IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2022] SCCA50 (19 August 2022)
SCA 20/2020
(Arising in MC53/2020 SCSC 198)

In the matter between:

Anna Lavrentieva **Appellant**
(rep by Mr Guy Ferley)

vs
Alexander Ugnich **Respondent**
(rep by Mr France Bonte)

Neutral Citation:	*Lavrentieva v Ugnich* (Civil Appeal SCA 20 of 2020) [2022] (Arising in MC 53/2020 [2020] SCSC 198) (19 August 2022)
Before:	Fernando President, Robinson, Tibatemwa-Ekirikubinza JJA
Summary:	Matrimonial Cause - Matrimonial Causes Rules - Rule 40 - Hearing - Investigation by the Supreme Court of an application for ancillary relief - Practice - Submission of no case to answer - Appeal is dismissed
Heard :	3 August 2022
Delivered:	19 August 2022

ORDER

(i) The Appeal is dismissed in its entirety
(ii) The orders of the learned Judge are upheld
(iii) We make no order as to costs

JUDGMENT

ROBINSON JA

THE BACKGROUND

[1] This appeal concerns an application in a matrimonial cause for ancillary relief brought by the Respondent (the Applicant then), a Russian citizen.

[2] The Appellant (the Respondent then) and the Respondent were married on the 14 February 1998 and divorced on the 22 February 2011. The decree *nisi* granted was made absolute.

[3] It is stated in the application that in 2005, parcel C2914 with a house situated thereon, hereinafter referred to as the *"Property"*, was transferred into the name of the Appellant in *Ugnich v Lavrentieva & Anor CS 125/2012 [2017] SCSC 36* (delivered on the 2 April 2017). It is also averred that, although the Property is registered in the sole name of the Appellant, it was purchased by the Respondent with his funds from an account in his sole name. The Property was registered in the name of the Appellant as she is a Seychellois citizen. Furthermore, the Respondent averred that he subsequently paid for renovations to the Property. The Respondent sought orders *inter alia* that the Property is registered in his sole name.

[4] The Appellant raised three pleas in *limine litis inter alia* that the application was *res judicata*. We interject to state that ground ″c″ of the grounds of appeal, referred to in paragraph [8] hereof, challenged the conclusion of the learned Judge that the application was not *res judicata*. The Appellant by Counsel dropped ground ″c″ at the appeal.

[5] In her affidavit, the Appellant averred that she is the lawful and beneficial owner of the Property, which the Respondent purchased for her. She also averred that the Respondent had not maintained their four children, who now live with her mother in the United States. Hence, the Appellant had sought to transfer the Property to her mother so that the latter could use the money from renting out the Property to help maintain the children.

[6] At the hearing before the Supreme Court, the Appellant, through his Counsel, Mr Anthony Derjacques submitted that there was no case to answer and, on being put to his election, chose to stand on his submission and called no evidence. The learned Judge ruled against the Appellant and dealt with the Respondent's evidence.

[7] Considering the evidence, the learned Judge of the Supreme Court, in her judgment, *inter alia* ordered that the Property is registered in the sole name of the Respondent according to her powers under section 20(1)(g) of the Matrimonial Causes Act as she was of the view that the Respondent solely paid for the Property and its renovations.

THE APPEAL

The Grounds of Appeal

[8] The soundness of the learned Judge's reasons and conclusions is being challenged on the following grounds —

> *"a). The Learned Judge erred in law in failing to determine that on the evidence deponed in Court, including exhibits, the action was not proven by the Respondent, on a balance of probabilities.*
>
> *b). The Learned Judge erred in law in failing to accept the Appellant's evidence in her Answer and the Affidavit attached to the said Answer which in law, constitutes evidence.*
>
> *c). The Learned Judge erred in law in failing to determine that the action is res judicata.*
>
> *d). The Learned Judge erred in law in failing to determine that the action is bad in law in that the procedures for service on the Appellant had not been followed by the Court.*
>
> *e). The Learned Judge erred in law in failing to determine that the oral evidence of the Respondent was not admissible as against an authenticated document, i.e, the transfer for land parcel C2914, and only a formal back letter could lawfully modify, change or alter a transfer deed.*
>
> *f). The Learned Judge erred in law in failing to hold that the oral evidence of the Respondent was not admissible in law as the subject matter, i.e, the property transfer, exceeded the value sum of SR5,000.00cts.*
>
> *g). The Learned Judge erred in law, in failing to hold, in the premises, that the Respondent had failed to prove its case."*

[9] Counsel for the Appellant, in his skeleton heads of argument, has dropped ground ″d)″ of the grounds of appeal. As mentioned in paragraph [4] hereof, the Appellant dropped ground ″c)″ at the appeal.

The Analysis of the Contentions of the Appellant and the Respondent

Grounds "a)" and "g)" of the grounds of appeal

[10] Grounds ″a)″ and ″g)″ of the grounds of appeal are taken together.

[11] The Appellant did not provide this Court with any written heads of argument concerning these two grounds of appeal. At the appeal, we brought to the attention of Counsel for the Appellant that grounds ″a)″ and ″g)″ were vague and cannot be entertained as they amounted to no grounds of appeal under rule 18(3) and (7) of the Seychelles Court of Appeal Rules, 2005, as amended (S. I. 13 of 2005). Obviously, the vague grounds did not come within the savings. Counsel disagreed that these two grounds of appeal were vague. It suffices to state that Counsel for the Appellant did not convince us as to why both of these grounds were not vague.

[12] For the sake of completeness, we state that rule 18(3) and (7) of the Seychelles Court of Appeal Rules, 2005, as amended, stipulates —

> *"18 (3) … 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.*
>
> […]
>
> *7* ***No ground of appeal which is vague or general in terms shall be entertained****, save the general ground that the verdict is unsafe or that the decision is unreasonable or cannot be supported by the evidence."*. [Emphasis supplied]

[13] The Court of Appeal has held that the word *"shall"* in rule 18(3) is mandatory*;* see, for example, *Petit v Bonte [2000]SCCA 1 (SCA45/1999) [2000]SCCS 13 (14 April 2000); Chetty v Esther (SCCA 1 (SCA 44/2020) (appeal from MA No. 156/2020 and MC No.*

69/2020; Elmasry and anor v Hua Sun (SCCA66) 17 December 2021) SCA 28/2019 (Arising in CC13/2014) SCSC451.

[14] In **Petit** [supra], the Court of Appeal stated —

> *"It is important to note that Rules of Court are made in order to be complied with. Without complying with and should the Court allow that to happen, then it is both sending wrong signals and establishing precedent, which may eventually lead to flouting and abuse of the whole court process. That should not be allowed to happen…".*

[15] For the reasons stated above, we strike out grounds ″a)″ and ″g)″ of the grounds of appeal.

Ground "b)" of the grounds of appeal

[16] Before considering the contention contained in ground ″b)″, we state the course the trial took in the Supreme Court.

[17] After the Applicant's evidence had been concluded, Mr Anthony Derjacques submitted to the learned Judge that there was no case for him to answer. The learned Judge followed the practice which is followed in such a case: as has been clearly laid down by the Seychelles court in refusing to rule on a submission of no case to answer unless Counsel has stated that he was going to call no evidence. Mr Anthony Derjacques submitted to the learned Judge that there was no case to answer and elected to stand on his submission. The learned Judge ruled against the Appellant.

[18] Counsel for the Appellant contended in his written submissions with respect to ground ″b)″ that the learned Judge was wrong in not *accepting* the affidavit evidence of the Appellant in this case. He has cited section 169 of the Seychelles Code of Civil Procedure for his contention. We remark that the Appellant has not challenged the learned Judge's ruling in her notice of appeal. Moreover, at the appeal, Counsel stated on her behalf that she had accepted the ruling on the submission of no case to answer.

[19] Counsel for the Respondent contended that the learned Judge was not wrong in not *accepting* the affidavit evidence of the Appellant since Mr Anthony Derjacques, after the close of the Applicant's case, had stated that he was going to call no evidence and elected to stand on his submission.

[20] In such circumstances, we deal with the contentions that are before us.

[21] We have considered rules 11(2) and 40 of the Matrimonial Causes Rules, the combined effect of which *inter alia* is that an affidavit must be filed in support of an application for ancillary relief and in answer to such an application, respectively.

[22] Rule 11(2) of the said Rules stipulates —

> *"* […].
> *11(2)* ***A copy of every affidavit filed*** *in support of or* ***in answer to an application for ancillary relief*** *… shall be delivered to the opposite party, if he has appeared or is the petitioner, at the address of his attorney or of …"*. [Emphasis supplied].

[23] Rule 40 of the Matrimonial Causes Rules, which deals with the investigatory powers of a Judge on an application for ancillary relief, stipulates —

> *"40 On an application for maintenance pending suit or* ***for other ancillary relief whether contained in the petition or otherwise****, the judge shall fix a date for the hearing of the application, and notice thereof shall be given by the Applicant to every other party to the application who has appeared* ***and at the hearing the judge shall in the presence of the parties, or their attorneys, investigate the allegations made in support of and in answer to the application and may order the attendance of the spouses and any other person for the purpose of being examined or cross-examined or may take the oral evidence of witnesses, and at any stage of the proceedings may order the production of any document or call for further affidavits****."* [Emphasis supplied]

[24] Rule 40 of the Matrimonial Causes Rules calls on a Judge to investigate the allegations made in support of and in answer to the application. In so doing, the Judge may take evidence orally and may order the attendance of any person to be examined or cross-examined, and may, at any stage of the proceedings, order the production of any

document or call for further affidavits. In light of rule 40, we do not consider it necessary to address section 169 of the Seychelles Code of Civil Procedure or any other provision of the said Code or any other enactment. In this connection, we refer to rule 57 of the Matrimonial Causes Rules, which deals with the application of the rules of the Supreme Court. Rule 57 of the Matrimonial Rules stipulates —

> *"57 Subject to the provisions of the Act and of these rules and of any other enactment, the Seychelles Code of Civil Procedure, shall apply mutatis mutandis, to the practice and procedure in any matrimonial cause or matter to which the Act relates, and when the Seychelles Code of Civil Procedure is silent the practice and procedure of the High Court in England shall be followed as near as may be."*

[25] Considering the record with care, we note that Mr Anthony Derjacques had not indicated to the Supreme Court that the Appellant would rely on affidavit evidence. It stands to reason, therefore, that we are not here concerned with the course the trial would have taken under rule 40 of the Matrimonial Causes Rules had such been the stance of the Appellant. Be that as it may, we state that it is unclear why Counsel for the Appellant is suggesting that the learned Judge was wrong in not *accepting* the affidavit evidence of the Appellant. Mr Anthoney Derjacques in the Supreme Court took the course, which he did with its attendant risk.

[26] We see no reason why the practice of putting a respondent to his election in a matrimonial cause should not be in line with that in other cases; see, for example, *Victor v Azemia [1977] SLR 195* and *Public Utilities Corporation v Vista do Mar Ltd [1999] SLR 77*. In this appeal, we have not considered whether there should always remain a discretion in a court in a matrimonial cause concerning the exercise of that discretion, *i.e.*, the practice of putting a respondent to his election.

[27] For the reasons stated above, we accept the contention of Counsel for the Respondent and hold that the learned Judge was not wrong in not *accepting* the affidavit evidence of the Appellant in this case.

[28] Hence we dismiss ground ″b)″ of the grounds of appeal.

Grounds "e)" and "f)" of the grounds of appeal

[29] Concerning grounds ″e)″ and ″f)″ of the grounds of appeal, we note that Counsel for the Appellant has not sought to explain in his skeleton heads of argument how Articles 1321(4) and 1341 of the Civil Code of Seychelles apply to this case. Having considered the judgment, we state that, although the learned Judge had referred to these provisions in her judgment, they had no bearing whatever on the learned Judge's decision. We state in passing that the case of **Ugnich** [supra] discussed these provisions.

[30] Clearly, grounds ″e)″ and ″f)″ are devoid of merit and stand dismissed.

THE DECISION

[31] For the reasons stated above, the appeal is dismissed in its entirety.

[32] Hence, we uphold the orders of the learned Judge.

[33] We make no order as to costs.

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F. Robinson, JA

I concur _____

A. Fernando, President

I concur _____

Dr. L. Tibatemwa-Ekirikubinza, JA

Signed, dated and delivered at Ile du Port on 19 August 2022