Reportable
[2023] SCCA 24 (26 April 2023)
SCA 26/2021 and SCA 27/2021
(Arising in CS 59/2017)

Meria Nourrice Appellant
(rep. by Amanda Faure)

and

Jeanne D'Arc Isabelle Savy Respondent
(rep. by Serge Rouillon)

Cross-Appeal

Jeanne D'Arc Isabelle Savy Cross - Appellant
(rep. by Serge Rouillon)

and

Meria Nourrice First Cross - Respondent
(rep. by Amanda Faure)

and

Lucie Pool Second Cross – Respondent
(rep. by Kieran Shah)

Neutral Citation: *Nourrice v Savy* (SCA 26/2021 and Savy v Nourrice and Another SCA 27/2021) [2023] SCCA 24 (Arising in CS 59/2017 (26 April 2023)
Before: Robinson**,** Tibatemwa-Ekirikubinza, Andre, JJA
Heard: 12 April 2023
Summary: Civil Code of Seychelles **—** contracts and obligations **—** sale — promise to sell — whether or not the promise to sell was unilateral or bilateral — damages — specific performance is possible
Delivered: 26 April 2023

ORDER

(i) I quash the order of the learned Judge, at paragraph [80 (1)] of her judgment, that Meria — *"*[t]*he first defendant shall pay the sum of SCR 1 million rupees in damages to the Paintiff"*.

(ii) I substitute therfor an order that Meria shall transfer the ownership of parcel V18949 together with a house standing thereon situated at Foret Noire to Jeanne D'Arc on or before the 30 July 2023 on the payment by Jeanne D'Arc of the balance of the purchase price in the sum of SCR950,000/-. Jeanne D'Arc shall make payment of the sum of SCR950,000/- on the date of signature of the transfer of ownership of parcel V18949.

(iii) Jeanne D'Arc shall pay all fees with respect to the transfer of ownership of parcel V18949 as provided under the bilateral agreement dated 8 April 2016, exhibit P1.

(iv) Should Jeanne D'Arc fail to make payment on the date of signature of the transfer of ownership of parcel V18949, the bilateral agreement dated 8 April 2016, exhibit P1, shall be rescinded so that Meria would be relieved from the obligation to transfer the ownership of parcel V18949 together with a house standing thereon situated at Foret Noire to Jeanne D'Arc and the deposit shall be forfeited to Meria.

(v) The order of the learned Judge, at paragraph [80 (2)] of her judgment, that — *"*[t]*he first Defendant shall further pay the sum of SCR50,000.00 as moral damages to the Plaintiff"*, is upheld.

(vi) The order of the learned Judge, at paragraph [80 (3)] of her judgment — *"*[t]*he whole with interest from the date of judgment with costs"*, is also upheld.

(vii) With costs in favour of Jeanne D'Arc at the appeal.

JUDGMENT

ROBINSON JA

1. Meria Nourrice, then First Defendant, is the Appellant and First Cross-Respondent in this appeal and cross-appeal, respectively, hereinafter referred to as *"Meria"*. Jeanne D'Arc Isabelle Savy, then Plaintiff, is the Respondent and Cross-Appellant in this appeal and cross-appeal, respectively, hereinafter referred to as *"Jeanne D'Arc"*. Lucie Pool, then Second Defendant, is the Second Cross-Appellant in the cross-appeal, hereinafter referred to as *"Lucie"*.

The facts

2. In an amended plaint filed against Meria and Lucie, Jeanne D'Arc prayed *inter alia* for a judgment —

> *"a. for an order of Specific Performance ordering the 1st Defendant to transfer the agreed portion of land Tile V18949 with the house thereon to the Plaintiff for Rupees 1,500,000/- less the deposit already paid;*
>
> *and or in the alternative;*
>
> *b. ordering the Defendants jointly and severally to pay the Plaintiff damages in the sum of R1,531,934/- forthwith, and*
>
> *c. ordering the Defendants jointly and severally to pay the Plaintiff moral damages in the sum of R800,000/-*, […]."

3. In essence, the plaint contended that Meria, in a written agreement, under private signature, dated 8 April 2016, agreed to sell to Jeanne D'Arc parcel V5298, together with a house standing thereon situated at Foret Noire for and in consideration of the price of SCR1,500,000/-. The plaint averred that a *"deposit"* of SCR550,000/- was made towards payment of parcel V5298. It is undisputed that a *"deposit"* of SCR550,000/- was made towards payment of the purchase price.

4. Jeanne D'Arc contended that the common intention of the parties was to transfer the ownership of a parcel of land to be excised from the larger parcel V5298. It is also undisputed that four parcels of land were excised from parcel V5298. Meria became the absolute owner of parcel V18949 of an extent of 1507 square meters, a subdivision of parcel V5298.

5. The plaint averred that Meria and Lucie were aware that she had applied for a loan from the Seychelles Credit Union for SCR950,000/- to pay the agreed balance of the purchase price. The paragraph [11] of the plaint claimed that — *"*[i]*n December 2016 the 1st Defendant gave the Plaintiff an Official Search Certificate dated 1st December 2016; a Valuation Report dated 20th July 2015 and a letter to say that she was selling plot V18949 (subdivision of V5298) to the Plaintiff for her to give to her Bank to complete the loan process. The said letter from the 1st Defendant stated that she was selling the Title V18949 for Rupees One Million Five Hundred Thousand (Rs.1,500,000/-) to the Plaintiff"*.

6. The paragraph 13 of the plaint averred that the Seychelles Credit Union approved the loan taken by Jeanne D'Arc to finance the balance of the purchase price of parcel V18949. The Seychelles Credit Union deposited the proceeds of the loan in the account of Jeanne D'Arc's Counsel of record, following which Meria and Jeanne D'Arc fixed a date to sign the transfer of ownership of parcel V18949. However, they did not sign the transfer of ownership of parcel V18949 on the date agreed, as Meria informed Jeanne D'Arc that she was waiting for *"a road to be registered on the parcel of land"* before she would sign the transfer of ownership of parcel V18949. The parties postponed the signature of the transfer of ownership of parcel V18949.

7. The paragraph [14] of the plaint averred that another date was fixed for the parties to sign the transfer of ownership of parcel V18949. However, Meria did not transfer ownership of parcel V18949 to her on that day. The paragraph [14] of the plaint went on to aver that — *"the 1st Defendant appeared and produced a handwritten document with additional clauses to be inserted in the draft sale document including a restriction in her favour on the land to the effect that: "a. the Plaintiff should subdivide the property after she had bought the land and repaid her loan; b. the Plaintiff should extract 700 square metres from the land she buys and sell the same to the 1st Defendant; and c. the Plaintiff consents to a Restriction being placed on the property subject to the above conditions.".* Jeanne D'Arc did not accept the conditions contained in the handwritten document.

8. Jeanne D'Arc averred that the deposit is with Meria. Jeanne D'Arc also averred that she is willing to perform upon the agreement dated 8 April 2016 by paying the agreed balance of the purchase price in the sum of SCR950,000/- from the agreed price of SCR1,500,000/-. She claimed that Meria persistently refused to sign the transfer of ownership of parcel V18949.

9. Save for the admitted facts, Meria denied the claims made by Jeanne D'Arc. Meria objected to the trial court making an order for specific performance on the basis that the common intention of the parties was not to transfer the ownership of the property of an extent of 1507 square meters together with the two houses standing thereon *(at paragraph 20 of her defence)*. It is observed that Meria — *"admitted that the Plaintiff*

and the 1st Defendant agreed that the Plaintiff would purchase a house and a part of the property which would eventually belong to the 1st Defendant […] *at the time that the Plaintiff and the 1st Defendant visited the property at Foret Noire and the Plaintiff agreed on the purchase of that part of the property the whole of the said property was still co-owned and was in the process of being sub-divided and the Plaintiff knew and was informed of this fact* (at paragraph 2 of the defence)*."*

10. The paragraph [19] of the defence contended that Meria did not have to transfer ownership of parcel V18949 to Jeanne D'Arc as the latter had acted in breach of the agreement in that she — *"does not accept the conditions she had previously accepted"*. The paragraph [12] of the defence referred to the conditions stated at paragraph [14] of the plaint[1].

11. The defence also contended that Jeanne D'Arc had acted in breach of the agreement dated 8 April 2016 as she had not paid the *"deposit"* within the stipulated time. Meria asked the trial court to dismiss Jeanne D'Arc's action with costs.

12. Lucie filed a defence in which she contended *inter alia* in *limine litis* that the plaint discloses no cause of action against her and should be struck out, which plea was dismissed. Lucie filed a defence on the merits denying the claims made by Jeanne D'Arc.

The evidence of the parties

13. The learned Judge dealt extensively with the evidence. I have reproduced hereunder the following documentary evidence on the basis of which the learned Judge determined the nature of the transaction between the parties.

14. I reproduce verbatim the terms of the agreement dated 8 April 2016, exhibit P1, signed by Meria and Jeanne D'Arc in the office of Lucie —

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[1] *"a. the Plaintiff should subdivide the property after she had bought the land and repaid her loan; b. the Plaintiff should extract 700 square metres from the land she buys and sell the same to the 1st Defendant; and c. the Plaintiff consents to a Restriction being placed on the property subject to the above conditions."*

*"**PROMISE OF SALE***

*I, **Meria Lebon** of Foret Noire, Mahe, Seychelles (hereinafter referred to as the Promisor) **HEREBY PROMISES TO SELL AND TRANSFER** to Jeanne D'arc Savy of La Louise, Mahe, Seychelles (hereinafter referred to as the Promisee) the house standing on Parcel No. V5298, on the following terms and conditions:*

1. *The purchase price of the house is Rupees One Million Five Hundred and Fifty Thousand (R1, 500, 000) to the Promisor.*

2. *The Promisee shall put a deposit of Rupees Five Hundred and Fifty Thousand (R550, 000) to the Promisor.*

3. *The balance of Rupees Five Hundred and Fifty Thousand (R550,000) shall be paid at the end of July 2016.*

4. *The Promisee shall pay notarial fees stamp duty and any other costs incidental to the preparation, execution and registration of the transfer document.*

5. *This Promise of sale shall lapse and be void and of no effect if, after 4 months from the date of execution of the Promise of sale the Promisee fails to pay the balance of the purchase price whereupon the deposit paid shall be forfeited by the Promisor.*

Made in duplicate at Victoria, Mahe, Seychelles this _____ day of _____ 2016

Promisor *Promisee*

Signed by Meria Lebon and Jeanne D'Arc Savy who are known to me in my presence.

SD: Lucie A. Pool

NOTARY PUBLIC".

15. I reproduce verbatim the letter dated 7 December 2016, signed by Meria, exhibit P6, addressed to the Seychelles Credit Union, in which Meria stated that she was selling her parcel V18949 to Jeanne D'Arc. The exhibit P6 was given to the Seychelles Credit Union in support of Jeanne D'Arc's loan application to finance the agreed balance of the purchase price. The exhibit P6 stated —

"7th December 2016

The Manager

Seychelles Credit Union

Cooperative House

Victoria

Mahe

To whom it may concern,

RE: Sale of Land Parcel No. V18949

Dear Sirs,

I Meria Louise Nourrice nee Lebon of Foret Noire hereby notify and certify that I am selling my land situated at Foret Noire Parcel No. V18949 to Ms. Jeanne D'Arc Savy for the value of the sum 1.5 million Seychelles Rupees.

Thank you for your understanding.

Sincerely,

Ms. Meria Louise." Emphasis is mine

16. I also reproduce verbatim a handwritten document, exhibit P7 —

"V18949

1507m²

Subject to the following conditions :

(1) The Buyer shall subdivide the property after she repays the full amount of the loan

(2) The Buyer shall extract 700 square metres and transfer same on the seller

The Buyer consent to the Registrar entering a restriction in terms of the above conditions." Emphasis is mine

17. According to Jeanne D'Arc's evidence, on the second date fixed for the signature of the transfer of ownership of parcel V18949, Meria produced exhibit P7 containing additional clauses she wanted to be inserted in the transfer of ownership of parcel V18949, which she refused to accept.

18. Meria testified that she produced exhibit P7 in the office of Jeanne D'Arc's Counsel of record, which was not accepted. She claimed that Jeanne D'Arc had agreed that after she had repaid the sum of SCR1,500,000/-, they would extract the land on which the house is located, which would be allocated to Jeanne D'Arc. She testified that Jeanne D'Arc had told her that she did not want the whole parcel of land, V18949

19. The letter dated 20 April 2017, exhibit D4, sent to Jeanne D'Arc by Mr Bernard Georges, on the instruction of Meria, informed Jeanne D'Arc that Meria was still willing to perform upon the agreement dated 8 April 2016, exhibit P1; and that should Jeanne D'Arc choose to withdraw from the said agreement, she would lose the deposit paid under the law. I reproduced verbatim exhibit D4 —

"20th April 2017

Mr. Serge Rouillion

Attorney-at-law

Suite14, first floor, Kingsgate House

P.O. Box 1075

Mahe, Seychelles

=========

WITHOUT PREJUDICE

Dear Mr. Rouillion,

Re: Ms. Isabelle-Jeanne-D'Arc Savy of La Louise, Mahe

We act for Mrs. Meria Lebon.

Reference is made to your letter dated 29th Match 2017.

We have been advised by our client that a promise of sale of the house standing on Parcel V5298 was made between herself and Ms. Isabelle-Jeanne- D' Arc Savy on 8th July 2015.

We are instructed to inform you that our client is willing to perform upon the promise of sale by transferring the house to Ms. Savy upon receipt of the outstanding balance of SCR950,000.00 that is still owed to our client. Should Ms.

Savy choose to withdraw from the agreement, she will lose the deposit paid in accordance with the law.

We hope that this matter can be resolved amicably.

Yours sincerely,

BERNARD GEORGES"

The live issues canvassed before the learned Judge

20. Based on the pleadings of the parties, the evidence and the written submissions of Jeanne D'Arc and Lucie, the learned Judge considered whether or not there was a valid promise of sale between Meria and Jeanne D'Arc and if, yes, should the trial court order specific performance and/or award damages. She also determined whether or not Lucie failed to carry out her notarial duties correctly in preparing the promise of sale and give correct advice according to law.

21. Regarding whether or not there was a valid promise of sale between the parties, the learned Judge considered the nature of the agreement dated 8 April 2016, exhibit P1. She also considered whether or not the common intention of Meria and Jeanne D'Arc was to sell parcel V18949 together with a house standing thereon for and in consideration of the sum of SCR1,500,000/- along with a deposit of SCR550,000/- made towards payment of the purchase price.

22. After an extensive analysis of the evidence adduced before her, the learned Judge concluded that there was a valid promise of sale between Meria and Jeanne D'Arc. I reproduce verbatim the learned Judge's appraisal of the evidence of the common intention of the parties and her conclusion on the legal significance of the agreement dated 8 April 2016, exhibit P1 —

> *"[38] The first Defendant wholly admitted at paragraph 3 of the Plaint that there was an agreement executed on the 8th April 2016 between the Plaintiff and the First Defendant at the Chambers of Notary Public, the second Defendant.*
>
> […]

[44] The promise of sale sets out the undertaking of the first Defendant to sell "the house" on V5298 to the Plaintiff for the price of SCR1,500,000.00 with a deposit of SCR55,000.00 to be paid.

[45] Indeed it is in evidence that the deposit was paid on the same day that the promise of sale was signed as per P12 […]*. The Plaintiff testified that she gave the first Defendant the remainder of the deposit in cash. The first defendant also admits that the sum was paid through disputed facts.*

[46] The main contention of the first Defendant is that the agreement was for the sale of one of the two houses on Title V5298. […]*. If from the outset both sides were in agreement that there were two houses on the property, that would have been reflected in paragraph 15 too.*

[47] In cross-examination the first Defendant stated that when she went to the second Defendant with the Plaintiff she explained to the second Defendant that the land is big and they were supposed to subdivide. Indeed the second Defendant stated in her own evidence that there was a subdivision to be done. I accept the evidence of the first Defendant that there was a subdivision to be made. However, the subdivision was to be of parcel V5298 and not of parcel V18949. In fact, parcel V5298 was subdivided into 4 plots; V18947, V18948, V18949 and V19323; with parcel V18949 being allocated to the first Defendant. […].

[48] It is noted that the first Defendant in evidence stated that the land was to be subdivided again. […] *I do not believe that there was any agreement for any subsequent subdivision of V18949. It is my firm belief that the agreement was for the sale of one and only one house on V5298 and upon subdivision the house stood on V18949.*

49] This belief is reinforced by the valuer's report. It was the testimony of the first Defendant that Mr Valentin, the valuer, called her, but since she could not get out of work she asked the Plaintiff to pick up the report. The very same report requested by the Plaintiff for the purposes of her loan application that showed that there was only one house on the property.

[50] Furthermore, it has to be said that I have difficulty believing the first defendant when she says that there were people living in the structure, which she says is the second house, as late as 2019. Mr Valentin, in his report, described the structure as a store and laundry area in need of major refurbishment.

[51] At this point I have to say that I fail to understand the first Defendant's claim that things changed when the Plaintiff applied for a loan. From the evidence, the first Defendant was nowhere close to being ready for the sale to go through in August 2016 since the application for partition

notarised by the second Defendant was submitted on 27th September 2016 and only registered on 10th November 2016.

[52] Inspite of the Promise of Sale lapsing in August 2016, the first Defendant proceeded as if it still subsisted; informing the Plaintiff of the progress of the subdivision, eventually giving her a letter to take to Seychelles Credit Union, dated 7th December, 2016, indicating her intent to sell the Plaintiff V18949. This letter in view expressed the first Defendant's desire to keep to the terms of the promise of sale signed on the 9th April 2016. It clarified their true intent which was the sale of parcel V18949, in the same way her Counsel by letter dated 20th April 2017 extended her willingness to perform the promise of sale. By their conduct both sides treated the promise of sale as subsisting and continuing beyond the stated time frame with the clarification by the letter dated 7th December 2016. […]*".*

23. The learned Judge believed the evidence of Jeanne D'Arc that there was no discussion about any subsequent subdivision of parcel V18949 between the parties. She believed Jeanne D'Arc's evidence that — *"the agreement was for the sale of one and only one house on V5298 and upon subdivision the house stood on V18949",* at paragraph [48] of the judgment.

24. The learned Judge found Meria not to be a credible witness. She stated that — *"her dishonesty is evident by her continuing to request and take money from the Plaintiff as late as March 2017 when it was obvious that she had no intention of honouring her undertaking in the promise of sale",* at paragraph [70] of the judgment.

25. The learned Judge did not order specific performance on the basis that the agreement dated 8 April 2016, exhibit P1, was a unilateral promise of sale — *"whereby the first Defendant* [Meria] *undertook to sell subject to the price being paid"* (at paragraph [64] of the judgment). She based her determination on *Gummery v Ernestine (SCA 05/2014) [2016] SCA 7 (22 April 2016)*. Hence, the learned Judge concluded that the breach by Meria is not subject to an order for specific performance but instead to an order for damages under Article 1142 of the Civil Code of Seychelles.

26. In the final analysis, the learned Judge awarded damages to Jeanne D'Arc as follows —

"[71] In consideration of the above, I award a global sum of SCR1,000,000.00 as damages for the breach.

[72] With regard to the claim for moral damages, the Plaintiff deponed that she suffered a lot. She had to take money from her business and not travel for business in order to pay the deposit. According to her "when you go through these situations, it scares you." She explained that the episode had not been easy for her and there were times she could not sleep.

[73] […].

[74] Noting the Plaintiff's evidence and the conduct of the first Defendant I accept the Plaintiff's claim for moral damages though the claim for SCR800,000.00 I find is excessive. Taking into account the above, I find that a sum of SCR50,000.00 for moral damages is just and fair".

27. Concerning Lucie, the learned Judge stated that Jeanne D'Arc had claimed loss against Lucie in delict. She concluded on the evidence that Lucie's conduct did not give rise to a delict claim. She dismissed the case against Lucie.

The appeal and the cross-appeal

28. Meria and Jeanne D'Arc have challenged the judgment in an appeal and a cross-appeal, respectively.

29. Meria has challenged the judgment on six grounds of appeal, which are reproduced verbatim hereunder —

"1. The Learned Judge erred in not considering or making any reference to the submissions of the 1st Defendant, as attached herewith.

2. The Learned Judge erred in concluding that "… there was a valid promise of sale between the parties" (Paragraph 54 of the judgment) when in her own pleadings, the Respondent pleads at paragraph 18 of her Plaint that the Promise of Sale is defective, null and void."

3. The Learned Judge failed to give any justification in awarding what she terms as a "global sum of SCR1,000,000 as damages for the breach." The award is excessive, unreasonable, not detailed and/or justified.

4. The Learned Judge failed to give any justification in awarding SCR50,000 for moral damages after having awarded SCR1,000,000 as damages to the Respondent. The award is excessive, unreasonable, and unjustified, especially after an excessive award of SCR1,000,000 had already been made in favour of the Respondent by the Learned Judge.

5. The learned Judge erred in finding that there was no agreement between the Appellant and the Respondent for the subdivision of Title V18949 when the Respondent agreed to have been informed of the subdivision of the property before the sale could be concluded.

6. The Learned Judge erred in stating the following:

- *"The Plaintiff paid her the deposit before the expiry of the four months stated in the promise of sale." (Paragraph 25 of the judgment);*
- *"Indeed, it is in evidence that the deposit was also paid the same day that the promise of sale was signed…" (Paragraph 45 of the judgment);*
- *By intimating that Mr Valentin's report was dated 2019. Paragraph 50 of the judgment)."*

30. By way of relief, Meria has asked the Court of Appeal to allow the appeal and set aside the judgment. Alternatively, for an order reducing the award of damages to Jeanne D'Arc by allowing Meria to refund Jeanne D'Arc the sum paid by Jeanne D'Arc to Meria.

31. Jeanne D'Arc, in her cross-appeal, has challenged the judgment on seven grounds. Ground one reads — *"*[t]*he learned Judge has erred in law in failing to appreciate the 1st agreement of the parties involved the 1st Respondent acting in different capacities from the 2nd agreement; and the consequences thereof"*.

32. Ground two has challenged the finding of the learned Judge that the agreement dated 8 April 2016, exhibit P1, constitutes a unilateral promise of sale. The contention raised by ground six is that the learned Judge erred in not making an order for specific performance in this case. Grounds two and six read as follows —

" 2. The learned Judge has erred in law in finding as a fact yet failing to appreciate that the 2nd agreement was a complete agreement for a sale not a retractable unilateral promise of sale evidenced;

i. by the several documents presented to the bank on completion of subdivision and court partition of the sale property in the name of the 1st Respondent; and

ii. no evidence of recission of the 2nd agreement in any of the pleadings, evidence and by the own admission of the 1st Respondent;

[…]

6. The learned Judge has erred in law in failing to order specific performance of the parties' 2nd agreement where the price and subject matter of the agreement was agreed and never rescinded. […]*."*

33. Grounds three, four and five read as follows —

"3. The learned trial judge (and the Judge before) have not treated the Plaintiff constitutionally equally and failrly before the law by allowing the 2nd Respondent;

a. A huge leeway and time delay to prepare and defend her actions where;

b. both Appellant and 1st Respondent have said they were relying on her as a public officer lawyer to properly advise them of the proper steps to take;

c. From the questioning it was obvious that she was the one who gave the handwritten note to the 1st Respondent who had no idea about the meaning of a restriction after the 1st Respondent had completely and unequivocally agreed to the sale.

4. The learned Judge erred in law and in fact and has shown bias in failing to appreciate and to take note of the many steps the Appellant went through before the final document for V18949 was drawn up by the conveyancing attorney in her award by a serious miscalculation of;

a. the expenses and damages incurred by the Appellant securing the funds to pay for the deposit, insurance, legal costs prior to and up to this appeal, and

b. for the final loan amount which she is paying off the bank to this day with no property or security to charge for it;

c. by comparing moral damages from another case in her assessment instead of looking at the time, trouble, inconvenience and actual expenditure incurred by the Appellant in carrying out procedures as a first time buyer to obtain a loan;

d. in only awarding the Appellant interest and costs from the date of judgment and not from the date of the filing of the Plaint; when much of the delay and costs were due to proceedings relating to the negligence of the 2nd Respondent, to file complete pleadings timeously.

e. in failing to make any pronouncement on the application for an inhibition to secure the property subject of the suit before and after judgment.

5. The learned Judge erred in law in failing to fully identified the errors made by the 2nd respondent in advising the parties and in, drawing up the relevant documents and making the necessary awards against the 2nd Respondent accordingly in all fairness to both Respondents in the circumstances."

34. I find that the contention raised in ground seven is irrelevant and misconceived and stands dismissed. Ground seven reads as follows — *"*7. *The learned Judge has erred in failing to secure the veracity of the award in favour of the Appellant in that from the facts that 1st Respondent and her family were waiting for payment from the Appellant's deposit to complete their private affairs and they had no means to pay for these transactions."*

35. By way of relief, Counsel for Jeanne D'Arc has asked the Court of Appeal for —

"a) [a]*n order setting aside the Judgment of the Supreme Court and substituting an order for specific performance of land title V18949; and in addition*

b) Reassessing the damage suffered and due to the Appellant; and

c) the whole with costs in this Court and in the Supreme Court with effect from the date of the filing of the Plaint."

Analysis of the contentions of the parties concerning the appeal and cross-appeal

Ground five and six of the grounds of appeal and grounds two and six of the grounds of cross-appeal

36. I have, at the outset, dealt with grounds five and six of the grounds of appeal and grounds two and six of the grounds of cross-appeal together as they succeed and fall on only one basis. What was the legal nature of the agreement dated 8 April 2016, exhibit P1, signed by the parties, and what were the legal consequences of the said agreement.

37. According to Counsel for Meria, the skeleton heads of argument addressing ground two of the grounds of appeal also dealt with grounds five and six.

38. I have to determine whether or not the learned Judge was correct to conclude that the agreement dated 8 April 2016, exhibit P1, was a unilateral or bilateral promise of sale, which brings me to consider the nature of the agreement.

39. A promise to sell is equivalent to a sale if the parties have agreed upon the price and the thing, and there is a common intention between them to transfer the ownership of the property under the terms agreed. Article 1589 of the Civil Code of Seychelles stipulates — "[a] *promise to sell is equivalent to a sale if the two parties have mutually agreed upon the thing and the price."*

40. I refer to **Aubry et Rau - Droit Civil Français Vol. V, Vente**, page 3, paragraph 349, on the legal import of Article 1589 —

> *"A. Le consentement des parties doit porter à la fois sur la chose à vendre et sur le prix. Il doit, de plus, lorsque le contrat n'a pas été conclu purement et simplement, porter sur les conditions ou modalités sous lesquelles l'une des parties a déclaré vouloir vendre, ou l'autre, vouloir acheter.* ***Il faut, enfin, que le consentement ait pour but la transmission de la propriété de la chose formant l'objet du contrat****: une convention passé, sous forme de vente, par des parties qui n'avaient pas l'intention réelle et sérieuse, l'une de se dépouiller de la propriété, l'autre de l'acquérir, pourrait être efficace sous d'autres rapports, mais ne constituerait point une vente.*
>
> ***La promesse de vendre une chose, moyennant un prix determine, équivaut à une vente actuelle, et en produit tous les effets, lorsqu'elle a été acceptée avec promesse réciproque d'acheter. On la dénomme promesse synallagmatique.****"* [Emphasis is mine]

41. In **Répertoire de droit immobilier, Promesse de vente, by Olivier Barret, Professeur à l'Université Paris V (Réné-Descartes)** and **Avocat à la cour, Janvier 2011 et actualisation Avril 2017, Chapitre 1** with respect to **Promesse unilatérale de vente ou "pacte d'option"**, the following is stated —

> *"****les promesses de vente sont des contrats préparatoires de la vente en ce qu'elles constituent, dans l'esprit des parties, une étape vers la conclusion de celle-ci.*** *Leur existence et leur utilité tiennent à ce que, bien souvent, alors que les*

contractants se sont accordés sur les éléments principaux de la vente, il ne leur apparaît pas souhaitable, ou il ne leur est pas possible de conclure d'emblée ce contrat de manière définitive. ***Tantôt, l'un d'entre eux veut mûrir sa décision, pour s'assurer de l'opportunité de l'opération qu'il envisage; l'autre lui consent alors, dans le cadre d'une promesse unilatérale de vente ou d'achat, une option – c'est pourquoi on parle aussi de "pacte d'option" — qui, si elle est exercée dans un délai convenu, emportera la formation du contrat final. Tantôt, les deux parties entendent s'engager dés maintenant et réciproquement en vue d 'une vente qui n'est pas immédiatement réalisable; elles concluent alors une promesse réciproque de vente et d'achat, plus sounvent appelée promesse synallagmatique ou encore, par les praticiens, "compromis de vente****".*

42. It is also explained in **Répertoire de droit immobilier**[2] that the criterion which permits to distinguish between a *"promesse unilatérale de vente"* and *"promesse réciproque de vente et d'achat"* is very clear. *"Le bénéficiare n'est pas tenu de conclure le contrat définitif; il est titulaire d'une option, qu'il est libre d'exercer ou non."*

43. I find it noteworthy to quote the following extracts from **Dalloz, Encyclopédie Juridique, Répertoire de droit civil, 2éme edn. vo. Promesse de vente —**

"166. La promesse réciproque de vente et d'achat est celle par laquelle les parties s'engagent toutes deux à la réalisation d'un autre acte: l'acte de vente qui aura celui-ci un caractère définitif. De ce point de vue, elle a comme la promesse unilatérale le caractere d'une convention préliminaire et elle est trés répandu sous l'appelaltion de compromis, lorsque l'objet de la convention est un fonds de commerce ou un bien immobilier.

167. La promesse réciproque de vente et d'achat se caractérise par le fait qu'à la difference de ce qui existe au cas de pacte d'option, les parties sont toutes deux engagées en vue de la réalisation du contrat définitif; on rappellera, à cet égard, qu'il ne suffit pas pour y ait promesse synallagmatique (au sens généralement donné ici à ce terme), que l'avant –contrat ait engendré des obligations à la charge de chacune des parties […] *il faut encore que ces obligations aient un caractère symétrique et engagent less assujetis à la realisation de la vente.*

[…]

170. ***Mais, dans de nombreux autres cas, la promesse réciproque ne peut être ramenée a une vente pure et simple:*** *(a) D'abord, lorsque la vente est présentment impossible parceque telle autorisation administrative doit être obtenu, telle formalité légale accomplie; ce n'est qu'après l'une ou l'autre que la vente pourra exister* ***(b) Ensuite lorsque ce sont les parties elles-mêmes qui, en introduisant dans la vente un élément de formalisme conventionnel,***

[2] Ibid, at paragraph 41

subordonnent la réalisation de celle-ci à tel ou tel fait à venir *: ainsi bien souvent à la rédaction d'un acte authentique, au paiement total du prix,* […] ***Seulement, dans de tels cas, il est très généralement admis que l'élément dont l'absence empêche la perfection de la vente n'affecte que les effets de celle-ci, laquelle existe déjà en tant que telle*** *(Cf. Planiol et Ripert, t. 10 par Hamel, no. 175; Aubry et Rau, t.5, para. 769; Colin, Capitant et Julliot de la Morandière, t.2, no. 834; Ripert et Boulanger, t. 2, no. 2414 ; Morin, le compromis, p. 254 et s.); la promesse synallagmatique de vente ne serait ici qu'une vente affectée d'un terms suspensif (Cf. par ex. civ. 5 d,c. 1934, s. 1935.1.68) ou d'une condition suspensive (Cf. par ex. pour le cas ou une autorisation administrative est nécessaire: civ. 15 janv. 1946. 131; 25 févr. 1946, D. 1946, 341, note P. Hébraud; et pour le cas d'une clause surbordonant la vente à la passation d'un acte notarié, com. 18 déc. 1962, Bull. civ. III, no. 522; 11 déc. 1965, D. 1965.198; 18 nov. 1965, J.C.P. 1965. II. 14501; rappr. civ. 9 juin 1971, Bull civ. III, nos. 364 et 365),* ***les juges du fond appréciant souverainement s'il ya terme ou condition*** *(Req. 20 oct. 1908, D.P. 1912.1.61; 26 juin 1935, D.H. 1935, 414; Com. Morin, op. cit., p. 321, selon lequel il faudrait, en cas de doute préférer l'idée de terme)."* Emphasis is mine

44. In **Gummery,** Twomey JA, delivering the judgment of the Court of Appeal, stated —

"[17] ***In a unilateral promise of sale of property, the Promisor […] undertake to sell property to a Beneficiary […] under certain determined conditions during a certain period. The Beneficiary of the promise acknowledges the commitment of the Promisor, but he does not promise to conclude the final contract. He has an option to give his consent or not****.*

[18] The unilateral promise differs both from a simple offer to contract (pollicitation) and from the final contract contemplated. It lies somewhere in between. It is more than a simple offer, but less than a final contract (See Alex Weill, Droit Civil – Les Obligations (Paris, Dalloz 1970)111).

[19] A subsequent retraction by the Promisor prevents a meeting of minds between the Promisor and the Beneficiary and hence the birth of a contract […].

[20] Hence, an action by the Beneficiary for breach of a unilateral promise of sale can only result in an order for damages as provided by article 1142 of the Civil Code (supra) and cannot give rise to an action for specific performance. (See Cass. 3ème Civ, 26 juin 1996 pourvoi N°94-16.326, 3ème Civ 28 octobre 2003, pourvoi N°02-14.459 confirmed by 3ème Civ, 11 mai 2011 pourvoi n° 10-12.875).

[21] ***In contrast, in a synallagmatic promise of sale (which is formalised in Seychelles by the transfer document and registration and in France by***

a compromis de vente and the acte authentique and registration) the parties make mutual promises to conclude a certain contract at a later date (see Alex Weill, Droit Civil – Les Obligations (Paris, Dalloz 1970) 114-116). The Promisor undertakes to sell his property and the Promisee undertakes to buy the property.

[22] ***There is therefore meeting of minds and a contract. In such a situation, the first limb of Article 1589 (supra) applies in that the promise is equivalent to a sale. Insofar as the parties to this contract are concerned the promise of sale is indistinguishable from a contract of sale.***

[23] ***Articles 1101 and 1134 (supra) have application in such circumstances – hence the parties are bound to give effect to the contract. Their obligations have the force of law. The Promisee in the circumstances can move for specific performance of the contract*** *(see 3ème Civ, 13 octobre 1999, pourvoi N°97-21.779, 3ème Civ 25 mars 2009 pourvoi N° 08-11326).* [Emphasis supplied]

45. I consider the questions at issue raised by these grounds of appeal and cross-appeal based on the legal principles stated above.

46. The contention of Counsel for Jeanne D'Arc is that the agreement dated 8 April 2016, exhibit P1, constitutes a bilateral promise of sale, which under Article 1589 is equivalent to a sale. According to Counsel for Jeanne D'Arc, this entails that Meria is bound to transfer the ownership of parcel V18949 to Jeanne D'Arc.

47. Counsel for Meria submitted in her skeleton heads of argument concerning ground five that the promise to sell lapsed as Jeanne D'Arc did not pay the agreed balance of the purchase price in the sum of SCR950,000/- under the agreement dated 8 April 2016, exhibit P1, so that Meria was relieved from the obligation to transfer parcel V18949 to Jeanne D'Arc. I note that this point of contention being raised now on appeal was not made a live issue in Meria's pleadings. I also note that it was not even raised on the grounds of appeal.

48. In any event, it is plain that Meria could not treat the agreement dated 8 April 2016, exhibit P1, as lapsed as she took steps to complete the sale. She wrote to Jeanne D'Arc through Counsel, informing her that she was willing to perform upon the promise of sale upon receipt of the outstanding balance of SCR950,000/- that was still owed to her,

exhibit D4. Exhibit D4 went on to state that — *"*[s]*hould Ms Savy choose to withdraw from the agreement, she will lose the deposit paid in accordance with the law"*.

49. The evidence of Jeanne D'Arc is to the effect that having received exhibit D4, she instructed the Seychelles Credit Union to deposit the proceeds of the loan in the sum of SCR950,000/- in her bank account to finance the transfer of ownership of parcel V18949, which instruction was complied with by the Bank.

50. The evidence of Miss Louise, the Seychelles Credit Union's loan manager, confirmed that Jeanne D'Arc took a loan in the sum of SCR950,000/- from the Seychelles Credit Union to finance the balance of the purchase price. The loan is to be repaid over 240 months for the sum of SCR7946/- monthly at the rate of interest of 8 percent. Miss Louise confirmed that Jeanne D'Arc has been repaying the loan since the 15 February 2017.

51. Ground five contended also that the learned Judge was wrong to conclude that there was no agreement between Meria and Jeanne D'Arc to subdivide parcel V18949 as Jeanne D'Arc accepted that she had been informed of the subdivision of the *"property"* before the promise of sale was concluded.

52. I have not been swayed by the contention of Meria through Counsel raised in ground five that Meria and Jeanne D'Arc had agreed to subdivide parcel V18949 before the promise to sell was concluded. I am satisfied with the soundness of the learned Judge's appraisal of the evidence, that — *"*[i]*t is noted that the first Defendant in evidence stated that the land was to be subdivided again.* […] *I do not believe that there was any agreement for any subsequent subdivision of V18949. It is my firm belief that the agreement was for the sale of one and only one house on V5298 and upon subdivision the house stood on V18949*[3]*."*

53. The learned Judge's findings align with the averments contained in the defence that — *"*[t]*he Plaintiff and the 1st Defendant agreed that the Plaintiff would purchase a house and a part of the property which would eventually belong to the 1st Defendant* […] ***at the time that the Plaintiff and the 1st Defendant visited the property at Foret Noire and the***

[3] (at paragraph [48] of the judgment)

Plaintiff agreed on the purchase of that part of the property the whole of the said property was still co-owned and was in the process of being sub-divided and the Plaintiff knew and was informed of this fact", at paragraph [2] of the defence. Emphasis is mine.

54. Having considered the skeleton heads of argument made in support of ground five, suffice to state that they are at odds with ground five. I repeat Counsel's submission in her skeleton heads of argument to emphasise the point which I am making, *"[13]* […] *Jeanne D'Arc Savy contends throughout that* […] *she was not informed that the land V5298 where the house she was being sold was subject to subdivision and that the eventual plot for Meria Lebon would become V18949. This cannot be sustained as through evidence, it was apparent that prior to the signing of the POS [promise of sale] the Respondent visited the property four (4) times, she even brought her intended father-in-law with her to get an idea of the size as she knew nothing about square meters."*

55. Counsel for Meria contended with respect to ground six that the learned Judge was wrong in stating that — "[t]*he Plaintiff paid her the deposit before the expiry of the four months stated in the promise of sale*[4]*"* and "[i]*ndeed it is in evidence that the deposit was also paid the same day that the promise of sale was signed*[5]*…"*. This ground contended that the said findings were not supported by the evidence and showed that the learned Judge made mistakes in her judgment.

56. I find the contention raised by ground six to be irrelevant and misconceived based on the parties' common intention to sign the transfer of ownership of parcel V18949. It is undisputed that Meria received the deposit in the sum of SCR550,000/-, which she used to clear the outstanding loan on parcel V5298 in the sum of SCR400,000/-.

57. I point out that Counsel for Meria emphasised in her skeleton heads of argument and at the hearing of the appeal that there was a common intention between Jeanne D'Arc and Meria to perform the promise to sell.

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[4] (at paragraph 25 of the judgment)

[5] (at paragraph 45 of the judgment)

58. In my view, the analysis of the learned Judge was undermined because she concluded that the written agreement, exhibit P1, was a unilateral promise of sale because Meria *"undertook to sell subject to the price being paid."* This was plainly wrong. This has permitted this Court to re-examine the facts upon a correct application of the relevant law.

59. I note that the learned Judge, after an extensive assessment of the evidence, should have concluded that the written agreement, exhibit P1, was a bilateral promise of sale.

60. The requirements in the agreement dated 8 April 2016, exhibit P1, that a deposit was to be paid; and that the balance of the purchase price was to be paid within the time provided in the agreement, failure of which the deposit paid would be forfeited, were conditions precedent as defined under the Civil Code of Seychelles. The said requirements were clearly uncertain rather than certain future events.

61. I observe that the learned Judge had misinterpreted **Gummery**, in which the Court of Appeal concluded that the agreement constituted a bilateral promise of sale and ordered the remedy of specific performance. In **Gummery**, the Court of Appeal stated — *"*34. […] *it was a condition of the Agreement that the purchase price be paid in pound sterling. Given her testimony that she lived in Liverpool at the time of the agreement and continues to do so, we are of the view that the Appellant is being truthful. In the circumstances, she had specified a condition precedent to the contract of sale".*

62. Hence, I accept the contention of Counsel for Jeanne D'Arc that the learned Judge erred in concluding that the agreement dated 8 April 2016, exhibit P1, was a unilateral promise of sale.

63. In **Gummery,** the Court of Appeal stated at paragraph [23] — *"[23] Articles 1101 and 1134 (supra) have application in such circumstances – hence the parties are bound to give effect to the contract. Their obligations have the force of law. The Promisee in the circumstances can move for specific performance of the contract (see 3ème Civ, 13 octobre 1999, pourvoi N°97-21.779, 3ème Civ 25 mars 2009 pourvoi N° 08-11326).* I

accept the contention of Counsel for Jeanne D'Arc that the learned Judge erred in not making an order for specific performance in this case.

64. In **Gummery**, the Court of Appeal held that a court is obliged to award specific performance if the creditor demands it if that is possible: see also *Chetty v Chetty SCA38/2020 [2022] SCCA73 (16 December 2022)*, which quoted with approval a decision of the *"Cour de Cassation"*, Chambre Civile 3, 19 February 1970, 68-13.866, in which the *"Cour de Cassation"* held that any creditor is able to require execution of the obligation when such execution is possible based on Article 1184 of the Code Civil — *"Mais attendu que, tout créancier pouvant exiger l'exécution de l'obligation lorsque cet execution est possible.* […]". I accept the submission of Counsel for Jeanne D'Arc that the execution of the obligation is possible in this case.

65. I state in passing that the learned Judge was not called upon to determine the legal nature of the payment of SCR550,000/- made by Jeanne D'Arc to Meria. The question is whether or not the sum of SCR550,000/- is a deposit in the nature of *"arrhes"*, the legal consequences of which are that the parties are free to rescind the agreement under Article 1590 of the Civil Code of Seychelles or an *"accompte"*, which is an advance payment.

66. The legal nature of the payment of the sum of SCR 550,00/-, whether or not it is in the nature of *"arrhes"* (a deposit) or an *"accompte"* an advance payment, is a factual issue for the sovereign appreciation of the trial court based on the evidence of the common intention of the parties at the time of the drawing up of the agreement: see, *Weller & Another v Katz (SCA 39/2017) [2020] SCCA 6 (21 August 2020).*

67. For the reasons stated above, grounds five and six of the grounds of appeal stand dismissed. Grounds two and six of the grounds of cross-appeal are allowed.

68. I now consider the remaining grounds of appeal and cross-appeal.

Ground one of the grounds of appeal

69. Concerning ground one, Counsel, in her skeleton heads of argument, contended that the learned Judge was wrong not to have considered the written submissions tendered on

behalf of Meria before the trial Court. She stated that even though the submissions were filed late, there was time for the trial court to consider them before the delivery of judgment. Suffice to state that Meria's Counsel has raised on appeal the issues contained in the written submissions offered on behalf of Meria before the trial court, which I have considered.

70. In light of the above, ground one stands dismissed.

Ground two of the grounds of appeal

71. As I understand it, the contention raised by Counsel for Meria in her skeleton heads of argument concerning ground two is based on Jeanne D'Arc's plea that the — *"promise of sale was defective and null and void" (at paragraph [18] of the plaint).* I note that the skeleton heads of argument submitted on behalf of Meria did not offer any reliable submission in support of this ground. Having considered the averments contained in the plaint with care, I am disposed to conclude that Jeanne D'Arc's plea that the *"promise of sale was defective and null and void"* was mere surplusage. I observe that the plaint could have been more felicitously drafted.

72. For the reasons stated above, ground two stands dismissed.

Ground three of the grounds of appeal

73. Ground three questioned the award of monetary damages made by the learned Judge against Meria. Counsel for Meria offered no reliable submission in her skeleton heads of argument in support of ground three. She stated that Meria has also suffered loss and disappointment by the transfer of land not going ahead.

74. Given the decision to make an order for specific performance in this case, I consider the award in damages made in favour of Jeanne D'Arc.

75. I refer to paragraphs [66] to [71] of the judgment, which explained the basis for the award of SCR1,000,000/- —

"[66] The first Defendant admitted to having received the sum of SCR550,000.00 as deposit.

[67] The plaintiff paid SCR 750 to the second Defendant for the promise of sale. Seychelles Credit Union blocked the sum of SCR142,500/- on her account as contribution for the loan. She paid SCR14,884.00 as insurance premium. She had to undergo medical tests twice in order for the loan to be processed. In total her expenses for processing the loan was SCR57, 434.00 which the first defenadnt in her evidence accepted.

[…]

[69] *According to the first Defendant, she knew nothing of the loan until Mrs Rouillon spoke to her about it. Her evidence was that she only became aware when she received a sum of SCR30,000. From D2* [Copies of Jeanne D'Arc's bank statements] *the sum of SCR30,000.00 was deposited in the first Defendant's bank account* […].

[70] It is noted that the Plaintiff on the 4th January 2017 sent the first Defenadnt the sum of SCR5,000.00; […]money which the first Defendant told her would be deducted from the balance.

[71] In consideration of the above, I award a global sum of SCR1,000,000.00 as damages for the breach.

76. Based on the analysis of the learned Judge, I find that she should have awarded the sum of SCR770,568 as monetary damages. She has awarded a global sum of SCR1,000,000/- as damages for the breach. This is not the correct approach.

77. Even though I have found that the learned Judge should have awarded the sum of SCR770,568/- as damages, I conclude that the contention raised in ground three is misconceived for the reason that the learned Judge was wrong to award damages in this case. I have stated above that the learned Judge should have made an order for specific performance in this case. Hence, I quash the order made by the learned Judge awarding the sum of SCR1,000,000/- to Jeanne D'Arc in damages.

78. Hence, ground three stands dismissed

Ground four of the grounds of appeal

79. Ground four questioned the assessment and award of moral damages made by the learned Judge against Meria.

80. At paragraph 59/10/11 of the Supreme Court Practice 1979 of England, which deals with the power to alter the amount of the judgment, it is stated *"*[w]*here the damages have been awarded by a Judge sitting alone or by a master, the Court of Appeal will not alter the figure merely because it thinks it would have awarded a different figure; but only if the Judge acted upon a wrong principle, or the amount is so extremely low as to make it an erroneous estimate (Flint v. Lovell, supra, at p. 360; Owen v. Sykes, [1936] 1. K. 192, C.A.)".* See, also the cases of *Michel & Ors v Talma & Ors (SCA 22/10) and Government of Seychelles v* Rose (SCA14/2011).

81. The skeleton heads of argument submitted on behalf of Meria essentially submitted that the learned Judge erred in awarding moral damages against Meria in that the award of damages ran afoul of the principle that damages in delict are compensatory and not punitive. The skeleton heads of argument also contended that the learned Judge did not justify the award of damages. I observe that Counsel for Meria did not substantiate any of these contentions in her skeleton heads of argument.

82. The learned Judge explained why she awarded moral damages to Jeanne D'Arc in the sum of SCR80,000/-. She considered Jeanne D'Arc's evidence that she suffered a lot from what she went through and suffered from a lack of sleep. Considering the approach taken by the learned Judge, I hold that she violated no principle in assessing and making the award of damages and the award of damages was far from being manifestly high or excessive. In the final analysis, I hold that there is no basis for me to interfere with the award of damages in this case.

83. Hence, ground four stands dismissed.

84. I now consider the remaining grounds of the cross-appeal.

Grounds three, four and five of the cross-appeal

85. Grounds three, four and five challenged the dismissal of Jeanne D'Arc's claim against Lucie. I have considered the contention raised by these grounds of cross-appeal and the skeleton heads of argument of both Counsel with care.

86. I observe that Jeanne D'Arc's cause of action against Lucie is unclear. The paragraph 18 (d) of the pleadings claimed that the agreement dated 8 April 2016, exhibit P1, was defective null and void *inter alia* as *"d. the 2nd Defendant prepared and attested an incomplete and incompetent legal document which failed to define and include the parties full identity; their capacities to sign the document and their legal rights under the law."* The learned Judge accepted that this was a claim in delict. I am at a loss to understand what these averments are conveying. I have mentioned above that the plaint could have been more felicitously drafted.

87. For the reasons stated above, I dismissed grounds three, four and five of the grounds of appeal.

88. This is enough to dispose of this appeal and cross-appeal.

89. For the reasons stated above, the appeal is dismissed in its entirety. The cross-appeal succeeds partly on grounds two and six.

The Decision

90. I make the following orders—

91. I quash the order of the learned Judge, at paragraph [80 (1)] of her judgment, that Meria — *"*[t]*he first defendant shall pay the sum of SCR 1 million rupees in damages to the Paintiff"*.

92. I substitute therfor an order that Meria shall transfer the ownership of parcel V18949 together with a house standing thereon situated at Foret Noire to Jeanne D'Arc or before the 30 July 2023 on the payment by Jeanne D'Arc of the balance of the purchase price in the sum of SCR950,000/-. Jeanne D'Arc shall make payment of the sum of SCR950,000/- on the date of signature of the transfer of ownership of parcel V18949.

93. Jeanne D'Arc shall pay all fees with respect to the transfer of ownership of parcel V18949 as provided under the bilateral agreement dated 8 April 2016, exhibit P1.

94. Should Jeanne D'Arc fail to make payment on the date of signature of the transfer of ownership of parcel V18949, the bilateral agreement dated 8 April 2016, exhibit P1, shall be rescinded so that Meria would be relieved from the obligation to transfer the ownership of parcel V18949 together with a house standing thereon situated at Foret Noire to Jeanne D'Arc and the deposit shall be forfeited by Meria.

95. The order of the learned Judge, at paragraph [80 (2)] of her judgment, that — *"*[t]*he first Defendant shall further pay the sum of SCR50,000.00 as moral damages to the Plaintiff"*, is upheld.

96. The order of the learned Judge, at paragraph [80 (3)] of her judgment — *"*[t]*he whole with interest from the date of judgment with costs"*, is also upheld.

97. With costs in favour of Jeanne D'Arc at the appeal.

_____

F. Robinson JA

I concur:- _____

Dr. L. Tibatemwa-Ekirikubinza JA

I concur:- _____

S. Andre JA

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