

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA 21

SCA 51/2018

(Appeal from MA 237/ 2017
arising from CS 353/2009)

In the matter between

ROSITA TARROZA PARCOU

(rep. by Mr. Serge Joan-Luc Rouillon)

Appellant

and

THELMA HALL

(rep. by Mr. Conrad Lablache)

1st Respondent

MARINA JOSEPHINE ALLEN

(rep. by Mr. Conrad Lablache)

2nd Respondent

Neutral Citation: *Parcou v Hall & Anor* (SCA 51/2018) [2021] SCCA 21 11 June 2021

Before: **Fernando P**, Tibatemwa-Ekirikubinza, Dingake, JJA.

Summary:

Heard: 25 May 2021.

Delivered: 11 June 2021

ORDER

The appeal fails on all grounds. Consequently, the order of the Supreme Court given on 3rd September 2018 is upheld.

JUDGMENT

TIBATEMWA-EKIRIKUBINZA, JA

The Facts

1. Julien Jean Baptiste Parcou died intestate on 22nd April, 2009. Before his demise, he owned land comprised in Titles V6647, V6650, and V6652 at Pascal Village, Beau Vallon. On 17th November 2004, Julien Jean Baptiste transferred Title V6650 to his son-Julien Keven Parcou (the Defendant in CS/353/2009) for a sum of SR 60,000. He also transferred Title V6652 to Julien Kaven Parcou for a sum of SR 1 on 24th January 2008 and on 4th June 2008, he further transferred to Julien Kaven Title V6647 for a sum of SR 1. He, however, reserved for himself the usufructuary rights in Titles V6652 and V6647.
2. At trial, Thelma Hall (the 1st Respondent and one of the beneficiaries to the estate of the late Julien Jean's estate) argued that the deceased had transferred property that was over and above the disposable portion and thereby unlawfully disinherited her of her rightful share of the estate.
3. Thelma Hall argued that the transfers that were made by the deceased were disguised donations to Julien Kaven Parcou and prayed for the same to be cancelled so that the land reverts into the estate of the deceased or alternatively, for the donation to be reduced and costs granted to her.
4. In his defence, Julien Kaven Parcou (the Defendant in the original action) argued that:
 1. Sufficient consideration of **SR 100,000** had been paid in respect of Title V6652;
 2. Sufficient consideration of **SR 50,000** was paid in respect of Title V6647 and that additionally, Julien Parcou (the Defendant) had taken over his brother's debt worth ZAR (South African Rand) 80,000;

5. The Defendant also argued that the impugned transfers were made with the knowledge and acquiescence of the late Juliet Jean Baptiste Parcou's heirs and that it had also been agreed that the Defendant would continue to provide for and care for their late father and the family home on Title V6652 would be available to all heirs when they visited.
6. It was further argued by the Defendant (Julien Kaven Parcou) that Thelma Hall (the 1st Respondent) had abandoned her share in the suit properties by agreeing to the transfers and was thus estopped from obtaining any share by way of reduction.
7. At the trial, the 2nd Respondent (Marina Josephine Allen) in a Statement of Demand, intervened and joined cause with Thelma Hall, arguing that she had not agreed to the transfers and dispositions of the suit properties and that the same had been unlawful. That they had only found out about the transfers of the suit property after the death of their father-the late Julien Jean Baptiste Parcou and denied that there was any agreement amongst the heirs by which Keven Julien Parcou would keep the house on Title V6652. She also denied being invited to live in that house when she visited Seychelles.
8. The Defendant claimed that although the notarial deeds bore nominal or low sums, he had, through his car hire business, transferred more sums of money to the deceased. In respect of Title V6652, he claimed that SR 100,000 had actually been transferred to the deceased's account. Although an objection to this evidence was raised on behalf of the intervenor (Marina Josephine Allen-the 2nd Respondent), the same was overruled by the trial judge.
9. The defendant also submitted that the deceased had transferred Parcel V6650 to him for SR 60,000 because he (the Defendant) had paid his brother's (Hedrick Philip Parcou) loan from Barclays Bank.
10. In respect of Parcel V6647, the defendant argued that he had transferred SR 50,000 to his late father which was money that his deceased brother (Hedrick Philip Parcou) had owed the

deceased for the purchase and importation of ice cream powder. However, the transfer document indicated the transfer price to be SR 1.

11. In cross-examination, the defendant departed from his pleadings when he stated that his sisters (Thelma and Marina Josephine- the 1st and 2nd Respondents respectively) had not agreed to the transfers of the impugned properties. He also admitted that there had not been an agreement to the effect that if he returned Parcel V6652 the 1st and 2nd Respondents could stay in the family home whenever they visited Seychelles.

12. The defendant argued that his sisters' claim was bound to fail because the law on *donation déguisée* does not extend to bona fide sales for valuable consideration.

13. However, the defendant on the one hand and the plaintiffs on the other hand all agreed that the evidence of what consideration was paid beyond that reflected in the notarial documents was inadmissible pursuant to **Article 1321(3)** of the **Civil Code**.

14. It is on record that in October 2017, the defendant, Keven Parcou passed away and his wife - Rosita Tarroza Parcou (the appellant) was appointed as executrix of his estate.

The Evidence

15. A letter from Keven Parcou to Barclays Bank marked Exhibit D1 A showed that he had asked the Bank to transfer SR 100,000 to his late father for the purchase of Parcel V6652 on 8th August 2007. On 24th January 2008, the said parcel was transferred to Keven. Another letter from the Bank dated 23rd September 2011 also confirmed that SR 100,000 had been transferred from Keven's car hire business to the late father's account on 13 November 2007. It should be remembered that Parcel V6652 was transferred to the Defendant on 24 January 2008.

16. Ms. Maria Monthy - an employee of Barclays Bank produced a letter in which the Bank confirmed that on 21st April 2008, SR 50,000 was withdrawn by Keven's car hire company and deposited on his late father's account.

17. In the judgment of the Supreme Court delivered on 7th February 2017, the trial Judge held that since the back-letters had not been reduced into writing and registered, in accordance with **Article 1321(4)** of the **Civil Code**, the authentic documents in relation to Parcels V6652, V6650, and V6647 continued to be valid and with full effect.

18. The Court then went on to determine whether the transfers of the properties as they appeared in the authentic documents amounted to a *donation déguisée*.

19. It was the finding of the court that the defendant had failed to prove that the plaintiff and Intervenor (1st and 2nd respondent in the appeal) had acquiesced to the transfers. Consequently the defendant failed to defeat his sisters' claim of a *rappport á la masse* (a right in their late father's estate).

20. That secondly, his good faith was not apparent since the suit properties were sold at low or nominal consideration and his pleadings varied from his evidence.

21. Thirdly, the Court held that even if the consideration for the suit properties was taken to be the true amount that the defendant claimed to have paid his late father, it was too low given the fact that the land was developed with buildings. The Court in rhetoric questioned how those sums in the mind of any objective person represent real consideration.

22. It was also the view the court that looking after one's elderly father whilst residing with him in the family home could not be viewed as a duty requiring compensation and the reduction of other family members' portion in the patrimony.

23. The court concluded that the sales were in the circumstances *donations deguise'es* as far as the remaining heirs are concerned. In line with Article 913 of the Civil Code it was held that the transfer of property to the defendant should not have exceeded one quarter of the deceased's estate which is to the effect that gifts *inter vivos* shall not exceed one fourth of the property of the donor if he leaves three or more children.
24. Taking note of the fact that the deceased did not have any property other than the 3 properties in issue and furthermore that the value of the deceased's estate had not been established, the court ordered that the market value of the properties be established at the point in time that they were transferred to the defendant. It was further ordered that after the deduction of one quarter of the value of the estate which would go to the defendant, the remainder of three quarters of the property be distributed into four equal parts to the plaintiff, the Intervenor, the heirs of the deceased son of Julien Jean Baptiste Parcou (brother to the 3 parties before court) and defendant.
25. On 14th July 2017 an application by the Plaintiff and the Intervenor was made for a Court Order appointing an expert to determine the value of the properties. On 13th September 2017 the application was heard and the Court appointed a valuer (Nigel Roucou) agreed to by counsel for the applicants on the one hand and the respondent on the other hand. On 25th October 2017 when court convened to receive the report of the valuer, counsel for the defendant in the main case and respondent in the application (Mr. Lucas) informed court that the defendant (Julien Keven Parcou) had passed away a week before the court appearance and steps were being taken for the appointment of an executor to his estate. Court nevertheless noted that prior to the death of the respondent, court had appointed a valuer and as such the valuation process was to go ahead.
26. On 14th February 2018 Mr. Lucas informed court that an Executrix had been appointed for the estate of Julien Keven Parcou and that the executrix had appointed Mr. Brian Julie as her

lawyer. That Mr. Julie had picked the file from Lucas' office. Court discharged Mr. Lucas and ordered the Deputy Registrar to issue a notice to Mr. Julie to appear in Court on 21st February 2018 when the case would be mentioned. On 21st February 2018 Mr. Brian Julie appeared and confirmed that Rose Parcou had been appointed an executrix for the estate of Julien Keven Parcou. On 21st March 2018 Mr. Julie appeared for the respondent in the application. With the agreement of both counsel another person, Mr. Blackburn, was substituted as valuer. On 6th June 2018 Mr. Julie proposed that the parties negotiate, that before his demise, Mr. Parcou had indicated that he wanted the matter sorted out and that the executrix too was interested in negotiations. However Mr. Lablache indicated that there was no possibility of negotiations and that it would be easier to get the property valued. Court noted that without valuation of the property, there was no way of ascertaining the value of property to be transferred to the other beneficiaries. It was also pointed out that before his demise, Kevin Parcou was aware of the Court Order for valuation of the property. On 20th June Mr. Blackburn appeared in court and Mr. Julie made a commitment to make arrangements with the executrix to allow the valuer access the property. He also made a commitment to be present at the site on the agreed day of the visit. On 3rd September 2018 the court received a valuation report from the valuer. Both counsel, Mr. Lablache for the plaintiffs and Mr. Julie for the defendant were in court. The report was in line with the Court Order that each property be valued at the point in time when it was transferred to Keven Parcou by his father. When the Trial Judge asked counsel whether they had any objection to the report which they had already seen, both counsel answered in the negative. Since the application had been for an order to have the property valued and the valuation had been done, the court gave an order in line with main judgment delivered on 7th February 2016. The Judgment was to the effect that after the deduction of one quarter of the value of the estate which would go to the defendant, the remainder of three quarters of the property be distributed into four equal parts to the plaintiff, the Intervenor, the heirs of the deceased son of Julien Jean Baptiste Parcou (brother to the 3 parties before court) and defendant. The court order was to give effect to what was in the Judgment.

27. Dissatisfied with the Supreme Court judgment, Rosita Tarroza in her capacity as executrix lodged an appeal in this Court on the following grounds:

1. That the learned judge erred in law in entering the final consent order dated 3rd September 2018 in case Civil Side MA237/2017 arising in c.s.353 of 2009 because it was entered into by a counsel;
 - a) purportedly acting on behalf of the absent appellant; and
 - b) failed to take into consideration the provisions of the Seychelles Code of Civil procedure CAP 213 Section 131 the precedents in respect of judgments by consent.
2. The terms and conditions in the disputed final consent order were not complete due to the fact that;
 - a) the appellant was unaware of the procedure taking place on her behalf from the final valuation of the heirs' property to the final consent for distribution; and
 - b) it was not signed by the parties; and
 - c) it did not state the full terms and conditions agreed by the litigants in relation to the valuation, the amount of compensation to be paid and the full conditions of settlement of the case.
3. There was a clear cause not to give the judgement on the alleged settlement stated by the advocates in the case.
 - a) The order of the court was;

“[33] In accordance with Articles 913,914 and 918 of the Civil Code, I therefore Order that the market value of Parcels V6652, V6650 and V6647 he valued at the point in time that they were transferred and returned into the hotchpot. After the deduction of one quarter of the value of the estate to the Defendant, the remainder of the value of three quarters of the property should be distributed into four equal parts to the Plaintiff, the Intervenor, the heirs of Hedrick Parcou and the Defendant.
4. There is no evidence that such valuation was made as per the court order on a property where the deceased Keven Parcou had spent substantial sums in renovating during his tenure for the betterment of his family. So

this was an essential element not considered in the consents given by counsel in the absence of their clients.

Prayers

28. The appellant prayed that:

1. A declaration be made that the Supreme Court should not have entered the final consent order dated 3rd September 2018 in case civil side MA 237/2017 and the matter be referred back for its final determination of all outstanding matters in relation to the case.
2. An order for a new valuation of the properties which were subject of the judgment dated 7th February 2017 and the final order dated 3rd September 2018 and a fully consensual agreement on the valuation before any orders for payment or distribution of properties between the parties be made.
3. Costs be granted to the appellant.

Submissions of Counsel

Ground 1

Appellant's submission

29. The appellant argued that the learned judge erred in law in entering the final consent order dated 3rd September 2018 in case Civil Side MA237/2017 arising in c.s.353 of 2009 because counsel purportedly acted on behalf of the absent appellant in contravention of the provisions of **Section 131** of the **Seychelles Code of Civil Procedure** and precedents in respect of consent judgments.

30. In support of this, counsel for the appellant relied on the case of **Gill vs. Wilfred Freminot and another**¹ where the judge, Domah J.A, ruled that the judgment given amounted to no judgment because it did not comply with Section 131 of the Code of Civil Procedure. The Judge stated that the said Section contained a rule of best practice which is to the effect that

¹ SCA 4 of 2006.

after an agreement has been entered into, parties, who should be present, should sign the agreement then move to enter judgment in the terms set out. In the **Gill** case (supra), there was no motion and no formal judgment was entered as such.

31. The Judge in the **Gill** case, also held that the orders made following the agreement were bereft of any legal basis and were void because they failed to comply with Section 131.

Respondent's reply

32. In reply to the submission made by the appellant, counsel for the respondent submitted as follows:

33. Counsel argued that the value of the properties was established by a valuer appointed by the court, consequent to a motion brought by Thelma and Marina Josephine. After the court had appointed the valuer, the defendant's Counsel suggested that the parties should negotiate and compromise on the value of the properties. This suggestion was opposed by Counsel for Thelma and Marina Josephine and was not favoured by the Court.

34. That since there never was any agreement or compromise among the parties on the value of the properties, the value was established by the valuer- Mr. Blackburn.

35. Furthermore, that both counsel were afforded the opportunity to challenge the revised valuation (the initial valuation having been rejected by the Court), but neither parties made any objection to it. In the circumstances, the court proceeded to determine the motion of 3rd August 2017, by making an order setting out the market value of the properties and also specifying how that value should be distributed.

36. Counsel therefore argued that the order of the learned Judge was not based on any agreement of the parties.

37. In respect to whether the purported consent complied with Section 131 of the Seychelles Civil Code of Procedure, Counsel submitted that the said section had no application and that the case of **Gill vs. Freminot (supra)** was of no relevance. He stated that **Section 131 SCCP** sets out the conditions of form to be complied with where the parties settle a suit by a consent judgment. What was pending before the court was not a suit (as judgment in the suit had already been delivered) but rather a motion to determine the value of the properties. Be that as it may, counsel submitted that there was no agreement among the parties on the value of the properties.

Ground 2

Appellant's submissions

38. On this ground, Counsel for the appellant submitted that the learned Judge erred in law in entering the final consent order dated 3rd September 2018 in Civil Side MA237/2017 because of the questionable nature of the counsel's mandate in the matter. This was because the appellant had contended that counsel Julie did not have a mandate to act for her or did not carry out her instructions in her proceedings.

Respondent's reply

39. To this, counsel for the respondent averred that this appeal is not a competent procedure to deal with such allegations of professional malpractice. In light of this issue, counsel highlighted the following pertinent facts:

- (a) The order authorizing the valuation of the properties was made before the original Defendant (Mr. Keven Parcou) passed away and Counsel Julie replaced previous counsel Lucas in the proceedings.
- (b) Counsel Lucas informed the court that the Executrix had instructed Mr. Julie to replace him as counsel in the proceedings.

- (c) The valuation report indicates the Valuer -Blackburn had access to the properties as well as inside the buildings on the properties. The Record shows that such access became possible after counsel Julie undertook to make the necessary arrangement with the Defendant (the Executrix).

Ground 3

Applicant's submission

40. The appellant contends that the terms and conditions in the disputed final consent order were not complete due to the fact that:

- (a) the appellant was unaware of the procedure taking place on her behalf from the final valuation of the heirs' property to the final consent for distribution; and
- (b) it was not signed by the parties; and
- (c) it did not state the full terms and conditions agreed by the litigants in relation to the valuation, the amount of compensation to be paid and the full conditions of settlement of the case.

41. Therefore, there was a clear cause not to give the judgment on the alleged settlement stated by the advocates in the case.

42. There is no evidence that such valuation of the deceased's property was made as per the court order on a property where the deceased Keven Parcou had spent substantial sums in renovating during his tenure for the betterment of his family. So this was an essential element not considered in the consents given by counsel in the absence of their clients.

Respondent's reply

43. Counsel submitted that there was absolutely nothing on record to show that there was any agreement among the parties, let alone that they had agreed to the "full terms and conditions" as the Appellant contends.

44. He also stated that not all the heirs to the estate of Jean-Baptiste Parcou were party to the proceedings and so any agreement as to distribution among the heirs would have been

ineffective. How the value should be distributed had already been determined by the judgment of 7th February 2016, in accordance with the Civil Code. The learned judge's repetition of that part of her judgment in the order of 3rd September 2018 would have been made in the interest of clarity. It did not create any additional liability for the Defendant.

45. Counsel also averred that the suggestion in the Appellant's head of arguments that valuation of the properties must be "fully consensual" was misconceived and has no basis in law. That it was clearly in the court's power to determine the motion to establish the value of the properties as it did, i.e. based on the unchallenged report of the valuer, and notwithstanding the lack of agreement among the parties.

Court's consideration

46. The essence of the grounds of appeal and the submissions is that the learned trial Judge erred in law in entering the final "consent" order because the lawyer who purported to represent the appellant did not have the requisite authority to do so. It was also contended that the order given was in contravention of **Section 131** of the **Seychelles Code of Civil Procedure** and case law on consent judgments.

47. It is trite law that by virtue of the fiduciary relationship between a lawyer and their client, a lawyer's actions done on behalf of the client are binding. However, an attorney will have no authority to bind interests or waive rights of a person as his client until that person retains him or is assigned by court to be that person's counsel.² Similarly, in the persuasive case of **Reynold Lofberg vs. Aetna Casualty & Surety**³, the appellate Court of California held that an attorney may not appear in an action without authority from the party on whose behalf he appears. Such unauthorized appearance would be ground for disciplinary proceedings.

48. The question which follows for determination is: *Did the lawyer who appeared as counsel for the appellant have the requisite mandate to represent her?*

² C.J.S (Corpus Juris Secundum) (1937) at page 62.

³ 264 Cal.App 2d 306 (1968) 70 Cal.

49. In order to comprehensively address the contentions of the appellant, it is necessary to chronologically reproduce the salient proceedings leading up to the ‘consent order’ which is being contested.
50. The judgment in the main suit was delivered on 7th February 2016. The said judgment indicates that Counsel Charles Lucas represented the defendant-Keven Parcou.
51. After the said judgment, a motion *vide* MA 237 of 2017 for an order to determine the value of the properties was filed in Court by Thelma and Marina Josephine (the respondents). The motion was dated 14th July 2017.
52. On 13th September 2017, a valuer was appointed.
53. On Wednesday 25th October 2017, Counsel Lucas informed court that his client-Keven had passed away the previous week. He further informed court that that the process of appointing an executor for Keven’s estate was underway and that it was counsel Brian Julie handling the said process. The court adjourned the matter to 17th January 2018. When hearing commenced on the said date, Counsel Lucas informed court that he could not correspond with the valuer without receiving instructions from the executrix.
54. On 14th February 2018, Counsel Lucas informed court that an executrix had been appointed and that the executrix had instructed Mr. Brian Julie to appear on her behalf and counsel Julie had in fact picked the file from him.
55. The matter was adjourned to Wednesday 21st February 2018 and the court also directed that the hearing notice be served on Mr. Brian Julie and the valuer to appear on the aforementioned date.

56. On 21st February 2018, Mr. Brian Julie appeared in court as Counsel representing the estate of the defendant.
57. On 20th June 2018, Mr. Julie, Mr. Lablache and the valuer were present in court. The valuer informed court that he had been unable to value the property and asked for access. Mr. Julie informed court that the valuer's position was correct and this was because his Client-the appellant/executrix had travelled out of the country but was now back. He made a commitment to be present during the valuer's visit to the properties.
58. On 3rd September 2018 the valuation report was presented. The valuation report indicates the Valuer -Blackburn had access to the properties as well as inside the buildings on the properties. The record shows that such access became possible after counsel Julie undertook to make the necessary arrangement with the executrix.
59. Court asked if there were any objections to the report and both Counsel Julie and Lablache replied they had no objection. Court proceeded to enter the final (impugned) order.
60. It is on record that it was Counsel Lucas who previously represented the deceased Jean Parcou who informed court that Mr. Julie had instructions from the executrix to proceed with the matter. Prior to court entering the impugned order counsel Julie had represented the appellant three times. The court record shows that the first time the appellant registered her complaint against Mr. Julie was on the 4th September 2018, a day after the trial court had given the Order which the appellant is contesting. I therefore hold that Mr. Brian Julie had the authority to appear on behalf of the appellant.
61. I will now address the appellant's argument that the learned trial Judge failed to consider **Section 131** of the **SCCP** and case law on the prerequisites for a consent judgment. Section 131 provides as follows:
- If on the day fixed in the summons for the defendant to appear, or on any subsequent day before judgment has been given, the parties or the plaintiff if**

no set off has been pleaded, appear in court and state that the suit has been settled, the suit shall be struck out and no suit shall thereafter be brought between the same parties in respect of the same cause of action.

62. I will start with the arguments regarding case law. The appellant argued that the learned Judge failed to consider the principle in the decision of **Gill vs. Wilfred Freminot & another (supra)**. In that case, Gill offered to purchase property from Mr. Grandcourt for consideration of SR 500,000/=. The terms of payment were that the final payment was to be made by December 1993. Gill started making payments in installments but by December 1993 there was an outstanding amount of 130,000. Mr. Grandcourt must have then unilaterally decided to treat the contract as repudiated and proceeded to sub-divide the parcel and registered the sub-divided plots, thus fore-stalling the move of the appellant to complete

his long overdue payment and have the property transferred in his name. Following this, Gill instituted a suit in the Supreme Court for specific performance of the contract for the sale of land. However before the case was heard the parties decided to enter into an agreement which was dictated to the court and the so-to-say “consent-judgment” was entered into on the day of trial. Shortly thereafter, Mr. Grandcourt passed away. The heirs challenged the “consent judgment” up to the Court of Appeal. The respondents argued that Mr. Grandcourt was not present in court on the day the consent order was made since he was on his sick bed.

63. In discussing whether the judgment of the trial court was a valid consent judgment, this Court referred to Section 131 of the Code of Civil Procedure as the procedure for entering a consent judgment in Seychelles. The Court *inter alia* held that:

“Parties have to be present in court more so when the order that the court is to make is not based on law but on consent of parties.”

64. The court held that if a party is not present in court, the fact that he was represented by his attorney would not cure the defect. The matter was therefore referred back to the Supreme Court for a fresh hearing.

65. I find that the Gill case is distinguishable from the present appeal. In the Gill case, the merits of the case were not resolved in court. The dispute before the parties was purportedly settled out of court and the agreement reached by the parties was merely dictated to the court and it was on this basis that the court issued a “consent judgment”. On the other hand, in the matter before this Court, the impugned order based on the valuation report was not a result of consent between the parties.
66. The need to appoint a valuer was grounded in the decision of the trial judge contained in the judgment delivered on 7th February 2016 to the effect the properties in issue be valued at the time when they were transferred to the defendant and be returned to the hotchpot. That furthermore, the property be divided between the legal beneficiaries in accordance with Article 913 of the Civil Code. And on 14th July 2017 an application by the Plaintiff and the Intervenor was made for a Court Order appointing an expert to determine the value of the properties. It was averred in the affidavit supporting the application that it had not been possible for the parties to agree on the market value of the properties and as a result the 7th February 2016 judgment had remained unenforceable. Court granted the application.
67. I therefore find that the order which would be the basis for the division of property was a consequence of the court’s analysis and interpretation of the law governing transfer of property to offspring and the reserved rights of heirs. At the time that the judgment was delivered Kevin Parcou was still alive and he did not appeal against the said judgment. His estate was thus bound by the decision of the court therein.
68. What must be emphasized is that what the appellant is contesting is the value attached to the property by the valuer, an expert agreed upon by both counsel and appointed by court.
69. It must be noted that during the proceedings of 6th June 2018, Counsel Julien submitted that the executrix was willing to enter into negotiations but counsel for the respondents declined

the offer. Court also pointed out the fact that the executrix was aware of the court's order and so was Mr. Kevin Parcou before his demise.

70. It is clear that the value contained in the court's order was not arrived at through an agreement between the parties and thus the order by court is not a consent order. Neither counsel nor party in the case moved that judgment to be entered as per agreement reached between the parties since there was no such agreement. After the valuer's report was presented to court, counsel for the respondent who had applied for the appointment of a valuer so as to effect the court's decision of 7th February 2016 asked for a final order in terms of the amount set out in the report as "*this would tie the value to the main judgement*". The court then gave the impugned order in open court in the presence of counsel for all the parties.

71. It must also be underscored that the July 2017 application for valuing the property cannot be defined as a suit envisaged under **Section 131** of the **SCCP**. The main judgment had already been delivered. The impugned order detailing the value of the property was to enable implementation of a decision in the said judgment. Issuing of such an order cannot be regulated by section 131 which provides *inter alia* that on any day before judgment has been given, the parties can appear in court and state that the suit has been settled.

72. Consequently, the appellant's contention that the learned trial Judge should have been guided by Section 131 of the Seychelles Civil Code as well as the case of **Gill vs. Wilfred Freminot and another (Supra)** is misguided.

Conclusion and Orders

73. In the result, I hold that the appeal fails on all grounds;

The order given by the Supreme Court on 3rd September 2018 is hereby upheld with the following consequences:

- (i) The value of SR 7, 650,000 given by the valuer represents the market value of parcels V6652, V6650 and V6647.
- (ii) One quarter ($\frac{1}{4}$) of SR 7, 650,000 is to be deducted and the remainder of the value, that is, of the three quarters ($\frac{3}{4}$) of SR 7, 650,000 be distributed in four equal parts to Thelma Hall, Marina Josephine Allen, the heirs of Hedrick Parcou and the estate of Kaven Parcou.

Costs.

74. Costs in this Court and in the court below are granted to the respondents.

Dated and signed on this 11th day of June, 2021.



Tibatemwa-Ekirikubinza, JA.

I concur

Fernando PCA

Dingake JA