

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA 18

Civil Appeal SCA 41/2018

(Appeal from CS 112/2014) SCSC645

Dora Shelly Helene Roselie
Joseph Mathew Roselie
Ralph Francis Roselie
Jourdan Gonsalve Roselie
Marie, Celine Roselie
Lucy Marline Nella Roselie
(rep. by Mr S. Rajasundaram)
and
Molly Rita Roselie
(rep. by Mr France Bonte)

Appellants

Respondent

Neutral Citation: *Roselie & Others v Roselie* (SCA 41/2018) [2021] SCCA 18
30th April 2021

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

Summary:

Heard: 19 April 2021

Delivered: 30th April 2021

ORDER

- (1) The Appeal is dismissed.
 - (2) No order as to costs.
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JUDGMENT

ROBINSON JA (FERNANDO PRESIDENT concurring)

1. I have had the advantage of reading in draft the Judgment delivered by my learned brother, Justice Dingake. I also hold the view that the appeal should be dismissed, but for the reason that the plaint filed by the Appellant does not disclose a reasonable cause of action against the Respondent. I give reasons.
2. The action has been instituted against the Respondent based on Articles 913, 920 and 921 of the Civil Code of Seychelles. Section 71 (d) and (e) of the Seychelles Code of Civil Procedure stipulates —"71. *The plaint must contain the following particulars: [...]; "(d) a plain and concise statement of the circumstances constituting the cause of action and where*

and when it arose and of the material facts which are necessary to sustain the action;(e) a demand of the relief which the plaintiff claims".

3. I observe that the plaint filed by the Appellant did not aver with certainty, precision and clearness all the particulars in support of her claim. The plaint averred that the transfer of parcel C3387 to the Respondent purported to be a sale but was, in reality, a disguised donation. The plaint does not contain any averments about the disposable portion of which the deceased was entitled to dispose of and the reduction of dispositions made under the mentioned Articles. It is a fundamental rule of our system of pleading that every pleading must contain all the material facts on which a party relies for his claim or defence. "*The word "material" means necessary for the purpose of formulating a complete cause of action, and if any one "material" fact is omitted, the statement of claim is bad.*" (*Bruce v Odhams Press Ltd.* [1936 1 KB at p. 697]). The same principle applies to a defence. For example, in *Gallante v Hoareau [1988] SLR 122*, the Supreme Court, presided by G.G.D. de Silva Ag. J, at p 123, at para (g), stated —

"[t]he function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the Court will have to adjudicate in order to determine the matters in dispute between the parties. It is for this reason that section 71 of the Seychelles Code of Civil Procedure requires a plaint to contain a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action".

4. Moreover, the prayers are not without their challenges. The Appellant has asked the Court *inter alia* to declare the sale null. I hold the view that such a prayer is incompatible with the cause of action in such a case. I state this because once a plaintiff establishes a *disguised donation*, it yields to the rules of *fonds* of donations. Though the object of the disguise would have been to escape the rules of the reserve, the donation is not null. In such a case, the dispositions that exceed the disposable portion shall be liable to be reduced to the size of that portion. [See *Encyclopédie Dalloz Donation* p 350 note 523 "c. — *Conséquences de la preuve de déguisement*". See Article 922 of the Civil Code of Seychelles. Thus, there is no relief prayed for in this case.
5. I mention in passing that I am reserving my opinion as to whether or not to prove a "*donation déguisée*", bad faith on the part of the deceased and to that matter, fraudulent pretence should not only be averred but must be proved against a defendant.
6. Section 92 of the Seychelles Code of Civil Procedure provides —

"92 The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer ...". I order accordingly.

7. For the reasons stated above, I dismiss the appeal but for the reason that the plaint discloses no reasonable cause of action against the Respondent. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 30th April 2021

Robinson JA

I concur

Fernando, President