

THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES HELD AT VICTORIA

Civil Appeal No. 45 of 2012

Lucy Prudence=====Appellant No.1

Jemmy Hoareau=====Appellant No.2

versus

Lina Frideria=====Respondent

Charles Lucas for the Appellant

Respondent absent and unrepresented

RULING

Egonda-Ntende CJ

- (1) This appeal was commenced by a document entitled 'Ex-parte Notice of Appeal' and when it was called for hearing before me it proceeded *ex parte* and was fixed for judgment. As I was preparing the case for judgment I realised that this procedure may well be in breach of the law for the reasons that I set out below. As a result I have deferred the giving of judgment in the matter and now by this ruling require the Appellant to satisfy this court as to the legality of presenting an appeal *ex parte*.
- (2) Commencement of Appeals from Magistrates Court to the Supreme Court is governed by Rule 6 of the Civil Appeal Rules, which state,
 - (1) Every appeal shall be commenced by a notice of appeal.
 - (2) The notice shall be delivered to the clerk of the court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorises the appeal.
 - (3) The notice shall be accompanied by as many copies as there are respondents.
 - (4) the appellant shall pay the prescribed fees and deposit the amount of the cost of preparation of the record as estimated by the clerk of the court.
 - (5) **The clerk of the court shall cause the notice to be served on each respondent as soon as is practicable.'**
- (3) After the appellant files a memorandum of appeal the clerk of court is required by rule 15 'to

cause the memorandum of appeal to be served on the respondent.'

- (4) It is evident from this file that on filing of the *ex parte* notice of appeal, it was not served on the respondent, probably, because of its entitlement, as *ex parte*. Neither was the memorandum of appeal served on the respondent and consequently, it must be assumed, the respondent was not notified of this appeal, and did not turn up at the hearing. It may be noted at this stage that the hearing in the court below proceeded *ex parte*. May be it is this procedure in the court below that prompted the appellant to initiate *ex parte* proceedings on appeal as well, a procedure that is not consistent with the foregoing rule that we have referred to above.
- (5) In light of the foregoing I deem it necessary that the appellant satisfies this court that this 'so called *ex parte* proceeding on appeal that is not in direct contradiction with the Appeal Rules. I shall therefore reset this matter for hearing and shall require the appellant to address me on this point.

Signed, dated and delivered at Victoria this 1st day of February 2013

FMS Egonda-Ntende
Chief Justice