

has also been reiterated by Chief Justice Alleear in the case of *Esparon & Anor* (unreported)–SC Civil Side 157/ 1990.

Following the said ruling the plaintiff continued giving evidence in order to establish the alleged agreement. Again Mr Boull 1321 of the Civil Code alleging that the agreement which the plaintiff is claiming is nothing but a back-letter. It is one of simulation in which the agreement namely Exh-P1, that is the registered title deed in fact, in respect of the land in question, is destroyed, in effect, by a secret back-letter should be in writing and registered within 6 months from the date of the making of the deed. In the absence of such writing as has been produced, the plaintiff has contended that the said secret contract is void. Therefore oral evidence is not admissible to prove a void contract. In support, Mr Boull cited the relevant excerpts from the judgement of the Seychelles Court of Appeal in *Ruddenklau v Timm Adolf Botel* (unreported) Civil Appeal 4/199. The plaintiff's submission is that the admission of evidence to prove the alleged back-letter, a void

On the other hand Mr Elizabeth contended that the authority cited by the plaintiff is not relevant to this case. He attempted to distinguish the instant case on the facts and in substance. Further, he submitted that the alleged agreement between the parties is not a back-letter or simulation or secret agreement. He submitted that the Court should allow oral evidence to prove the transaction in question.

I have carefully analysed the points raised by both counsel in their submissions and have perused the relevant provision of law as to back-letters. Indeed, Article 1321(4) of the Civil Code provides that:

Any back-letter or other deed, other than a back-letter or deed as aforesaid which purports to vary, amend or rescind any registered deed of or agreement for sale, transfer, exchange, mortgage, lease or charge or to show that any registered deed of or agreement for, or any part of any registered deed of or agreement for sale, transfer, mortgage, lease or charge of or on any immovable property is simulated, shall in law be of no force or avail whatsoever unless it shall have been registered within six months from the date of the making of the deed or of agreement for sale, transfer, exchange, mortgage, lease, or charge of or on the immovable property to which it refers.

Obviously, the issue herein raises two important questions.

1. Is the alleged transaction a back-letter in law?
2. If so, is oral evidence admissible to prove this back-letter?

As regards the first question, on the face of the pleadings in the plaint it is clear that the parties allegedly entered into an agreement for the transfer of the land in question to the

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attempted to testify that the agreement alleged under article 1321 of the Civil Code is trying to prove is a secret and ostensible agreement of the defendant in fact, in respect of the land in question, is destroyed, in effect, by a secret back-letter. In law such a secret back-letter is void from the date of the making of the deed. In this case, the plaintiff's evidence shall be inadmissible. He quoted the authority of the Court of Appeal in *Sidna Ruddenklau v Timm Adolf Botel*. In this case, he objected to the admission of evidence to prove the alleged back-letter, a void contract in law.

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plaintiff. This fact was not disclosed in the actual transfer deed of the defendant. In pursuance of this hidden or undisclosed agreement, the defendant allegedly made a sham transfer of the land in his name. This deed was executed and registered with the land registry. In fact, this was an apparent and ostensible transfer. However, this deed was intended to implement the hidden agreement between the parties. It is understood that the unceremonious agreement which the parties entered into is nothing but a back-letter whereas the registered deed is a simple answer to the first question in the affirmative. That is "the transaction is a back-letter in law" and so it should be treated as such for all legal intents and purposes.

Now let us move on to the second question. In this respect, the points raised by both counsel particularly, on the issue as to whether oral evidence is admissible to prove a back-letter.

In this case, obviously the plaintiff is trying to prove a secret contract which destroys the apparent and ostensible transfer deed i.e. the deed which was executed and registered. However, the alleged secret contract was never reduced into writing nor registered. In terms of article 1321(4) if a back-letter is not reduced into writing within six months from the date of the making of the deed, in law it shall be void.

As quotably stated in the case of Botel (supra) "while the requirement in cases where the contract is merely evidentiary pursuant to article 1341 of the Code is an exception provided by article 1347 of the Code, the requirement in cases where the contract is formal provided for in article 1321(4) is formal. The consequence is that the contract is void by reason of the absence of writing."

In the circumstances, I quite agree with the submission of the defendant that oral evidence shall be inadmissible to prove the terms of a back letter which is nothing but a void contract. Therefore, I find the answer to the second question in the affirmative. That is "no oral evidence is admissible in law to prove this back-letter."

For these reasons, I uphold the objection raised by Mr Boulle that the plaintiff cannot adduce oral evidence to establish the back-letter that was entered into between the parties as no oral evidence in this respect is admissible in law.

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executed in favour of the defendant, the defendant's transfer was duly registered. This deed is the ostensible intended to implement the agreement which the parties entered into. Therefore, I find the answer to the first question in the affirmative. That is "the transaction is a back-letter in law" and so it should be treated as such for all legal intents and purposes.

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That the plaintiff cannot adduce oral evidence to establish the back-letter that was entered into between the parties as no oral evidence in this respect is admissible in law.