

IN THE SEYCHELLES COURT OF APPEAL

MARCEL LOUIS DAVID

APPELLANT

VERSUS

LAND REGISTRAR

RESPONDENT

Civil Appeal No. 36 of 1997

(Before: Silungwe, Ayoola & Adam JJA)

Mr R Valabhji for the Appellant

Mr G Dodin for the Respondent

JUDGMENT OF THE COURT

(Delivered by Adam J.A)

The respondent on 16th October 1997 made application to the Supreme Court for the rectification of the Land Register. This was dealt without notice to anyone including the appellant by Alleear CJ in Chambers. On 17th October 1997 he only heard the respondent and made his order that the Land Register be rectified by the cancellation of the document (Revocation of Gift Inter Vivos) which had been registered on 19th June 1996. This document purported to revoke a gift made and registered on 26th June 1976 in favour of Marquise David by the appellant who was her father. Alleear C J also ordered that the name of Marquise David be restored as rightful owner of parcel H880.

In the Memorandum of Appeal the grounds were that the ex-parte hearing conducted in Chambers was a violation of the right to a fair hearing to which the appellant was entitled under the laws of Seychelles and that it violated the audi alteram partem rule.

In his Skeleton heads of argument the Counsel for the appellant submitted that what one was concerned with was to uphold the constitutional right of fair hearing under Article 19(7) and (8) of the Constitution of Seychelles. In this case the hearing was in Chambers and not in open court.



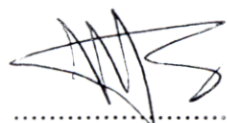
In the Skeleton heads of argument it was submitted by the respondent's counsel that the Land Registration Act is specific in section 99 in Part XII when an interested party should be given an opportunity to be heard. But in Part X of the Act he submitted such an opportunity is not given. He argued that Article 19(7) and (8) of the Constitution was not violated because the law had made provision for the application like one in this case without the necessity of a hearing.

But section 89 does not in specific terms indicate that a fair hearing must not be held. It states that the Court has a discretion to order rectification but does not indicate that the Court did not have to give an opportunity to be heard. What is being suggested on behalf of the respondent is that this Court read into section 89 that it did not allow an opportunity to be heard. The respondent did not show that by giving an opportunity to be heard the respondent would suffer prejudice and for that reason it should be read into section 89.

We are satisfied that the respondent should have given interested persons an opportunity to be heard before the application was dealt with by Alleear CJ. Failing to do so meant a denial of natural justice. The audi alteram partem rule requires that before any decision is made interested persons must be given an opportunity to be heard. This is enshrined in Article 19(7) of the Constitution of Seychelles which is the supreme law of Seychelles. To the extent that any law excludes the right to a fair hearing it would be inconsistent with Article 19(7).

Accordingly the Order made by Alleear CJ is set aside and the matter remitted to the Supreme Court with the direction that any interested persons including the appellant be given notice before the application is considered.

Dated at Victoria, Mahe this ^{9th}..... day of April 1998



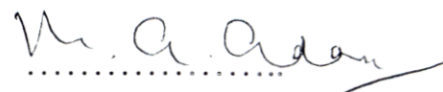
A.M Silungwe

Justice of Appeal



E.O Ayoola

Justice of Appeal



M.A Adam

Justice of Appeal

*Handled down
Helen J A*