

IN THE COURT OF APPEAL OF SEYCHELLES

---

**Reportable**

[2026] (27 April 2026)  
SCA MA 30/2025  
(Arising in CS 48/2022)

In the matter Between

**1. Christopher Mancham (formerly known as  
Christopher Gill**

**2. Danby Elcine Mancham (formerly known as  
Danby Elcine Gill)**  
(rep. by Mr. Basil Hoareau)

Appellants

And

**Leonard Gill**  
(rep. by Ms. Ketlyn Telemaque)

Respondent

---

**Neutral Citation:** *Mancham & Or v Gill* (SCA MA 30/2025) [2026] (Arising in CS 48/2022)  
(27 April 2026)

**Before:** Gunesh-Balaghee, Sharpe-Phiri, Sichinga, JJA

**Summary:** Contents of plaint – function of pleadings- whether evidence adduced was  
outside the pleadings - Rule 18(8) of the Court of Appeal of Seychelles Rules,  
2023 – raising new ground of appeal without seeking leave of the Court

**Heard:** 14 April 2026

**Delivered:** 27 April 2026

---

ORDER

The appeal is dismissed with costs. The orders made by the Supreme Court are maintained  
except that the delay of one month referred to under paragraph (ii) of the judgment of the  
Supreme Court shall run from the date of this judgment.

---

JUDGMENT

---

**GUNESH-BALAGHEE, JA**

(Sharpe-Phiri JA, Sichinga JA, concurring)

1. This is an appeal from the judgment dated 9 December 2025 of a learned Judge of the Supreme Court delivered in favour of the appellants (then defendants) while making a number of orders against them.

### **Background Facts**

2. The facts giving rise to this appeal may be summed up as follows:
  - (1) The respondent (then plaintiff) and the first appellant are brothers, while the second appellant is the first appellant's wife.
  - (2) The respondent had given a power of attorney dated 2 June 1995 to the first appellant for the latter to act as his agent. The first appellant purporting to act under the power of attorney ("POA") sold a plot of land (Parcel No. PR 5617) which belonged to the respondent to himself and his wife.
  - (3) The respondent alleged that the purchase price was never paid and that the first appellant was not authorised under the POA to sell the said land parcel to himself and his wife as (a) he had never given any written authorisation or otherwise to the first appellant to sell and transfer the said land parcel; (b) the power of attorney is couched in general terms and only covers acts of administration; and (c) the power of attorney does not expressly grant any power relating to the sale or some act of ownership in land parcel No. PR5617.
  - (4) The respondent further alleged that the second appellant knew that the first appellant was not authorised to sell and transfer the land parcel due to her relationship with the first appellant and because the POA was registered.
  - (5) The respondent sought a judgment from the Supreme Court:
    - (a) ordering that the sale agreement between the parties was null and void;
    - (b) declaring that the appellants do not own land parcel No. PR5617 or have any proprietary interest therein;
    - (c) declaring that the respondent is the sole owner of the land parcel;

- (d) notifying the Registrar General of the Order and ordering the latter to rectify its records to reflect that the respondent is the sole owner of the land parcel and that the appellants do not own the same or have any proprietary interest therein; and
  - (e) ordering the appellants to jointly and severally pay costs.
- (6) After a contested hearing, the Supreme Court made a number of findings which are reproduced verbatim below:

- “(i) The POA does not grant specific authority to the 1<sup>st</sup> defendant (now first appellant) to sell parcel PR 5617. However, previous sales of other properties using the same POA were validated by the plaintiff (now respondent). He received payments which were accepted. He never objected to the sale of any of the other properties. In fact, one of the main reasons for the POA was for development of the land parcels for sale. Actually this was the modus operandi between the brothers. On that basis, I opine that the 1<sup>st</sup> Defendant (appellant No. 1) could in fact sell to himself and the 2<sup>nd</sup> Defendant (appellant No. 2);*
- (ii) The 1<sup>st</sup> Defendant could transfer land parcel on himself and the 2<sup>nd</sup> Defendant provided that full and adequate consideration was paid;*
- (iii) The Defendants did not prove to the satisfaction of this Court that any consideration was paid and there was no evidence that there was a set-off on the consideration for sums allegedly owed to the 1<sup>st</sup> Defendant. Further, the Defendants did not discharge the necessary burden of proof that he was granted a half interest in all or any of the Plaintiff’s properties;*
- (iv) The Plaintiff was aware that the Defendants had acquired parcel PR 5617 since he visited the properties (including PR 5617) when the Defendants were constructing their house. He did not object to that. Therefore, I conclude that since no objection was expressed, he acquiesced to the Defendants buying the property. In that sense there was no need to inform him of same.*

- (v) *Construction of the road access to the properties were paid from the proceeds of the sale of the properties. The Defendants could not prove that they personally incurred such expenses; and*
  - (vii) *In failing to pay valuable consideration for the PR 5617, the 1<sup>st</sup> Defendant did not act in the best interest of the Plaintiff as he was required to do so under the POA.”*
- (7) The Court then stated the following at paragraph 35 of its judgment:
- “[35] The Court enters judgment for the Defendant (sic) but makes the following orders; (sic)*
- “(i) Land parcel 5617 shall remain registered in the names of the Defendants but the Defendants shall pay to the Plaintiff adequate and valuable consideration for the land;*
  - (ii) The Plaintiff shall communicate to the Defendants the value of the property within a month of this judgment. If the value of the property is disputed, the Plaintiff shall immediately appoint an appraiser to value the property and the cost of such appraiser shall be borne equally by the Defendants. For avoidance of doubt the house of the Defendants sitting on the PR 5617 shall not be included in the price; only the land value shall be included in the consideration;*
  - (iii) The consideration shall be paid within 4 months after communication of the sum to the Defendants. In the event that an appraiser is retained, the date of payment of the consideration shall run from the date that the Plaintiff communicates to the Defendants the sale value of the property;*
  - (iv) The fees of such appraiser shall be borne by the Plaintiffs (sic) and the Defendants equally within 2 weeks of him submitting his report and the event that the appraiser seeks a part payment prior to the commencement of such works, such sum shall be paid by the parties equally;*

(v) *interest at the legal rate shall accrue to the final consideration in the event of late payment; and*

(vii) (sic) *Parties shall bear their own costs.*”

### **Ground 3**

3. The appellants appealed against the judgment of the Supreme Court on 6 grounds, but, in the skeleton heads of argument filed on their behalf, they indicated that they would only proceed with ground 3 and were abandoning all the other grounds.
4. Ground 3 is reproduced below:  
  
“The learned Judge failed to find that the transfer was not duly paid for.”
5. If one were to construe ground 3 as drafted, it should be dismissed straightaway as it is alleged thereunder that the learned Judge did not find that the transfer was not duly paid for, when clearly this is the opposite of what was found by the learned Judge.
6. Learned Counsel for the appellants indicated that the ground of appeal was drafted by the appellants who are lay persons to explain the above. In addition, when one reads the skeleton heads of argument of the appellants, in particular paragraph 2.3 of the skeleton heads of argument, where the appellants expressly state that they are challenging the trial judge’s finding and order that the appellants pay the respondent adequate and valuable consideration for Parcel PR 5617, it becomes obvious that, in effect, what the appellants are contending is that the learned Judge was wrong to have found that they had not paid for the land parcel transferred to them.
7. Learned Counsel for the appellants referred to a number of cases on the contents of pleadings and submitted that the pleadings disclosed a single cause of action which was based on the invalidity of the act of the first appellant who was not authorised under the POA to sell and transfer land parcel PR 5617 into his name and not on a breach of contract. He sought to buttress his contention by relying on the prayers sought by the respondent which were to declare that the sale and transfer of parcel PR 5617 to the appellants was null and void and that of recognising the respondent as the sole owner of the land parcel.

8. He contended that although paragraph 5 of the plaint alleges non-payment of the purchase price of SR 300,000, this was pleaded in passing and not as the foundation of the claim.
9. He referred, *inter alia*, to section 71(d) of the Seychelles Code of Civil Procedure, paragraph 18/7/5 of the Supreme Court Practice 1979 of England, and to the cases of **Gallante v Hoareau [1988] S.L.R 122**, **Marie-Ange Pirame v Armano Peri SCA 16 of 2005** and **Tirant & Anor v Banane [1977] 219** in support of his contention that the question of payment for the transfer of the land parcel was not an issue that should have been determined by the trial court.
10. Section 71(d) of the Seychelles Code of Civil Procedure and paragraph 18/7/5 of the Supreme Court Practice 1979 of England as well as the relevant extracts of the cases referred to above on which learned Counsel for the appellant relied are set out below.
11. Section 71(d) of the Seychelles Code of Civil Procedure reads as follows:
 

*“71. The plaint must contain the following particulars:*

  - (a) ...*
  - (b) ...*
  - (c) ...*
  - (d) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action;*

*...”*
12. Paragraph 18/7/5 of the Supreme Court Practice 1979 of England provides:

*“18/7/15 [All] Material Facts – The general rule is thus stated by Cotton, L.J., in Philipps v P., 4 Q.B.D p. 139: - “In my opinion it is absolutely essential that the pleading, not to to be embarrassing to the defendants, should state those facts which will put the defendants on their guard, and tell them what they have to meet when the case comes on for trial.” The word ‘material’ means necessary for the purpose of formulating a complete cause of action; and if any one ‘material’ statement is omitted, the statement of claim is bad’ (per Scott. L.J., in Bruce v. Odhams Press Ltd. [1936] 3All E.R. at p. 294)” ...”*

13. The extract of **Gallante v Hoareau [1988] S.L.R. 122** to which Counsel referred reads as follows:

*“the function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the Court will have to adjudicate in order to determine the matters in dispute between the parties”*

14. Counsel underlined that in **Marie-Ange Pirame v Armano Peri SCA 16 of 2005**, the Court stated that:

*“this Court did state (in CA 8/87) inter alia that – evidence outside the pleadings although not objected to and the relief not pleaded for, cannot and does not have the effect of translating the said issues into the pleadings or evidence. Indeed we should reiterate here that the above quoted views of this Court still remain to be good law.”*

15. He also highlighted that, in **Tirant & Anor v Banane [1977] 219**, the Court underlined that :

*“In civil litigation each party must state his whole case and must plead all facts on which he intends to rely, otherwise strictly speaking he cannot give evidence of them at the trial. The whole purpose of pleadings is so that both parties and the Court are made fully aware of all the issues between the parties. ...”*

16. I understood the submissions of learned Counsel for the appellants to mean that the question of non-payment for the transfer of the parcel was not part of the pleadings and therefore the Court should not have adjudicated thereon.

17. However, as rightly pointed out by learned Counsel for the respondent, it was specifically averred at paragraph 5 of the plaint that the purchase price for the transfer was never paid. In addition, I note that the appellants denied paragraph 5 of the plaint and never averred that it was irrelevant, but on the contrary alleged that the sale was for valuable consideration in the form of an access road built by the first appellant without which road, the property would not have been accessible or have had any value.

18. More importantly, I note that the first appellant deposed regarding the building of the roads and the second appellant testified that she worked for over 20 years for which she should have been paid SCR 4.5 to 4.6 million and other than her service for the plaintiff, she gave the respondent SCR 300,000 from her own accounts.
19. The above clearly shows that the issue as to whether there was any consideration was raised in the pleadings and that evidence in that regard was adduced before the trial court both by the appellants and the respondent.
20. As rightly pointed out by learned Counsel for the respondent, the case of **Pirame** is inapplicable in the present case as the said case concerned evidence outside the pleadings. In so far as the above extract from case of **Tirant** is concerned, it in fact supports the case of the respondent since, as can be gleaned from the pleadings and the evidence on record, the respondent had pleaded the issue of non-payment of the purchase price and adduced evidence to that effect. In the circumstances, the learned Judge was perfectly entitled to consider the said issue and to rule thereon.
21. Coming back to ground 3, it is important to reiterate that under the said ground the appellants are challenging the learned Judge's finding that the transfer was not duly paid for. It is important to recall that the learned Judge made the following findings: he concluded that the first appellant could sell the land parcel to the appellants provided that the latter paid full and valuable consideration for the land parcel to the respondent. The learned Judge also rejected the evidence of the first appellant that it owned half interest in the land parcel. Regarding the payment, he found that the appellants had failed to prove that there was any set-off of the purchase price due by the appellants to the respondent by the salary owed to the second appellant by the respondent or the construction of the roads by the first appellant.
22. Under ground 3, the appellants are challenging a finding of fact which was made by the trial Judge after hearing the witnesses. I have perused the record and do not find anything suggesting that the learned Judge's assessment of the witnesses to be in any way perverse. Moreover, learned Counsel for the appellants has not drawn the attention of this Court to any contradiction, incoherence or inconsistency in the evidence of the respondent, nor did the Court come across any when perusing the court record.

23. The trial court was best placed to assess the veracity and reliability of the testimony of the witnesses who deposed given that it had the advantage of seeing and hearing them. The trial court remains sovereign in its appreciation of the evidence adduced and its assessment of witnesses called during the proceedings. The advantage that the trial court has over an appellate court, with respect to the assessment of witnesses will only be interfered with on appeal if, on the face of the record, the assessment is found to be perverse.
24. In the present case, there is no averment of perversity against the judgment. Further, the appellants have failed to show how the said finding, which is based on an appreciation of the facts and of the credibility of witnesses who deposed before the trial court, is wrong. In this regard, I find it relevant to refer to the following oft-quoted extract from the case of **Benmax v Austin Motor Co Ltd (1955) 1 All E.R. 326:-**

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

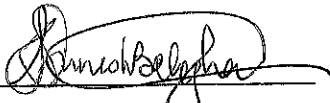
25. In light of the above, I find no merit in ground 3 which is accordingly dismissed.

***Ultra petita***

26. Learned Counsel for the appellants submitted in his skeleton heads of argument and in Court that the learned Judge acted *ultra petita* by making the orders referred to at paragraph 35 of the judgment as the said prayers were never sought by the respondent.
27. The question of the orders made by the Supreme Court being *ultra petita* were not raised as a ground of appeal. On being questioned in this respect by the Court, learned Counsel for the appellants stated that the said issue was raised under ground 3. I must express surprise, to say the least, at the reply of learned Counsel for the appellants. I have read and re-read ground 3; the said ground as drafted cannot by any stretch of the imagination be construed as challenging the judgment on the ground that the prayers granted by the Supreme Court were *ultra petita*.
28. Rule 18(8) of the Court of Appeal of Seychelles Rules, 2023 expressly provides that the appellant shall not, without leave of the Court, be permitted, on the hearing of an appeal, to rely on any grounds of appeal other than those set forth in the notice of appeal.
29. Rule 18(8) has been the subject of judicial scrutiny in numerous cases (See: **Machinery and Equipment Limited v Cousine Island Co. Ltd – [2023] SCCA 13**; **Mountain View Investment Pty Ltd v Pomeroy – [2023] SCCA 50**; **Commercial House One (Seychelles) Ltd v Eden Island Development Company Ltd and Anor (SCA 29/2023) [2024] (Arising in CS 98/2022)(3 May 2024) – [2024] SCCA 3**; **Vijay Construction (Proprietary) Limited v Eastern European Engineering Limited – [2022] SCCA 57**; **Zialor v R – [2017] SCCA 105**; **Nicette v Marimba – [2022] SCCA 17**; **O’Nivo Construction (Pty) Ltd and Anor v Bijoux and Anor – [2021] SCCA 35**; **Confait & Anor v Port- Louise and Anor – [2021] SCCA 39**; **Hunt v Hunt – [2025] SCCA 9**; **Petrescu v Illescu – [2023] SCCA 21**; **Ahmed v Republic – 2025-12-15**; **Re Ailee Development Corporation and The Companies Act 1972 – [2010] SCCA 1**; **Bordino and Anor v Government of Seychelles – [2022] SCCA 76**; **Small Enterprise Promotion Agency & Anor v Kankan Limited – [2022] SCCA 45**). If there was any doubt as to the purport of Rule 18(8), this has been laid to rest by the cases decided by this Court. For example, in **Vijay Construction (Proprietary) Limited v Eastern European Engineering Limited – [2022] SCCA 57**, this Court observed that Rule 18(8) simply means that it is permissible for an appellant to amend his grounds of appeal provided leave

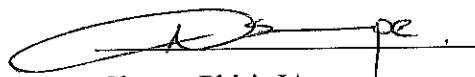
is sought and granted. Where a party seeks to amend his grounds of appeal and it is unopposed, the Court may very well allow the proposed amendment, but where the proposed amendment is opposed, the Court has a residual discretion to determine whether it is satisfied that it is in the interest of justice to grant the amendment.

30. In the present case, leave of the Court was not sought before raising the above ground which was raised for the first time in the skeleton heads of argument. I am not prepared to condone this surreptitious attempt by the appellants to raise a new ground.
31. Since the only ground of appeal raised by the appellants has failed, the appeal is dismissed, with costs.
32. For the avoidance of doubt, the delay of one month referred to under paragraph (ii) of the judgment of the Supreme Court shall run from the date of this judgment and the parties shall each bear their own costs before the Supreme Court, but the appellants shall bear the costs of this appeal.



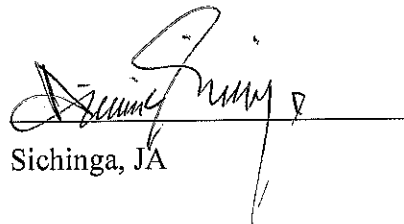
Gunesh-Balaghee, JA

I concur:



Sharpe-Phiri, JA

I concur:



Sichinga, JA

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