

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 23 (26 April 2023)
Consolidated Civil Appeal SCA
19/2021 and SCA 21/2021
(Arising in [2021] SCSC 299 out of
CS 79/2018)

In the matter Between

**Thony Clement Adeline acting through
His Curator Sydna Lavigne**
(rep. by Mr. Kieran Shah)

Appellant

And

Alwyn Talma
(rep by Mr. Frank Elizabeth)

Respondent

Neutral Citation: *Adeline v Talma* (Consolidated Civil Appeal SCA 19/2021) and SCA 21/2021) [2023] SCCA 23 (26 April 2023) (Arising in [2021] SCSC 299 out of CS 79/2018)

Before: Dr. M. Twomey-Woods, Robinson, Andre JJA

Summary: Whether there is a valid contract of sale of land between the parties – If there is a valid contract of sale, should it have been rescinded by the Court a quo – What is due to be paid.

Heard: 13 & 21 April 2023

Delivered: 26 April 2023

ORDER

The Court makes the following Orders:

- i. The appeal of Talma is dismissed in its entirety.
- ii. The appeal of Adeline succeeds on ground 2 (b).
- iii Talma is ordered to pay SCR377, 485.87 together with legal interest from the date of the agreement, within one month from the date of this judgment upon which

Parcel PR 957 shall be transferred into his name, failing which the total sum of SCR 622,514.13 shall be reimbursed to him by Adeline.

iii. Costs are awarded in favour of Adeline.

JUDGMENT

ANDRE, JA

INTRODUCTION

[1] There are two consolidated appeals in this matter namely SCA 19/2021 by Alwyn Talma (Talma) against Tony Clement Adeline, represented by his curator Sydna Lavigne (Adeline), being dissatisfied with the decision of learned Judge Pillay given at the Supreme Court on 10 June 2022 in Civil Side No. CS No. 70 of 2018, wherein the honourable Pillay J made the following determination: *‘In the circumstances, I exercise my discretion to confirm the sale of PR 957 to the Defendant/[Talma]; the defendant having paid the sum of SCR 355,000/- shall settle the outstanding balance of SCR 645,000/- within 3 months of today’s date with interest at the legal rate from the date of filing of the case; In the event that the balance is not settled within the time the Plaintiff/[Adeline] shall refund the Defendant/ [Talma] the sum of SCR 355,000/- and the Registrar of Lands shall remove the Defendant/[Talma] as proprietor of PR 957 and instead register the Plaintiff/[Adeline] as the proprietor of PR 957, on proof of payment of the sum of SCR 355,000/; Costs are awarded to the Plaintiff/[Adeline]...’*

BACKGROUND

[2] Adeline and Talma entered into an agreement of sale for Parcel PR 957 which was to be sold at SCR 1 million. It is Talma’s case that the terms of the agreement were that the

purchase price could be paid in monthly instalments of SCR 5,000. Sometime in 2015, a curator was appointed to act on behalf of Adeline due to his deteriorating physical and mental conditions. It is then, that the concerns about the contract of sale arose, and a suit was filed against Talma. It was argued that the deed of transfer for Parcel PR957 was null and void because it failed to satisfy one of the essential conditions of the contract, i.e. consent. Another argument advanced by Adeline was that Talma had not paid the full sale price and thus, the contract of sale should be rescinded.

- [3] The court *a quo* dismissed the plaint and ordered payment by Talma to Adeline of what it considered the remaining balance of SCR 645,000 within 3 months from the judgment.
- [4] Further, and in the event that Talma failed to settle the said balance, the court ordered that Adeline must refund SRC 355,000 to Talma, following which the Registrar of Lands would register parcel number PR957 into Adeline's name.
- [5] In light of the above, both parties appeal against the decision.

GROUND OF APPEAL

- [6] Talma raises four grounds of appeal which state *verbatim* as follows:

Ground 1

The learned Judge erred when she ruled that the Appellant having paid the sum of SCR 355,000 shall settle the outstanding balance of SCR 645,000 within 3 months of today's date with interest at the legal rate from the date of filing of the case. The Appellant submits that he has paid SCR 703,020.60.

Ground 2

The learned judge erred when she gave the Appellant 3 months to pay the outstanding balance of SCR 645,000 which is unreasonable in all the circumstances of the case.

Ground 3

The learned Judge erred when she held that in the event of the balance not settled within that time the Plaintiff shall refund the Defendant the sum of SCR 355,000 and the Registrar of lands shall remove the Defendant as proprietor of PR957 and instead

register the Plaintiff as the proprietor of PR957, on proof of payment of the sum of SCR 355,000.

Ground 4

The learned Judge erred when she held that no reasonable person would accept the sum of SCR 1 million to be paid in instalments of SCR 5,000 per month. This goes contrary to freedom of contract under the law.

[7] Adeline on the other hand raises two grounds of appeal which read *verbatim* as follows:

1. *The learned trial Judge was in error to hold that the sale of the property parcel PR957 was valid having regard to all the circumstances generally which show there was no valid consent, and in particular, the disingenuous manoeuvres of the Respondent calculated to the Appellant to sell the land, including misleading on the value and payment of the purchase price, that the parties could not have been ad idem to effect a sale.*
2. *The learned trial Judge was in error to exercise her discretion to rescind the sale and grant the Respondent time to pay R 645,000:*
 - (a) *As the Respondent has not pleaded nor made it a live issue in the hearing for the exercise of the Court's discretionary power;*
 - (b) *The sum paid of R 5,000 per month was not part payment but was equivalent to interest value one could expect on a return on investing Rupees 1 million being the purchase price.*
 - (c) *The reprehensible conduct of the Respondent playing on the weaknesses of the Appellant for the Respondent's ultimate aim of getting him to sell the property did not justify the exercise of the Court's discretion in the Respondent's favour.*

SUBMISSIONS OF PARTIES

[8] Per Rule 24 of the Court of Appeal Rules of 2005, both parties have filed skeleton heads of arguments of the 27th February 2023 and 10 March 2023 respectively, and of which due consideration has been given thereto in this Judgment.

ANALYSIS OF THE CONSOLIDATED GROUNDS OF APPEAL.

THE ISSUES TO BE DETERMINED IN THIS APPEAL

[9] Having read through the grounds of appeal, heads of arguments filed in accordance with the Rules of the Court (*supra*), and what the parties submitted during the oral hearing of 13 April 2023, we consider the following to be the main issues to be determined in the present proceedings:

- ii. *Was there a valid contract of sale of land entered into between the parties?*
- iii. *If there was a valid contract of sale, should it have been rescinded by the Court a quo?*
- iv. *What is due to be paid?*

On whether there was a valid contract for the sale of land parcel PR 957

[10] For purposes of this consolidated appeal and issues to be determined, we consider Adeline's case in the court *a quo* to have been based on three main tenets. Firstly, it was that there was no valid consent to an agreement to sell Parcel No PR957 because Adeline had no command of English and could not have understood what the said sale document was about. Secondly, it was that the transfer sum of SCR 1 million was not paid, thereby breaching a fundamental requirement of the sale. Thirdly and finally, it was that the transfer document was defective.

[11] Talma on the other hand argued that Adeline was lucid, in full control of his mental faculties, and thus able to give valid consent. In respect of having not paid the full sum of

SCR 1 million, Talma argued that there was an arrangement to make the payments in instalments, and any reflection on the transfer deed that the full sum was paid was done only to comply with the law. Substantial payments had been made to meet the obligation of the payment agreement between the parties. In respect of the transfer document being defective, Talma contended that the deed was drafted and executed by a qualified Notary of many years of standing and the transfer conformed to the laws of Seychelles.

[12] The learned trial Judge found that despite the circumstances (as she details and makes findings on the issues in paragraphs [24] to [36] of the impugned judgment), there was a valid sale of parcel PR947 between Talma and Adeline because there was no mistake vitiating consent. Therefore the contract was valid in law.

[13] It is Adeline's submission before this Court that the learned Judge erred in her conclusion, faced with the deceptive conduct of Talma, to have concluded that there was valid consent needed for the contract of sale of land to hold. It is the submission of learned counsel for Adeline that a contract is concluded as a result of the meeting of autonomous minds. And that because Adeline has a curator, it is evidence of a lack of that autonomous mind due to alcoholism, the latter of which has been admitted by Talma. Further evidence that Adeline was not of autonomous mind is the manner in which the deed was signed, wherein he had inserted a thumbprint. As such, his cognitive capacity to enter into a contract of sale is undermined, demonstrating that his mental faculties had deteriorated by years of alcoholism and addiction. It is the further submission of counsel for Adeline that the above account vitiates the two requirements of a contract: namely the consent of parties to bind themselves and the capacity to enter into a contract. Counsel has relied on *Chetty v Chetty* (2008-2009) SCAR 167 and Article 1108 of the Civil Code to support his arguments.

[14] The consent to bind oneself to a contract is clear where the party has signed the contract. From the agreed facts of this case, it appears to me that Adeline did sign the transfer deed with his thumbprint. By this alone, it is easy to see how the learned Judge would have made a finding that Adeline was not misled into signing the transfer (paragraph [37] of the impugned judgment).

- [15] However, the consent is being challenged based on the mental faculties of Adeline and the disingenuous manoeuvres by Talma based on the knowledge of the same.
- [16] It was admitted in the Court *a quo* that Adeline suffered from alcoholism and addiction which led to a curator, Ms. Sydna Lavigne being appointed. The land transaction, however, occurred before the appointment of a curator. This is why Talma argues that Adeline was in full control of his mental faculties and therefore validly consented to the sale agreement.
- [17] The trial judge found (and with whom we agree) that although Adeline used his thumbprint to sign, it was a valid signature of the agreement. The use of the thumbprint was not evidence that he had not consented but rather that he might have been physically impaired because of his alcoholism.
- [18] Adeline's use of the thumbprint was done in the presence of Mr. Nichol Gabriel, a Notary who is bound by the provisions of the Notaries Act among other things. The reason advanced by Mr. Nichol Gabriel as to the use of the thumbprint was that there was a need to 'save time'. At the same time, we note that the signing by Adeline was done in the presence of Mr. Gabriel's staff as the witness, contrary to the law. Further, the thumbprint in question is not followed by any description of which thumb and the reasons for the use of a thumbprint instead of a hand signature.
- [19] It should be concerning if a Notary, often operating in the most sensitive areas of a person's life such as dealing with the conveyancing of property, considered it necessary to rush through the signing of transfer documents to 'save time.' Moreover, there are serious concerns where the notary of record has not complied with paragraph 6 of the Schedule to the Notaries Act, which requires that the reasons for the inability to sign be recorded. It was not recorded in this instance. Furthermore, the witnesses who were present to witness the signing of the deed were also disqualified by virtue of being employees of the notary Mr Nichol Gabriel.
- [20] It is clear to us, as it was to the learned trial Judge who based on her finding in paragraph [35] that Talma, with the assistance of the Notary, took advantage of the mental faculties

of Adeline which were limited due to alcoholism and epilepsy. There should be serious public policy concerns to be noted in this regard even in the face of Section 21 of the Notaries Act which provides limited circumstances where a deed is void.

- [21] Nevertheless, the main issue raised by Adeline is the lack of consent. Article 1109 of the Civil Code provides circumstances where consent can be vitiated – and this is if the same is given by mistake, extracted by duress, or induced by fraud. Counsel for Adeline argues that there was mistake as to the substance because there was a misrepresentation in respect of the value of the property.
- [22] Previous decisions of this Court highlight that mistakes as contemplated in Article 1109 can either relate to substance or to the personal qualities of the contracting party (see *University of Seychelles v AG* [2015] (SCA 11 of 2013) [2015] SCCA 16 (16 April 2015)). In the present case, I note that what was pleaded was mainly lack of consent, due to Adeline’s poor command of the English language. To support this, learned counsel for Adeline relied on the case of *Houareau v Houareau* (216 of 2008) [2011] SCSC 16 (18 March 2011) where a contract for the sale of land was considered null and void due to consent being obtained by a misrepresentation of facts, i.e. the substance. In the present case, however, and as the learned Judge Pillay correctly found, no mistake could be found on the evidence either in relation to substance or the personal qualities of Adeline.
- [23] We also note that in the *Plaint* before the court *a quo*, it was pleaded that Adeline is a feeble-minded person. This, in our view, would have gone to the heart of his capacity to contract and perhaps would have come to his aid had it been properly pleaded and substantiated in written submissions. However, this Court is bound by the pleadings of the parties and therefore, we cannot consider the issue of capacity.
- [24] Therefore in line with the above analysis, I find that the learned Judge did not err when she found that there was no mistake in the facts to vitiate the consent and therefore the contract was valid. As such, ground 1 of Adeline’s appeal has no merits.

On whether rescission was to be granted

- [25] Having found that the contract of sale between the parties who signed it was validly formed, the issue concerning the rescission of the said contract under Article 1184 of the Civil Code of Seychelles does not arise for consideration. In any event, this Court does not have to consider the issue of rescission of the contract of sale under Article 1184 of the Civil Code of Seychelles, given that it applies in case either of the parties does not perform his undertaking. In the present appeal, this Court is not concerned with the performance of the contract of sale but with its formation.
- [26] However, in view of ground 2 of Adeline's appeal, and for the sake of clarity, we make the following observations.
- [27] In the Court *a quo*, Adeline argued in the alternative that should the trial court have found a valid contract, the same should have been rescinded due to Talma's failure to pay the full purchase price. In response to this argument, Talma submits that part of the sale agreement was not to pay the full sum, but rather to pay in instalments, which was done in compliance with the obligations therein.
- [28] The learned trial Judge made a finding that Talma took advantage of Adeline knowing full well that the latter suffered from alcoholism and was only looking for his next drink. Another finding made by the learned Judge was to the effect that on the evidence it looked more likely than not that Talma decided to have the purchase price paid in instalments. That notwithstanding this, the sale was valid, and rescinding the contract was denied. Instead, the learned Judge proceeded to exercise her discretion to order the balance to be paid within 3 months, failure of which would mean the Registrar of Lands must remove Talma as the proprietor of PR957.
- [29] Talma appeals the decision to have him pay the balance within three months on the basis that it is unreasonable. He also argues that the learned Judge erred when she said he had only paid SCR 355,000 at the time, and that he had so far paid SCR 703,020.60 to Adeline for the property.

- [30] Adeline on the other hand challenges the decision to exercise discretion in the manner that the learned Judge did on the basis that (a) it was not pleaded; (b) SCR 5,000 was not a part payment but equivalent to interest Adeline would have enjoyed had he been paid the full SCR 1 million purchase price; and (c) the reprehensible conduct of Talma playing on the weaknesses of Adeline.
- [31] It is trite law that rescission is given where there has been a breach of contract. Even then, the Court has wide discretion because it may extend the time for the party to pay (per Sauzier J in *Philips v Vista do Mar* [1973] SLR 394, see also Article 1184 of the Civil Code). The learned judge could have exercised this discretion, but doing so in due consideration of the purchase price and the deed of transfer as we explain below.
- [32] Contrary to what counsel for Talma submits on SCR 5,000 instalments being valid terms of the agreement, we note that the deed of transfer tells a different tale. It was signed on 20 June 2013 and registered on 22 August 2014. In it, it is averred that the full consideration was paid to Adeline. This is not true – because Talma paid and continues to pay the part payments in SCR 5,000 each month. So what this Court is faced with is a deed that is averring an untrue statement yet the same deed cannot be considered to be void between the parties by Section 21 of the Notaries Act.
- [33] Be that as it may, we consider that the full amount should have been paid to meet the averment/condition in the deed of sale that ***‘In consideration of one million rupees (1,000,000SR) (which sum the Vendor hereby acknowledges having received)...’*** The statement triggered, in our view, a new obligation to meet the purchase price of SCR 1 million on the date when the deed was signed. We, therefore, reject the argument of learned counsel for Talma that the trial Judge ordering Talma to pay the remaining balance in 3 months was unreasonable in the circumstances. This is because the deed expressly states that Talma had paid the full consideration for the property. In saying so, he has bound himself with the same and should have paid the full purchase price on or before the deed of sale was signed on 20 June 2013.
- [34] As Talma did not pay the full purchase price, Adeline was correct to approach the court for an order for rescission of the contract. However, rescission is not automatic. Article

1184 of the Civil Code empowers the Courts of Seychelles to decide on whether the contract must be rescinded or confirmed.

[35] We consider that the contract need not be rescinded, because Talma has paid a substantial amount of the purchase price, which we shall come to later.

[36] On consideration of the above, we find that ground 2 (a) and (c) of Adeline's appeal has no merit. Simultaneously, grounds 2, 3, and 4 of Talma's appeal also have no merit.

On what is due to be paid by Talma towards the purchase price

[37] We are therefore faced with what is due to be paid to Adeline by Talma.

[38] It is the contention of Talma in ground 1 of his appeal, that he has paid SCR703, 020.60. At the hearing of 13 April 2013, we asked the parties to this appeal to file an agreed statement of account of sums paid by Talma towards the property. The parties however failed to do so and have submitted different amounts to this effect.

[39] Counsel for Talma submits that his client has so far paid SCR 755,006.29 which comprises of both the bank statements and some cash payments evidenced by receipts and which were admitted in evidence in the lower court. Of this SCR 755,006.29, it is submitted that SCR 355,000 was paid in bank transfers, SCR 155,066.29 was paid in cash, and SCR245, 000 by cheques. Counsel for Adeline submits that the payments made to his client so far amount to SCR 600,000 from bank statements. Counsel for Adeline also sums up the amounts on receipts that were admitted in evidence and submits that a total of SCR66, 717.60 was paid.

[40] It would appear that counsel agree on SCR600,000 to have been made by bank transfers and cheques, and disagree in respect of the cash payments. Counsel for Talma states cash payments issues amount to SCR155,066.29, while counsel for Adeline submits that it was only SCR66,717.60 on the evidence on record. Further to the SCR66, 717.60, counsel for

Adeline argues that anything paid after September 2015 cannot stand because his client was now under curatorship and did not have the capacity to receive the said payments.

[41] We note that the learned trial Judge came to a figure of SCR 355,000 which is only that which was reflected in the Bank Statements on record. To us, and in consideration of the above – it was only SCR 600,000 paid towards the purchase price, plus those cash payments up to the time when Adeline had capacity, which amounts to SCR 22,514.13. Thus, we find that SCR 622,514.13 has been paid by Talma to date. What remains to be paid is therefore SCR 377, 485.87.

[42] However, the unpaid balance under the contract is subject to interest. We therefore partially agree with ground 2 (b) of Adeline’s appeal on the point that interest ought to have accrued on the balance of the purchase price.

[43] On consideration of the above, ground 2 (b) of Adeline’s appeal succeeds and simultaneously, ground 1 of Talma’s appeal fails.

CONCLUSION

[44] In the result, we conclude as follows. There was a valid contract of sale of land between the parties for the sum of SR 1 million payable on or before 20 June 2013.

[45] We also find that the learned Judge erred in her appreciation of the amounts that had been paid both by cheque and in cash. We find that a total amount of SCR 377,485.87 is owed together with interest at the legal rate from the day the agreement was signed, that is on 20 June 2013.

ORDER

[46] This Court makes the following orders:

- (i) Appeal of Talma is dismissed in its entirety.
- (ii) Appeal of Adeline succeeds on ground 2 (b).

(iii) Talma is ordered to pay SCR377, 485.87 together with legal interest from the date of the agreement, within one month from the date of this judgment upon which Parcel PR 957 shall be transferred into his name, failing which the total sum of SCR 622,514.13 shall be reimbursed to him by Adeline.

(v) Costs are awarded in favour of Adeline.

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

S. Andre, JA

I concur

Dr. M. Twomey-Woods

I concur

Robinson, JA

