

**IN THE SEYCHELLES COURT OF APPEAL**

**FALCON ENTERPRISE**

Appellant

VERSUS

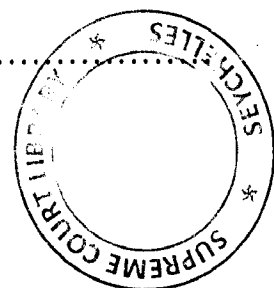
- 1. **DAVID ESSACK**
- 2. **THE WINE SELLER (PTY) LTD.**
- 3. **EAGLE AUTO PARTS (PTY) LTD.**

1<sup>ST</sup> Respondent  
 2<sup>nd</sup> Respondent  
 3<sup>rd</sup> Respondent

Civil Appeal No: 20 of 2001

*(Before: Ayoola, P., Pillay & Matadeen JJA)*

.....  
 Mr. D. Lucas for the Appellant  
 Mr. F. Elizabeth for the Respondents



**JUDGMENT OF THE COURT**

*(Delivered by Pillay, JA.)*

We agree with both Learned Counsel that there should be a new trial in this case for the following reason, namely that the trial Judge had, upon the objection to the admissibility of the documents, D1 and D2, allowed them to be put in as items and had stated that their contents were not evidence until he had pronounced on the question of their authenticity. However, the trial Judge without pronouncing on the disputed signature of the two items in the course of the trial later in his judgment pronounced not only on the disputed signature of the two documents but also admitted them in evidence as DW1 and DW2 and proceeded to use their contents against the appellant, without the latter having had an opportunity of having a say in respect of those contents, in clear breach of the rule of fair hearing.

In the circumstances, the proceedings of the trial Court are vitiated and the judgment is accordingly quashed. We order a fresh trial before a differently constituted Court.

Each party is to bear his own costs here and in the Court below.

*E. O. Ayoola*  
 E. O. AYoola

**PRESIDENT**

*A. G. Pillay*  
 A. G. PILLAY

**JUSTICE OF APPEAL**

*K. P. Matadeen*  
 K. P. MATADEEN

**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 31<sup>st</sup> day of July, 2001.