# IN THE SEYCHELLES COURT OF APPEAL

**[Coram:** S. Domah (J.A) , M. Twomey (J.A) , J. Msoffe (J.A) **]**

## Civil Appeal SCA 38/2013

**(Appeal from Supreme Court Decision CS 74/2005)**

---

| | |
|---|---|
| Lucine Vidot | 1st Appellant |
| Carol Vidot | 2nd Appellant |
| Doreen Hoareau | 3rd Appellant |
| Marie Vidot | 4th Appellant |
| Andre Vidot | 5th Appellant |
| Joanna Vidot | 6th Appellant |
| Versus | |
| Jeanne Lesperance | Respondent |

---

Heard: 13 April 2016

Counsel: Mr. Nichol Gabriel for the Appellants

Mr. Francis Chang Sam for the Respondent

Delivered: 22 April 2016

**JUDGMENT**

J. Msoffe (J.A)

[1] We wish to observe from the outset that this was a typical case of delayed justice. The Plaint was filed on 9th February 2005 and the Defence on 13th October 2005. In between there was an application for a writ of *habere facias possessionem* taken at the instance of the Respondent herein and

which was the subject of a Judgment by Perera, J. dated 20th July 2007. The Respondent appealed the Judgment and on 25th April 2008 this Court, Domah, J., delivered its Judgment "vide SCA No.25/2007 dismissing the appeal thereby paving the way for continuation of hearing of the case. This was followed by a series of adjournments some of which were, in our view, unnecessary. A look at page 156 a of the record before us will show that by 29/2/2012 hearing had been completed and submissions filed. Yet, it was not until 2/10/2013 (almost two years later) that the Judgment was delivered! Surely, for whatever reasons, the Judgment ought not to have taken all that long period of time to be composed and delivered. Overall, therefore, the case took nine or so years to be completed. This is unacceptable. After all, this was a simple case with no intricate or complicated issues involved. It should not have, therefore, taken all that long period of time to come to an end. Courts should always be alive and conscious of the wisdom contained in the famous adage or saying that "Justice delayed is justice denied".

[2] At the centre of dispute in this matter is a parcel of land C1665 situated at Anse Louis, Mahe, Seychelles. In a Plaint dated 7th February 2005 the Appellants filed an action against the Respondent seeking judgment from the Supreme Court ordering the Respondent to sub-divide her half share of the above property.

[3] The Appellants and the Respondent are children of one Ms. Victoria Vidot who died on 29th August 1999. The Respondent is the eldest sister amongst the siblings. The parties' mother lived in concubinage with one Mr. Meze Joseph Vankeirsbilck for about 29 years until his death on 20th August 1995. He died *intestate*. During their early life the parties lived in the same house with their mother and the said Mr. Meze Joseph Vankeirsbilck. On 17th

October 1994 by a deed of transfer executed before a notary public, Mr. Gerald Maurel, Mr. Meze transferred his undivided half share in the property to the Respondent for a valuable consideration. On 5th August 1997, with the assistance of Mr. Maurel, the Respondent got the deed registered. Thus, she became the owner of the half share which originally belonged to Mr. Meze Joseph Vankeirsbilck. Subsequently, on 11th December 2003 she purchased the other undivided half share from Mr. Serge Vankeirsbilck for a valuable consideration of SR50,000/- vide a transfer deed executed before Mr. Francis Chang Sam and registered on 23rd January 2004 thereby becoming the sole owner of the whole property.

[4] On the other hand the Appellants' case was, and indeed still is, that although Mr. Meze Joseph Vankeirsbilck was not their biological father they lived together with him in the same household in circumstances under which they regarded him as their step-father. That, they took care of him when he became old and sick. That, during his old age he wanted to give all the children of his concubine his half share in the property. That, since all the children were not living at Mahe at the material time it was agreed that the step-father would transfer his half share to the Respondent who would later sub-divide a plot to those of the siblings who did not already have a plot of land. That, in consequence of the above agreement the land was transferred to the Respondent for the sum of SR1 on 25th July 1997. That, whenever the Appellants requested the Respondent to sub-divide the land and transfer to those of them without a plot the latter always asked them to wait and to stop being in a hurry to finalize "things" as they were able to enjoy the land anyway.

[5] In its Judgment the Supreme Court framed two issues for consideration and decision, to wit:-

> "1. Had the defendant before or at the time of acquiring ownership of the suit property, entered into any agreement with the plaintiffs to subdivide an half share in it and transfer that portion to those of the plaintiffs, who did not already own another plot of land? And
>
> 2. If so, should the Court order the defendant to perform his obligations as per the terms of the said agreement?"

[6] In the end, the Supreme Court answered the above issues in the negative and dismissed the suit with no order as to costs. Aggrieved, the Appellants are appealing.

[7] We wish to digress a bit here and observe that usually issues are framed by the Court and agreed upon by the parties at commencement of hearing and not otherwise. It is not good practice to frame issues in the course of composing a Judgment, as happened in this case. And, needless to say, issues arise from the pleadings.

[8] The basic advantage of framing issues at the commencement of hearing is that, it helps to focus the parties straight away from the beginning of the trial and narrow down the issues thereby allowing them to bring or adduce evidence on only those matters which the parties are not in agreement. In other words, evidence would be adduced on only those matters in which the parties are at issue. If this process is done and adhered to, it would be evident that time, energy and expense would be saved in the process and all this would be to the advantage of both or all the parties concerned.

[9] Of course, in the course of trial the Court is not precluded from amending or drawing other issues arising from the evidence so long as they are within the pleadings.

[10] Thus, a typical hearing in a civil case would begin and continue in more or less along this format:-

*Issues framed by the Court and agreed upon by the parties:-*

1. *Whether ……*
2. *Whether ……*

*etc.*

*PLAINTIFF'S CASE*

*PW1 ……*
*PW2 ……*
*etc.*

*DEFENDANT'S CASE*

*DW1 ……*
*DW2 ……*
*etc.*

*SUBMISSIONS (usually beginning with the defendant or his/her attorney)*

*JUDGMENT.*

[11] In a case where issues have been framed the task of the Court in composing a judgment becomes far much easier than in a case without framed issues because all that the Court will have to do is to provide reasoned answers to the questions posed in the issues and in the process it will have to state whether or not in its opinion the answers are in the affirmative or negative. Without framed issues, we are sorry to say, there is always a possibility or

danger that the Court may unknowingly engage itself in "a fishing expedition" without a sense of direction.

[12] In the notice of appeal the Appellants have raised five grounds of appeal which read as under:-

(i) The learned trial Judge erred in law in not properly considering and weighing the whole evidence put before the Court at the hearing of the case, in particular the evidence in regards to the legality of the Transfer Deed dated 17th of October 1994 whereby the Respondent became half owner of Parcel C 1665.

(ii) The learned trial Judge was wrong to make a finding on the inadmissibility of oral evidence on the existence of an agreement between the parties when the Appellants in the case had very close ties with the deceased Meze Vankiersbilck and the Respondent.

(iii) The learned trial Judge erred in holding that the evidence of the Respondent was to be believed and to hold that the Appellants failed to establish a prima facie case to prove their claim in this action, let alone on a balance of probabilities.

(iv) The learned trial Judge erred in holding that the Deed of Transfer dated 17th October 1994 was a valid legal Transfer Deed.

(v) The learned trial Judge erred in holding that matters adduced during the course of the hearing were extraneous and did not fall

within the perimeters of the pleadings and the evidence on record."

[13] Before addressing the above grounds it is pertinent to observe that the general principle is that parties are bound by their pleadings. As a general rule, the Court will not grant a relief which is not founded on the pleadings. Having stated so, we will proceed to address the grounds of appeal, *albeit* briefly, because we are of the view that this is a simple and short appeal which does not require much discussion in disposing it of.

[14] Under grounds (i) and (iv) the Appellants are seeking to fault the Judge in not considering or giving weight to the legality of the transfer deed dated 17th October 1994. With respect, the Judge cannot be faulted because, as per the pleadings, this was not a material issue in the claim. All along the Appellants' claim was that the Respondent be ordered to sub-divide the land and share it among the siblings. The Appellants' prayer has never been that the deed be declared null and void. Hence, the Judge had no obligation to consider this argument because if he had done so he would have acted *ultra vires*.

[15] In the third ground of appeal it is alleged that the Judge erred in holding that the evidence of the Respondent was to be believed and that the Appellants failed to establish a *prima facie* case to prove their claim. Yet again, going by the pleadings, the Appellants' claim was based on an alleged agreement to sub-divide the land among the siblings. Yet, at no point in the proceedings did they produce any written evidence to support this claim. At any rate, as shall be shown hereunder in discussing ground (ii), they cannot

adduce oral evidence to support their claim as that would be contrary to the dictates of Article 1321 of the Civil Code of Seychelles.

[16] The complaint in the fifth ground of appeal is that the Judge erred in holding that matters adduced during the hearing were extraneous. It seems to us that this ground is vague because in the skeleton heads of argument filed by the Appellants' Counsel there is no mention of the matters the Appellants are referring to. At any rate, it is discerned from the Judgment that the Judge in his Judgment refrained from considering matters which were outside the pleadings. In the process, he based his decision on the alleged agreement to sub-divide the land because this was the crucial matter as per the pleadings on record.

[17] This brings us to the second ground of appeal. Counsel for the Appellant has submitted that oral evidence should have been permitted in this case. He has stated that since there was a moral responsibility to bring written evidence about the agreement between the deceased and the parties that the land was to be transferred to the respondent and thereafter transferred in equal shares to all her siblings, the learned trial judge should have permitted oral evidence of the appellants. We disagree.

[18] Although it would have been possible to admit the oral evidence on the grounds that the relationship between the parties including their stepfather was akin to a blood relationship and such evidence would therefore have been excepted by the rule in article 1341 (vide *Coopoosamy v Duboil* (2012) SLR 219), the appellants would still have fallen afoul the provisions of article 1321.

[19] It is clear from article 1321(1) that back letters (*contre-lettres)* contrary to what is expressed in an authentic document (here the transfer document between the respondent and the deceased) cannot be relied on by third parties (here the appellants). Article 1321 (4) stipulates that back letters purporting to vary, amend or rescind a registered deed, an agreement for sale or a transfer must itself be registered. The exact provision is repeated in section 82(2) of the Mortgage and Registration Act.

[20] The superiority of documentary evidence over oral evidence is the pillar of our civil law and hence although back letters are admissible against agreements in certain circumstances they are inadmissible against deeds relating to immoveable property.

[21] In the circumstances we are of the view that the learned trial judge was correct in not allowing oral evidence in this case albeit under the wrong provision of the law.

[22] For the above reasons, we are satisfied that this appeal has no merit. We hereby dismiss it. As correctly opined by the Supreme Court, since this is a family dispute, we think, it will not be appropriate or in the best interests of justice to order costs. We, therefore, make no order as to costs. In essence, each party shall bear its own costs.

J. Msoffe (J.A)

**I concur:.** **…….** S. Domah (J.A)

**I concur:.** **…….** M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 22 April 2016