

## HOUAREAU v HOUAREAU

(2012) SLR 239

D Sabino for the appellant  
S Rouillon for the respondent

**Judgment delivered on 31 August 2012**

**Before Fernando, Twomey, Msoffe JJ**

**TWOMEY J:**

I have read my brother Fernando's judgment. I concur with his findings in respect of the lack of valid consent in respect of the impugned transfer of the bare-ownership of parcel J680 from Ralf Hoareau to the respondent. I am however unable to agree with his findings on *lésion* and although this appeal necessary fails because of our concurrence over the nullity of the contract of sale I feel duty bound to express my views on the issues relating to *lésion* raised in this appeal.

The trial judge found that the lack of a single report as required under article 1680 of the Civil Code of Seychelles was not fatal to the case of the respondent, the plaintiff in the case below. It is important to bring article 1680 and other related provisions into view:

To satisfy the court that a prima facie case exists the plaintiff *must* submit a report by three experts who shall be bound to draw up a single report and to express an opinion by majority. [emphasis mine].

Section 9 of the Interpretation and General Provisions Act, Cap 33 of the Laws of Seychelles states:

The Interpretation and General Provisions Act, shall subject to the provisions of this Act, apply in relation to the interpretation of this Act but shall not apply in relation to the Civil Code of Seychelles, which shall be read and construed for all purposes in accordance with the rules of interpretation set out therein.

Article 4 of the Civil Code of Seychelles states – “The source of the civil law shall be the Civil Code of Seychelles and other laws from time to time enacted”.

Section 21 of the Interpretation and General Provisions Act, Cap 103 of the Laws of Seychelles stipulates – “(1) Where in an Act terms or expressions of French Law are used, they shall be interpreted in accordance with French Law”.

Given the imperative “must” in article 1680 and the provisions contained in the instruments above, I am of the view that article 1680 is mandatory and failure to comply with it is fatal to a claim for rescission of a sale for *lésion*.

I am supported in my view by French authorities on the proof required for *lésion* viz *Dalloz Jurisprudence Générale Répertoire 1977* at [140]:

Preuve

140. Expertise – Une fois que par un premier jugement, le tribunal a autorisé le demandeur à faire la preuve de la lésion, la preuve de la lésion peut être faite. Aux termes de l'article 1678, la preuve de la lésion ne pourra se faire que par un rapport de trois experts qui seront tenus de dresser un seul procès verbal commun et de ne formuler qu'un seul avis à la pluralité des voix. Cette expertise est-elle obligatoire? Suivant la plupart des auteurs, le texte de l'article 1678 est impérative, les juges de fond avant de prononcer la rescission doivent nécessairement faire estimer l'immeuble par trois experts, quand bien même le fait de la lésion résulterait de preuves littérales (*Trib. Civ. Caen 18 avril 1921: D.P. 1922, 2, 85; Rev. Trim, dr. Civ. 1921, 794, observ. Japiot. – Aubry et Rau, op. cit., t. V, §358. – Mazeaud, op. Cit., t. III, n. 886.- Planiol et Ripert, op. cit., t. X, n. 245*).

The court therefore in cases of *lésion* has to adhere strictly to the rules set out in article 1648. I reject the finding by the trial judge, accepted by my brother Fernando that "the Court should look at the spirit of the law and intention of the makers of it" and that the provisions of article 1678 are only a procedural requirement that can be ignored. The Code is different to both statutes and the Constitution. Its interpretation is provided for in the provisions already mentioned. In any case as pointed out by Chloros in *Codification in a Mixed Jurisdiction* "... the Civil Code is subject to its own rules of interpretation".

In a case of *lésion* the procedure is that as set out by Sauzier J in *Adrienne v Adrienne* (1978) SLR 8: the plaintiff must satisfy the court that a prima facie case based on the single report generated by the three experts is made out. The case then proceeds as usual and the court assesses the evidence to establish if there are possible defences for the *lésion*.

I also find that the evaluation accepted by the Court breaches other provisions of the Civil Code of Seychelles inasmuch as it does not take into account article 1675 of the Civil Code that the property shall be calculated according to its condition at the time of the sale. In this case several factors were disregarded in the assessment of the value of the property namely: the fact that the transfer consisted only of the bare interest in the land and not the usufruct, the value at the time of the transfer and the fact that the valuers did not gain access to the house and could only value it from the outside.

I also do not find that the option was put to the appellant to pay the difference between the purchase price and the value as assessed by the experts. I cannot agree with my brother that the option put to the mother of the appellant sufficed to satisfy the provisions of article 1682. The option must be put to the buyer. The fact that the Court counselled the mother of the appellant in open court before evidence had been adduced is not what is envisaged by the provisions of article 1682. In any case the mother was not the representative of the appellant. She was a mere observer in court viz:

Court: Where is the defendant?  
Mr Sabino: Her mother is present in Court.  
Court: Madam you are the mother of the defendant.  
Answer: Yes  
Court: Madam I will strongly advise you to settle the matter...

These were inappropriate statements and procedures by the Court which comprehensively breached the provisions of the Civil Code, hence the appellant's grounds on these issues succeed. However due to the fact that she has failed to disprove the deceased's case that there was no valid consent to the sale, the orders made by my brother Fernando stand.

### **FERNANDO J:**

This is an appeal against the judgment of the Supreme Court dated 18 March 2011, which was in favour of Ralf France Roch Houareau, now deceased; declaring that the purported deed of transfer dated 6 December 2005 registered with the Land Registry, transferring the bare-ownership in respect of title J680 in favour of the appellant in this case, is a nullity and rescinding the transfer thereof; ordering Ralf France Roch Houareau to repay the sum of R25,000 to the appellant with interest on the said sum at 4% per annum as from 15 March 2006 until the sum is fully repaid and directing the Registrar of Lands to rectify the Land Register in respect of title J680 by removing the appellant namely, Emma Rachel Juliette Houareau as the proprietor of the bare-ownership thereof and registering the respondent namely, Ralph France Roch Hoareau as the only proprietor of all interests in the said title upon proof of payment of the sum as ordered, to the satisfaction of the Land Registrar.

Attorney Mr Rouillon, who appeared for Ralph France Roch Hoareau before the trial court, had informed this Court in his heads of arguments that Ralph France Roch Hoareau, the person named by the appellant as the –

Respondent to this appeal has passed away prior to the filing of the appeal and it was incumbent on the appellant to amend the caption on his appeal to reflect the change of circumstances.

He had gone on to state:

In fact in a letter written to the President of the Court of Appeal in response to an earlier motion filed by the appellant, the respondent's counsel alerted this Honourable Court of the change of circumstances. Since then the case was dormant while the appellant considered his strategy concerning the appeal in terms of whether to proceed or not. The case was relisted on the new cause list to the surprise of the respondent hence there was no motion to amend the caption by the respondent.

He had stated:

I have taken the liberty to amend the caption subject to the approval of this honourable court; and counsel for the appellant for the appeal, to proceed and to save time and expense in view of the long list of outstanding cases waiting to be heard by this honourable court.

The order of the Supreme Court in case no 82 of 2011 appointing the executor of the estate of Ralph France Roch Hoareau under article 1026 of the Civil Code of Seychelles has been attached to the heads of arguments by Mr Rouillon. Accordingly, Ms Rebecca Mercia David of Roche Bois, Mont Buxton, Mahe, the daughter of Ralph France Roch Hoareau, has been appointed as executrix to the estate of Ralph France Roch Hoareau who died on 25March 2010. The judge who made the appointment has stated:

On the strength of the affidavit filed in support of the application and other documentary evidence adduced by the applicant in this matter, I am satisfied that the petitioner namely, Ms Rebecca Mercia David of Roche Bois, Mont Buxton, Mahe, is the daughter of one Ralph France Hoareau hereinafter called the “deceased” who died intestate in Seychelles on 25March 2010. I am equally satisfied that it is just and necessary that the petitioner should be appointed as the executrix to the estate of the deceased.

Taking into consideration the delay by the Supreme Court by 1.3 years to deliver this judgment since conclusion of the proceedings, the failure by the appellant to have the executrix to the estate of Ralph France RochHoareau substituted up to the date of hearing of this appeal, and placing reliance on the case of *France Bonte v Seychelles Petroleum Company Limited SCA* No 9/2008, we decided to have the executrix Rebecca David substituted as the respondent to this appeal, and proceed with the appeal in the interests of justice.

As per the Transfer Of Land (Bare Ownership) document, in respect of Title No: J 680 registered with the Land Registry, Ralph France Roch Hoareau, hereinafter referred to as ‘RFRH’, had transferred “in consideration of Rupees twenty five thousand, (R25,000) .....” to the appellant (his niece), “the bare-ownership in the land comprised in J680 reserving the usufructuary interest” to himself. The land as per the valuation reports is located at Mont Simpson estate, along the Mont Simpson road approximately 100 metres from the main road, in a very good residential area and is bounded by other residential properties on all sides. Its terrain has been described as fairly flat and very well landscaped. Water, electricity and telephone are available and serve the existing house.

The appellant has raised the following grounds of appeal:

- (1) The Judge grants lesion despite the fact that the respondent (RFRH) failed to satisfy the basic elements for lesion in that (a) The surveyors reports did not value the property at the time of sale; and (b) The 3 surveyors did not submit a single report.
- (2) The Judge did not make an order in terms of article 1682 of the Civil Code of Seychelles, which is the consequence in an action in lesion. The judgment of the Judge is accordingly ultra vires.

- (3) The Judge has ordered for ownership rights in land to be removed from a party without their consent. This is ultra vires. The court has no such powers.
- (4) The Judge has made an order against the Land Registrar when he is not a party to the suit.

She has prayed that the judgment of the Supreme Court be set aside.

One of the grounds upon which the trial judge had declared the transfer referred to in paragraph 1 above, a nullity, was on the basis that the respondent had signed the transfer deed upon a mistaken belief that the suit-property will revert back to him on his repaying the loan of R25,000 that he had received from the parents of the appellant.

In the plaint the respondent had averred at paragraph 4:

The plaintiff (RFRH) avers that at the time he signed the transfer with the defendant [appellant, before us] he was not in good mental capacity and the price he received is completely disproportionate to the actual value of the property sold.

And at paragraph 5:

The plaintiff avers that the above mentioned transfer is void and voidable due to the fact that the plaintiff was not in good mental health at the time of the transfer transaction.

In the statement of defence, the defendant, now appellant before us, in answer to paragraph 4 of the plaint referred to at paragraph 6 above had averred: ".....The plaintiff was fully aware of and appreciated the nature and effect of the transaction."

At pages 26-30, 33 and 34, counsel for the appellant has cross-examined RFRH at length about his awareness and appreciation of the nature and effect of the transaction. The following dialogue between counsel for the appellant and RFRH (verbatim) in pages 26, 27, and 28 is to be noted:

Q: Mr Hoareau, you claimed that you did not know what you were signing a transfer deed that day before Mr Valabhji?

A: Mr Valabhji was fooling me, he is tricky too. I told him that if I return back her loan my land will belong to me, he prepared the paper. He is tricky. When I went back to him to say that I am refunding back the money he said acha cha cha, He is tricky.

Q: You are saying also that you were given a loan of R25,000.

A: Yes, to refund back afterwards. It is my intention to refund back.

Q: ...did Mr Valabhji not explain to you what you were signing?

A: No..... I told him I am taking a loan with Mrs Hoareau and after that I am going to refund her back her R25,000.

And RFRH in answer to a question from counsel for the appellant had also said – "A: I did not realize that it was not a document pertaining to a loan agreement".

The above cross-examination was due to RFRH's evidence in his examination-in-chief that at the time he signed the transfer of land (bare ownership) document, in respect of Title No J 680 he was under the impression that he was signing it to have the loan of R25,000 and that it was a loan agreement.

Basing himself on the above averments referred to at paragraphs 6 and 7 above and the evidence referred to at paragraph 8 above, the trial judge in answering the question: "Did the plaintiff (RFRH) give consent to the impugned transfer?" had said:

Obviously, the ..... question..... on the issue of consent is a question of fact.....In fact, there is only one version on record on this material issue. [The appellant in this case in the trial before the Supreme Court had at the close of the plaintiff's (RFRH's case) case opted not to call any evidence and make a submission of no case.] That is the only uncontradicted version of the plaintiff. ....On the question of credibility, I believe the plaintiff. I accept his evidence, in that he received the sum of R25,000 from the parents of the defendant [appellant] only as a loan. When the plaintiff visited the office of the notary Mr Valabhji, the latter confirmed to the former that when the loan is repaid the bare ownership transferred in favour of the defendant, would revert back to the plaintiff.

The trial judge had found that RFRH had signed the said deed "without consent so to say valid consent; as such consent was obtained by misrepresentation or misstatement of facts" and gone on to hold –

Indeed, consent shall not be valid if it is given by a mistake vide article 1109 of the Civil Code of Seychelles(CCS). Validity of consent is an essential condition for the validity of any contract of sale vide article 1108 of the CCS. Hence, I conclude that the plaintiff did not give a valid consent to the impugned transfer. Evidentially the plaintiff in this respect has discharged his evidential burden and has established a prima facie case to the satisfaction of the Court showing that the impugned transfer is a nullity and is liable to be rescinded in law.

The appellant has not appealed against this finding nor had she placed any evidence before the trial court to contradict the evidence of RFRH. The suggestion made by the appellant's counsel to RFRH before the Supreme Court that he made up the story of the loan as an excuse, which was denied by RFRH, is not evidence. We therefore agree with the trial judge that there is only one version on record on this material issue and that is the only uncontradicted version of RFRH. We are also of the view that the issue of consent is a question of fact and the question of credibility of RFRH was one to be determined by the trial judge. There are no compelling reasons urged before us to disturb that finding.

When the attention of the appellant's counsel was drawn to the fact that he had not appealed against the rescinding of the contract on the ground of mistake by the trial judge, as itemized at paragraph 9 above, he tried to argue that mistake had not been pleaded by the respondent in his plaint. A perusal of the averments in paragraph 4 and

5 of the plaint, the averments in paragraph 4 of the statement of defence as averred at paragraphs 6 and 7 above, and the line of cross-examination adopted by counsel for the appellant, as referred to at paragraph 8 above, shows that this is not the case. Counsel for the appellant had not objected at any stage that mistake had not been pleaded by RFRH, but rather cross-examined him on the basis that there was no mistake. In *Re Vandeervell's Travels Trusts(No 2)* [1974] 1 Ch 269 at 321, cited in *W & C French (Seychelles) Limited v Oliaji and Others* (1978-1982) SCAR 448, Lord Denning MR had this to say –

It is sufficient for the pleader to state the material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequences of which the facts permit.

In *Lever Brothers Ltd v Bell* [1930] 1 KB 557, Scrutton LJ said:

In my opinion the practice of the courts has been to consider and deal with the legal result of pleaded facts, though the particular legal result alleged is not stated in the pleadings, except in cases where to ascertain the validity of the legal result claimed would require the investigation of new and disputed facts which have not been investigated at the trial.

In view of the failure of the appellant to appeal against this finding the appeal must necessarily fail. I have however decided to consider the four grounds of appeal.

As regards the first ground of appeal it is correct that all three surveyors had valued the property on “the current market value” and all three surveyors had carried out their respective valuations between the period 24 March 2009 and 20 April 2009. The disputed transfer had been made about 3.4 years before the valuations, namely on 6 December 2005. It should be noted that the appellant has not raised any objection to any of the matters referred to in ground 1 of the appeal, when the three valuation reports were sought to be produced at the trial, and acquiesced in the way the proceedings were conducted. However the question that arises for determination is, is this a basic element of the principle of lesion and a sufficient ground to set aside the judgment as prayed for? An answer to this question necessitates an examination of the relevant articles of the Civil Code of Seychelles Act dealing with ‘Rescission of Sales for Lesion’ –

1674 – *If the price paid by the buyer is less than one half of the value of the thing bought, whether it be movable or immovable, the seller shall be entitled to a rescission of the contract, even if he has expressly waived his right to do so, and even if he has declared his willingness to give up the surplus value of the property.* Subject to the provisions of this article and articles 1675 and 1676 the rule of article 1118 of this code shall have application.

1675 – *In order to establish whether there is lesion of more than one half, the value of the property shall be calculated according to its condition at the time of the sale....*

1677 – *To establish whether lesion occurred the Court shall take into account the condition of the value of the property at the time of the sale.*

1679 – The Court shall not admit any claims that a contract is vitiated by lesion unless the plaintiff is able to make out a prima facie case that the circumstances are sufficiently serious to warrant an investigation by the Court.

1680 – *To satisfy the Court that a prima facie case exists the plaintiff must submit a report by three experts who shall be bound to draw up a single report and to express an opinion by majority.* The experts shall be appointed by the Court unless both parties have jointly agreed to appoint the three experts.

1682 – If the buyer prefers to keep the thing and pay a supplement as provided in article 1118, he shall also pay interest on the supplement as from the day when the action for rescission was brought.

If he prefers to return the thing and recover the price, he must also surrender the income of the thing as from the day when the action was brought.

If he has received no income he shall be entitled to interest on the price as from the day fixed for the supplement.

1118(1) – *If the contract reveals that the promise of one party is, in fact, out of all proportion to the promise of the other, the party who has a grievance may demand its rescission; provided that the circumstances reveal that some unfair advantage has been taken by one of the contracting parties.* The loss to the party entitled to the action for lesion shall only be taken into account if it continues when the action is brought.

1118(2) – The defendant to an action for lesion as in the preceding paragraph shall be entitled to refuse rescission if he is willing to make adequate contribution to the other party in such manner as to restore a more equitable balance between the contracting parties.

1658(1) – Apart from the grounds of nullity or rescission already explained in this Title, and those which are common to all contracts, *the contract of sale may be rescinded by the exercise of the option to redeem and by reason of the insufficiency of the price.*

[emphasis added]

An examination of the above mentioned articles show that the basic element of the principle of lesion is the disproportion between the promises of the two parties to the contract, which reveal that some unfair advantage has been taken by one of the contracting parties, necessitating a rescinding of the contract. The disparity should be such that the promise of one party is, in fact, out of all proportion to the promise of the other. The yardstick set by the Code for determining the disparity is based on the price paid under the contract and that where the price paid by the buyer is less than one half of the value of the thing bought. The provisions in articles 1675, 1677 and 1680 are



there to assist the court in determining whether the price paid by the buyer is less than one half of the value of the thing bought and certainly not basic elements for lesion. Lesion is not about determining the exact price a party to litigation has to be awarded but to inquire into a seller's entitlement for rescission of the contract on the ground that the promise of one party is, in fact, out of all proportion to the promise of the other. Thus the valuation of property "according to its condition at the time of the sale" and the need to submit a single report by three experts expressing an opinion by majority are guidelines to satisfy the Court that a prima facie case to vitiate the contract by lesion has been made out. It will be nonsensical to think that merely because the three experts had not submitted a single report, the contract cannot be vitiated in a case like this, when the separate valuations of the property title J 680 by the three experts who testified in court, on average, is more than 34 times the sale price. It can be safely said that the three experts have 'expressed an opinion by majority' and that "the price paid by the buyer is less than one half of the value of the thing bought."

In this case three valuation reports based on the 'current market value' as at the date of the valuation had been submitted by RFRH in respect of property title J 680 before the trial court without objection by the appellant, namely:

Report dated 24 March 2009 valuing the property at R910,000.

Report dated 25 March 2009 valuing the property at R850,000.

Report dated 20 April 2009 valuing the property at the total price of R832,000 (the land comprising parcel J680 at R532,000 and the house at R300,000).

When the surveyor who had valued the property at R910,000 was asked in cross-examination by the appellant's counsel why there was a difference between his valuation and that of the others, the answer had been to the effect that valuation is not an exact science and any differences within 5 to 10% "is acceptable for us in this industry." It is therefore clear that all three valuations fall within this range and the three valuations on average comes to R864,000. It is clear from the cross-examination of the experts who testified before the trial court that there is no reason adduced by way of evidence or suggestion made, to indicate that the price of the property had dramatically increased over the past 3.4 years, namely from the date of the transfer up to the time of the valuations. The appellant in her skeleton heads of argument had stated:

In between 2005 to 2009, the court may take judicial notice of the fact that the rupee was devalued twice sometime in 2007/2008 (fixed devaluation) and then floated in November 2008.

In the same way it is inconceivable to think that at the time of the transfer, namely on 6 December 2005 the value of the property J 680, with the house standing thereon and in the location where it is situated, was even less than R50,000 so as not to attract the provisions of article 1674. According to one of the experts, the value of a property largely depends on its location. The disparity in this case between the transfer price in December 2005 and the valuation price in April 2009 is so immense that a court would not be in doubt to conclude that the provisions of article 1674 do have application. I am in agreement with the trial judge when he states:

However, each expert has individually submitted his or her valuation report to the court. They have been admitted in evidence. The Court can simply peruse all three reports and easily ascertain what the majority opinion is. This is a very simple exercise, which the Court can competently and effectively carry out in this respect. The statute in fact, does not prevent the court from ascertaining the majority opinion by examining the informed opinion expressed individually by all three experts in their respective reports....

I am in agreement with the trial judge and am of the view that justice should be administered in a common sense liberal way and be broad based rather than based on narrow and restricted considerations hedged round with hair-splitting technicalities.

It is necessary to attribute a meaning to the word "shall" in articles 1675, 1677 and 1680 referred to in paragraph 6 above in order to make a determination on the first ground of appeal. I have already come to the conclusion at paragraph 13 above that the matters set out in ground 1 of the appeal are not basic elements for lesion as argued by the appellant. The questions for determination are; are they mandatory conditions that should be fulfilled before a court could rescind a contract on the ground of lesion. The word "shall" in its ordinary signification is mandatory but not always. Whether the matter is mandatory or directory depends upon the real intention of the legislature which is ascertained by carefully attending to the whole scope of the Code, to be construed with reference to the context in which it is used. For ascertaining the real intention of the legislature, the court may consider, inter alia, the nature and the design of the Code, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely that the Code provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and above all, whether the object of the legislation will be defeated or furthered. In the Indian case of *Ramesh Singh v Sheodin Singh* (1890) ILR 12 All 510, it was held interpreting the word "shall" in s173(5) of the Criminal Procedure Code:

There is a difference between a case which a court or an officer of a court omits to do something which by a statute it is enacted *shall be done*, and cases in which a court or an officer of a court does something which by a statute it is enacted *shall not be done*. In the one case the omission to do an act which by a statute it is enacted shall be done may not amount to more than an irregularity in procedure, whilst in the other case, in which the prohibition is enacted, the doing of the prohibited thing by the court or the official is ultra vires and illegal, and if ultra vires or illegal, it must follow that it was done without jurisdiction. [emphasis added]

I am firmly of the view that the word "shall" in articles 1675, 1677 and 1680 is to be interpreted as meaning directory. In view of the matters set out above I dismiss ground 1 of appeal.

The complaint under ground 2 is to the effect that the Judge did not make an order in terms of article 1682 of the Civil Code of Seychelles. Article 1682 referred to at paragraph 11 above has no relevance to this case. The need to make an order may arise only where the defendant to an action for lesion 'is willing' to make adequate contribution to the other party in such manner as to restore a more equitable balance between the contracting parties as stated in article 1118(2) of the Civil Code and referred to at paragraph 11 above. A perusal of the proceedings indicates that the appellant had not come up with any firm offer of an adequate contribution to the other party in such manner as to restore a more equitable balance between the contracting parties, despite every effort made by the Court to encourage a settlement of this case. To the question by Court whether the appellant has any offer to make, the answer from the appellant's counsel had been in the negative. The following dialogue (verbatim) between the Court and the mother of the appellant, who was looking after the interests of the appellant who was abroad, indicates the length to which the court had gone to encourage a settlement, which had not been taken up or evaded by the appellant –

Q by Court: Madam I will strongly advise you to settle the matter. Make some offer and settle in your interest. If I proceed I think I would not be able to do justice to both sides, I want to balance the interest. I do not say you should pay R900,000 or whatever the valuation, at least because you are relative you should make an offer and he might accept, and you can also protect the interest of your daughter as well.

A: We thought it was a gift to my daughter.

Q by Court: It was not a gift....it is a sale. If you can make an offer maybe I will tell him to accept. Normally usufructuary is valued, according to the valuers one third of the total value. If the property is valued at R900,000 the value of the usufructuary is R300,000. Still the bare ownership should be around R600,000. You should make some offer. You agree on the amount then you can pay by installments but he has the right to stay in the house and do whatever he wants.

A: He is renting the house but I do not know of the tenant are paying any rent.  
[verbatim]

It must be noted that when this dialogue took place the appellant according to her counsel was 23 years old and her uncle the RFRH, now deceased, was 57 years of age.

I therefore dismiss ground 2 of appeal.

We see no merit in ground 3 of appeal as the Court had acted under the provisions of the Civil Code of Seychelles Act. We see no merit in ground 4 of appeal as there was no need to make the Land Registrar a party to this suit under the Seychelles Code of Civil Procedure.

The appellant in his skeleton heads of arguments has made an attempt to challenge the valuations on the basis that the fact that the land had been "sold with the usufructuary kept by the respondent", that the valuation has been made without an inspection of the interior of the house, and that there was no evidence as regards "any developments close to the land, such as a supermarket" that could affect the value of the land. They

were not grounds of appeal. I am of the view that the Court had been conscious of the fact that the land had been sold subject to a usufructuary interest. This is borne out in the questions by Court as referred to at paragraph 15 above. The disparity in this case between the sale price and the valuations is so great that the other matters would not be of any consequence.

We therefore dismiss this appeal with costs of this appeal to be paid to the respondent.

The orders made by the trial judge at page 12 of his judgment are amended and are to be read as follows, in view of the substitution of Rebeca David as executrix to the estate of the late Ralf Houareau:

- (i) We declare that the purported deed of transfer – dated 6 December 2005 registered with the Land Registry on 15 March 2006 – transferring the bare ownership in respect of Title J 680 in favour of the appellant (defendant before the trial court), is a nullity and therefore, we hereby rescind the said transfer accordingly.
- (ii) We order the respondent to pay the sum of R25,000 to the appellant with interest on the said sum at 4% per annum as from 15 March 2006 until the sum is fully paid.
- (iii) We direct the Registrar of Lands to rectify the Land Register in respect of Title J680 by removing the appellant namely, Emma Rachel Juliette Houareau as the proprietor of the bare ownership thereof and registering the respondent as the only proprietor of all interests in the said Title upon proof of payment of the said sum as ordered in paragraph (ii) above, to the satisfaction of the Land Registrar.