

COURT OF APPEAL OF SEYCHELLES

Reportable

[2026] (27 April 2026)

SCA 21/2025

(Arising in CS 96/2018)

Flora Marie Therese Camille (nee Waye-Hive)
(herein represented by her Agent and Proxy
Mr. George Camille)
(rep. by Mr. Basil Hoareau)

Appellant

And

Nell Agnes Parry (nee Camille)
(represented by Mr. Frank Elizabeth)

Respondent

Neutral Citation: *Camille (represented by her Agent and Proxy Mr. George Camille) v Parry*
(SCA 21/2025) [2026] (Arising in CS 96/2018))
(27 April 2026)

Before: Fernando, President, Robinson, André, JJA

Heard: 3 April 2026

Summary: (1) Instrument of disposition and agent — Form of instrument —
Verification of execution — Whether the instrument of transfer is valid
— Whether the sale is complete — Whether the registration was obtained
by mistake — *Land Registration Act, sections 2, 58, 60, 63, 64, 65, 69 and*
89 — Civil Code of Seychelles, article 1583 —
(2) *The Estate of Charlemagne Grandcourt Represented by Wilfred*
Fréminot and Edwina Fréminot acting as Joint Executors & Anor v
Christopher Gill SCA 7/2011, is distinguished

Delivered: 27 April 2026

ORDER

1. The appeal is allowed in its entirety.
2. The judgment of the Supreme Court is quashed.
3. The Appellant, Flora Marie-Therese Camille (nee Waye-Hive), is declared the sole proprietor of the parcels V12815 and V12816.
4. The Land Registrar is ordered to rectify the register of the parcels V12815 and V12816 by deleting the Respondent, Nell Agnes Parry (nee Camille), as the proprietor of the parcels V12815 and V12816.

5. The Land Registrar is ordered to register the Appellant, Flora Marie-Therese Camille (nee Waye-Hive), as the sole owner of the parcels V12815 and V12816.
 6. No order as to costs.
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JUDGMENT

Robinson JA

(Fernando, President, André JA, concurring)

1. The Appellant, the Plaintiff before the Supreme Court, is the mother of the Respondent, the Defendant in the suit lodged by the Appellant, bearing reference number CS96/2018.
2. The Appellant appeals against the judgment delivered on the 4 July 2025, dismissing the suit.
3. The trial Judge concluded, as follows, at paragraphs [49], [52], [54], [55], [56] and [59] of the judgment, which conclusions are being challenged by the Appellant —

"[49] ...Having carefully considered parties submissions, I find that the transfer document was not executed in accordance with the Land Registration Act as it was not properly attested and, further, the Defendant was not properly represented by proxy. I agree with the Plaintiff's submissions that a person cannot attest his own signature, it would undermine the purpose of the attestation, which is to ensure authenticity of signature impartially and independently. Furthermore, this Court observes that Mr Antony Derjacques signed the instrument of transfer on behalf of the Defendant, however, document authorising him to sign on the Defendant's behalf was not provided to the Court. According to section 69(1) and (2) of the Land Registration Act, "...no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorised in that behalf by a power of attorney executed and attested in accordance with section 60". Section 69(2) further obliges the said power of attorney to be filed.

[52] I find therefore, that the "Transfer of Land" document clearly identifies the price for the land and moreover contains statement "in consideration of the

price of Seychelles Rupees Four Hundred thousand only (RRS400,000/-) which sum has been duly paid hereby transfer...the land...

...

[54] *Following the Court of Appeal's decision in Estate, Charlemagne Grandcourt and Others vs Christopher Gill (supra), this Court finds that the instrument of transfer is defective as it was not executed in accordance with the Land Registration Act. However, it does not make the transfer of land to the Defendant null and void...*

[55] *This Court observes that attestation by notary of the document is defective only in regard to witnessing his own signature, which he signed as agent on behalf of the Defendant, the transferee. He witnessed and attested the signature of the Transferor, the Plaintiff in accordance with the provisions of the Act. The defectiveness arises from the fact that he signed on behalf of the transferee, the person confirming acquisition of rights, and attested his own signature...*

[56] *Moreover, in Estate, Charlemagne Grandcourt and Others vs Christopher Gill, there was further documentary proof that consideration price was not paid, unlike the present case where the Plaintiff signed a document confirming that consideration sum has been paid to her. It is only now that the Plaintiff claims that price was not paid. It is the view of this Court that "Transfer of Land" document is proof that consideration was paid, as accepted and signed by the Plaintiff. The burden of proof that it was not paid has therefore shifted to the Plaintiff, who makes such a claim. I find that the Plaintiff failed to prove that consideration was not paid...*

...

[59] *For the reasons stated above, I find the Transfer of Land document to be defective; however, the transfer of land from the Plaintiff to the Defendant is valid. The instrument of transfer has already been registered with the Land Registry, and the Defendant is registered as the owner of the land. Accordingly, the Plaintiff is dismissed with costs."*

4. The outcome of the appeal turns on the application of the written law to the facts, which I will now summarise.

THE FACTS

The claims of the parties

5. The Appellant and Respondent are agreed that the Appellant was at all material times the registered proprietor of the parcels V12815 and V12816 and the building situated on them (hereinafter referred to as the "*Property*"); and that by an instrument of transfer dated 27 April 2010, the Appellant purportedly transferred and sold the Property to the Respondent.

6. At paragraph [4] of the amended plaint, the Appellant averred that, despite the instrument of transfer stating that the purported transfer of the Property was in consideration of Seychelles Rupees Four Hundred Thousand (SCR400,000/-), in reality, no consideration price had been paid.

7. The Appellant averred, at paragraph [5] of the amended plaint, that the instrument of transfer is null and void and/or illegal. The particulars of nullity and/or illegality are as follows —

"(i) the transfer instrument was not executed in accordance with the provisions of the Land Registration Act;

(ii) the Defendant did not execute the transfer instrument nor was the Defendant properly represented by a proxy; and/or

(iii) the transfer instrument was not properly attested."

8. The Appellant averred that based on the abovementioned particulars, the Property has been illegally registered in the name of the Respondent and, consequently, the Appellant remains the real and sole proprietor of the Property. The Appellant is claiming her proprietary and ownership right in the Property and prays the Court to —

"(i) declare that the Plaintiff is the sole proprietor of the parcel and the building situated thereon;

(ii) order the Land Registrar to rectify the register of the parcels by deleting the Defendant as the owner of the said parcels and register the Plaintiff as the sole owner of the parcels;

(iii) order the Defendant to pay costs to the Plaintiff; and

(iv) make any order it deems just and necessary in the circumstances of the case."

9. The Respondent filed a defence dated 1 October 2018, raising a point of law, which stated: *"the action was filed on the 5th October 2018 and the transfer was registered on the 23rd June 2010 and therefore the action is prescribed in law as per Article 2271 and Article 1304 of the Civil Code"*. The trial Judge dismissed the said point of law. The Respondent did not cross-appeal.
10. In its amended defence, the Respondent also averred that she has been taking care of the Appellant for the past five years. In further answer to paragraph [1] of the amended plaint, she averred that the instrument of transfer was notarised and registered.
11. At paragraph [4] of the amended defence, the Respondent denied that the consideration stated in the transfer document was not paid and puts the Appellant to strict proof of the averment contained in paragraph [4] of the amended plaint.
12. At paragraph [5] of the amended defence, the Respondent denied that the instrument of transfer is null and void and/or illegal. She averred that the transfer is valid; that the thing and the price were properly identified; that the instrument of transfer was properly notarised; that it was lawfully attested; that it was accepted by the transferee; and that she has lawfully accepted the transfer and is currently in physical possession of the house, living in it with the Respondent.
13. At paragraph [6] of the amended defence, the Respondent claimed that the Property is lawfully registered in the name of the Respondent by the Registrar of Lands; and that the transfer was lawfully completed. The Respondent claimed to be the lawful proprietor and owner of the Property. She averred that the transfer is lawfully sufficient with the Property identified; the transfer sum stated; the transferor's signature placed on the transfer; and attested to. She averred that the Respondent accepted the transfer and ownership and possession of the Property.
14. The Respondent prayed that the Court dismiss the plaint with costs and declare the Respondent as the lawful owner of the Property.

The evidence of the parties

The evidence of Miss Rose-May Carolla — PW-1

15. Miss Carolla works in the Registration Division and has been there for over thirty-five years. She provided testimony regarding the parcels V12815 and V12816. She stated that the parcels V12815 and V12816 were transferred from Mrs. Flora Marie-Therese Camille to Nell Agnes Parry. The transferee for both parcels is Mrs. Nell Agnes Parry. Mr. Anthony Derjacques, a notary, signed on behalf of Mrs. Nell Agnes Parry and attested to the signatures related to the transfer. As a result of this transfer, both parcels are now in the name of the Respondent.
16. During cross-examination, she stated that the transfer was dated 27 April 2010, and that the consideration stated on the transfer is SCR400,000. The instrument of transfer was registered on the 23 June 2010. The Registrar did not raise any issues regarding the validity of the instrument of transfer. The instrument of transfer for the parcels V12815 and V12816 is admitted as exhibit P1-as per the record of appeal.

The evidence of the Appellant, Mrs. Flora Marie-Therese Camille — PW-2

17. The Appellant is the mother of the Respondent. The Appellant stated that the parcels V12815 and V12816 were registered in her name. She did not intend to give the Property to the Respondent. Mr. Anthony Derjacques did not explain anything to her. She went there with her sister, Miss Aline Vel, who did not explain why she was there. When she was asked whether she recalled signing a document, she responded: "*...I was just brought there to the office I have other children also I did not know what was happening.*" She could not remember the year she went to Mr. Anthony Derjacques' office.
18. In cross-examination, when she was asked whether anybody put pressure on her to sign the transfer, she responded: "*A. No there were only 3 of us*". When she was asked again whether anybody put pressure on her to sign it, she stated, "*A. It was not my intention I don't know if it was the emotion I have other children also I did not know what I was doing.*"

19. She stated that the Respondent has been living in Australia for twenty-eight years. When she was asked if she communicates with the Respondent or speaks to her on the phone, she replied that since the Respondent left the country, there had been no contact. The Respondent came, argued with the Appellant, and then left the country, telling the Appellant not to contact her again.
20. When she was told that the Respondent regularly sends money to her from Australia, she replied that she was actually the one giving the Respondent money and food. She testified that the Respondent's husband left her a long time ago. When she was told that the Respondent pays her electricity and water bills every month, she responded that she is the one sending the money because the Respondent does not have any. She also stated that when the Respondent's husband left, the Respondent's children were very young.
21. Counsel for the Respondent presented a document indicating that the Respondent paid the Appellant's electricity and water bills from February 2017 to September 2018, totalling SCR42,194.60. The Appellant replied that the Respondent left a telephone bill for SCR4,300, which the Appellant has paid.
22. She testified that there is a shop on the property, which is now closed. Originally, it was a small dining room that she converted into a shop to earn a little money. When she was told that the shop had been rented to Chris Lesperance of Bougainville for SCR6,000 since 6 January 2016, she stated that it had actually been rented for SCR5,000. She accepted that the Respondent instructed Chris Lesperance, to whom the Respondent had rented the shop, to pay the rent to the Appellant. She stated that she deposited a small amount into the Respondent's account.
23. When it was mentioned that her son, Bernard Camille, had been renting the shop for SCR4,000 per month from 2011 to 2013, she responded that Bernard Camille had been renting for SCR3,000. She stated that he was not paying well due to low sales. When Counsel for the Respondent stated that the Respondent mentioned that Bernard Camille

had been paying SCR4,000 per month for a total of twenty-four months, amounting to SCR 96,000; and that the Respondent had instructed Bernard Camille to give this money to the Appellant, the Appellant did not accept. She responded that Bernard Camille still owes her money.

24. When she was informed that Nerrick Dugasse had rented the shop for SCR5,000 from 2013 to 2014, paying SCR5,000 per month, and that he had given her a total of SCR60,000, she stated that she recalls, but did not know him. When she was informed that Nerrick Dugasse had been there from 2013 to 2014 and had paid twelve months' rent at SCR5,000 per month, totalling SCR60,000, the Appellant stated that, when he rented it, he only gave her SCR1,500, and she had not received the SCR60,000. When Counsel for the Respondent informed her that Nerrick Dugasse did not pay the sum of SCR60,000 in a lump sum, but instead paid SCR5,000 per month, she responded that this is not true.
25. She stated that she is still living in the house on the land she worked hard to obtain, and that she renovated the small kitchen into a shop. When she was informed that she sold the Property to the Respondent on the 27 April 2010; and that the Respondent has remained in Australia, while she, the Appellant, continues to occupy the Property and receive rent from the shop since 2010, she replied that, when the Respondent left Seychelles, the shop had just been built. The shop was built in 2011.
26. She knows one Miss Katty Smith. She denied the Respondent's statement that Miss Katty Smith had been renting the shop for SCR5,000 per month from 2014 to 2015; and that the Respondent had told Miss Katty Smith to pay the money to her. When asked whether she received rent from Miss Katty Smith, the Respondent stated that she placed the money on her account. Upon the Respondent's return, approximately SCR20,000 was in the Respondent's bank account. The Appellant sent the money to the Respondent.
27. When she was informed that she had confirmed, despite her previous statements, that she was receiving money, depositing some into the Respondent's account, and sending some to Australia, and that rent was being paid to her, she explained that each month she made

a *draft* to send to the Respondent. She added that the Respondent did not have money and was selling magazines on the street just to afford something to eat.

28. She was told that she was not being truthful — despite claiming that the Respondent had not contacted her at all while in Australia, not even by phone — about how the Respondent could have told her that she was selling magazines by the roadside. In response, she stated that she travelled to Australia three times a year to visit the Respondent. The Respondent stated that the children were giving her a hard time, which prompted her to go to Australia to help take care of them.
29. When she was asked who paid for her ticket to Australia, she stated that the Respondent was paying a big loan and did not know what to do; and that the Respondent did not have any money to buy food. When she was informed that the Respondent had invited her to come to Australia to care for her because her life on Mahe was not good, she stated that the Respondent told her to come to Australia because the Respondent did not have anything, and the children were very small.
30. She mentioned that she used the money she earned from her job on La Digue to travel to Australia. She worked in a bakery on La Digue, and it was hard for her to obtain her land. When asked about her earnings at the bakery, she explained that after paying the workers, she was left with only a small amount. When she was told that a disposable income of SCR1,500 is insufficient for her to buy a plane ticket to Australia and travel there three times a year, she responded that during those trips, the tickets were not very expensive; they ranged from SCR6,000 to SCR7,000, which was not much more than that.
31. She denied that the Respondent had paid for her tickets to Australia. She stated that she had paid for the Respondent's tickets when she travelled to Seychelles. Upon the Respondent's return to Australia, she also bought tickets for the Respondent and her three children. Additionally, she had 300,000 Mauritian rupees in Mauritius, and she sent some of it to the Respondent.

32. While she was in Australia, she bought everything. When she went to Australia, she stayed for three months, and she has two uncles there, so she also visited them. Life was not as expensive as it is today.
33. She was questioned about her finances because she spent nine months in Australia with her daughter and did not earn any income during that time. She was asked how she covered her household expenses for those nine months. She explained that she had workers, as well as her sons and husband, helping her. She decided to leave everything in their hands because it was painful for her to see what the Respondent was going through in Australia. Additionally, she had a daughter who was studying there.
34. When she was told that the life of poverty her daughter was experiencing in Australia was entirely a figment of her imagination, she stated that it was not a story.
35. She confirmed that between 2015 and 2016, the shop was rented to Randy Azemia for SCR5,000 per month. The Respondent instructed the tenant to give the rent payments to the Appellant. She mentioned that Randy Azemia paid her the rent, and after settling the bills, she transferred some of the remaining money to the Respondent.
36. She was informed that from 2016 to 2018, Chris Lesperance rented the shop for a monthly rent of SCR6,000; and that the Respondent told him to pay the rent of SCR6,000 to the Appellant. She replied that Chris Lesperance only paid SCR5,000 per month, not SCR6,000, which she used to pay the bills. She put the rest of the money into the Respondent's account. An employee at Barclays Bank *drafted* the transaction and sent it to the Respondent.
37. Yuthlyne Payet rented the house for one month at SCR4,900, and the payments were made to her.
38. When she was informed that Miss Selma Decommarmond was paying SCR3,000 to rent the place; and that she had been there from 2014 to 2016, she replied that Miss Selma

Decommarmond used the verandah to care for a few children. Additionally, she mentioned that a caretaker came to assist her, and Miss Selma Decommarmond paid that lady SCR2,000 every month.

39. When she was informed that the Respondent had paid the cost of renovating the verandah so that the Appellant could earn an additional income of SCR3,000 per month by renting it to Miss Selma Decommarmond, the Appellant stated that Miss Selma Decommarmond had paid that lady SCR2,000 to care for her at night.
40. She has six children, three daughters and three sons, and that all of them should receive an equal share of everything. Four of her children are currently in Seychelles. She lives alone and has a carer to assist her. When she was informed that the Respondent was paying the carer, she questioned where the Respondent would obtain the money to pay the carer. She stated that the Respondent had never given her any money. When the Respondent visited Seychelles for the holidays, she called the Appellant, who paid for her tickets.
41. When she was informed that, despite selling the house and the land to the Respondent on the 27 April 2010, she still had possession and occupancy until her death, she responded that the Respondent never gave her any money for them. She went to Mr. Anthony Derjacques's office by car. She was still strong then, but she is no longer physically strong.

The evidence of Miss Aline Vel — DW-1

42. Aline Vel resides in English River and is 76 years old. She is a pensioner. The Appellant is her sister, and the Respondent is her niece. Miss Vel presented a document to the Court confirming that it is a general power of attorney granted to her by the Respondent, authorising her to represent the Respondent in these proceedings. This document, dated 7 September 2018, is admitted into evidence as exhibit D1- as per the record of appeal.
43. She testified that the Respondent is currently in Australia. She confirmed that the parcels V12815 and V12816 refer to the two parcels of land in question. Additionally, she stated

that the Appellant sold the Property to the Respondent on the 27 April 2010. The instrument of transfer was registered on the 23 June 2010.

44. When asked how much was paid for the transfer of land and what the purchase price stated in the document was, she stated that the Appellant requested the payment be set at SCR 400,000, as the Respondent was the Appellant's confidant and the only one looking after her. She was unsure whether the transfer took place, but during that time, the Appellant was travelling to Australia three or four times. The Respondent was purchasing items from Australia and bringing them back to Seychelles to sell in their shop on La Digue. They operated a bakery and a shop on La Digue.
45. When she was asked who supported the Appellant financially, she stated that, before they had businesses on La Digue, they were probably sustaining themselves with the money she was earning. Regarding the SCR 400,000, she stated that they had made certain repairs to the tuck shop on the land and had drawn up a contract in both of their *presence*. It was agreed that the Appellant would accept the money generated from the tuck shop as payment for the SCR400,000. Throughout this time, the Appellant has been taking money from the tuck shop as payment for the SCR400,000. From then until now, the Respondent has made payments of SCR1,500 to SCR 2,000 to the Appellant. She mentioned that sometimes they paid the Appellant SCR1,500. When they rented the shop at a higher rent, they paid SCR2,000 instead of SCR1,500.
46. She tendered in evidence exhibit D3, a document titled, "*Commercial Building Lease Contract*" dated 16 October 2011, which was made between the Appellant and Bernard Camille and Marie-Andre Hoareau.
47. She explained that, based on the rent received, she was giving the Appellant between SCR1,500 and SCR3,000 per month at the Respondent's instruction. She kept a record of the receipts, which included the signatures. According to her, the receipt book serves as proof that she was giving amounts ranging from SCR1,500 to SCR3,000 to the Appellant on behalf of the Respondent; and that the Appellant had signed the document. However,

when the Appellant was unable to sign, Miss Vel signed on her behalf; more recently, it is the carer who is signing on her behalf.

48. When she was asked when she started making payments to the Appellant, she stated it was when the Respondent began having problems with the Appellant. She thinks she left in 2018. She started giving her mother some money and paid all the electricity bills while she was here. Once Miss Vel gave the Appellant SCR1,500, which is recorded. When she rented the place, she would occasionally give the Appellant SCR3,000, SCR 2,000, or SCR 1,500, depending on her rental situation. According to the receipt book, she began making these payments in 2019. As of now, she is still paying SCR2,000, which she hands over to the carer. She produced the receipt book as exhibit D4 - as per the record of appeal.
49. In addition to paying SCR2,000, she also buys certain items for the Appellant, including a packet of milk and some vegetables. She stated that either she or her older sister, who usually takes care of the Appellant and all her children. Miss Vel also pays for all the house repairs.
50. When she was cross-examined, she stated that the instrument of transfer, exhibit P1, is dated 27 April 2010 and was signed by the Appellant and Mr. Anthony Derjacques on that date. She accepted that the document states that, on the 27 April 2010, when it was executed, the sum of SCR400,000 had been paid.
51. I reproduce the following excerpts between Counsel for the Appellant and Miss Vel (verbatim) —

"Q: As per D4 the receipt book the price for the – consideration price for the loan was being paid in 2019, 2020, 2020, 2021, 2022, 2023, some good 11.22.48 to 14 years later. Is that so?

A: Non msye. Mon kapa klarifye? (No English translation).

Q: Yes.

A: *No. let me clarify. As stated before in regards to the SCR400,000 I'm not aware if that was fully repaid because they've had certain arrangements between them whereby certain items will be brought from Australia and then we sold in their shop. But this money that – these contributions that I have been making on behalf of Neil Parry was to – have been making these contributions on behalf of Neil Parry as instructed by her.*

Q: *Personal contribution?*

A: *Personal contribution.*

Q: *So what you're saying you cannot confirm yourself whether the SCR400,000 had been paid by Miss Parry to her mom as per the transfer instrument, you cannot confirm that?*

A: *But it's stated on the document by her mother that it was fully paid.*

Q: *Madame listen to me. You, you cannot confirm that?*

A: *I cannot confirm it.*

Q: *These receipts that you've produced, they are receipt where you saying these were payments where Neil was assisting her mom in terms of maintenance?*

A: *Yes.*

Q: *Okay.*

A: *Can I add something else?*

Q: *No.*

Court: Let her explain Mr. Hoareau.

MR HOAREAU CONTINUES

A: *She rented the shop and she took the money for herself." [Emphasis is mine]*

52. She stated that exhibit D2 - as per the record of appeal, which is entered in the name of the Appellant as the lessor, was signed on the 7 April 2014. Exhibit D3, as per the record of appeal, a lease entered into by the Appellant, as the lessor, was signed on 6 October 2011.

THE DETERMINATION OF THE APPEAL

53. The Appellant, dissatisfied with the judgment, has appealed against the whole judgment on six interrelated grounds of appeal —

- "1. *The learned trial Judge erred both in law and in fact by concluding that the Respondent had paid the consideration price to the Appellant.*
2. *The learned trial Judge misdirected himself in law by holding that the transfer instrument was merely defective, despite its failure to comply with the attestation requirements under the Land Registration Act, instead of declaring the transfer instrument invalid, void, and without legal effect.*
3. *The learned trial Judge erred in law and on the evidence in holding that the only defect in the document was the notary witnessing his own signature.*
4. *The learned trial Judge erred in law by concluding that the instrument of transfer satisfied all the requirements of Article 1583 of the Civil Code, notwithstanding that the transfer instrument was invalid, void, and devoid of legal effect.*
5. *The learned trial judge wrongly relied upon the maxim of equity, notwithstanding that the suit was not founded upon principles of equity.*
6. *The learned trial Judge erred both in law and on the evidence by failing to hold that parcels V12815 and V12816 had been unlawfully registered in the name of the Respondent."*

54. The Appellant sought the following relief from the Court of Appeal —

"For the Court of Appeal to reverse the decision of the Supreme Court and to make the following orders —

- (a) *declare that the Appellant is the sole proprietor of the parcels and the building situated thereon;*
- (b) *order the Land Registrar to rectify the register of the parcels by deleting the Respondent as the owner of the said parcels and register the Appellant as the sole owner of the parcel;*
- (c) *order the Respondent to pay costs to the Appellant;*
- (d) *make any order it deems just and necessary in the circumstances of the case."*

Issues for determination on the appeal

55. The appeal will be determined on the issues raised by the grounds of appeal, according to the order stated below —

- (i) regarding ground 2, the issue is whether the instrument of transfer should be declared invalid, void, and without legal effect for non-compliance with the attestation requirements under the Land Registration Act, rather than merely treated as defective. Additionally, ground 3 raises the question of whether the only irregularity in the instrument of transfer, exhibit P1, is the notary witnessing his own signature, which will be addressed while determining the issue under ground 2;
- (ii) regarding ground 1, whether the Appellant paid the consideration of SCR400,000 to the Respondent;
- (iii) regarding ground 4, whether the transfer instrument meets the requirements of article 1583 of the Civil Code of Seychelles, despite it being invalid, void and without legal effect;
- (iv) regarding ground 6, whether parcels V12815 and V12816 have been unlawfully registered in the name of the Respondent;
- (v) regarding ground 5, whether the maxim of equity applies to this suit, even though it is not founded upon the principles of equity.

Grounds 2 and 3 of the appeal: The attestation issue

56. The arguments presented by Counsel for the Appellant for ground 2 have been reiterated and are relied upon to support ground 3. I have combined these two grounds. To avoid repetition, I will not repeat all the arguments made by both Counsel. However, all their arguments are taken into account in the analysis.

Submissions on behalf of the Appellant

57. With respect to these two grounds, Counsel for the Appellant challenged the findings of the trial Judge made at paragraphs [54] and [55] of the judgment.
58. At paragraph [54] of the judgment, the trial Judge, based on the Court of Appeal decision in **The Estate of Charlemagne Grandcourt Represented by Wilfred Fréminot and Edwina Fréminot acting as Joint Executors & Anor v Christopher Gill SCA 7/2011** (7 December 2012), (hereinafter referred to as "*The Estate of Charlemagne Grandcourt*", for ease of reference), concluded that the instrument of transfer, exhibit P1, is merely defective as it was not executed pursuant to the provisions of the Land Registration Act. However, he concluded that the defects did not render the instrument of transfer, exhibit P1, to the Respondent, null and void.
59. Concerning paragraph [55] of the judgment, the trial Judge concluded that the notary's attestation of the execution of the document is defective solely because he witnessed his own signature, which he had signed as an agent for the Respondent, the transferee.
60. Counsel for the Appellant, relying on sections 60 (1), 63, 65 and 69 (1) and (2) of the Land Registration Act, among other things, argued that the instrument of transfer, exhibit P1, is null and void and/or illegal and as such it has no legal effect. The argument is based on these interrelated points —
- (i) the instrument of transfer, exhibit P1, was not executed pursuant to sections 60 (1), 63, 64, 65 and 69 (1) and (2) of the Land Registration Act;
 - (ii) the instrument of transfer, exhibit P1, was not properly attested;
 - (iii) the Respondent did not execute the instrument of transfer, exhibit P1, nor did a proxy properly represent the Respondent.

61. Counsel for the Appellant relied on section 65 of the Land Registration Act to support his argument that the Court has the power to declare an instrument of transfer null and void, and/or illegal.

Submissions on behalf of the Respondent

62. Counsel for the Respondent combined grounds 2, 3 and 4. I will consider the submissions of Counsel for the Respondent with respect to grounds 2 and 3. I will then consider the submissions with respect to ground 4 separately. As mentioned above, the grounds are interrelated.
63. Counsel for the Respondent did not accept the arguments of Counsel for the Appellant. Based on **The Estate of Charlemagne Grandcourt**, Counsel for the Respondent argued that the argument of Counsel for the Appellant to the effect that non-compliance with section 60 of the Land Registration Act renders a transfer null and void is misconceived. He argued that the trial Judge correctly followed the relevant holdings in **The Estate of Charlemagne Grandcourt**. He submitted that this authority distinguishes between defects in a registrable instrument and the validity of the underlying agreement, holding that a technical defect does not, in itself, render a transfer void *ab initio*. He submitted that **The Estate of Charlemagne Grandcourt** held explicitly that a notarial deed, even if inaccurate and unregistered, still has "*full application and binding effect as far as the two parties to it are concerned*".
64. He argued that, based on **The Estate of Charlemagne Grandcourt**, the trial Judge correctly identified the main defect — the notary witnessing his own signature — and correctly concluded that this defect did not make the instrument of transfer, exhibit P1, void *ab initio*. Counsel for the Respondent further argued that, even if there were additional defects in the instrument of transfer, exhibit P1, other than the notary's witnessing of his own signature, the core legal principle from **The Estate of Charlemagne Grandcourt** applies to this case.

65. He argued that the registration of the instrument of transfer, exhibit P1, in the Land Register on the 23 June 2010, perfected the transfer and vested absolute title in the Respondent, in accordance with section 20 of the Land Registration Act.

Analysis of the arguments of the parties

66. I have carefully considered the record of appeal, the skeleton heads of argument, and the oral submissions from both parties.
67. Ground 2 raises the question of whether the instrument of transfer, exhibit P1, should be declared invalid, void, and without legal effect for non-compliance with the attestation requirements under the Land Registration Act, rather than merely treated as defective. Additionally, while considering the issue under ground 2, I will consider whether the only irregularity in the instrument of transfer, exhibit P1, is the notary witnessing his own signature.
68. I begin by stating that the parties are agreed, and the trial Judge correctly concluded that the instrument of transfer, exhibit P1, is defective due to improper attestation under the Land Registration Act. I also agree that the instrument of transfer, exhibit P1, is indeed defective for the same reason. However, I need to consider the irregularities to determine whether they are significant enough to render the purported instrument of transfer, exhibit P1, invalid, void, and without legal effect.
69. I reproduce the purported instrument of transfer, exhibit P1, verbatim, below —

"THE LAND REGISTRATION

TRANSFER OF LAND

TITLE V12815 & V12816

I, Mrs Flora Marie-Therese Camille (nee Waye-Hive) born on the 30th July 1933, holding N.I.N 933-0033-4-9-13 of Revolution Avenue, Mahe, Seychelles hereinafter referred to as the "TRANSFEROR" in consideration of the price of Seychelles Rupees Four Hundred Thousand only (Rs400,000/-) which sum has been duly paid

hereby transfer to Mrs Nell Agnes Parry (nee Camille) born on the 20th April 1967, holding N.I.N No. 967-0372-1-0-75 presently of Perth Australia, hereinafter referred to as the "**TRANSFEE**" the land comprised in the above-mentioned titles.

The Transferee is not non-Seychellois.

The Transferee is the daughter of the Transferor.

*Accepted on behalf of the "**TRANSFEE**" Mrs Nell Agnes Parry, (nee Camille) by Anthony G. Derjacques, Notary.*

Dated this 27th day of April 2010.

Flora Camille
TRANSFEROR

[Signed Anthony Derjacques]
TRANSFEROR

Signed by the said Mrs Flora Marie-Therese Camille (nee Waye-Hive), who is known to me and in my presence on the day, month and year first - mentioned.

Immovable Property (Transfer Restriction) Act. Cap 96.

[Signed: Anthony Derjacques]
ANTHONY DERJACQUES
NOTARY"

70. Counsel for the Appellant relied on sections 60 (1), 63, 64, 65 and 69 (1) and (2) of the Land Registration Act in support of his arguments, which stipulate —

"60 (1) [E]very instrument¹ evidencing a disposition² and executed in Seychelles shall be executed in the presence of a notary, barrister, attorney, magistrate, justice of the peace, a duly appointed Government Representative, or the Registrar, who shall attest the execution in the prescribed form....

...

63. An instrument the execution of which is duly attested in accordance with section 60 or section 61 shall be presumed, unless the contrary is shown, to have

¹ The term "instrument" is defined in section 2 of the Land Registration Act, as: "[including] any deed, judgment, decree, order or other document requiring or capable of registration under this Act."

² The term "disposition" is defined in section 2 of the Land Registration Act, as meaning: "any act by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge".

been duly executed by the parties thereto. The attestation shall be evidence of the facts set out therein and such facts shall be presumed to be true unless the contrary is shown.

64. *An attestation purporting to have been signed by a person empowered under section 60 to attest the execution of an instrument shall, in the presence of proof to the contrary, be presumed to have been so signed without proof of the official character of such person.*

65. *An instrument drawn up and executed in accordance with the provisions of this Act and which in other respects complies with such provisions shall be valid and effectual notwithstanding the provisions of any other law relating to the form and validity of the transaction effected by such instrument.*

...

69 (1) *Except as provided in subsection (3), no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorised in that behalf by a power of attorney executed and attested in accordance with section 60,*

(2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar, shall be filed." [Emphasis is mine]

71. Article 1317 of the Civil Code of Seychelles, referred to by Counsel for the Appellant, is also relevant. I reproduce it as follows —

"1317 An authentic document is a document received by a public official entitled to draw up the same where the document is drafted and in accordance with the prescribed forms".

72. Although the Land Registration Act does not define the term "attest", Counsel for the Appellant has referred to the definition from Black's Law Dictionary, which I accept and rely on as follows —

"1. To bear witness; testify – attest to the defendant's innocence – 2. To affirm to be true or genuine to authenticate by signing as a witness – attest the will." [Emphasis is mine]

73. I agree with the argument presented by Counsel for the Appellant, which stated that sections 60 (1), 63, 64 and 65 of the Land Registration Act show that the attestation of an

instrument of disposition shall be performed only by a specific category of persons listed in section 60 and in the prescribed manner. Under section 60 (1) of the Land Registration Act, an instrument evidencing a disposition executed in Seychelles shall be executed in the presence of a notary, a barrister, an attorney, a magistrate, a justice of the peace, a duly appointed Government representative, or the Registrar, who shall attest the execution in the prescribed form. Rule 5 of the Land Registration Act stipulates the form as follows: "*[t]he attestation of every execution required by the Act to be attested shall be in the following form – "Signed by... who is known to me (or who was satisfactorily identified to me) in my presence."* The purpose of this attestation is to verify, witness and confirm the signatures of those executing the instrument of disposition by an independent person, as specified in section 60 of the Land Registration Act.

74. It makes sense to conclude, as pointed out by Counsel for the Appellant, that the prescribed form of the attestation reinforces the argument that a person who executes an instrument of disposition cannot also attest the signatures of the parties involved in executing it. In addition, in view of the importance and sanctity attached by the Land Registration Act to such attestation, a person who executes the instrument of disposition cannot validly attest to the person's own signature.

75. Section 63 of the Land Registration Act states that the facts set out in an instrument of disposition constitute evidence of those facts and are presumed true only if the execution of the instrument has been duly attested under section 60 or section 61 of the Land Registration Act. It is evident from the wording of section 63 of the Land Registration Act that the attestation of an instrument of disposition by the persons mentioned in section 60 provides authenticity and credibility to the instrument. For instance, when an instrument of disposition is executed in accordance with section 60 of the Land Registration Act, it is granted the status of an authentic document under article 1317 of the Civil Code of Seychelles. I hold the view that the requirement of attestation is a mandatory safeguard under the Land Registration Act, and its absence means the presumption under section 63 does not apply.

76. Upon careful examination of the instrument of transfer, exhibit P1, several significant defects are revealed —
- (i) Mr. Anthony Derjacques executed it as the agent, proxy and attorney of the Respondent;
 - (ii) he has, in his capacity as notary, attested the execution of the instrument of transfer, exhibit P1, by the Appellant;
 - (iii) it is of concern that he attested his own execution of the instrument of transfer, exhibit P1;
 - (iv) the evidence clearly indicates that the Respondent neither personally executed the instrument of transfer nor appointed Mr. Anthony Derjacques, through whom execution was purportedly effected on her behalf, as her agent in accordance with the mandatory requirements of section 69;
 - (v) the purported instrument of transfer, exhibit P1, does not refer to any such power of attorney, and none was adduced in evidence;
 - (vi) as a result, the instrument of transfer, exhibit P1, was executed solely by the Appellant and not by the Respondent.
77. It is important to highlight that the trial Judge thoroughly examined these significant issues at paragraph [49] of the judgment, which is repeated at paragraph [3] of the current judgment. However, it is unclear why he concluded that there is only one defect in the instrument of transfer, which he characterised as a minor defect — the notary witnessing his own signature. Therefore, I find that the trial Judge was wrong to hold that the notary witnessing his own signature was the only defect, and I quash the said finding.
78. I now determine whether the instrument of transfer, exhibit P1, should be declared invalid, void and without legal effect for non-compliance with the attestation requirements under the Land Registration Act, rather than merely treated as defective.

79. Counsel for the Appellant argued that the failure to attest the execution of an instrument evidencing a disposition, in accordance with the provisions of the Land Registration Act, would render the instrument of transfer invalid and void. He submitted that section 65 of the Land Registration Act supports such a conclusion.
80. Whereas, Counsel for the Respondent argued that the interpretation stating that non-compliance with section 60 (1) of the Land Registration Act renders an instrument of transfer void under section 65 of the Land Registration Act is a misinterpretation of the law and is, therefore, misconceived. He argued that the relevant holdings in **The Estate of Charlemagne Grandcourt** apply to this case. According to his argument, this authority distinguishes between defects in a registrable instrument and the validity of the underlying agreement, holding that a technical defect does not, in itself, render a transfer void *ab initio*.
81. Having considered the submissions of both Counsel, I conclude that the arguments of Counsel for the Respondent are incorrect, based on an appreciation of the fundamental defects in the instrument of transfer. *Ex facie* the instrument of transfer, exhibit P1, the defects are not merely technical and remediable; they go to the fundamental question of whether it was validly executed at all. I explain below under ground 4, that the facts of **The Estate of Charlemagne Grandcourt** are materially distinguishable from the facts of this case; and that the principal dispute in **The Estate of Charlemagne Grandcourt** concerned non-registration of an instrument of transfer under the Land Registration Act. Therefore, I accept the argument of Counsel for the Appellant that the fundamental irregularities in the instrument of transfer, exhibit P1, contrary to sections 60 (1), 63, 64, 65 and 69 (1) and (2) of the Land Registration Act, renders the instrument of transfer, exhibit P1, invalid and void and, as such, it has no legal effect.
82. Having considered the submissions of both Counsel, I agree with the argument of Counsel for the Appellant that section 65 of the Land Registration Act supports such a conclusion. To emphasise my point, I repeat section 65 of the Land Registration Act, which stipulates: "[a]n instrument drawn up and executed in accordance with the provisions of this Act and which in other respects complies with such provisions shall be valid". [Emphasis is

mine]

83. Hence, I hold the view that, by implication, an instrument of transfer that has not been drawn up and executed in accordance with the provisions of the Land Registration Act is fundamentally defective. Therefore, the instrument of transfer should be declared invalid, void, and without legal effect. Hence, I agree with the argument presented by Counsel for the Appellant that the instrument of transfer, exhibit P1, is null and void and/or illegal, and as such, it has no legal effect. Consequently, I reject the argument made by Counsel for the Respondent that the relevant holding in **The Estate of Charlemagne Grandcourt**, which states that a notarial deed, even if inaccurate and unregistered, still has full application and binding effect as far as the two parties to it are concerned, applies to the facts of the present case.
84. With respect to the present case, I hold that the instrument of transfer, exhibit P1, which was not validly executed by the Respondent, and which was attested in breach of the fundamental safeguard of independent witnessing, is invalid and void. There was no valid execution of the instrument of transfer, exhibit P1, whatsoever.
85. It is noted that Counsel for the Appellant accepts and relies on a judgment from the Environment and Land Court of Kenya in the case of **Karim Nathoo vs Joseph Martha Musyoka and the Land Registrar [2022] KEELC 3986 CKLR**, which is of persuasive authority in this country. I accept the point made by Counsel for the Respondent that there is no need for the Court to refer to the said authority, given the clear provisions of Seychellois written law on the issues at hand.
86. For the reasons stated above, I uphold the finding of the trial Judge that *"this Court finds that the instrument of transfer is defective as it was not executed in accordance with the Land Registration Act"*.
87. However, I quash the following finding of the trial Judge with respect to the instrument of transfer, exhibit P1, that *"[h]owever, it does not make the transfer of Land to the Defendant null and void."* For the finding of the trial Judge, I substitute therefor the finding that the instrument of transfer for parcels V12815 and V12816 is invalid and void and, as such, it

has no legal effect.

88. Consequently, I declare that the instrument of transfer for the parcels V12815 and V12816, exhibit P1, is invalid and void.
89. I allow grounds 2 and 3 of the appeal.

Ground 1 of the appeal: The consideration issue

90. Regarding ground 1 of the appeal, to avoid repetition, I have not repeated all the arguments of both Counsel. However, all their arguments are considered with care in the analysis.

Submissions on behalf of the Appellant

91. Counsel for the Appellant challenged the conclusion of the trial Judge at paragraph [56] of the judgment. In the said paragraph, the trial Judge stated, among other things, "*...It is only now that the Plaintiff claims that the price was not paid. It is the view of this Court that "Transfer of Land" document is proof that consideration was paid, as accepted and signed by the Plaintiff, who makes such a claim.*" [Emphasis is mine]
92. Counsel for the Appellant argued that the trial Judge erred in finding that the consideration of SCR400,000 had been paid. The argument of Counsel for the Appellant is founded on the following interrelated points.
93. Based on sections 58, 60 and 63 of the Land Registration Act, Counsel for the Appellant argued that the fact in the instrument of transfer, exhibit P1, stating that the consideration of SCR400, 000 "*has been duly paid*" could not be presumed to be true. He argued that the trial Judge, therefore, erred in holding that, based on the purported instrument of transfer, exhibit P1, the burden of proof regarding the non-payment of the consideration price "*shifted to the Plaintiff*".
94. Furthermore, Counsel for the Appellant argued that the evidence presented to the trial Court established on a balance of probabilities that the purchase price of SCR400,000 was not paid to the Appellant by the Respondent. He also argued that the Appellant's evidence

established that she did not intend to transfer the Property to the Respondent, and that the attorney-at-law failed to explain the nature of the document the Appellant was executing.

95. Furthermore, Counsel for the Appellant argued that the Respondent provided no explanation or evidence for the non-availability of Mr Anthony Derjacques. He argued that this failure renders the Respondent's case suspect and significantly undermines its credibility. He accepted and relied upon the persuasive authority of **Wisniewski v Central Manchester Health Authority [1998] P. 1 QR P3 24 (1998)**, a judgment from the Court of Appeal of England, in support of his arguments.

Submissions on behalf of the Respondent

96. Counsel for the Respondent submitted that the trial Judge was correct to find that the consideration of SCR400,000 was paid. He argued that the instrument of transfer, exhibit P1, executed on the 27 April 2010, contains a formal attestation by the Appellant that the sum of SCR400,000 "*has been duly paid and received*". He claimed that this constitutes conclusive documentary evidence of receipt of payment.
97. Furthermore, he submitted that the Appellant's reliance on the rule in **Browne v Dunn (1893) 6 R. 67 (House of Lords 1 January 1893)** and the case of **Wisniewski** [supra] is misplaced. He argued that Counsel for the Respondent (Counsel of record), cross-examined the Appellant concerning the circumstances of the transfer, and the failure to call the notary, Mr. Anthony Derjacques, is, therefore, not fatal. He submitted that the primary evidence is the signed instrument of transfer itself. Additionally, the trial Judge was justified in giving more weight to the Appellant's formal written declaration than to her subsequent oral denials.
98. Furthermore, he argued that the trial Judge, having evaluated the Appellant's demeanour, rightly found her testimony to be inconsistent. Absent a finding that the trial Judge's assessment was perverse, which it was not, the Court should not interfere with the findings of the trial Judge.

Analysis of the arguments of the parties

99. The issue to be determined is whether the Respondent paid the Appellant SCR400,000 in consideration of the transfer of parcels V12815 and V12816.
100. Counsel for the Appellant relied on section 58 (3) of the Land Registration Act, among other things, which stipulates: "(3) [i]nstruments shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and, when received, an acknowledgement of the receipt of the consideration or of any part thereof." Section 58 (3) of the Land Registration Act requires instruments to contain a true statement of the consideration and, when received, an acknowledgement of receipt.
101. The instrument of transfer, exhibit P1, states, among other things: "*in consideration of the price of Seychelles Rupees Four Hundred Thousand only (Rs400,000/-) which sum has been duly paid*". [Emphasis is mine]
102. I have accepted the argument of Counsel for the Appellant, based on section 63 of the Land Registration Act, that the fact stated in the instrument of transfer, exhibit P1, that the consideration of SCR400,000 "*has been duly paid*" cannot be presumed true. It is evident, therefore, as submitted by Counsel for the Appellant, that the trial Judge made an error by holding that, based on the instrument of transfer, exhibit P1, the burden of proof that the consideration was not paid "*shifted to the Plaintiff*". I hereby quash the said finding of the trial Judge.
103. Having considered the evidence on record, which I have taken the time to provide a full account of at paragraphs [15] to [52] of the current judgment and the submissions of both Counsel, I accept the argument of Counsel for the Appellant that the evidence established, on a balance of probabilities, that the consideration of SCR400,000 was not paid to the Appellant. I give the following reasons for my conclusion.
104. The defence of the Respondent pleaded that the consideration of SCR400,000 stated in the instrument of transfer, exhibit P1, had been paid. The evidence showed that Miss Vel, the sole witness for the Respondent, failed to prove payment of the purchase price at the time

the purported instrument of transfer, exhibit P1, was executed on the 27 April 2010. The evidence established that the Appellant was not cross-examined on the fact in the instrument of transfer, exhibit P1, that the consideration of SCR400,000 was paid at the time of the execution of the instrument of transfer on the 27 April 2010. I find that it was necessary to put questions to the Appellant with respect to this material fact in issue. Counsel for the Respondent only briefly informed the Appellant during cross-examination that, despite selling the house and land to the Respondent on the 27 April 2010, she retained possession and occupancy of the house. In response, the Appellant stated that the Respondent never paid her any money for the Property.

105. On the same point, it is observed that Miss Vel testified that payments were made in instalments between 2011 and 2018. However, in cross-examination, she testified that she was unaware whether the Respondent had paid the consideration of SCR400,000. Counsel for the Appellant correctly pointed out that the Respondent's case directly contradicts the facts stated in the instrument of transfer, exhibit P1, which further undermines its validity.
106. Therefore, the evidence of Miss Vel showed that the fact stated in the instrument of transfer, namely, *"in consideration of the price of Seychelles Rupees Four Hundred Thousand only (Rs 400,000/-), which sum has been duly paid"*, is not true. It is only when the purchase price has been received that there can be an acknowledgement of the receipt of the consideration or any part thereof under section 58 (3) of the Land Registration Act.
107. Since Counsel for the Respondent has not put a crucial part of the Respondent's case to the Appellant, the Respondent cannot be allowed to rely on the argument that the consideration of SCR400,000 has been paid. It is a well-established rule of evidence, founded upon the principles of natural justice, that a party must put its case to an opponent's witnesses to afford the witnesses the opportunity to respond. In the **Modern Law of Evidence** - by **Adrian Keane (4th Edition)**, it is stated —

"A party who has failed to cross-examine a witness upon a particular matter in respect of which it is proposed to contradict his evidence in chief or impeach his credit by calling other witnesses, will not be permitted to invite the jury or tribunal of fact to disbelieve the witnesses' evidence on that matter. A cross-examiner who

wishes to suggest to the jury that the witness is not speaking the truth on a particular matter must lay a proper foundation by putting that matter to the witness so that he has an opportunity of giving any explanation which is open to him. Thus, in *Browne v Dunn*, a libel action in which certain witnesses were not cross-examined on a particular matter, it was held by the House of Lords improper subsequently to invite the jury to disbelieve them. [Emphasis is mine]

108. In *Browne v Dunn* (this case is the basis for the term "rule in *Browne v Dunn*"), it is stated —

"It was a rule of professional practice and essential fair dealing with the witnesses that if, on a crucial part of the case, a party intended to ask the jury to disbelieve the evidence of a witness, that party should cross-examine that witness or at any rate make it plain, while the witness is in the box, that the evidence was not accepted. If the party failed to do that, then he would not be allowed in his address to the court to rely on that argument at all. In the absence of such cross-examination it would be the duty of the Judge to comment to the jury on the fact that one party's case had not been put to another, even though the two cases were diametrically opposed."

109. Similarly, Counsel for the Appellant argued that the Respondent cannot contest the Appellant's evidence in examination-in-chief that Mr. Anthony Derjacques failed to explain the nature of the document the Appellant executed; and that she was unaware it constituted an instrument of transfer of the Property to the Respondent. He argued that this failure to cross-examine left the Appellant's testimony uncontroverted. He pointed out that the cross-examination of the Appellant regarding the execution of the instrument of transfer, exhibit P1, was limited to two questions, both concerning whether the Appellant had been pressured to sign it.
110. Upon a careful examination of the Respondent's case, it is unclear how the trial Judge could have been persuaded to disbelieve the Appellant's evidence, as suggested by Counsel for the Respondent. A careful examination of the evidence revealed that the case for the Respondent was not put to the Appellant. Where a party omits to cross-examine a witness on a material aspect of the witnesses' testimony, the Court is entitled to accept that evidence as unchallenged and credible. Hence, if I were to consider the case for the Respondent that was not put to the Appellant, it would result in a violation of the rule of professional practice and of essential fair dealing with the witnesses, and, essentially, a breach of natural

justice.

111. Counsel for the Appellant also argued the point that the Respondent should have adduced the evidence of Mr. Anthony Derjacques, who prepared and attested the purported instrument of transfer, exhibit P1. Counsel for the Appellant argued that Mr. Derjacques was uniquely positioned to explain whether the nature of the instrument of transfer, exhibit P1, was explained to the Appellant and also to explain why the instrument of transfer, exhibit P1, stated that the sum of SCR400,000 "*has been duly paid*". According to Counsel for the Appellant, this failure renders the Respondent's case suspect and significantly undermines its credibility.
112. Counsel for the Appellant referred the Court to the case of **Wisniewski** [supra], in which the Court of Appeal of England, after considering several authorities from pp. 11 to pp. 14 of the judgment, observed —

"From this line of authority, I derive the following principles in the context of the present case —

- (1) *In certain circumstances, a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
- (2) *If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
- (3) *There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the Court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.*
- (4) *If the reason for the witness's absence or silence satisfies the Court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified." [Emphasis is mine]*

113. There is no need for me to repeat the Appellant's evidence on the material issues before the

Court. Having considered the submissions of both Counsel, I find that there is a case to answer on the Appellant's evidence. This leads me to the conclusion that Mr. Anthony Derjacques had material evidence to give on the facts in issue in this case. I find that Counsel for the Respondent cannot argue that Mr. Anthony Derjacques' absence is not significant.

114. The Respondent did not state that Mr. Anthony Derjacques was unavailable to give evidence. I find that this failure, along with Mr. Anthony Derjacques' silence, render the Respondent's case suspect and significantly undermines its credibility. The adverse inference is thus compelling: the Respondent's case is fatally weakened, transforming what might have been a contestable matter into one overwhelmingly in the Appellant's favour.
115. For the reasons stated above, I conclude that the learned trial Judge erred in finding that the evidence established, on a balance of probabilities, that the consideration of SCR400,000 had been paid. I quash the said finding of the learned Judge.
116. For the reasons stated above, I allow ground 1 of the grounds of appeal.

Ground 4 of the appeal — Whether the instrument of transfer satisfied all the requirements of article 1583 of the Civil Code of Seychelles

117. I have carefully considered the arguments presented by both Counsel. To avoid repetition, I will address the submissions from both Counsel regarding ground 4 during the analysis stage. In relation to ground 4, I also refer to the arguments made by Counsel for the Respondent at paragraphs [62] to [65] of the current judgment.

Analysis of the arguments of the parties

118. The issue raised by ground 4 is whether the instrument of transfer, exhibit P1, meets the requirements of article 1583 of the Civil Code of Seychelles, despite being invalid, void and without legal effect. The Civil Code of Seychelles, which applies to this case, is the one that came into force in 1976, as the instrument of transfer, exhibit P1, was executed on the 27 April 2010.

119. Article 1583 of the Civil Code stipulates —

"Article 1583

1. A sale is complete between the parties and the ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid.

2. ..."

120. Counsel for the Appellant challenged the trial Judge's finding that the instrument of transfer, exhibit P1, satisfied all the requirements of article 1583 of the Civil Code of Seychelles and, thus, constitutes a valid agreement thereunder. He stated that the trial Judge reached these findings at paragraphs [50] to [55] of the judgment, relying on the Court of Appeal's decision in **The Estate of Charlemagne Grandcourt**. At paragraph [52] of the judgment, the trial Judge stated —

"I find therefore, that the "Transfer of Land" document clearly identifies the price for the land and moreover contains statement "in consideration of the price of Seychelles Rupees Four Hundred Thousand only (Rs400,000/-) which sum has been duly paid hereby transfer...the land..."

121. Counsel for the Respondent relied on **The Estate of Charlemagne Grandcourt** for the proposition that the defects in the instrument of transfer, exhibit P1, are minor. He pointed out that the instrument of transfer, exhibit P1, clearly states that the sum of SCR400,000 *"has been duly paid"*. Therefore, he argued that the sale between the parties is complete.

122. I start by observing that the facts of **The Estate of Charlemagne Grandcourt** are materially distinguishable from those in the present case. **The Estate of Charlemagne Grandcourt** concerned a contract of sale, properly signed by the parties, together with a charge, before France Bonté, Notary, on the 4 February 1993. The instrument of transfer was never registered. The dispute in the same case concerned mainly the non-registration of the instrument of transfer under the Land Registration Act.

123. I hold the view that **The Estate of Charlemagne Grandcourt** supports the view that an

instrument of transfer with minor formal defects can evidence a contract between identified, consenting parties who have both signed the instrument of transfer. Article 1318 of the Civil Code of Seychelles supports this view. The said article stipulates: "[a] document which is not authentic due to a lack of authority or capacity of the official, or because of a formal defect, shall have effect as a private document if signed by the parties."

124. However, **The Estate of Charlemagne Grandcourt** cannot support the view that an instrument of transfer which was never validly executed by one of the parties and which was attested in breach of the fundamental safeguard of independent witnessing can be treated as a binding contract or as conferring proprietary title.
125. After considering the submissions of both Counsel, I find that the instrument of transfer, exhibit P1, does not meet the requirements set out in article 1583 of the Civil Code of Seychelles. The evidence fails on a balance of probabilities to establish agreement on the thing and the price under the said article. The absence of consideration is relevant both to the validity of the instrument under the Land Registration Act and to whether it can operate even as a valid contract. I conclude that the alleged sale has not been established on a balance of probabilities.
126. My conclusions are based on the following considerations —
- (i) the purported transferee (the Respondent) did not execute the instrument;
 - (ii) Mr. Anthony Derjacques, who purportedly executed it on the Respondent's behalf, had not been lawfully appointed as the Respondent's agent; no evidence established such appointment;
 - (iii) thus, the instrument of transfer was executed solely by the Appellant, not the Respondent;
 - (iv) the Respondent's case directly contradicts the facts stated in the instrument of transfer, exhibit P1, that "*in consideration of the price of Seychelles Rupees Four Hundred Thousand only (Rs400,000/-), which sum has been duly paid*";

- (v) the Appellant testified that she did not understand the nature of the instrument, as the attorney-at-law did not explain it to her; and that she had no intention of transferring the parcels to the Respondent;
- (vi) the above items of evidence are further supported by the Respondent's failure to call Mr. Anthony Derjacques as a witness.

127. Hence, I find that the trial Judge erred in law in concluding that the instrument of transfer satisfied all the requirements of article 1583 of the Civil Code of Seychelles and, thus, constituted a valid agreement thereunder, despite being invalid, void and without legal effect. I quash the findings of the learned Judge.
128. For the reasons stated above, ground 4 of the appeal is allowed.

Ground 5 of the appeal — The trial Judge's reliance on the maxim of equity

129. Counsel for the Appellant challenged the finding of the trial Judge at paragraph [58] of the judgment that *"...Anyone who knowingly signs a land transfer document containing false information about the payment of the purchase price, and later seek relief from the court, risk being denied such relief under the equitable principle of "clean hands", which prevents a person from benefiting from their own wrongdoing."*
130. The issue raised by ground 5 is whether the maxim of equity applies to the suit, even though it was not founded on equitable principles.
131. Suffice it to state that I agree with the submissions made by both Counsel that the trial Judge erred in relying on the maxim of equity. The trial Judge improperly invoked the maxim of equity in this case, as the Appellant did not seek equitable relief under section 6 of the Courts Act.
132. Furthermore, equitable relief was not available to the Appellant, given the adequate legal remedies provided by the Land Registration Act and the Civil Code of Seychelles. Counsel

for the Respondent added that any challenge to the equitable maxim is irrelevant to the validity of the Court's decision.

133. For the reasons stated above, ground 5 of the appeal is allowed.

Ground 6 of the appeal — The registration issue

Submissions on behalf of the Appellant

134. Counsel for the Appellant relied upon the submissions advanced in the skeleton heads of argument on behalf of the Appellant in support of ground 6.

Submissions on behalf of the Respondent

135. Counsel for the Respondent relied upon the submissions advanced in the skeleton heads of argument on behalf of the Respondent in support of ground 6.
136. He added that no fraud, omission, or mistake on the part of the Respondent was pleaded or proved.

Analysis of the arguments of the parties

137. Ground 6 raises the issue of whether parcels V12815 and V12816 were unlawfully registered in the name of the Respondent.
138. Section 89 of the Land Registration Act stipulates —

"89 (1) Rectification by Court 89 (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."

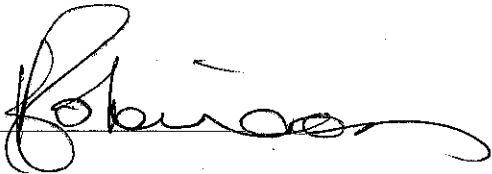
139. It is important to clarify that it is not a legal requirement for the plaint to expressly use the term "*mistake*" within its body. Having considered the submissions of both parties, I accept the argument of Counsel for the Appellant that the Appellant's claim, stating that the registration of the parcels V12815 and V12816 was obtained by mistake, is borne out by the facts contained in the amended plaint, which are set out in the current judgment.
140. After concluding that the instrument of transfer, exhibit P1, is a nullity based on the facts of this case, and not merely defective, the consequence is that the registration of the Respondent as the proprietor of parcels V12815 and V12816 was obtained by mistake within the meaning of section 89 (1) of the Land Registration Act. The Court has the power to order rectification by directing that the registration be cancelled or amended.
141. The Registrar should not have accepted the instrument of transfer for registration in the first place, given the defects *ex facie* the instrument of transfer, exhibit P1. The registration of the instrument of transfer, exhibit P1, does not cure the invalidity of the instrument. Section 89 (2) protects a proprietor in possession who acquired the land for valuable consideration and without knowledge of the mistake. However, as I have found that the consideration of SCR400,000 was not paid, the Respondent is removed from the protection afforded by section 89 (2) of the Land Registration Act. Hence, I quash the finding of the trial Judge at paragraph [59] of the judgment that "*the Defendant is registered as the owner of the land*".
142. In light of the foregoing, I allow ground 6.

DECISION

143. For the reasons stated above, the appeal is allowed in its entirety.
144. I make the following orders —
1. the Appellant is declared the sole proprietor of the parcels V12815 and V12816 and the building situated thereon.


2. the Land Registrar is ordered to rectify the register of parcels V12815 and V12816 by deleting the Respondent, Nell Agnes Parry (nee Camille), as the proprietor of the parcels V12815 and V12816.
3. the Land Registrar is ordered to register the Appellant, Flora Marie-Therese Camille (nee Waye-Hive), as the sole owner of the parcels V12815 and V12816.

145. I make no order as to costs.



Robinson JA

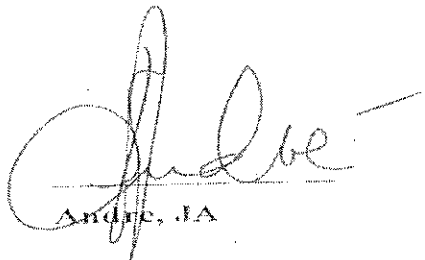
I concur:-



Fernando, President

ANDRÉ JA, (concurring):

1. I have had the advantage of reading the judgment of Robinson JA and I agree with both the reasoning and the orders.
2. I wish to emphasise that the statutory requirements governing execution and attestation of instruments of disposition under the Land Registration Act are not merely procedural. They constitute essential safeguards designed to ensure authenticity, voluntariness, and legal certainty in dealings with land.
3. Where those requirements are not complied with, particularly in circumstances where the purported transferee neither executes the instrument nor authorises its execution in accordance with the Act, the defect is fundamental.
4. In such a case, the instrument cannot be treated as merely defective. It is void and incapable of conferring any contractual or proprietary rights, and its subsequent registration does not cure that invalidity.
5. Subject to these observations, I concur.



André, JA

Signed, dated and delivered at Ile du Port on 27 April 2026.