

In the Seychelles Court of Appeal

Francoise Larue

Appellant

v

Michel Husser

Respondent

Mr Boulle for appellant
Mr Houdoul for respondent



Judgment of Goburdhun P

In an action brought before the Supreme Court respondent claimed from appellant the refund of 26,500 Swiss Francs which sum he alleged he had remitted to appellant to finance a guest house business in which he was to participate. In her defence appellant admitted having received the said money but pleaded it was a gift made to her.

In the course of the proceedings before the Supreme Court objection was taken by counsel for appellant to oral evidence being given by respondent in support of his claim.

The learned trial judge overruled the objection on the ground that appellant had admitted receiving the money from respondent in her pleadings. Evidence was heard and the learned judge found the case for the respondent proved and gave judgment in favour of respondent.

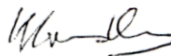
Appellant is challenging the ruling of the learned judge on the ground that "the learned judge erred in admitting oral evidence on the basis of the admissions contained in the defence, as a judicial admission cannot be admitted only in part to the detriment of the defendant."

In the circumstances, with due respect I find that the learned judge was in error in allowing oral evidence. The fact that respondent cannot rely on a qualified admission to make out his case does not mean that he is completely shut off from proceeding further to prove his case. It is still open to him to make out his case, independent of the admissions made in the pleading, one way of doing it would be to obtain a beginning of proof in writing which would render likely the alleged agreement.

In this case respondent did not examine appellant on her personal answers as there was no necessity for him to do so as the ruling as to admissibility of oral evidence was in his favour.

In the circumstances I would set aside the judgment of the learned judge and remit the case back to the Supreme Court for a re-hearing. The Respondent to pay the costs of the appeal.

Dated 18th May 1995.


H Goburdhun
President

Delivered by H Allcar
C.J. in Open Court.

H Allcar
C.J.
18-5-95.