

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ...
CS 115/2019

In the matter between:

MARIE THERESE EDOUARD
(rep. by S Rajasundaram)

Plaintiff

V

CHARLES LUCAS
(rep. by B Hoareau)

1st Defendant

ELOUTA LOUISIAN MORGAN
Defendant
(rep. by D Belle)

2nd

Neutral Citation: *Marie Therese Edouard vs Charles Lucas and or* [2022] SCSC.... CS 115/2019

Before: Govinden CJ

Summary: Action for revocation of registered instrument notarial deed for lack of consent; Plaintiff dismissed

Heard: 4th; 5th March; 1st April; 6th July 2022

Delivered: 20th June 2022

ORDER

Plaint and Counterclaim are dismissed.

JUDGMENT

R GOVINDEN, CJ

The background and Pleadings

1. The Plaintiff avers that she is a 67 years old resident of Port Glaud and is illiterate. The first Defendant is a practising Attorney at Law and a Notary Public. The second Defendant is her daughter. As a result of a family dispute she was informed by the second Defendant that the house comprised in Title J1174 at Port Glaud had been transferred to the 2nd Defendant. She avers that the 2nd Defendant relies on a registered land transfer instrument dated the 21st of December 2009; registered on the 15th of February 2010 and attested by the 1st Defendant. On the instrument, a usufructuary interest is kept in favour of her spouse, Amed Rene Edouard. According to her she was shocked when she saw the transfer instrument as she never signed it. As such, she feels that the instrument of transfer was done through fraud, it is not genuine and she did not intend to transfer her title to anybody.
2. With this, the Plaintiff claims that both defendants are jointly and severally liable in law for having concocted, prepared and registered a false document. She further claims that a letter was written to the 1st Defendant, in which clarity was sought from him on this issue. In response, the 1st Defendant denied the allegations and counterclaimed an apology and damages. As a result, the Plaintiff prays to this court to nullify the said title deed; to order that bare-ownership to tile J1172 be reverted to her and that the defendants be ordered to pay to her SCR 150,000 in damages.
3. The 1st Defendant in his Statement of Defence denies the Plaint and proceeds to counterclaim. He denies that the Plaintiff is illiterate and avers it is only a means to mislead the court as to her capacity to know the transfer transactions. According to him, the Plaintiff knowingly participated in the transfer transactions of the parcel which was done with a view to avoid tax. Title J1174 was originally registered in the name Amed Edourd. In March 2009 the Plaintiff together with Amed consulted him on how the latter can transfer the title to his step daughter, the 2nd Defendant. As Amed has biological children, he advised him to settle his means by will in which he would make provisions for his children and for the Plaintiff who would inherit his moveable properties on his death. Amed was advised on the advantages of retaining a usufructuary interest for himself and the Plaintiff, while bare ownership would be transferred to the 2nd Defendant. Amed was advised that since the 2nd Defendant was not his biological child, she was

liable to pay stamp duty on the gift. As such, it would be best to first transfer J1174 to the Plaintiff where the transaction would be exempted of stamp duty and thereafter the Plaintiff would in turn transfer it to the 2nd Defendant free of the same duty. This would have the triple effect of securing the gift to her stepdaughter; at a reduce tax rate and ensuring that the Plaintiff and Amed retain a usufructuary right.

4. According to the 1st Defendant, his advice was followed and on the 25th of March 2009 Amed transferred the ownership to the Plaintiff in which did he retained usufructuary interest to himself and the Plaintiff. After being awarded a waiver of Stamp Duty, Amed signed his last Will and Testament on the 27th of April 2009.
5. The 1st Defendant further avers that between March 2009 and the 21st December 2009 the Plaintiff held the bare ownership of Title J1174 until the 21st December 2009 as agent and trustee of the 2nd Defendant who was the designated recipient of the parcel. The Plaintiff attended the chambers of the 1st Defendant on the 7th of July 2010 and the 6th October 2010 in order to pay a fee note of Amed, to show that all legal services were rendered.
6. With the above, the 1st Defendant denies having acted fraudulently and maliciously and avers bad faith and untruthfulness on the part of the Plaintiff.
7. In his counterclaim the 1st Defendant avers that the allegations in the Plaintiff are false, slanderous and are against his personal and professional reputation in that they amount to commission of criminal offences and malpractices for which he is liable to be disbarred and subject to criminal proceedings. As a result, he issued a letter of demand to the Plaintiff requesting for an apology and withdrawal of the accusation and to pay him damages in the sum of SCR 500,000. The letter of demand was met with rejection on part of the Plaintiff, and she subsequently filed the present suit where she has repeated the accusations which have caused him further damage. Against this background, the 1st Defendant prays that this court enter judgment in favour of his Counterclaim; to issue a permanent injunction upon the Plaintiff to prohibit any further accusations and to award damages against the Plaintiff in the sum of SCR 500,000.

8. In her reply to the Counter Claim the Plaintiff avers that she had not made any slanderous publication against the 1st Defendant as she was only seeking justice in respect of her property. It is also the contention of the Plaintiff that the averments in her Plaint are made before a court of law and cannot therefore amount to a slander. As a result, she refutes the counterclaim.
9. On the other hand the 2nd Defendant denies the Plaint and join defence with the 1st Defendant.

The evidence

10. The Plaintiff called Mr Fred Houareau a representative of the Registrar General who produced following documents:
 - i. the original transfer of bare ownership document from Mr Amed Edouard to the Plaintiff of parcel J1174 dated 25th March 2009 as ExhP1;
 - ii. the transfer of bare ownership interest in title J1174 document from the Plaintiff to the 2nd Defendant, as Exh P2; and
 - iii. a copy of a letter dated the 22nd April 2009 entitled waiver of Stamp Duty on title number J1174, as Exh P3.
11. The Plaintiff in her testimony stated as follows. First, she is married to Amed Rene Edouard. Second, the 2nd Defendant is her daughter born of a previous relationship and the 1st Defendant is an acquaintance whom she knew through her daughter who had been working with him. She disputed the fact that she signed Exh P2 as her name is not written in full as she usually signs. As to Exh P1, she submits that signed only in the presence of the secretary of the 1st Defendant, who blocked the upper part of the document when she was signing and was informed that it was to be a surprise from her husband to her. It is her testimony that the 1st Defendant never informed her about what she signed on that day

and she wants the court to cancel this document. She states that she came to know about the land transaction only following a family dispute. The 2nd Defendant is said to have showed the Plaintiff and her husband Amed the transfer instrument and informed them that they had given her the land. Following this, she wrote a letter to the lawyer through her counsel to the 1st Defendant, ExhP4 in evidence, and him to cancel the transfer. This was done by her even verbally, however he refused categorically. Mr Lucas replied to her letter in two written replies which she produced as Exh P5 and P6. She disputes and refutes all of the 1st Defendant replies. She produced her ID card as proof of her signature, which was marked as Exh P7.

12. Under cross examination the Plaintiff accepted that she knew the 1st Defendant as he once lived at Port Glaud with his in-laws. Though she could read what was contained on Exh P1 when she first saw it with the 1st Defendant, she could not understand what it meant. She claimed that she has a problem with her eyesight. It was as a result of this that she went and sought an explanation with the 2nd Defendant accompanied by her husband. A hand written note written in English was also admitted into evidence.
13. Later, the 1st Defendant informed her that the document that she signed in the presence of the 1st Defendant's secretary was only a permission for the 2nd Defendant to build. The 1st Defendant refused to cancel the documents. She stated that her spouse has one son from a different relationship.
14. Amed Edouard's account is also worthwhile to highlight. He knows how to read a little in English but he cannot write. He was the original owner of Parcel J1174. He went to the office of the 1st Defendant in order to make a Will so that upon his death his moveable property will be bequeathed to his two sons and his immovable property to his wife. However, he never signed such documents and does not know of its existence. He only received a call from the 1st Defendant's secretary who informed him to come. He went there alone and signed a document. It is his account that he signed the document only in the presence of the 1st Defendant's secretary. He submitted that it was a later realisation

to him that the property had been transferred to his wife, and this was when the 1st Defendant showed it to him. Regarding ExhP1, he can only recognised his signature on it and the parcel number. When he discovered that eventually the land had been transferred to the 2nd Defendant he expressed his dissatisfaction to the 1st Defendant, who informed him that the transaction was as per his instructions. On Exh P2 he can only identify his signature, he did not sign it in the presence of the 1st Defendant.

15. In his cross examination he identified a document entitled last will and testament containing his signature, which was marked as Exh D1. He further stated that he knows the 1st Defendant who once came to the 2nd Defendant's wedding at his place of residence and they used to meet at the 1st Defendant's in-laws at Port Glaud. He also stated that he did approach the 1st Defendant in order to transfer his land on his wife in March 2009. He disputed having soliciting the 1st Defendant's professional services before March 2009. In his account, he only knew that the Plaintiff had signed a document at the 1st Defendant office. When she informed him of this, it was then that the 1st Defendant informed that he had signed a transfer of the land to the 2nd Defendant. However, he was under the impression he was signing the transfer in favour of the Plaintiff. After he had signed the document he had gone to get a copy but the 1st Defendant informed him that it was with the 2nd Defendant. He denies the version of the Defence that he had voluntarily gifted his land to the 2nd Defendant, by transferring the bare-ownership to his wife and for her to transfer to the 2nd Defendant.

16. The 1st Defendant testified that he is a Notary and an Attorney at Law and that he knows the Plaintiff and her husband since 2004. His wife's brother is the husband of the 2nd Defendant and they had frequented each other and were once neighbours. He made a Discharge of Charge document for the Plaintiff's husband in 2006 under full instruction. In 2009 he drafted a Last Will and Testament for him again under his instruction. He also transferred the bare ownership of parcel J1174, which had belonged to Amed, to the Plaintiff whilst reserving to them both usufructuary interest. He explained the circumstances of the transfer of bare ownership to the 2nd Defendant to be one done with the aim of lessening tax payments whilst at the same time protecting the transfer from

challenges in an action by the children of Amed and that this was his instructions. This was to be done by way of a Will and Testament and Exh P1 and Exh P2. The Plaintiff was aware of all transactions except the ones arising from the Will. Exh P1 was signed in his presence in his office by the Plaintiff and her husband, whilst Exh P2 was also signed in his presence by the 2nd Defendant and the Plaintiff. The 1st Defendant produced his office diary as Exh P10, which according to him, listed the dates that appointments were given to sign those documents. Mr Lucas went on to inform the court that after the Edouards found out that they could not take a loan as a result of bare ownership being on the 2nd Defendant, they came to him in order to cancel the different transactions but he informed them that it was not possible without consent of the 2nd Defendant.

17. The 1st Defendant denies all allegations of malpractice on his part. He testified that he informed counsel for the Plaintiff that he would counterclaim for damages as a result of the complaints of his client because he has suffered both personally and professionally as a result of her actions.
18. Clarence Robert, the 1st Defendant's, secretary testified in his favour. At the material time she was managing his office diary, Exh D1. She is also acquainted to all parties in the case. She stated that Exh P1 was prepared by the 1st Defendant and signed before him and not before her as stated by the Plaintiff. She also confirmed that Exh D5, the Last Will and Testament of Amed was signed by him in the presence of the 1st Defendant. She recalled calling both the Plaintiff and the 2nd Defendant to come and sign Exh P2, to which both of them came and the signing was done in the presence of and in the office of the 1st Defendant. She identified the diary of the 1st Defendant. As per entries that she made in the diary she gave appointments to the Plaintiff and her husband to come and see the 1st Defendant.
19. The 2nd Defendant testified of a loving relationship between her and Amed prior to the events giving rise to the issues in the Plaintiff. She first saw Exh P2 when she went to sign it in the 1st Defendant's office. Prior to this, she was informed by Amed about this document,

except that she would be allowed to stay on the parcel. She was called to the 1st Defendant's office by Clarence and she and her mother signed the document in the presence the 1st Defendant. When the document was ready she was informed by the secretary to come and collect them which she did. It was only when Amed enquired about their existence that she disclosed them to him. Thereafter she was asked whether she wanted to give back the bare ownership to the Plaintiff by the 1st Defendant and she refused as she considered that it was gifted to her by Amed. She had been informed, at the time of its signing, the reasons why the land had to be transferred to her mother first.

20. Under cross examination she accepted that she was not privy to the transactions giving rise to Exh P1, she saw the latter document only when she went to sign. She only became aware of the court case after she received summons to appear in the case.

Issues for determination

21. Having scrutinised the pleadings I have identified the following issues left for the court determination;

- (1) Whether or not Amed Edouard lawfully transferred the bare ownership of parcel J1174 to the Plaintiff and retained usufructuary interest for himself and the Plaintiff and whether subsequently the Plaintiff lawfully transferred the bare ownership of same parcel to the 2nd Defendant.
- (2) If the above transfers were lawfully effected, whether the accusations of the Plaintiff as described in the Plaint and Counterclaim are defamatory.

Analysis and determination

22. The first issue for consideration is whether or not Amed Edouard lawfully transferred the bare ownership of parcel J1174 to the Plaintiff and retained usufructuary interest for

himself and the Plaintiff and whether subsequently the Plaintiff lawfully transferred the bare ownership of same parcel to the 2nd Defendant. This is an issue that calls for a factual determination after the court would have considered the entire facts and circumstances of the case including the credibility of witnesses. In the process of coming to a decision on this issue I have given careful attention to the evidence of all the witnesses and the content of the different documentary evidence produced in support and against the cases of each parties. I have done this after giving special consideration to their testimonies as given under oath as tested by the test of cross examinations and the impact on their credibility as witnesses.

23. The Plaintiff's case here consist principally of her testimony and that of her husband, the evidence of Mr Hoareau being formal and not contested, except the documentary evidence that he had produced. On the other hand the Defendants presents a joint defence and they and their witness sought to present a common front to the Plaintiff. The court task is to scrutinise their evidence and see who has proven their case on a balance of probabilities.

24. The Defence case against the Plaintiff is that she is not telling the truth in almost the totality of her testimony and that her evidence should not be believed in its entirety. Moreover, the Defence says that the Plaintiff belittles her knowledge of the 1st Defendant. Having gone over the proceedings, I find that she does not testify much with regards to her familiarity to him in her examination in chief, except to say that he acted as Notary in the several transactions. Under cross examination she denies the fact that the 1st Defendant ever visited her place of residence and that she only met him at a party at which was held at his in-laws' place of residence once. In the cross examination of Amed however, the following transpires. The 1st Defendant did visit the 2nd Defendant at their residence and the Plaintiff was there, something that she vehemently denied in her testimony. On the other hand the 1st Defendant testifies that he knows the Plaintiff very well since 2004. He had attended many events at the Plaintiffs house, including 1st communion; the confirmation and christening of the 2nd Defendant's child. He also

attended the 2nd Defendant wedding there and also a few birthdays. Regarding the relationship between the 2nd Defendant, the Plaintiff and her step dad Amed, the 2nd Defendant testified that they would sit down from time to time during the weekend for them to share a conversation. This state of friendship and fraternity between the now opposing parties is also confirmed by the evidence of witness Clarence Robert. Having addressed my mind to this issue I find that the Plaintiff was not wholly truthful when it comes to her and her husband's friendship with the 1st Defendant. I am of the view that prior to the events that allegedly gave rise to Exh P1 and Exh P2, they were on friendly terms. The fact that the Plaintiff lied on this aspect of her evidence has consequences which I will relate to later in this judgment.

25. The signature of the Plaintiff is being traversed by the Plaintiff herself. She disputes having signed Ex P2. On this document her signature appears as 'M Therese Edouard'. She disputes having signed this document because according to her, she would have signed her name in full as 'Marie-Therese Edouard'. She says that Exh P1 shows exactly how she signs. However on her ID card of which a copy has been tendered as Exh P7 she signed as 'M Therese Edouard'. According to her, the reason why she had signed this way on her ID is that she was having an eye problem and she was informed to sign as such last year prior to her obtaining new glasses. However, under cross examination she admitted that when her eyesight was worse, she could still sign her name in full and better than when she signed for her ID card. She said the following are the challenges she faced when she signed Exh P1;

“Yes it is completely right on this paper but however I will say that upon writing this paper, my name on the paper I was not correctly seeing the paper and I was writing my name , some words was being apart from each other, so I was doing it approximately on the paper”

Upon being further pressed as to why she signed her name on the ID card in the way she did the Plaintiff she went on to state that;

“I wrote my name on the ID card so when I went there the lady asked me to write in a small way so I wrote it the way she told me to do so”.

26. The 1st Defendant on the other hand insist that the Plaintiff signed Exh P1 in his presence. I have carefully studied the three documents in evidence upon which the several signatures appears. They are all substantially different. This leaves with three signatures of the Defendant on record; one on the Exh P1; the second on Exh P2 and the third on her ID card. The Plaintiff has not given me a plausible explanation as to why at least her signature on Exh P7 and that on Exh P1 are different. She attempts to explain the inconsistencies by stating that she was suffering from an eye ailment when she signed. Another explanation given is that she was asked to sign in a certain ways. These are explanations are inconsistent and somewhat evasive. As a result I do not believe that she has one single genuine signature. She clearly has different ways of signing her names and ‘Marie Therese Edouard’ as it appears as appear on Exh P1 is not the only way.

27. Much has been said about and on the literacy of the Plaintiff and that of her husband. This issue has an impact on the court decision as to whether they voluntarily and knowingly signed Exh P1 and Exh P2 as it is being averred by the Defendants. The less educated and literate they are the more likely that they would have been tricked or misled by the Defendants into signing the documents. Hence during the trial special efforts appear to have been put in evidence by both sides so as to enhance and diminished this fact. As far as the Plaintiff is concerned she started off by saying that she can read and write but to a lesser degree. However when she was given Exh P1 to read under cross examination she could read the title of the document. She read the following content thereof;

“I Amed Rene Edouard ID Number 96211071119 hereby transfer to my wife Marie Therese Edoisca Edouard”

28. She could understand the words Port Glaud, Seychelles. However, though she could read the terms “bare ownership” and “usufructuary interest” on the document she could not

know or comprehend what it meant. She said that it was for this reason that she and Amed decided to go to the 1st Defendant so that they could understand what these words meant.

29. A prayer that the Plaintiff had copied by hand from a prayer book was also produced in evidence and according to her she could read the prayer in the way that she had copied it in the English language.

30. Having assessed all these and other parts of the evidence I have come to the view that the Plaintiff possesses a fair knowledge of the English language so as for her to be able to know what she was reading or writing though she would have had difficulties to understand technical or legal terms . She is literate and educated enough to know that when you go to sign a document at a Notary Public, it should be an important legal document that would have affected the personal affairs and interest of the parties. I am satisfied therefore that at the time that she went to sign Exh P1, she would have been aware of the fact that she was signing a legal document relating to a transfer from her husband to herself. This carries huge implication namely that she would then have been concerned to know the content of the document and to have a copy thereof which seemingly was not the case according to their own evidence. The Plaintiff is hence not an illiterate as she avers in her Plaintiff.

31. This leads to the next issue, and that is how the documents were executed. With regards to Exh P1, the Plaintiff claims that she was called to the office by the secretary of the 1st Defendant then she was given a document, the secretary either by accident or in an attempt to hide the upper part of the document, put her hand on that part and she was asked to sign it, which she did. She was informed that it was a surprise from her husband of which she would be informed about later. As to why she did not read the document, she blamed it on her eye sight.

32. Having assessed the demeanour of Plaintiff in the light of this aspect of evidence, I find it wanting in several respects. To me, the Plaintiff does not seem to be that kind of person that would naively sign a legal document without knowing its content. She is a person of strong character and conducts her affairs with responsibility and necessary diligence. She would have asked the secretary to at least explain to her the content of the document. Which in her own words she did not or at least she would have asked her to remove her palm so that she could have total sight of it, which again she did not. Accordingly, I have formed the view that the Plaintiff is not truthful here. This was not the way that Exh P1 was executed.
33. The Plaintiff testifies that she signed Exh P1 without knowing its content and legal implications imply in this assertion is that she could not have fully consented to receiving the bare-ownership of parcel J1174. However, irrespective of this apparent unlawfulness she does not request for the court to cancel this document. Instead she prays for orders to nullify the transfer of bare ownership to the 2nd Defendant in Exh P2 in her Plea and her testimony. To the court this partiality does not bode well to the credibility of the Plaintiff. If both documents were fraudulently executed, they should both be cancelled. To do what she is asking based on her own case would be her condoning an alleged fraud against the interest in the land of her own husband. If that be the case it shows her as a person who is prepared to cater for her own partial interest to the detriment of those close to her, even if that was to be done fraudulently. Secondly, her stance also serves to render more probable the version of the Defendant that the execution of both documents were done in the presence of the 1st Defendant in accordance to law.
34. This leads me to consider the reason that the Plaintiff lied about knowing the 1st Defendant. The above clearly shows that she tended to distance her relationship to him in an attempt to show that the unfamiliarity with him. In my view, the Plaintiff did that because she thought that the closer their friendship would have been the less likely someone would believe that the 1st Defendant would have resorted to the alleged scheme averred in the Plea. Therefore, as part of her narration of events and to some extent her husband too, it was essential to show that there was no friendship between the parties. In this

attempt the Plaintiff has failed as I find that all the parties were familiar to one another, although at different levels.

35. In respect of Amed Edouard, I assessed his testimony in the light of the facts and circumstances. I am of the view that he is illiterate. He cannot speak and read the English language, though he can sign and identify his signature. With regards to his relationship with the 1st Defendant I find that prior to this case they were on very friendly terms. He denies that he voluntarily and willingly signed Ex P1 and 2. His case is that he wanted to set up his succession scheme in which his wife will be bequeathed his land and his children his movable and that the 1st Defendant was to arrange his affairs so that this be done. Having signed one document in front of the 1st Defendant's secretary he left it at that, thinking that it had been done, only to learn later that his land title J1174 had been transferred to the 2nd Defendant. I disbelieve this witness evidence with regards to the facts and circumstances relating to the signing of the two documents. Similar to what I have found with respect of the Plaintiff I find it hard to accept that Amed would have simply signed a document in front of the secretary without probing further as to what he was signing. Moreover, being a good friend of the 1st Defendant he would have at least immediately after putting his signature approached him and enquire from his the content of the document and asked him for a copy. He did not do so and neither did he discuss it with his wife until an issue with regards to raising of a loan arose. To my mind the spouse of the Plaintiff simply had a change of heart upon the Plaintiff falling out with her daughter and the former attempting to rescind the transfer as a result. Hence his solidarity with her in this case. The evidence points to the fact that he sign both documents voluntarily and willingly before the 1st Defendant.

36. In regard to evidence of the 1st Defendant and his witness, I find them to be honest, candid and truthful. Having considered the totality of their evidence, I find the following on a balance of probabilities: the Plaintiff's husband wanted to arrange his affairs and so he got his friend the 1st Defendant to assist him. The scheme that he devised was to ultimately transfer his immovable property parcel J1174 to his step daughter and his

moveable to his sons in a way that would led to the minimum payment of Stamp Duty and to comply with the then forced heirship provisions of the Civil Code. In order to do this he did three things. First, he instructed the 1st Defendant to draw up a Last Will and Testament in which he signed with full capacity and consent in the presence of the 1st Defendant. Secondly, he transferred the bare ownership of the said parcel to the Plaintiff and reserved the usufructuary interest on both himself and the Plaintiff. Thirdly, his wife transferred her bare-ownership to the ultimate beneficiary, the 2nd Defendant. I find also as proven the fact that both he and the Plaintiff signed these two document lawfully with full capacity and consent in the presence of the 1st Defendant and that these were done in accordance with Section15 and the 1stSchedule of the Notaries Act.

37. I therefore find the first issue raised for my determination in favour of the Defendants. Amed Edouard lawfully transferred the bare ownership of parcel J1174 to the Plaintiff and retained usufructuary interest for himself and the Plaintiff and subsequently the Plaintiff lawfully transferred the bare ownership of same parcel to the 2nd Defendant. The Plaintiff is accordingly dismissed.

Whether the accusations of the Plaintiffs are defamatory

38. In his counterclaim the 1st Defendant has averred that the accusations found in the Plaintiff and those found in a letter of demand addressed to him dated the 4th of April 2019 issued by the Plaintiff's lawyer are false slanderous and are against both his personal and professional reputations and that they have caused damages as such to him . He averred further that the 1st Defendant had refused to retract and apologise and compensated him for the damages.
39. The 1st Defendant's claim is one in defamation founded under Article 1383 (3) of the Civil Code, which reads as follows;

“The provisions of this Article and of Article 1382 of this Code shall not apply to the civil law of defamation which shall be governed by English law.”

40. It was held in *Kim Koon v Wirtz* (1976) SLR 101 that the law of defamation applicable in Seychelles is the law in force in the United Kingdom on 31 October 1975. Similarly, in *Biscornet v Honoré* (1982) SLR 455, Sauzier J stated that given the enactment of the Civil Code and its coincidence with the independence of Seychelles:

"In cases of defamation therefore it is the English law in force when the Civil Code of Seychelles 1975 was enacted which applies..."

41. Our laws of defamation are therefore unfortunately frozen in time and any statutory or jurisprudential developments in the English law are inapplicable to our jurisdiction.

42. In *Esparon v Fernez and anor* (1980) SLR 148, 149, Sauzier J set out the principles of our law of defamation as follows:

"Under Article 1383 of the Civil Code of Seychelles, defamation is governed by the principles of English Law. The following are the relevant principles ...

- 1. A man commits the tort of defamation when he publishes to a third person words containing an untrue imputation against the reputation of another.*
- 2. Words, which impute to the plaintiff the commission of a crime for which he can be made to suffer corporally by way of punishment are actionable without proof of special damage.*
- 3. A man, stating what he believes to be the truth about another, is protected in so doing, provided he makes the statement honestly and without any indirect or improper motive."*

43. Dodin J in *Pillay v Pillay* (CS 15/10) [2013] SCSC 68 (16 October 2013) gave a further exposition of our law as follows:

"There are five essential elements that a plaintiff must prove to establish defamation: (1) The accusation is false; (2) it impeaches the subject's character; (3) it is published to a third person; (4) it damages the reputation of the subject; and (5) that the accusation is done intentionally or with fault such as wanton disregard of facts or with malicious intention..."

Allowable defences against defamation are justification which includes the truth of the statement, fair comment which is determined by whether the statement was a view that a reasonable person could have held, absolute privilege when the statements were made in

Parliament or in court, or they were fair reports of allegations in the public interest and qualified privilege, where it is determined that the freedom of expression outweighs the protection of reputation, but does not amount to the granting of absolute immunity. A defamatory statement is presumed to be false unless the Defendant can prove its truth.

This court will follow these principles with respect to this claim.

44. In her defence to the Counter Claim the Plaintiff avers that her Complaint and this suit cannot amount to defamation as they were instituted before the Supreme Court in her quest for justice. This is a defence of absolute privilege.

45. In English law no claim lies, whether against judges, counsel, jury, witnesses or parties, for words spoken in the ordinary course of any proceedings before any court or judicial tribunal recognised by law. The evidence of all witnesses or parties speaking with reference to the matter before the court is privileged, whether oral or written, relevant or irrelevant, malicious or not. The privilege extends to documents properly used and regularly prepared for such legal proceedings. I make this statement of law based upon the Halsbury's Laws of England / Defamation (Volume 32 (2019)) / 2. Defences.

46. Accordingly, in my determination the letter of demand of the Plaintiff and her Complaint are subject to the defence of absolute privilege and hence offers an absolute defence against any defamation that could have been made by her in these documents or in court. For this reason the Counterclaim is dismissed.

Final determination

47. For reasons aforementioned the Complaint and Counterclaim are dismissed.

48. I make no order as to costs.

Made at Ile du Port on this 20th day of June 2022.

R. J. Govinden

Chief Justice