

**Adonis v Larue  
(1999) SLR 66**

Frank ELIZABETH for the plaintiff  
Philippe BOULLE for the defendant

**Ruling delivered on 8 October 1999 by:**

**KARUNAKARAN J:** The plaintiff in this matter sues the defendant for loss and damages in the sum of R365,000 which the plaintiff allegedly suffered as a result of a breach of contract by the defendant.

The plaintiff is the mother and the defendant is her son. It is averred in the plaint that at all material times the plaintiff was residing in Italy and the defendant in Seychelles. On 19 August 1994 the defendant agreed to purchase a parcel of land title no B858 situated at Barbarous, Mahe for the plaintiff and to have the same registered in the defendant's name temporarily until the plaintiff returned to Seychelles. By the way, it is pertinent to note that the plaint hereof does not disclose the material fact whether the plaintiff paid any sum to the defendant in pursuance of the said agreement. See section 71(d) of the Seychelles Code of Civil Procedure in this regard as to what a plaint must contain.

The plaintiff upon her return to Seychelles requested the defendant to transfer the land into her name. However, the defendant refused to make the transfer in breach of the alleged agreement.

Consequently, the plaintiff claims that she suffered loss and damages and hence the action herein.

At the outset of the hearing in this matter whilst the plaintiff was giving evidence-in-chief in support of her case, she attempted to adduce oral evidence to establish the alleged agreement between the parties. Counsel for the Defendant Mr Boule swiftly objected to the admission of evidence in this respect. He argued that no oral evidence should be admissible in terms of article 1341 of the Civil Code as the value of the subject matter exceeded R5000. On the contrary, counsel for the Plaintiff Mr Elizabeth submitted that this case falls as an exception to the rule under article 1341 of the Code. According to him, the blood relationship between the parties being the mother and son, it was morally impossible for the plaintiff to obtain from the defendant a written proof of the obligation. Hence, he contended that oral evidence is admissible in this case as it falls under exception to article 1341. Having heard both sides on this issue the Court in its ruling overruled the objection of Mr Boule and allowed the plaintiff to adduce oral evidence despite the value of the subject matter exceeding R5,000. In fact, the Court held this case as an exception to article 1341 in view of the said moral impossibility due to blood relationship between the parties relying on the Mauritian case law in *Nunkoo and others v Nunkoo* 1973 MR 269. It is relevant to note here that the same position of case law

has also been reiterated by Chief Justice Alleear in the case of *Andre Esparon v Serge Esparon & Anor* (unreported)–SC Civil Side 157/ 1990.

Following the said ruling the plaintiff continued giving evidence and attempted to testify in order to establish the alleged agreement. Again Mr Boulle objected under article 1321 of the Civil Code alleging that the agreement which the plaintiff is trying to prove is nothing but a back-letter. It is one of simulation in which the apparent and ostensible agreement namely Exh-P1, that is the registered title deed in favour of the defendant in respect of the land in question, is destroyed, in effect, by a secret contract. In law such back-letter should be in writing and registered within 6 months from the date of the making of the deed. In the absence of such writing as has happened in this case, he contended that the said secret contract is void. Therefore, no evidence shall be admissible to prove a void contract. In support, Mr Boulle cited an authority. He quoted the relevant excerpts from the judgement of the Seychelles Court of Appeal in *Sidna Ruddenklau v Timm Adolf Botel* (unreported) Civil Appeal 4/1995. Hence, he objected to the admission of evidence to prove the alleged back-letter, a void contract in law.

On the other hand Mr Elizabeth contended that the authority cited by Mr Boulle is not relevant to this case. He attempted to distinguish the instant case from the other on facts and in substance. Further, he submitted that the alleged transaction between the parties is not a back- letter or simulation or secret agreement. Therefore, he urges the Court to allow oral evidence to prove the transaction in question.

I carefully analysed the points raised by both counsel in their submissions. I also perused the relevant provision of law as to back-letters. Indeed, article 1321(4) of the Civil Code provides that:

Any back-letter or other deed, other than a back-letter or deed as aforesaid which purports to vary, amend or rescind any registered deed of or agreement for sale, transfer, exchange, mortgage, lease or charge or to show that any registered deed of or agreement for, or any part of any registered deed of or agreement for sale, transfer, mortgage, lease or charge of or on any immovable property is simulated, shall in law be of no force or avail whatsoever unless it shall have been registered within six months from the date of the making of the deed or of agreement for sale, transfer, exchange, mortgage, lease, or charge of or on the immovable property to which it refers.

Obviously, the issue herein raises two important questions.

1. Is the alleged transaction a back-letter in law?
2. If so, is oral evidence admissible to prove this back-letter?

As regards the first question, on the face of the pleadings in the plaint it is clear that the parties allegedly entered into an agreement for the transfer of the land in question to the

plaintiff. This fact was not disclosed in the actual transfer deed executed in favour of the defendant. In pursuance of this hidden or undisclosed agreement, the defendant allegedly made a sham transfer of the land in his name. This sham transfer was duly executed and registered with the land registry. In fact, this registered deed is the apparent and ostensible transfer. However, this deed was ultimately intended to implement the hidden agreement between the parties. In the circumstances, it is understood that the unceremonious agreement which the parties originally entered into, is nothing but a back-letter whereas the registered deed a simulation. Therefore, I find the answer to the first question in the affirmative. That is "yes, the alleged unwritten transaction is a back-letter in law" and so it should be treated as such for all legal intents and purposes.

Now let us move on to the second question. In this respect, I carefully analysed the points raised by both counsel particularly, on the issue as to admissibility of oral evidence to prove a back-letter.

In this case, obviously the plaintiff is trying to prove a secret contract, which in effect destroys the apparent and ostensible transfer deed i.e. Exh Pl. This deed is duly executed and registered. However, the alleged secret contract was never reduced into writing nor registered. In terms of article 1321(4) if a back-letter is not registered within six months from the date of the making of the deed, in law it shall be of no force or avail.

As quotably stated in the case of Botel (supra) "while the requirement of writing in other cases be merely evidentiary pursuant to article 1341 of the Code albeit subject to the exception provided by article 1347 of the Code, the requirement of writing in cases provided for in article 1321(4) is formal. The consequence is that such secret contract is void by reason of the absence of writing."

In the circumstances, I quite agree with the submission of Mr Boule that no oral evidence shall be admissible to prove the terms of a back letter in law which is nothing but a void contract. Therefore, I find the answer to the second question in the negative. That is "no oral evidence is admissible in law to prove this back-letter".

For these reasons, I uphold the objection raised by Mr Boule and rule that the plaintiff cannot adduce oral evidence to establish the back-letter that is the alleged secret contract between the parties as no oral evidence in this respect, is admissible in law.

**Record: Civil Side No 399 of 1997**