

# **IN THE SUPREME COURT OF SEYCHELLES**

JEAN LOUIS DUGASSE

**PLAINTIFF**

**VERSUS**

1. **SYLVETTE HOAREAU**  
**GUSTAVE DODIN**

2. **GOVERNMENT OF SEYCHELLES**  
**DEFENDANTS**

Civil Side No 103 of 2003

Mr. F. Elizabeth for the Plaintiff

Mr F. Ally for the 1<sup>st</sup> Defendant

Mr. Esparon for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

## **JUDGMENT**

**B. Renaud** J

By Notice of Motion supported by Affidavit entered on 8<sup>th</sup> November, 2002 in Ex-Parte Case No. C.S 234 of 2002, the Applicant Mr. Jean-Louis Dugasse inter alia applied for an inhibition order. On 14<sup>th</sup> November, 2002 this Court made the following order:

*“Accordingly, I hereby make an order of inhibition in terms of Section 76(1) of the Land Registration Act, against the parcel of land registration and transcribed in Vol. 44 No. 292, Vol. 45 No. 583 and Vol. 45 No. 585 until further order by this Court”.*

The above order still subsists.

By a Plaint entered on 25<sup>th</sup> April, 2003 the Plaintiff, Mr. Jean-Louis Dugasse against Sylvette Hoareau as 1<sup>st</sup> Defendant; Mr. Gustave Dodin, Land Registrar as 2<sup>nd</sup> Defendant and Government of Seychelles as 3<sup>rd</sup> Defendant, praying the Court to give judgment in his favour in the sum of SR300,000.00 against the Defendants jointly and severally together with interest and costs.

In the above-mentioned case the Plaintiff pleaded that he is and was at all material times a Building Contractor and the owner of a parcel of land registered and transcribed in Vol. 44 No. 292, Vol. 45 No. 583 and Vol. 45 No 585. The 2<sup>nd</sup> Defendant is the Registrar of Lands and was acting in the course of his duty and employment with the 3<sup>rd</sup> throughout.

The Plaintiff also pleaded that on the 10<sup>th</sup> November, 2001 his parcel of land was subdivided and registered as title Nos. PR3827; PR3828; PR3029; PR3830; PR3843 and PR3844 which land he averred to have purchased from Mrs. Lauremaine Jean (*nee Meriton*) on the 4<sup>th</sup> December, 1992 for the sum of SR50,000.00 together with Mrs. Autricia Mussard and on the 10<sup>th</sup> April, 1999 he purchased the half share of Mrs Autricia Mussard in the property.

The Plaintiff averred that on 3<sup>rd</sup> July 2001 the 1<sup>st</sup> Defendant forged his signature and that of Mrs. Lauremaine Jean on another document stating that the said property has been sold to Mrs. Lauremaine Jean for the sum of SR60,000.00.

The Plaintiff further averred that on 12<sup>th</sup> November, 2001 the 1<sup>st</sup> Defendant forged the signature of Mrs. Lauremaine Jean on another transfer document wherein she stated that Mrs Lauremaine Jean sold the said property to her for the sum of SR80,000.00. He averred that those forgeries made by the 1<sup>st</sup> Defendant constitute a “faute” in law. He also contended that Mrs. Lauremaine Jean has sworn an affidavit wherein she denies purchasing the property again from the Plaintiff or that she sold it to the 1<sup>st</sup> Defendant and that Mrs. Jean has confirmed that her alleged signature on the said documents is a forgery.

The Plaintiff also averred that on 22<sup>nd</sup> November, 2001 the 2<sup>nd</sup> Defendant registered the said property in the name of the 1<sup>st</sup> Defendant. He averred that the 2<sup>nd</sup> Defendant knew or ought to have known at the time of the said registration that the said land has already been sub-divided and registered in his name prior to said alleged sale dated 12<sup>th</sup> November, 2001 and registered on the 22<sup>nd</sup> November, 2001.

The Plaintiff averred that on the act of the 2<sup>nd</sup> Defendant in registering the said property in the name of 1<sup>st</sup> Defendant on the 22<sup>nd</sup> November 2001 when the 2<sup>nd</sup> Defendant knew or ought to have known that the said land had been sub-divided and registered in the name of the Plaintiff on the 12<sup>th</sup> November, 2001 constitute to a “faute” in law for which the 2<sup>nd</sup> Defendant is liable to the Plaintiff and the 3<sup>rd</sup> Defendant vicariously liable.

The Plaintiff claims the amount of SR300,000.00 for moral damage for inconvenience, anxiety, trauma and mental anguish.

The caption of the Plaint was subsequently amended so that the 2<sup>nd</sup> Defendant was entered as – “Samia Govinden (*Registrar of Lands, etc*).- instead of Mr. Gustave Dodin etc.

In her Statement of Defence entered on 2<sup>nd</sup> July, 2007, the 1<sup>st</sup> Defendant admitted that the Plaintiff was at all material times a Building Contractor but denied that the Plaintiff is the owner of a parcel of land registered and transcribed in Vol. 44 No. 292, Vol. 45 No. 583 and Vol 45 No. 585. The 1<sup>st</sup> Defendant averred that the Plaintiff was the owner of the land and he sold it to Mrs. Lauremaine Jean (*born Meriton*), who sold it to the Plaintiff.

The 1<sup>st</sup> Defendant stated that she is unaware that on the 10<sup>th</sup> November, 2001 his land was sub-divided and registered as title Nos. PR3827; PR3828; PR3029; PR3830; PR3843 and PR3844 and put the Plaintiff to strict proof of this allegation.

The 1<sup>st</sup> Defendant admitted that the Plaintiff purchased the land from Mrs. Lauremaine Jean (*nee Meriton*) on the 4<sup>th</sup> December, 1992 for the sum of RS50,000.00 together with Mrs Autricia Mussard and on the 10<sup>th</sup> April, 1999 he purchased the half share of Mrs. Autricia Mussard in the property.

The 1<sup>st</sup> Defendant denied any allegation of forgery as alleged in paragraph 5 of the Plaintiff and averred that according to a written agreement between the Plaintiff and Mrs. Lauremaine Jean dated 3<sup>rd</sup> July, 2001, and registered and transcribed at the Mortgage and Registration Office, Victoria, the Plaintiff sold and transferred the land to Mrs. Lauremaine Jean.

Similarly, the 1<sup>st</sup> Defendant denied any allegation of forgery as alleged in paragraph 6 of the Plaintiff and averred that by an agreement dated 12<sup>th</sup> November, 2001, and registered and transcribed at the Mortgage and Registration Office, Victoria, Mrs Lauremaine Jean sold

and abandoned the said land to the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant denied forging any document and did not commit any 'faute' in law.

The 1<sup>st</sup> Defendant claimed to be unaware that Mrs. Lauremaine Jean has sworn an affidavit wherein she denies purchasing the property again from the Plaintiff or that she sold it to the 1<sup>st</sup> Defendant and that Mrs Jean has confirmed that her alleged signature on the said documents is a forgery.

The 1<sup>st</sup> Defendant admitted that on 22<sup>nd</sup> November, 2001 the 2<sup>nd</sup> Defendant registered the said property in her name.

The 1<sup>st</sup> Defendant denied the claim of the Plaintiff for moral damages and averred that she is not liable to the Plaintiff in any sum whatsoever or at all and that she has title, or better title than the Plaintiff, to the land and that the land is owned by her having purchased it from Mrs. Lauremaine Jean.

The 2<sup>nd</sup> Defendant in her Statement of Defence raised a Plea in Limine Litis as follows:

**"This action cannot be entertained by your Lordship's Court against the 2<sup>nd</sup> Defendant ad the claim sought to be enforced is in respect of acts done or omitted to be done by a Public Officer, in the execution of his office and therefore would be prescribed under Section 3(a) of the Public Officers Protection Act, 1976 (Cap 192)".**

On the merits, the 2<sup>nd</sup> Defendant denied all and singular the several averments contained

in the Plaintiff save and except those which are specifically admitted.

The 2<sup>nd</sup> Defendant admitted that at all material times the Plaintiff was the owner of a parcel of land registered and transcribed in Vol. 44 No. 292, Vol. 45 No. 583 and Vol. 45 No. 585 and that the 2<sup>nd</sup> Defendant is indeed the Registrar of Lands and was acting in the course of his duty and employment with the 3<sup>rd</sup> Defendant. The 2<sup>nd</sup> Defendant however puts the Plaintiff to the strict proof of all the other averments in paragraph 1 of his Plaintiff.

The 2<sup>nd</sup> Defendant also admitted that the Plaintiff purchased the land stated in paragraph 2 of the Plaintiff from Mrs. Lauremaine Jean (*nee Meriton*) on the 4<sup>th</sup> December, 1992 for the sum of SR50,000.00 together with Mrs. Autricia Mussard.

The 3<sup>rd</sup> Defendant in its Statement of Defence also raised a Plea in Limine Litis as follows:

**“The action against the 3<sup>rd</sup> Defendant is prescribed under the Public Officers (Protection) Act (Cap. 192)”.**

The 3<sup>rd</sup> Defendant admitted that the 2<sup>nd</sup> Defendant is the Registrar of Lands and was acting in the course of her employment with the 3<sup>rd</sup> Defendant throughout, but denied each and every other averments of the Plaintiff and further put the Plaintiff to strict proof of his averments contained in paragraphs 5 and 6.

The 3<sup>rd</sup> Defendant denied that on 22<sup>nd</sup> November, 2001 the 2<sup>nd</sup> Defendant registered the property, stated in paragraphs 5 and 6 of the Plaintiff, in the name of the 1<sup>st</sup> Defendant and averred that any registration is done in good faith.

As regards the averments contained paragraph 12 of the Plaint, these are denied by the 3<sup>rd</sup> Defendant who averred that it is not liable in view of Section 7 of the Land Registration Act (Cap. 107).

The 3<sup>rd</sup> Defendant averred that at any rate the sum of SR300,000.00 claimed in paragraph of the claimed is grossly exaggerated.

**What I need to essentially determine at the outset in this suit is whether the Plaintiff, after purchasing the land from Mrs. Lauremaine Jean, sold that same land back to Mrs. Lauremaine Jean by virtue of Exhibit P4.**

On the 4<sup>th</sup> December, 1992 the Plaintiff together with Mrs. Autricia Mussard purchased from Mrs. Lauremaine Jean (*nee Meriton*) for the sum of SR50,000.00 a parcel of land registered and transcribed in Vol. 44 No. 292, Vol. 45 No. 583 and Vol. 45 No. 585.

On the 1<sup>st</sup> April, 1999 he purchased the half share of Mrs. Autricia Mussard in the property and thus became the sole owner of the property.

On the 10<sup>th</sup> November, 2001 the Plaintiff sub-divided that land and registered the resultant parcels as title Nos. PR3827; PR3828; PR3429; PR3830; PR3843 and PR3844.

There is a document Exhibit P2 dated 3<sup>rd</sup> July, 2001 purported to be a transfer made by the Plaintiff to transfer the same property back to Mrs. Lauremaine Jean.

The crux of the case of the Plaintiff is that he never ever sold back his land to Mrs Lauremaine Jean.

In fact, Mrs. Lauremaine Jean, by an affidavit dated 16<sup>th</sup> November, 2002 confirmed that she never purchased back the property from the Plaintiff and she did not in any event had that amount of money at that time to buy back the said property.

There is a document, Exhibit P4, dated 12<sup>th</sup> November, 2001 which purported to be a Transfer Deed from Mrs. Lauremaine Jean to the 1<sup>st</sup> Defendant in respect of the same property in issue.

The Plaintiff purchased the property in issue jointly with Mrs. Autricia Mussard on 4<sup>th</sup> December, 1992. Seven years later he saved sufficient funds to buy back the share of the co-owner on 1<sup>st</sup> April, 1999. From that date on he was the sole owner of the property. In order to develop his property he spent considerable sum of money in order to sub-divided that property into 6 plots. The sub-division took sometime to be carried out and processed and the sub-division was finally completed by the Land Surveyor in November, 2001. The Plaintiff caused the 6 plots to be registered as parcels title Nos. PR3827; PR3828; PR3829; PR3830; PR3843 and PR3844 on 10<sup>th</sup> November, 2001.

Between the time that the Plaintiff became the sole owner of the property in issue, that is from December, 1992 to the time that that property was sub-divided the Plaintiff had no cause and in fact did not sell his property. Mrs Lauremaine also deponed that the signature on Exhibit P4 is an imitation of her signature and in reality it was not her who made it.

The Plaintiff is a Building Contractor with considerable experience of land and business transactions. It is rationally conceivable that only on 16<sup>th</sup> December, 2002 that the Plaintiff, after going through all the hassles and expenses to sub-divide the property to be sold at a higher price for considerable profits, that he would sell back the property to the original

owner at almost the same price he purchase it a decade earlier? Moreover, will the Plaintiff being a reasonable person, when he was on the verge of gaining from his investment, that he would venture to divest himself of such asset and sold it back to someone who did not even afford to buy it back at almost the same price he purchased it a decade before?. That to me is absurd and unbelievable.

I have carefully verified the signatures on Exhibit P4 which purport to be those of the Plaintiff and Mrs Lauremaine Jean. I find that the signature of the Plaintiff is very easy to reproduce or imitate by an reasonably literate person who has the ingenuity, simple writing skills and the crooked mind to do so. Whoever had done those imitations and he resulting transactions not only imitated the signature of the Plaintiff but also that of Mrs Lauremaine Jean. The signature of the latter is similarly easy to imitate. It is my considered judgment that Exhibit P4 is not a document drawn up or caused to have bee drawn up by the Plaintiff and Mrs. Lauremaine Jean. I find that this document is a fabrication calculated to deprive the Plaintiff of his property and as such I declare that this document is null and void and is incapable of vesting the 1<sup>st</sup> Defendant any interest in the parcel of land registered and transcribed in Vol. 44 No. 292, Vol. 45 No. 583 and Vol. 45 No. 585.

Accordingly, I order and direct the 2<sup>nd</sup> Defendant to annul the registration made in the name of the 1<sup>st</sup> Defendant on 22<sup>nd</sup> November, 2001 and to maintain the subsistence of the entries under the Land Registration Act in respect of parcels title Nos. PR3827; PR3828; PR3829; PR3830; PR3843 and PR3844 in the name of the Plaintiff.

The 2<sup>nd</sup> Defendant raised a Plea in Limine Litis that this action cannot be entertained by this Court against the 2<sup>nd</sup> Defendant as the claim sought to be enforced is in respect of acts done or omitted to be done by a Public Officer, in the execution of his office and therefore would be prescribed under Section 3(a) of the Public Officers (*Protection*) Act, 1976 (*Cap*

192).

I do not believe that there is a need for an elaborate argument by this Court on the point raised. Suffice to say that I uphold the plea raised by the 2<sup>nd</sup> Defendant as I do not find evidence that the latter acted in bad faith but simply discharging the functions of his office. By analogy I make the same finding I respect of the vicarious liability of the 3<sup>rd</sup> Defendant.

I accordingly dismiss the case against the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant and make no order as to costs.

There may not be direct evidence as to who drew up or cause to draw up Exhibit P4 and imitated the signatures of the Plaintiff and that of Mrs. Lauremaine Jean thereon, the fact remains that the 1<sup>st</sup> Defendant maintained that that document was genuine. Moreover she is the only one who stands to gain by it. In the circumstances I find that the 1<sup>st</sup> defendant is held liable for the "faute".

I give judgment in favour of the Plaintiff as against the 1<sup>st</sup> Defendant in the sum of SR60,000.00 as moral damages with interest and cost.

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B. RENAUD  
**JUDGE**

Dated this 13<sup>th</sup> day of November 2009