IN THE COURT OF APPEAL OF SEYCHELLES

1. **KRISHNA LEVI CHETTY**
2. **ELVIS CHETTY**
3. **PRISCILLE CHETTY**

APPLICANTS

vs

1. **MERCIA CHETTY**
2. **LEA RAJA MANIKAM CHETTY**

RESPONDENT

SCA MA15/13

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Counsel: Mr B. Hoareau for the Appellants
Mr A. Derjaques for the Respondents

JUDGMENT

DOMAH, S.,

[1] This is an application seeking an interpretation of a judgment which this Court handed down on 6 December 2013 in an appeal and a cross appeal from a decision of the Supreme Court delivered by the Chief Justice who had dismissed the case of the appellants involved in a property dispute with the respondents. This Court, after hearing the submissions of learned counsel for the parties, dismissed both the appeal and the cross appeal, on the facts and in law. On the facts, for insufficiency of credible evidence and in law, on an interpretation and application of the provision of article 834 of the Civil Code.

[2] Learned counsel appearing for the applicants, in support of this application has invoked Rule 13(2) of the Seychelles Court of Appeal Rules 2005. This rule confers the power of this Court to correct any slip or accidental error arising in its proceedings, so as to give effect to the manifest intention of the Court, notwithstanding that the proceedings have terminated and the Court is otherwise *functus officio* in respect thereof. He has also referred to the English position in the case of **Hatten v Harris [1892] A.6 560** which refers to the competence of a court to do so for the purpose of harmonizing what was

said with what was meant. He also relied on the old English law of procedure contained in Rule 11 of Order 20 which speaks of the inherent powers of the Court to vary its own orders so as to render its own meaning plain.

[3] Learned counsel appearing for the respondents resist the application. In his submission, the only rule applicable in law in this case is Rule 13(2) of the Seychelles Court of Appeal Rules 2005 but on the facts this Rule would not apply. His reading of the judgment is that the manifest intention of the Court is clear and concise and not open for interpretation or clarification in that it is neither ambiguous nor unclear. This, to him, is not an application for seeking "to clarify and/or correct any slip or accidental error, so as to give effect to the manifest intention" of the Court. In his submission, from what may be culled from the prayer, applicants are seeking anything but an interpretation of the judgment. What they are seeking is a remittal of a case which comprised an appeal and a cross appeal both of which were effectively dismissed; and, unambiguously and unequivocally at that.

[4] We agree with learned counsel for the respondents. It does not take long for one to realize that the applicants are not engaged in sounding the intention of this Court but in attributing an intention to it - which is not borne out by paragraph 30 on which they rely.

[5] It was never the intention of this Court that -

(a) "the matter be remitted before the Supreme Court for the purpose of adducing evidence, before the Supreme Court, so that the value of undivided shares of the 1st Respondent in parcel V5495, may be ascertained; [underlining ours]

(b) the parties may adduce evidence through different experts other than those who have already testified;

(c) the Supreme Court will have to also determine the legal status of the usufructuary interest of the 2nd Respondent; and/or

(d) that the above issues, may be determined by the original trial judge or by another judge of the Supreme Court, who may also rely on the evidence already adduced before the Supreme Court."

[6] The clarification and or correction of any slip or accidental error, if at all, has to be apparent from the record of an operative paragraph and not depend upon a construction given by the parties to any particular paragraph which is not the operative paragraph of a judgment. The applicants, in this case, are not seeking any clarification or correction for that matter. They are seeking prayers for an order so that their own interpretation of a paragraph in the judgment be given effect to so that the final orders by this Court made be negated. We decline to be led into such a dangerous course of action in the interpretation of Rule 13(2) of the Seychelles Court of Appeal Rules. There are certain things that can be done under it and there are certain things that cannot be done. There can be an amendment to a figure for example but there cannot be an amendment to any final order unequivocally made the result of would trigger another process of adjudication: see **Revera v Dinan 3 SCAR (Vol II) p. 225; Moore v Buchanan [1967] 1 WLR 1341; Tak Ming Co. Ltd v. Yee Sang Metal Supplies Co. 1973 1 WLR 300,** cited by learned counsel for the respondents.

[7] If any interpretation is needed and, for the avoidance of doubt, we would be happy to doubly reassure parties that the order that was made was for the dismissal of the appeal and the cross appeal. One should not read anything more or less into it. A paraphrase of the exhortative paragraph 30 is not needed. However, we are happy to provide one, with the added advantage of a numbering:

1. Parties, are to go back to their experts; and
2. come up with something more credible on either side;
3. to enable the <u>court</u> to decide between the competing values offered; [underlining ours]
4. along the principles which the courts have applied over the ages.
5. Parties may also – and they are encouraged to do so – elect a common valuer for the purposes of reducing the number of the issues in their dispute.

[8] Much has been made of the word “court” in the paragraph relied on. If this Court had meant a remittal to the Supreme Court whence the appeal and the cross came as the applicants want us to construe, it would have either used the term Supreme Court. The reason is fundamental to the legal and judicial system and relates to jurisdictional *seisin*. The process of seizing the jurisdiction of a Court of Law is not an informal administrative

matter but a formal judicial matter. There is only one way for the remittal of a case from the Court of Appeal to the Supreme Court and no other: it is by way of a formal judicial order inasmuch as they are courts of hierarchical and differing jurisdictions. Orders of remittal from one jurisdiction to another may not be made by implication. It is a matter of regret that we continue to note too many of these free-for-all and free-for-everything manner in which courts' jurisdictions are seized. It is inimical to the rule of law enshrined in the Constitution as the basis of our democratic society.

[9] For that reason, we cannot allow applicants to use one exhortative paragraph which precedes the operative paragraph of a judgment for the purpose of giving a judicial kiss of life today to an appeal and a cross appeal, both bodies of which were effectively laid down in their respective graves on 6 December 2013.

[10] We need to spend more judicial time than we have given to the parties in this case when it is apparent that this application stems from a misapprehension manifest in the minds of the applicants and not an intention manifest in the judgment of this Court.

[11] It is worthy of note that, in his submission, the applicants, while making most of the language in paragraph 30 of the judgment, completely occults paragraph 31 which clearly made the orders of dismissal of both the appeal and the cross appeal.

[12] It is a common and universal reality that property disputes the world over and not only in the judicial process are, unfortunately, overcharged with a lot of explicable emotions for all directly concerned. Speaking of judicial process only, when they reach the courts, not all parties are able, with equal measure, to exercise the necessary detachment to assist in the proper identification of the rules and the proper application. As it is with client so it is with counsel sometimes. The problem is exacerbated where counsel is himself or herself his own or her own client in a property dispute that is between family members who are of a different generation than that whose properties are the subject matter of the dispute. Courts are fully aware of this and they live above all this. They apply the rules as they find them, knowing too well that litigation hurts but that the parties came to litigation with that risk. That is why we, in the judgment, did the extra mile to encourage parties to adopt a course of action which would avoid or mitigate the hurts of litigation. The rule of law is the rule of law. What such parties need at the

end of a judgment is not an emotional response to the judgment but a rational response. Avenues of mutual conciliatory responses are never closed so that parties may move on with their lives.

[13] The only orders that the Court had made other than the dismissal of the appeal and the cross appeal was one of costs.

[14] For the reasons given above, we set aside the application with costs.

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S.B. DOMAH	**A. FERNANDO**	**M. TWOMEY**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated this 11th April 2014, Ile du Port, Seychelles.