

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 95/2016

[2018] SCSC 158

MARIE ROSINE GEORGES

Plaintiff

Versus

1. CLIFFORD BENOIT

1st Defendant

2. CHARLES LUCAS

2nd Defendant

3. THE LAND REGISTRAR

3rd Defendant

Heard: 7 September 2017, 19 September 2017, 17 November 2017, 22 November 2017

Submissions 2 February 2018

Counsel: Mr. Francis Chang-Sam SC, Ms. Edith Wong, Mr. Olivier Chang Leng

for plaintiff

First Defendant, absent and unrepresented

Mr. Charles Lucas in person

Mrs. St. Ange-Ebrahim for Third Defendant.

Delivered: 20 February 2018

JUDGMENT

M. TWOMEY, CJ

- [1] The Plaintiff and First Defendant were married in December 1979 and divorced in May 2012. Following the divorce, the Plaintiff changed her married name “Benoit” to her maiden name “Georges” on her official documents.
- [2] The Second Defendant is a notary and attorney at law, admitted to and practising at the Bar of Seychelles and in his last mentioned capacity represented the First Defendant before the Supreme Court in both the divorce and matrimonial property proceedings.
- [3] The Third Defendant is the statutory custodian of records in relation to land in Seychelles and legally bound to keep them up to date.
- [4] According to a document stamped and registered by the Third Defendant on 17 December 2015, the joint fiduciaries (one of whom was the Plaintiff) of the matrimonial land, on the 16 December 2015, purportedly granted to the First Defendant as owner of land parcel V16827, the easement of a right of way together with associated rights.
- [5] It is the Plaintiff’s case that she did not sign the signature “M. Benoit” that appears on the grant of easement or at all. She also avers that the Second Defendant is wrong when he states in the notarial document that she signed it in his presence and that either the First Defendant fabricated or forged a signature on the document and pretended it to be hers and the Second Defendant thereafter wrongly attested to her having signed it in his presence or that the First and Second Defendants jointly forged and/or connived with each other to fabricate a signature, which they purported to be hers.
- [6] She further avers that it was necessary for the First Defendant to resort to this fraudulent method of obtaining the grant of easement registered against the matrimonial land in order that he might dispose of it without her being made aware of it.
- [7] She claims therefore that as a result of the fraudulent acts of each of the First and Second Defendants she has suffered loss and damage amounting to SR100, 000 and prays for orders for the damages as claimed; preventing the First Defendant or other persons claiming title under him from using the right of way; requiring the Third Defendant to comply with the order and to cancel the grant of easement, and any further orders deemed fit by the Court.

- [8] The First Defendant filed no statement of defence despite the fact that legal aid was granted to him for the purpose of drafting the same, and has contented himself with trying to reach a judgment by consent with the Plaintiff, which judgement was rejected. He has also put up no defence to the case and did not appear at the trial. The case therefore proceeded ex parte against him.
- [9] The Second Defendant avers in his statement of defence that the Plaintiff did indeed sign her signature on the notarial document and that this was done on his advice. He denies the allegations of fraud and collusion and states that he has acted for the Plaintiff and First Defendant *pro bono* and in their best interests, as they were family friends. He further states that he has seen the judgment by consent prepared by the First Defendant for the cancellation and removal of the grant of easement and as he has no interest in the same he has no objection to it.
- [10] He further states that there was no fraud at all and no inconvenience caused to the Plaintiff by the grant of easement, which she in any case jointly granted with the First Defendant. He states that the Plaintiff has been hostile towards him since the First Defendant tried to remove a restriction she had entered on Parcel V16827 and that he has now fallen victim to her “wrath”. He further states that the Plaintiff has suffered neither loss nor damage as claimed or at all.
- [11] The Third Defendant has asked for the suit against it to be struck out as it would in any case abide any court order and that it is the Attorney General who should be pleaded as defendant in claims against the Government of Seychelles. It denies the averments in the Plaint as not being within her knowledge. It avers that it did not receive any documentation pertaining to the Defendant’s change of name and cannot therefore have had knowledge of the same. It further admits registering the grant of easement but states that was it was responsible for registering documents presented but not for verifying their authenticity.
- [12] In her testimony, the Plaintiff explained that she had been married to the First Defendant for thirty-two years. They were co-owner of various parcels of land namely: V6494 and V3849. The Court of Appeal delivered a final decision in respect of the settlement of the matrimonial property for those two parcels and ordered that she had the first option to

purchase the First Defendant's share in the same, after which the First Defendant would have the option to purchase her share, failing which the matrimonial home would be sold and the proceeds distributed between the parties in the shares indicated by the court.

- [13] She came to know of a document purporting to grant an easement of a right of way across the matrimonial property (Parcels V3849 and V 6494). She had not signed this document and it did not bear her signature. She explained that she had gone through the trouble of changing her name and signature on all her personal documents since her divorce including her identity card, the Ministry of Education where she worked, the bank where she had accounts and her passport although its term had not expired. These documents were produced as exhibits in the case (P. 5 (a) and (b), P6, P7, P8).
- [14] She denied having signed the document on the purported date as she had during that week been marking exams and could not have gone to the Second Defendant's office. She did not know where the Second Defendant's Office was and had never been there. She denied ever signing any document before the Second Defendant. She also stated that she would not have signed a document in December 2015 with her married name "Benoit" after having changed her name in 2012. In any case when she signed as "Benoit", her signature was different to the one on the purported grant of easement dated 16 December 2015. Comparisons were provided with the production of documents in which she had signed as Benoit (Exhibits P.9, P5 (b), P11).
- [15] The Second Defendant's action had shocked her and had made her very depressed. She could not understand why someone to whom she had been married for thirty-two years would go behind her back to facilitate a sale to a third party. An Indian man purporting to be the buyer of the adjacent property purchased from the First Defendant had come to the house and had insisted that she had signed the document and proceeded to clear the land at the back of her house. He stated that he would give her a key to the gate he wanted to put at the end of the right of way. This upset her as she felt it was an intrusion on her privacy as the proposed wall along the right of way would be two metres from the matrimonial home. The right of way would benefit the Second Defendant as he owned the land to be served by it and it would facilitate its sale.

- [16] Mr. Kiren Madeleine, an examination officer at the Ministry of Education, confirmed that the Plaintiff was marking exams between the 14 and 18 of December 2015 and produced the list of exam markers for the period (Exhibit 14). The Plaintiff's name was contained in the list. She was paid the full amount for the work indicating that she had turned up for each of the days.
- [17] The Second Defendant testified. He stated that he knew the parties since 2002. He became their legal advisor and used to visit them on Sunday mornings. He explained that Parcel V3849 is an access road leading to Parcel V6494 on which the matrimonial home is built. He stated that the First Defendant had contacted him to draft a right of way over Parcels V3849 and V 6494 in favour of Parcel V16827, which he owned and on which he had built a bed-sitter.
- [18] The First Defendant had been in his office prior to the signature and the drafting of the document and he had called the Plaintiff on his phone. The Second Defendant had talked to her personally on the First Defendant's phone and she had agreed to sign the document as Rosine Benoit. The second Defendant drove to the First Defendant's office at Kings Car Hire in Mont Fleuri and then drove to Les Mamelles to the Plaintiffs' house together with the First Defendant. They were served whisky and at around 5 pm on that date, that is the 16 December 2015, the Plaintiff signed the agreement.
- [19] It was the Second Defendant's evidence that it was subsequent to Christmas and after the Court of Appeal case that the Plaintiff, influenced by and in collusion with her Counsel, vented her "wrath" on him. In his view he is bearing the brunt of the problems between the Plaintiff and the First Defendant.
- [20] When asked to compare the Plaintiff's signature on the grant of easement (P 4) and that on her passport before she changed her name (P5 (b)) and to express an opinion on whether they were similar he stated:

*"...I do not know I cannot comment on it because I am not a legal expert and number 2 it was signed before me in my presence so I take it be her signature."
(Page 35 of transcript of 17 November 2017)*

- [21] When an affidavit unrelated to this matter and which was sworn on 12 July 2011 (Exhibit P12) was shown to him without the signature of the deponent, that is, the Plaintiff, but with his own signature and stamp attesting that the Plaintiff had sworn it, he stated that he had not retained a copy of it even although as a notary he ought to have to. He stated that he did it to assist the Plaintiff and the First Defendant as their family friend and to whom he was close. He also admitted that he had signed the grant of easement document before the parties had. He stated that a few days before the 16 December 2015 he had talked to her on her ex-husband's phone and advised her to sign as Benoit. He stated that he often attested to documents before parties had signed.
- [22] As concerns the plea of the Third Defendant relating to its liability I do not find a cause of action made out against the Office. No tort or any breach of duty is alleged, nor is there a prayer for any relief against it apart for an order that it cancels the grant of easement. Further, the Third Defendant is an agent of the Government and in this regard, section 165 of the Seychelles Code of Civil Procedure provides that in such cases it is the Attorney General who shall represent the Government. Were any orders made by the court in respect of the Third Defendant it would be bound to comply with them. I therefore dismiss the case against the Third Defendant.
- [23] The Second Defendant has submitted that no *mise en demeure* was issued to the Defendants and that the liability of the Defendants is not made out in the pleadings. A *mise en demeure* or a letter of demand is normally issued by a creditor to demand the execution of the debtor's obligation. With regard to the issue raised by the Second Defendant of the failure of Plaintiff to issue a *mise en demeure* to the Defendants, it is trite that this demand is not necessary in some causes of action and sometimes even in contracts. A formal notice of demand is normally issued in money claims to trigger the time from which interest is to run (see in this regard *Juris Classeur – Articles 1146 – 1155, contrats et obligations*, sub head “application de la règle – notes 15 and 43, (last paragraphs) and the decision in 06-13.823 Arrêt n° 257 du 6 juillet 2007, Cour de cassation - Chambre mixte). This submission is therefore dismissed.
- [24] I turn first to the main issue in this case which simply put is the following: Whether the actions of the First and Second Defendants amount to a fraud? In considering this issue

the court will have to make a finding on whether the signature of the Plaintiff on the impugned grant of easement is a forgery amounting to a fraud.

[25] In closing submissions, the Plaintiff has submitted that as the grant of easement is an authentic document it raises a presumption of the truth of its contents. Relying on the authority of *Jupiter v Larue* (1974) SLR 299, Mr. Chang-Sam, learned SC for the Plaintiff, has submitted that a challenge to the document must therefore must be brought through the procedure of *inscriptio falsi* as provided for in Article 1319 of the Civil Code. It is his submission that the Plaintiff has sufficiently adduced evidence of the fact that she did not sign the document. The First Defendant has put up no defence and the Second Defendant has failed to prove evidence to the contrary to support his claim that the Plaintiff indeed signed the document. Mr. Chang-Sam submitted that in line with *Didon and anor v Leveille* (1983) SLR187, no expert was required to prove the falsity of the document but that instead the court could come to its own conclusion.

[26] He further submits that there is even more damning evidence in respect of the failure of the Second Defendant as a notary to attest to documents properly and signing to documents before parties sign.

[27] In respect of fraud, Mr. Lucas submits that this cannot be presumed by the court and must be proved (*Hoareau v Hoareau* (2011) SLR 47). In his submission there was no evidence adduced to show that the Plaintiff did not sign the document and the allegation regarding the authenticity of the Plaintiff's signature amount to her word against his and where probabilities are evenly balanced the Plaintiff's case should be dismissed (*Perks v Carpin and Anor* (1981) SLR210). He has also submitted that although the court need not obtain the expertise of a handwriting expert to determine the authenticity of the signature it should when the interest of justice would be best served by such assistance (*Michaud v Ciunfrini* 2005). It is also his submission that the court is only able to carry out its determination when comparisons of signatures are made available to it (*Alcindor v Morel* (2011) and *Didon and Anor v Leveille* (supra) which was not the case in the present matter.

[28] Fraud (*le dol*) is not defined in the Civil Code. It is defined as follows by the authors Terré and anors:

“Imparfaitement défini par l’article 1116 du Code civil, le dol dans la formation du contrat désigne toutes les tromperies par lesquelles un contractant provoque chez son partenaire une erreur qui le détermine à contracter. Celui qui en est victime ne s’est pas trompé, on l’a trompé.” (Francois Terré, Philippe Simler, Yves Lequette Droit civil; les obligations (10e édition) Dalloz - Précis Dalloz 228).

[29] Hence, fraud in contract consists of all sorts of deceitful practices or wilful devices, resorted to by a party to a contract against another with intent to deprive the other of his right or in some manner to do him an injury. A forgery therefore is one of the techniques of fraud.

[30] Article 1116 of the Civil Code of Seychelles provides the rules relating to evidence in cases where allegations of fraud as follows:

“Article 1116

Fraud shall be a cause of nullity of the agreement when the contrivances practised by one of the parties are such that it is evident that, without these contrivances, the other party would not have entered into the contract. It must be intentional but need not emanate from the contracting party.

It shall not be presumed and it must be proved.”

[31] In the present case, the impugned notarial document is attested to the Second Defendant who signs the following declaration:

“Signed by the aforesaid Marie Rosine Benoit and Clifford Sibert Benoit who are both known to me and in my presence

[32] The provisions of the Civil Code in this regard state:

“Article 1317

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 forms.

Article 1319

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.”

[33] Section 22 of the Notaries Act (Cap. 149) provides that, a notarial deed is an “authentic document” and in parallel with Article 1319 of the Civil Code, section 63 of the Land Registration Act (Cap 107) provides that –

“An instrument, the execution of which is duly attested in accordance with Section 60 or Section 61, shall be presumed, unless the contrary is shown, to have been duly executed by the parties thereto. The attestation shall be evidence of the facts set out therein and such facts shall be presumed to be true unless the contrary is shown”.

[34] Andre Sauzier J in his booklet “Sauzier on Evidence” explains that the distinction in procedures for impugning notarial documents was done away with after the recodification of the Civil Code in 1975 He states:

“5... Before [the new Article 1319] came into force, an authentic document had first to be impugned by an elaborate procedure known as inscriptio falsi (inscription de faux) laid down in arts 286, and 303 to 316 of the Code de Procédure Civil which are still in force in Seychelles (although now obsolete). That was necessary only in relation to acts or facts

which were stated in the presence or which he himself performed or other acts or facts.

document to have happened in the public official's presence or which he himself had performed. No such procedure was required for other acts or facts.

6 The legal presumption of proof lays the burden on the party who impugns the document to prove its falsity. At the same time the elaborate procedure of *inscriptio falsi* is done away with and no distinction is made between acts or facts which have happened in the public official's presence or which have been performed by him and those which have not.

7 An authentic document has full effect until the rebutting evidence impugning its validity has been accepted by the court” (p. 22).

[35] Sauzier's view has been endorsed by the courts since and there is *jurisprudence constante* to the effect that when a party impugns a notarial document he incurs the burden of proving its falsity. Perrera J, for example, in *Albert v Rose* (2006) SLR 140 concurs with Sauzier J when he states:

“The 2nd paragraph of Article 1319, which is a new provision, did away with the procedure known as *inscriptio falsi* which had to be followed in relation to acts or facts which were stated in the document to have happened in the presence of the notary or which the notary himself had performed. Now the legal presumption of proof casts the burden on the party who challenges the document to prove its falsity. This can be done whether the acts or facts happened in the presence of the notary or otherwise.”

[36] I agree with Mr. Lucas that fraud cannot be presumed by the court and must be proved by adducing positive evidence. But what is more relevant to the present case is whether the evidence adduced relating to the forgery of the document meets the threshold for the standard of proof required.

[37] It is trite that where fraud is alleged a higher degree of probability is required but not so much as is necessary in a criminal case (see *Renaud v Ernestine and anor* (1979) SLR 121, *Bason v Bason* (2005) SLR 129). In respect of forgeries specifically, the court in both *De Commarmond v Dubal* (1982) SLR 122 and *Didon and Anor v Leveille* (1983) SLR 187, stated that after warning itself of the dangers posed by not having the evidence of a handwriting expert, it could draw its own conclusion by comparing the handwriting on the impugned document with the handwriting on other documents admitted by the alleged writer for the impugned document.

[38] In *Michaud v Ciunfrini* SCA 26/2005, 24 August, 2007, the necessary caution was also sounded by the court of the dangers of deciding on fraud without the aid of an expert. The court stated:

“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.”

[39] These authorities provide sufficient warning of the dangers posed to the court in making a finding on handwriting without the aid of an expert. However, I am strengthened in my decision to so proceed given the particularities of the present matter. The evidence is to the effect that the Plaintiff never attended the office of the notary and that the notary attested to the signatures by appending his own signature to the document before the Plaintiff purportedly signed. Moreover the histrionics of the Second Defendant in court together with his evasiveness and the accusations he has levelled at Senior Counsel for the Plaintiff together with his averment that he has “fallen victim to the Plaintiff’s wrath” give rise to the suspicion that he has everything to hide and is being economical with the truth.

[40] This is exemplified by the fact that none of facts relating to how he obtained the Plaintiff’s signature were ever averred in his statement of defence nor put to the Plaintiff when he cross-examined her. It was only after she corroborated the fact that she did not attend his office to sign the grant of easement by evidence that she was marking exams

on the day that he testified subsequently that he obtained her handwriting not in his office but at her home after she had poured him a glass of whisky.

[41] *Pirame v Peri* SCA No 16 of 2005 (unreported) is authority that no regard should be had to evidence on the record that is outside the pleadings. The evidence of the Second Defendant in this respect is therefore disregarded. In any case, having observed the Second Defendant's demeanour in the witness box and that of the Plaintiff's, I have no doubt in my mind that the Plaintiff is a candid, frank credible, straightforward witness and the Second Defendant is anything but. He has brought no witness or other corroborating evidence of his narrative.

[42] In terms of the purported Plaintiff's signature on the grant of easement itself, it reads "R Benoit" with no full stop after the "R". The writing is also in glaring difference to the signature of the Plaintiff before she divorced and changed her name to R. Georges. Many samples of her signature have been produced. It is my view that any objective person taking a cursory look at the signature on the notarial document will notice that it is certainly not the signature of the Plaintiff. It resembles neither her pre 2012 signature "R. Benoit" nor the way she has signed since 2012 as "R. Georges". I cannot accept Mr. Lucas's submission that the Plaintiff brought no proof that she did not sign the document. She has and well above the standard required in such cases.

[43] It is also noted that the First Defendant did not defend the action. That also speaks volumes. Instead he wants to submit to a court order to cancel the grant of easement. He is liable to the Plaintiff. That order will in the circumstances ensue.

[44] I also find the Second Defendant liable and I explain lengthily below how his liability arises in this case. As concerns the prayers for damages, Mr. Lucas further submits that the Plaintiff's claim for inconvenience has not been supported and should not be granted. In respect of claimed legal fees he submits that a court award of costs would meet such fees and that in any case such a claim is not permissible under the Civil Code. In respect of moral damage, he submits that as these are claimed as arising from fraud and that this has not been proven the damages don't arise. He also states that prayers for "any order" is not pursuant to section 71 (e) of the Seychelles Code of Civil Procedure. A plain reading of that provision does not sustain that submission and it is dismissed.

- [45] I am of the view that the prayers for damages for the inconvenience caused by the grant of easement and the moral damages should be granted given the steps the Plaintiff had to take to protect her interest by entering an inhibition on her property and suffering third parties calling onto her property to reason with her for the use of the purported right of way. Similarly, the Plaintiff has adduced evidence of the distress she has had to endure and the claim for moral damages is made out.
- [46] With regard to the claim for fees incurred for seeking legal advice and legal representation, I am of the view that these may be claimable when an exceptional case is brought to show that they were incurred over and above normal court costs which are ordinarily claimable under The Court Fees (Supreme Court) And Costs Act. Such evidence was not adduced and in the circumstances I decline to grant them.
- [47] I am asked to make further orders deemed fit in the circumstances. I do make a finding on the evidence that the signature of the Plaintiff was forged. I cannot make a finding as to whether it was the First or Second Defendant who forged the document. I do infer from the circumstances that they individually or jointly caused the forgery.
- [48] I have been shocked by the revelations about the Second Defendant, made by himself even after he was warned about self-incrimination. He has brazenly admitted to attesting to signatures on official documents before parties' signatures have even been appended. He even tried to infer that other notaries engage in the same practice and that it is common place. He stated that he carried such documents in his brief case. He has before the Court been unrepentant about such practices. As a notary he has a duty to both signatories on an official document.
- [49] The duties of a notary can arise under contract, delict or by statute. The liability of the Second Defendant does not arise contractually in the present case given the circumstances described above. They arise tortiously and statutorily.
- [50] In the French civil law tradition, a *notaire* is a public official who acts as witness to the transfer of documents and once he executes and records transactions presented to him, any "*acte notarié*" is self-proving and is conclusive evidence of both its contents and the

underlying acts if subjected to the personal verification of the *notaire*.”¹ The “status accorded a *notaire* implies that in the performance of his duties, he acts for both parties, effectuating the intentions of each.”² A *notaire* is accorded the power to render documents enforceable without the parties having to pass through the courts.

- [51] In Seychelles, the role of a public notary traces its origins to the French civil law notion of a ‘notaire public’, as section 3(b) (ii) of the Notaries Act provides that a notary’s duties shall be to :

“furnish executory or authenticated copies of documents”

- [52] With respect to a notary’s duties, civil law doctrine recognises that a *notaire* has two functions: first, a duty to advise regarding the content of documents (*mission de conseil qui se rapporte au contenu, “le negotium”*) and secondly, a duty to authenticate documents (*mission d’authentification qui se rapporte au contenant, “l’instrumentum”*). Thus, a *notaire* exercises a public function, but is also considered a “*profession liberale*.” The former is derived from his designation as a public official and his inability to refuse to perform his function when legally required; and the latter is derived from his independence or the absence of hierarchical constraints and the client’s ability to choose his advisor/*notaire*³.

- [53] In contrast with section 19 of the Legal Practitioners Act which grants attorneys immunity from criminal or civil liability in respect of his/her conduct and management before a court, a tribunal or institution, the Notaries Act does not grant any immunities to notaries. Although the statutory provisions of the Notaries Act may provide an adequate framework for assessing and sanctioning a notary’s improprieties or illegal conduct, the absence of an immunity provision in the Notaries Act suggests that an aggrieved party may pursue alternative avenues to redress the alleged wrong. Where a notary’s conduct is prejudicial to a client or party, the absence of an immunity provision in the Notaries Acts suggests that aggrieved parties are permitted to pursue delict claims pursuant to Article

¹ D. Barlow Jr. Burke; Jefferson K. Fox, *Notaire in North America: A Short Study of the Adaptation of a Civil Law Institution*, 50 Tul. L. Rev. 318, 322 (1975-1976) (citing J. Merryman, *The Civil Law Tradition* 113-15 (1969)).

² *Id.*

³ R. Bestgen, *Les contours de l’obligation du notaire de preter son ministere en lien avec sa responsabilite professionnelle*, at pp. 10-11.

1382 of the Civil Code against that notary. Indeed, allowing delictual liability claims against notaries ensures that prejudices incurred by a notary's clients are remedied adequately through compensatory and moral damages.

[54] The duty to authenticate is intended to be exercised in conjunction with the duty to advise, which can be divided into three subcategories:

(1) the notary must provide complete information to the parties, including all the relevant legal rules regarding the agreement. This supposes that the notary must do his research regarding the parties but also the factual elements of the file with which he is presented;

(2) ensure that the agreement is not in violation of the law, which includes verifying whether the agreement is balanced and equitable between the parties. The notary therefore has the obligation to reject all illegal and fraudulent agreements;

(3) ensure the security of the convention, so as to prevent disputes between parties in good faith. To do so, he must respect all legal formalities but also inform the parties of the formalities that they are expected to complete⁴ (emphasis added).

[55] In order to impose damages on a *notaire* for breach of his duty, the French Supreme Court insists on there being a causal link between the damage suffered by the victim and the alleged *faute* of the *notaire* (See Cass. Civ. 1ere, 2 juillet 2014, n° 13-17.894).

[56] It is my view that there is enough evidence in this case to show the causal link between the acts of the Second Defendant and the damaged caused to the Plaintiff. The liability of the Second Defendant under Article 1382 is clearly made out.

[57] In addition to this delictual liability, section 11(1) of the Notaries Act entitled "Suspension or removal of a notary by court" provides that the Supreme Court may suspend or remove a notary who is guilty of malpractice or misconduct (§ (1)(a)(i); who

⁴ See *id.* at pp. 12-13 (summarising French discussion regarding the duty to advise).

fails to perform his functions a notary (§(1) (a) iv); where the court believes that he has ceased to be a fit and proper person to perform the function of a notary (§(1) (a) v).

[58] Additionally, section 11(2) of the Notaries Act provides that the Court may instead of suspending or removing a notary under section 11(1) impose a fine or order the notary to pay such compensation as the Court thinks fit (§ 11(2)(a)). However, before “suspending or removing a notary from office under this section the Supreme Court shall inform the notary of the charge or complaint against him and give the notary an opportunity to be heard in person or by counsel as the notary thinks fit” (§ 11(6)).

[59] Based on the evidence, I find that The Second Defendant has breached his duties as notary as set out above and ought to be suspended. He should however be given an opportunity to be heard in person or by Counsel regarding these findings. The necessary orders follow hereafter:

1. I Order the First and Second Defendants to jointly and severally to pay the Plaintiff the sum of SR20, 000 for inconvenience caused and SR 60,000 for moral damage and the whole with costs.
2. I Order that the Grant of Easement dated 16 September 2015 and registered on 17 December 2015 be cancelled, with this Order to be served on the Land Registrar for compliance.
3. I Order that this Judgment be served on the Judicial Committee on Legal Practitioners set up by the Office of the Chief Justice and consisting of three senior judges of the Supreme Court, and who shall at their next convention notify the Second Defendant of a hearing of the matters complained of regarding his notarial duties and obligations. He will be given an opportunity to be heard. The Committee shall after the hearing recommend to the Chief Justice any measures if any, to be taken against the Second Defendant.

Signed, dated and delivered at Ile du Port on 20 February 2018.

M. TWOMEY

Chief Justice