

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: 57/2016**

**[2017] SCSC 1035**

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Mark Couchene                      Plaintiff

versus

Sheila Baker                      Defendant

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Heard:                      28 March 2017, 14 June 2017, 30 June 2017, (6 September 2017 Submissions),

Counsel:                      Ms. Kelly Louise for the Plaintiff  
   Mrs Samantha Aglaé for the Defendant

Delivered:                      6 November 2017

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**JUDGMENT**

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**M. TWOMEY, CJ**

[1]     In a Complaint filed on 29 August 2016, the Plaintiff claimed that on 15 July 2011 the Defendant, his concubine, became the owner of the bare ownership of Parcel PR4884 by virtue of a transfer purportedly effected by himself. He averred that he only became aware of the transfer in 2014 when he came across the document among his personal effects.

[2]     He maintained that he did not sign the transfer documents or intend the Defendant to have bare ownership of the said parcel of land. He averred that the signature on the document purporting to be his was a forgery and that the consideration for the transfer

was never paid. He claimed that despite repeated requests, the Defendant had failed to return the bare ownership of the said parcel to him. He prayed for an order of the court declaring the transfer document to be null and void and for the Land Registrar to amend the Register of Parcel PR4884 accordingly.

- [3] In her Statement of Defence the Defendant vehemently denied the averments of the Plaintiff that the transfer was not effected or that his signature on the transfer document was a forgery. She further averred that it was the Plaintiff who had travelled from Praslin to Mahé to have the transfer executed. He received consideration for the transfer of the bare ownership of the property to her. Further in the Supreme Court case DV146/2012 he had stated to the Court that he had transferred the property to the Defendant.
- [4] In his testimony, the Plaintiff repeated the averments in his Plaint. He denied ever having a relationship with the Defendant. He also denied ever having signed any papers in relation to immovable property involving the Defendant. When shown his signature on the transfer document he claimed it was not his as he could neither read nor write and claimed that he had only entered his mark (a cross) whenever his signature was required on a document. He denied receiving any money for the transfer. He did not know why he had allowed the Defendant to erect a building on his property but admitted making part payment for it.
- [5] In cross examination he admitted knowing the Defendant but only in relation to her visiting his home with her husband and when he visited her home on Mahé which he said happened all the time. He denied knowing the notary Mr. Nichol Gabriel or ever signing any documents before him. He vehemently denied stating to the Court during his divorce proceedings with his wife that he had sold Parcel PR4884 to the Defendant. He denied being given receipts of the consideration of the purchase price of the said parcel.
- [6] In re-examination it was put to him that he had sworn an affidavit in DV 146/2012 (Exhibit D1) , in paragraph 15 of which he had averred:

“...Parcel PR4884 is registered in my sole name and I am entitled to transfer the said land with house to any other person wishing to buy the land. Sheila Baker

was a willing buyer to and she paid me the full consideration for the house and land.”

- [7] The Plaintiff’s son, Paul Couchene, also gave evidence. He stated that he had gone to his father in 2014 who wanted to appoint him as a power of attorney and transfer everything he owned to him. He did not know the Defendant although he had seen her in a jeep with his father and her husband. He had never lived with his father and had been brought up by his father’s first wife. He admitted that he was looking at what was his and his sisters and did not know whether his father had sold the land to the Defendant.
- [8] The Defendant testified. The Plaintiff had cohabited with her for five years at Les Mamelles. He had told her that he was going to Desroches to work but she had subsequently met him with Kathleen Payet whom he had subsequently married.
- [9] In 2009, she met him at the Central Police Station and he had offered his land for sale. After discussion she agreed to purchase it. He had gone to see Mr. Gabriel who had prepared the documents. They attended together for signature and she handed him SR100, 000 in the presence of Mr. Gabriel. She produced the receipt of the transaction dated 21 February 2011 (Exhibit D2).
- [10] He authorised the construction of the building on the property. The building had reached wall plate level and it cost her SR80, 000. She had intervened in his divorce case to show that she had an interest in the land, the subject of a matrimonial case between him and his second wife. In cross examination she stated that she had seen the Plaintiff write and sign.
- [11] Mr. Christopher Calva also testified. He is the Defendant’s nephew. He had lived with the Plaintiff for two years. He had witnessed the Plaintiff reading his bills and other documents.
- [12] Mr. Nichol Gabriel testified that he had known the Plaintiff for a number of years. He had first instructed him in a case involving his brother in 2010 and he had subsequently instructed him on a number of occasions. The Plaintiff had been present in his office when the transfer to the Defendant had been made. He had come several times and had

told him he was taking too long to execute the transfer. He had signed the document and he had no doubt about the Plaintiff's ability to read and write. He had previously shown him another promise of sale for land on Praslin he had signed.

[13] I have read the closing submissions of the Plaintiff and those of the Defendant's. Much as I would like to enter into a discussion of the law on the four conditions of a contract as outlined in Ms. Louise's submissions on behalf of the Plaintiff or nullity of a contract through fraud, I am left with the lasting impression of the testimony given by the Plaintiff and the Defendant and their witnesses in this Court. The Plaintiff came across as one of the most untruthful witnesses I have ever observed in the Court room. He was shifty and unconvincing.

[14] He is not a befuddled old gent of whom advantage was taken as he would want us believe. On the contrary I am of the view that he avoided answering the difficult questions put to him in court. I myself reminded him what an oath meant especially when his own averment in his matrimonial court case was put to him to show that he had averred therein that he had transferred the land to the Plaintiff. Equally of note is that in the root of title document to this case - a transcription dated 4 April 2008 between Joseph Adam and the Plaintiff - the Plaintiff has therein also appended his signature.

[15] In the light of these pieces of damning documentary evidence, the evidence of the Defendant and the notary Mr. Gabriel whose testimony was not in any way, shape or form undermined I have no difficulty in dismissing the evidence of the Plaintiff. He has failed to bring any evidence of fraud on the part the Defendant or to show that he had not signed the transfer document. He has wasted the time of this Court.

[16] There is no statutory provision for wasted costs in Seychelles but the courts have discretionary powers in relation to costs. Section 7 of the Court Fees (Supreme Court) and Costs Act provides:

*“Nothing in this Act shall detract from the discretionary power of the court to grant or disallow costs in causes or matters or to grant costs only on the amount*

*awarded by the judgment of the court, or to apportion the costs as the court may deem fit.”*

[17] In *Allisop v FIU* [2016] SCCA 1, the Court of Appeal granted wasted costs in an ill-advised appeal which it viewed as an abuse of process. It cited *Re a Barrister (wasted costs order)* 3 All ER 429 where the court imposed a three-stage test to be adopted when considering a costs order; the test which I now reproduce:

*“(1) Has there been an improper, unreasonable or negligent act or omission? (2) As a result, had any costs been incurred by a party? (3) Should the court exercise its discretion to order the lawyer to meet the whole or any part of the relevant costs?”*

[18] I endorse this three stage test. In the present case I am of the view that the Plaintiff had no case whatsoever, has wasted both the Defendant’s and the courts time and has led the Defendant to unnecessary expense. There has been an improper and unreasonable act on his part and the Defendant has incurred costs. I am however not certain that the circumstances in the present case merit the lawyer being made to meet the costs. In the circumstances I make the following orders:

1. The Plaintiff’s case is dismissed.
2. The Plaintiff is ordered to pay double the costs of this suit.

Signed, dated and delivered at Ile du Port on 6 November 2017.

**M. TWOMEY**  
Chief Justice