

IN THE COURT OF APPEAL OF SEYCHELLES

[Reportable]
[2025] (22 April 2025)
SCA19/2024
(Arising in CS 71/ 2023)

- 1. Florent Servina**
- 2. Graciana Tirant**
- 3. Carol Williams**

Appellants

(in forma pauperis rep. by Serge Rouillon)

and

Flory Servina
(rep. by Divino Sabino)

Respondent

Neutral Citation: *Servina & Others v Servina* [2025] (22 April 2025) SCA 19/2024 (Arising in CS 71/ 2023)

Before: Fernando (President) Twomey-Woods & Robinson (JJA)

Summary: Breach of Rules of Seychelles Court Appeal - lack of application for condonation- simultaneity of causes of action and non-option – pleadings not supported by evidence

Heard:

Delivered: 22 April 2025

ORDER

The appeal is dismissed. No fees are to be paid to Counsel for the Appellants.

JUDGMENT

DR. M. TWOMEY-WOODS JA

(Fernando President and Robinson JA concurring)

Background

[1] This is the second legal dispute concerning Title B1399, a parcel of land previously held in co-ownership by three parties involved in the present appeal: Florent Servina (the 1st Appellant), Graciana Tirant (the 2nd Appellant), and Flory Servina (the Respondent). The first case, *Servina v Servina* (Civil Case No. 92 of 2020) [2022] SCSC 864 (7 October 2022), included an additional party, Mr. Frank Ally, the notary who prepared the transfer

of Parcel B1399 to a third party. However, the merits of the first suit were not determined. Instead, the court ruled exclusively on two preliminary objections: first, that the claim was time-barred under Article 2271 of the Civil Code and second, that the plaintiff had improperly joined two distinct causes of action involving different parties, contrary to Article 105 of the Seychelles Code of Civil Procedure.

[2] The court upheld the second plea, resulting in the dismissal of the suit.

[3] The present case was filed on 24 July 2023, involving only the parties named in the citation above. The Plaintiff alleges that Flory Servina breached an agreement with his siblings, Florent Servina and Graciana Tirant. According to the claim, the parties had agreed that after the latter had transferred their undivided shares in Parcel B1399 to Flory Servina, he would subsequently transfer the entire property to his daughter, Carol Williams (the Third Appellant). In the event, it is alleged, Flory Servina failed to fulfil this obligation.

[4] Once again, Flory Servina raised preliminary objections, including the submission that the suit was time-barred under Article 2271 of the Civil Code. Unlike the first case, the court, in this instance, proceeded to hear evidence before ruling on the objection. Ultimately, the court upheld the prescription defence, finding that the Appellants' claim was based on a verbal agreement - a personal obligation (*right in personam*) rather than a real property right (*right in rem*). Since the Appellants sought a declaration of breach of agreement and damages rather than asserting ownership, the applicable prescription period was five years. The court dismissed the suit since the claim was filed outside this limitation period.

The appeal

[5] The Appellants have appealed the decision on the following ground:

The learned judge erred in law in failing to address the pleaded and deponed evidence of the first appellant that he only discovered the property subject of the parties agreement was sold in August 2019 when he visited the Land Registry and therefore, the action filed in June 2024 was not prescribed.

[6] Before I proceed to consider this ground of appeal, I must, unfortunately, address a breach of procedural rules.

Breach of procedural rules

- [7] Rule 18 of the Seychelles Court of Appeal Rules prescribes a period of thirty days from the date of the decision appealed for filing a notice of appeal. Once a notice of appeal is filed, the appellant has one calendar month to submit their main heads of argument. This period starts from the date they are served with the record of appeal, as stipulated in Rule 24(1)(a) of the Rules.
- [8] In this case, the record of appeal was served on the Appellants' attorney on 24 January 2025, meaning the heads of argument should have been filed no later than 6 March 2025. However, in violation of the rules, they were only submitted on 17 March 2025. Notably, no formal motion for condonation of the delay was filed. Instead, Mr. Rouillon, in the first paragraph of his skeleton heads of argument, acknowledges the late filing and seeks condonation for just cause. No supporting affidavit from the Appellants was provided to the court. Mr. Rouillon merely asserts in the skeleton heads that the delay occurred because a panel member's recusal had been sought and was not resolved until 18 February 2025.
- [9] This approach is irregular and fails to comply with procedural requirements. Furthermore, it must be emphasised that the recusal was decided well before the deadline for filing the heads of argument had expired, rendering the justification for the delay unconvincing.
- [10] Mr. Rouillon has conceded he has not complied with Rule 11(2) for formal application for condonation. Notwithstanding, he has appealed to the powers of the President of the Court of Appeal, who can *ex mero motu* condone delay.
- [11] However, based on the established jurisprudence, Counsel cannot be heard for several reasons. Firstly, as was held in the South African case of *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1), now adopted into our jurisprudence, condonation cannot be had for the mere asking: "It is axiomatic that condoning a party's non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has a discretion whether to grant condonation." (at paragraph 20)

- [12] *Grootboom* emphasises that a party seeking condonation must provide a full and reasonable explanation for the delay, demonstrating sufficient cause. By any stretch of the imagination, it cannot be said that this is the case in the present appeal.
- [13] Secondly, the failure to apply for condonation means there is no material before the court to justify an extension of time (See *Aglae v Attorney General* (SCA 35 of 2010) [2011] SCCA 3 (2 March 2011, citing *Ratnam v Cumarasamy* [1964] 3 All ER 933 (PC)). Without a condonation application, there is no basis for the court to exercise its discretion in favour of the defaulting party
- [14] Thirdly, this Court has adopted a stance of strict adherence to procedural time limits. The rules of court must, *prima facie* be obeyed (*Aglae*). In *Auguste v Singh Construction* (Commercial Case 71 of 2022) [2022] SCCA 69 (16 December 2022) (2022), we stated that courts must adopt a "tough stance on time limits" to ensure certainty and cost-effectiveness in litigation. The consequences of non-compliance are clear. In *Chang Sing Chung v Kim Koon and Ors* (SCA MA 38 of 2023) [2023] SCCA 48 (25 August 2023) (2023), this Court again confirmed that flouting Rule 24(a) has consequences, including dismissal of the appeal or refusal to hear the defaulting party.
- [15] In summary, since no application for condonation was filed in the present appeal, the delay remains unexplained and unjustified, warranting the Court's refusal of audience to Counsel. Given the mandatory nature of procedural rules and the absence of any application for condonation, Counsel cannot be heard. The failure to seek condonation constitutes a fatal procedural defect, and the court is bound by precedent to enforce strict compliance with filing deadlines.
- [16] However, to give closure to this protracted matter, I hasten to add that had this court proceeded to consider the merits of this appeal, it would ultimately still have denied it. There are two main reasons for this: The Plaint is defective in that it simultaneously founds a claim under a breach of contract and a delict (fraud) in breach of the provisions of Article 1370 of the Civil Code. This is the French concept of *non-cumul de responsabilité* as domesticated and adapted in the jurisprudence of Seychelles. Our provisions read as follows:

"1770 (3)(a) A person who has a cause of action founded either in contract or in delict may elect which cause of action to pursue.

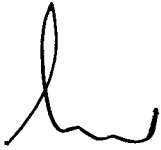
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(c)A plaintiff shall not be allowed to pursue both causes of action consecutively."

- [17] These provisions have been interpreted in several authorities, notably *Fisherman's Cove Limited v Petit and Dumbleton Limited* (1978) SLR 15, *Multichoice Africa Ltd v Intelvision Network Ltd & Ors* (SCA 45 of 2017) [2019] SCCA 1 (8 April 2019) *Hermitte v Attorney General & Anor* (SCA 48 of 2017) [2020] SCCA 19 (21 August 2020), and *Machinery and Equipment Limited v Cousine Island Co. Ltd* (SCA 18 of 2021) [2023] SCCA 13 (26 April 2023) to mean that the doctrine as obtains in Seychelles is to the effect that when a contractual relationship exists between parties but the facts give rise to possible claims in either delict and contract, a plaintiff can elect to bring a claim in delict if it so wishes. The provisions also allow a claim to be brought in the alternative so that a plaintiff can bring a claim in delict and, in the alternative, in contract. The long and short of this doctrine is that a plaintiff cannot bring an action in contract and delict either simultaneously or consecutively.
- [18] Unfortunately, in the present appeal, the Appellants simultaneously sued for breach of contract and fraud. The prayers are also flawed. They seek a declaration that the sale documents—involving non-parties to this suit—constitute fraud. Additionally, they request SCR 1 million in damages without specifying the basis for this claim. The pleadings are therefore, defective.
- [19] Moreover, the Appellants' case rests on the assertion that they only discovered that Flory Servina had transferred the land to a third party in 2019. This claim is contradicted by Florent Servina's own testimony, which confirms that he became aware of the land transfer in 2016.
- [20] For these reasons, the appeal is dismissed in its entirety.

Order

[21] The appeal is dismissed with costs.



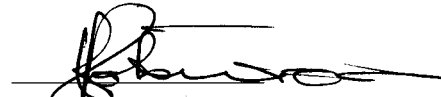
Dr. M. Twomey-Woods, JA.



I concur

A. Fernando, President

I concur


F. Robinson, JA

Signed, dated and delivered at Ile du Port on 22 April 2025.