

IN THE SEYCHELLES COURT OF APPEAL

Reportable

[2021] SCCA 66 17 December 2021
SCA 28/2019
(Arising in CC13/2014)

In the matter between

ASHRAF ELMASRY

ELENA KOZLOVA

(rep. by Frank Elizabeth)

Appellants

and

MARGARET HUA SUN

(rep. by Basil Hoareau)

Respondent

Neutral citation: *Elmasry and anor v Hua Sun* (SCCA 66) (17 December 2021) SCA
28/2019 (Arising in CC13/2014) SCSC 451

Before: Fernando, PCA, Twomey, JA and Tibatemwa-Ekirikubinza, JA

Heard: 3 December 2021

Summary: grounds of appeal in breach of Rule 18(7) of the Seychelles Court of Appeal
Rules – vague and general grounds of appeal tantamount to no grounds of
appeal

Delivered: 17 December 2021

ORDER

The appeal is dismissed with costs. The orders of the Supreme Court are upheld

JUDGMENT

TWOMEY JA

[1] The Appellants have appealed a decision of the Supreme Court dated June 2019 in which the court ordered the Appellants to return to the Respondent the sum of \$660, 428 that she had paid to them in expectation of the fulfilment of a contract they had entered into.

[2] The court further ordered the Appellants to pay the Respondent SR 100,000 for moral damages, which she had suffered for the non-return of the money she had paid the Appellants.

[3] The Appellants filed two grounds of appeal against this decision, namely that the learned trial judge erred when she dismissed the Appellants' counter-claim and when she awarded moral damages to the Respondent.

[4] In both the decisions of an application for a stay of execution of this decision, before the Supreme Court (dated 8 November 2019), and before the Court of Appeal (dated 30 June 2020), it was pointed out to the Appellants that these grounds of appeal were extremely vague and general and failed to state how the learned trial judge erred either in law or facts. The Court of Appeal went further to state:

“The said grounds of appeal do not conform to and are contrary to Rule 18(7) of the Seychelles Court of Appeal Rules which state:

‘No ground of appeal which is vague or general in terms shall be entertained, save the general grounds that the verdict is unsafe or that the decision is unreasonable or cannot be supported by evidence.’”

[5] Despite being put on notice of this non-compliance with the Rules, the Appellants chose not to amend their grounds of appeal until the hearing of the appeal.

[6] At the hearing, Counsel for the Respondent, Mr. Hoareau submitted that the vagueness of the Appellants' grounds of appeal was tantamount to there being no grounds and relying on the cases of *Petit v Bonte* [2000] SCCA 1 (SCA 45/1999) [2000]SCCA 13 (14 April 2000) and *Chetty v Esther* (SCCA 44/2020 (Appeal from MA No. 156/2020 and MC No. 69/2020)) [2021] SCCA 12 (13 May 2021) prayed for the dismissal of the appeal.

[7] Mr. Elizabeth, Counsel for the Respondent, submitted that the grounds as pleaded made it sufficiently clear what points of fact and law were alleged to have been wrongly decided but if they were found to be vague that he may be allowed to amend the notice of appeal in the interest of justice and fairness.

[8] Rule 18 (3) of the Seychelles Court of Appeal Rules provides:

“[...] grounds of appeal shall set forth in separate numbered paragraphs the findings of fact and conclusions of law to which the appellant is objecting and shall also state the particular respect in which the variation of judgment or order is sought.” (emphasis mine)

[9] Clearly, the word *shall* is mandatory, as was also confirmed in the case of *Petit* (above).

[10] In my analysis of the grounds of the present appeal and the submissions of both Counsel on the issue of non-compliance with the rules for vagueness, I am persuaded by Counsel for the Respondent that the grounds are indeed imprecise and do not conform to sections 18 (3) of the Seychelles Court of Appeal Rules.

[11] To compound matters, Counsel for the Appellants was twice put on notice of the non-compliance of the notice of appeal with the Seychelles Court of Appeal Rules. He has submitted that he should be allowed to amend his grounds of appeal despite this application being made at the eleventh hour and without proper notice to either the Court or the Respondent.

[12] Given the strict wording of the provisions of Rule 18(7) and the lateness of the application to amend the grounds of appeal, I have no option but to strike out the notice of appeal.

[13] The appeal is dismissed with costs and the orders of the Supreme Court upheld.

Signed, dated, and delivered at Ile du Port on 17 December 2021.

Dr. Mathilda Twomey, JA

I concur

Anthony Fernando, President

I concur

Dr. L. Tibatemwa-Ekirikubinza, JA