

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA36/2013**

**Appeal from Magistrates Court Decision 38/2013**

**[2016] SCSC 139**

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**PIERRE MORIN**

Appellant

versus

**GERMAIN CAMILLE**

Respondent

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Heard:

Counsel: Mr. J. Camille for appellant

Mr. M. Vidot for respondent

Delivered: 3 March 2016

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**JUDGMENT**

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Renaud J

**[1]** The Appellant was the Plaintiff in the Court below claiming the sum of SR280,000.00 being an amount which the Respondent (who was the Defendant) owed to him arising out of a loan made to the latter, together with moral damage for distress and anxiety in the sum of SR25,000.00.

[2] The Learned Senior Magistrate dismissed the Plaintiff with cost to the Respondent upon her concluding that the sum claimed by the Appellant was not a loan but a gift he made to the Respondent.

[3] The Appellant being aggrieved by the decision of the Learned Senior Magistrate given on 18th November, 2013 is now appealing against the whole of that decision on the following grounds:

**Ground 1**

The Learned Senior Magistrate erred in law and on the facts for having concluded that the payment of SR400,000.00 by the Appellant to the Respondent was a gift rather than a loan of the same sum, by Appellant to Respondent.

**Ground 2**

The Learned Senior Magistrate erred in law for having wrongly applied the principles of law as regards to gift in the circumstances of the evidence in this matter.

[4] I have meticulously reviewed all the evidence in this case as well as given careful consideration to the submissions made by Learned Counsel for the respective parties. I carefully reviewed the judgment of the Learned Senior magistrate and the findings she made and conclusions drawn on the basis of the evidence.

[5] The bone of contention that now arises for consideration was whether the sum was a loan or it was a gift.

**Grounds 1 and 2.**

[6] The two grounds of appeal shall be considered together.

[7] Both the Appellant and the Respondent testified on their own behalf and neither of them called any other witness. Therefore the Court below had to determine the case on the basis of the evidence of the parties only.

- [8]** The issues that were to be determined by the Court below were, in my view, correctly formulated by the Learned Magistrate.
- [9]** It was not in dispute that the Respondent is and was at all material times the nephew of the Appellant and a businessman. It was also admitted that the Respondent received from the Appellant the total sum of SR400,000.00 by two instalments of SR200,000.00 each.
- [10]** The Respondent however denied that the said sum was a loan made to him but that it was rather a gift made to him after his advising and guiding the Appellant on the sale of the latter's property and also as a token of appreciation for the many deeds the Respondent performed for the Appellant in the past.
- [11]** A matter of serious consequential significance in this case is that upon demand by the Appellant to be repaid the sum owed, the Respondent started to repay the Appellant by instalments around 2005. At that time the Appellant was experiencing financial difficulties. The Appellant maintained that the Respondent continued to refund the money by instalments until June 2011 up to a total of SR120,000.00.
- [12]** The Respondent, however, contended that he was not refunding the Appellant the money he gave him but he was rather assisting the Appellant as the latter had assisted him prior.
- [13]** The evidence of the Plaintiff was that between April and October 2003 when he was living on La Digue, he lent the Respondent a total of SR400,000.00 made in two instalments of SR200,000.00.
- [14]** The first of such instalment of SR200,000.00 was to enable the Respondent who lived on Mahe, to purchase a vehicle to be resold for profit. The Respondent accordingly purchased a Mini Bus S13811 and thereafter resold it but did refund the Appellant any money. The Respondent instead asked the Appellant to allow him to use the proceeds of that sale to purchase an engine for his boat and the Appellant allowed him to do so.
- [15]** Later on the Respondent asked the Appellant for a further SR200,000.00 to enable him pay his ex-wife her share in the matrimonial property. The Appellant loaned the

Respondent a second amount of SR200,000.00 to avoid the Respondent loosing his house.

- [16]** In 2004 the Appellant came to live on Mahe. The Appellant acknowledged that the Respondent started repaying him by a first instalment of SR30,000.00. In 2007 the Respondent repaid him a second instalment of Euros400. In 2008 the Respondent repaid him the sum of US\$300. In 2009 the Respondent repaid him a sum which he did not recall exactly how much. In 2010 the Respondent repaid a further sum of Euros 400. In August 2010 the Respondent repaid a sum of SR40,000.00. The last repayment made by the Respondent was a total of SR16,000.00 made during period April to July 2011.
- [17]** The Appellant reckoned that he was repaid a total amount of SR120,000.00 leaving a balance outstanding in the sum of SR280,000.00. The Appellant required the unpaid balance of SR280,00.00 for him to move out to a new place. When he asked the Respondent for his money the latter refused to repay the balance but instead insulted him and simply refused to talk to him anymore.
- [18]** The Appellant admitted that the Respondent used to render him assistance when he (Appellant) was living in La Digue and in return he paid the Respondent for all the expenses he incurred on his behalf. The Respondent did not assist or advised him in any way, when he was selling his property to Cable and Wireless for SR1.3m. .
- [19]** The Appellant firmly maintained his stance under rigorous cross-examination that he lent the Respondent SR400,000.00 and that it was never intended to be a gift.
- [20]** The Defendant is in the business of boat charter and guest house operation. When the Appellant was living on La Digue he assisted him. They were close uncle and nephew. The Respondent stated that he assisted the Appellant in the sale transaction of his property to Cable and Wireless. After the sale the Appellant, in 2003, gave him SR200,000.00.
- [21]** In 2004 the Appellant informed the Respondent that someone on La Digue wanted to buy a vehicle to operate as a taxi and whether he knew of any such vehicle available on Mahe. The Appellant gave him the sum of SR200,000.00 for that purpose as a gift. The

Respondent bought a vehicle and according to him it was resold for only SR170,000.00. The Respondent informed the Appellant of the sale and the latter did not ask him about the money.

[22] The Respondent admitted that he gave some money in foreign exchange to be sent to his (Appellant) relatives in Australia. Exhibit D1 is purported to be a statement of account of the Respondent showing 4 money transfers to the benefit of the Appellant totaling SR98,000.00 over the period 11th March 2004 to 27th May, 2004.

[23] The Respondent went on to testify that in addition to those transfers he also gave the Appellant further sums of money. Under cross-examination he stated that at the time the Appellant gave him the two sums of money he was not aware that the Appellant had sold his property on La Digue. He confirmed that the two sums were given to him in 2003 and 2004.

[24] The Respondent is a businessman involves in charter boat and guest house activities living on Mahe. The Appellant is a person of no profession who lived on the isolated island of La Digue. No doubt the Respondent is more conversant with money and other transactions than the Appellant. His testimony obviously will be better thought out than that of the Appellant in order to better convince the Court that his version of the story is more truthful. The Court therefore had to be very cautious when considering the evidence of the Respondent as against that of the Appellant in order to establish its veracity and reliability.

[25] There is no dispute that the Appellant gave SR400,000.00 to the Respondent in two instalments made at two different times. The Respondent corroborated the evidence of the Appellant than one of the instalment was made in connection with the purchase of a vehicle by the Respondent to be resold and any profits made was to be shared out. Was that a gift? It is my considered judgment that that was not so.

[26] The Respondent admitted that he used the proceeds of the sale of the vehicle, with the approval of the Appellant, to make a deposit in order to obtain a loan to buy an engine for his boat.

- [27] The Respondent admitted he received a further instalment of SR200,000.00 on another occasion. The Appellant stated that the Respondent needed money to resolve his matrimonial property issue and he lent him that sum.
- [28] The Respondent stated that the Appellant gave him the SR400,000.00 as a gift after the sale of his property for SR1.3m to Cable and Wireless, which property he assisted and advised the Appellant about its sale. I note that the Respondent stated that he was not aware that the Appellant had sold his property on La Digue. Then how come he assisted the Appellant in that transaction? If that was so, why would the Appellant made the gift to him in two instalments at different times? It is obvious that that was not the case. If it was a gift there would have been no condition regarding sharing of profits after the sale of the vehicle.
- [29] Moreover, if the money given by the Appellant to the Respondent was a gift no question of refund would arise. The Respondent admitted that he made certain repayments to the Appellant either by various bank transfers, foreign payments and cash. That corroborated the testimony of the Appellant that the Respondent started repaying him the loans which he reckoned to be up to an amount of SR120,000.00 and he thereafter stopped. Does one refund a gift of money by instalments? I find that this is not the case, repayment by instalments are made towards money borrowed.
- [30] In the final analysis I find and conclude that the Learned Magistrate did not address her mind fully to the facts revealed by the evidence and therefore came to the wrong conclusion that the money was a gift rather than a loan. It is obvious to this Court and for reasons stated earlier above that the total amount of SR400,000.00 was not a gift made by the Appellant to the Respondent but it was rather loans to be repaid to the Appellant by the Respondent.
- [31] In the absence of evidence to the contrary I find that the Respondent repaid only SR120,000.00 towards the loans and left an unpaid outstanding balance of SR280,000.00 which is now to be repaid by the Respondent to the Appellant.

**[32]** This ground of appeal of the Appellant has merit. The judgment and orders made by the Learned Magistrate are hereby set aside.

**[33]** No doubt the Appellant went through distress and anxiety occasioned by the act and omission of the Respondent and as such the Appellant is entitled to moral damage which I set at SR25,000.00.

**[34]** I accordingly enter judgment in favour of the Appellant as against the Respondent in the total sum of SR305,000.00 with interest at the legal rate with effect from the date of this judgment.

**[35]** I award costs against the Respondent both in this Court and the Court below.

Signed, dated and delivered at Ile du Port on 3 March 2016

B Renaud  
Judge of the Supreme Court