

**RAWAT A M & ORS v LI YEW FAI R J F C & ORS**

**2010 SCJ 15**

**IN THE SUPREME COURT OF MAURITIUS**

**CHAMBERS**

**S.N. 570/08**

**In the matter of:**

**Mr. Aboobakar Moossah Rawat & ors**

**Applicants**

**v.**

**Mr. Rudy Joey Fook Chong Li Yew Fai & ors.**

**Respondents**

**In the presence of:-**

**The Municipal Council of Beau Bassin/Rose Hill & ors.**

**Co-Respondents**

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**JUDGMENT**

There were originally ten applicants in this case. In the course of the proceedings, applicants nos. 5 and 7 no longer wished to pursue the application and applicant no. 6 was put out of cause as he had left the area, subject matter of the application.

The Judge in Chambers declined to issue an interim order and summoned the respondent to show cause why –

- “(i) a Mandatory Order in the nature of an injunction should not be issued restraining and prohibiting the Respondents from carrying on their illegal activities of repairing vehicles along Raoul Lejeune Street, Beau Bassin;*
- “(ii) a Mandatory Order should not be issued directing the Co-Respondent no. 1 to take all reasonable steps so that the Respondents stop carrying out repairs of vehicles along Raoul Lejeune Street, Beau Bassin;*
- “(iii) a Mandatory Order should not be issued directing the Co-Respondent no. 2 to take all reasonable steps so that vehicles shall in no circumstances park outside the yellow lines along Raoul Lejeune Street, Beau Bassin;*
- “(iv) a Mandatory Order should not be issued directing the Co-Respondent no. 3 to take all reasonable steps so that the Respondents comply with the rules and regulations of the **environment** in the exercise of their trades.”*

It is common ground that respondent no. 1 holds two licences: one as “dealer in electric and electronic appliances and accessories”, and the other for a “workshop electrical and electronic appliances”. Respondent no. 2 holds a licence as “dealer in motor vehicle spare parts and tyres”. And respondent no. 3 is licensed to operate a “video club”.

The essential complaints of the applicants are that the parking spaces next to the businesses of the respondents are sub-standard and insufficient with the result that vehicles spill on Raoul Lejeune Street, Beau Bassin, overstepping the double yellow

lines next to the business complex. Vehicular traffic along the street is impeded. In one paragraph the applicants averred that the respondents have been repairing motor vehicles along the street. In another paragraph, they averred that respondents nos. 1 and 2 carry on repairs on vehicles parked in such a way as to protrude on the street over the single yellow line and double yellow lines. Respondent no. 1 also installs car hi-fi equipment and alarm systems on motor vehicles. Respondent no. 2 would test "special" exhaust pipes, hi-fi equipment and alarm systems. They would rev the engines whilst on test drives. To sum up, the applicants say that there is constant noise pollution, access to vehicular traffic is impaired and they experience difficulties in getting out from their respective compounds.

Respondent no. 1 has denied all the allegations of illegal activities and added that applicants nos. 1, 2 and 3 stop their cars in front of their properties and wait for their gates to open, thereby constantly interrupting smooth flow of traffic. Applicant no. 2 usually causes his car to be parked on the double yellow lines. This is denied by applicants who aver that they are hindered by cars whose owners have business with the three respondents. He has accepted having been prosecuted for parking on the double yellow lines, but added that he has got nothing to do with the other contraventions established by the police, and has pleaded not guilty to three other contraventions.

Respondent no. 2 has also denied the averments of the applicants and averred that he sells spare parts of vehicles and for that purpose he has got to ascertain from the vehicles of his customers the model and reference numbers of the parts. He does so in the two parking spaces allocated to him. Repairs to motor vehicles are effected in Meldrum Street where he operates a workshop. He is not involved in the testing of

special exhaust pipes, the fixing of hi-fi equipment, alarm systems and spare parts on vehicles. His business activities do not generate any noise or traffic jams.

Respondent no. 3 has denied the allegations of applicants that he is involved in repairing of vehicles. He merely runs the business of a video club and has never been contravened for breach of his licence. His customers would not come to his shop “in flocks but rather ... in dribs and drabs to select a video”. He has seen applicant no. 1 extending the double yellow lines, found opposite the business premises, beyond his gate.

At the hearing of the application on its merits, Counsel for respondent no. 1 stated that his client, without admitting liability, undertakes not to carry on any activities on Raoul Lejeune Street, and that he will restrict these activities to the parking space in front of his business premises. Counsel for respondent no. 3 stated that her client is also prepared to give an undertaking, but could not give any guarantee on misuse of parking space allocated to him outside his operating hours. Counsel for applicants submitted that the essence of the application is to prevent nuisance caused by the activities of the respondents. Counsel for respondent no. 2 submitted that the application is one for a mandatory order of injunction restraining activities along the street and not on the parking spaces. Mandatory injunction is granted in exceptional circumstances. He is joined in by Counsel for the Police and the Ministry of **Environment** who, she submitted, were discharging their respective duties. Attorney appearing for the Municipal Council stated that the Council would abide by the decision of the Judge in Chambers.

The proceipe contains four prayers for mandatory orders.

It is a well settled principle of law that an application for a mandatory injunction is more drastic in effect than a prohibitory injunction. I may usefully refer to the oft-quoted case of *Shepherd Holmes Ltd. v. Sandhan* (1971) Ch. 340, 351 –

*“ ... the Court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case, the Court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this is a higher standard than is required for a prohibitory injunction.”*

In the present matter, I am not satisfied that the applicants have established such an unusually clear and strong case as to justify the issue of the mandatory orders prayed and I say so for the following reasons –

- (a) it is not apparent from the affidavit of the applicant when the alleged nuisances started. Except for a letter, whose date is mentioned as being of the 28 September 2007, in which the applicants complained to the Municipal Council, no other dates are mentioned; I am unable, therefore, to say whether the applicants have been diligent in applying for the injunctions, or have remained indolent;
- (b) except for a parking contravention admitted by respondent no. 1, there is no evidence of any conviction of any of the respondents for alleged breaches of the law. The police has filed a list of parking offences established on Raoul Lejeune Street, ranging from the 20 October 2007 to 17 March 2008. It is unnecessary to issue an order against the

Commissioner of Police who, it is clear, is discharging his statutory duties in the area;

- (c) Mr. Veeraragoo, a Consultant on Occupational Health has reported that he effected 3 site visits, on Monday the 04 August 2008 at 2.15 p.m., on Saturday 09 August 2008 at 11.00 a.m. and 2.30 p.m. There were no major activities in the first two occasions, but on the third, hi-fi and alarm systems were being tested generating a noise level in the yard of applicant no. 2 causing "community annoyance". This evidence has to be pitted against that of the **Environment** Officer of the Ministry of **Environment** who stated that, responding to the complaint of applicant no. 2, the Police de l'**Environment** effected surprise visits on the 27 May 2006, 29 May 2006, 17 June 2006, 18 July 2006, 03 August 2006, 13 August 2007, 18 August 2007, 20 August 2007, 29 September 2007, 16 October 2007 and 01 November 2007 along Raoul Lejeune Street and no noise nuisance had been detected;
- (d) the detailed averments contained in the affidavits of the parties show that the matter is a hotly contested one and I cannot have the assurance I should have before granting the mandatory orders prayed for;
- (e) the applicants have raised the issue whether the respondents are operating without the appropriate planning permissions taken out. This is denied by the respondents. They aver that the owner of the building holds the appropriate development permit and, as stated by the applicants themselves, they hold the relevant licences delivered by the Municipal Council. I must say that the matter has been inadequately

canvassed at the hearing. No specific legislation requiring any special permission was quoted by Counsel. It is quite obvious that if the respondents started their activities in breach of the planning laws, the applicants have other remedies they may wish to resort to.

The application is refused with costs. I certify as to Counsel.

**S. Bhaukaurally  
Judge**

**22 January 2010**

**For Appellant:**

**Mr. O. I. A. Bahemia, Attorney at Law  
Mr. N. Patten, of Counsel**

**For Respondent No. 1:**

**Mr. G. Ng Wong Hing, Senior Attorney  
Mr. G. Banji-Soni, of Counsel**

**For Respondent No. 2:**

**Mr. S. Baichoo, Attorney at Law  
Mr. N. Joomeer, of Counsel**

**For Respondent No. 3:**

**Mr. G. Ramdowal, Attorney at Law  
Ms. R. Jaddoo, of Counsel**

**For Co-Respondent No. 1:**

**Mr. P. Rangasamy, Attorney at Law**

**For Co-Respondents No. 2 & 3:**

**Ms. S. Sonah, Principal State Attorney  
Ms. G. Manna, Ag. Assistant Solicitor General,  
of Counsel**