IN THE SEYCHELLES COURT OF APPEAL

CEDRIC PETIT — APPELLANT

V/S

GEORGES LEFEVRE — FIRST RESPONDENT

MARGUERITE LEFEVRE — SECOND RESPONDENT

Civil Appeal No. 28 of 1995

Before; Goburdhun P., Ayoola & Adam JJA

Mr. P. Boulle for the Appellant
Mr. Pardiwalla & Mr. Lablache for the First Respondent
Mr. Bonte & Mr. Valabhji for the Second Respondent

JUDGMENT OF THE COURT DELIVERED BY ADAM J.A.

This Court had before it for consideration besides the Memorandum of Appeal, 3 Notices of Motion on which seperate Rulings have been made. In the grounds of appeal on behalf of the Appellant there were said to be two errors on the law, one on mixed law and fact against the First Respondent (now abandoned) and nine on findings of fact against the Second Respondent. It is clear to us that the ground on the judge's findings (described as ambiguous, contradictory and unreasonable) that there was no agreement on the "price" and on the "thing" will be determinative of this appeal as the rest of the grounds are peripheral to it.

Perera J. in his judgment regarded these proceedings as an action for specific performance of an alleged promise to sell in which the Appellant sought transfer of the undivided shares of the First Respondent and Second Respondent. The Appellant produced 49 faxes, telegrams and letters (of which 32 were sent to

Mr. Georges, Attorney at Law and 17 to the Second Respondent) to establish such an agreement. Having heard the Appellant's and the Second Respondent's testimony he made the finding that Appellant's offer was in his letters of 26 April 1989 and 11th May 1989 to the second Respondent whose terms were that the sales price was R500.000 nett payable R250,000 on 1 June 1989 and the balance of R250,000.000 not later than 6 months from 1 June 1989 against which amount she would register a mortgage bond. Included in the sale were all furniture, fixtures and fittings excluding personal items. This was altered on 11 May 1989 to exclude antique furniture and personal items. The reply to that offer was the Second Respondent's letter of 15 Augst 1989 which indicated the "reached agreement" was that the sales price was R500,000 nett of which R250,000 was to be paid by 1 December 1989 and to be paid first and non-returnable; and R250,000 against which amount she would register a mortgage bond; and that the sale did not include any furniture except fixtures or furniture attached to the walls. If appellants wanted to purchase any furniture in the house a price would have to be agreed. The monies to be sent were in US dollars to Jersey, Channel Islands. She asked the Appellant's confirmation of her letter.

On the 30 August 1989 he Appellant in his letter confirmed the agreement as being that the salesprice was R500,000 of which the first instalment of R250,000 was to be paid within 30 days of signature of the agreement and then refers to provisions of guarantee, etc. It states that they agreed that the price included furniture, fixtures and fittings excluding antique items and personal items. It also described the condition of some furniture, that the remainder of the furniture could have very little market value but she was welcome to retain kists and antique items. It annexed a full inventory of everything in the house. It also provided that the Appellant pay her R3,000 per month from 1 December 1989 until the date of payment of the salesprice.

The Judge made reference to Jones v. Daniel (1894) 2 Ch.332. He said that in Article 1589 of the Seychelles Civil Code ("Sey CC") a promise to sell was equivalent to a sale if two parties have mutally agreed upon the "thing" and the "price". This should be read, according to him, subject to Article 1108 which prescribed the four conditions that were essential for validity of an agreement. He held that the Appellant pleaded that the promise of sale was in the Second Respondent's letter of 15 August 1989 and if the acceptance of it by the Appellant was contained in his letter of 30 August 1989 it should have been absolute and unqualified. He concluded that the letter of 30 August 1989 (conditional acceptance) was instead a counter-offer which was never accepted by the Second Respondent. Perera J. also said that to the Appellant, the "thing" consisted of land, house and furniture. But to the Second Respondent the "thing" consisted of land, house and fixtures. To the judge there was no agreement on the "price" or the "thing".

It should be noted that there was an exchange of correspondence in that on 13 March 1989 the Appellant was told by Mr. Georges that the Respondents (living in USA) wanted offers in excess of R500,000 on the basis they did not really want to sell; that the Appellant to Mr. Georges on 15 March 1989, in order to formulate his offer, told him that he understood the house was furnished and he wanted to acquire the furniture as part and parcel of the property; that prior to that on 7 March 1989 to Mr. Georges that the property must include furniture, fixtures and fittings; that on 25 April 1989 to Mr. Georges he was in all probability going to accept the Second Respondent's price even though he felt it somewhat high; that on 26 April 1989 he informed Mr. Georges that during a telephone conversation with the Second Respondent mush to his surprise she did not know anything about the purchase price being paid in two instaments; that on 8 May 1989 he informed Mr. Georges that in a telephone conversation with the Second

Respondent held on 7 May 1989 she indicated that she knew nothing about furniture and the Appellant told her that she could keep all personal items or antiques; that on 11 May 1989 he informed Mr. Georges that a telephone conversation with Second Respondent held on 10th May 1989 she confirmed that they had a firm deal, that on 19th May 1989 he informed Mr. Georges that during a telephone conversation held on 18th May 1989 he got the impression that the First Respondent was genuine in his desire to sell but it appeared that the problem was with the Second Respondent. Also, in that 11 May 1989 letter to the Second Respondent the Appellant told her that he was anxios to getthe house in June 1989 and that they had bought a beach buggy and other items such as microwave oven and crockery and cutlery. In his letter of 9 June 1989 to Mr. Georges the Appellant told him that he would not occupy temporary accommodation and that this may result in the collapse of the agreement entirely and a claim of damages by him. On 9 August 1989 Mr. Georges informed him that he had received the necessary papers from the Second Respondent but the Appellant should advise him when he and the Second Respondent had agreed on terms. Mr. Boulle on behalf of the Appellant submitted that the judge erred as the issue to be determined was whether there was a real difference between what the Appellant and the Second Respondent agreed. He maintained that the evidence (Appellant's letters of 26 April 1989) 11 May 1989 and 30 August 1989 and Second Respondent's letter of 15 August 1989 revealed that they spoke the same language. He suggested that this was a case of mistake and referred to Chloros "Codification in a Mixed Jurisdiction" at 108. But Chloros refers to Article 1108 and the four conditions that are essential for a valid agreement. It is under the heading of elements vitiating consent that Pro. Chloros discussed mistake and referred to offer and acceptance. He spoke of coincidence between offer and acceptance. This was not a case where vitiating elements of consent - mistake, innocent or fraudulent misrepresentations - were applicable.

Mr. Valabhji on behalf of the Second Respondent submitted that in the first proceedings in the Supreme Court in his Plaint in

November 1991, the Appellant averred that in May 1989 by oral agreement the Second Respondent acting on her own behalf and on behalf of the First Respondent agreed to sell two parcels of land and dwelling-house. He did not claim then that furniture was sold to him. Mr. Valabhji drew attention to land which was tangible and undivided rights which were intangible. He also argued that one must look to the intention of the parties to determine what constituted the "reached agreement". There was no meeting of the minds. The Appellant said the "thing" was land, house with fixtures, fittings and furniture exluding antiques and personal

items. The Second Respondent said the "thing" was land, house with fixtures or furniture attached to the walls but did not include any furniture for which a price had to be agreed between them.

In Jones v. Daniel, supra, the defendant purchaser in his written offer agreed to buy the plaintiff seller's property for L1450. In reply Jones' solicitor accepted on his behalf the written offer and said that he had enclosed a contract for Daniel's signature in which were included special terms like the payment of 10% deposit to Jones and these terms were not in Daniel's written offer. Romer J. at 335 regarded the acceptance letter with the enclosed contract as meaning

> So far as the price is concerned we are agreed. I now enclose you terms which I require you to assent to, if you assent to them and sign them and pay the deposit, then there will be a binding contract between us, but not till then".

Therefore, he held;

> "It was not on acceptance simpliciter of the Defendant's offer forming a contract,and a mere reference to an enclosed document as carrying out the contract so made. In my opinion, it would not have been fair as against the Plaintiff to have said on behalf of the Defendant, if he had been willing so to say immediately he received that letter, that the

> Plaintiff was bound by an absolute contract for £1450 without obtaining a deposit and without any conditions whatever as to title or otherwise. I do not think that that was the Plaintiff's intention".

As Mr. Valabhji pointed out this appeared to be an ongoing process after the Appellant had already occupied the house with furniture in it. The evaluation form filed by the Appellant (exhibit Z47-48) through which he obtained insurance coverage in July 1989 for a private dwelling house and contents for that property which listed beds, chest of drawers, settee, chairs, coffee tables, display cabinet in the bedrooms and living room and tables, chairs, sideboard in the dining room) disclosed the amounts for which these items were listed for insurance purpose.

We are satisfied therefore that the appellant's letter of 30 August 1989 did nothing other than to continue to reflect his offer of 26 April 1989 and 11 May 1989 which the Second Respondent in no uncertain terms had rejected by excluding furniture in her 15 August 1989 letter. She was only selling the land, house with fixtures of furniture attached to the walls. It is clear from 15 August 1989 letter that the Second Respondent was agreeable to selling the furniture in the house when a price was agreed for that.

Whereas the Appellant wanted to acquire the furniture excluding antiques and personal items within the price of R500,000.

When the Second Respondent received the Appellant's 30 August 1989 letter, she was being asked to accept those terms and until she gave her assent there was no binding contract. There was no meeting of the minds.

In such circumstances it would not have been fair to the Second Respondent for Perera J. to hold that immediately

she received the Appellant's letter of 30 August 1989 ~~that~~ she was bound by an absolute contract. We do not accept that this was the Second Respondent's intention. He came to the right conclusion that the parties had not agreed on the "thing as required by Article 1589 of the Seychelles Civil Code."

Accordingly the appeal is dismissed with costs.

Dated this 2nd day of April 1996.

M.A.ADAM
JUSTICE OF APPEAL

H. GOBURDHUN
PRESIDENT

E.O.AYOOLA
JUSTICE OF APPEAL