

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 39 (25 August 2023)
SCA 07/2022
(Arising in [2022] SCSC 273 CS
111/2019)

The Registrar General
(rep. by *Corine Rose*)

Appellant

versus

Maxime Lewis Beaufond
(rep. by *Divino Sabino*)

1st Respondent

Mary Leontine Beaufond
(rep. by *Guy Ferley*)

2nd Respondent

Joel Maxime Esparon
(rep. by *Guy Ferley*)

3rd Respondent

Neutral Citation: *The Registrar General v Beaufond & 2 Others* [2023] Civil Appeal SCA 07 of 2022 SCCA 39 (Arising in [2022] SCSC 273 CS 111/2019)

Before: Fernando, **President**, Twomey-Woods, Tibatemwa-Ekirikubinza, JJA

Summary: **Will - Interpreting a will - meaning of a clause stating that property is to be held for a lifetime.**

Liability for fault-A person is liable for harm caused not only by their actions but also by their negligence or imprudence.

Heard: 9 August 2023.

Delivered: 25 August 2023.

ORDER

1. The appeal fails in its entirety and is dismissed.
2. The orders of the trial Judge are upheld.

3. The Appellant is jointly and severally liable with the 2nd and 3rd Respondents to pay the 1st Respondent the sum of SR 100,000.00.
4. The 1st Respondent shall be entitled to the costs of these proceedings

JUDGMENT

DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.

The Facts

5. The Registrar General, who is appellant in this case is responsible for the registration of land transfers. The 1st and 2nd Respondents are brother and sister respectively. They are beneficiaries of the last Will and the Testament of their late Uncle-Raymond Andre Ghislain (hereinafter referred to as "the testator"). The 3rd Respondent is a nephew of the 1st and 2nd Respondents.
6. On 8th of June 2002, Mr. Raymond Andre Ghislain passed away. He left a will in which he stated that he had bequeathed half of his undivided share of land registered as title no.V7930 to Mary Leontine Beaufond (2nd Respondent) for her life and thereafter the same to Maxime Beaufond (the 3rd Respondent). The testator had co-owned the land with the 2nd Respondent.
7. It was averred by the 2nd Respondent that co-ownership of the said land with her uncle was as a result of her assistance to him in paying off the loan in the sum of SR 63,000 for the said property.
8. The 2nd Respondent further averred that it was on the premise of paying the said loan that her uncle bequeathed the land to her for her lifetime. She had subsequently registered the land in her sister's son's name - Joel Maxime (the 3rd Respondent) - through the registration of an Affidavit on Transmission by Death dated the 26th of December 2016.
9. The above action brought contention between the 1st and 2nd Respondents.

10. As a result, the 1st Respondent (Maxime Lewis Beauford) instituted a suit in the Supreme Court against the 2nd and 3rd Respondents as well as against the Registrar General who is now the Appellant.
11. The 1st Respondent stated that it was an express stipulation of the Will that the share of the testator in the property would devolve upon the 2nd Respondent upon his death and afterwards, upon the death of the 2nd Respondent, the share would devolve to him.
12. That therefore the transfer to the 3rd Respondent was done in breach of the will and that the Appellant too had acted in breach of the duties of the Registrar's office by allowing the 2nd Respondent to effect the said transfer which deprived the 1st Respondent of his beneficial interest.
13. In their defence, the 2nd and 3rd Respondents stated that a proper construction of the Will is to the effect that the testator's share of the property would have devolved upon the 1st Respondent only if the 2nd Respondent (Mary Beauford) had predeceased the testator. That therefore, no *faute* was committed.
14. The defence produced 2 witnesses to support their case. The 1st witness was the 2nd Respondent who testified that, it was her lawyer who advised her to effect the transfer in the names of the 3rd Respondent. Furthermore, the 2nd Respondent testified that it was an embittered and acrimonious relationship that she had with her brother- the 1st Respondent which motivated her to effect the transfer of the land into her sister's son's name- (the 3rd Respondent).
15. The second witness was the mother of the 2nd Respondent-Mrs. Marie Gabriel Nolla Beauford. She stated that, "Maybe if Maxime (1st Respondent) will have treated his sister (2nd Respondent) in a good way maybe things will have not been like it is". She stated that the 1st Respondent had even used racial slurs against the 2nd Respondent for having married a coloured man. She also spoke of the acrimonious relationship that exists between the 1st and 2nd Respondent which had resulted into the 2nd Respondent to effect the transfer of the

land to her sister's son in order to deny the 1st Respondent benefit of his share in the property. According to her, it was the 2nd Respondent who took care of the testator during his living.

16. For the Appellant, it was her defence that she committed no breach of her functions by allowing the 2nd Respondent to transfer the property as there were no encumbrances on the property at that time.

17. In arriving at his decision Govinden, CJ identified the issue for determination by the court as a very narrow factual issue. And it was - *what is the proper construction to be given to the phrase in the Will which stated that: 'I bequeath my half undivided share in title no. V7930 to Mary Leontine Beaufond for her life and thereafter the same to Maxime Beaufond'?*

18. Having appraised himself of the principles applicable to the interpretation of Notarial Deeds, Govinden, CJ held that the literal meaning of "for her life" can only mean for her life time. The half undivided share in the property is bequeathed to Mary Leontine Beaufond only for her lifetime and after her death it would devolve upon Maxime Beaufond.

19. It was held that the transfer of the property to Joel Maxime Esparon (3rd Respondent) by the 2nd Respondent was void and so was the subsequent registration of the property by the Appellant into the names of the 3rd Respondent.

20. Consequently, the trial Judge ordered that:

i. The Registrar of Lands amends the Land Register so that only half of the undivided share of parcel V7930 is registered in the name of the Plaintiff, the other half undivided share shall be registered in the name of Mary Leontine Beaufond.

ii. The Registrar of Lands enters a restriction against parcel V7930 so that it is not transferred during the lifetime of the Mary Leontine Beaufond.

iii. Revocation of the usufructuary interest granted in favour of Mary Beaufond on the property.

iv. The Defendants (the Registrar, Mary Beauford and Joel Maxime Esparon) to jointly and severally pay the Plaintiff (Lewis Beauford) damages in the sum of Rs. 100,000.00.

v. Costs of the suit granted to the Plaintiff (Maxime Lewis Beauford)

21. Dissatisfied with the judgment of Govinden, CJ, the Appellant (Registrar General) lodged an appeal in this Court on the following grounds:

1. The learned trial judge erred in his judgment in ordering the Appellant to pay the 1st Respondent damages in the sum of SCR 100,000/- as no findings of liability were made against the Appellant at all and no reasons whatsoever were provided for why damages are payable by the Appellant.

2. Further or alternatively, to the extent that the Learned Trial Judge found that the Appellant acted in breach of its obligations under the law, such finding was in error because the Appellant was, in fact, correct to:

i. register the Affidavit on Transmission by Death and consequently record the 2nd Respondent as the proprietor of the undivided share of the land in the land register; and

ii. register the transfer of the land by the 2nd Respondent, as proprietor of the land, to the 3rd Respondent and record the 3rd Respondent as proprietor of the land, on the basis that, whilst the Learned Trial Judge found that the effect of the will to be that the undivided share in the land was to pass from the 2nd Respondent to the 1st Respondent upon the death of the 2nd Respondent, such a finding was wrong in law, in that, according to the laws of Seychelles, such bequest, gift over or substitution, as the case may be, is not permitted and therefore the relevant term of the will is null.

3. The Learned Trial Judge erred in failing to properly consider and appreciate that the bequest contained in the will of the deceased testator constituted a bequest, gift

over or substitution, as the case may be, which, given that it did not fall within the ambit of Article 1048 and 1049 of the Civil Code, 1976, was inconsistent with the provisions of article 900 and other relevant provisions of the Civil Code Act, 1976. The effect of this was to render the term of the will that made provision for the bequest, gift over or substitution is null and, as such, the Appellant's decision to register the undivided share of the deceased testator in the land in the way the Appellant did was not an error on her part. In fact, the registration of the transfer of one half of the land to the 2nd Respondent and ultimately to the 3rd Respondent was permissible and correct in law.

Relief sought:

22. The Appellant prayed to set aside the order made against the Appellant to pay the 1st Respondent a sum of SCR 100,000/- in damages jointly and severally with the 2nd and 3rd Respondent.

Appellant's submissions

Ground 1

23. Counsel submitted that the basis upon which damages are awarded in such matters are found in Articles 1149 and 1150 of the Civil Code of Seychelles Act 2020.

24. Article 1149 provides as follows:

1. The damages which are due to the creditor cover in general the loss that he has sustained and the profit of which he has been deprived, except as provided hereafter.

2. Damages shall also be recoverable for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss of any of the amenities of life.

3. The damages payable under paragraphs 1 and 2 of this article, and as provided in the following articles, shall apply as appropriate to the breach of contract and the commission of a delict.

4. In the case of delicts, the award of damages may take the form of a lump sum or a periodic payment. In the latter case, the Court may order that the rate of the payments should be pegged to some recognized index such as the cost of living index or other index appropriate to the activity of the victim.

25. Article 1150 provides that:

1. The debtor shall only be liable for damages with regard to damage which could have been reasonably foreseen or which was in the contemplation of the parties when the Contract was made, provided that the damage was not due to any fraud on his part.

26. Counsel argued that in the proceedings below, this Court should note that the only averment that the 1st Respondent made against the Appellant is found at paragraph 14 of the affidavit where he stated that:

"I believe that given that the will of my uncle was registered at the Registry of Deeds and also attached to the affidavit on transmission by death, the 3rd Defendant ought not to have allowed the transfer of land from my sister to the 2nd Defendant to be registered."

27. In faulting the Trial Judge for making an award against the Appellant, the written submissions of Counsel were extensive. I must however state that lengthy as they were, the submissions were repetitive and often lacked clarity. The essence of one argument was, as far as I could understand it, that the 1st Respondent failed to demonstrate that he suffered loss that could be attributed to the Appellant. And that consequently, it was not open to the Learned Judge to make a finding that the Appellant was jointly and severally liable with the 2nd and 3rd Respondents for the loss he found them liable for.

28. Counsel further argued that in the impugned judgment, the Learned Trial Judge offers no (explanation) as to what sum the Appellant was liable to pay. In faulting the Judge for not giving "reasons as to why he found as he did against the Appellant", Counsel cited the authority of **Carolus and Others v Scully and Others**¹ where this Court at paragraphs 42 and 43 of the judgment, stated that:

¹ [2022] SCCA 1.

"It is expected that a judgment evidences on the face of it, the thought process of the author. A Judgment Is not written for the benefit of the Judge, the most important audience are the litigants. They are entitled to have a candid explanation of the reasons for the decision. The judge in a trial court is the fact finder who will make findings of fact. The trial court makes findings as to what happened - based on the evidence submitted by the parties. Based on these findings and the relevant law, the fact finder will determine which party should have judgment awarded in their favor."

29. That in the present case, the Learned Judge failed to address his mind to the issue of liability of the Appellant and did not make any findings of facts in that regard. And that further to that, the Judge did not provide any explanation as to why he ordered that the Appellant should be jointly and severally liable for the award of damages to be paid to the 1st Respondent.

30. That this Court further held in the Carolus case (supra) that:

"An appellate court generally does not decide issues of fact. The primary distinction between trial and appellate courts is that whereas trial courts resolve both factual and legal disputes, appellate courts will normally only review claims that a trial judge made a legal mistake. The legal mistake may be in form of procedure taken by the trial judge in resolving the dispute. Appellate courts review the procedures and the decisions in the trial court to make sure that the proceedings were fair and that the proper law was applied correctly."

31. Premised on the above authority, the Appellant argued that this Court should set aside the order of the Supreme Court in which the Appellant was found to be jointly and severally liable to pay the 1st Respondent a sum of SR100, 000.00 in damages.

32. Counsel for the Appellant argued that alternatively, if the Appellant were to be found at fault, the Court should by virtue of Section 4 of the Public Officer's (Protection Act)

ordered only nominal damages since the Appellant is a Public officer. The Section provides that:

Where, in an action to enforce a claim in respect of an act or omission referred to in section 3, the court certifies on the record that the public officer or person concerned acted or, as the case may be, omitted to act, upon reasonable or probable cause, the plaintiff is not entitled to more than nominal damages or to any costs of the action..

Respondent's reply

33. The essence of the submissions of Counsel for the Respondent was that the evidence adduced in *court a quo* could only lead to the finding that contrary to the intent of the testator, the Appellant registered the land in the name of the 3rd Respondent, a registration which was void.
34. Counsel submitted that the Will and its contents were brought to the attention of the Appellant when the 2nd Respondent filed an affidavit on transmission by death, with the Will attached. The Appellant allowed the transfer of land from the 2nd Respondent to the 3rd Respondent.
35. Furthermore, the questions directed to the Deputy Registrar by the Learned Trial Judge during the trial reveal that the Appellant's officers, in reviewing the documents submitted to them ought to have noted the restriction on future transfers in the Will but they did not do so.
36. Counsel also submitted that the Judge was correct in proceeding to make corrective or remedial orders and awarding damages against the Defendants, including the Appellant. That the award of damages follows from the finding that the Appellant acted contrary to the intention of the testator and Article 138 (1) of the Civil Code of Seychelles states that: *“Every person is liable for the damage it has caused not merely by his act but also by his negligence or imprudence”*. In further support of this submission, counsel relied on this

Court's decision of **Michel & Ors v Talma & Anor**², wherein the Court recognized the difficulty in assessing moral damages and reiterated the principle that it should not replace a trial court's award for damages unless it was manifestly high or excessive. That therefore, the only basis upon which this Court can interfere with the award is whether the estimate or assessment was unreasonable and excessive.

Analysis of Ground One

37. The Appellant argues that the learned trial judge erred in ordering the Appellant to pay the 1st Respondent damages in the sum of SCR 100,000/- as no finding of liability was made against the Appellant at all and no reasons were provided as to why damages are payable by the Appellant.
38. The argument that there was no finding of liability cannot stand. It is clear in the judgment that the trial judge determined that the Registrar should not have effected the impugned transfer. The judge determined that “... *contrary to the intent of the testator, the 3rd Defendant registered the undivided share in parcel V7930 in the name of the 2nd Defendant, something which makes the registration void.*” (My emphasis)
39. The holding can only be interpreted as a finding that there was fault.
40. It is necessary nevertheless for this Court to (again) clearly explain where the fault of the Appellant lay – in which way was the conduct of the Registrar General’s officers in breach of duty. And I do it below.
41. The Appellant is the Registrar of Deeds as well as the Registrar of Lands. In the capacity of Registrar of Deeds, the Appellant registered the Will. And in the capacity of Registrar of Lands, the Registrar registered the affidavit on transmission by death. In that affidavit, the 1st Respondent avers that the Will and Testament is registered with the Registrar of

² (SCA 22 of 2010) [2012] SCCA 36 (13 April 2012),

Deeds and gives details of the registration. Attached to the affidavit is the Will in question. The Will stated that the property in issue was bequeathed to the 1st Respondent for her life and thereafter the same to Maxine Beaufond.

42. As Registrar of Land, the appellant registered the transfer of land from the names of the 1st Respondent into the names of the 2nd Respondent. Given that the Will was attached to the affidavit on transmission by death, the Appellant ought not to have effected the transfer of the land from the 2nd to the 3rd Respondent. In **Pierre v Attorney General**³ this Court defines fault as an error of conduct which results from breach of a duty of care.
43. The conduct of the Appellant was imprudent and **would** be caught by Article 1383 which provides that: A person is liable for harm caused not only by his or her actions but also by his or her negligence or imprudence. Article 1382 (2) (a) defines fault as an error of conduct that would not have been committed by a **prudent** person in the circumstances. (My emphasis)
44. It would follow that under Article 1382(1) of the Civil Code, the Registrar General **would** be obliged to repair the harm caused by his imprudence or negligence. The Article provides that: Every human act that causes harm (dommage) to another requires the person by whose fault the harm occurred to repair it. And according to Article 1382 (2) (b) Fault may be the result of an act or an omission.
45. Arising from the above analysis, I find no error in the decision of the trial judge that liability attaches not only to the 1st and 2nd Respondents but also to the Appellant.
46. Having made a finding of faute, the Trial Court ordered that the Appellant, the 2nd Respondent and the 3rd Respondent jointly and severally pay the 1st Respondent damages in the sum of SR 100,000.00.

³ (2008) SLR 251

47. In their skeleton heads of argument and during the hearing of the appeal, the Appellant submitted that liability for damages to be paid by a public officer is subject to the Public Officers Protection Act.⁴ It was the argument of the Appellant that where a Public Officer is found liable a court can only award nominal damages.

48. Under Section 4 of the Act,⁵ where in an action to enforce a claim in respect of an act or omission done or omitted to be done by a public officer in the execution of his office, the court certifies that the public officer acted or omitted to act, upon reasonable cause, the plaintiff is not entitled to more than nominal damages.

49. The argument of the Appellant was therefore that in the event that this Court upheld the finding of the trial court that the Appellant was at fault and that damages are to be paid to the 3rd Respondent, **only nominal damages would be due from the Appellant.**

50. In response to the said argument by Counsel for the Appellant, Counsel for the Respondent objected to the raising of this argument, on the basis that the argument was not raised at the Supreme Court.

51. Indeed, perusal of the record shows that this argument was not raised in the court below. This is despite the fact that the plaintiff (now 3rd Respondent) prayed for an order that the **defendants** pay SR 350,000.00 to him in damages. In their written defence, and aware that the Plaintiff was seeking for damages, the Appellant averred in paragraph 10 that:

⁴ I would also add that it is also subject to section 7 of the Land Registration Act which provides that: *The Land Registrar and any other officer of the Registry shall not be liable to any action, suit or proceedings for or in respect of any act or matter **in good faith** done or omitted to be done in exercise or supposed exercise of the powers given by this Act.*

⁵ Act 24 of 1976

There is no cause of action ... against the 3rd Defendant and ... the Plaintiff is not entitled for a judgment against the 3rd Defendant for SR 350,000 as prayed for, much less any other order. In any case the claim is imaginary, manifestly exorbitant, unrealistic and without any factual or legal basis and for damages to the Plaintiff as prayed for,

52. I further note that the issue was also not pleaded in the Grounds of Appeal before us. And neither was it canvassed in the written submissions of the Appellant. It first came up during the hearing of the appeal.

53. For the above reasons, and in agreement with Counsel for the 1st Appellant, the applicability of Section 4 of the Public Officers (Protection) Act ought not and was not considered by this Court in arriving at the quantum of damages.

54. The Appellant also argued that in the judgment of the trial court there is no discussion of “in what sum the Appellant was liable to the 1st Respondent ... and how and why he ordered that the Appellant should be jointly and severally liable for the damages.”

55. I presume that the Appellant is faulting the judge for making an order which does not specify the amount of damages to be paid by each of the three parties found at fault and liable to pay damages. The order does not specify how much each appellant should pay.

56. Resolving this issue calls for an exposition of the principle underlying an order by court that an amount of money to be paid by more than one individual found at fault is to be “*severally and jointly*” paid by the group.

57. In law, joint and several liability makes **each individual** against whom the order is made, responsible for damages **up to the entire amount awarded**. That is, if one party is unable to pay, the others named must pay more than their share. So in the matter before us, each of the appellants is liable for the whole amount.

58. This Court is aware that **more commonly**, comparative fault laws limit an individual’s payment to a proportion based on the extent of their fault. However, an order that parties

at fault are jointly and severally liable is aimed at empowering beneficiaries to pursue full payment, if necessary, from the party with the financial ability if the others cannot pay. Joint and several liability favours the would be recipient in that it ensures as much as possible that there is full payment.

59. Consequently, the award of damages to the 1st Respondent, to be jointly and severally paid by the Registrar General, Mary Leontine and Joel Maxime Esparon is upheld.

60. I find that resolution of ground 1 disposes of the appeal. There is no need to resolve ground 2 and 3 of the appeal.

Conclusion and Orders


61. The appeal fails in its entirety.

62. The orders of the trial Judge are upheld.

63. The Appellant is jointly and severally liable with the 2nd and 3rd Respondents to pay the 1st Respondent the sum of SR 100,000.00.


64.

65. The 1st Respondent shall be entitled to the costs of these proceedings.




Dr. Lillian Tibatemwa-Ekirikubinza, JA.

I concur



Fernando President

I concur



Dr. M. Twomey-Woods

Signed, dated and delivered at Ile du Port on 25 August 2023.