

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2019/0316

**IN THE MATTER of a petition in opposition to A
Judgment Under Article 381 of the Code of Civil
Procedure.**

BETWEEN:

- 1. RAPHAEL CHARLEMAGNE**
- 2. MARILYN MARTIN aka MARILYN CHARLEMAGNE**

Petitioners

And

**SAINT LUCIA NATIONAL HOUSING CORPORATION
(Formerly ST. LUCIA HOUSING AUTHORITY)**

Respondent

BEFORE: His Lordship, the Honourable Justice Rohan A Phillip
(Judge in Chambers via Zoom)

APPEARANCES: Ms Natalie Da Breo of Counsel for the Claimant
Mrs Petra Nelson of Counsel for the Defendant

PRESENT: No Party

2021: June 23;
2024: September 06

DECISION

Background/Nature of Proceedings

[1] This is an application filed on 29th October 2019 by the respondent to strike out the petition of the petitioners filed on 25th June 2019 to, among other things, set aside an order for possession.

- [2] The respondent, as claimant/applicant in a civil claim, SLUHCV2018/0277 - *Saint Lucia National Housing Corporation (Formerly St.Lucia Housing Authority) v 1. The Occupiers (Bachelors Quarters Apartment 20, 30 & 31) 2. Mattaniah Charlemagne & Others*, filed on 13th June 2018 (“the Claim”), obtained an order dated 25th June 2018 and entered on 5th July 2018 for, among other things, possession (“the possession order”) that:

“The Respondents and all other Occupiers of Parcel No. 0849D 128 and Parcel No. 0849D 227 in the Registration Quarter of Urban Castries shall vacate and deliver up vacant possession of the said properties and the Applicant’s building erected thereon no later than Tuesday 31st July, 2018.”

- [3] On 23rd October 2018, the respondent filed a request for the issue of a writ of possession and a notice to the judgment debtor under the possession order, which the Registrar signed on 24th October 2018, instructing/directing the Marshal to take possession of the property known as: “*Bachelors Quarters, La Clery Housing Estate, Apartment 28 - Raphael and Marilyn Charlemagne*”.
- [4] On Friday, 26th October 2018, the said writ of possession was served on the 1st petitioner in the presence of the 2nd petitioner. Just after 8 am on Monday, 29th October 2018, the Marshal executed the writ of possession, evicting the petitioners, and the property was destroyed that morning.
- [5] Further to the petitioners’ applications to vary or set aside the possession order and to correct it, on 19th December 2018, the court ruled as follows:

“**UPON** (i) Application to Vary or Set Aside Order of the Court made on 25th June, 2018 filed herein by the applicants on 29th October, 2018 followed by Amended Application filed on 16th November, 2018 and (ii) Application to Correct the said Order under CPR 42.10 filed herein by the applicants on 23rd November, 2018 coming on for further consideration

AND UPON PERUSING the order dated 25th June, 2018 and noting it is a final order and the Court is functus officio and has no jurisdiction to entertain these applications, so that any further recourse or redress can only be by way of appeal to the appellate court by the parties to the claim

AND NOTING FURTHER that the applicants, who seek to invoke the Court’s jurisdiction on both applications are not parties to the claim and never sought to be joined in that regard and therefore have no standing to move the court in this way

AND NOTING that a Writ of Possession obtained by the claimant has been executed and it irreversible, this Court is of the considered view that the applications are flawed and incapable of invoking the jurisdiction of the Court

AND UPON HEARING Counsel for the applicants and Counsel for the claimant

IT IS HEREBY ORDERED THAT

1. The respective applications are struck out.
2. There is no order for costs”.

[6] The petitioners appealed the possession order and filed a constitutional motion seeking damages and declarations that their constitutional rights to protection of the law (section 1 (a)) and protection of the right to a fair trial (section 8 (a)) have been infringed or breached. The constitutional motion was struck out by an order dated 31st October 2019 as disclosing no reasonable cause of action capable of any chance of success.

[7] On 25th June 2019, the petitioners filed an opposition petition pursuant to Articles 381, 382 and 383 of the Code Civil Procedure of Saint Lucia¹ (“the Procedure Code” or “CCP”) and its powers under the laws of Saint Lucia. The basis of the petition was that their interests were affected, and the court’s order very negatively impacted them, even though they were never parties to the claim.

[8] They sought orders for (a) the court to set aside the possession order to the extent that it applies to them; (b) a declaration that the possession order is invalid to the extent that it applies to them; (c) costs; and (d) the court grant any other relief it sees fit.

[9] The respondent filed this application supported by an affidavit of Petua Morris, Legal Secretary, to strike out the petitioners’ opposition petition, as it did not disclose any reasonable grounds for bringing an opposition and was an abuse of the court’s process.

The Respondent’s Case

[10] The respondent ground the application on the court’s inherent jurisdiction and, in the alternative, the court’s power under CPR 2000 (as amended) rules 26.1(2)(w), 26.3(1)(b), and 26.3(1)(c) to take any other step, give any other direction, or make any other order to manage the case and further the overriding objective; to strike out a statement of case or any originating motion where it does not disclose any reasonable ground for bringing a claim; and is an abuse of the process of the court.

¹ Cap. 243, Revised Laws of Saint Lucia 1957

- [11] The respondent contended that the court should strike out the petition as it did not establish any legal interest that would permit the petitioners to file an opposition to the possession order according to articles 381 to 383 of the CCP. Without more, the petitioners merely pleaded that they had both been born on the La Clery housing estate (which the respondent disputes as untrue) and have lived there their entire lives. This fact fails to establish any legal right, whether contractual or otherwise, that would permit the petitioners to file this opposition against the respondent, who at all material times was the registered proprietor of the property, the subject matter of this petition. Accordingly, the petition, on its face, discloses no cause of action sustainable under article 381 CCP or at all, as the petitioner has failed to plead anything of fact upon which the court can establish an interest. There is no claim to proprietary or other right, beneficial or otherwise.
- [12] Additionally, the structure which forms the subject matter of this petition was lawfully demolished under a validly executed writ of execution dated 24th October 2018 issued out of the court's Registry, which the petitioners have never opposed following the CCP. Thus, there can be no issue of restoration of any tangible interest therein since the petitioners were unlawful occupiers of the premises at all material times.
- [13] Further, the respondent argued that the petition was an abuse of process and should be struck out as the possession order was a final judgment that can only be set aside by appeal to the appellate court. The petitioners have failed to establish an interest capable of invoking articles 381 to 383 CCP. The petition is ill-conceived as the petitioners do not have legal standing to ground their petition.
- [14] Counsel for the respondent, in her submissions, reiterated the respondent's grounds for the application. She added that the opposed proceedings named two of the petitioners' children; the petitioners were present in court at the hearing and allowed to speak during the proceeding but indicated that they were not parties to the matter. Further, it was made clear during the hearing that all the occupiers of Block 0849D Parcel Nos. 128 & 227 were being pursued. The petitioners' two sons were present and addressed the court at length. They accepted they were unlawful occupiers of the land. The petitioners also appeared before the court but their sons were the ones who addressed the court. These parties were never the tenants of the NHC. The petitioners were not

entitled to the relevant gratuitous grant of the Government under the relevant project, and being unlawful occupiers, the court ordered possession.

[15] The transcript shows the court was inclined to give three weeks' notice. Still, the respondent (claimant there) agreed to provide six weeks as sufficient time to relocate. The court briefly heard the first petitioner and went to great lengths to clarify that it would give all lands to the lawful owner. The petitioners were unlawful occupiers with derelict buildings that had to be demolished. After the expiry of the time provided by the court, Marshall executed the writ of possession, and the petitioners still refused to give up possession. The writ of possession was lawfully and regularly issued.

[16] Apart from the application, the petitioners filed a constitutional motion, SLUHCV2019/0076, which was dismissed. Now, the petitioners have come to this court pursuant to Article 381 of CCP. They are unable to show any interest in the property. The petition is devoid of any substance required by Article 381 of CCP. The petitioners were present when the court made the possession order, chose not to address the court, and never appealed the possession order. Thus, this is an abuse of the process of the court.

[17] Based on all the facts the petitioners cannot sustain the petition as they have no interest in the property, legal, beneficial, or otherwise. The petition is totally misconceived and should be dismissed with costs.

The Petitioners' Case

[18] The petitioners pleaded case in opposition to the possession order was that on 29th October 2018, the petitioners were residents at the La Clery housing estate, having both been born and lived their entire lives on the estate, when they were forced out of their home when a writ of possession issued by the court was executed upon them by the Marshall under the authority of the Registrar of the court. The writ ordering the Marshall to have the petitioners evicted, followed directly from the possession order, directly affected the interests of the petitioners as it had the effect of evicting them and rendering them homeless.

- [19] They stated they were directly affected by the possession order. They were never parties to the Claim nor served with the claim form, the statement of claim, the application, the supporting affidavit or any documents relating to the Claim before the court made the possession order. On 25th June 2018, at the hearing of the Claim and application, the petitioners attended court. They attempted to make representations for themselves but were not permitted to do so. The court insisted they were not allowed to speak because they were not parties to the Claim. After 25th June 2018, the respondent did not make them parties to the claim and, in any case, in its order of 19th December 2018, the court declared that the petitioners were not parties to the Claim and ruled that after the giving of the order of 25th June 2018, it was *functus officio*.
- [20] The petitioners contend that they were entitled to be heard by the court and should have been joined as parties and served with the court documents in the Claim and the application which formed part of the Claim. Further, to have them evicted, the respondent was legally obligated to file a fixed-date claim against them as per Rule 8 of the Civil Procedure Rules, making them parties to the Claim, which the respondent should have served upon them. The application and its supporting affidavit, which the court granted, leading to the possession order and the eventual eviction of the petitioners, should also have been served upon them. The court made the possession order without due process of the law. The petitioners, not parties to the Claim, could not make representations on their own behalf. The result was that the hearing of the Claim and its supporting application affected their interests without them being allowed an opportunity to be heard. The hearing was unfair.
- [21] The petitioners' counsel submitted that the petition is under Article 381 of CCP, which requires the petitioners should have a beneficial interest in the property. They have not approached the court to try the issue before the court. The petitioners have determined that they were resident on the property. The petition is that their interest was affected without them having a hearing. Article 381 of CCP is to fix the problem at the High Court rather than going to the Court of Appeal. The application before the court was for an injunction to restrain the defendants, being all occupiers and the court granted the order of defendants and all occupiers.

- [22] The transcript will not show the petitioner's sons spoke for the petitioners. The petitioner did not refuse to speak. The transcript shows that the court told the petitioner to stop talking. Referring to the order dated 19th December 2018, mentioned in para 21 of the petitioners' affidavit dated 25th June 2019, on whether the prisoners were parties to the Claim, counsel submitted the court found that they were not parties and could not invoke the jurisdiction of the court.
- [23] The court may well find that they were illegal occupiers but it said they were not parties to the Claim and ruled against them. The petition does not require the petitioners to have a beneficial or other interest. The court never tried the issue of whether the petitioners were unlawful occupiers, and it is not for this court to try. If the court does not fix its error to give the petitioners a right to be heard, it will not achieve the objective to deal with matters justly and fairly. The court should do this on a point of principle in relating all that is just and fair.

Discussion

- [24] The petition is premised on Articles 381 to 383 (CHAPTER THIRD – Oppositions by Third Parties) of CCP, which provide as follows:
- “381. Any person whose interests are affected by a judgment rendered in a case in which neither he nor persons representing him were made parties, may file an opposition to such judgment.
382. This opposition is formed by means of a petition to the Court, which must contain the grounds of opposition, and proper conclusions, and must be served upon the parties in the cause, or upon the solicitors who represented them, if it is made within a year and a day after judgment. The truth of the allegations contained in the opposition must be sworn to, as in the case of an opposition to annul.
383. The proceedings upon oppositions by third parties are the same as upon ordinary suits. They do not prevent the execution of the judgment unless the Court or Judge order a stay of execution.”
- [25] On the face of Article 381, the petitioners must show that their interests are affected by the possession order. Therefore, what interest must the petitioners show to maintain the opposition? In **Augustin v Francis et al.**,² the Court of Appeal restricted the third-party interest in the property to the same interest affected by the judgment being opposed. In that case, the third party claimed to be a co-owner of the property in a representative capacity, and the interest affected by the

² Saint Lucia Civil Appeal No. 2 of 1970 (9th April 1970)

judgment was possession, not ownership, between the plaintiff and the defendant. The Court of Appeal held that:

“... the judgment which is opposed was merely a judgment for recovery of possessions. It contained no declaration of title. On the face of it, it would not appear that the interests of the third party were affected, because all it did was to order delivery of possession as between the plaintiff and the defendant, without making any reference to the question of title or ownership.”

- [26] Following the reasoning in ***Augustin v Francis et al.*** above, the petitioners must show a right or interest in being or remaining in possession of the Bachelors Quarters, La Clery Housing Estate Apartment 28 (“Apartment 28”).
- [27] The petitioners’ pleadings, at their highest, assert that they were the persons in actual occupation of Apartment 28 when evicted. However, they do not suggest any rights to Apartment 28, except to say they were born there and lived there all their respective lives until the Marshall evicted them on 29th October 2018. The question begs, does an occupier have a right or interest in being or remaining in possession of occupied property?
- [28] Under the laws of Saint Lucia, the right to possession of property (land) is provided for in the Civil Code³ and the Land Registration Act⁴ (“the LRA”). Generally, ownership of land and possession go together - that is to say, the court will attribute possession to the registered landowner whether in factual control or not. It will be for a party disputing that possession to establish that the landowner did not have or was not entitled to possession. The petitioners have not asserted to be the owners, or for example, under Article 374 of the Civil Code, a right to retain Apartment 28 until reimbursed for improvements made to it for which they are entitled to reimbursement or under section 28 of the LRA a registered title, a right of prescription, or the benefit of an overriding interest.
- [29] The contentions of the petitioners appear focused on the alleged procedural irregularities by not being made parties to the Claim or served with the papers therein and an opportunity to be heard by the court.

³ Articles 360 to 363

⁴ Cap 5:01 of the Revised Edition of the Laws of Saint Lucia, section 23

[30] On a strike-out application, the court decides the matter based on the contents of the pleadings, whether they disclose any reasonable ground for bringing the action or is an abuse of the court's process. Consequently, while the petitioners may have been occupiers of Apartment 28, they must at least assert how their occupation entitled them to possession such that the possession order affected their right or interest in possession of Apartment 28 to maintain this petition. This they have failed to do even on a liberal view of their case. It does not appear to me that the petitioners were able to raise any or any sufficient interest in the possession of Apartment 28, the subject of the possession order, to be able to oppose the possession order. I would, therefore, grant the respondent's application to strike out the petition because it disclosed no reasonable ground for bringing the action with costs to the respondent.

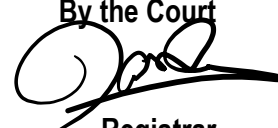
Conclusion

[31] Regarding costs, the petitioners' counsel submitted that the court should not award costs because the petitioners were gravely embarrassed, so insult should not be added to injury, and the court should award no costs. If the petitioners successfully resisted the application, the court should award costs at its discretion. On the other hand, counsel for the respondent submitted that the costs should follow the cause or at the court's discretion. It should be \$2,500.00. The petitioners gave the court no good reasons to retract from the usual practice of costs following the event so that I would award costs to the respondent of \$1,500.00.

[32] In the circumstances, and for the reasons given above, IT IS ORDERED THAT:

1. The petitioners' petition filed on 25th June 2019 to, among other things, set aside the possession order is struck out and stands dismissed.
2. The petitioners shall pay the respondent the costs of this application of \$1,500.00.

**Justice Rohan A Phillip
High Court Judge**

By the Court

Registrar