

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: F. MacGregor (PCA), S. Domah (J.A), M. Twomey (J.A) ]**

**Civil Appeal SCA 21/2013**

**(Appeal from Supreme Court Decision 103/2012)**

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Marie France Faure

Appellant

Versus

Louis Hoareau

1<sup>st</sup> Respondent

Keven Gonzague Hoareau

2<sup>nd</sup> Respondent

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Heard: 21 August 2015

Counsel: Mr. S. Rajasundarm for the Appellant

Mrs. Alexia Amesbury for the 1<sup>st</sup> Respondent

Mr. Joel Camille for the 2<sup>nd</sup> Respondent

Delivered: 28 August 2015

**JUDGMENT**

**S. Domah (J.A)**

- [1] On 31 August 2007, the Appellant lodged a civil case against Respondent No. 1 (CS 250/2007) ("the first claim") in which she claimed damages against him. Respondent No. 1 who was a single defendant in that case did put an appearance in October 2007. The case proceeded for hearing and at the end of the day, on 18 November 2010, she obtained judgment in her favour by order of Karunakaran J., as he then was, in the sum of Rs555,000.00. That sum remained unpaid. When execution was sought in the case, the appellant found that on 7 March 2008, i.e. while that case was still pending before the court, Respondent no. 1 had transferred a property C2462 which was then in his name to Respondent no. 2 who is no other than his own son. The appellant took the

view that it was fraudulent on the part of Respondent No. 1 to have effected the transfer at that moment in time. In her view, it was designed to frustrate, and did frustrate, her attempts to execute the judgment which she was due to obtain, and which she did obtain. In the event, she has been left without any hope of successful execution.

- [2] On 7 August 2012, therefore, she brought another action (“the second claim”) based on fraud against both Respondent No. 1 and Respondent No. 2. She sought a declaration that the transfer was null and void, an order for the Registrar of Lands and Deeds to divest the ownership of the property from Respondent No. 2 and direct that Respondent No. 1 does not alienate, transfer or dispose of the property in detriment to the appellant’s recourse to recover her judgment debt in the first claim.
- [3] The learned Ag Chief Justice of the Supreme Court dismissed this second claim. He accepted the argument that, on the face of the pleadings, the plaintiff disclosed an action based on fraud but dismissed it, without going through the merits, on the ground that the appellant had no *locus standi* to bring such an action.
- [4] The appellant appeals before us advancing 4 grounds of appeal. Language being the tool of legal practice, the grounds could have been worded – we feel bound to say – with greater attention to grammatical English. We reproduce same:

*“Ground no1: The Learned Trial Judge, however, found and was satisfied that there was a ground, namely “fraud” which the judge himself ruled so, failed to allow the Plaintiff {Appellant} to proceed with the case on merits. The learned Judge ought to have allowed the Appellant to proceed with the case on merits.*

*Ground No. 2: The Learned Judge ought to have allowed the Plaintiff {Appellant} to give her a chance as to explain how she was an interested party on the property in C2461 in terms of the averment of the Plaintiff, in respect of the transfer dated 7<sup>th</sup> March 2008.*

*Ground No. 3: The Learned Judge failed to appreciate the existence of cause of action of the Appellant’s Plaintiff and further failed to provide an*

