

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 55 (19 August 2022)

SCA 23/2020

(Appeal from CS 131/2018) SCSC 268

In the matter between:

THE ESTATE OF REGIS ALBERT
(Represented by its Executor Camille Albert)

First Appellant

THE ESTATE OF LORNA ALBERT
(Represented by its Executor Camille Albert)

Second Appellant

CAMILLE ALBERT

Third Appellant

MICHEL ALBERT

Fourth Appellant

LOUISETTE ALBERT

Fifth Appellant

DEZILNA ALBERT
(All represented by Mr Wilby Lucas)

Sixth Appellant

vs

CAROLINE CHETTY
(Represented by Ms Evelyne Almeida)

Respondent

Neutral Citation: *The Estate of the late Regis Albert, rep. by the Executor Camille Albert & Others v Chetty* (SCA 23 of 2020) (Arising in CS 131/2018 [2020] SCSC 268)
(19 August 2022)

Before: Robinson, Tibatemwa-Ekirikubinza, Andre JJA

Summary: Acquisitive Prescription - Animus - Counter claim

Heard: 5 August 2022

Delivered: 19 August 2022

ORDER

(1) The appeal is dismissed in its entirety.

(2) The orders of the learned Chief Justice are upheld, save for the following amendment —

Concerning the order found in paragraph [71] of the learned Chief Justice judgment, we delete thereof the figure and words "*eighteen months of this judgment*" and substitute therefor the figure and words "*ten months of the date of the Court of Appeal judgment*".

(3) No order as to costs.

JUDGMENT

ROBINSON, JA

[1] This appeal raises questions about the acquisition of ownership of immovable property through acquisitive prescription. It concerns the ownership of two parcels of land, C5773 and C5769, in the district of Anse Royale, Mahe, hereinafter referred to as the "*Disputed Property*".

[2] We noted the poor representation given to the Appellants in this case. The learned Chief Justice, in paragraph [77] of her judgment, observed that she was — "*concerned with the poor representation and advocacy afforded to the Appellants by Counsel [...]*". Nonetheless, we have given this appeal our best consideration.

Claims of the Appellants and Respondent

[3] Mrs Caroline Chetty, the Respondent, claimed that she is the registered owner of the Disputed Property, which are subdivisions of parcel C5767, the latter being a subdivision of parcel C1545. She claimed that the First and Second Appellants, while alive and without her permission and consent, erected structures, carried out works and planted vegetation on the Disputed Property. The Third, Fourth, Fifth and Sixth Appellants live on the Disputed Property.

- [4] She further averred that the Second Appellant filed a plaint CS90/2007 in which she claimed that they are entitled to claim ownership of parcel C1545 by succession as they are the heirs of their father, Mr Joseph Cassime, whose parents were related to Noelie Loger. The plaint CS90/2007 was dismissed for want of prosecution.
- [5] She claimed that the Appellants have no legal right to and no lawful interest in the Disputed Property.
- [6] The Respondent asked the Supreme Court to order the Appellants at their cost to remove all the structures they have erected on the Disputed Property, return them to their natural state, and order them to quit trespassing on the Disputed Property and refrain from erecting any further structures on them.
- [7] The Appellants, in their statement of defence, had raised two pleas in *limine litis*, which the learned Judge considered. The Appellants had not challenged the rulings of the learned Judge concerning the pleas in *limine litis*.
- [8] On the merits, the Appellants averred that they were unaware that the Respondent was the owner of the Disputed Property. Moreover, the houses they occupied were built more than fifty years ago on the parcel C1545. The Third, Fourth, Fifth and Sixth Appellants averred that the First and Second Appellants are their parents with whom they had lived since birth on the parcel C1545.
- [9] In paragraph 7¹ of their statement of defence, the Appellants claimed ownership of either the parcel C5773 or C5769 on the basis that the possession of either plot by them has been "*exclusive*" under Article 2262 of the Civil Code of Seychelles.
- [10] Hence, the Appellants asked the Supreme Court to make the following orders in their favour —

¹ Paragraph 7 of the Appellants' statement of defence reads — "*7. In response to paragraph 8 of the Plaint, the Defendants collectively are claiming right of ownership by virtue of exclusive possession under article 2262 of the Civil Code for more than 20 years on either C5773 or C5769*".

- "(a) Refuse the grant of the relief sought under para (a) and (b) in the Prayer of the *Plaint*.
- (b) To declare the Defendants as the rightful owner of the property they have been in occupation by virtue of acquisitive prescription peaceful, public and unequivocal without interruption for more than twenty years.
- (c) To make any further order the Court may consider appropriate in the circumstances."

A summary of the evidence

- [11] At the trial, the Respondent, PW-3, gave evidence and called as witnesses Mr Suleman Athanasius — PW1, who spoke to documentation from the office of the Registrar of Land and Mrs Sumita Andre — PW-2, who spoke to documentation from the Supreme Court of Seychelles. Mrs Andre exhibited the Supreme Court file relating to CS 90/2007, P5.
- [12] The Appellants' witnesses were the Third Appellant — DW-1, the executor to the estate and succession of the First and Second Appellants, who also gave evidence on his behalf, Mr Renald Robert — DW-2, Mr Michel Albert — DW-3, and the other siblings, who adopted the testimony of the Third Appellant.
- [13] ***The evidence of Mrs Caroline Chetty.*** The Respondent's evidence, which the learned Judge accepted, was that she purchased the Disputed Property from Mr Radley Sinon, representing Miriam Sinon, under a power of attorney dated 12 December 2003, on the 19 November 2008. Before she purchased the Disputed Property, she noticed structures on them. Mr Radley Sinon told her that once the Disputed Property had been sold, the occupants of the structures would move out. However, despite her purchase of the Disputed Property, the people living on them did not move out.
- [14] She testified that Notary Miss Lucie Pool, who handled the transfer of the Disputed Property, searched the Disputed Property at the Land Registry and found that no encumbrances were registered against them.

- [15] The Appellants filed a plaint on the 15 March 2007, CS 90/2007, P5, claiming the ownership of the Disputed Property. The plaint stated *inter alia* that the structures were built with the permission of the late Mr Joseph Cassime. She filed an intervention to their plaint in which she asked the Supreme Court to declare her the lawful owner of the Disputed Property and dismiss the Appellants' plaint. The case was dismissed for want of prosecution.
- [16] She asked the Supreme Court to evict the Appellants and to have them remove their illegal structures at their costs. The structures are situated mainly on the parcel C5769 with some encroachment on parcel C5773.
- [17] Concerning the evidence of the Third Appellant, we state that we can do no better than to repeat his testimony before the Supreme Court in paragraphs [12], [13] and [14] of the learned Chief Justice's judgment.
- [18] ***The evidence of The Third Appellant*** —

"[12] Camille Albert, the Third Defendant and the Executor of the Estates of the First and Second Defendants, gave evidence that he was born on 22 April 1972 and has lived on the property all his life. His parents were the First and Second Defendants, Regis and Lorna Albert née Cassime and they had received permission from the owner, Noelie Loger, to build on the land. Ms. Loger was his 'grandparents' grandmother' (sic) and his family had always lived on the Property. He now lived on the Property with his partner and children.

[13] There were four structures on the Property and they were all occupied by his siblings and their families. All the structures were built by his father, Regis Albert. He was not willing to vacate the Property.

[14] In cross examination, he stated that his parents received permission to erect the structures from the heirs of the property. It was common to build structures on the Property without its prior subdivision as it was heirs'

land. He admitted that in 2007 in the previous court case filed by his mother, Lorna Albert, the Second Plaintiff in that case, that she had averred that she had built the structure on the Property because she was entitled to the land by succession. He was of the view that he also had a right to the Property as an heir of the original owner Noelie Loger. He also admitted that in the 2007 plaint there is mention of only two structures, a house belonging to his mother and one to Brunette Cassime, his grandmother. He stated that his entitlement to the Property could either be by the fact that he was an heir of Ms. Loger or through long occupation – although he was of the view that the former would be more the case."

[19] Concerning the evidence of Mr Renald Robert, DW-2, we also repeat his testimony before the Supreme Court in paragraphs [15] and [16] of the learned Chief Justice's judgment.

[20] ***The evidence of Mr Renald Robert —***

"15. *Mr. Renald Robert, the Third Defendant's older brother, testified that he used to live in his parent's house on the Property. He left when he was nine or ten years old. His parents had obtained the permission of their parents and they of their parents before to build on the Property. The original house had been of corrugated iron and was built by his father Regis Albert in or around 1969. In 1977, the house was converted into a three-bedroom house. He came back to live in the house about five years ago. He was unaware as to the reason why he had not been added as a Defendant to the instant suit as he also lived in the house. [16] [...]. He admitted that he had nothing in writing to show that his parents had permission to build on the land."*

[21] After considering the evidence, the learned Chief Justice dismissed the Appellants' claim of acquisitive prescription of the Disputed Property. She entered a judgment in favour of the Respondent, in which she made the following orders —

"[78] The Defendants' counterclaim of acquisitive prescription of Parcels C5773 and C5769 is dismissed. The Plaintiff's prayers are granted. The Defendants are ordered at their own cost to remove all structures they have erected on the Property and to return them to their natural state within eighteen months of this judgment. They are further ordered not to trespass on the land after that date and not to erect any further structures."

The appeal

[22] The Appellants challenged the findings of the learned Chief Justice on the following grounds of appeal —

2.1 *The learned trial Judge erred in fact and law to act on pleadings as judicial admission in a previous case, civil side 90 of 2007 which had never been adjudicated and decided by the Court.*

2.2 *The Learned Trial Judge erred in law to depart from the pleading raised in the statement of defence, but instead, import in her judgement, new matters emerged under cross-examination.*

2.3 *The Learned Trial Judge has failed to address the long term occupation of the Property by the Appellants prior to the date of the purchase and registration of C5769 by the Respondent.*

2.4 *The Learned Trial Judge erred in law when she determined the date prescription started to run.*

2.5 *The Learned Trial Judge erred in law when considering elements to satisfy acquisitive prescription under Articles 2229 to 2235 and 2261 of the Civil Code.*

2.6 *The Learned Trial Judge has failed to take into action the moral, economic and public interest and hardship the order of demolition would impact on the Appellants when the prayer in the Plaintiff's Complaint gives the Court an alternative option to make any order as the Court deem appropriate."* [verbatim]

Analysis of the parties' contentions

Ground 2.2 of the grounds

[23] The Appellants have not provided this Court with any reliable heads of argument concerning this ground. Their skeleton heads of argument only referred to a judgment of this Court, namely *Equator Hotel v Minister for Employment and Social Affairs (1996-1997) SCAR 243* for the principle that the failure or omission of a party to object to issues during proceedings does not have the effect of importing these issues into the pleadings or evidence. This ground is vague and cannot be entertained as it amounted to no ground of appeal under rule 18(3) and (7) of the Seychelles Court of Appeal Rules, 2005, as amended (S. I. 13 of 2005).

[24] 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]

[25] 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.

[26] 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 [...]”.

[27] For the reasons stated above, we strike out ground 2.2 of the grounds of appeal.

Grounds 2.3 and 2.4 of the grounds

[28] The skeleton heads of argument submitted by Counsel for the Appellants do not address grounds 2.3 and 2.4 of the grounds. At the appeal, Counsel did not offer any reliable submissions concerning these grounds. We do not consider that we are in a position to determine these grounds as we did not hear reliable submissions from Counsel for the Appellants. For the reasons stated above, we dismiss grounds 2.3 and 2.4 accordingly.

Ground 2.5 of the grounds

[29] The skeleton heads of argument submitted by Counsel for the Appellants do not address grounds 2.5 of the grounds. At the appeal, Counsel did not offer reliable submissions concerning this ground.

[30] We observe that the Appellants' pleadings concerning their plea for acquisitive prescription were problematic. Article 2229 of the Civil Code of Seychelles stipulates expressly the quality of possession that is required to acquire ownership by prescription in these terms — "*[i]n order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner.*" The Appellants had pleaded only the condition concerning unequivocal possession — see paragraph 7 of their defence. The learned Chief Justice was prepared to proceed based on the Appellants' pleadings. She pointed out in her judgment that there were issues concerning these two conditions: unequivocal possession and the possessor acting in the capacity of the owner.

[31] Counsel for the Respondent essentially submitted that the learned Chief Justice was not wrong in concluding that the Appellants' claim for acquisitive prescription conflicted with the evidence of their permissive occupation of the Disputed Property. We agree. Moreover, we accept the learned Chief Justice's finding that there was no evidence that the permissive occupation by the Appellants' predecessors ended when the Appellants themselves took possession of the Disputed Property. Article 2235 of the Civil Code of Seychelles allows one to aggregate one's own possession with that of one's author towards the achievement of possession for the prescriptive period.

[32] The Court of Appeal in *SDC v Morel Civil Appeal 8/2002* (delivered on the 18 December 2002), considered by the learned Chief Justice in her judgment, stated —

"Once permissive possession was admitted in evidence, the case for the Respondent had to fail. It negated the foundation of the claim of the Respondent, based as it was on acquisitive prescription.

[...] *On the facts of this case the Respondent must establish when his permissive occupation terminated and when his possession as owner commenced. Time begins to run only after he commences to possess the parcel as owner”.*

[33] This refutes the Appellants' case that their possession of the Disputed Property have been unequivocal and not been attributable to any title other than ownership. For the reasons stated above, ground 2.5 stands dismissed.

Ground 2.6 of the grounds

[34] Counsel for the Appellants submitted that the learned Chief Justice should have refused the Respondent's request for demolition because it would cause great hardship. It suffices to state that this issue did not arise on the Appellants' pleadings. Hence, the learned Chief Justice cannot be faulted for not deciding an issue not arising on the pleadings. Ground 2.6 is misconceived and stands dismissed.

[35] This is enough to dispose of this appeal. We state that consideration of ground 2.1 would have made no difference to the outcome of this appeal. In any event, we did not receive any reliable submissions from Counsel for the Appellants with respect to this ground.

[36] Before we leave this appeal, we state that, as the Appellants have an alleged claim against the Respondent, they should have set up their claim in the Respondent's action. In other words, the defence should have pleaded a counterclaim asking for a declaration of their alleged right. See, for example, *Chetty & Anor v Laporte (SCA 19 of 2019) [2021] SCCA 80* (delivered on 17 December 2021).

The Decision

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

[38] We uphold the orders of the learned Chief Justice, except for the following amendment

—

Concerning the order found in paragraph [71] of the learned Chief Justice judgment, we delete thereof the figure and words "*eighteen months of this judgment*" and substitute therefor the figure and words "*ten months of the date of the Court of Appeal judgment*".

[39] We make no order as to costs.

F. Robinson
Justice of Appeal

I concur:



Dr. L. Tibatemwa-Ekirikubinza, JA

I concur:

S. Andre, JA

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