

IN THE SEYCHELLES COURT OF APPEAL

GERALDINE DECOMMARMOND & OTHERS

APPELLANTS

versus

**SEYCHELLES HOUSING
DEVELOPMENT CORPORATION**

RESPONDENT

Civil Appeal No: 44 of 1998

[Before: Ayoola, P., Silungwe. & De Silva, J.J.A]

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Mr. F. Elizabeth for the Appellants
Mr. J. Renaud for the Respondent



JUDGMENT OF THE COURT

(Delivered by Silungwe, J.A)

We are here faced with an appeal against the Supreme Court's refusal to declare (inter alia) that the estate of the late Clifford de Commarmond does not owe a sum of SR75,575.00 to the respondent (a public corporation engaged in the business of owning, renting, building and financing homes).

It is common cause that the appellants – seven in all – are heirs of the late Clifford de Commarmond (hereafter referred to as the deceased), a helicopter pilot in the Seychelles People's Defence Forces (S.P.D.F), who died in a helicopter accident on November 27, 1992. The first, second and third appellants are the deceased's widow, father and mother respectively; the rest of the appellants comprise three brothers and a sister.

Following the passing away of the deceased, S.P.D.F paid compensation to the appellants, amounting to SR385,952.89, in full and final settlement of all claims following from the deceased's death but less

SR75,575.00 which was placed under the superintendence of Mr. R. Valabhji, an Attorney at Law, for the purpose of paying off an alleged outstanding loan due from the deceased to the respondent. Consequently, the balance of SR310,377.89 was distributed among the appellants in accordance with their respective entitlements. In partial fulfilment of what he ostensibly perceived to be his responsibility, Mr. Valabhji disbursed to the respondent a sum of SR37,787.50 (i.e. half of the aggregate sum of SR75,575.00 held by him).

Thereafter, the appellants were spurred into action which found expression in the filing of a plaint whereby they sought the following relief:-

- “(1) a declaration that the deceased’s estate does not owe the sum of SR75,575.00 or any other sum to the defendant (now respondent);
- (2) an order discharging a legal charge lodged against Title V6568; and
- (3) an order that the sum of SR37,787.50 be reimbursed to the deceased’s estate by the defendant.”

Upon hearing the case, Perera, J, entered judgment in favour of the respondent which was premised on the following relevant (paraphrased) findings:-

- (1) the fact that the loan of SR75,575 had been given to SPDF on behalf of the deceased and

that a loan account under his name had been opened was established by evidence;

- (2) the heirs had by judicial admission and impliedly in Ex. P1 admitted the fact that the loan existed:
- (3) the fact that the loan was utilised to renovate and extend the house belonging to the 3rd plaintiff (3rd appellant) is immaterial to the loan transaction between the deceased and the defendant (respondent);
- (4) hence, the deceased's estate was liable to pay the outstanding balance due to the defendant; and
- (5) the defendant was further entitled to recover any sum due by way of interest or otherwise from the executor of the deceased's estate.

As against the said judgment, the appellants are now before us on an appeal that rests on two grounds the first of which questions the trial Court's findings based: on the first appellant's judicial admission in another petition, namely, Civil Side 221 of 1993; and on an acceptance of a unilateral reduction of the sums paid to the other appellants being construed as an implied acknowledgement of the deceased's alleged indebtedness to the respondent. The second ground challenges the trial Court's finding that the deceased's alleged loan was proved by evidence.

We will now consider the first ground of appeal which is in two parts. The first part relates to the trial Court's finding of the first appellant's judicial admission in Civil Case No. 221 above-mentioned

wherein her averment in paragraph 2 of the petitioner, produced as Exh. D1, reads:-

“That during his life time, the deceased borrowed money from the Seychelles Housing Development Corporation for the purpose of repairing and extending the house on his mother’s land for occupation by the deceased himself and his wife, the petitioner.”

It is submitted by Mr. Elizabeth that the learned trial Judge erred in describing the statement in paragraph 2 of the first appellant’s petition in Civil Side No. 221 of 1993 as a judicial admission. He contends that, as the relevant case before the Court was Civil Side No. 235 of 1995, an admission in different proceedings (i.e. CS 221/93) is not a judicial admission but an extra-judicial admission. Two authorities: Pillay v Chetty (1972) SLR 110; and Gokool v Sampat (1981 MR, 325, are cited in aid of the submission.

The argument canvassed here can at once be disposed of. It is unnecessary to debate whether or not what the first appellant said in Civil Side No. 221 of 1993 was a judicial admission or an extra judicial admission in the light of her viva voce testimony before the trial Court in the instant matter. At pages 20 and 21 of the trial Court’s proceedings, the following appears (inter alia) under cross-examination by Mr. Renaud:-

“Q: Did you, at any time sign any document saying that your former husband had taken a loan from the SHDC?

A: No.

Q: Did you not, in case No. 221/93, sign a document that reads as follows: 'That during his life time ... and his wife the petitioner'. You the petitioner in that case, do you recall signing it?

A: No.

Q: Do you want to look at it? Was it a mistake?

A: No, but I do not remember.

Q: You do not remember?

A: I do not recall.

Q: Let me show it to you (document produced to witness). You look at paragraph 2 of this petition and once you have done that, look at the end of it and say whether you acknowledge your signature on the left hand side. You acknowledge signing this document?

A: It is my signature.

Q: It is your signature. You do not know what was in it?

A: I do not remember.

Q: But you agree at page 2 of that document, which says that during his life time, 'the deceased borrowed money from the SHDC ... his wife the petitioner, his wife, that is you?

A: Yes."

From this excerpt, it is clear that although the first appellant was initially evasive in her answers, she ultimately made a judicial admission in this particular case. Hence, the trial Court's finding to that effect cannot be successfully impugned. Accordingly, this part of the argument fails.

The second part of the first argument has to do with the acceptance by the rest of the appellants of sums of money deducted from their entitlements which acceptance was construed as an implied acknowledgement of the deceased's indebtedness to the respondent, as illustrated by Exh. P1 which was produced on behalf of the appellants.

This document (Exh. P1) lists all the names of the appellants and constitutes an acknowledgement by them of deductions of sums of money shown against their names individually in favour of the respondent concerning the payment of a loan out of the deceased's estate and thereby absolving SPDF of any liability to the deceased's estate. The document bears what appears to be six signatures, inclusive of the first appellant's, but, inexplicably, these are not affixed against individual names. It is not clear whether all the appellants appended their signatures to the document, apart from the question and answer by the Court and Mr. Georges (who represented the appellants at their trial) as the record of appeal shows at page 19:-

"Court: ... Are these the signatures of heirs?

Mr. Georges: These are the signatures, yes, the signatures of all the heirs, as they collected their money."

It was only the first appellant who subjected the receipt of her share to an endorsement of the following condition on Exh. P1:-

"I accept subject to the loan payable to SHDC being disbursed back to me according to my share."

But the endorsements of other signatories were free from any conditions. This goes to demonstrate that the other signatories did

acknowledge that the deceased had, sometime prior to his demise, obtained a loan from the respondent, as previously stated, which remained outstanding at the time of his death.


The first appellant's conditional endorsement of Exh. P1 does not, therefore, detract from the overall acknowledgement of the deceased's indebtedness to the respondent. In any event, there is, as previously stated, the first appellant's judicial admission of the indebtedness of the deceased's estate to the respondent, coupled with the fact that the rest of the appellants acknowledged the deceased's indebtedness and that the action against the respondent had been brought by them jointly and severally. The fact that the deceased obtained the said loan from the respondent and that this remained unpaid at the time of his death cannot conceivably be gainsaid. It follows that the trial Court's finding in this respect is impeccable.

It will no doubt be observed that what has been discussed above and the conclusions reached thereon, provide a complete answer to the second ground by amply confirming the trial Court's finding to the effect that the deceased's loan was proved by evidence. Thus, the second ground no longer calls for discussion.

The evidence on record reveals that, for one reason or another, the respondent paid the deceased's total loan of SR75,575.00 direct to "Army Construction" on February 22, 1991 which constructed the deceased's house on Parcel V6568 that belonged to the deceased's mother. This offers a possible explanation why the loan could not be secured even by the time that the deceased met his death, hence the respondent's lodgement of the legal charge over Title V6568.

Ultimately, the direction in which we are heading must be as clear as daylight. The trial court's judgment is upheld and the appeal is,

therefore, dismissed. However, in the circumstances of this case, we make no order as to costs.



E. O. AYoola
PRESIDENT



A.M. SILUNGWE
JUSTICE OF APPEAL



G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this *13* day of *August* 1999.