Chapter 243 of the Laws of
Saint Lucia

EX PARTE: LEROY OCHILIEN

Appearances

Mrs Petra Jeffery Nelson for Petitioner
Miss Cybelle Cenac for the Respondents

2000: November 30th
2001: February 27th

JUDGMENT

[1] **d’Avergne, J:** By a petition supported by an affidavit filed on the 1st day of June
2000 the Petitioner, Leroy Ochilien, seeks the following relief:

That the Respondents Marie David and Sylvester David, whether by themselves
their servants and/or agents be restrained from:

- (a) Constructing any more houses on **THE PROPERTY** until it is
partitioned or separated by consent of all parties having interest
therein or until further order of this Court.

- (b) From tying their pigs close or in the vicinity of the area occupied by **THE PETITIONER**.
- © Maintaining their pit toilet within 100 feet from the area occupied by **THE PETITIONER**.
- (d) From setting fires in or around the area occupied by your Petitioners, or to the danger of **THE PETITIONER**, his family, his garden animals and/or vehicle.
- (e) From throwing poison into **THE PETITIONER'S** yard or in the general area or in any open or public place wherein it can be a danger to any person or animal.
- (f) From entering and/or remaining and/or occupying any portion of parcel 3 of **THE PROPERTY**.
- (g) From obstructing the egress and ingress of **THE PETITIONER** from and in his driveway by his house and/or workshop.
- (h) From cultivating any portion of parcel 3 at all.
- (i) From damaging **THE PETITIONER'S** crops or garden.

[2] The evidence of the Petitioner is that he is the occupier in possession of a portion of land (herein after referred to as **The property**) together with several relatives, situate at Plateau and registered as Block and Parcel numbers 1449B 243 and 244 in the registration, quarter of Dauphin, Gros Islet. He deposed that one of the relatives Rosanise Louisy a co-owner with 1/20 share but who is not in possession

nor in occupation applied for Declaration of Title for all the Property but the matter was dismissed on the 27th January 2000.

[3] He further deposed that Marie Venice David (hereinafter referred to as The First Respondent) is the daughter of the said Rosanise Louisy and that Sylvester David (hereinafter referred to as the Second Respondent) is the son of the first Respondent; that they were not only permitting other relatives to settle indiscriminately on the property but were totally disregarding the rights of all those already in possession and occupation of the property, that they were even permitting minibus drivers to park in and around the driveway of the Petitioner's home; that the Second Respondent along with his servants and agents commenced a construction on the property and despite a warning from the Court to desist completing the building, completed it, that one of the first Respondent's daughters lit a fire very close to the Petitioner's vehicle which almost consumed the said vehicle had it not been for the intervention of other persons.

[4] The Petitioner again deposed that he was very fearful for his family and even his animals because of the various acts of indiscretion of the Respondents; that the family of the Respondents are presently occupying a greater part of the property than their entitlement upon which he is advised that he has an overriding interest.

[5] The Second Respondent, the son of the first Respondent never submitted any evidence but the evidence is that he is the son of the First Respondent who

deposed that she is the daughter of Rosanise Louisy one of the co-owners of the property and exhibited the Judgment of **Mathew J** as he then was, dated 4th and 11th March 1991; that the Petitioner was only granted permission to establish a shelter for his pigs but instead erected a dwelling house; that she had been on the land before the birth of her first born who is presently forty five (45) years old; that the Second Respondent completed the house which he commenced nine (9) years before and that he had permission from her mother to do so. She denied that any new construction had started after the Court warning; that it was the Petitioner who built the extension to his house, close to her toilet and pig shed; that he had even promised to buy the land if and when Rosanise Louisy was selling and that it was agreed that he would be given the first option.

[6] She denied that the various wrongful acts which the Petitioner deposed to were being committed by her relatives and also that the Petitioner had any overriding interest in the property.

[7] She further deposed that her mother had agreed to partition the property amongst its co-owners; that the Petitioner was not a co-owner for he is an illegitimate son of Rose Ochilien also known as Rose Louis who was the lawful daughter of Antoine Louis. She quoted **Mathew J** in Suit 98 of 1983 between **Rosanise Louisy vs Antoine Louis** in which the Learned Judge declared that Antoine Louis had no interest in the property.

[8] She deposed that it was the Petitioner who came to the nuisance he complained of, since the pig sty and pit latrine were in existence before the Petitioner built his house; that whatever she did on the property was with the authority and consent of Rosanise Louisy, a co-owner who has and continues to have authority to occupy any portion of the land on a temporary basis.

[9] The Petitioner concluded his affidavit by stating that he had been on the property from his birth and has made many improvements to the property in good faith, his permission to do so having been given by his grandfather Antoine Louis who was then the owner of the property.

[10] **Conclusion**

In order for me to arrive at a determination on this matter it is incumbent on me to have regard to the judgment in Civil Appeal No. 98 of 1983 **Rosanise Louisy** and **Antoine Louis**.

[11] In that judgment **Mathew J** as he then was, held that the deed of declaration by Antoine Louis made on February 21st 1964 and registered in Volume 117 at No. 77196 “is null, void and of no effect . . . that the Defendant, Antoine Louis and his heirs are not owners nor are they co-owners of the said portion of land.”

[12] The Petitioner does not deny that the first Respondent is the daughter of Rosanise Louisy but states that he has no knowledge as to whether she is lawful or not,

however she has deposed that she occupies the land with full consent of her mother Rosanise Louisy who is a co-owner who is permitted to occupy any portion of the land on a temporary basis.

[13] I believe the Petitioner that he entered into possession of the property in good faith (at the time his father was the owner of the land) and that he has done improvements to land and would therefore fall into the category of **Section 28(g) of the Land Registration Act No 12 of 1984** i.e “the rights of a person in actual occupation of land”.....Based on the above I find that the Petitioner does have *Locus Standi*.

[14] It is noteworthy to state that on the 14th July 2000 the parties concerted to the following order:

That no further works or excavation should be carried out by the Respondents on the property until the Petition for injunction filed on 14th June 2000 is dealt with. This order was entered on the 9th August 2000.

[15] Having found that the Petitioner does have *Locus Standi*, I now deal with the application for the interlocutory injunction which purpose is to preserve the *Status Quo*.

In **American Cyanamid Co. v Ethicon Limited [1975] 1 ALL E. R 504** at page 510 Lord Diplock had this to say:

“The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is

not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are questions to be dealt with at trial...So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought."

[16] From the Affidavit's evidence it is clear that there is a serious issue to be tried for which damages would not be a sufficient remedy and that the *Status Quo* should be maintained until the rights of the parties have been determined. Consequently I should grant the order sought upon the Petitioner's undertaking as to damages.

[17] The order of the Court is therefore that upon the Petitioner's undertaking as to damages an interlocutory injunction is granted.

Restraining the Respondents whether by themselves and their servants or agents or howsoever otherwise from:

1. (a) Constructing any more houses on **THE PROPERTY** until it is partitioned or separated by consent of all parties having interest therein or until further order of this Court.
- (b) From tying their pigs close or in the vicinity of the area occupied by **THE PETITIONER**.
- © Maintaining their pit toilet within 100 feet from the area occupied by **THE PETITIONER**.

- (d) From setting fires in or around the area occupied by your Petitioners, or to the danger of **THE PETITIONER**, his family, his garden animals and/or vehicle.
 - (e) From throwing poison into **THE PETITIONER'S** yard or in the general area or in any open or public place wherein it can be a danger to any person or animal.
 - (f) From entering and/or remaining and/or occupying any portion of parcel 3 of **THE PROPERTY**.
 - (g) From obstructing the egress and ingress of **THE PETITIONER** from and in his driveway by his house and/or workshop.
 - (h) From cultivating any portion of parcel 3 at all.
 - (i) From damaging **THE PETITIONER'S** crops or garden.
2. That the Respondents do pay Costs to the Petitioner to be agreed or otherwise Taxed.

**Suzie d'Auvergne
High Court Judge**