

IN THE COURT OF APPEAL OF SEYCHELLES

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**Reportable**

[2021] SCCA 69 17 December 2021  
SCA 20/2019  
(Appeal from MA 62/2018)  
(Arising out of DV 158/2007)

**Mariaan Laubscher**

*(rep. by Mr. Divino Sabino)*

**Appellant**

and

**Michael Bloss**

*(rep. by Mr. Charles Lucas)*

**Respondent**

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**Neutral Citation:** *Laubscher v Bloss* (SCA 20/2019 [2021] SCCA 69  
(Appeal from MA 62/2018) (Arising out of DV 158/2007)  
17 December 2021

**Before:** Fernando President, Robinson JA, Dingake JA

**Summary:** Dingake JA – Judgment by consent, interpretation of the clause, intention of the parties, contribution payments toward rent for the child  
Fernando P – Appeal against Ruling of Supreme Court dated 1 April 2019  
Robinson JA – Judgment by consent – contribution payments toward rent for the child - clarification of judgment [“slip rule”] – section 147 Seychelles Code of Civil Procedure. Appeal dismissed. No order as to costs.

**Heard:** 6 December 2021

**Delivered:** 17 December 2021

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**ORDER**

The appeal is dismissed. There is no order as to costs.

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**JUDGMENT**

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**DR. O. DINGAKE, JA**

## **INTRODUCTION AND FACTUAL BACKGROUND**

- [1] The fate of this appeal turns on the interpretation of the court order obtained by consent.
- [2] The Appellant, Ms Laubscher and the Respondent, Mr Bloss were married and now divorced. The parties have a child, Alexis, who at the time of the Supreme Court proceedings was almost 18 years old.
- [3] Prior to the Supreme Court proceedings, the parties obtained Judgment by consent, in which, among other things, they agreed that Mr Bloss would make certain monthly payments representing rent for alternative accommodation for Alexis as Ms Laubscher was moving out of the matrimonial home with their son.
- [4] It is important here to note that the parties mutually resolved their issues during court proceedings, that culminated in the parties obtaining judgement by consent. This is the clearest evidence of “a real contract between the parties” as suggested by Lord Green in *Chandless –Chandless v Nicholson* (1942) 2 AER 315 at 317, cited in *Pardiwalla v Pardiwalla* (1993 -1994) SCAR 234.
- [5] In 2012 when Alexis was 11 years old Mr Bloss had stopped making the payments for the reason that Ms Laubscher had moved in with her boyfriend, whose accommodation was provided by his employer and therefore Ms Laubscher was not paying any rent.
- [6] During the Supreme Court proceedings, the parties came to a mutual agreement that there was only one issue left to be determined by the Court (the rest having been disposed of amicably between the parties). The issue that was left to be determined was the clause regarding payments representing rent.
- [7] The Trial Judge interpreted the clause in favour of Mr Bloss, finding that since Ms Laubscher is not paying rent, Mr Bloss no longer has obligation to pay contributions to rent. Ms Laubscher is now appealing the said decision seeking reliefs specified in paragraph 3 of the Notice of Appeal. One of the reliefs sought is ordering Mr Bloss to pay Ms Laubscher amount specified in the clause from July 2012 (when payments stopped) until April 2019 (when child became 18 years old).

## GROUNDS OF APPEAL

[8] The Appellant submits 2 Grounds of Appeal:

**Ground 1** – The Learned Judge failed to take into consideration that the relevant clause did not give the Respondent discretion to cease making payments before the child reached the age of 18;

**Ground 2** – The Learned Judge failed to appreciate that the reference to rent payable was only that, a reference to explain the monthly amount that was payable;

## THE CLAUSE THAT FALLS FOR INTERPRETATION

[9] The clause that falls for interpretation, Clause i(d) states:

*d) the Petitioner shall pay the sum of SCR2,525/- every month to the Respondent, as a consideration for her moving out of the matrimonial house together with the child Alexis, such payment represents rent contribution for alternative accommodation for Alexis. Such payment to be made until the child Alexis attains the age of 18 years. The payment of such consideration is to begin when the Respondent moves out of the matrimonial home, which shall be within a period of not more than six months from the date of this judgment. The Petitioner shall contribute SCR1,500 towards the cost of house moving.”*

## CONSIDERATION

[10] It is important in interpreting the clause to interpret it as a whole. It is trite law that Judgment by Consent has elements of contract as it is an agreement between the parties.

[11] In *Pardiwalla v Pardiwalla (1993-1994) SCAR 234* it was stated that a judgment by consent is in effect a contract binding both parties which becomes an enforceable judgment of the court. Article 1162 of the Civil Code provides that : “*In case of doubt, the contract shall be interpreted against the person who has the benefit of the term and in favour of the person who is bound by the obligation*”. As stated in *Vidot & Ano v Henry & Ano (SCA 17/2018) [2020] SCCA 32 (18 December 2020)*, “*the contra preferentum rule found in Article 1162 dictates that the court interprets the ambiguity in favour of the Respondents*” (respondents being a party bound by the obligation in that case).

- [12] The effect of the above authorities is plain. It is that if there is in fact ambiguity in the clause in the present case, the clause should then be interpreted in favour of Mr Bloss.
- [13] Speaking for myself, I do not find the clause to be ambiguous. It is clear that payment is for rental contribution. In any event, in the event, it is considered ambiguous in that it is capable of more than one meaning the principles of contract and the provisions of the Civil Code would compel an interpretation that favours the conclusion reached by the court below.
- [14] It is trite law that under the contract law principles, weight must also be given to the intention of the parties. It is trite learning that when interpreting a contract, the first step is to determine the common intention of the parties (*Chow v Bossy* (2006-2007) SCAR 57). Priority is given to true intention and in the event of a conflict between their true intention and their intention as expressed in the deed, the former must prevail (*Ladouceur v Bibi* (1975) SLR 278; *Ladouceur v Bibi* (1979) SCAR 174).
- [15] As for the intention of the parties it seems to me that the intention of the parties was that the Respondent was to help out the Appellant with the rent as she is moving out of the matrimonial home with the child. Consequently, if there is no rent to pay why should the Respondent pay the contribution to the rent? In that regard I agree with the Respondent. His subsequent conduct further supports this intention, as he stopped paying the contribution once the Appellant was not paying any rent.
- [16] Although the clause is not a model of clarity and may be capable of several meanings, read as a whole, the clause obligated the Respondent to contribute to rental payment and this obligation was to subsist until the child was 18 years.
- [17] The suggestion that this agreement could be interpreted as possibly part of the general maintenance to the child would be inconsistent with the context, facts and the wording of the clause earlier produced.
- [18] Having considered the clause very carefully, the intention of the parties and the applicable law, I am of the considered view that the Trial Judge was correct in his

determination. The Appellant has not provided compelling arguments why the clause should be interpreted in any other way other than what it clearly states: that payment represents rent.

[19] In my mind a proper consideration of the clause that falls for determination, combined with the instructive provisions of the Civil Code and the application of the general principles of contract, individually and collectively, make the decision of the court below, sought to be quashed, unassailable.

[20] In my mind it is unmistakable that the purpose of payment was contribution for rent. It cannot be denied, that logically, when there is no rent to be paid, the purpose of the contribution ceases to exist.

[21] I must point out that the matter of the Respondent deciding to stop paying was concerning, but it is important to note that it is not the issue we are called upon to decide. We are called upon to decide the meaning of the clause quoted earlier.

[22] In our respectful opinion, proceeding on the assumption that the clause that falls for determination is indeed ambiguous, it would seem to me that the true intention of the parties was for the Respondent to assist in rent payments considering that the Appellant had moved out of the matrimonial home and had to look for rented accommodation. If the true intention was to make payments in consideration that the Appellant has moved out only (as per Appellant's argument), what was the purpose to expressly state that payment represent rent?

[23] It seems to me that if the true intention was to assist with rent payment, logically then once the Appellant was not paying rent there is no need for assistance with it and the Respondent is not obliged by that clause to continue making rent contributions.

[24] This is not a conclusion my heart would have preferred, but the law dictates that this appeal should fail.

[25] In the result, this appeal is without merit and it is dismissed. I make no order as to costs.



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Dr. O. Dingake, JA

**FERNANDO, PRESIDENT**

1. I have read the Draft Judgment of Justice Dingake where he has set out the facts of this case correctly and the clause in the Consent Judgment that falls to be interpreted.
2. I agree with Justice Dingake that the fate of this appeal turns on the interpretation of a court order obtained on the basis of a Consent judgment and that a clause in an agreement has to be interpreted as a whole. There is no need to look into anything else in considering this appeal. I also agree with him that the court must be slow to impose terms on an agreement, which were not within the contemplation of the parties when they made the agreement. The intention of the parties in this case has to be gathered from clause i(d) of the Consent Judgment as there was no other evidence placed before the Court.
3. I have set down herein clause i(d) of the Consent Judgment that falls for interpretation for purposes of convenience:

“The petitioner shall pay the sum of SR 2,525/- every month to the Respondent, as a consideration for her moving out of the matrimonial house together with the child Alexis, such payment represents rent contribution for alternative accommodation for Alexis. Such payment to be made until the child Alexis attains the age of 18 years. The payment of such consideration is to begin when the Respondent moves out of the matrimonial home, which shall be within a period of not more than six months from the date of this judgment. The Petitioner shall contribute SR 1500 towards the cost of house moving”

4. I disagree with Justice Dingake in regard to his pronouncement at the second sentence in paragraph 14 of the judgment and his subsequent statements in support of the pronouncement he had made therein. Paragraph 14 of the judgment states: “As for the intention of the parties it seems to me that the intention of the parties was that the Respondent was to help out the Appellant with the rent as she is moving out of the matrimonial home with the child. Consequently, if there is no rent to pay why should the Respondent pay the contribution to the rent?...”
5. It is incorrect to say as stated by Justice Dingake, that the intention of the parties “was to help out the Appellant with the rent”; for according to i(d) of the Consent judgment: “such payment represents rent contribution for alternative accommodation for Alexis” and not the Appellant. ‘Alternative accommodation’ has to be understood in this context as meaning, alternative to the matrimonial home he was living in. It can be rent-free or rental accommodation for Alexis.
6. I agree with paragraph 15 of his judgment where Justice Dingake states: “Although the clause is not a model of clarity and may be capable of several meanings, read as a whole, the clause obligated the Respondent to contribute to rental payment and this obligation was to subsist **until the child was 18 years.**”
7. The following sentences stand out in clause i (d) in support of the Appellant’s argument:
  - (a) “The petitioner shall pay the sum of SR 2,525/- every month to the Respondent, and that
  - (b) as a consideration for her moving out of the matrimonial house together with the child Alexis,
  - (c) Such payment to be made until the child Alexis attains the age of 18 years,
  - (d) The payment of such consideration is to begin when the Respondent moves out of the matrimonial home,”
8. The only sentence that the Respondent relies on, in support of his argument is:

“Such payment represents rent contribution for alternative accommodation for Alexis.”

9. In my view clause i(d) read as a whole, cannot be interpreted to mean anything other than what is set out in paragraph 6 above.
  
10. Counsel for the Appellant had argued before the Supreme Court that the real underlined reason why the payment was to be made as mentioned in the Judgment by Consent is consideration for her moving out of the matrimonial house together with the child and relinquishing her rights in the matrimonial home. This according to him was regardless of whether she had to pay rent or not. Counsel for the Respondent had argued before the Supreme Court that the sum of SR 2525.00 was for rental payment. He had said “wherever you go, wherever you live in rental accommodation this shall be the figure that we shall fix now both parties agreed.” At the time the Consent Judgment was signed there was no indication whatsoever that the Appellant was to move into the house of another person who had been provided accommodation by his employer or that even if that were to happen, that the Appellant would not have to contribute towards the rent. There was no evidence before the Court that the person with whom the Appellant would settle down would receive free accommodation from his employer and even if that be the case, such person will not ask for payment of rent from the Respondent. This is because, accommodation even if provided free to an employee by the employer, a value is placed on it from the point of view of the employee and it forms part of his remuneration package. It was therefore absurd for the counsel for the Respondent to have argued before the Supreme Court: “If she is now going to move out or the relationship breaks up or she is obliged to pay rents and of course my client will resume paying the payment for his son.” In my view Consent Judgments are not entered on the basis of contingencies, which could keep on changing. I am also of the view that a party to a Consent judgment cannot unilaterally stop, start, and then stop and start once again in abiding by the conditions agreed in a Consent Judgment, without having recourse to Court. The only instance stated in the Consent Judgment when payment of rent would cease is when Alexis attains the



age of 18 years. There is no mention in clause i(d) that the Respondent need not or can cease to pay the sum of SR 2,525/- if Alexis is to find rent free accommodation.

11. I therefore have no hesitation in allowing the appeal and ordering the relief prayed for at paragraph (ii) of the Notice of Appeal. I also order costs against the Respondent.

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Fernando, President

## ROBINSON, JA

[26] The facts of this case are not in dispute and are set out in the judgment of Dingake JA, who has dismissed the appeal. Fernando, President, has allowed the appeal in a separate judgment. I am also of the opinion that the appeal should be dismissed. I give the reasons for my opinion.

[27] The issue, in this case, concerns paragraph "*i (d)*" of the judgment. I read that paragraph

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*"(d) the Petitioner shall pay the sum of SCR2,525/- every month to the Respondent, as a consideration for her moving out of the matrimonial house together with the child Alexis, **such payment represents rent contribution for alternative accommodation for Alexis.** Such payment to be made until the child Alexis attains the age of 18 years. The payment of such consideration is to begin when the Respondent moves out of the matrimonial home, which shall be within a period of not more than six months from the date of this judgment. The Petitioner shall contribute SCR1,500 towards the cost of house moving."*

Emphasis is mine

[28] The learned Judge, after having examined paragraph "*i (d)*" of the judgment, in light of the oral submissions of the Appellant and the Respondent, concluded as follows —

*"... I am of the opinion that the payment of SR2,525 every month is subject to the phrase "such payment represents rent contribution for alternative accommodation for Alexis". It speaks for itself that if there is rent free alternative accommodation for Alexis, the obligations would not arise.*

*It is admitted between the parties that following the entering of the judgment by consent, the Petitioner started to live with her boyfriend free of charge and no rent contribution is made by the Applicant regarding this accommodation.*

*Accordingly, I find that there arose no duty on the part of the Respondent to pay SR2,525 monthly rent contribution towards the Petitioner. Thus, to this extent, I dismissed the Petition ...".*

- [29] The Appellant has appealed the learned Judge's finding on two grounds of appeal.
- [30] Ground one contended that the learned Judge failed to consider that the Respondent did not have the discretion under paragraph "i (d)" of the judgment to cease making payments before the child reached eighteen.
- [31] I repeat ground two verbatim — *"The Learned Judge failed to appreciate that the reference to rent payable was only that, a reference to explain the monthly amount that was payable"*.
- [32] Concerning these two grounds of appeal, I have considered the record, the skeleton heads of argument offered on behalf of the Appellant and the Respondent and the oral submissions of Counsel for the Appellant at the appeal.
- [33] First, I deal with ground two of the grounds of appeal.
- [34] With respect to this ground, prayer (ii) of the Appellant's prayers is asking for an order that will give effect to the Appellant's interpretation of paragraph "i (d)" of the judgment as follows —
- "(ii) *Ordering the Respondent to pay the Appellant SR 2,525 per month, from July 2012 (when the Respondent ceased making payments) until April 2019 (when the child became 18 years old) inclusive"*.
- [35] The judgment rehearsed the submissions of Counsel for the Appellant concerning paragraph "i (d)" —

*"[i]t is the submission of the learned Counsel for the Petitioner that this clause imposed an obligation upon the Respondent to pay a sum of SR2525 every month to the Respondent, on a consideration for her moving out of the matrimonial house together with the child Alexis. According to the Learned Counsel this is a strict obligation. **It is his submission that the request to pay arises as a result of the Applicant having to move out of the matrimonial house with their son Alexis and that it has nothing to do whether or not alternative free accommodation is available.**"*

Emphasis is mine

[36] The submissions of Counsel for the Respondent are also rehearsed in the judgment —

*"[o]n the other hand, the learned Counsel for the Respondent submitted to the contrary. It is his submission that the obligation of his client to pay the sum of SR2525 arises every month only if alternative accommodation for Alexis is needed, in the sense that the Applicant had had to pay alternative rent accommodation for their son.*

*According to his submission in the event that the Petitioner gets free accommodation for both herself and his son following the judgment by consent, there would be no obligation for him to pay the monthly contribution of SR2525 every month".*

[37] As I understand it ground two contended that the learned Judge failed to appreciate that the words "rent payable" in paragraph "i (d)" of the judgment referred to "the monthly payable amount".

[38] It is apparent that the learned Judge basing himself on the expressed words of paragraph "i (d)" of the judgment, concluded that the Respondent was not responsible for making contribution payments toward rent for the child. Concerning this ground of appeal, I am concerned with whether or not the learned Judge was correct in adopting such an approach.

[39] Section 131 of the Seychelles Code of Civil Procedure stipulates —

*"131 The parties may at any stage of the suit before judgment, appear in court and file a judgment by consent signed by both parties, stating the terms and conditions agreed upon between them in settlement of the suit and the amount, if any, to be paid by either party to the other and the court, unless it see cause not to do so, **shall give judgment in accordance with such settlement"**.*

Emphasis is mine

- [40] See, for instance, *Marisa Bantele-Lefevre v Veronica Lanza SCA 43/2017*<sup>1</sup>, in which the Court of Appeal held — *"the settlement of the parties entered as a judgment by consent, under section 131 of the Seychelles Code of Civil Procedure, becomes an enforceable judgment of the court"*.
- [41] In parenthesis, I state that in *Jessley Cecile v M. T Rose & ORS SCA 8/ 2009*<sup>2</sup>, the Court of Appeal, relying on French doctrine and jurisprudence, held that *"the court agreement reached between the parties to a dispute results in a "contrat judiciaire"*. In **Marisa Bantele-Lefevre**, the majority judgment disagreed with this finding and gave reasons for its disagreement. The majority judgment in **Marisa Bantele-Lefevre** held that the procedure obtained in French jurisprudence with respect to a *"contrat judiciaire"* is not analogous to the procedure obtained in section 131 of the Seychelles Code of Civil Procedure. In this connection, I find it fitting to add that French jurisprudence does not give *"les contrats judiciaires l'autorité de la chose jugée"*<sup>3</sup>. Unquestionably, section 131 of the Seychelles Code of Civil Procedure gives *"l'autorité de la chose jugée"* to a final, enforceable judgment of the court entered under that section.
- [42] In light of the above, sections 147 and 150 of the Seychelles Code of Civil Procedure apply to a final judgment of the Supreme Court given in accordance with the parties' settlement.
- [43] Under section 147 of the Seychelles Code of Civil Procedure, a legal remedy is stipulated for correcting clerical mistakes or errors arising from accidental slips or omissions in a judgment or order by the court on motion at any time — the *"slip rule"*.
- [44] Section 150 of the Seychelles Code of Civil Procedure also stipulates a legal remedy for the suspension or variation of a judgment as follows —

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<sup>1</sup> 16 October 2020

<sup>2</sup> 14 August 2009 16 October 2020  
14 August 2009

<sup>3</sup> Dalloz Encyclopédie Juridique Civil (2<sup>e</sup> édition) AST-CL under *"Chose Jugée"* at note 31 - [see also notes 30-33 which set out the reasons]

*"150 The court may, after hearing both parties, alter, vary or suspend its judgment or order, during the sitting of the court at which such judgment or order has been given".*

[45] I state that rule 13(2) of the Seychelles Court of Appeal Rules 2005, as amended, deals with correcting a Court of Appeal judgment. I read that rule —

*"13(2) The Court may of its own motion or on application 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."*

[46] Section 150 of the Seychelles Code of Civil Procedure does not apply to this case.

[47] I examine the Appellant's case based on the "*slip rule*".

[48] In *Allied Builders (Seychelles) Limited v Resort Development SCA10/2016*<sup>4</sup>, the Court of Appeal applied the observations in *Chetty v Chetty [2104] SCAMA15/13*<sup>5</sup> with respect to the "*slip rule*" as follows —

*"[t]he 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 seeking prayers or an order so that their own interpretation of a paragraph of the judgment be given effect to so that the final orders by this Court made be negated".*

[49] It is to be noted that the clarification of the judgment in **Chetty** was sought under rule 13 (2) of the Seychelles Court of Appeal Rules 2005, as amended. I state that the observation of the Court of Appeal in **Chetty** applies to this case.

[50] Also, in *Revera v Dinan (1983-1987) 3 SCAR (Vol II) 225*, the Court of Appeal (Sauzier JA) stated: "*[t]he "slip rule" may be used where there is no new adjudication to be made*".

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<sup>4</sup> 31 August 2018

<sup>5</sup> 11 April 2014

[51] The above Court of Appeal judgments emphasise that the "*slip rule*" prohibits amendments sought in terms of anything touching on a substantial issue that has to be relitigated.

[52] Applying the above legal principles to this case, I conclude that the Appellant had asked the Supreme Court to reconsider the judgment made and perfected. In this respect, I hold the view that the interpretation sought by the Appellant would have amounted to an amendment of the judgment if the Supreme Court were to accede to her request, which is prohibited under section 147 of the Seychelles Code of Civil Procedure. At any rate, I conclude that the learned Judge erred in his approach in dealing with the question at issue in not considering the "*slip rule*".

[53] For the reasons stated above, ground two is misconceived and stands dismissed.

[54] I deal with ground one of the grounds of appeal.

[55] Ground one of the grounds of appeal raised an issue that was not raised in the Supreme Court. As mentioned above, the Appellant contended that the learned Judge erred in not considering that the Respondent did not have the discretion under the disputed paragraph to stop making payments before the child reached eighteen. Unquestionably, this is not an issue that I can consider for the first time on appeal.

[56] In any event, ground one does not arise for consideration as it is inextricably linked with ground two.

[57] Hence, ground one of the grounds of appeal is misconceived and stands dismissed.

### **Decision**

[58] For the reasons stated above, the appeal is dismissed in its entirety. I make no order as to costs.

F. Robinson, JA

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