

## COURT OF APPEAL OF SEYCHELLES

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### **Reportable**

[2023] SCCA 21 (26 April 2023)

SCA 22/2021

(Arising in MC 101/2019)

**Stefan Renato Petrescu**  
(rep. by Mr Rouillon)

Appellant

and

**Stefan Adrian Iliescu**  
(rep. by Mr Elizabeth and  
Mr Houareau)

Respondent

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**Neutral Citation:** *Petrescu v Iliescu* (SCA 22/2021) [2023] SCCA 21 (Arising in MC 101/2019) (26 April 2023)

**Before:** Robinson, Tibatemwa-Ekirikubinza, Andre, JJA

**Summary:** Court of Appeal of Seychelles — Seychelles Court of Appeal Rules 2005 as amended — Notice of grounds of appeal — form of grounds of appeal — rule 18 (2) (3) (7) and (8) — vague grounds of appeal — striking out of grounds one, two, three, four, five and six — appeal dismissed in its entirety — with costs

**Heard:** 14 April 2023

**Delivered:** 26 April 2023

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### **ORDER**

1. Grounds of appeal one, two, three, four, five, and six are struck out and stand dismissed
  2. Ground seven stands dismissed
  3. Appeal is dismissed in its entirety
  4. With cost in favour of the Respondent, Stefan Adrian Iliescu
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### **JUDGMENT**

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**Robinson JA**

(Dr. L. Tibatemwa-Ekirikubinza, JA concurring)

## The background

1. The Respondent (then Petitioner) is Stefan Adrian Iliescu, hereinafter referred to as "Adrian". The Appellant is Stefan Renato Petrescu (then Respondent), hereinafter referred to as "Renato".
2. This appeal comes before the Court of Appeal from a judgment of a learned Judge of the Supreme Court delivered on the 25 August 2021, in case reference MC101/2019.
3. The Notice of Appeal was filed on the 30 August 2021. Renato, through Counsel, filed an amended notice of appeal on the 1 March 2023 after having been granted leave by the Court of Appeal to amend his notice of appeal.

*Ruling on Motion concerning Renato's application for further evidence: MA03/2023 arising out of SCA22/2021*

4. The Court of Appeal delivered a Ruling on Motion on the 13 April 2023 concerning Renato's application that further evidence be allowed to be produced in connection with the hearing of this appeal under rule 31 (1) of the Seychelles Court of Appeal Rules, 2005, as amended<sup>1</sup>.
5. Renato's application concerned two documents, namely *"a. a formal ruling from a Romania Prosecutors Tribunal dated 20<sup>th</sup> April 2021 in case 122/P/2019 [...]; and b. a final ruling of the Romania Bucharest Appeal Court in case SC GBC CRIAD SRL v Petrescu Stephan Renato dated 16<sup>th</sup> May 2022 file number 3953/2/2019 [...]"* (at paragraph [10] of the Ruling on Motion).
6. The Court of Appeal dismissed Renato's application with costs on the ground that it was improperly supported.
7. The Court of Appeal stated the following in support of its decision dismissing the application —

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<sup>1</sup> The Seychelles Court of Appeal Rules 2005, as amended, is hereinafter referred to as the *"Seychelles Court of Appeal Rules"*, for ease of reference.

- "13. The issue for consideration, as mentioned above, is whether or not the way the affidavit was sworn was regular. We have to turn to English law on the matter in the absence of any local provision governing this aspect of our law of evidence. We read from **Halsbury's Laws of England Fourth Edition**, paragraph 321, page 223 on the filing of affidavits —

*"(8) FILING AND OFFICE COPIES OF AFFIDAVITS*

321. Filing affidavits. [...]. In the case of an affidavit in a foreign language, there must be filed with it a translation and an affidavit from the translator verifying the translation and annexing both the original affidavit and the translation. [...], see *Re Sarazin's patent* (1947) 64 R. P. 51."

14. We also read from the Supreme Court Practice 1976, para 41/12/5, which stipulates —

*"Filing Affidavit in Foreign Language. — "When it is desired to file an affidavit in a foreign language the usual course is to obtain a translation of such affidavit by a qualified translator and to annex the foreign affidavit and the translation as exhibits to an affidavit by the translator verifying the translation. The three documents are filed together, filing fees being paid for two affidavits. " See *Re Sarazin's patent* (1947) 64 R. P. 51."*

*[Emphasis supplied]*

15. This procedure has not been adopted in the present case.
16. For the reasons stated above, we cannot receive the evidence of Renato in the form of an affidavit for the purpose of being used in this matter.
17. In *Savoy Development Limited v Salum SCA MA16/2021*, arising in *SCA10/2021*, Twomey JA stated at paragraphs [13] and [14] — "[13] The Court of Appeal in *Lablache de Charmoy* (*supra*) held that the parties cannot waive irregular affidavits. Affidavits are sworn evidence and evidential rules for their admission cannot be waived by the Court either. " In ***Savoy Development Limited***, Counsel for the respondent relied on defect in the jurat. Twomey JA considered the defect in the affidavit to be fatal. She dismissed the application with costs.
18. In the present case, the defect is fatal. In the circumstances, as Renato's application is improperly supported, the case is dismissed with costs."

## **The Proceedings before the Supreme Court**

8. Adrian filed a petition dated 4 November 2019, supported by evidence by affidavit in case reference number MC101/2019. Adrian contended that Renato has fraudulently obtained sole ownership and directorship of Global Business Group Limited, an international business company incorporated in 2010, with himself as the sole beneficial owner.
9. Adrian contended that the registered agent of Global Business Group Limited, All About Offshore (Seychelles) Limited, was notified of Global Business Group Limited's court case in Romania against Renato but proceeded to issue a certificate of incumbency unlawfully naming Renato as the sole director of Global Business Group Limited without informing or notifying him or his agent.
10. Adrian contended that All About Offshore (Seychelles) Limited issued the certificate of incumbency based on fraudulent and forged documents given to it by Renato.
11. Renato produced the forged certificate of incumbency on the 28 October 2019 in the Romanian court to show that he was the owner of Global Business Group Limited. He averred that this was the first time he knew of the company's change of ownership.
12. Adrian immediately instructed his attorney to seek an adjournment to travel to Seychelles to enquire of the registered agent why there had been a change of ownership of his company, Global Business Group Limited, without his instructions, authority, consent, and permission.
13. Adrian contended that the "actions" of Renato are unlawful and without authority and have caused and continue to cause loss and damages to him, for which Renato is liable.
14. Adrian prayed for a judgment asking the trial court to make the following orders in his favour —

"1. *that the purported change of ownership of the company is unlawful, null and void ab initio.*

2. *that the Petitioner [Adrian] is the sole beneficiary of the company [Global Business Group Limited], and Company Services Ltd is the sole Director of the company, and any change in the company register to reflect the*

*Respondent [Renato] as the Director and/or Beneficial Owner, and the Certificate of Incumbency dated 19<sup>th</sup> September 2019, to be null and void and of no effect.*

3. *direct the Registered Agent, All About Offshore (Seychelles) Ltd, to amend its register to reflect the Petitioner as the sole beneficial owner of the company and Company Services Ltd as sole director of the company.*
4. *direct the Registered Agent, All About Offshore (Seychelles) Ltd, to issue a new certificate of incumbency showing that the Petitioner [Adrian] is the sole beneficial owner of the company and Company Services Ltd the sole director of the company.*
5. *award damages in favour of the Petitioner and against the respondent in the sum of \$100,000.00 for prejudice, cost of travel, accommodation, food and beverage, and unlawful interference with the Petitioner's property.*
6. *the whole with costs."*

15. Renato filed an affidavit in reply to the petition objecting to the matters contained in the petition. In his affidavit in reply, Renato averred the following with respect to Adrian's allegation that he has fraudulently obtained sole ownership and directorship of Global Business Group Limited with himself as the sole beneficial owner —

*"[...]*

26. *That the changes in the shareholding and management of GBG LTD [Global Business Group Limited] were signed by Sammy Antoine Fremiot the sole registered owner of GBG LTD and by Patrick Bonnelame of AAOB [All About Offshore Seychelles Limited]. These took place in September 2019 and were carried out by the AAOB the registered agent of GBG LTD.*
27. *That AAOB registered them in the Trade Register of Seychelles, verifying in advance the authenticity and veracity of the signatures.*
28. *That later and even now, the Petitioner, although he knew he gave his consent regarding the modification of the real beneficiary, is trying to explain before this Honourable Court that he is the victim and to come up with all kinds of lies and false acts in order to try and make everything look like it was all a fraud he knew nothing about, and that in fact I am the one who wants to steal his company thus trying to cover his own illegalities and frauds.*

29. *That it is clear both from the documents that I attach to this statement and in my statement, and the rest of the statements of the people involved in this case, it can be decided who was the one who lied and cheated or did fraud and who was fooled.*
30. *That we want to draw the attention of this Honourable Court to please bear in mind my history, the fact that I am a businessman without a record, clean, with a nice and legal business in Romania as opposed to the Petitioner, who was prosecuted in several criminal cases by car theft, drugs, and other offences (as evidenced by the documents I attach to this statement) that I was never considered neither criminal nor fiscal, the evidence being the records I attach to this statement attached and Marked Exhibit N.*

[...]

32. *That I kindly asked the Court to please, carefully check all the documents that I attach to this Affidavit because among them there is a statement of the Petitioner given in front of the criminal investigation bodies in Romania, in a criminal file, in which he acknowledges that he is not the owner of the company in Seychelles – GBG LTD and that I am the representative of this company and also says that we met in 2010 and asked me to collaborate in the construction field because he knew that I wanted to invest in this domain. According to the statement, it is clear that I was never his employee as a driver and that we had a collaborative relationship, attached and Marked Exhibit O.*
33. *That it also follows from the accounting documents that the Romanian company CRIAD SRL does not own a shopping mall and does not receive one million euros a month from the rents, as the Petitioner's Counsel stated before the Seychelles Court.*
34. *That I am advised by my legal counsellor since it appears that much of the evidence of the Petitioner is based on hearsay evidence and matters involving questions of law both Romanian and Seychelles laws, practices, procedures and he has asked for remedies without explaining what the questions of law to be decided on and what are factual statements in his Affidavit i.e. there is no concept of trust or trustees in the domestic laws of Seychelles therefore Mr Freminot held shares for his own benefit and not for any third party from the beginning.*
35. *That having taken legal advice on the legal issues involved in this Affidavit both in Romania and in Seychelles and having a very close and experienced personal knowledge of the facts, financial and other associated issues, I make this Affidavit confirming that the statements herein are true and correct to the best of my knowledge, belief and*

*information and from legal and financial advice both in Romania and in Seychelles.*

*The pleas in limine litis*

16. In the course of proceedings in the trial court, Renato filed two pleas *in limine litis* on the 24 January 2020<sup>2</sup> on the basis that (i) Adrian should have filed the case by way of plaint and not by way of petition supported by evidence by affidavit, and (ii) there is "*no concept of domestic trusts in Seychelles or nominee relationships except for specific statutory exceptions and the petition filed by the petitioner does not fall under or qualify to be under any such exceptions*".
17. Having considered the submissions of the parties on the pleas in *limine litis*, the learned Judge dismissed the pleas in *limine litis* on the basis that Renato — "*[...] has failed to show that the pleadings by way of petition has resulted in any prejudice being caused to the respondent.*"; and that it was too premature for the trial court to decide the question at issue raised by the second plea in *limine litis* without first allowing Adrian to support his contention by way of evidence subject to cross-examination by Renato.

*The proceedings on the merits*

18. Adrian and Renato gave extensive evidence. Renato called Peter Vandervalk as a witness.
19. In his judgment, the learned Judge determined the following questions at issue.
20. The learned Judge determined the question of who was and is the beneficial owner of Global Business Group Limited. After an extensive analysis of the evidence adduced before him, he concluded that — "*[51] [f]rom the provided documents of both companies it is clear that whoever owns GBG company owns majority CRIAD company (as transfer of shares to Mr Petrescu was annulled and GBG was restored as majority shareholder). According to the documents up to disputed transfer of shares, the owner of GBG was initially the Petitioner, he ceased to be the owner at some point and became once again in January 2019.*"

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<sup>2</sup> (in case reference number MA141/2020 (arising in MC101/2019))

21. In determining the question of who was and is the beneficial owner of Global Business Group Limited, the learned Judge also considered the contention of Counsel for Renato that there is no concept of *"domestic trusts in Seychelles or nominee relationships except for specific statutory exceptions and the petition filed by the petitioner does not fall under or qualify to be under any such exceptions"*.
22. The learned Judge opined that the concept of domestic trusts does not exist in Seychelles but that International trusts is valid in Seychelles. He concluded that — *"the assets in dispute in the present case are shares in the Romanian Company CRIAD, which are owed by the Seychelles GBG. The assets in dispute are, therefore, not located in Seychelles and the issue of domestic trusts does not arise"*.
23. Counsel for Renato also challenged the *"Extrajudicial Criminal Expert Report"* (Exhibit P20 and P20(a)) prepared by the Criminal Expert Preda Nicolae on the following basis —
- "Any expert report the other side wished to produce should have been brought and produced by the expert who must be subject to rigorous cross-examination since I was instructed the report filed by the petitioner is bogus and add little value if any and its production should have been complied strictly with the Evidence Act and our general rules of admissibility and hearsay evidence exclusions. "*
24. After an extensive analysis of the evidence and the legal provisions, the learned Judge accepted the expert report based on the conclusion reached in the said Report that the signature on the *"Declaration"* *"does not reproduce a signature executed by Iliescu Stefan-Adrian [...]"*.
25. The learned Judge also considered Adrian's contention of whether or not the registered agent, All About Offshore (Seychelles) Limited, had acted contrary to section 360 (1), (2) and (3) of the International Business Companies Act, 2016, as amended. After an extensive analysis of the evidence and the legal provisions, the learned Judge held the view that — *"[...] the Registered Agent had clear knowledge that there was a serious dispute going on between the Petitioner [...] and the Respondent [...] in Romania for the ownership of the CRIAD company and therefore as responsible Registered Agents of*



*GBG they should have been more cautious in dealing with any changes being brought to their notice."*

26. In the final analysis, the learned Judge concluded that —

*"[t]his court is satisfied the Expert Report complies with all legal requirements and can be accepted by the court and that the Petitioner has established the burden of proof placed on him to prove that the Change of Beneficial Owners' Declaration is a forgery. Therefore the further steps taken in respect of the transfer of the beneficial ownership is null and void. Therefore the ownership of the IBC company GBG lies with the Petitioner Adrian Iliescu. I therefore order the Registered Agent to restore the position of the parties prior to transfer of shares to the Respondent and order the Registered Agent to rectify the beneficial owner under section 358 of the IBC Act 2016."*

27. Finally, the learned Judge dealt with the "constitutional rights and lack of fair trial in respect of the case" referred to by Counsel for Renato in his written submissions. With respect to these issues, the learned Judge concluded at paragraph [116] of the judgment

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*"[116 [...] [i]n this regard the record speaks for itself. Ample opportunity was given to learned Counsel for the Respondent to prepare for the case as on several occasions, learned Counsel was given ample time to prepare even his re-examination questions due to the lengthy cross examination conducted by learned Counsel for the Petitioner. Despite many applications for urgency hearing being made by the Petitioner, time was given for the Respondent to reply and prepare his case. Applications for recusal were made on several occasions by learned Counsel for the Respondent and time was given for the hearing of same but eventually learned Counsel for reasons best known to him, decided to withdraw and not pursue the applications though the opportunity was provided. All preliminary objections were eventually dealt with at the request of learned Counsel for the Respondent. The Respondent was given ample opportunity to appeal from the Rulings in the said preliminary objections but once again for reasons best known to learned Counsel for the Respondent, he refrained from appealing from these decisions. This court is satisfied on the preliminary Rulings given by this court and sees no reason to revisit these decisions. [...]. Learned Counsel for the Respondent was never denied any right to natural justice either as all rulings and orders were made after hearing both Counsel on the material issues and giving them both ample time to prepare their written submissions. This court in coming to its findings in this case has not relied on any false, misleading vexatious*

*statements from the bar as borne out by the facts and reasoning contained herein.*

*[117] The other matters namely evidence, oral affidavit evidence, procedural irregularities, failure to call witnesses and concept of trusts, have been dealt with in this judgment and even in the several rulings given during the course of the trial. Any aggrieved party has still recourse to the Seychelles Court of Appeal."*

28. The learned Judge was satisfied that Adrian had proved his case on a balance of probabilities and entered judgment in his favour as set out in prayers one to four of the petition with costs.
29. The learned Judge did not award damages in this case on the ground that the issue of damages in relation to unlawful interference with Adrian's property should be determined by the courts in Romania.

### **The appeal**

30. Renato has challenged the judgment on the following grounds —

- "1. *The learned judge (and initially the previous judge M Twomey CJ before recusing herself) acted in a biased, unconstitutional manner against the Appellant in the case.*
2. *The learned judge erred in law in allowing the case to be brought by way of petition instead of a Complaint for simple civil dispute between the parties and he erred in the substantive law and procedural law.*
3. *The learned judge erred in law and fact in failing to apply himself to the facts and erroneously interpreted money laundering transactions as business investments.*
4. *The learned judge erred in fact and law in wrongly admitting evidence which affected his decision and which required the testimony of witnesses to prove their truth and credibility.*
5. *The learned judge erred in law in wrongly interpreting the trusts laws of the Seychelles, particularly in relation to this action.*
6. *The learned judge failed to appreciate the reason the International Business Company was set up and failed to consider the issue of anonymity of the owner's status of such Companies as explained by the Appellant and his witness.*

7. *The learned judge has erred in failing to apply the law of abuse of process where the Respondent entered duplicitous actions by Petition in this suit and by separate Plaint in C.S. 116 of 2020 asking for the same reliefs for the same litigant."*

31. Relief sought by Renato from the Court of Appeal —

- "a. *For this court to set aside the judgment of the trial court and for a declaration that the Appellant is the beneficial owner of the Seychelles IBC Global Business Group Limited;*
- b. *For all changes made as a result of the judgment to be consequently set aside in favour of the Appellant;*
- c. *for the registrar of international business companies to be informed of the conclusion of this suit and to make the necessary consequential changes accordingly;*
- d. *an order for the costs of these proceedings and for the court below from the date the Appellant was served with the documents from the Supreme Court."*

*The preliminary objection — Grounds one, two, three, four, five, and six of the grounds of appeal*

32. A preliminary objection was raised in the skeleton heads of argument on behalf of Adrian that grounds one, two, three, four, five and six as formulated by Counsel for Renato, run afoul of rule 18 (7) of the Seychelles Court of Appeal Rules on the basis that they are vague or general in terms and, hence, should be struck out.

33. Rule 18 (7) of the Seychelles Court of Appeal Rules stipulates — "[n]o 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".

34. In support of his submission, Mr Hoareau also referred to sub-rules (2), (3), and (8) of rule 18 of the Seychelles Court of Appeal Rules, which stipulate as follows —

- "(2) *Every notice of appeal shall set forth the grounds of the appeal [...].*
- (3) *Such 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 the judgment or order is sought."*

[...]

(8) *The appellant shall not without leave of the Court be permitted, on the hearing of that appeal, to rely on any grounds of appeal other than those set forth in the notice of appeal: Provided that nothing in this sub-rule shall restrict the power of the Court to make such order as the justice of the case may require."*

35. Mr Hoareau submitted that a ground of appeal that only sets out the findings of fact and conclusions of law to which an appellant is objecting would be a vague ground of appeal. He submitted that a ground of appeal shall also set forth precisely the basis on which the Appellant is objecting since the purpose of a notice of appeal is to inform the court and the respondent of the grounds to be argued. He added that the respondent must be given fair notice of what is to be contended. In furtherance of his submission, Mr Hoareau submitted that rule 18 (8) does not allow the appellant, without leave of the Court of Appeal, to argue any ground of appeal not set forth in the notice of appeal.
36. Based on his submissions, Mr Hoareau submitted that the Court of Appeal should find that grounds one, two, three, four, five and six were vague or general in terms and did not give Adrian fair notice of what was to be contended. He contended that the said grounds of appeal should be struck out.
37. Concerning ground one, Mr Hoareau submitted that it did not set out the findings of fact and conclusions of law to which the appellant is objecting and the basis on which it was being contended that the learned Judge and Twomey-Woods then CJ had "*acted in a biased, unconstitutional manner against the Appellant in the case*".
38. Concerning grounds two, three, four and five, Mr Hoareau submitted that it is insufficient for the said grounds to state that the learned Judge erred. He submitted that the said grounds should set forth the basis on which it was to be contended that the learned Judge erred.

39. Concerning ground six, Mr Hoareau submitted that it set forth the findings to which Renato was objecting but did not set forth the basis on which it was being contended that the learned Judge erred.
40. Mr Hoareau relied on *Cedric Petit v Marguitta Bonte SCA No. 11/2003* (20 May 2005), *Chetty v Esther SCA44/2020* (13 May 2021) and *Salameh v North Island Company Limited SCA5/2022* (16 December 2022) in which the Court of Appeal has struck out the appeal on the ground that it contravenes rule 18 (3) and (7) of the Seychelles Court of Appeal rules. Mr Hoareau also relied on *S v S, 2003 S. C. L. R. 261 (2002)*, a case of persuasive authority.
41. In **Chetty**, supra, the Court of Appeal struck out the notice appeal, having determined that the two grounds of appeal reproduced hereunder were vague —

*"GROUND 1*

*The presiding Judge erred when she dismissed the Appellant's application for a stay of execution and notice of appeal.*

*GROUND 2*

*The presiding Judge erred when she dismissed the Appellant's case as she failed to take into account the relevant facts and matters before coming to the decision that she did."*

42. In **Chetty**, supra, the Court of Appeal, relying on **Cedric Petit**, supra, stated the following in support of its decision to strike out the notice of appeal —

*"[13] As mentioned above, it is reasonably plain that the notice of appeal is not sufficient notice of the grounds of appeal. Thus, it is unquestionable that I am duty-bound to refuse to entertain the notice of appeal under rule 18 (3) and (7) of the Seychelles Court of Appeal Rules.*

*[14] Fundamentally, if I were to condone such vague grounds of appeal, I would be allowing the Appellant to introduce issues that have not been raised in the insufficient notice of appeal or covered in the vague grounds of appeal outside the time limit for raising new issues, without leave of the Court of Appeal and the proper procedures having been followed under the Seychelles Court of Appeal Rules. Also, heads of argument should*

*neither raise issues not envisaged in a ground of appeal nor raise a new ground of appeal.*

- [15] *This is also the view held by the Court of Appeal in Cedric Petit v Marguitta Bonte SCA Civil Appeal No. 11 of 2003 (delivered on the 20 May 2005). In Cedric Petit, supra, the Court of Appeal considered the old rule 54 of the Seychelles Court of Appeal Rules, 2000, as amended, which dealt with a notice of appeal. Rule 54(3) and (6) of the Seychelles Court of Appeal Rules, 2000, as amended, stipulated —*

*"54 [...].*

*(3) Every notice of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of the appeal, specifying the points of law or fact which are alleged to have been wrongly decided together with particulars of such errors, such grounds to be numbered consecutively and to state the exact nature of relief sought and the precise form of the order which the appellant proposes to the Court to make [...].*

*6) No ground of appeal which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence and any ground of appeal or part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on the application by the respondent ...".*

- [16] *In Cedric Petit, supra, Mr Elizabeth, Counsel for the respondent, raised a preliminary objection in law to the effect that the ground of appeal advanced by the appellant did not amount to a ground of appeal in law. Mr Georges, for the appellant, conceded the point. The Court of Appeal held that: "sub-rules (3) and (6) are of a mandatory nature". Emphasis is mine. The Court of Appeal went on to state —*

*"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. This Court had an opportunity, recently, to re-emphasise this point (see Central Stores vs Minister William Herminie and Another, judgment dated 25 February 2005; Harry Berlouis and Francis Gill, SCA No. 13 of 2003)".*

- [17] *Turning to this appeal, having failed to comply with rule 18 of the Seychelles Court of Appeal Rules, I am duty-bound to strike out the notice of appeal.*

[18] *Consequently, I dismiss this appeal in its entirety. I uphold the order of the learned appellate Judge dismissing the Applications: MA No. 156/2020 and MC No. 69/2020."*

43. In **Cedric Petit**, *supra*, the ground of appeal was framed in the following words —

*"The trial Judge erred in the interpretation of sections 97 and 98 of the Code and as a result, the entire judgment is based on an erroneous proposition of law."*

44. In **Salameh**, *supra*, the Court of Appeal struck out the notice of appeal because the grounds of appeal were poorly drafted and contravened rule 18 (7) of the Seychelles Court of Appeal Rules.

45. Mr Hoareau also referred the Court of Appeal to **S v S**, in which the court referred to the following extracts from *Ferguson v Whitbread & Co plc* 1996 SLT 659, where it was said by Lord President Hope at page 659L concerning certain grounds of appeal in that case

—  
*"[10] [...] the preparation of the grounds of appeal, which require to be lodged as a step in process, should never be regarded as a mere formality. The purpose of the rule, which is a simple example of case management, is to give notice to the parties and to the court of the points which are to be argued. Specification of the grounds enables the parties to direct their argument, and their preparation for it, to the points which are truly at issue. "*

46. Counsel for Renato did not offer any reliable submissions to counter the submissions of Mr Hoareau.

47. Having considered grounds one, two, three, four, five and six of the grounds of appeal in light of the submissions of Mr Hoareau, we have no hesitation in concluding that the said grounds of appeal are vague and do not give Adrian fair notice of what case he must be prepared to answer.

48. Despite having concluded that ground two is vague or general in terms, we state that we have no qualms with the finding of the learned Judge that — *"[...] the pleadings by way of petition has not resulted in any prejudice being caused to the respondent."* This finding of the learned Judge was grounded, for instance, on the case of *Quilindo and Ors v*

*Moncherry & Ors SCA29/2009 (6 December 2012)*, in which it was held that where no prejudice has been suffered by the case being initiated by petition, where it should have been initiated by way of plaint, *"such technical objections should not affect the fair administration of justice"*.

49. As Renato has failed to comply with rules 18 (3) and (7) of the Seychelles Court of Appeal Rules, we are duty-bound to strike out grounds one, two, three, four, five and six of the grounds of appeal, which stand dismissed.

*Ground seven of the grounds of appeal*

50. With respect to ground seven, Counsel for Renato submitted in his skeleton heads of argument that — *"[i]t is dealt with on page 114 onwards of the booklet"*. We note that the record at the appeal contains 1530 numbered pages. We also observe that Counsel for Renato at the appeal did not offer any reliable submissions with respect to this ground of appeal.
51. We find that the skeleton heads of argument filed with respect to ground seven did not conform to rule 24 (2) (b) of the Seychelles Court of Appeal Rules, which stipulates that — *"[t]he heads of argument shall be clear, succinct and shall not contain unnecessary elaboration."*
52. For the reasons stated above, ground seven stands dismissed.

**The Decision**

53. Grounds one, two, three, four, five, and six of the grounds of appeal are struck out and stand dismissed.
54. Ground seven stands dismissed.
55. The appeal is dismissed in its entirety with cost in favour of the Respondent, Stefan Adrian Iliescu.



F. Robinson JA

I concur:-

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Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated, and delivered at Ile du Port on 26 April 2023.

**ANDRE JA**

**IN ADDITION TO THE JUDGMENT OF ROBINSON JA**

- [1] I have read the judgment of Learned Robinson JA, and I am in concurrence with the judgment but I wish to however, further add to paragraph 48 of the judgment of Robinson JA.
- [2] According to the Amended Notice of Appeal, the Appellant is appealing against the whole of the judgment of Burhan J dated 25<sup>th</sup> August 2021 in MA101 of 2019 and “ancillary orders of previous judge M Twomey CJ before recusing herself”. The Appellant raises seven grounds of appeal. My addition focuses on the second ground of appeal in terms of the legality of form.
- [3] In the Skeleton Heads of Arguments, the Appellant addresses Ground 2 in paragraphs 56-58:

*“56. Ground 2. The learned judge erred in law in allowing the case to be brought by way of Petition instead of a Complaint for simple civil dispute between the parties and he erred in the substantive law and procedural law*

*57. This ground is sufficiently covered in the Appellants submissions in numerous places but it has to be mentioned that in the preliminary ruling of the trial judge's the tone of the case mentioned above continues with the judge almost accuses counsel of being on frolic of his own by the idea of using the Complaint rather than Petition argument see page 1521 of the booklet. Yet there is evidence that the same Respondent used another counsel to make the same demands using a Complaint in case **Stefan Iliescu v Stefan Petrescu and others c.s. 116 of 2020** page 139 of the booklet.*

*58. Please also see page 115 of the Booklet second paragraph 2 relating to procedural irregularity where the trial judge allowed the introduction of further documents by SI after Cross examination”*

- [4] It should be noted from the outset that the trial Court has ruled regarding the issue of the case being instituted by way of petition and affidavit in its Ruling of 15<sup>th</sup> October 2020, MC101/2019 (see pages 1521a-e of the brief)<sup>3</sup>. The Court dismissed objections to pleading being instituted by way of petition and affidavit instead of the plaint. The Appellant has not indicated in the Notice of Appeal that it is appealing against this particular ruling.
- [5] The issue thus is whether the suit could have been brought by petition or should have been brought by plaint.
- [6] The issue was addressed in the Ruling of 15<sup>th</sup> October 2020, MC101/2019 at paragraphs [3]-[11]. Firstly, the Court stated that certain provisions in the International Business Companies Act indicate that action can be brought by way of application before the court and therefore can be brought by way of petition and affidavit, not the plaint. The Appellant, the Respondent in Supreme Court, argued then that under section 23 of the Seychelles Code of Civil Procedure, every suit must be instituted by filing a Plaint.
- [7] In the Petition, the Petitioner, the Respondent in the present suit, among other prayers asked that the change of ownership of the company be declared unlawful, null, and void and also for the direction that the Registered Agent amends its register to reflect that the Petitioner is the owner of the company. Under section 358 of the IBC Act 2016 which deals with the Rectification of the Register of Beneficial Owners, the Court may on an application order such rectification and may also determine any question relating to the right of a person who is a party to the proceedings to have his name entered or omitted from the register of beneficial owners.<sup>4</sup> The issue between the parties was relating to exactly that – beneficial ownership of the company.

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<sup>3</sup> <https://seylit.org/sc/judgment/supreme-court/2020/758>

<sup>4</sup> Rectification of register of beneficial owners

358.(1) If – (a) information that is required to be entered in the register of beneficial owners is omitted from the register or inaccurately entered in the register; or

(b) there is unreasonable delay in entering the information in the register, a beneficial owner or member of the company, or any other person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified.

(2) On an application under subsection (1), the Court may –

(a) either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register of beneficial owners, and may direct the company to pay all costs of the application and any damages the applicant may have sustained;

(b) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of beneficial owners, whether the question arises between –

(i) two or more beneficial owners or alleged beneficial owners; or

(ii) between one or more beneficial owners or alleged beneficial owners and the company; and

(c) otherwise determine any question that may be necessary or expedient to be determined for the rectification of the register of beneficial owners.

- [8] It was stated in the Ruling, that the Counsel for Renato argued that, “it is wrong statement by law, if learned Counsel for the petitioner contends that his case has been brought using special procedures under the IBC Act which in his view does not exists” and referred to *Batcha v Gopal and Anor* (CA 16/2011) [2011] SCSC 96 (01 December 2011) (see paragraph [4] of the Ruling).
- [9] In *Batcha v Gopal and Anor* (CA 16/2011) [2011] SCSC 96 (01 December 2011)<sup>5</sup> the plea in limine raised was that the matter had been wrongly instituted by way of plaint instead of by petition in accordance with the Companies Act (Supreme Court Proceedings) Rules 1972, S.I. No. 94 of 1972. The Court held that the suit has been wrongly instituted:

“Rule 3 of the Companies (Supreme Court Proceedings) Rules, states,

*‘Except in the case of applications by way of appeal to the court from a decision, order, act or omission of the Registrar of Companies and of applications made in proceedings under Part VI of the Act, every application to the court under the Act shall be made by petition in accordance with these rules.’*

*It appears pretty clear from the foregoing rule that ‘every application to the court’ under the Companies Act, ‘shall be made by petition in accordance with these rules.’ On the face of it this rule appears mandatory with the use of word shall.*

*The question that must be answered is whether the plaintiff’s action is an action brought under the Companies Act. The plaintiff is complaining about the sale of company assets without his involvement as a director of the company. He alleges that no resolution was passed by the directors authorising such sale. He claims to be shareholder of 10% shares in the company which is a minority shareholder.*

*Ordinarily a shareholder cannot bring an action on behalf of the company or purportedly to protect company assets given the separate personality between the shareholder and the company. It is only under the purview of the Companies Act that an action can be commenced in such circumstances as are covered by Section 201 of the Companies Act, which states,*

*‘201.(1) Any shareholder of a company who complains that the affairs of the company are being conducted in a manner which is oppressive or unfairly prejudicial to some part of the share holders (including himself) or, in a case falling within section 190(3), the Registrar, may make an application by way of*

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<sup>5</sup> <https://old.seylii.org/sc/judgment/supreme-court/2011/96>

petition to the court for an order under this section. (2) If on the hearing of the application the court is satisfied either:- (a) that the applicant, either alone or together with other shareholders, has been treated oppressively in one or more respects over a period of time, or that action has been taken by the persons who are or were in control of the affairs of the company, being action which was known by them to be likely to prejudice unfairly the interests of the applicant, either alone or together with other shareholders; or (b) the persons who are or were in control of the affairs of the company have been guilty of serious misconduct or breaches of duty which has or have prejudicially affected the interests of the applicant, either alone or together with other shareholders; the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or for the acquisition of any such shares by the company and, in the case of such an acquisition by the company, for the reduction accordingly of the company's capital, or otherwise.'

*The plaintiff's action is complaining of misconduct of the defendant no.1, the director that was running the company and the majority shareholder. That action can only be brought in accordance with the Companies Act that regulates companies and cannot be brought by way of undefined general principles of law as Mr Rajasundaram submitted. A company is a different person from its members as noted in Salomon v Salomon [1897] A C 22. The plaintiff is not the owner of the assets or property over which he has commenced an action. He has no right to commence such action in the manner he has done. It is not his property.*

*I agree with Mr Basil Hoareau that this action is wrongly brought by plaintiff. The plaintiff could only have brought this action under section 201 of the Companies Act and then only by way of petition as provided for under the relevant rules, The Companies (Supreme Court Proceedings) Rules. Such an action could be commenced in his capacity as a minority shareholder. Where there is a specific law by way of legislation covering a specialised subject it must be risky in the extreme to ignore the special vehicle created for the resolution of such a dispute and purport to go for general principles of law without citing any as Mr Rajasundaram chose to do."*

[10] The case referred to by the Appellant's Counsel before the trial Court, therefore, appears to support the argument of the Petitioner before the trial Court, not his own argument.

[11] Moreover, the Petitioner, the Respondent in the present appeal, argued before the trial court that filing of a wrong application is not fatal to the case and relied on cases Hoareau & Anr v Karunakaran & Ors [2017] SCCA 33, Mary Quilindo and ors v

Sandra Moncherry & Ors [2012] SCCA 39 and Nina Aleksandrovna Fadeeva v Sofia Georgiyevna Kucheruk Civil Side MC 84/2017.

- [12] The trial Court followed the Court of Appeal precedent established in Quilindo & Ors v Moncherry & Ors (SCA 29 of 2009) [2012] SCCA 39 (06 December 2012)<sup>6</sup> which held that where no prejudice was suffered by the proceedings being initiated by petition and not by a plaint such technical objections should not affect the fair administration of justice. The Court in Quilindo relied on Privy Council decision in Toumany and anor v Veerasamy [2012] UKPC 13 and held :

“[25] . . .

*The same analogy can be brought to this case. No prejudice whatsoever was suffered by the Appellants by the proceedings being initiated by petition instead of plaint. In fact the issue was not raised until at the close of the Appellant's case. Lord Brown considered these technicalities a blot on the record of Mauritius for the fair administration of justice. We do not need to fall in the same trap.*

*[26] We are of the view that in affiliation proceedings until and unless procedures and forms of pleadings are clearly indicated, an applicant cannot be denied the right of hearing for want of proper pleadings. For the moment it would appear that either a plaint or a petition is acceptable as proper pleadings by which such action might be commenced.”*

- [13] In Seychelles International Business Authority vs Jouaneau and another (SCA 40 and 41 of 2011) [2014] SCCA 28 (14 August 2014)<sup>7</sup> the Court of Appeal dealt with the same issue and noted Quilindo & Ors v Moncherry & Ors in the context of judicial review. The court observed:

“[31] . . . The Seychelles Code of Civil Procedure is also not very enlightening on this issue. In its section 2 it defines “suit” or “action” as “a civil proceeding commenced by plaint” and a “cause” as “any action, suit or original proceedings between a plaintiff and a defendant.” There is no definition of “application.” In England the procedure for judicial review is by notice of application supported by affidavit. Traditionally, in Seychelles, judicial review applications are made by petition, probably because of the Supreme Court Rules. The judicial review sought in this case is not under the constitutional supervisory jurisdiction of the court but rather under a statutory scheme which does not clarify the procedure to be adopted. Section 23 of the Seychelles Code of Civil

<sup>6</sup> <https://seylil.org/sc/judgment/court-appeal/2012/39>

<sup>7</sup> <https://old.seylil.org/sc/judgment/court-appeal/2014/28-0>

*Procedure indicates that “every suit shall be instituted by filing a plaint.” The issue arising is whether this case was wrong suited which would be fatal to the proceedings (see *Choppy v. Choppy*(1956) SLR 162). A similar issue arose in the case of *Quilindo v Moncherry* (unreported)SCA 29/2009 in which we referred to the Mauritian case of *Toumany and anor v Veerasamy* [2012] UKPC 13 . . .*

*[32] No prejudice whatsoever was suffered by the Appellants by the proceedings being initiated by petition instead of plaint. In fact the issue was not raised until at the close of the Respondent’s case in which counsel admitted that no express procedure was provided for in the statutory scheme. The matter was not specifically addressed by the court as it felt it would be sitting on appeal on its own decision. In our opinion the learned trial judge missed the point; whilst he could not address the issue of duplicity again, there had been no decision made on the issue of the form of proceedings to be brought in cases of judicial review. We are of the view that given the lack of clarity in the procedural law we cannot fault counsel for the form of proceedings he brought. We do however hazard to say that given the analogy of judicial review under the Constitution it would have been preferable to bring the matter by way of petition instead of a plaint. . . .”*

[14] The Court therefore also made emphasis on the lack of express procedure in the statutory scheme. In my view, in the present case, the statutory procedure is not as express as in *Batcha v Gopal and Anor* case, however, it is also not non-existent. As pointed out above, section 358 of the IBC Act states that upon application the Court may determine the issue of the beneficial ownership.

[15] Decision in *Quilindo v Moncherry* was further followed in *Ablyazov v Outen & Ors* [2015] SCCA 23 which is also noted in the trial Court’s Ruling (paragraph [9]). In *Civil Construction Company Limited v Leon & Ors* (SCA 36 of 2016) [2018] SCCA 33 (13 December 2018)<sup>8</sup> the majority judgment of the Court of Appeal however also pointed out that such application is not without a limit:

*“[48] Respondents 3 to 6 were minors at the time the suit was filed. They had no capacity to sue in their own right given the provisions of Article 450 (1) of the Civil Code. As in the case of *Rose and others vs Civil Construction Company Limited* [2014] SCCA 2 (11 April 2014), there was no representative action taken on their behalf. Either of the parents of the minor children would be entitled to sue in a representative capacity as the guardians of the children under section 73 of the Seychelles Civil Procedure Code. However, the plaint should have stated that representative status, and it did not.*

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<sup>8</sup> <https://seylji.org/sc/judgment/court-appeal/2018/33>

*[50] In the present case, the plaint was therefore wrongly brought on behalf of the minor children, the Third to Sixth Respondents. We therefore uphold this ground of appeal.*

*[51] The cases referred to by Mr. Derjacques with regard to the court condoning mistakes in procedures to achieve the ends of justice can be distinguished from the present suit. The oft quoted statement by Domah JA that “...procedure is the hand-maid of justice and should not be made to become the mistress” in *Ablyazov v Outen & Ors* [2015] SCCA 23 concerned a suit started by petition instead of by plaint. Similarly for the cases of *Mary Quilindo and Ors v Sandra Moncherry and Anor* (unreported) SCA 29 of 2009 and *Toomany and Anor v Veerasamy* [2012] UKPC 13). They have no bearing on the present appeal.*

*[52] There must be a limit as to how far the court in the name of justice should make a case for the plaintiff. Ours is an adversarial legal system and judges are not advocates for the parties. We cannot engage in this exercise.”*

## **CONCLUSION**

- [16] Considering the above decisions, it appears, firstly, that filing a suit in the wrong form is not always fatal. Secondly, the Court will have regard whether there is express statutory procedure and whether incorrect filing has caused prejudice. Thirdly, in the present case, the IBC Act makes express reference to the application to Court in the context of a beneficial ownership dispute.

.....

**ANDRE JA**

Signed, dated, and delivered at Ile du Port on 26 April 2023.

