

**Domingue v Landry
(2003) SLR 148**

Danny LUCAS for the Plaintiff
Jacques HODOUL for the Defendant

Ruling on admissibility of oral evidence delivered on 31 January 2003 by:

JUDDOO J: The Plaintiff claims from the Defendant loss and cost of an agreement whereby the parties jointly invested towards the purchase of a house.

The Plaintiff seeks to adduce oral evidence in support of the agreement. On behalf of the Defendant, objection has been raised under Article 1341 of the Civil Code of Seychelles which prohibits the admission of oral evidence of an agreement where the subject matter exceeds R5,000.

It is admitted in the present case that both parties have lived in a matrimonial home until 4 January 2001 and that they have a child from their relationship born in 1995. The agreement between the parties was within the scope of the matrimonial home.

Under Article 1348 of the Civil Code of Seychelles, the rules of evidence are inapplicable whenever it is not possible for the creditor to obtain written proof of an obligation towards him. On the basis of case law, the principle of written proof has been extended to moral impossibility. In *Vidotto v Dayachy* 1990 SLR 279 this Court stated (Alléear.J as he then was):

Jurisprudence has extended the principle of impossibility of written proof to moral impossibility. Such moral impossibility arises from the relationship between the parties: eg

- (a) Family relationship, husband and wife, parent and children and sisters.
- (b) Ties of affection.
- (c) Relationship as friends.
- (d) Relationship of trust between master and servant.

Proceeding from the above premise, the Court was satisfied that a special relationship existed between the Defendant and the Plaintiff who was the common law wife of the Defendant's brother. The Court held that it was not possible for a loan agreement between the parties to be reduced in writing and allowed oral evidence in support thereof.

On the facts of the present case, the parties lived together as husband and wife as from 1994 and even had a child in 1995. They lived intimately until January 2001. During

2003 by:

the Plaintiff's claim for damages pertaining to an agreement for the purchase of a dwelling

the agreement between the parties hereto under Article 1341 of the Civil Code of Seychelles which prohibits the admission of oral evidence of an agreement where the subject matter exceeds R5,000.

the matrimonial home from 1994 until 4 January 2001 and that they have a child born on 29 March 1995. The agreement between the parties was within the scope of the matrimonial home.

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the time they lived together, it is averred that they had reached agreement as to the construction of a dwelling house. In the circumstances of the case, I find their relationship to be so intimate and close that it prevented the Plaintiff from obtaining written proof of the transaction. Accordingly, the objection is set aside and the Plaintiff is allowed to adduce oral evidence in support of the transaction.

Record: Civil Side No 204 of 2001