

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HELD AT VICTORIA

Civil Suit No. 128 of 2011

Oglivy Berlouis=====Plaintiff

Versus

Lucienne Charlette=====Defendant No.1
Edwin Gonzague Anselme Hoareau=====Defendant No.2

Charles Lucas for the Plaintiff

Alexandra Madeilene for the Defendant No.1

Joel Camille for the Defendant No.2

JUDGMENT

Egonda-Ntende, CJ

- 1 The plaintiff brings this action seeking the registration in his names of land titles Volume 80 No. 235 and Volume 81 No. 70 by defendant No.1, in her capacity as Registrar of Titles, contending that he had purchased the said properties from defendant no.2, the registered proprietor thereof. The defendant no.1 opposes this action on the ground that the papers presented by the plaintiff for registration appeared suspicious upon which no transfer could be based. The defendant no.2 opposed this action on the ground that there was no agreement of sale between the plaintiff and the defendant no.2 over the said properties as the agreement of sale was with a third party.

- 2 The plaintiff contends on the pleadings that the defendant no.2 was at all material times the owner of the property in issue, hereinafter referred to as the property. Prior to February 2001 the plaintiff instructed Notary Ramnikal Valabhji to conduct a sale of the said property between himself as purchaser and the defendant no.2 as vendor for the price of R 700,000.00. The vendor was paid 330,000.00 vide 2 cheques from the clients account of Notary Ramnikal Valabhji. Secondly a sum of US\$ 77,900.00

was transferred to the vendor's account with Barclays Bank Plc, Port Louis, Mauritius.

- 3 The Notary initially secured the signature of the vendor on a blank deed of transfer without inserting the name of the purchaser in February 2001 as a form of security for the sale. On 10th August 2001 the Notary drafted a deed of sale under private signature and secured the signature of both the vendor and the plaintiff to complete the execution of sale. The Notary failed to register the said sale from 2001 to 2008 until he was unable to do so due to his medical state.
- 4 The plaintiff in 2008 engaged Attorney William Hermine to secure the registration and transcription of the sale by way of supporting affidavit, proof of payment and copy of blank transfer deed executed by the vendor in 2001. The said papers were presented and the defendant no.1 declined to transfer and transcribe the said property to the plaintiff. The plaintiff asserts that as there was a valid sale between the plaintiff and defendant, in spite of the missing deed, it is just, necessary and reasonable that the sale of the property be registered and transcribed by the Registrar on orders of this court.
- 5 The defendant no.1 opposed this claim. She stated that she was not satisfied with the genuineness of the papers presented on 14 October 2008 and 28 October 2008 by Mr Hermine, as there were photocopies, one set of transcription had not been signed by the purchaser, the signature of the vendor on all of the documents were not original but appeared a photocopy thereof and the transcriptions were sealed with cellotape.
- 6 The defendant no.2 opposed this action. Firstly he stated that this action was prescribed in law pursuant to article 2271 of the Civil Code of Seychelles, hereinafter referred to as CCS, Secondly the defendant no.2 contended that the plaintiff was barred by article 1341 of the CCS from adducing oral evidence in respect of the alleged transaction. In the alternative the defendant no.2 denied the contents of the plaint and contended that there was no contract of sale between the plaintiff and defendant no.2. The contract of sale was between a Robert Noonan, for whom the plaintiff was acting, and the defendant no.2. The Notary drafted only one document that the defendant signed and this was the blank form of transfer where the names of

the purchaser were not inserted. The names were not inserted as the purchaser was a non-Seychellois and the Government sanction was required before the name could be inserted.

- 7 The defendant contended that the said payments for the purchase were done on behalf of Mr Noonan the purchaser. Apart from the first deed the defendant has never signed any other deed, including a transcription deed, as alleged by the plaintiff and such purported document must have been forged by or at the instance of the plaintiff. The defendant finally contends that the plaintiff has no locus standii to institute this action in terms of article 1165 of the CCS, as the contract of sale was only between Robert Noonan and the defendant no.2. The plaintiff is a third party to the contract. He prayed that this suit be dismissed with costs.
- 8 Before I can consider the evidence adduced by the parties it is convenient at this stage to set out the issues that must be resolved in this case for either party to succeed. It is clear that the central issue is **whether or not there was a contract of sale between the plaintiff and defendant no.2**. If there was no contract of sale between these 2 parties, as is contended by the defendant no.2, this action must fail. If a contract of sale between the plaintiff and defendant no.2 is proved then this action would succeed.
- 9 There is no written contract of sale of land between the plaintiff and the defendant no.2 that has been tendered in this court. It is the case for the defendant no.2 that there was never such a contract in the first place. The only written deed of transfer prepared by a notary, which the defendant no.2 signed, was blank in respect of the purchaser. The explanation by defendant no.2, in his testimony to this court, is that the purchaser was a Mr Robert Noonan, a non-Seychellois and his name could not be put on the deed until a Government sanction of the transaction had been obtained.
- 10 The plaintiff while admitting that such a deed was made states that he was the purchaser and not Mr Robert Noonan. However at the time he had not made up his mind as to whether the property should be registered in his personal names or in the names of a company or a nominee. That was the reason why his name or any other name was not placed in the place for the purchaser. The plaintiff is astonished that the

defendant no.2 claims that the plaintiff was acting as an agent of Robert Noonan as the plaintiff had never told the defendant so. He wondered how the defendant no.2 had come by the name Robert Noonan.

- 11 The plaintiff admitted that Robert Noonan existed. In fact the plaintiff acted as an agent for Robert Noonan in a number of matters, related to the purchase of land in Africa. The notary paid the defendant no.2 with 2 cheques in respect of money the notary held on account of Robert Noonan and it is Noonan that authorised that money to be disbursed to the defendant no.2 but as a payment on account of the plaintiff. Similarly the transfer of US\$77,900.00 was from an account controlled by Robert Noonan but it was made on account of the plaintiff as those monies were due to the plaintiff from Robert Noonan. It was on account of the plaintiff's instructions to Mr Robert Noonan that this money was paid to the defendant no.2's account.
- 12 Implausible stories may well turn out to be the true. If the plaintiff never told the defendant about a Robert Noonan, how can it turn out that the defendant no.2, was taken by the plaintiff to a Notary, to draw up the instruments of sale or transfer, who kept Mr Noonan's money in his clients account? And how does it turn out that he was paid with money initially belonging to Mr Noonan held by the Notary? In addition the last payment, the foreign exchange remittance to the defendant no.2, also originated from a company, outside of Seychelles, controlled by Robert Noonan. Is this not too much of a coincidence? The only people who could have revealed the identity of Mr Robert Noonan to the defendant were either the Notary or the plaintiff or both of them. The defendant no.2 could not have dreamed up the name of Robert Noonan.
- 13 It may well be possible that the plaintiff was at a loss as to which name this property should be put in but it is extremely surprising that he would wait 8 years for a transfer to be done until the Notary who handled the transaction became senile! Ordinarily self interest could not have allowed such a state of affairs. This story weighed together with the story for the defendant is simply improbable. Given the sums of money involved in this transaction it is surprising that if the plaintiff was the actual buyer of the property he did not secure this transaction with an agreement of sale between himself and the defendant no.2 pending the determination by the plaintiff of the person in whose favour he wanted the land in question transferred to.

- 14 The plaintiff admitted in his testimony that he acted for Mr Robert Noonan at about the time of this transaction. He did so in buying land. He approached the defendant to purchase some land. The defendant stated that the plaintiff did so, on behalf of Mr Robert Noonan. The defendant no.2 did not know Robert Noonan. He did not meet Robert Noonan. The plaintiff took him to a Notary who had Mr Robert Noonan's money and paid the defendant no.2. The plaintiff assisted the defendant no.2 open an account in Barclays Bank Plc, Mauritius. A company controlled by Mr Noonan transferred the balance of the purchase price to that account.
- 15 The defendant no.2 explained that the only reason why the purchaser was not named in the deed of transfer was because the purchaser was a non-Seychellois, and this would await grant of the Government sanction, necessary for such transactions. This version is more plausible than the plaintiff's version. The defendant no. 2 explained that the plaintiff was acting as an agent for Robert Noonan in this sale. In fact the plaintiff admitted that around this time he had been acting as an agent for Robert Noonan. The defendant's story is not fanciful. It is supported in material parts by the account of the plaintiff himself.
- 16 The purchase price was paid with money held either on behalf of Mr Noonan and or by a company controlled by Mr Noonan. The plaintiff claims that this money was paid on his account and instructions, in his own right, for services he had rendered to Mr Noonan. He could not produce any proof, documentary or otherwise, of such services or any other evidence pointing in that direction, other than his word. Mr Noonan was an associate of the plaintiff and not of the defendant.
- 17 In addition the defendant no.2 testified that he had only signed one document, the deed of transfer, in February 2001. However numerous documents were produced by the plaintiff or at the instance of the plaintiff, purporting to bear the defendant no.2's signature. The defendant no.2 has called those documents forgeries. The plaintiff could not produce Mr Hermine who had attested some of those documents, like the deed of transfer of August 2001 or the transcriptions, to testify to support their authenticity or genuineness. The defendant no.1 found such documents suspicious and refused to act on them. The defendant no.2 states on oath that they are not his

documents. They do not bear his signature. Or rather he did not execute the same. Any signature on them purporting to be his signature is a forgery. This testimony has not been refuted.

18 The fact that the plaintiff is associated with such documents or is the originator of such documents does not lend credence to his version of events. On the contrary, on a balance of probabilities, it destroys the case he put forward as unworthy of belief. I find that the plaintiff has failed to prove that he entered into a contract of sale on his own behalf with the defendant no.2 over the property in question. As that is my finding on that issue this suit must fail. It is dismissed with costs.

Signed, dated and delivered at Victoria this 31st day of January 2013

FMS Egonda-Ntende
Chief Justice