

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC 460  
CS30/2015

In the matter between:

**YVES MAUREL**  
*(rep. by Mr Serge Rouillon)*

**1<sup>st</sup> Plaintiff**

**ANGELIKA MAUREL**  
*(rep. by Mr. Serge Rouillon)*

**2<sup>nd</sup> Plaintiff**

and

**MARY GEERS**  
*(rep. by Alexandra Benoiton)*

**1<sup>st</sup> Defendant**

**NADIA FEDERICK**  
*(rep. by Alexandra Benoiton)*

**2<sup>nd</sup> Defendant**

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**Neutral Citation:** *Yves Maurel & Or vs Mary Geers & Or* (CS30/2015) [2022] SCSC 460 (6 June 2022).

**Before:** Esparon Judge

**Summary:** Plaintiff seeking for Order of the Court that the sale of land is null and Void for fraud and being contrary to Notaries Act and an action in delict alleging the manufacturing of an Affidavit.

**Heard:** 21 February 2022

**Delivered:** 6 June 2022

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**ORDER**

Action by way of Plaintiff to declare that the sale of land is null and void as a result of fraud and being contrary to notaries act and an action in delict alleging the manufacturing of an Affidavit by the second Defendant - The first Plea in Limine Litis of the Defendants is upheld and the Plaintiff is dismissed with cost.

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**RULING**

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**ESPARON J**

## Introduction

This is an Action by way of Plaint whereby the Plaintiffs are asking the Court to declare that the sale of an island named L'Islette Island should be declared null and void as a result of fraud. Secondly whether the transfer deed fails to comply with the provisions of the Notaries Act and whether the 2<sup>nd</sup> defendant's alleged manufacturing of her Affidavit amounts to a faute in Law.

1. The Defendants filed their defence and Counter-claim and raised the following points of law or Plea In Limine Litis;
  - A. The Plaintiffs have wrongly and illegally joined different causes of action in the same suit despite the different causes of action being against different Defendants, and consequently the Plaint ought to be set aside.
  - B. The Plaint ought to be dismissed under the inherent powers of the Court on the ground of abuse of process of Court.
  - C. The cause of action or causes of action are prescribed in accordance to Article 2271 and /or 1304 of the Civil Code of Seychelles Act.
2. As regards to the first Plea in Limine Litis raised namely that the Plaintiffs have wrongly and illegally joined different causes of action in the same suit despite the different causes of action being against different Defendants and consequently the Plaint ought to be set aside, Counsel for the Defendants submits that the Plaint as filed sets out to deal with several different matters concerning parties notably an action in delict between the Plaintiffs and the second Defendant as averred in paragraph 6 of the Plaint. Secondly, a claim of monies by the second Plaintiff against the 1<sup>st</sup> Defendant. Thirdly an action for breach of contract between the estate of the deceased represented by the 1<sup>st</sup> Plaintiff against the 1<sup>st</sup> Defendant and fourthly as to allegations in respect of the Seychelles Revenue Commission against Defendants.
3. The Defendants made submissions to the Court that in this case, not only have different causes of actions been joined in the same suit, the Plaintiffs have also brought separate actions against separate parties seeking different remedies against different Defendants within the same case. They have further submitted that although joinder of causes of

action is provided for under Section 105 Seychelles Code of Civil Procedure, there is a requirement that the following requirements are met.

4. The first requirement that should be met under Article 105 of the Seychelles Code of Civil Procedure is that the causes of action should have arisen between the same parties. The second requirement is that the parties should sue and be sued in the same capacities and thirdly that it should appear to the Court that such causes of action can conveniently be tried or disposed of together in the same suit as the Court had decided in the case of *Camille and Others v Bayview Estate Limited and Others* (CS 16/2012) [2014]
5. The Defendants further submitted that the Plaintiff does not satisfy these criteria as the Plaintiff pleads two distinct events namely that the signature of the transfer, which the 2<sup>nd</sup> Plaintiff and the second Defendant have no knowledge of and were not parties to and secondly, the Plaintiff also avers a claim for damages by the Plaintiffs arising from alleged distress caused by the second Defendant for 'stress, anxiety and inconvenience by the change of story of the second Defendant she has repeated since the childhood of the heirs of the deceased' which the first Defendant has no involvement in or knowledge of.
6. The Defendants also submits to this Court that the various causes of action are vastly different and pertain to different parties as such they cannot be conveniently be tried or disposed of together in the same suit. Hence, the Defendants humbly submits to the Court that the Plaintiffs have wrongly and illegally joined different causes of action in the same suit despite the different causes of action being against different Defendants and that the suit is not maintainable in law and should be struck out.
7. Counsel for the Plaintiff however admits that the amended Plaintiff contains two different causes of action namely one for breach of contract and secondly, for faute which are grounded in one set of facts namely fraud. Counsel for the Plaintiffs further submitted to the Court that in terms of the joinder of the two different causes of action of contract and delict in this particular suit, all the facts of the case flow from the same events and separation of actions would only mean hearing and rehearing of the same facts over repeatedly.

8. Counsel for the Plaintiffs also submitted to the Court that the Court had made an order under Section 106 of the Seychelles Code of Civil Procedure on its own initiative but that in terms of joinder or misjoinder the powers of the Court are wide to join or disjoin parties at any time. Counsel for the Plaintiffs submitted to the Court that as a result of the following circumstances of this case, it is very convenient to try all the causes of action together and that the Court is bound by its Preliminary Ruling.
9. Counsel for the Plaintiffs further submitted to the Court that there is no reason why separate causes of action cannot be tried together since they involve one series of incidents fully known by all the parties involved at all times and involve clear fraud by the Defendants and that there is a discretion of the Court in the event the actions cannot be tried together to separate them but that there is nothing there about dismissing the case purely on this Plea. Hence, in terms of different suits being filed by the parties the Court can separate the different suits if it appears to the court that they cannot be conveniently tried together. The Court has also the option of joining this case with the case filed in 70 of 2015 since the facts and subject matter and evidence are the same.
10. The Court notes that when separate actions are filed by separate Plaintiffs arising out of the same transaction or occurrence, the issue of consolidation is likely to be raised early on by one of the parties or the Court. The related concepts of “relatedness” and “merger” often creates confusion and doubt among the parties and sometimes the Court itself as to what exactly the legal and procedural effect of the consolidation order means and what was intended.

### **The Law**

11. Article 106 of the Seychelles Code of Civil Procedure provides that ‘if more than one suit has been entered by the same Plaintiff against the same Defendant or if more than one suit has been entered by different Plaintiffs against the same Defendant in respect of claims arising of the same transaction or series of transactions or if cross suits have been entered between the same parties and the parties sue and are sued respectively in the same capacities, the Court may either on its own motion or on application of any of the parties order such suits or any of them to be consolidated or tried as one suit, if it appears

to the Court that they can be conveniently tried or disposed of together, and the Court may make such other order as may be necessary or expedient for the purpose of trying such suits together, and may make such order as to cost as may be just’.

12. It is clear from the reading Article 106 of the Seychelles Code of Civil Procedure that it authorises consolidation when actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. However a confusion may arise when the parties and/or the Court are not precise when using the term “consolidation”.
13. The case *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal. 4<sup>th</sup> 1127, 1147, the California Supreme Court has explained that consolidation authorises the Court when appropriate to “order a joint hearing or trial” or “to order all the actions consolidated”. Consolidation for trial, is the most common and usually what is intended in this present case when the parties and the Court discuss consolidation. In a consolidation for trial, “the pleadings, verdicts, findings and judgments are kept separate; the actions are simply tried together for the sake of convenience and judicial economy.” (See *Sanchez v. Superior Court*, (1988) 203 Cal. App. 3d 1391, 1396).
14. When the Court moves for consolidation for trial purposes only its order should be clear as to whether the cases are consolidated for trial purposes only or completely merged into one single action with one judgment. In most instances, what the parties intend when asking for consolidation is consolidation for purposes of trial only. However, the Court’s order may not be precise which can lead to confusion particularly when there are multiple Defendants and cross-complaints being filed in several different actions.
15. One could also argue that consolidating two cases to be tried together does not mean that they will be disposed of together especially when the parties are not suing or being sued respectively in the same capacities.

16. Thus paragraph 36 of the ruling of Judge Andre could lead to confusion because by stating that following in the 30/2015 Ruling, in line with the provisions of Section 106 of the Seychelles Code of Civil Procedure will be consolidated and tried together with suit 70/2015 means that they will be both tried as one suit as per the said provision.

17. However, as per the record of proceedings of the 19<sup>th</sup> of October 2020, the Court clarified the following with regards to paragraph 36 of her Preliminary hearing by stating that:

“[...] If two cases have different causes of action but it is related then the cases are tried together but it doesn't make two cases one case.

.....

[...] the two cases will be heard together, tried together but it does not dissect the two cases.

.....

[...] some parties are the same, some are not the same but irrespective of non-similar causes of action, we get the cases to be tried together to avoid recalling witnesses and repeat of evidence.”

18. Article 1370 (2) of the Civil Code of Seychelles Act provides that ‘When a person has a cause of action which may be founded either in contract or in delict, he may elect which cause of action to pursue. *However, if a law limits the liability in either of the two causes of action, the Plaintiff shall be bound to pursue the cause of action, to which that law relates. A Plaintiff shall not be allowed to pursue both causes of action consecutively.*’

19. It is clear that Article 1370 (2) of the Civil Code of Seychelles Act grants a person the right to base his action either in contract or in tort, when the person has a cause of action which may be founded either in contract or in tort. It is also well settled by the

Seychellois Courts that Article 1370 (2) of the Civil Code of Seychelles Act does not constrain a person, who had sustained damages as a result of a breach of the conditions of a contract, to ground his action in contract only, when that person has a cause of action which may be founded in either contract or in tort and does not provide that a person cannot plead both causes of action in contract and in tort in the same action as long as they are pleaded in the alternative: see *Multi Choice Africa Limited v Intelvision Network Limited and Anor* SCA 45/2017.

20. In the present case it is clear that this is not the case since there are different causes of action in the same suit but no two causes of action are against the same defendant. Counsel for the defendants has also raised that in the case of CS. 30/15 there is a duplicity of causes of action meaning two separate causes of action in respect of parties represented in different capacities.
21. Section 105 of the Seychelles Code of Civil Procedure deals with joinder of causes of action and provides that ‘Different causes of action may be joined in the same suit, provided that they be between the same parties and that the parties sue and are sued respectively in the same capacities but if it appear to the Court that any of such causes of action cannot be conveniently tried or disposed of together, the Court may, either of its own motion or on the application of the Defendant, order separate trials of any of such causes of action, or may make such other order as may be necessary or expedient for the separate disposal thereof, or may order any of such causes of action to be excluded, and may make such order as to costs as may be just’.
22. It is very clear that section 105 of Seychelles Code of Civil Procedure when it comes to joinder that in principle joinder cannot be raised *proprio motu* by the Court and hence Counsels have to raise it on behalf of their clients to join parties to their pleadings. If the Courts were to do that, they would be juxtaposing themselves in the places of parties and this would be unethical. This Court takes note that no necessary application for joinder was made by Counsel for the Plaintiffs.

23. Furthermore, although joinder of causes of action is permitted under Section 105 of the Seychelles Code of Civil Procedure, the proviso thereunder stipulates that it should satisfy three conditions which are that the causes of action should have arisen between the same parties. Secondly, that the parties should sue and be sued in the same capacities and thirdly that it should appear to the Court that such causes of action can conveniently be tried or disposed of together in the same suit.
24. This Court finds that it is evident in the instant suit, the alleged causes of action have arisen between different parties, who seek different remedies against different defendants. The parties also sue and are being sued entirely in different capacities i.e Nadia Federick the Second Defendant is a Defendant in 30/2015 and a Plaintiff in 70/2015 because of the mixing up of causes of actions, remedies, parties and the difference in their capacities, it appears that the causes of action cannot conveniently be tried or disposed of together in the same suit despite the link in evidence.
25. Counsel for the Plaintiffs has submitted before the Court that the court still has a discretion if the actions cannot be tried together to separate them but that there is nothing there about dismissing the cases purely on these Pleas. However, Counsel for the Plaintiffs do not provide any authority for that proposition.
26. In the case of *Andre v Jupiter* SCA 19/2018, the Court of Appeal quoted with approval paragraph 15/1/6 of the Supreme Court Rules 1979 which reads –

“Objection to Misjoinder of Causes of Action – Where the Plaintiff has not obtained the requisite leave and so has improperly joined several causes of action in the same action, the Defendant may enter a conditional appearance and apply to set aside the writ.

If the Defendant takes a step in the action without raising the objection, he waives the irregularity, (*Lyoyd v. g. W. etc., Dairies Co.*, [1907] 2k. b. 727. C. A., explaining *Pilcher v. hinds*, 11 Ch.D. 905); but the objection may be taken after appearance before taking any step (*hunt v. Worsfold*, [1896] 2 Ch.224). It is too late to object at the trial (*Re Deborn* (1888). 58 1.T.519)”.



27. On the basis of paragraph 15/1/6 of the Supreme Court Rules 1979, the Court of Appeal observed that –

“30. In the light of Section 105 of the Code of Civil Procedure and English authorities mentioned above, Counsel for the Appellant ought to have raised the issue of misjoinder of causes of actions as a Plea in Limine Litis and had he done so, the suit ought to have been dismissed or set aside on the ground of misjoinder of causes of action”.

28. In the present case, the Defendants have raised the issue of misjoinder of causes of action as a Plea in Limine Litis and the Plaintiffs have not made any Applications for joinder of causes of action and hence following the principles in the case of Andre V/S Jupiter SCA 19/2018, I accordingly uphold the first Plea in Limine Litis of the Defendant as I find that the Plaint is not maintainable in law.

29. As regards to the third point of Law raised by Counsel for the Defendants namely that of the cause of action or causes of action are prescribed in accordance with Article 2271 and/or 1304 of the Civil Code of Seychelles Act, it is evident from the pleadings that the Plaintiffs are praying this Honorable Court to rescind the contract of sale of L’Islette Island as the main redresses for reasons that the agreed sum was not fully paid and that there was a fraud allegedly perpetrated by the first Defendant.

30. Counsel for the Plaintiffs submitted to the Court that the Defendant raised several arguments that the Plaintiff’s action is prescribed by law as it was not filed within the ten-year statute of limitation period. On this issue, Counsel for Plaintiff submitted that this plea has been amply dealt with in the Preliminary Ruling at paragraphs 13 to 16 and that the only extra ingredient in the present plea is the issue of article 1304 in respect of the 5 year prescription for nullity or rescission.

31. Article 1304 of the Civil Code of Seychelles Act which provides that ‘In all cases in which the exercise of an action for nullity or rescission of a contract is not limited to a shorter period by special legislation, that action shall be available for five years’.

32. It is evident from the pleadings in the matter that the sale agreement was completed on 2<sup>nd</sup> December 1997 and the Plaintiffs have filed their Plaint on the 8<sup>th</sup> April 2015 as acknowledged by Counsel for first defendant in her submission. Hence the action has been filed eighteen years after the sale agreement. The nature of Plaintiff's claim is that the transfer is null and void for fraud and defective under the Notaries Act.
33. In the 2017 Preliminary Ruling, the Court found that the Plaintiffs' suit was not time barred as it was an action involving real property that was filed within the 20 year statutory period of Article 2262 of the civil code of Seychelles Act which provides that 'All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not'.
34. It was the Court's view that the Defendants could not take advantage of the ten-year prescription period as provided for in Article 2265 of the Civil Code of Seychelles Act which provides that 'If the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith, the period of prescription of article 2262 shall be reduced to ten years'.
35. As it is evident that the aim of Plaintiff's suit was to contest the very fact that Title to L'Islette Island was acquired in good faith, it was not clear at that stage whether the first Defendant's title to L'Islette Island was acquired in good faith.
36. At paragraph 31 of the Preliminary Ruling in terms of the complete change of circumstances created by the Affidavits of the second Defendant, the Court stated the following;

"However, while Plaintiffs could have filed a claim earlier against Mary Geers as noted by the Court in Maurel case, the decision not to file such a claim should not count against her. When one reads Plaintiffs' amended Plaint, it becomes clearer that Ms. Frederic's February 2015 Affidavit meaningfully changes the evidentiary nature supporting the action. Being able to merely

articulate suspicions of fraud at an earlier time without more evidence (i.e. without Ms. Frederic's Affidavit) should not operate to bar Plaintiffs from later filing a claim. While Ms Frederic's February Affidavit is contested and cannot guarantee that Plaintiffs will successfully establish their claim, this evidence improves or makes it more possible that Plaintiffs can prove the fraud allegations on the balance of probabilities. In effect, Plaintiffs should not be penalized for not filing a claim, related to a similar factual transaction, whose chances of success only became more probable after certain evidence had emerged subsequent to the initial suit. [..]"

37. Counsel for the Plaintiffs submitted to the Court that the time limit set for the running of prescription is, as found in the Preliminary Ruling, the date the Plaintiffs discovered the facts of fraud when the second Defendant signed her affidavits before the Notaries particularly the second Affidavit signed in 2015 where she confirms the facts set out in the first Affidavit signed in 2005. Plaintiffs further submits that the prescription period for any action starts running from the discovery of the event grounding the cause of action. Counsel for the Plaintiffs further submitted that since the issue concerns rights in land, it is well within the prescriptive period for any claim for faute and also the 20 year period for challenging a fraudulent sale that is not clear and bona fide. Counsel for Plaintiffs finally submitted to the Court that on the third plea that for matters involving fraud of any kind there is no prescriptive period.
38. On the other hand, Counsel for the Defendants submitted to the Court that the dates pleaded in the plaint and the calculation of 5 years is as follows;
- i. Plaint pleads that the contract was signed on second December 1997, five years would extinguish in December 2003;
  - ii. The registration date was 18<sup>th</sup> December 1997, the 5-year time limit would be December 2003;
  - iii. The death of the Deceased was 4<sup>th</sup> March 1999, five years hence would be March 2004;

- iv. The alleged 'lease' payments of SCR 27,000 to be settled within the five years of the sale (ending approximately 2<sup>nd</sup> November 2002) would carry a 5 year prescription limit ending November 2007;
  - v. The Executor was appointed on the 19<sup>th</sup> November 2009, though it took ten years from the date of death, even if the 5-year limit would have commenced upon his appointment, it would expire in November 2014;
  - vi. The failed garnishee order on 24<sup>th</sup> July 2000 stemming from the appeal to the divorce case given on the 28<sup>th</sup> November 1997 also carry expired prescription periods ending July 2005 and November 2002 respectively.
39. Counsel for the Defendants submitted to the Court that since the Plaintiff was filed in April 2015 and therefore the claim in relation to the contract of sale was out of time by virtue of prescription. Additionally Counsel for the Defendant submitted that the claim for damages against the second Defendant in relation to her statements and/or actions during or prior to the Court case referred above having been ruled on in July 2000, is also time barred.
40. Defendants submitted further that even when fraud is found, in a contract, the right to claim for nullity and rescission is time barred by the lapse of five years under article 1304 of the Civil Code of Seychelles Act and this is from the time that the fraud is known and hence that it is clear on the face of the pleadings that the Plaintiffs had knowledge of the transfer for over two decades.

### **The law**

41. As regards to fraud and action for nullity or rescission of a contract Article 1304 provides that *"In all cases in which the exercise of action for nullity or rescission of a contract is not limited to a shorter period by special legislation, that action shall be available for five years. That period shall only run in the case of duress as from the day that the duress came to an end; in the case of mistake or fraud, as from the day when they were discovered"*.

42. Under this section, the prescriptive period is 5 years in all cases in which there is an action for nullity or rescission of a contract as stated in the first part of the section. It is clear therefore that it is applicable to matters involving land. The second part of the section however, states that in the case of a mistake or fraud, the period shall only run as from the day when they were discovered.

43. In cases where fraud is involved, the courts have the discretion to decide that the prescription period should run from the time that the fraud was discovered. *Delpesch v Soomery & Ors* (CS 109/2016) [2020] SCSC 765 (14 October 2020);

44. In the case of *Attorney- General v Robert* (CS 428/1995 ( 1997) SCSC 17 ( 29<sup>TH</sup> October 1997), the Counsel for Defendant raised the point of law arising on the plea of prescription “*on the basis that the Plaintiff has sued on the contract where the five years period of prescription is applicable under article 2271 of the Civil Code, but he conceded that the point of law should fail if it is decided by the Court that the action of the Plaintiff is real action in respect of rights of ownership of land or other interests therein*”. The Court concluded on this point raised:

“I am satisfied that on the Plaintiffs' pleadings and the admissions by the defendant it is established that the action before this Court is real action in respect of the Plaintiffs' right of ownership acquired by a purported purchase of parcel S 365 established by exhibits P1 and P4 for valuable consideration. Hence the period of extinctive prescription applicable to the instant action is 20 years which has not yet elapsed since the offer and acceptance and the presumed sale dates back to the year 1986. I, therefore, deny the Defendant's point of law.”

45. It should also be noted that there is a distinction between action in respect of rights of ownership of land (*droit reel*) and action to recover the value of the property (*droit personnel/droit de creance*). Where the action is for the latter, a prescription of 5 years may apply (***Reddy & Ano. v Ramkalawan* (CS 97/2013) [2016] SCSC 31 (26 January 2016); *Albert v St Jorre* (2002) SLR 30;**

***Gayon v Collie (2004-2005) SCAR 67; Armand Khany & Others v Leonel Cannie (1983) SLR 65; Nourrice & Ors v Nicette (CS 57/2015) [2016] SCSC 208 (29 March 2016)***

46. As to the issue of the claims of prescription by the Defendants (supra), counsel for the Plaintiff submitted to the Court that the time limit for the running of prescription is, as found in the Preliminary Ruling, the date the Plaintiffs discovered the facts of the fraud when the second Defendant signed her Affidavits before the Notaries particularly the second Affidavit signed in 2015 where she confirms the facts set out in the first Affidavit signed in 2005.

47. *The case of Camille v Government of Seychelles (CS 8/1997) [1998] SCSC 21 (14 December 1998)* which followed the decision in the case of *AG v Voysey (SCA 12/1995) [1996] SCCA 5 (05 July 1996)* where the Court held that;

“There is no statutory provision that confers power on the Court in this jurisdiction to postpone the accrual of a right of action because of ignorance of the Plaintiff of the material facts relating to the cause of action”.

48. The case of *AG v Voysey (SCA 12/1995)* is also an authority whereby the Court held that the right of action may not accrue if the facts were fraudulently concealed by one of the parties. The Court in the case of *Camille v Government of Seychelles* (supra) further stated in obiter regarding the case of *AG v Voysey* decision;

“Ayoola JA stated, albeit obiter, in the case of *Voysey* stated that –

Normally, a right of action accrues when the essential facts exist and, barring statutory intervention, does not arise with the awareness, for instance, of the attributability of the injury to the fault of the other party, **unless there has been fraudulent concealment of facts**. The date of manifestation

of damage may be specifically made the commencement of a right of action.

49. In Hanbury on Modern Equity (8<sup>th</sup> edition) dealing with equity in relation to the Statute of Limitations, the author states the following on page 307;

‘The doctrines of laches and acquiescence in the case of purely equitable claims, substituted by equity for the statutes of limitation as deterrents to the tardy assertion of rights unless one of those statutes had expressly included equitable claims within its orbit. In the case of legal claims, or even of equitable claims which it would regard as analogous to legal claims, equity rigidly enforced the observance of the statutory periods. But one important reservation equity permitted to itself. **If there had been fraud on the part of the defendant, and the Plaintiff did not discover it, through no fault of his own, until the statutory period had elapsed, equity would consider that the period had not begun to run until the date of its discovery**’.

#### **Determination**

50. If this Court would decide to follow the above principles then the court may arguably hold that the prescription period should start to run at the time the alleged fraud was discovered, allegedly in 2005 when the second Defendant signed her first Affidavit before the Notary; but to do so, the Plaintiff must prove the alleged fraud first. Another issue arising in this case is when the alleged fraud/abuse of power/lack of consent was discovered first. If the deceased had indeed made the statements to the Plaintiffs that he had not consented to the sale of land, when did he find out about that and why nothing was done by him about it remain unanswered and is irrelevant in this case. That is

because the agreement was that the deceased was to be paid by instalment of SCR27,000 monthly as an alleged lease payment for a period of five years, after which the balance of the consideration would be settled in five years. The deceased passed away within the five-year period.

51. Therefore, this Court finds that discovery of the alleged fraud would not have occurred before 1999 by the Deceased himself and the prescription period should have started to run when the Plaintiffs discovered the alleged fraud i.e. when the second Defendant signed her first Affidavit in the year 2005.

52. Hence, this Court holds that since the alleged fraud was only discovered in 2005 and such an action is considered as one of a real right having a prescriptive period of 20 years, then this Court further holds that the action of the Plaintiffs is not prescribed by law or time barred.

53. As regards to the Defendants second point of law or Plea in Limine Litis namely that the Plaintiffs ought to be dismissed under the inherent powers of the Court on the ground of abuse of process of Court, this Court finds that the Court in its preliminary ruling delivered by Judge S. Govinden at the time had adequately dealt with this issue and hence this Court is of the view that the Court should not make any further pronouncement on the issue namely on the defendants second Plea in Limine Litis.

54. Since this Court has already ruled at paragraph 28 of this Ruling that since the defendant have raised the issue of misjoinder of causes of action as a Plea in Limine Litis and the Plaintiffs have not made any Application for Joinder of the causes of action and as such this Court upheld the first Plea in Lime Litis of the defendants since the Plaintiffs is not maintainable in law, this Court makes the following Order;

i) I hereby dismiss the Plaintiffs with cost in respect to CS. 30 of 2015.

55. However the Plaintiffs may decide to file separate legal actions if so advised.



Signed, dated and delivered at Ile du Port on the 6<sup>th</sup> day of June 2022.

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Esparon J