

**IN THE COURT OF APPEAL OF SEYCHELLES**

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**Reportable**

[2021] SCCA 47 (13 August 2021)  
SCA 11/2019  
(Appeal from CS 57/2016)

In the matter between

**THE EXECUTOR OF THE ESTATE  
OF EDOUARD COUCHENE  
PAUL COUCHENE**  
*(rep. by Mr Clifford Andre)*

**Appellant**

and

**SHEILA BAKER**  
*(rep. by Miss Alexandra Madeleine)*

**Respondent**

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**Neutral Citation:** The Executor of the Estate of Edouard Couchene v Baker  
(SCA 11/2019) [2021] SCCA 47 (13 August 2021) (Arising in CS 57/2016)  
**Before:** Fernando President, Robinson, Tibatemwa-Ekiribubinza JJA  
**Summary:** Role of an appellate court in an appeal against findings of facts by a trial  
court - order for payment of double the costs of the action quashed - Appeal  
partly succeeds - With costs  
**Heard:** 6 August 2021  
**Delivered:** 13 August 2021

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**ORDER**

- (1) Appeal partly succeeds
  - (2) Order for payment of double the costs of the action quashed
  - (3) With costs in favour of the respondent
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**JUDGMENT**

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**ROBINSON JA (FERNANDO PRESIDENT, TIBATEMWA–EKIRIKUBINZA JA  
concurring)**

***The Background***

1. This is an appeal from a judgment of the Supreme Court on the 6 November 2017, in

which the learned Chief Justice ordered the dismissal of Mr Edouard Couchene's case, the plaintiff then, and that he should pay double the costs of the action.

2. Mr Paul Couchene has filed this appeal in his capacity as the executor to the estate and succession of the late Mr Edouard Couchene, his father ("*the deceased*").
3. The deceased bought the land in dispute, parcel PR4884, of the extent of 2,688 square metres, in consideration of the price of SCR85,000 from Joseph Adam, in 2008, Transcription Vol. 84 No. 249 (Exhibit P1).
4. The deceased made an allegation of forgery against Miss Sheila Baker, the respondent (the defendant then), in a plaint filed on the 20 June 2016, concerning parcel PR4884.
5. The deceased in his plea, averred that he was at all material times the owner of parcel PR4884, and that Miss Baker was at all material times his concubine. Miss Baker became the owner of the bare ownership in parcel PR4884 by a transfer purporting to have been effected by him. He stated that he first came across the instrument of transfer for parcel PR4884 among his personal effects in 2014. At no point did he [the deceased] intend to transfer the bare ownership in parcel PR4884 to Miss Baker. He claimed that the signature purporting to be his, on the said instrument of transfer is a forgery. He also claimed that the consideration set out in the instrument of transfer was not paid to him.
6. Despite numerous requests to return the bare ownership in parcel PR4884 to him, Miss Baker has to date failed or neglected to do so. Thus, he asked the Supreme Court to make orders ordering that the instrument of transfer, dated 21 February 2011, be declared null and void, and the Land Registrar amends the Register of parcel PR4884 accordingly.
7. Miss Baker denied the deceased's claims and claimed that he voluntarily signed the instrument of transfer document for parcel PR4884 in 2011, in her presence and Counsel, Mr Nichol Gabriel. Moreover, the deceased travelled from Praslin to Mahe to effect the transfer for parcel PR4884. She also claimed that the deceased swore to an affidavit in

2012, in which he averred that he sold parcel PR4884 to her for consideration. She stated that the deceased was paid for the sale and transfer of parcel PR4884 and received a receipt. She asked the Supreme Court to dismiss the deceased's plaint with costs.

8. The learned Chief Justice's finding that the deceased has failed to show that he has not signed the transfer document depended fundamentally on an evaluation of the evidence of the witnesses whom she saw and heard. The following passages are contained in the judgment (paragraphs [13], [14] and [15]) —

*[13] [...] I am left with the lasting impression of the testimony given by the Plaintiff and the Defendant and their witnesses in this Court. The Plaintiff came across as one of the most untruthful witnesses I have ever observed in the Courtroom. He was shifty and unconvincing.*

*[14] He is not a befuddled old gent of whom advantage was taken as he would want us to believe. On the contrary I am of the view that he avoided answering the difficult questions put to him in court. I myself reminded him what an oath meant especially when his own averment in his matrimonial court case was put to him to show that he had averred therein that he had transferred the land to the Plaintiff. Equally of note is that in the root of title document to this case - a transcription dated 4 April 2008 between Joseph Adam and the Plaintiff - the Plaintiff has therein also appended his signature.*

*[15] In the light of these pieces of damning documentary evidence, the evidence of the Defendant and the notary Mr. Gabriel whose testimony was not in any way, shape or form undermined, I have no difficulty in dismissing the evidence of the Plaintiff. He has failed to bring any evidence of fraud on the part of the Defendant or to show that he had not signed the transfer document. He has wasted the time of this Court.*

### ***The Appeal***

9. The appellant has appealed the findings of the learned Chief Justice. I have considered the grounds of appeal, the skeleton heads of argument submitted on behalf of the appellant and the respondent, and the oral submissions of both Counsel.
10. The grounds of appeal essentially contended that the learned Chief Justice wrongly assessed the evidence and came to findings of facts that were not supported by evidence. The appellant also appealed against the order given by the learned Chief Justice that the

deceased should pay double the costs of the action. In light of the circumstances of this case, I make an order quashing the order for payment of double the costs of the action.

11. On the other hand, Counsel for the respondent in her written and oral submissions contended that the learned Chief Justice had not gone *plainly wrong* in her assessment of the evidence. In this respect, she claimed that the evidence of the deceased materially undermined his contentions that the signature purporting to be his on the instrument of transfer is a forgery and consideration set out in the instrument of transfer was not paid to him.
12. It is essential to recall the role of an appellate court in an appeal against findings of facts by a trial court. *Searles v Pothin Civil Appeal SCA07/2014*<sup>1</sup>, which referred to the formulation of the Court of Appeal in *Akbar v The Republic Criminal Appeal SCA5/1998*<sup>2</sup>, observes that the role of an appellate court in an appeal against findings of facts by a trial court is not to "*rehear the case. It accepts findings of facts that are supported by the evidence believed by the trial court unless the trial judge's findings of credibility are perverse*". I have to consider whether or not it was permissible for the learned Chief Justice to make the findings of facts which she did in the face of the evidence as a whole.

***The Analysis of the contentions of the appellant and Miss Baker***

13. Counsel for the appellant in his written and oral submissions argued that the learned Chief Justice erred when she found that the appellant had failed to bring evidence of forgery on the part of Miss Baker in the face of the contradictory evidence with respect to the mode of payment of the purchase price for the sale of parcel PR4884 and the signature purporting to be the deceased on the instrument of transfer. With respect to his contentions, Counsel submitted *inter alia* that Miss Baker testified that she paid the deceased SCR100,000 in cash in consideration of the transfer of parcel PR4884 in the

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<sup>1</sup> (Judgment was delivered on 21 April, 2017)

<sup>2</sup> (Judgment was delivered on 3 December 1998)

presence and office of Mr Nichol Gabriel. In contrast, Mr Gabriel testified that he was not in his office when the sum of SCR100,000 exchanged hands.

14. With respect to these issues, the learned Chief Justice assessed the evidence of the deceased in the context of the entirety of the evidence in the trial. She found him to be the *"most untruthful witness [she] [had] ever observed"*, and, therefore, attached no weight to his evidence. As she was satisfied that Miss Baker was substantially truthful in her testimony on the vital aspects of this case, which she mentioned in her judgment, she also accepted Miss Baker's testimony that she paid the deceased the sum of SCR100,000 in cash in consideration of the transfer of parcel PR4884, and that she received a receipt of payment.
15. Having considered the evidence as a whole, I can identify no mistake in the learned Chief Justice's evaluation of the evidence that is sufficiently material to undermine her findings. The key aspects of the evidence of the deceased as found by the learned Chief Justice are troubling. If the deceased never signed the instrument of transfer in which he kept the usufructuary interest, his conduct made no sense. I note that the deceased testified in-chief that he did not permit Miss Baker to build on parcel PR4884, but he did not know why he did nothing to stop her from building on it. Miss Baker testified to the effect that she built two self-catering accommodations on parcel PR4884. Moreover, the absence of any explanation for the palpable delay between becoming aware of the purported forgery (at latest 2014) and filing the plaint on the 20 June 2016, is also troubling.
16. There are, no doubt, cases in which it is proper to say, after reading the record of proceedings, that, after making allowance for possible exaggeration and giving total weight to the trial Judge's assessment of the witnesses, no conclusion is possible except that the decision was wrong. I can come to no such finding in the present case. Thus, I am satisfied that there was a proper basis for the learned Chief Justice's conclusion on the material aspects of this case.

***The Decision***

17. For the reasons stated above, the appeal partly succeeds. I quash the order for payment of double the costs of the action. I uphold the decision of the learned Chief Justice that the case be dismissed.

18. With costs in favour of the respondent.

Signed, dated and delivered at Ile du Port on 13 August 2021.

Robinson JA

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I concur

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Fernando President

I concur

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Tibatemwa-Ekiribubinza JA