

IN THE COURT OF APPEAL OF SEYCHELLES

[Reportable]

[2026] (27 April 2026)

SCA 23/2025

(Arising in CS 05/2025)

In the Matter Between:

James Van Bloemestein
(rep. by Mr. Frank Elizabeth)

Appellant

And

Tania Borisovna Hoareau
(rep. by Mr. Frank Ally)

Respondent

Neutral Citation: *Bloemestein v Hoareau* [2026] SCA 23/2025 [2026] (Arising in CS 05/2025 (27 April 2026))

Before: Fernando, President, Robinson, André JJA

Summary: (i) Extinctive prescription — No plea of prescription on appeal — Whether the Court can, *proprio motu*, take judicial notice of prescription in respect of a claim — *Civil Code of Seychelles, articles 2219, 2223, 2224*
(ii) Plea of *res judicata* — The authority of a final judgment [*l'autorité de la chose jugée*] — Plea of *l'autorité de la chose jugée* should be specially pleaded in the defence — *Civil Code of Seychelles, article 1351*
(iii) Inherent powers of the Court — Plea of *res judicata* — Whether the plaint CS05/2025 is an abuse of the process of the Court

Heard: 13 April 2026

Delivered: 27 April 2026

ORDER

1. The appeal stands dismissed in its entirety.
 2. The order of the trial Judge entering judgment in terms of the plaint is upheld.
 3. The order of the trial Judge ordering the Appellant to pay the Respondent the sum of United States Dollars Six Hundred Thousand in default of his obligations to finance and construct the main house on the Respondent's parcel V7944 in terms of the Agreement of 10 May 2017, is quashed.
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4. For the order of the trial Judge, the following order is substituted therefor: the Appellant shall pay the Respondent the sum of Seychelles Rupees Four Million Five Hundred Thousand in default of his obligations to finance and construct the main house on the Respondent's parcel V7944 in terms of the Agreement of 10 May 2017.
 5. With costs in favour of the Respondent.
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JUDGMENT

ROBINSON JA (FERNANDO, PRESIDENT, ANDRÉ JA, CONCURRING)

The background

1. The Respondent, the Plaintiff then, filed a suit CS5/2025, praying for the trial Judge to make the following orders —
 - (a) to order the Appellant to specifically perform any or both of his obligations under an agreement dated the 10 May 2017 (hereinafter referred to as "*the Agreement*");
 - (b) to make any other order as the Supreme Court deems fit; and
 - (c) to make an order awarding costs in her favour.
2. Following the hearing of the suit *ex parte*, the trial Judge, in a judgment delivered on the 8 September 2025, entered judgment in terms of the plaint and made the following order —

"39. The Defendant shall pay the Plaintiff the sum of United States Dollars Six Hundred Thousand in default of performance of his obligations to finance and construct the main House on Plaintiff's land in terms of the Agreement of 10 May 2017.

The grounds of appeal

3. The Appellant, dissatisfied with the judgment, has appealed against it on the following grounds —

"GROUNDS OF APPEAL

GROUND 1

The Learned trial judge erred in law when she failed to dismiss the Respondent's case on the ground that the Respondent has failed to discharge the burden and standard of proof in that:-

- i) *The subject matter of the case was an agreement dated 10th May 2017, which was prescribed in law and therefore could not be sued upon by the Respondent nor enforced by the court in law. The learned trial Judge thus committed a grave error of law when she ruled that prescription is interrupted by "...an acknowledgement by the defendant of the plaintiff's right of action...".*

(See paragraph 37 of the judgment where the learned trial Judge ruled as follows:- "[T]he court also notes that in 2019, Plaintiff's brought an action by way of plaint for specific performance against Defendant in CS160/2019 and that the proceedings in CS160/2019 ended with the entry of the JBC on 27th November 2020. The JBC entered in the proceedings in CS160/2029 included an acknowledgement by the Defendant of Plaintiff's right of action and thereby interrupted the 5 years' prescription.

- ii) *The subject matter of the case was a judgment by consent in Civil Side No. 160/2019 dated 27th November 2020, by which the Respondent had completely exhausted her legal rights and remedies, resulting in dismissal of an application for summons to show cause by the Supreme Court and the suit was therefore caught by the legal doctrine of res judicata and liable to be dismissed in law.*

GROUND 2

The learned trial judge erred in law when she ruled that:- "It is clear from the Plaint that the Plaintiff is not seeking to enforce the JBC but the Defendant's contractual obligations in relation to the main house," ... as the Respondent had completely exhausted all her legal rights and remedies under the contract in Civil Side No. 160 of 2019, leaving no residual issues outstanding and remaining for judicial intervention and adjudication. (See paragraph 33 of the judgment).

GROUND 3

The cumulative effect of the errors in the impugned judgment dated 8th September 2025 constitutes an exceptional case involving a manifest breach of fundamental principles of law, demanding the immediate intervention of the Seychelles Court of Appeal to prevent a miscarriage of justice."

The issues for determination

4. The issues for determination are as follows —
 - (i) first, regarding ground 1 (i), whether the right of prescription has been pleaded on appeal.
 - (ii) secondly, regarding ground 1 (ii), whether the terms and conditions of the judgment by Consent entered into on the 27 November 2020, exhibit P4, (hereinafter referred to as the "*Judgment by Consent*"), has the effect of *res-judicata* in relation to the action number CS05/2025.
 - (iii) thirdly, it is noted that ground 2 of the appeal, which questioned the finding of the trial Judge with respect to the characterisation of the Respondent's case as contractual instead of an enforcement of the Judgment by Consent, was not pursued by Counsel for the Appellant during the hearing of the appeal. If it had been pursued, my finding, after considering the arguments from both Counsel, would have been that the contention raised by ground 2 is misconceived. The source of the right being litigated cannot be the Judgment by Consent; rather, it is clearly derived from the Agreement, dated 10 May 2017, exhibit P2, (hereinafter referred to as the "*Agreement*"). The Judgment by Consent served to preserve the Respondent's right to proceed in this manner, which the trial judge correctly determined. Ground 2 of the appeal stands dismissed.
 - (iv) fourthly, about ground 3, the Appellant made a broad allegation of cumulative errors or a miscarriage of justice; however, the specifics of this allegation remain unclear. During the hearing of the appeal, Counsel for the Appellant accepted that ground 3 did not constitute a valid ground of appeal, as it ran afoul of rule 18 (7) of the Court of Appeal of Seychelles Rules, 2023, as amended. Therefore, ground 3 is struck out.
5. I state at this juncture, with regard to ground 1 (ii), that the Appellant's skeleton heads of argument relied on the defence of *res-judicata* — *l'autorité de la chose jugée* — based on

article 1351 of the Civil Code of Seychelles and/or the principle of abuse of the process of the Court.

6. The Court informed Counsel for the Appellant during the hearing of the appeal that the prospects for the Appellant's case concerning these legal defences — namely, extinctive prescription, and *res judicata* under article 1351 of the Civil Code of Seychelles — appeared unlikely. Counsel for the Appellant informed the Court that if the Appellant's arguments regarding these defences were not accepted, the Appellant would focus solely on the principle of abuse of process. Nonetheless, all issues have been considered.
7. I set out the matters relevant to the determination of the questions raised by the appeal.

The case for the Respondent in the suit CS05/2025

8. At paragraph [1] of the plaint, the Respondent claimed that the Appellant and herself were in a domestic relationship for approximately 22 years before they separated.
9. At paragraph [2] of the plaint, the Respondent claimed that during their relationship, they entered into the Agreement, in which the Appellant agreed to finance the construction of a house on the Respondent's land parcel V7944 situated at Nouvelle Vallee, Beau Vallon, Mahé, Seychelles (hereinafter referred to as the "*the Property*").
10. Paragraph [3] of the plaint stated that the terms of the Agreement included the following —
 - (i) that the Appellant would finance the construction of retaining walls and a first house (hereinafter referred to as "*the chalet*" or "*Annex*") on the Property within twelve months from the date of the Agreement, as stated at paragraph [3.1] of the plaint;
 - (ii) that the Respondent would use the Chalet upon vacating the current rented premises, as stated at paragraph [3.2] of the plaint;
 - (iii) that the Appellant would finance the construction of the main house on the Property, measuring 300 square meters in extent, at an estimated cost of

approximately four million five hundred thousand Seychelles rupees (SCR4.5 million) as soon as possible but within a period of two years from the date of the Agreement, as stated at paragraph [3.3] of the plaint;

- (iv) that all costs and charges relating to site preparation, ground breaking work, and construction of the main house shall be borne by the Appellant even if the domestic relationship ended, as stated at paragraph [3.4] of the plaint;
- (v) the Appellant would pay United States Dollars six hundred thousand (US\$600,000) or the equivalent in Seychelles rupees at the prevailing exchange rate within five years beginning from the date of the Agreement if the conditions in paragraphs 3.1, 3.3 and 3.4 were not fulfilled by the end of the five-year period, as stated at paragraph [3.5] of the plaint; and
- (vi) should the Appellant's obligations set out in paragraphs 3.1, 3.3 and 3.4 be completed and discharged by the end of the five-year period stipulated at paragraph 3.5 above, the Appellant will be released and dispensed from the obligation to pay the US\$600,000/-, as stated at paragraph [3.6] of the plaint.

11. At paragraph [4] of the Agreement, it is claimed that (as repeated at paragraph [4] of the plaint) —

"4.1 ...the construction of the main house would commence immediately upon signature of the Agreement or within two years of the Agreement, i.e. by 9th May, 2019 and be completed within the said two year period. Alternatively, under paragraphs 6 and 9 of the Agreement, it was implied that completion would occur within 5 years of the Agreement that is by 9th May, 2022; and

4.2 if the Defendant fails to construct the main house on parcel V7944 within the stipulated time limits, expressed or implied under the Agreement, the Defendant would be liable to pay Plaintiff the sum of US dollars 600,000/- that the Defendant was to deposit in the Plaintiff's bank Account within a period of five years from the date of the Agreement that is on or before the 9th May, 2022.", as stated at paragraph [4] of the plaint."

12. Paragraphs [5] and [6] of the plaint claimed that the Appellant breached the Agreement by failing to finance the construction of the Chalet, the Annex and the main house on the Property within the stipulated time limit. Consequently, the Respondent initiated the suit **Tania Borisova Hoareau v/s James Kenneth van Blomestein in the Supreme Court of Seychelles in Civil Side 160/2019 (the "Civil Suit")** seeking specific performance of the Appellant's obligations under the Agreement or payment of US\$600,000/-.

13. The Respondent claimed at paragraph [7] of the plaint that during the proceedings of the suit CS160/2019, the parties agreed to the Judgment by Consent dated 27 November 2020, embodying the terms and conditions of their settlement. The terms and conditions of the settlement primarily addressed the construction of the Chalet and retaining walls on the Property, which the Appellant agreed to finance, construct and complete by the 31 January 2021. Additionally, the said paragraph [7] stated that the terms of the settlement expressly preserved the Respondent's right to pursue claims regarding the main house, stating the following —

"8.1 The Defendant acknowledged his undischarged obligation under the Agreement concerning the main house and US\$600,000/- payment; and

8.2 The Plaintiff's right to seek specific performance or other relief regarding these undischarged obligations was preserved."

14. Further or alternatively to paragraph [8] of the plaint, the Respondent claimed, at paragraph [9] of the same, that her right to pursue these obligations was interrupted due to —

"9.1 the initiation and conduct of the Civil Suit 160/2019; and/or

9.2 the Defendant's acknowledgement of his undischarged obligation in the Consent Judgment and Agreement that such right of the Plaintiff be reserved or preserved to pursue them."

15. The Respondent claimed at paragraph [10] of the plaint that, as of 9 May 2022, the final deadline for the Appellant to fulfil his obligations under the Agreement — specifically, to deposit the sum of United States Dollars six hundred thousand, following his failure to finance and construct the main house — he has wilfully failed, ignored or refused to deposit the said amount, in breach of his obligations.

16. The Respondent claimed at paragraph [11] of the plaint that, in further breach of the Appellant's obligations under the Agreement, the Appellant has failed as follows —

"11.1 to deposit the sum of United States Dollars Six Hundred Thousand (600,000/-) within the stipulated five-year period from the date of the Agreement, that is on or before 9th May, 2022, upon his failure to construct the house on land parcel V7944 within two years or within the extended period of five years; and/or

11.2 to finance and construct the main house on parcel V7944, as expressly agreed upon in the Agreement."

17. At paragraph 12 of the plaint, it is stated that despite repeated requests, the Appellant has refused or neglected to fulfil or perform any or all of his above-mentioned undischarged obligations under the Agreement.

The evidence

The evidence of Alberto Crespo Morales

18. Mr. Morales is a self-employed civil engineer who testified that he is familiar with the Respondent and the Property. He recently visited the Property and found that there are no houses built on it, except for the foundation of a house measuring approximately 70 to 80 square meters.

The evidence of the Respondent

19. The Respondent testified in terms of her plaint. She added that her cohabitation with the Appellant ended in 2017. During their time living together, they always planned on building a house on the Property. The Respondent obtained planning permission to build a retaining wall since 2007 and produced the planning permission as evidence, exhibit P1.
20. The Respondent testified that subsequently, on the 10 May 2017, they entered into the Agreement, which is reproduced verbatim at paragraph [25] of this judgment.
21. The Respondent testified that the suit CS160/2019 was filed because the Appellant had acted in breach of the Agreement. The Respondent testified that a prefabricated house was

ordered and arrived in the country in November 2018, but the Appellant took no further action thereafter. Additionally, the Appellant failed to implement any of the developments they had agreed upon.

22. The Respondent also testified about the Judgment by Consent, which is reproduced verbatim at paragraph [27] of this judgment.
23. The Respondent testified that, despite sending a letter of final notice to the Appellant dated 13 January 2025, which required compliance with the obligations under the Agreement and the Judgment by Consent in respect of the financing of the main house, the Appellant has failed and ignored his obligations to the Respondent.
24. The Respondent sought an order that the Appellant either build the main house or pay the sum of United States Dollars six hundred thousand to her.

THE REGISTERED AGREEMENT, EXHIBIT P2

25. The Agreement provides as follows —

"THIS AGREEMENT made this 10 day of May, 2017.

Between

James Kenneth Van Blomestein of Pascal Village, Mahé, Seychelles, hereinafter referred to as Party One

And

Tatiana Borisovna Hoareau of Pascal Village, Mahé, Seychelles, hereinafter referred to as Party Two

***WHEREAS** the parties acknowledge having lived together as husband and wife in cohabitation for the past twenty two years during which time the child of Party Two, Charlotte Margaret Hoareau, born on the 29th April, 1992, has grown up with and been treated by Party One as his own child for whom he has given care and attention as a parent throughout the time that the parties have lived together.*

***AND WHEREAS** the parties hereby wish to enter the following Agreement which shall have full effect in the event that the current de facto union between the parties should break up and they should separate.*

AND WHEREAS Party One acknowledges that it had always been his intention to finance the construction of a dwelling house for the couple on land belonging to Party Two, of which dwelling house he would also enjoy use and occupation as a member for the rest of his life.

AND WHEREAS Party Two has expressed the wish to ensure that Party One should not suffer in the event of the breakup of the parties and that she is taken care of financially after the parties go their separate ways.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. *Party One shall finance the construction of the retaining walls and a first house on Title number V7944 belonging to Party Two at Nouvelle Vallée, Beau Vallon, Mahé, within a period of twelve months from the date of these presents.*
2. *The parties have agreed that the Chalet, to be known as the Annex, shall be used by Party Two upon vacating the current rented premises which the parties have lived in together up to the time of the break up.*
3. *Party One shall continue to pay the monthly rental for the said premises at Pascal Village until the end of the tenancy.*
4. *Party One shall finance the construction of the main house of a surface area of 300 square metres which is estimated to cost approximately Four million five hundred thousand Seychelles Rupees (SCR4.5 million) as soon as possible but within a period of two years from the date of these presents.*
5. *All costs and charges to the preparation, ground-breaking work and construction of the main house shall be borne by Party One, notwithstanding that the parties may no longer live together.*
6. *Subject to the provision set out in Paragraph 9 below, Party One further agrees to pay into the bank account of Party Two the sum of United States Dollars Six Hundred Thousand (US\$600,000) or the equivalent in Seychelles Rupees at the prevalent exchange rate within a period of five years beginning from the date of these presents.*
7. *Party One agrees to take up life insurance policy in which Party Two shall be named as the sole beneficiary in order to guarantee the undertakings made in Paragraphs 1, 3, 4 and 5 above the present Agreement shall become immediately enforceable against Party One.*
8. *The parties specifically agree that should Party One leave Party Two prior to completion of the undertakings made in Paragraphs 1, 3, 4 and 5 above the present Agreement shall become immediately enforceable against Party One.*

9. *Party Two further undertakes that should the undertakings set out in Paragraphs 1, 3, 4 and 5 have been completed by the end of the five-year period stipulated in Paragraph 6 above, Party One will be dispensed from the obligation of payment set out in the said Paragraph 6.*
10. *Party Two further undertakes to ensure that both she and her successors shall respect the undertaking that Party One shall enjoy the use and occupation of the dwelling house or annex for the rest of his life...*

IN WITNESS WHEREOF, the contracting parties have set their hands to these presents, made in two originals on the day, month and year first above written.

[Signed]

[Signed]

James Kenneth Van Blomestein
[Emphasis is mine]

Tatiana Borisovna Hoareau"

26. The Agreement includes clause [4], which sets out the Appellant's obligation to finance and construct the main house.

THE JUDGMENT BY CONSENT, EXHIBIT P4

27. The Judgment by Consent, exhibit P4, is reproduced verbatim below —

"SUPREME COURT OF SEYCHELLES

Not Reportable

[2020] SCSC 930

CS 160/2019 [as per the record of appeal]

In the matter between

TATIANA BORISOVNA HOAREAU

Plaintiff

And

JIMMY KENNETH VAN BLOMESTEIN

Defendant

Neutral Citation: Hoareau vs Van Blomestein (CS 160/2019) [2020] SCSC 930 (27th November 2020).

Before: R. Govinden CJ

Summary: Judgment by Consent entered

Delivered: 27 November 2020

JUDGMENT BY CONSENT

GOVINDEN, CJ

[1] On consent of parties, I enter Judgment as per the terms and conditions contained in the Agreement dated 27th November 2020. Duly signed by the parties and their respective counsels in my presence in open Court today. The said Judgment is marked as exhibit P1 and is filed on record. Judgment by consent is accordingly entered.

(Signed)

Signed, dated and delivered at Ile du Port on 27th November 2020.

(Signed and Stamped)

Govinden, CJ".

"IN THE SUPREME COURT OF SEYCHELLES

Tatiana Borisovna Hoareau

Plaintiff

of Pascal Village, Mahe, Seychelles

v/s

Jimmy Kenneth Van Bloemestein

Defendant

of Ma Constance

Mahe, Seychelles

CS No: [106/2019] – [as per the record of appeal]

JUDGMENT BY CONSENT

1. *Whereas the Parties lived in co-habitation for 22 years together with the Plaintiff's daughter who was 3 years old at the time.*
2. *Whereas during the period of co-habitation the Parties entered into an agreement dated 10th May 2017 for the Defendant to finance and construct a retaining wall and a first house ("the Chalet to be known as the Annex") on Title V7944 owned by the Plaintiff.*
3. *Whereas the Parties have agreed that the Plaintiff shall move in the Chalet upon vacating the current rented premises at the end of January 2021.*
4. *And wherefore the Parties hereby agree to enter into a Judgment by Consent in the following terms:*
 - (i) *The Defendant shall immediately undertake to finance and construct the retaining wall and the Chalet to be known as the Annex on Title V7944 registered in the name of the Plaintiff.*
 - (ii) *The retaining wall and Chalet must be completed by 31st January 2021 in time for the Plaintiff to move in upon her eviction from the rented premises at Pascal Village.*
 - (iii) *The Plaintiff reserves her right under the contract to pursue her case with regard to the building of the main house on Title V7944.*
 - (iv) *The Parties acknowledge that this Judgment by Consent settles all issues relating to the present case CS 106/2019.*
 - (v) *If any terms of the Judgment are breached by any party, the aggrieved party shall be at liberty to enforce this judgment.*
 - (vi) *The Parties mutually agree to fully cooperate in order to complete all administrative procedures and formalities necessary to effect the terms of this Judgment by Consent.*
 - (vii) *Each party shall bear its own costs.*

Dated this 27th day of November 2020.

(Signed)

Tatiana Borisovna Hoareau

Plaintiff

(Signed)

James Kenneth Van Bloomestein

Defendant

(Signed)

Ms Lucie Pool

Attorney for the Plaintiff

(Signed)

Mr. Frank Elizabeth

Attorney for the Defendant"

28. Relevant to the determination of this appeal is the stipulation in the Judgment by Consent, which states that the Plaintiff reserves her right under the Agreement to pursue her case with regard to the building of the main house on the Property.

The decision and orders of the trial Judge

29. The trial Judge determined that the Appellant had acted in breach of the Agreement for the financing and construction of the main house on the Respondent's Property. She noted that in terms of the Agreement, the Appellant was obligated to build a main house of 300 square meters, with an estimated cost of four million and five hundred thousand Seychelles rupees, on the Property. The Appellant was also responsible for all costs and charges for site preparation, ground-breaking, and construction works. The Appellant was also obligated to pay United States Dollars six hundred thousand (or its equivalent in Seychelles rupees) by the end of 2022, subject to discharge upon fulfilment of his undertakings to build, among other things, the main house.
30. The determination of the trial Judge that the Appellant had acted in breach of the Agreement for the financing and construction of the main house on the Property was based on the finding that the Respondent was not trying to enforce the Judgment by Consent, but was instead aiming to uphold the Appellant's contractual obligations concerning the main house. The trial Judge was satisfied that the partial settlement set out in the Judgment by Consent specifically preserved the Respondent's right to pursue the present claim in relation to the main house. Additionally, she found that, despite the Judgment by Consent, the Appellant has still failed to meet his obligations, which triggered the performance of the obligation and/or the financial penalties that the Respondent is now seeking to enforce.
31. She awarded the remedy of specific performance under article 1184 (3) (a) of the Civil Code of Seychelles. As mentioned at paragraph [2] of this judgment, the trial Judge entered

judgment in favour of the Respondent in terms of the plaint and made the orders repeated at the same paragraph.

32. The trial Judge addressed the issue of extinctive prescription under article 2271 (1) of the Civil Code of Seychelles. I will not go into detail about the trial Judge's analysis regarding the issue of prescription. Ground 1 (i) of the appeal deals with the question of whether a right of prescription has been pleaded on appeal.

Analysis of the contentions of the parties

Ground 1.1 of the appeal

The defence of extinctive prescription

33. The contention raised by ground 1 (i) is that the trial Judge erred in law in holding that the cause of action instituted by the Respondent was not prescribed under article 2271 of the Civil Code of Seychelles.
34. Both Counsel have provided written and oral submissions with respect to this ground, which I have considered with care. In examining the issue of extinctive prescription, I hold the view that the question which arises for determination is whether the right of prescription has been pleaded on appeal. The Court is permitted to raise this point under rule 18 (9) of The Court of Appeal of Seychelles Rules, as amended.
35. It should be noted that the Appellant did not plead on appeal that the five-year extinctive prescription under article 2271 of the Civil Code of Seychelles applies to the Respondent's action. Further, I note that in the plea in *liminie litis* filed by the Appellant on the 19 February 2025, the Appellant did not raise the plea of prescription. During the hearing of the appeal, both Counsel expressed their views on whether a plea of prescription had been raised. Additionally, they expressed their views on whether the trial Judge was correct to raise, *proprio motu*, the five-year extinctive prescription.
36. During the hearing of the appeal, the Court informed both Counsel of articles 2223 and 2224 of the Civil Code of Seychelles, which stipulate —

" Article 2223

The Court cannot, proprio motu, take judicial notice of prescription in respect of a claim.

Article 2224

A right of prescription may be pleaded at all stages of legal proceedings, even on appeal, unless the party who has not pleaded it can be presumed to have waived it." [Emphasis is mine]

37. Both Counsel agreed at the hearing of the appeal that a right of prescription has not been pleaded. It is observed that the contention raised by ground 1 (i) of the appeal challenged the finding of the trial Judge that the cause of action instituted by the Respondent was not prescribed under article 2271 of the Civil Code of Seychelles. Additionally, it was agreed that the pleadings of the Respondent, at paragraph [8] of the plaint, did not amount to a plea of prescription. It would have been unusual for the Respondent to raise a plea of prescription against herself. It is noted that the averments at paragraph [8] of the plaint, which the trial Judge referred to, referred to prescription being interrupted by a legal act. Article 2242 of the Civil Code of Seychelles stipulates that prescription may be interrupted either naturally or by a legal act. At paragraph [8] of the plaint, the Respondent averred, in the alternative, that her right to pursue these obligations was interrupted due to —

"9.1 the initiation and conduct of the Civil Suit 160/2019; and/or

9.2 the Defendant's acknowledgement of his undischarged obligation in the Consent Judgment and Agreement that such right of the Plaintiff be reserved or preserved to pursue them."

38. In **PTD Limited v Keven Zialor Civil Appeal SCA 32/2017** (5 December 2019), the Court of Appeal held that prescription must be pleaded; and that a court cannot take judicial notice of prescription in respect of a claim. Similarly, in the case of **Prosper & Another v Fred (SCA 35/2016) [2018] SCCA 41** (14 December 2018) applied in **PTD Limited** [supra], the Court of Appeal held: "[...] *generally prescription must be pleaded and cannot be raised by the court itself (see Article 2223 of the Civil Code [...]).*" See also the case of **The Estate of the Late Andre Delhomme and Anor v The Attorney General SCA 15/2021** (26 April 2023).

39. Additionally, note 332 from *Dalloz Encyclopédie de Droit Civil 2e Ed. Verbo Prescription Civile* states: "[l]a prescription n'opère pas de plein droit et l'article 2223 du code civil interdit aux juges, d'une manière absolue, de suppléer le moyen résultant de la prescription. La règle est générale et s'applique, quelle que soit le délai [...]." [Emphasis supplied] «The court is absolutely prohibited by article 2223 of the Civil Code from taking judicial notice of prescription. This general rule applies whatever the period may be».
40. In light of the above, I find that no plea of prescription has been raised on appeal. I also find that the trial Judge was wrong *proprio motu* to take judicial notice of the five-year extinctive prescription in respect of the claim.
41. For the foregoing reasons, ground 1 (i) of the appeal stands dismissed.

The defence of res judicata

42. Secondly, ground 1 (ii) raises the defence of *res judicata* on appeal. I have examined the skeleton heads of argument submitted on behalf of the Appellant with respect to this ground. In his skeleton heads of argument, the Appellant relied on *res judicata* — "*l'autorité de la chose jugée*" — under article 1351 of the Civil Code of Seychelles and/or the principle of abuse of process.

The defence of l'autorité de la chose jugée

43. I will deal with the issue of *l'autorité de la chose jugée* under article 1351 of the Civil Code of Seychelles, which stipulates —

"1351 (1) A final judgment has the effect of res judicata only in respect of the subject matter of the judgment.

(2) It is necessary that the demand relate to the same subject matter that it relate to the same cause of action, that it be between the same parties and that it be brought by them or against them in the same capacities."

44. Counsel for the Appellant raised the defence of *l'autorité de la chose jugée* on appeal. The question to be determined is whether it is correct for the Appellant to raise this plea on

appeal. It is noted that the hearing of the case proceeded *ex parte* before the Supreme Court. Further, the plea *in limine litis* filed by the Appellant on the 19 February 2025, did not include a point of law based on the defence of *l'autorité de la chose jugée*.

45. With respect to the defence of *res judicata* — *l'autorité de la chose jugée* — under article 1351 of the Civil Code of Seychelles, I hold the view that the Civil Code of Seychelles does not allow this defence to be raised for the first time on appeal. I hold the view that if the Legislature had intended to permit such a plea to be raised for the first time on appeal, it would have expressly stated so in the same Code. I am fortified in my view because the Legislature has expressly allowed a plea of prescription to be raised even on appeal under article 2224.
46. Therefore, I hold that the Appellant cannot, on appeal, invoke the defence of *res judicata* — *l'autorité de la chose jugée* — under article 1351 of the Civil Code of Seychelles, as this plea must be specially pleaded in the defence. These issues were discussed with both Counsel during the hearing of the appeal.
47. For the foregoing reasons, ground 1 (ii) of the appeal, which concerns the plea of *res judicata* — *l'autorité de la chose jugée* — under article 1351 of the Civil Code of Seychelles, stands dismissed.

The principle of abuse of process under the inherent power of the Court

48. The second issue for determination on ground 1 (ii) is whether the plaint commencing the action number CS05/2025 is an abuse of process of the Court.
49. The Appellant argued, among other things, that the Judgment by Consent in CS160/2019 constitutes a final determination of the disputes arising from the Agreement and is binding on both parties. He claimed that the Respondent is, therefore, barred from initiating new proceedings regarding the same issues. He stated that this approach aligns with the legal principle that litigation should come to an end; and that parties should not face repeated litigation for the same cause, as held in **Gomme v Maurel (2012) SLR 341**.

50. Counsel for the Respondent did not accept the arguments presented on behalf of the Appellant. I refer to the arguments of Counsel for the Respondent below.
51. It is well established in Seychelles' jurisprudence that the Superior Court has an inherent jurisdiction to prevent abuse of its process. In **Hunter v Chief Constable of the West Midlands Police [1982] AC 529**, Lord Diplock remarked at paragraph [29]: "[t]he Court has the inherent power to prevent misuse of its procedure where the process would be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people." See also the authority of **Reichel v Magrath (1889) 14 App. Cas. 665 1889**.
52. I refer to [0.18/19/9] R.S.C 1965, which states that the term "an abuse of the process of the Court" connotes that the process of the Court must be used *bona fide* and properly and must not be abused. **Hunter** [supra] states: "where there is abuse, the court has a duty, not a discretion, to prevent it."
53. In **Gomme** [supra], the Court of Appeal stated: "[t]he rationale behind the rule of *res judicata* and its strict application is grounded on a public policy requirement that there should be finality in a court decision and an end to litigation in a matter which has been dealt with in an earlier case. Because of the imaginative use that has been made to go round the rule, courts have developed the rule of abuse of process. The rule of abuse of process encompasses more situations than the three requirements of *res judicata* [*l'autorité de la chose jugée*]...".
54. To determine whether the plaint CS5/2025 amounts to an abuse of process, I must engage in a close *merits-based* analysis of the facts. This will take into account the private and public interests involved, and will focus on the crucial question: whether, in all the circumstances a party is abusing or misusing the Court's process, see Lord Bingham in **Johnson v Gore Wood & Co Court of Appeal (Civil Division) | November 12, 1998 | [1999] B.C.C. 474** and Buxton LJ in **Laing v Taylor Walton [2008] PNLR 11**. Moreover, as Lord Bingham put it in **Johnson** [supra], there will rarely be a finding of abuse unless the later proceedings involve what the court regards as the unjust harassment of a party. There may be such harassment if, as Wigram V-C put it in the passage from **Henderson v**

Henderson, if a party fails to rely upon a point which properly belonged to the first litigation and which, with reasonable diligence, he might reasonably have brought. See also the cases of **Berlouis and Another v The Estate of the Late Ogilvy Berlouis (SCA 10/2024)** (18 December 2024), **Commercial House One (Seychelles) Ltd v/s Eden Island Development Company Ltd & Anor [SCA 92/2023]**, and **Gill v/s Film Ansalt [2013] SLR 137**.

55. I have considered the skeleton heads of argument of both Counsel with care with respect to the issue of abuse of process. Having applied a broad-merits-based approach and considered all the circumstances of the case, I find that the maintenance of the plaint CS05/2025 in the circumstances does not amount to any vexatious, oppressive and dilatory tactic and an abuse of the process of the Court. Hence, I do not accept the submissions of Counsel for the Appellant on the plea raised that the plaint CS05/2025 constituted an abuse of process, and should be dismissed. I give the following reasons for my conclusion.
56. The plaint pleaded the following matters, among other things —
- (i) the registered Agreement dated 10 May 2017;
 - (ii) the Appellant's obligation to finance and construct the main house on the Property at an estimated cost of approximately four million five hundred thousand Seychelles rupees;
 - (iii) the alternative obligation to pay United States Dollars six hundred thousand within the five-year period if the undertakings were not fulfilled;
 - (iv) the reservation clause in the Judgment by Consent at paragraph [4 (iii)].
57. Counsel for the Appellant did not address these matters in his arguments. Instead, he argued essentially at paragraphs [10], [11] and [12] of his skeleton heads of argument that the Respondent had the opportunity to present all claims related to the Agreement during the case CS160/2019. He contended that the Respondent is now attempting to bring the same claims in case CS05/2025. Having conducted a close *merits-based* analysis of the facts, I hold the view that the case CS05/2025 is not a second bite at the cherry, but the

pursuit of a claim which the Judgment by Consent has preserved. The Judgment by Consent, at paragraph [4 (iii)], expressly preserved the Respondent's right to pursue the present claim in relation to the main house in terms of the Agreement, as correctly found by the trial Judge, which finding I uphold.

58. Therefore, the Appellant's plea that the plaint commencing the suit CS05/2025 is an abuse of process of the court stands dismissed.
59. Ground 1 (ii) of the ground of the appeal stands dismissed.

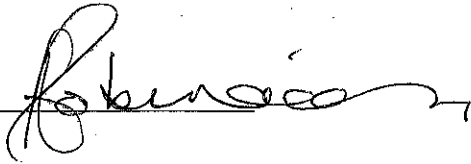
A miscellaneous matter

60. Counsel for the Appellant discussed paragraph [4 (iii)] of the plaint under ground 5, which the Court has found is not a valid ground of appeal. Counsel for the Appellant accepted that this paragraph concerned only the construction of the main house. The issue was raised with both Counsel during the hearing of the appeal that the amount agreed upon for the construction of the main house under the Agreement, and the terms and conditions of the Judgment by Consent, is four million five hundred thousand Seychelles rupees, not United States Dollars six hundred thousand, which concerned the main house, the Chalet and the retaining walls. Both Counsel agreed with the Court's proposition that the amount should be four million five hundred thousand Seychelles rupees, not United States Dollars six hundred thousand, for the construction of the main house.

Decision


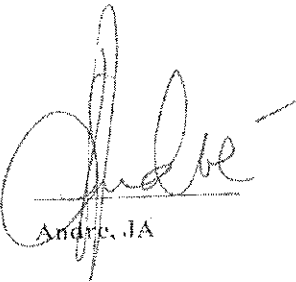
61. For the reasons stated above, the appeal stands dismissed in its entirety. I make the following orders —
 1. The order of the trial Judge entering judgment in terms of the plaint is upheld.
 2. The order of the trial Judge ordering the Appellant to pay the Respondent the sum of United States Dollars six hundred thousand in default of his obligation to finance and construct the main house on the Respondent's parcel V7944 in terms of the Agreement of 10 May 2017 is quashed.

3. For the order of the trial Judge, the following order is substituted therefor: the Appellant shall pay the Respondent the sum of four million five hundred thousand Seychelles rupees in default of his obligations to finance and construct the main house on the Respondent's parcel V7944 in terms of the Agreement of 10 May 2017.
4. With costs in favour of the Respondent.



Robinson JA

I concur:-


Fernando, President
Andre, JA

I concur:-

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