

IN THE SUPREME COURT OF SEYCHELLES

Marie Alice Edmond

Executor of the Estate of the Late

Alfred George of Anse Aux Pins, Mahé
Plaintiff

Vs

Lyra Vidot
of Anse Aux Pins, Mahé
Defendant

Civil Side No: 226
of 2000

Mr. J. Renaud for the plaintiff

Mr. F. Ally for the defendant

D. Karunakaran, J.

JUDGMENT

This is a suit for declaration seeking to annul a deed of transfer in respect of an immovable property for an alleged fraud. The plaintiff, in her capacity as executrix to the estate of one late **Alfred George** seeks this Court for a declaration that the deed of transfer in respect of land Title No. S188 dated 17th May 1993 and registered with the Land Registry on 27th June 1993, is void as the purported transfer made thereunder was a fraudulent one. On the other side, the defendant denies the plaintiff's claim in its entirety contending that the said transfer is valid, effectual and genuine and not a fraudulent one.

It is not in dispute that the plaintiff herein is the executrix of the estate of the late Alfred Georges, hereinafter called the "deceased", who was the one, originally instituted the instant suit, while he was alive in 2000. However, when the suit remained part-heard as was pending for the continuation of hearing, the deceased passed away in the intervening period. The silver lining is that it happened after he gave his testimony in Court in this matter. As a result, the caption of the plaint was subsequently amended and the deceased was replaced by the executrix of his estate one Marie Alice Edmond, with the leave of the Court.

The facts of the case are these:

At all material times, the deceased *Alfred Georges* and one *Louis Georges* were undisputedly, the co-owners of a parcel of land situated at Anse Aux Pins, Mahe surveyed as Title: S188 hereinafter called the "property". As per the deed of transfer dated 17th May 1993 in exhibit P1, hereinafter called the "deed in dispute", both co-owners appeared before Mr. Charles Lucas, an Attorney at law and executed the said deed in his presence, and thereby transferred the property to the defendant - Lyra Vidot - having received the sum Rs25, 000/- in consideration from the defendant. The said transfer deed was duly executed, witnessed and attested by the said attorney, who subsequently, on 22nd June 1993, registered the deed with the Land Registry. In fact, Mr. Charles Lucas (DW1)

testified that he has been practising as Attorney and Notary public for the past 20 years in Seychelles. He knew both *Alfred Georges* and *Louis Georges*, the co-owners of the property very well. He had known them ever since they acquired title to the property by virtue of a judgment of the Supreme Court in CS 121 of 1998, dated 28th June 1991 *vide exhibit D1*. Further Mr. Lucas testified that in May 1993, both co-owners, personally appeared in his office and signed the “deed in dispute” in his presence. The Attorney also stated that he was the one, who drew up the transfer deed, identified the parties, particularly the deceased *Mr. Alfred Georges*, whom he had known for many years before, and also he verified his National Identity card for the correct spelling of his name executing the transfer in question. Mr. Lucas categorically testified that the deceased signed the deed exhibit P1 in his presence. After complying with all requirements of formalities, Mr. Lucas got the said “deed of transfer” duly registered with the land registry in accordance with the provision of the Land Registration Act. According to Mr. Lucas, the defendant had already deposited the money Rs 25,000/- in his office, which sum was fully paid to the sellers upon signing the transfer deed. The defendant Lyra Vidot also testified that on the day the transfer was made, Alfred Georges, Louis Georges and his wife were present at the office of the Attorney Mr. Lucas and Mr. Alfred Georges did sign the deed of transfer upon receipt of the money paid through the attorney. Moreover, the defendant testified that since Mr. Alfred Georges was her cousin, she knew him very well and she was all the time maintaining a good relationship with him. Both co-owners used to visit her at home and she also helped them in need particularly, when they had a court case of retrocession to acquire their title to the property. According to the defendant, both had agreed beforehand to sell the property to the defendant. In pursuance of the agreement, they subsequently executed the *transfer deed* at the office of the Attorney after receiving the consideration.

However, according to Mr. Alfred Georges, he never agreed to sell the property to the defendant. He also testified that he never went to the office of the Attorney Mr. Lucas to sign any transfer deed nor did he receive any money. Whilst he was testifying in Court, Alfred Georges personally verified the signature on the *deed in dispute* and stated thus: “I

see it. It is my signature; but it is not I who signed it". Also he produced a photo copy of his National Identity Card - exhibit P2 - containing his signature presumably inviting the court to compare the signature therein with that of the one found on the transfer deed. In the circumstances, he contended that the "*deed in dispute*" is falsified since he did not sign the document. In cross-examination, the deceased testified that he never had any case in court to acquire the title to the property and never engaged the attorney Mr. Shah to represent him in any court case. He did not know the defendant at all. In the circumstances, the plaintiff prays this Court for a declaration first-above mentioned.

Having sieved through the entire pleadings, evidence including all the exhibits on record, it seems to me, the fundamental question that arises for determination in this matter is this:

"Did the deceased Mr. Alfred Georges sign the transfer deed in dispute at the office of the attorney Mr. Lucas on the 17th May 1993?"

Obviously, this is a question of fact that does not involve any point of law. The answer to this question completely depends upon the credibility of the witnesses and their testimonies, since there are two contradictory versions on record on this material issue. According to the testimony of the Attorney Mr. Lucas and that of the defendant, Alfred Georges did sign the transfer deed in question; whereas Alfred Georges himself testified that he never signed any document at the office of Mr. Lucas.

First of all, on the question of credibility, I believe the Attorney Mr. Lucas and the defendant. I accept their evidence, when both testified that the deceased Mr. Alfred Georges did visit the office of the attorney Mr. Lucas and did sign the said transfer deed at his office. The evidence given by Mr. Lucas and the defendant on this crucial issue is reliable, cogent, corroborative and consistent with the contents of the registered document in exhibit P1 evidencing the transfer and the judgment of the Court in exhibit D1 showing how

the deceased acquired title to the property. Moreover, I find upon evidence that Mr. Lucas properly and correctly identified all the parties including Mr. Alfred Georges (now deceased), who all appeared before him in order to execute the said transfer deed. I also find that Mr. Alfred Georges did sign the said deed in the presence of Mr. Lucas upon receipt of the money from the attorney in consideration for the transfer. I do not believe the plaintiff, while he testified to the contrary. I completely, reject the evidence of Alfred Georges, in that, he testified that he never visited the office of Mr. Lucas and never signed the deed in question. The judgment of the Supreme Court in exhibit D1 indeed, speaks for itself, though Alfred Georges testified completely in contradiction to the contents of the said judgment. Obviously, when Mr. Alfred Georges testified in Court he was - about 80 - relatively old. Besides, the transaction of the alleged transfer has taken place in 1993 and he allegedly signed the deed about 13 years ago. In the circumstances, I find that since time and aging progressively weaken human memory, it is more probable and reasonable too, to conclude that Mr. Alfred Georges could have forgotten the facts due to fallibility of his memory rather than to presume that he deliberately lied to the Court under oath on this issue.

Having said that, I note, the plaintiff has pleaded fraud to be the cause to annul the transfer deed. In law, fraud cannot be presumed by Court, it must be proved by adducing positive evidence in terms of Article 1116 of the Civil Code.

Needless to say, the “deed in dispute” is an authentic document in terms of Article 1317 of the Civil Code. This document has been signed before Mr. C. Lucas, an Attorney at law and Notary Public, who categorically testified that he identified the parties namely, Louis Georges and Alfred Georges as and when they signed the deed as transferors respectively. The Attorney has also attested to the authenticity of their signatures in the deed. Besides, the document has also been registered in accordance with law. Therefore, there arises a rebuttable presumption of law in favour of the defendant that the document in question is a valid legal transfer deed bearing the genuine signature of the parties to it. As the maxim goes: **“Omnia proesumpunter rite et solenniter essa acta”** - which means - that all legal acts are presumed to have been done rightly and regularly. Hence, the evidential burden of proving the alleged fraud and falsity of the signature found on this authentic document - in exhibit P1 - and rebutting the presumption in this respect obviously, lies on the plaintiff, as he repudiated his purported signature on it. Evidently, the plaintiff in this case has miserably, failed to discharge that evidential burden and so I find.

Besides, Article 1324 of the Civil Code clearly states that when a party repudiates his handwriting or signature, or when his heirs or assigns declare that they do not recognise either of them, the Court shall decide the issue after hearing evidence. After hearing and examining the entire evidence in this matter, I find more than on a balance of probabilities that the deceased Mr. Alfred Georges did sign the transfer deed in dispute at the office of the attorney Mr. Lucas on the 17th May 1993. Accordingly, I find the answer to the question supra in the affirmative and conclude that the signature found on the *deed in dispute* is undoubtedly, the genuine signature of the deceased Alfred Georges.

Incidentally, I wish to observe that when the correctness of the statements recorded in a notarial deed and attested by the notary or in any authentic document executed by

an attorney can only be impugned by the procedure of ***“incriptio falsi”*** in terms of Article 1319 of the Civil Code *vide Ladouceur Vs. Bibi (1975) SLR Case No: 45* . Be that as it may, for the reasons stated hereinbefore, the instant suit is dismissed with costs.

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D. Karunakaran

Judge

Dated this 28th day of May, 2009