

**ALCINDOR v MOREL**

**(2013) SLR 491**

F Elizabeth for the plaintiffs  
F Bonte for the first defendant  
D Sabino for the second defendant  
A Amesbury for the third defendant

21 November 2013

CS 184/2011

**The judgment was delivered by RENAUD J**

[1] At the hearing of this suit counsel for the second defendant wanted to produce in evidence a receipt for R 75,000.00. Counsel for the first defendant adamantly objected to its production on the ground that the signature thereon is not that of his client. The hearing on the merits was adjourned and a trial within a trial was held and thereafter the parties made their respective submissions on that specific issue in order for the Court to give its formal ruling.

[2] Article 1317 of Civil Code of Seychelles (CCS) states that an authentic document is a document received by a public official entitled to draw up the same in the place in which the document is drafted and in accordance with the prescribed form.

[3] Article 1318 of the CCS states that a document which is not authentic owing to the lack of powers or capacity of the official or owing to a defect of form shall have effect as a private document if signed by the parties.

[4] Article 1319 states that an authentic document shall be accepted as proof of the agreement which it contains between the contracting parties and their heirs or assigns. Nevertheless, such document shall only have the effect of raising a legal presumption of proof which may be rebutted by evidence to the contrary. Evidence in rebuttal, whether incidental to legal proceedings or not, shall entitle the Court to suspend provisionally the execution of the document and to make such order in respect of it as it considers appropriate.

[5] Article 1320 states that a document, whether authentic or under private signature, shall be accepted as proof between the parties even if expressed in terms of statements, provided that the statement is directly related to the transaction. Statements foreign to the transaction, shall only be accepted as writing providing initial proof.

[6] In the case of *De Speville v Pillieron* (1936-1955) SLR 52 the plaintiff, the testamentary executrix of the deceased, sought to have a transfer of R 2,000.00 alleged to have been made by the deceased to the defendant set aside as null and void. The defendant contended that the transfer was a valid one made under a private deed. The Court held that:

- 1) No presumption of genuineness attaches to private deeds and once the writing or signature of such deed is questioned in

the manner provided by art 1323 CCS, it is for the party who claims under the deed to prove to the satisfaction of the court that such writing or signature is that of the person it purports to be

2) In the instant case was sufficient for plaintiff to question the alleged signature of the deceased on the private deed to shift the burden of proving the genuineness of that signature on to the defendant.

3) On the evidence the defendant had failed to discharge the burden of proof.

[7] In the case of *Adrienne v Adrienne* (1986) SLR 156, it was held that:

Where a party denies the signature on a document under private signature, it is for the party who wishes to avail themselves of it to prove the genuineness of the signature.

[8] In the case of *Michaud v Ciunfrini* SCA 26/2005, 24 August, 2007, it was held that:

If a handwriting expert is not available, the judge may make a determination on the comparison of genuine handwriting compared with disputed handwriting. However, the judge must bear in mind that justice would be better served by the assistance of an expert.

[9] At this stage however, I believe that for the suit to progress this court needs to make a clear determination as to whether Item 3 is an authentic document and secondly whether the signature thereon is that of the second defendant.

[10] During the voir dire Mr Serge Rouillon testified that he is a notary public and his signature appeared on Item 3. Mr Serge Rouillon testified that he is an attorney-at-law and notary public, practising at 14 Kingsgate House, Victoria.

[11] Sometimes he gets people coming from the street just to witness a transaction between themselves. He does not know what happened between them whether or not they were selling land or anything. They just walk into his office to pass some money and to have a document drawn up to recognize what is happening.

[12] He does not remember Mrs Amina Morel coming to his office but he remembers Mr Sophola and his secretary going through the processes which basically were to ask the person for ID card to fill out and then he signs it.

[13] Where he stamped at the bottom and signed, Mrs Morel must have signed in his office and it was done in 2010. It was done in his presence. But now he could not remember whether she signed in his presence but the fact that he had signed at the bottom she must have signed in his office.

[14] He could not remember if she did it while he was looking at her signing or when he was passing through the office when they were preparing the transaction and then he signed the document.

[15] When cross-examined by Ms Micock, Mr Rouillon stated that on 17 May 2010

he saw both parties. In his view Item 3 is basically a receipt and is not a document like a transfer or an agreement for these two people's transaction. He added that anyway he could definitely say that the two parties came to his office and they signed this document in his office. He confirmed that it is his signature at the bottom of that document. Both Amina Morel and Sonny Sophola came to his office to sign the document. The document is recognition of certain sums of money being paid in this matter of the land transfer. The amount paid is R 75,000. They came twice to his office actually. His office prepared a second document on which he saw a signature, but he did stamp at the bottom for some reasons because the funds were going to be paid by a cheque. So they came twice to his office just for a receipt for their transaction. He knew nothing about the land title or how they will be doing the whole transaction.

[16] Mr Elizabeth cross-examined Mr Rouillon who stated that he was not sure whether he saw any money exchange hands between the two parties. The transactions were done somewhere else in his office and he was not sure whether his secretary did the transaction with the parties. That document was drawn up before his secretary. He described the nature of the document as a simple receipt not so much a notarial document. He however saw both people in his office and the parties were in his office when he signed the document.

[17] The evidence of Mr Rouillon in a nutshell is that his secretary drew up a receipt which is now Item 3 before the Court, and that receipt was then given to him to sign and stamp. It is my finding that the document is therefore not an authentic document drawn up by a notary in the form envisaged by law. Mr Rouillon could not be certain whether it was indeed Mrs Amina Morel who actually signed on that receipt.

[18] I conclude that the receipt, Item 3 amounts to no more than a document under private signature and for the purpose of this suit it shall be considered as such.

[19] Item 3 being not an authentic document I will proceed to consider the second limb, that is, whether the signature thereon is that of Mrs Amina Morel.

[20] There are three different pieces of documentary evidence which have the signature of Marie Amina Morel thereon and these were drawn up on different dates. Firstly, there is an acknowledgement of receipt of R 75,000.00 signed on 17 May 2010 which is Item 3 before the Court; secondly there is Exhibit D2 a photo-copy of a Transfer Deed in respect of Title V12077 dated 2 November 2010; and, thirdly, there is Exhibit D5 signed by Mrs Marie Amina Morel in full view of the Court and counsel on 23 May 2013.

[21] In the absence of a handwriting expert, this Court ventured to make a determination on the comparison of genuine handwriting signed in the open Court with the disputed signature on the receipt. When the Court compared the three sets of signatures it noticed certain subtle dissimilarities in the style, form, steadiness or trembling pattern and pressure used. However, not being a handwriting expert it was not able to set out the fine distinctions between those handwritings.

[22] In the circumstances this Court therefore concludes and rules that justice would be better served by the assistance of an expert, and, in the absence of which, the Court will decide the case on the basis of evidence at the conclusion of the hearing on the merits.