

COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] (18 December 2023)

SCA 12/2022

(Arising in CS 115/2019)

Marie Therese Edouard
(*rep. by Mr. S. Rajasundaram*)

Appellant

And

Charles Lucas
(*self represented*)

1st Respondent

Elouta Louisian Morgan
(*represented by Mr. Daniel Belle*)

2nd Respondent

Neutral Citation: *Edouard v Lucas & Anor* (SCA 12/2022) [2023] (Arising in CS 115/2019)
(18 December 2023)

Before: Robinson, Tibatemwa-Ekirikubinza, Gunesh-Balaghee, JJA

Heard: 5 December 2023

Summary: **Appeal on facts – findings not shown to be unreasonable, unwarranted or
perverse- judgment of trial Court maintained**

Delivered: 18 December 2023

ORDER

I set aside the appeal and maintain the judgment of the Supreme Court in SCSC 510 CS 115/2019

JUDGMENT

GUNESH-BALAGHEE JA (Robinson, Dr. L. Tibatemwa-Ekirikubinza JJA concurring)

1. This is an appeal against a judgment of the Supreme Court setting aside the plaint lodged by the appellant (then plaintiff) against the respondents (then defendants) and the counterclaim lodged by respondent No. 1 against the appellant.

2. The appellant who was the plaintiff before the trial court is married to Mr Amed Edouard since the year 2000. Respondent No. 2 is the appellant's daughter. She was living with the appellant and Mr Amed in a house situated at Port Glaud which belonged to the latter and which is registered in title No J1174. Respondent No. 1 is an Attorney at Law and a Notary Public.
3. The appellant averred that, as per a land transfer document (Exhibit P2), duly attested by respondent No. 1 in his capacity as notary Public which is dated 21 December 2009 and registered on 15 February 2010, the bare ownership of the property registered in title No J 1174 was transferred by her to the second respondent while the usufructuary interests therein were retained by her husband and herself. She alleged that the document bears a signature which is not hers as she never signed same and that the document is a fraudulent one. She claimed that both respondents are jointly and severally liable in law for having concocted, prepared and registered a false document. She therefore sought that the document be declared null and void and that the bare-ownership of the property reverts to her in her sole name. She further sought SCR 150,000 as damages from the respondents.
4. Respondent No. 1 denied any wrongdoing on his part and he lodged a counterclaim wherein he sought the sum of SCR 500,000 from the appellant for defamation.
5. After considering the evidence adduced before him, the learned trial Judge dismissed the appellant's plaint and the first respondent's counterclaim.
6. The appellant is now appealing against the judgment on 4 grounds of appeal which are reproduced below:

***“Ground No. 1:** The learned Judge erred in his findings and failed to appreciate Appellant's real claims on how the property in J1174 and the legal aspect of fraud and is said to have been committed by the 1st Respondent and wrongly concluded that she had lawfully transferred the bare-ownership to the 2nd Respondent.*

***Ground No. 2:** The learned Judge erred in his findings and failed to consider the Appellant's signature in all documents apart from Exhibit P1 and her National ID card, which all show her signatures as “Marie Therese Edouard”. The learned*

Chief Justice as the trial Judge to observe any findings on the issues involving discrepancies of the Appellant's signature in the crucial document, The Transfer Deed while in our jurisdiction, the trial Judge would need to observe and conclude the veracity and genuineness of the signatures in dispute.

Ground No. 3: *The learned Judge despite concluding that the Appellant was capable of reading and copying prayers from her prayer book in English, failed to consider the distinction between the Appellant's literacy levels in regards to complex legal documents and the constant reading of prayer (verses) in Church.*

Ground No. 4: *The learned Judge failed to appreciate the Appellant's credible evidence as to how the title deed in question (J1174) is not signed by her and her claim that she never signed as M. Therese Edouard has not been considered by the court below."*

7. I have duly considered the submissions made on behalf of the parties. All the grounds of appeal were considered together by Counsel and I propose to do likewise.
8. The central issue in the case before the trial Judge was whether the appellant had signed the document marked as Exhibit P2 and whether she knew what she was doing when she signed the said document. There were two versions before the learned Judge: on the one hand, that of the appellant who was adamant that she never signed the said document and, on the other hand, that of the respondents who asserted that the appellant signed Exhibit P2 in their presence and fully participated in the transfer transactions.
9. The appellant is challenging the learned Judge's finding that the signature on Exhibit P2 was indeed hers. I am of the view that, on the evidence before him, the learned Judge was perfectly entitled to arrive at the above conclusion. Before the trial court, the appellant affirmed that her signature is in fact as per Exhibit P1, which is dated 25 March 2009. It is relevant to note that Exhibit P1 witnessed the transfer of the bare ownership interest in title No. J1174 by her husband to her while keeping the usufructuary rights therein for himself and herself. Her signature on the said document reads as follows: "*Marie Thérèse*

Edouard”. However, on her National Identity Card (Exhibit P7), the appellant’s signature reads as follows: “*M Th Edouard*”.

10. The learned Judge rightly noted that the appellant was at pains to explain the discrepancy between the signatures on the two documents referred to above (Exhibit P1 and Exhibit P7), which she agreed were both signed by her. As stated by the learned Judge, the appellant was inconsistent and quite evasive in her answers. She tried to explain the above discrepancy by the fact that she was suffering from an eye ailment when she signed her National Identity Card and also by the fact that she was informed that she had to sign as she did thereon when she went to obtain same about one year before the trial.
11. The learned Judge correctly noted that the appellant admitted during cross-examination that her eyesight was worse at the time when she signed Exhibit P1 in 2009 and yet, her signature on Exhibit P1 is written in full. Interestingly, I observe that the signature on Exhibit P1 even bears an acute accent (é) and a grave accent (è) which are not to be seen on her signatures on the plaint, the case summary and the request for further and better particulars. It cannot be gainsaid that the plaint, the case summary and the request for further and better particulars were signed by the appellant at a time when she was free to sign as she pleased and that her eyesight had improved as a result of the eye surgery she had undergone in the meantime and the new glasses which she had by then. Yet, the appellant’s signature on the said documents are also different from the signature on Exhibit P1. It is also noteworthy that when the appellant signed document D2 while testifying in court, her signature was again different from that on Exhibit P1 as she again she did not use the acute accent (é) and a grave accent (è) in the name “Therese” when she signed document D2 before the trial court.
12. In the light of the above, the learned Judge was perfectly entitled to state that he did not believe that the appellant has one single genuine signature but has different ways of signing her name. In the circumstances, the learned Judge’s finding that the appellant has many ways of signing her name, that the signature as it appears on Exhibit P1 is not the only way in which the appellant signs and that the signature on Exhibit P2 is hers cannot be impeached.

13. Having found that the appellant does not always sign in a single way, the question that the learned Judge had to determine was whether when the appellant signed Exhibit P2 she knew fully well what she was signing. As stated above, there were two versions before the learned Judge who had to decide whose version was more credible: that of the appellant and her husband or that of the respondents and their witness.
14. In this respect, I find it relevant to refer to the oft-quoted dictum of Lord Reid in **Benmax v. Austin Motor Co. Ltd. (1955) 1 All E.R. 326, 328-**

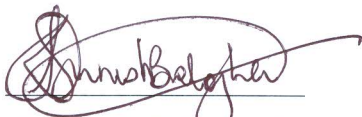
“.. the trial judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness’s memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an appeal court is, and should be, slow to reverse any finding which appears to be based on any such considerations.”

15. In the present case, as is apparent from the judgment, the learned Judge was well aware of both the above versions. He was faced with 2 different versions and preferred the respondents’ version and, having accepted one version, he was bound to reject the other contrary version. In this respect, he found respondent No. 1 and his witness to be honest, candid and truthful while he was not impressed by the appellant’s demeanour; he found that she was not truthful and that her husband showed his solidarity with her in the case.
16. The learned Judge had the undeniable advantage of seeing and hearing both the appellant, the respondents and their respective witnesses and was therefore in a better position than this Court to assess their credibility. In this exercise, he was perfectly entitled to take into account the demeanour of both parties. This is the short answer to the


appellant's submission that the learned Judge failed to appreciate the appellant's credible evidence. Moreover, the appellant has not established any ground which could satisfy ~~me~~ that the learned Judge had reached the wrong decision about the credibility of the parties.

17. It is the appellant's contention that the learned Judge did not make a proper assessment of the appellant's evidence regarding her literacy level as she stated that she does not understand the English language. I find no merit in the appellant's above contention. The judgment shows that the learned Judge was well aware of the appellant's evidence that she would have difficulties to understand technical or legal terms. The learned Judge nevertheless chose to act on the testimony of the respondents who asserted that Exhibit P2 was explained to the appellant before she signed same.


18. For the above reasons, I find no reason to interfere with the findings of fact of the learned Judge. On the evidence on record, he was entitled to reach the conclusions which he did. His findings have not been shown to be unreasonable, unwarranted or perverse. I, therefore, find no merit in this appeal which is dismissed with costs.


K. Gunesh-Balaghee JA

I agree with the conclusion that the appeal should be dismissed, with costs.


F. Robinson JA

I agree with the conclusion that the appeal should be dismissed, with costs.


Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated and delivered at Ile du Port on 18 December 2023.