IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2026] (27 April 2026)
SCA 28/2025
(Arising in MC 36/2024)

In the Matter Between

Daniel Donald Payet
(rep.by Mr. Guy Ferley)

Appellant

v/s

Gregoire Christian Payet
(rep.by Ms. Edith Wong)

Respondent

Attorney General as Ministere Public
(rep. by Mr. Vinsent Perera and Mr. Adam Afif)

Neutral Citation: *Payet v Payet* (SCA 28/2025) [2026] (Arising in MC 36/2024) (27 April 2026)

Before: Gunesh-Balaghee, De Silva, Sharpe-Phiri, JJA

Summary: *Application for an Order of Interdiction under 489(1) of the Civil Code of Seychelles Act, 2020; The proper test for granting of an interdiction; A Court is not bound to rely exclusively on medical expert evidence.; The appointment of Provisional Guardian pursuant to 497(1) of the Civil Code.*

Heard: 15 April 2026
Delivered: 27 April 2026

ORDER

The decision of Judge D. Esparon of 31 October 2025 is hereby set aside. An interdiction of the respondent is granted and the matter remitted back to the Supreme Court for the appointment of a Guardian in respect of the respondent. A Provisional Guardian is appointed pending the appointment of a Guardian by the Supreme Court. No order as to costs.

JUDGMENT

SHARPE-PHIRI, JA

(Gunesh-Balaghee JA, De Silva JA, concurring)

Introduction

1. This appeal arises out of civil proceedings instituted by Daniel Donald Payet ('the appellant') in the Supreme Court of Seychelles, wherein he sought an order of interdiction pursuant to *Article 489(1) of the Civil Code, 2020, (hereafter 'the Civil Code')* together with the appointment of a guardian in respect of Gregoire Christian Payet (hereinafter 'the respondent').

2. Following deliberations, the learned Justice D. Esparon in his judgment of 31 October 2025 dismissed the application, holding that the respondent's mental and physical faculties had not deteriorated to such an extent to render him incapable of freely expressing his will.

The background

3. The respondent is an 86-year-old businessman of established repute residing in La Digue, Seychelles. He is suffering from Parkinson's disease, a neuro degenerative condition. He is divorced from his former wife, with whom he had five children, Christine Daniella, Brigitte Lucy, Jacqueline Lydvine, Pascal Gregoire, and Daniel Donald, the appellant. He is the majority shareholder of Gregoire Company Limited, which operates a hotel and shopping complex. The respondent and his Company own several immovable properties in La Digue Island.

Proceedings in the Supreme Court

Petition & Affidavit for Interdiction

4. On 11 July 2024, the appellant commenced an action (MC36/2024) in the Supreme Court by way of Petition supported by affidavit evidence attesting that the respondent is afflicted with a progressive neurodegenerative condition. This condition has rendered him immobile, nonverbal and totally reliant upon professional carers for his personal care. Further that the children have limited access to the respondent and have restricted communication with him as he is unable to speak on phone.

5. The appellant further deposed that such severe mental and physical infirmity has incapacitated the respondent from managing his person and property, thereby warranting an order of interdiction for his protection.

6. The appellant further deposed that the respondent's incapacity was evident during prior matrimonial property proceedings (***Rita Pointe v Gregoire Payet DC 16/2021)*** ('divorce case'), where he participated via video link and sought to adduce evidence by rogation due to speech impairment. The appellant sought: (i) an order of interdiction of the respondent; (ii) medical examination of the respondent by a court-appointed practitioner; and (iii) appointment of himself or another suitable person as guardian of the respondent.

Reply & Affidavit in opposition

7. In the reply filed on 25 September 2024 by Ms. Wong, the respondent's counsel, she challenged the Petition's legal basis, the appellant's standing as guardian under Article 435(1)(c) of the Civil Code, and his good faith. Counsel confirmed that the respondent had applied to give evidence by rogation in the divorce proceedings given his inability to speak. She further asserted that the respondent's condition was not a recent development or new revelation to the appellant and that the petition was actuated by bad faith.

8. In response to paragraph 5 of the Petition, wherein it was alleged that the respondent's mental and physical infirmity rendered him incapable of safeguarding his interests, counsel for the respondent accepted the underlying condition but averred that the respondent has adequately provided for his own care through his companion, Ms. Marguerite Payet and two professional carers. While conceding the respondent's dependence thereon, counsel denied necessity for formal interdiction.

9. The respondent's counsel further contended that the appellant had adduced no credible evidence of any instances in which the respondent had manifested incapacity to manage or administer his own property. Counsel emphasised that, since 15 September 2020, the respondent had granted a licenced and reputable accounting firm, ACM & Associates

Pty Limited, a power of attorney over his business affairs, thereby ensuring competent handling of his financial decisions. This arrangement, it was submitted, obviated any necessity for interdiction, given the availability of trustworthy professionals to oversee his assets.

10. In his supporting affidavit, sworn by the respondent, he deposed that the appellant and his siblings had caused him distress during their last visit, prompting him to direct his counsel to prohibit any further contact. The respondent disputed the appellant's good faith in advancing the petition. He further alleged that these proceedings were launched solely in the wake of his rogation application in the divorce suit against the appellant's mother, actuated by ulterior motive of assuming control over his assets.

11. The respondent disputed the necessity of interdiction, averring that he is adequately supported by: (i) his efficient and capable companion, Ms. Marguerite Payet, together with two carers, who attended to his health and daily needs; and (ii) a power of attorney, granted to a reputable and licenced audit firm, ACM & Associates Pty Limited, which diligently executed his directives to ensure the seamless management of his businesses and assets. Counsel emphasised that delegation predated the petition by several years, thereby rendering superfluous any guardianship.

12. The respondent relied upon the medical report adduced in his rogation application within the divorce proceedings, wherein a qualified medical practitioner had certified his mental competence to take decisions independently, rendering guardianship unnecessary. That report, it was submitted, diagnosed solely an impairment of speech, insufficient, per se, to warrant interdiction. Reiterating his opposition, the respondent characterised the petition as frivolous, vexatious, and actuated by bad faith, and requested its dismissal with costs awarded in his favour.

13. At the initial hearing, Ms. Wong, the respondent's counsel raised preliminary issues: (i) defective legal basis; (ii) appellant's disqualification to act as guardian of the respondent pursuant to Article 435(1)(c) of the Civil Code but upheld the appellant's *locus standi*, to bring his Petition; and (iii) bad faith.

14. By ruling dated 7 February 2020, the learned Judge dismissed the first point of law; upheld the second issue on the appellant's qualification and reserved the third issue of bad faith for consideration with the petition. The Judge also ordered the Health Care Agency to appoint an expert to examine the respondent's condition and whether the respondent should be interdicted.

15. The petition proceeded to trial, wherein seven witnesses testified before the Court, namely:

(i) Mr. Daniel Donald Payet, on 4 March 2025 shown at pages 198-249 of the brief;
(ii) Ms. Nathanielle Siflore, on 17 April 2025, at pages 301-326;
(iii) Mr. Gregoire Christian Payet, on 31 March 2025, shown at pages 259-286;
(iv) Mr. Jean Marie Moutia on 12 June 2025, shown as pages 386-423;
(v) Dr. Josapha Jounneau, on 12 June 2025, shown at pages 363-385;
(vi) Dr. Grisel Iglesias Acosta on 24 June 2025, shown at pages 426-459;
(vii) Dr. Thomas Edo on 25 June 2025, shown at pages 447-459 thereof;

16. In closing, counsel for the appellant submitted that the respondent was afflicted with advanced Parkinson's disease, occasioning immobility, wheelchair dependence and incoherent speech. It was contended that these impairments rendered him vulnerable and incapable of managing his substantial business interests or personal affairs. Counsel urged the Court to draw inferences from its direct observations of the respondent, who was confined to a wheelchair, exhibited largely unintelligible mutterings, and communicated principally via hand signals.

17. Counsel elaborated that the respondent's extensive business interests, encompassing a major hotel and significant immovable properties, were managed by unrelated third parties (ACM & Associates), absent family oversight, thereby exposing him to potential abuse. Reference was made to Mr. Moutia's testimony, affirming that his firm oversaw the respondent's hotel under a power of attorney to which Mr. Moutia is connected, who, moreover, held shares and directorship in an entity that had procured a 20% stake in the respondent's company, Gregoire's Company Limited.

18. Counsel for the respondent acknowledged the respondent's physical limitations while affirming the integrity of his mental faculties. It was submitted that he enjoyed proficient care from professional carers and a companion, and had, years antecedent to the petition, deliberately conferred a power of attorney on ACM & Associates, to administer his business concerns.

19. Counsel for the Attorney General, intervening, submitted that severe physical impairment per se does not warrant interdiction where the subject retains capacity to comprehend relevant matters and convey his wishes to others. He stressed that interdiction is a measure of last resort.

Decision of the Supreme Court

20. On 31 October 2025, the learned Judge Esparon delivered judgment on the appellant's petition for the interdiction of the respondent. The core issue turned on *whether, by reason of his mental or physical condition, the respondent was incapable of managing his personal interests or discharging his family duties, thereby warranting interdiction pursuant to Article 489(1) of the Civil Code of Seychelles Act, 2020.*

21. After considering the parties' submissions, the Judge declined to grant the order for interdiction and dismissed the petition with costs. His reasoning for holding so was founded on consideration of the following evidence:

(i) Expert/Medical evidence: The Court established that the specialist psychiatric testimony from one Dr. Acosta indicated that the respondent has severe physical limitations due to Parkinson's disease, but is mentally oriented, showed no impairment of judgment, capable of expressing his will and making important decisions. That, while he had difficulty speaking, he could communicate logically with effort. Dr. Edo, on the other hand, initially noted signs of cognitive impairment, but conceded that the respondent could give simple 'yes' or 'no' answers and gestures;

(ii) Judicial interrogation: During a direct interrogation by the Court, the respondent demonstrated an understanding of his business' affairs, expressed clear distrust of his children (including the appellant), and confirmed his trust in his current managers, carers and companion;

(iii) Existing protections: The Court noted that the respondent had already taken steps to protect his interests by appointing professional managers (ACM & Associates), and having a dedicated companion and carers; and

(iv) Legal threshold: Applying Article 489(1) of the Civil Code of Seychelles Act, the learned Judge was of the view that the law requires a person to be unable to look after their interests. That, the respondent's ability to provide verbal and gestural instructions to those he trusts, proved that he was still in control of his affairs.

22. The learned Judge Esparon, thus, made the following pronouncements in his holding:

(i) *It is clear that the Court cannot make a determination on the issue of whether to interdict a person without relying on medical expert evidence. Although I find that Mr. Moutia was not a credible witness before the Court, in view of his evasiveness when asked when Mr. Gregoire Payet last gave him verbal instructions, when he was asked about whether Mr. Payet can manage his business by himself, or whether he can feed himself using his hands, when the last time he signed cheques personally. Furthermore, the fact that while holding a power of attorney, certain land was transferred to his brother-in-law as well as shares in the company to another company, of which he holds shares in, although he maintained he would only do so with instructions of the respondent.*

(ii) Although the above being said, as a result of the medical expert evidence in the matter especially Dr. Grisel Iglesias Acosta and Dr. Edo which does not differ much from Dr. Grizelle, this Court is bound by the opinion evidence of the said medical experts. Although, I have great sympathy for the relatives and children of the respondent in seeing their father suffering from Parkinsons disease affecting

his mobility, ability to speak properly and suffering from certain cardiac conditions, this Court is duty bound to apply the law to the facts of the case and shall take into consideration only the paramount best interest of the respondent and no one else.

(iii) This Court is of the view that as a result of the expert medical opinion evidence available in the present matter, from this Court's own observation during the interrogations of the respondent, this Court does not find that there has been any alteration of the respondent's mental faculties nor any alteration of the physical faculties to such an extent that prevents the respondent from expressing his will so that there is no need to interdict the respondent.

(iv) As a result of the Court's findings above, I decline to grant the order of interdiction sought in the petition against the respondent and accordingly dismiss the petition with costs.

The Appeal

23. Dissatisfied with the judgment of the lower Court of 31 October 2025, the appellant appealed to this Court, advancing five grounds:

1. The learned Judge erred in law in its finding that the court is bound by the opinion evidence of the medical experts only, when the law, section 493(1) of the Civil Code provides that the court may interrogate the respondent or cause the respondent to be interrogated by a person appointed by the court, which clearly signifies that the court is not bound to rely on medical evidence only.

2. The learned Judge erred in its conclusion that there has been no alteration of the respondent's mental faculties nor any alteration of his physical faculties to such an extent that prevents the respondent from expressing his will, when the court recorded its own observation as, "that the respondent had difficulty to speak properly whereby he answered the majority of questions with yes or no, sometimes mumbling and doing sign language."

3. *The learned Judge erred in his finding that the evidence of Dr. Grisel Iglesias Acosta and Dr. Thomas Edo did not differ, which led him to conclude that he was bound by their expert evidence, when the evidence of the two medical officers completely contradicted each other.*

4. *The learned Judge erred in finding that the respondent could clearly express his wishes to Mr. Moutia of ACM Associates with respect to the management of his business when he did not find Mr. Moutia a credible witness before the court in view of his evasiveness when asked when did Mr Gregoire Payet give him verbal instructions, when he was asked about whether Mr. Payet can manage his business by himself, or whether he can feed himself using his hands.*

5. *The learned Judge erred in not distinguishing cases from the Court de Cassation, he relied on, from the present case in that in the Cour de Cassation cases, the respondent could, despite physical handicap, clearly express their wishes, whilst the respondent could not do so because of inability to speak or write.*

24. Heads of argument were filed by the appellant on 11 March 2026, the respondent on 26 March 2026 and the Attorney General on 9 April 2026. I have duly considered the parties' respective submissions and cited authorities, for which I am obliged.

25. The appeal came up for hearing on 15 April 2026. Counsel for the appellant formally withdrew Ground 1, which accordingly stands abandoned and falls for no consideration. Grounds 2 and 5 will be addressed together, prior to Grounds 3 and 4.

Ground 2 and 5

26. Ground 2 raises the question of whether the trial Judge erred in concluding that the respondent's mental and physical faculties remained unimpaired to the point of preventing expression of will, notwithstanding the court's own recorded observation that the respondent exhibited significant speech difficulties, responding mostly with "yes" or "no," mumbling, and resorting to sign language.

27. The appellant submits at paragraph 2.2 of his skeleton heads that the learned judge contradicted himself by finding no alteration of faculties while simultaneously recording that the respondent '*had difficulty speaking properly, whereby he answered the majority of the questions with a yes or no, sometimes mumbling and doing sign language.*'

28. Counsel for the appellant also submitted orally that the transcript of the court interrogation shown at pages 262 to 280 of the brief demonstrates that the respondent could not express his wish clearly, save for indicating *yes* or *no* by hand gestures or nodding of his head. Counsel referred to page 261, showing how the respondent did not take an oath.

29. Mr. Ferley drew our attention to the record which shows what Mr. Afif stated: *"My Lord, I think despite the words not coming out of his mouth, I think it was clear that he understood what was being said, but he physically wasn't capable."* And the Court states: *"So we would give an unsworn – we'll give an unsworn statement."*

30. Mr. Ferley further submitted that, clearly the Court determined at the onset the respondent's inability even to take an oath in the proceedings. The issue of his capacity to speak, which he could not, was confirmed by the respondent's own witness, Mr. Moutia. He highlighted Mr. Moutia's evidence (page 492) that the respondent could neither speak nor write, being restricted to mumbling and sign language. He further added that even Dr. Acosta confirmed that the respondent was only able to communicate with her after she administered medication.

31. Counsel added that it is common cause, or at a minimum conceded by the respondent in his skeleton arguments, that he is physically incapable of speaking or writing. That the respondent's inability even to take the oath is manifest, as is his accepted incapacity to speak. The respondent never manifested his will voluntarily; responses were invariably elicited by yes/no questions from others, which cannot constitute a true expression of volition.

32. Counsel emphasised that the core issue transcends mere adequacy of care, which the appellant contests, asserting sound management of the respondent's affairs via powers of attorney held *inter alia* by ACM & Associates and Mr. Moutia (a witness). He stated that Guardianship serves to safeguard the ward's person and property, imposing stringent statutory duties under Article 391 – 510 of the Civil Code. The ward becomes a *ward of court*, with the guardian accountable to the Court for all dealings.

33. Counsel for the appellant submitted further that the proceedings disclose dispositions at page 402. It reveals that the property of the respondent was transferred by a holder of a power of attorney to his brother-in-law, and at pages 414–415, it reveals that a new company was incorporated wherein power-of-attorney holders acquired 20% shares of the respondent's Company Limited.

34. In response, the respondent Counsel contended in relation to Ground 2 that the trial Judge did not err in finding that the respondent was able to express his wishes, especially relying on the conclusions of Ministère Publique (page 42) and Dr. Acosta (pg 447) who both stated that the respondent was able to understand the questions being put forward, and was able to answer, albeit with difficulty, and with gestures and pointing.

35. Counsel submitted that the crux of the matter was whether the respondent was able to manage his affairs. She stated that although the respondent suffers from Parkinson's disease, and had physical limitations, all the doctors had confirmed that he was in good physical state for a person afflicted by the disease, and she maintained that he was still able to manage his affairs.

36. The Attorney General, on the other hand, submitted that there is no such contradiction. That the learned Judge acknowledged the respondent's physical limitations, his difficulty in speaking, and his reliance on gestures. But found that these limitations did not prevent the respondent from expressing his will.

37. The Attorney General placed reliance on the tetraplegia case in **Cour de cassation Première chambre civile, 12 juin 2025, n° 24-12.767**, at paragraph 14 of his heads. In that French case, a woman with complete paralysis of all four limbs, who could only communicate by using a helmet with a metallic pointer operated by head movements to type on a keyboard (and even that required a third party to install the equipment), was found to be capable of expressing her will. The Cour de Cassation quashed the Court of Appeal's order maintaining the protective measure, holding that the alteration of her physical faculties was not of a nature to prevent the expression of her will, since, equipped, even by a third party, with adequate IT equipment, she could express herself.

38. The question in Ground 5 is whether the trial Judge erred by failing to distinguish the case from the Cour de Cassation from the present case, wherein in that case, the respondent, despite physical handicap, retained clear capacity to express wishes, from the instant case, where the respondent lacked the ability to speak or write effectively.

39. Counsel stated that in the authority cited by the Court concerned a person subject to interrogation who expressed her wishes via equipment affixed to her skull, reminiscent of the late Professor Hawking's speech synthesiser, enabling clear communication. Counsel contended, that the respondent, by contrast, lacks any such assistive technology. At most, medication administered by a doctor permits minimal speech. Counsel said that this matter is plainly distinguishable: the cited case involved machine-mediated articulation whereas the respondent relies on mumbling, gestures, or sign language. No evidence establishes expertise in sign language among those surrounding him, including his nurses, companion or Mr. Moutia.

40. Ground 2 is the most significant ground of appeal and goes to the heart of the legal question. It challenges the learned trial Judge's conclusion that the respondent's condition did not meet the statutory threshold for the grant of an interdiction under *Article 489(1) of the Civil Code.*

41. Judicial interdiction is a protective measure directed at persons who lack sufficient discernment to safeguard their own interests. In Seychelles, it constitutes a civil law mechanism by which the Supreme Court may formally deprive an adult of full legal

capacity, thereby placing that person in a legal position broadly analogous to that of a minor, with decision-making authority transferred to a court-appointed guardian.

42. An interdiction operates as a protective legal mechanism designed to safeguard individuals who are unable to manage their own affairs. Its rationale is anchored in the foundational principle that full legal capacity is the default condition of adulthood. The dual scope of interdiction - extending to both the person and the property of the ward - reflects a recognition that incapacity may prejudice the ward in two distinct dimensions: personal welfare (e.g., healthcare decisions, living arrangements) and patrimonial interests (e.g., management of assets, performance of contracts). The appointment of a guardian under Article 415 is the mechanism by which protective oversight is activated in both dimensions simultaneously.

43. Article 489(1) provides that an adult may be interdicted where "*because of a mental or physical condition or otherwise,*" the person is "*unable to look after his or her own interests or properly fulfil family obligations.*" This provision expressly extends the protective regime beyond mental incapacity to include physical conditions, reflecting a legislative intention to address forms of vulnerability that may impede a person's ability to function, even in the absence of cognitive impairment.

44. Under the current provision, the inquiry is no longer whether the person falls within a recognised category of incapacity, but whether, as a matter of fact, the person is unable to manage his or her affairs. The emphasis is thus placed on the consequences of a condition rather than its classification. A diagnosis, whether mental or physical, is not determinative. What is required is an assessment of the individual's actual ability to understand, decide, and act in relation to his or her interests. This assessment is not to be taken lightly.

45. As cautioned by CJ Twomey (as she then was) in **A.S v M.E & Anor (MA 317/2016) [2018] SCSC 347**, interdiction is "*a harsh remedy*", "*a kind of civil death*" by which "*the interdicted person's active legal role is taken over by a guardian.*" The same was held in the **Interdiction of Haggerty, 519 So. 2d 868, 869 (La. App. 4th Cir. 1988),** where the Louisiana Court of Appeals held that *"[a] judgment of interdiction amounts*

to civil death" and in **Doll v Doll 156 So. 2d 275, 278 (La. App. 4th Cir. 1963),** which equated judicial interdiction to *"a pronouncement of civil death"*. It follows that the threshold for its imposition must be applied with care.

46. In interdiction proceedings, the Court must carefully assess the respondents' capacity. The Court of Appeal in ***Belmont v Belmont (MC5/2015) [2020] SCCA 21 August 2020*** exemplifies this: mild cognitive impairment permitted some decision-making, requiring evaluation of the extent of incapacity, not its mere presence. The Court must be positively convinced that the respondent cannot manage personal affairs, through close examination of functional abilities. The focus must remain on the individual's functional ability to make decisions and manage affairs, assessed in a context-specific and evidence-based manner.

47. As aforementioned, the central issue that falls for consideration under this ground is: *whether the respondent's condition does not meet the statutory threshold for an interdiction under* ***Article 489(1) of the Civil Code.***

48. I have closely examined the evidence on record in relation to the respondent's mental and physical faculties to manage his affairs.

49. The evidence of the appellant, ***Daniel Donald Payet*** was that *his father's condition has deteriorated a lot. He needs virtually 24-hour care. He needs care of his personal needs, washing, bathing, and going to the toilet. His father cannot walk on his own unaided. He cannot speak and he needs full-time care.* (pg 201, lines 11-14). When asked further whether the witness meant medical care or full-time care, he responded: *"medical care and care with his physical needs and everything he needs to do, like when he needs to go to the toilet.* He elaborated further that this father *needs care to be able to eat, he needs someone to assist because he cannot hold a spoon to eat. He needs full bodily care...* When asked if he believes his father could, in this condition, manage his personal and business affairs, he responded: *"I don't think so."* (pg 208, line 5).

50. The witness also stated that when he last saw his father, *he felt very sorry for him, because he didn't think he was comfortable.* He said *there was a pillow which they had*

to keep changing. He also added that *his father was dribbling and they had to constantly wipe his mouth.* Further, his father *was shaking, had no motor control of his own and could not move.* He said this *was patently obvious to me."* (pg 229, lines 18-21).

51. During cross examination of why he had asked for an interdiction of his father, he responded that: *"..if someone cannot sign, cannot give clear instructions, cannot move and had to be lifted like a baby and taken to the toilet,* they need to have a guardian appointed. *(pg 231.)* He went on to explain further in relation to his father's incapacity that: *there is a combination of things that made him incapable. His general mobility, his inability to do things, to stand up, to walk, inability to write, inability to speak. " (pg 235, lines 9-10).*

52. On being asked if these things alone were sufficient for an interdiction, the witness said: *he would say the interdiction is about his (respondent's) ability to do what a normal human being needs to do, as a man and a businessman.* He clarified that *it was not just about the respondent not being able to speak. It was a combination of things.* (pg 237.)

53. Daniel Payet also said *his father is vulnerable...whether he trusted the people around him was neither here nor there...there needed to be oversight of his father and his affairs.* He added that *the important thing was that his father gets a guardian and someone to look after his interests.*

54. A *locus in quo* was conducted on 31 March 2025. The Court moved to examine the respondent, Gregoire Christian Payet, on La Digue. The respondent was present along with his companion and carers. The interrogation is recorded at pages 260 to 280 of the brief and warrant close and careful analysis, for it is the record of the trial Judge's own direct observation of the respondent, and it is that record which renders the Judge's ultimate conclusion most difficult to sustain.

55. The interrogation began with the threshold question of the oath. The Court put three questions to the respondent to ascertain whether he understood the nature of giving testimony. The record reflects "Yes" to each of the three questions. However, the Court itself immediately noted for the record that the respondent *"has nodded and not exactly*

said yes, but he has nodded." (Page 261.) When Ms. Wong asked whether the Court was accepting the swearing, the Court replied: *"It's a bit difficult, yes."* Mr. Ferley observed: *"He did not confirm. There is no word that came out of his mouth and that's the observation of everybody."* The Court confirmed: *"Yes, for the record, no words came out of his mouth, but he tried to speak."*

56. The Court then enquired whether to proceed based on sworn or unsworn testimony, since it was *"not sure."* Mr. Afif resolved the uncertainty by observing: *"My Lord, I think despite the words not coming out of his mouth, I think it was clear that he understood what was being said, but he physically wasn't capable."* The Court accordingly proceeded based on an unsworn statement. (Page 261.) The significance of this exchange cannot be overstated: before a single substantive question was asked, the Court had already recorded that the respondent could not produce a single comprehensible word, could not confirm the oath, and could not do so not for want of understanding but because he was physically incapable of speech.

57. The substantive interrogation that followed confirmed and deepened that picture. The pattern that runs throughout, page after page, is the refrain: *"Witness trying to speak, but we can't understand."* The questions and responses merit careful examination by category.

58. On the management of his business affairs: when asked whether he had a person managing the hotel, the respondent could not produce a comprehensible answer. The Court supplied the name: *"Mr. Moutia, no?"*, to which Mr. Ferley objected: *"Judge, he is not saying anyone's name - he is just showing."* The Court acknowledged: *"Yes I am, but I am seeking his opinion."* (Page 263.) Even after the Court supplied the name, the respondent's response remained incomprehensible. When asked whether he had given Mr. Moutia the power of attorney, the respondent answered "Yes" - one of the few monosyllabic affirmatives in the record. When asked whether it was a general power of attorney, the response was again incomprehensible. (Page 263.)

59. When asked how many times per day Mr. Moutia came to see him, the respondent could not answer, and the Court resorted to offering numbers - *"3?"* and *"2?"* - to which the

respondent eventually responded with a nod or indication of three. (Page 264.) When asked whether he knew if Mr. Moutia complied with his instructions, and how he knew that, no comprehensible answer was forthcoming. (Page 264.) When asked directly how he gave Mr. Moutia instructions, the response was again incomprehensible. (Page 265.) When the Court then posed the most searching business question of the entire interrogation - *"if, for example, your business is in financial difficulties, let's say the hotel, Mr. Moutia has a general power of attorney: what would you tell him exactly?"* - the respondent could not speak. The Court recorded: *"Okay, was difficult to get the answer on this one definitely, I know it is a long question, but I tried obviously."* (Page 266.) No answer was given.

60. On his personal circumstances: when asked how long his companion had been living with him, the respondent could not answer. The Court offered a range of years - *"Is it 2 years, 3 years, 4 years, 5 years?"* - and then asked him to show with his hands. The record reflects that the respondent tried to show with his hands, but no figure was communicated with sufficient clarity for the Court to record it. Even the follow-up - *"More, more than 5 years?"* - produced no comprehensible response. (Page 266.) When asked how he directed his carers as to where he wanted to go, the response was incomprehensible. (Page 274.) When asked whether his companion would understand him if he wanted to visit one of his properties, and how he would tell her, the response was incomprehensible.

61. The Court noted: *"A bit difficult on this one, the Court will note."* (Page 275.) When the question was simplified to asking how he told her he wanted to go to the hotel, the response was again incomprehensible. The Court observed: *"Okay, it's a bit difficult, but..."* Mr. Ferley responded: *"It's not difficult."* The Court: *"Yes, very difficult."* Mr. Ferley: *"Impossible."* The Court then recorded: *"Yeah, very difficult to say. I see on his part, yeah, if he wants to visit the hotel, it is very difficult for him to communicate to say I want to go there - the way he is."* (Page 275.)

62. Amongst the few intelligible words produced in this line of questioning - and indeed in the interrogation - was the word "hotel," produced after the Court asked the respondent to say the word directly: *"Say hotel?"* The respondent answered: *"Hotel."* The Court

observed: *"He can say hotel - the word definitely."* (Page 275.) That single isolated word, produced in response to a direct prompt to repeat it, represents the high watermark of the respondent's verbal communication throughout the interrogation.

63. On questions calling for any information beyond a monosyllable: when asked whether the hotel had made a profit, the response was incomprehensible. (Page 277.) When asked whether he could read, the response was incomprehensible. (Page 273.) When asked how long he had known Mr. Moutia, the response was incomprehensible. (Page 271.) When asked whether he could express his will, the response was incomprehensible. (Page 268.) When asked whether, if someone were trying to fool him, he would be able to communicate that, the response was incomprehensible. (Page 269.) When asked whether he was comfortable having one person manage his whole estate, the response was incomprehensible. (Page 269.)

64. The questions to which the respondent produced a recognisable response were, without exception, simple yes/no questions to which the Court had already supplied the expected answer, or questions where the respondent pointed rather than spoke. He confirmed "Yes" that Mr. Moutia's manager reports to him on how much the hotel makes and that he understands when told. (Page 270.) He confirmed "No" - repeatedly and unequivocally - that he had not recently sold any property or land. (Page 270–271.) He confirmed "No" that he could not walk. He pointed to those behind him when asked who feeds him and who brought him to visit his properties. (Page 271.) He agreed with the Court's observation that he needs the help of not only one person but others. (Page 277.)

65. The Court concluded the interrogation with the following recorded observation: *"One thing he has agreed with us, that he needs the help of not only one person, but other persons. That he has agreed definitely."* (Page 277.) The Court deferred its assessment pending receipt of the medical reports.

66. The interrogation record, read as a whole, discloses a person who can nod, point, and produce isolated monosyllables in response to prompted binary choices, but who cannot independently articulate a single thought, cannot answer any question requiring more

than a yes or no, and cannot produce any communication that was not first structured and offered to him by another. The respondent could not explain how he gives instructions, could not say how long his companion had lived with him, could not say whether his hotel made a profit, could not say whether he could read, and could not say how he directs his carers. When the Court put to him its most direct and searching question - what he would tell his manager if the hotel were in financial difficulty - there was silence. That is the record that the trial Judge made.

67. The medical evidence of the three doctors was as follows: ***Dr. Josapha Jounneau*** rendered a report on 18 May 2025 (pages 78-79). He testified on 12 June 2025. His report - Exhibit C1 - confirmed that the respondent has a diagnosis of Parkinson's disease. The medical record notes that the respondent is said to have mumbled and blurred speech, making verbal interaction difficult.

68. In court, Dr. Jouanneau explained by way of context that his report constitutes a supporting statement to the primary assessment carried out on La Digue by Dr. Thomas Edo, his subordinate, and that his own role was to supervise and take ownership of that assessment at the primary healthcare level. (Page 368.) He confirmed that he had not physically seen the respondent himself, but that Dr. Edo had conducted the physical and mental assessment on site, and that it was on the basis of that assessment, and the physical barriers it revealed, that the decision was taken to involve a psychiatrist at a higher level of service. (Page 368.)

69. The doctor recorded that the respondent's Mini-Mental State Examination (MMSE) score was 12 out of 30, which he confirmed in evidence, indicates moderate cognitive impairment. However, he was careful to note that the MMSE has known limitations in patients with speech, motor or sensory impairments and that the speech difficulties had materially affected the score, as the respondent could not completely or thoroughly complete the assessment, given that several questions required a verbal answer which he was unable to provide. (Page 369; Page 375.) When pressed in cross-examination on what exactly was meant by mumbled and blurred speech making verbal interaction difficult, Dr. Jouanneau explained that mumbling and slurring of speech renders communication between two persons incomprehensible, that it is incomprehensible

what the other person is communicating. (Page 375.) He confirmed that these symptoms (slurring of speech) are consistent with Parkinsonian Dysarthria, a recognised complication of the disease that can significantly impact performance on the MMSE, particularly in the language and communication domains. (Page 369.)

70. Dr. Jouanneau was candid in cross-examination that he had deferred from making a definitive statement on capacity because there was ambiguity created by the speech impairment and because the case carried legal implications, making it more appropriate for a specialist to reach that conclusion. (Page 374.) In re-examination by Ms. Wong, Dr. Jouanneau confirmed without equivocation that the MMSE is not a foolproof test and has known limitations where a person has a particular illness, and that the decision to involve the psychiatrist was taken to give due intelligence to Mr. Payet, to ensure that experts in that domain conducted the assessment, given that the speech difficulty was a well-known limitation of the instrument being used. (Page 379.)

71. The doctor added that he had referred the respondent for further psychiatric assessment precisely because the instrument used could not, in the circumstances, accurately reflect cognitive capacity, and confirmed that the upcoming psychiatric evaluation was expected to provide a more accurate assessment of the respondent's cognitive function. (Page 370.) Dr. Jouanneau further recorded that the respondent's complex medical history, including Parkinson's disease, ischaemic heart disease, cardiomyopathy, cardiac arrhythmias with a pacemaker, and chronic anaemia, together with a PEG feeding tube and severely reduced mobility, made even travel from La Digue to Mahé medically burdensome, such that arrangements had to be made for the psychiatric specialist to travel to La Digue to conduct the evaluation locally. (Page 369.)

72. In evidence, he elaborated on the physical picture inferred from Dr. Edo's notes: the respondent is wheelchair-bound, requires a feeding tube inserted into his stomach, needs assistance with most activities a regular person would perform independently including showering, and presented at assessment with tremor, all entirely consistent with advanced Parkinson's disease. (Page 376.) When asked by Mr. Afif whether a person in such a condition, unable to walk and unable to talk properly, requires full-time care, Dr. Jouanneau answered without hesitation: *of course*. (Page 382.) When the

Court then put to him directly whether the law in Seychelles would contemplate interdiction in such circumstances, his answer was equally unequivocal: he do. (Page 382.)

73. ***Dr. Grisel Iglesias Acosta's*** report (Exhibit-C2) is dated 2 June 2025 shown at pages 83-85. Dr. Acosta testified on 24 June 2025. He is a specialist as both a general comprehensive doctor and a psychiatrist, with a master's degree in integral attention to women. Her expertise was not contested by either party. (Page 427.) She had seen the respondent on two separate occasions, spending almost two hours with him on each visit, both conducted at his home on La Digue. (Page 428, lines 9–10.) On her own account, she never attended alone; on the second visit, she was accompanied by the nurse in charge of her department, Nurse Marie-Anette Jean Baptiste, and she also had the instance of a Creole-speaking person present to eliminate any misunderstanding in translation. (Page 428, lines 24–28.) During cross-examination, Dr. Acosta confirmed that she does not speak Creole herself, and that whilst certain small words required assistance with translation, the conversation was kept mainly in English as she had told the respondent this was a legal procedure. (Page 481, lines 1–3.)

74. In her examination-in-chief, Dr. Acosta described the respondent as a man of 86 years with a history of Parkinson's disease whose motor ability is impaired—he cannot move—and whose language is also impaired due to the disease. (Page 428, lines 13–15.) She testified that *"he is talking with difficulty. He can talk – sometime he can talk more clear than another one. For that proposal, we use a pill when we want to stimulate his language a bit to understand a bit more what he's saying."* (Page 428, lines 17–19.) She explained that the medication used was Amantadine, a tablet with anti-Parkinsonian action that decreases rigidity and stiffness, and that after it was administered *"he was able to talk in a way that we could understand with a lot of efforts of course."* (Page 430, lines 15–18.) Crucially, she acknowledged that even this medically induced improvement in speech was not reliable: she testified that his voice *"is not clear all the time. Sometimes he's talking with a lot of effort, sometime he cannot talk."* (Page 430, lines 13–14.)

75. Regarding the respondent's cognitive state, Dr. Acosta testified that during her visits, he was well-oriented to time, place and person; that he had no evidence of memory impairment; that his thought processes were logical, if slow due to Parkinson's disease; and that his affective sphere was euthymic. The Mini-Cog assessment was administered in its spoken version, as the respondent's motor difficulties precluded written testing, and produced a score of 3. The Clock Drawing sub-test was omitted entirely due to motor difficulties. Dr. Acosta acknowledged the significant diagnostic challenge this presented, testifying that *"sometimes you need to make a mix between the tests and rely your examination also in your judgment because otherwise you won't be able to reach a proper diagnosis due to the limitation that Parkinson disease itself are propitiating in this patient."* (Page 429.)

76. When asked during examination-in-chief by the Court whether a person in the respondent's condition would be able to manage a substantive hotel business himself, Dr. Acosta's answer was carefully circumscribed: *"Himself, only with his Parkinson's disease, he is a person that is very limited physically due to his Parkinson's disease, but me as a psychiatrist, I cannot say that he has a cognitive impairment and he cannot do it. I am here as a psychiatrist, you know, I am not here as a neurologist. It's a complicated question. Physically, all of us, we know that he's not ready to comply with executive functions in his life."* (Page 430, lines 22–27.) This answer must be read with care. Dr. Acosta was confining herself strictly to her psychiatric lane, the cognitive question, whilst simultaneously and explicitly conceding the physical impossibility of the respondent complying with the executive demands of managing a business.

77. During cross-examination by Mr. Ferley, the doctor confirmed she could not say that the respondent was capable of constructing a long, complete sentence. (Page 432, lines 4–5.) She accepted that even conveying simple information took a very long time: the respondent had told her, slowly and with great effort, words of thanks for her visit, and *"it took a long time, but he told me."* (Page 432, lines 7–8.) She confirmed that the conversation that had taken place between them, over two visits of almost two hours each, was rendered possible only through a combination of: pharmacological preparation with Amantadine before the assessment; the presence of a Creole-speaking intermediary for translation assistance; repetition of questions to elicit clarification; and

reliance on the people around him who had learned over time to understand his particular patterns of speech. (Pages 428, 431–432.)

78. When counsel observed that the Court itself had attended La Digue and observed that the respondent could not utter any word in a comprehensible manner, Dr. Acosta did not dispute the observation, but drew a distinction between the conditions of the court visit and the conditions of her own assessment, noting that the medication windows during which clearer speech was possible occurred only at certain moments of the day when Amantadine was active. (Page 432, lines 16–19.) She went so far as to advise that her own recommendation, should anyone need to communicate with the respondent, was to administer the Amantadine first and then attempt the conversation. (Page 443.)

79. When asked by Mr. Afif what stage of Parkinson's disease the respondent was at, Dr. Acosta confirmed that, regarding the affectation of his mobility, *"we can say that he's in a stage 4 of Parkinson's disease."* (Page 440, lines 19–20.) She confirmed that stage 4 is worse than stage 1, and that his speech could be expected to become worse over time, describing the speech therapy he was receiving in Dubai as *"a kind of palliative care in these circumstances because, until now, as I told you, there is not cure for Parkinson disease."* (Page 441, lines 22–24.) When the Court asked directly whether Parkinson's disease would, as time passes, cause cognitive and mental capabilities also to degenerate, Dr. Acosta answered simply: *"Yes, yes."* (Page 442, line 21.) She further confirmed that the Parkinson's disease itself has not only physical deterioration but also *"cognitive deterioration and also dementia due to Parkinson disease."* (Page 443, lines 2–3.)

80. Dr. Acosta was also asked, in cross-examination by Mr. Afif, what would happen in terms of Mr. Payet's daily life if he could no longer speak or move at all—would she recommend that someone be appointed as a guardian to manage his daily needs? Her answer was telling: *"When Mr. Payet cannot make decision for himself, that someone can appear or I think that while he's able to make that decision, maybe he can decide it, but I am not here to answer that question. This is family matter, Judge matter."* (Page 442, lines 1–3.) She did, however, confirm unequivocally that physically he needs support and is a person who depends on the care of others: *"He's a person who depend*

on the care of the other; that is clear." (Page 442, lines 19–20.) When further asked whether the respondent was currently capable of doing everything he needs to do without anyone to look after him, Dr. Acosta answered: *"No, already I say clearly that for his physical condition, since a long time ago, he's needing the support that already I saw."* (Page 442, lines 17–19.)

81. It is of significance that when asked in re-examination by Ms. Wong whether the people around the respondent could understand him even prior to his taking the medication, Dr. Acosta answered: *"Yes, yes, it was clear."* (Page 445.) This answer, however, must be understood in its context: the people around him at the time of her visits were his long-term carers and companion, who had developed familiarity with his particular patterns of speech over extended periods of daily contact. As Dr. Acosta herself acknowledged when asked whether someone new, who had not previously interacted with Mr. Payet and did not understand his gestures or words, would find it difficult to comprehend him, her answer was simply: *"He needs family support."* (Page 437, lines 8–10.) The ability of intimately familiar carers to interpret the respondent's communication is not evidence of the capacity to express will in any legally meaningful sense; it is evidence of the interpretive labour those around him must perform to give effect to what they believe he intends.

82. Dr. Acosta's prognosis was poor, given the progressive and chronic nature of Parkinson's disease. (Page 433.) The condition will not reverse; it will become progressively worse, and there is no cure. (Page 433, lines 14–16.)

83. ***Dr. Thomas Edo's***, report (Exhibit C3) of 16 April 2025 is at pages 80-82. Dr. Edo testified on 24 June 2025. He is a General Practitioner holding an MBBCh degree from the University of Kalaba obtained in 1994 and a master's degree in public health from the University of South Africa, obtained in 2009, and is presently serving as the treating doctor on La Digue. (Page 447.)

84. Dr. Edo was the doctor who physically examined the respondent, having been instructed by Dr. Jouanneau, his immediate superior in community health, to carry out the assessment on 15 April 2025 at St. Mary's Hospital on La Digue. (Page 448.) He

described to the Court what happened from the moment the respondent arrived: the respondent was brought in by two chaperones and his wife Marguerite Payet, wheeled into the consulting room in a wheelchair. When Dr. Edo began with a simple pleasantry - asking how are you, Sir - he immediately discovered the respondent could not speak. He tried to speak but the doctor could not hear what he was saying. Dr. Edo asked the wife, who confirmed: *that's how he is, he cannot speak.* (Page 449.) He was candid in evidence that he had difficulty communicating with the respondent throughout, that the respondent was making some sound but that he could not really understand what he was saying, and that for most of the questions he asked, it was the wife who answered. (Page 449.) He further observed that the respondent had constant tremors, consistent with his Parkinson's diagnosis (Page 449.)

85. On examination, Dr. Edo recorded the respondent's speech as mumbled and blurred, difficult to understand the meaning, with fine tremors in the hands consistent with Parkinson's symptoms. (Page 450.) The respondent was found to be hemodynamically stable, conscious and alert, with oxygen saturation at 98%. He had a functional PEG gastrostomy tube from the abdomen, which the doctor observed directly. (Page 450.) The MMSE was administered and produced a score of 12, with Dr. Edo recording expressly that the speech quality - the mumbling of the patient during examination - affected the score. (Page 450.) His summary recorded that the respondent is an 86-year-old with some features of cognitive impairment, and his recommendation was that the mental status score of 12 needed to be assessed by a psychiatrist - a doctor specialised in mental health - given the limitations in administering the test due to poor verbal response. (Page 450.)

86. When asked by the Court whether, based on what he observed, a person in the respondent's condition with significant properties and a substantial business would be able to manage that business, Dr. Edo answered without equivocation: *"in my opinion, and based on what I see, I don't think he will be able to manage business, from what I saw"*. (Page 451.) When pressed further - not about daily affairs such as going to the toilet, but about managing his business affairs, meaning business affairs and property affairs - Dr. Edo's answer if the respondent could manage was equally unequivocal: *I don't think so*. (Page 451.)

87. When the Court returned to the point at the close of evidence and asked directly whether, if the respondent wanted to sell a specific parcel of property, he would be able to give that instruction and communicate it, Dr. Edo answered: *"from what I saw that day, I don't think he would be able to"*. (Page 456.) When asked further whether the respondent could give a manager an instruction about a hotel event, Dr. Edo confirmed that while the respondent might have such a wish internally, he cannot say it - he was mumbling and the doctor simply could not understand him, concluding that to give somebody an instruction, *I don't think he will be able to. Maybe he will have in him to do it, but he cannot say it.* (Page 456.)

88. In cross-examination, Dr. Edo confirmed that the respondent could not walk by himself and was brought in entirely by wheelchair. (Page 451.) He confirmed that his speech was mumbled and that he himself could not understand what the respondent was saying. (Page 452.) When asked whether the respondent understood the questions put to him, Dr. Edo confirmed that he believed he did - that the respondent appeared to follow given instructions, could raise his hand on instruction and did something when asked to sign or draw - but that the difficulty lay entirely in comprehending what the respondent was communicating in return. (Pages 453-454.) He acknowledged that the wife appeared to understand the respondent's manner of communication. (Page 458.)

89. When asked about the respondent's writing ability, whether he could write a sentence, Dr. Edo's answer was direct: *he couldn't write, couldn't write his name.* (Page 455.) When asked whether he believed the respondent could give instructions to those around him in any meaningful sense, Dr. Edo said that while those familiar with him might understand him, if asked to communicate something more complex, such as a desire to purchase a piece of property, *he honestly doubted he would be able to adapt.* (Page 456.) He confirmed he was leaving the ultimate question of capacity entirely to the Court to decide. (Page 456.)

90. The record before Judge Esparon has been meticulously scrutinised, with regard to his interrogation of the respondent (pages 259-286). Any objective observer would inevitably conclude that, notwithstanding one medical expert's assertion of intact mental faculties, the respondent's actual responses revealed otherwise. ***Armstrong v***

***First York Ltd* [2005] 1 WLR 2751** confirms that no principle obliges a trial Judge to expert evidence opinion, even in an unusual field, as dispositive of liability, to the exclusion of factual witnesses.

91. The grounds of appeal principally impugn the trial court's findings of fact. It is trite that an appellate court will not lightly disturb such findings unless plainly perverse, vitiated by legal misdirection, or unsupported by the evidence, bearing in mind its inherent disadvantage in not having observed witnesses. (See: ***Beeharry v R [2012] SCA 28/2009).***

92. Nonetheless, an appellate court may intervene where the record discloses material inconsistencies or contradictions within the evidence (including transcripts, statements, documents, affidavits and exhibits), indicative of the trial Judge's misapprehension of key facts or overlooking of critical proof, such as to render the finding palpably and overwhelmingly erroneous.

93. Where the record discloses such material inconsistencies, an appellate court may properly deem the trial court's finding palpably and overwhelmingly wrong, even absent fresh evidence. Any such error must be manifest from the record itself, without necessitating wholesale re-litigation by the parties. This stringent threshold is met, *inter alia*, where a finding is wholly unsupported by evidence; irreconcilably contradicted by uncontroverted proof; or vitiated by material misapprehension of testimony, as where the judgment attributes to a witness an affirmation plainly negated by the transcript. These are not mere slips but glaring errors patent upon appellate scrutiny of the record.

94. From the foregoing, the record plainly establishes physically incapacity of the respondent of the most severe kind. The respondent is wheelchair bound, fed via a gastrostomy tube, and so immobile that the Court and its medical experts were obliged to travel to examine him. Beyond that however, the record also unequivocally demonstrates that communication with the respondent necessitates prompted yes/no questioning, to which he responds as best he can. Page after page of the interrogation the transcript is marked with the refrain *"witness trying to speak, but we can't understand."* Even to the simplest questions, how he directs his carers, how long his

companion has lived with him, whether he can read, no intelligible response was forthcoming. The single intelligible word elicited throughout the entire interrogation was "hotel", produced after sustained and repeated prompting by the court a quo.

95. On questions of any material complexity, what he would tell Mr. Moutia if the hotel were in financial difficulty; how he gives instructions; whether he is comfortable having one person manage his whole estate, the court itself acknowledged: *"Okay, was difficult to get the answer on this one definitely"* (page 266); *"A bit difficult on this one, the Court will note"* (page 275); *"if he wants to visit the hotel, it is very difficult for him to communicate to say I want to go there – the way he is"* (page 275). The respondent remains incapable of independently articulating his wishes absent such leading prompts. If unable to convey his thoughts or volition *sui generis*, the respondent is manifestly ill-equipped to manage his own affairs.

96. The medical evidence reinforces this conclusion emphatically, and does so across all three doctors, two of whom examined the respondent. Dr. Edo independently recorded that the respondent's speech was mumbled and blurred to the point that its meaning could not be understood, and that this speech impairment had itself materially depressed his MMSE score of 12—a score flagged as indicative of cognitive impairment, while equally acknowledging that the test instrument was ill-suited to a patient in his condition.

97. When Dr. Jouanneau was pressed in cross-examination on precisely what mumbled and blurred speech making verbal interaction difficult meant in practice, his answer was unambiguous: it renders communication between two persons incomprehensible, such that what the other person is communicating simply cannot be understood. (Page 375.) He confirmed these symptoms are consistent with Parkinsonian dysarthria, a recognised complication of the disease that can significantly impact performance on the MMSE, particularly in the language and communication domains. (Page 369.)

98. Dr. Edo, for his part, described the moment the examination of the respondent began: when he asked the respondent how he was, he immediately discovered he could not speak—he tried, but the doctor could not hear what he was saying—and for most of the

questions asked, it was his companion who answered. (Page 449.) Dr. Edo went further still: when asked directly whether the respondent would be able to manage his business and properties, he answered without equivocation: *"in my opinion, and based on what I see, I don't think he will be able to manage business, from what I saw."* (Page 451.)

99. When asked whether the respondent could give a specific instruction—such as directing the sale of a parcel of property—Dr. Edo confirmed: *"from what I saw that day, I don't think he would be able to."* (Page 456.) When asked whether the respondent could give a manager an instruction about a hotel matter, Dr. Edo's answer went to the heart of the issue: *"Maybe he will have in him to do it, but he cannot say it."* (Page 456.) The capacity to form a wish internally, and the capacity to give effect to it by communicating it to others, are not the same thing. Dr. Edo's evidence makes that distinction with clarity.

100. Even Dr. Acosta, whose evidence was most favourable to the respondent and upon which the trial Judge principally relied, could not sustain the proposition that the respondent can manage his affairs in any practical sense. She confirmed she could not say the respondent was capable of constructing a long complete sentence. (Page 432, lines 4-5.) She confirmed that she had been compelled to administer Amantadine medication before the respondent could communicate intelligibly with her for the purposes of assessment, and that even then, his voice was *"not clear all the time. Sometime he's talking with a lot of effort, sometime he cannot talk."* (Page 430, lines 13–14.) She confirmed that the conversation she had with him over two visits of almost two hours each was rendered possible only through a combination of pharmacological preparation, the presence of a Creole-speaking intermediary, repeated questions, and reliance on carers who had learned his particular patterns of speech over time. (Pages 428, 431-432.)

101. When asked whether someone new, who had not previously interacted with the respondent and did not understand his gestures or words, would find it difficult to comprehend him, Dr. Acosta answered simply: *"He needs family support."* (Page 437, lines 8-10.) When asked directly whether he was currently capable of doing everything he needs to do without anyone to look after him, Dr. Acosta answered: *"No, already I*

say clearly that for his physical condition, since a long time ago, he's needing the support that already I saw." (Page 442, lines 17–19.) She confirmed unequivocally: *"He's a person who depends on the care of the other; that is clear."* (Page 442, lines 19–20.)

102. Dr Acosta went further, when questioned about the trajectory of the condition, confirming that Parkinson's disease carries not only physical deterioration but also *"cognitive deterioration and also dementia due to Parkinson disease"* (Page 443, lines 2-3), and that when asked directly by the Court whether cognitive and mental capabilities would degenerate as time passes, she answered simply: *"Yes, yes."* (Page 442, line 29.) She classified the respondent as being at stage 4 of Parkinson's disease for mobility (Page 440, lines 19-20), described the speech therapy he was receiving in Dubai as *"a kind of palliative care"* (Page 441, lines 22–24), and confirmed there is no cure. The prognosis is poor, the condition is irreversible, and it will become progressively worse. (Page 433.)

103. That the Clock Drawing component of the Mini-Cog had to be abandoned entirely due to motor difficulties - an assessment tool designed to detect even mild cognitive impairment - is itself telling. A psychiatric examination requiring pharmacological preparation before it can proceed, lasting nearly two hours on each of two separate visits, conducted with a Creole-speaking interpreter on standby and relying on the patient's familiar carers to fill interpretive gaps, is not an examination that reveals a person capable of managing a substantial business and its associated assets. It is an examination that reveals the extraordinary lengths to which professionals must go simply to establish the most basic communication with this man.

104. It is of further significance that the respondent's condition necessitated that the specialist psychiatric assessment itself be relocated to La Digue, rather than requiring the respondent to travel, precisely because, as Dr. Jouanneau recorded from the record, the respondent's complex medical history, cardiac conditions, a PEG feeding tube, and severely reduced mobility, made travel medically burdensome. (Page 369.) Dr. Jouanneau elaborated in evidence that their records revealed that the respondent is wheelchair-bound, requires a feeding tube inserted into his stomach, needs assistance

with most activities a regular person would perform independently including showering, and presented with tremors throughout, all entirely consistent with advanced Parkinson's disease. (Page 376.) When asked by Mr. Afif whether a person in such a condition, unable to walk, unable to talk properly, requires full-time care, Dr. Jouanneau answered without hesitation: *of course.* (Page 382.) When the Court then put to him directly whether the law in Seychelles would contemplate interdiction in such circumstances, his answer was equally unequivocal: *he does.* (Page 382.) The weight of logistics alone, which required the medical, legal and judicial machinery to travel to the respondent rather than the reverse, speaks volumes about the extent of his physical incapacitation.

105. The evidence of Mr. Moutia, the respondent's own witness and the person who, above all others, was said to give effect to the respondent's continuing exercise of will, did nothing to displace this picture. When asked during cross-examination how the respondent communicates instructions in a professional capacity, Mr. Moutia acknowledged that the respondent indicates with his hand or nods, or says yes or mumbles, and that *"sometimes the mumbles are identifiable, very identifiable and others know"* but that one may *"have to go backwards and forwards a couple of times."* (Page 389, lines 17-21). When asked directly whether he agreed that in order for the respondent to communicate his needs, someone else has almost to speak on his behalf, Mr. Moutia conceded: *"For the details, yes."* (Page 411, lines 22-23).

106. When asked how the respondent communicates if he wants to purchase property, Mr. Moutia replied that he might *"mumble something"* and that *"all the details would be from Mr. X or Mrs. X"* (Page 411, lines 14-17)- that is, from the counterparty, not from the respondent. When asked whether the respondent could carry out his functions on his own without help or expert advice, Mr. Moutia answered plainly: *"No."* This is the respondent's own witness speaking. His evidence, far from supporting the trial Judge's conclusion, is entirely consistent with Dr. Edo's observation that the respondent may have a wish within him but simply cannot say it - and with Dr. Acosta's own concession that for any detail, someone else must almost speak on his behalf.

107. I am of the considered view that the respondent's physical and communicative barriers constitute compelling and, on the record before this Court, uncontroverted evidence of an alteration of faculties sufficient to meet the statutory threshold. The three medical experts who examined the respondent are, between them, unanimous on two points: first, that his physical condition is at stage 4 of Parkinson's disease, is irreversible, and will deteriorate further; and second, that he cannot speak intelligibly without pharmacological assistance, cannot construct a complete sentence, cannot write, and cannot walk.

108. The divergence among them goes only to the question of whether a current diagnosis of cognitive impairment can be made to the requisite clinical standard, a divergence that, as Ground 3 addresses, the trial Judge failed to resolve by proper comparative analysis. But on the question of functional capacity to manage affairs, the evidence converges: Dr. Edo said he cannot do it. Dr. Jouanneau said interdiction would be contemplated. Dr. Acosta said he depends on the care of others, cannot comply with the executive functions of life, and that his condition will deteriorate cognitively as well as physically. A judgment cannot stand where the court's own factual observations, recorded in terms as stark as *"Impossible"* and *"very difficult"* in relation to the most basic acts of communication, directly contradict its ultimate legal conclusion, without any cogent explanation of how those observed difficulties were overcome or why they were found legally insufficient. No such explanation appears in the judgment of the court below.

109. It is trite that incapacity, without more, does not in itself justify an order of interdiction. The governing test is whether the individual is unable *"to care for one's person or to manage one's property,"* as articulated by Jean Louise Carrière in *Reconstructing the Grounds for Interdiction* (54 Louisiana Law Review, 1994). As the Louisianna Supreme Court observed in ***Succession of Lanata*, 205 La. 915, 933, 18 So. 2d 500, 506 (1944),** *"[t]he judgment decreeing interdiction does not create an incapacity to act; it is merely evidence of the existence of that incapacity."* It follows that the court's task is not to impose incapacity on the basis of vulnerability, dependency, or a perceived need for protection. Rather, it must determine, as a matter of fact, whether incapacity already exists within the meaning of *Article 489(1)*. That inquiry must remain firmly

anchored in evidence of the individual's actual functional ability, particularly the capacity to make and communicate decisions.

110. On the evidence as a whole, I am satisfied that the degree of incapacity in this case is such as rendering the respondent unable to manage his affairs. The learned trial judge, with respect, erred in failing to undertake a proper qualitative assessment of the respondent's functional ability, and instead fell short of engaging with the practical realities disclosed by the evidence.

111. Turning to Ground 5 and the authority from the Cour de Cassation upon which the trial Judge placed reliance: the fundamental feature of that case was the existence of a reliable, structured and verifiable means of communication, a technological apparatus, operated by the respondent herself through head movements, that permitted unambiguous, independent expression of will, without the interpretive mediation of third parties. The outcome of that case turned entirely upon that feature. Here, no such mechanism exists. The respondent has no assistive communication technology. Those around him, his carers, his companion, and Mr. Moutia, have no demonstrated expertise in any structured system of alternative communication. What passes for the expression of the respondent's will in the present case is, on the evidence, the interpretation by third parties of nods, mumbles, hand movements and facial expressions.

112. As Dr. Acosta herself acknowledged, a stranger unfamiliar with the respondent's patterns of communication would simply not understand him, he *"needs family support."* That observation from the respondent's own expert witness is fatal to any analogy with a case in which the subject communicated through a verifiable technological device understood by all. What passes for the expression of the respondent's will here is, at best, the inference of preference by those already intimately familiar with him. That is not the expression of will; it is the interpretation of it. The distinction is legally fundamental, and the trial Judge's failure to identify and address it when relying upon the French authority constitutes a material error of law.

113. Grounds 2 and 5 accordingly succeed.

Ground 3

114. The third ground of appeal raised by the appellant, is whether the trial Judge erred in finding no material difference between the evidence of Dr. Grisel Iglesias Acosta and Dr. Thomas Edo, thereby deeming himself bound by their opinions, when the two medical experts' testimonies in fact contradicted each other on key aspects.

115. Mr. Ferley has drawn the attention of this Court to page 428 of the brief, where Dr. Acosta is said to have testified that the respondent's language is such that he can talk with difficulty, in that he can talk more clearly sometimes than other times. That, the doctor has to administer a pill when she wants to stimulate his speech, to understand more clearly what the respondent is saying. Further, that because of this speech difficulty, the respondent tends to speak slowly and sometimes the doctor needs to repeat a question for the respondent to give a clear answer. That, in essence, the respondent speaks even though his speech must be induced by medication or otherwise. Crucially, she acknowledged that even this medically induced improvement in speech was not reliable, testifying that his voice is *"not clear all the time. Sometime he's talking with a lot of effort, sometimes he cannot talk."* (Page 430, lines 13–14.) That, in essence, whatever speech the respondent produces is medication-dependent, occurring only within certain windows of the day when Amantadine is active, and cannot be taken as a reliable baseline of his communicative capacity.

116. Referring this Court to Dr. Edo's testimony at page 449 of the brief, on the other hand, Mr. Ferley points out that the doctor's evidence shows that the respondent could not speak at all and that when asked if, in the doctor's opinion, a person with the respondent's condition could manage his business, the doctor's response was in the negative. Dr. Edo described attending at St. Mary's Hospital on La Digue and attempting, at the outset, a simple pleasantry, asking the respondent how he was, and immediately discovering that the respondent could not respond intelligibly. He tried to speak, but the doctor could not hear or understand what he was saying; the wife confirmed: that's how he is, he cannot speak. (Page 449.) Dr. Edo was candid that for most of the questions he put during the assessment, it was the wife who answered on the respondent's behalf. (Page 449.) When asked directly whether, in his opinion, a

person in the respondent's condition would be able to manage a substantive business and its associated properties, the doctor's response was in the negative and without equivocation: *"in my opinion, and based on what I see, I don't think he will be able to manage business, from what I saw."* (Page 451.)

117. I have examined the dialogue between counsel and the two doctors during the proceedings in the lower court and I equally observe that the two practitioners gave contradicting reports of the state of the respondent. Noteworthy from Dr. Acosta's testimony (pages 430 and 432) during examination-in-chief, is her closing remarks when asked whether in her opinion, she thought the respondent in his state would be able to manage a substantive hotel business himself. Dr. Acosta's response was that the respondent is a person who is very limited physically due to the disease but could not say that the respondent has a cognitive impairment. That, physically, though, everyone knew that the respondent is not ready to comply with executive functions of life.

118. During cross-examination, Dr. Acosta confirmed she could not say that the respondent could construct a long complete sentence, but that there are certain words he can say. (Page 432, lines 4–5.) Dr. Edo's testimony, on the other hand, when asked whether he thought the respondent, in his state would be able to manage business and his properties, Dr. Edo categorically stated that he did not think that the respondent was able to manage them (See: pages 450 and 451 of the brief).

119. It is important to appreciate what Dr. Acosta's answer, read carefully, actually concedes. Her refusal to diagnose cognitive impairment is confined strictly to her psychiatric mandate. It does not amount to a finding of functional capacity to manage affairs. A person may be oriented to time, place and person whilst being wholly incapable of expressing his will in any practically meaningful way, or of taking decisions that can be communicated, verified and acted upon. Dr. Acosta herself acknowledged this when she confirmed that physically the respondent *"is not ready to comply with executive functions of life"*, a concession that sits irreconcilably alongside the trial Judge's conclusion that the respondent remained capable of managing his affairs.

120. Despite the obvious contradiction in these experts' testimonies, the learned Judge still found that the evidence of the two did not differ. However, I find that the record actually supports the appellant's position that the testimonies of the two doctors were contradictory and that the trial Judge's failure to acknowledge and resolve that contradiction constitutes an error in the weighing of the evidence. It is further of significance that the trial Judge's reliance upon Dr. Acosta's opinion did not engage with the qualifications she herself attached to it: that even the medication-assisted communication she observed may not be replicable at any given time; that her assessment required pharmacological preparation, a translation intermediary, and the interpretive support of familiar carers; and that she went so far as to recommend that the same pharmacological preparation be undertaken before anyone else attempted to communicate with the respondent. (Page 443.) A psychiatric assessment conducted under those conditions is not evidence of reliable, independent communicative capacity.

121. Where expert witnesses provide conflicting accounts on central issues, especially in an instant such as the one in *casu*, where the mental capacity of a person is in issue, a trial court must conduct a comparative analysis, assigning weight to one over the other, based on reasonableness and probability, rather than treating them as a unified front. This principle was elucidated in the English case of ***Lowe v Havering NHS Trust*** **[2001] All ER (D) 253 (Jun),** that where there is a conflict in the expert evidence, a judge is entitled to exercise his judgment in resolving it, although, in rejecting a coherent and reasoned opinion, he is required to give a coherent and reasoned explanation for doing so and for accepting the opposing evidence:).

122. A holistic analysis of the learned Judge's interrogation of the respondent clearly reveals that the most probable conclusion any person applying their mind objectively should have reached is that the respondent is incapable of communicating the extent that he can issue intricate instructions that have a bearing on complex concepts such as the running of a business or disposal of property. Dr. Edo said as much directly. Dr. Acosta, on a careful reading of her evidence, conceded as much in her physical acknowledgment. By failing to acknowledge the contradiction between the two experts and to conduct the requisite comparative analysis, I find that the learned Judge failed to

properly weigh the evidence before him. In the premises, the third ground of appeal, consequently, succeeds as well.

Ground 4

123. The fourth ground of appeal raises the question of whether the trial Judge erred in holding that the respondent could clearly communicate his wishes to Mr. Moutia of ACM Associates regarding business management, despite having found Mr. Moutia to be an evasive and not credible witness on critical details: namely, when the respondent last gave him verbal instructions, whether the respondent can manage his business independently, and the respondent's ability to self-feed.

124. It is Counsel's contention that it has been established that the respondent can neither speak nor write, as per the interrogation by the court at pages 262-280 of the brief and further by the evidence of Dr. Edo at pages 449-456 of the brief. Against that established backdrop, the question of whether the respondent can meaningfully communicate his wishes to Mr. Moutia - and whether Mr. Moutia can legitimately claim to act upon those wishes - requires the most careful scrutiny.

125. Counsel further submits that, at pages 396- 397 of the brief, Mr. Moutia stated that he is not employed by Gregoire's Company Limited, but is a shareholder of ACM & Associates, a firm of accountants which provides accounting and financial services to the respondents' company. That ACM & Associates has the power of attorney granted by the respondent and Mr. Moutia is the designated director of ACM to deal with the Company. Counsel has contended that Mr. Moutia never receives written instructions and does not recall when last he received verbal instructions, but estimated it to have been around four months prior to the trial and that when he did receive such instructions, they were in the form of "yes or no" answers or some mumbling, in circumstances where the medical evidence confirms that even the mumbling was frequently incomprehensible to those present.

126. I have examined Mr. Moutia's testimony and inclined to agree that it is more than merely elusive - it is internally inconsistent in ways that directly undermine the factual

foundation upon which the trial Judge relied. When asked when last he was given instructions by the respondent, Mr. Moutia could not provide an answer (See: page 399 of the brief). Earlier, at page 398 of the brief, Mr. Moutia failed to clearly explain what his most recent instructions from the respondent were and just said that the respondent had not been present for the last week and that he (Mr. Moutia) had not been there for a whole month and that the hotel was running itself, in the absence of any direct instructions from the respondent. He was also asked to describe how, during the times he alleged that he would get instructions from the respondent, he actually received such instructions, whether verbally. Mr. Moutia could not answer the question, and, instead, responded to counsel as follows: *"You know well that he does not say it that way. You know well that he does not say that. I do not know why you asked me the question." (See: page 400 of the brief).*

127. A careful analysis of the line of responses and manner of responding adopted by Mr. Moutia during trial leads me to the inference that his responses had an undertone of frustration because he would not categorically admit that the respondent might be incapable of giving him instructions to the level of detail that he is claiming he does. What Mr. Moutia characterises as instructions are, on the evidence, at best reactions to proposals placed before the respondent by others, rather than the autonomous expression of will by a person managing his own affairs. This conduct warrants any tribunal before whom a witness such as Mr. Moutia appears before questioning whether any weight should be attached to his evidence (even though given under oath).

128. The learned authors of Halsbury's Laws of England, Vol. 11 (2009), 5th Edition (Civil Procedure) at para. 766, explain the courts discretion on the weight to attach to evidence, as follows: *"The weight to be given to a particular item of evidence is a matter of fact which will be decided, largely on the basis of common sense, in the light of the circumstances of the case and of the views formed by the jury (or judge where there is no jury) on the reliability and credibility of the witnesses and exhibits.*

129. I am inclined to perceive Mr. Moutia's testimony and manner of responding to counsel's questions during cross-examination as being of little assistance to the extent that it was intended to establish the fact the respondent is capable of communicating

complex instructions to Mr. Moutia or that Mr. Moutia has, since the alleged power of attorney, been acting lawfully, regarding the respondent's hotel business and properties. The trial Judge himself found Mr. Moutia not to be a credible witness, noting his evasiveness on precisely these central questions. What cannot be reconciled is how, having made that finding, the learned Judge then proceeded to find his conclusion, that the respondent was capable of managing his affairs through Mr. Moutia's firm, on a proposition whose only evidential support was Mr. Moutia's own testimony. A finding of non-credibility cannot be confined to peripheral matters while the witness's central narrative is simultaneously accepted as the basis for a substantive conclusion.

130. Mr. Ferley has submitted that it is not sufficient to say that the affairs of the person whose interdiction is sought are being managed by others. That, if a person cannot manage his affairs, it is necessary that a guardian be appointed and that this is for the protection of that person because with guardianship, arises legal obligations under Articles 391- 510 of Civil Code of Seychelles Act. Counsel, by way of illustration quoted the provisions of Article 500(1) of the Civil Code of Seychelles Act, as follows:

> *"(1) An order of interdiction or supervision must be served immediately on the petitioner, the person interdicted or under the supervision order as the case may be, and where the petition is granted on the guardian.*
>
> *(2) The guardian must forthwith draw up an inventory of the property of the person interdicted or under supervision order and give notice, as the nature of the property requires, to-*
>
> *(a) the Registrar-General;*
>
> *(b) the Registrar of Companies;*
>
> *(c) the manager of any bank where property of the person indicted or under supervision is held; or*
>
> *(d) such other persons as is appropriate."*

131. Mr. Ferley further contended, referring the Court to page 402 of the brief, that the proceedings show that the respondent may be susceptible to abuse. I had indicated above that I would address the implications of a particular response of the respondent

at page 271 of the brief, under this ground. When asked if he had recently sold any property or land, the respondent said '*no*'.

132. During Mr. Moutia's cross-examination, Mr. Ferley had asked him whether ACM & Associates, the accounting firm allegedly managing the respondent's business and properties had ever transferred any of the respondent's property. Mr. Moutia's response was in the affirmative and that the property in question was sold four years ago with the full consent and authorisation of the respondent. It must be noted that Mr. Moutia and two other individuals are the shareholders/officers of ACM & Associates, the very entity that holds the power of attorney over the respondent's affairs.

133. When further probed whether the respondent signed for the transfer deed, Mr. Moutia's response was that he was not sure who signed the title deed, but that it took four years to get to where it currently was. When asked whether he remembered which property was sold and to whom it was sold, Mr. Moutia's response was that he did not know, but remembers where the property was. Mr. Moutia was then shown a document pertaining to property number LD1057 and the person to whom it had been transferred, one Mr. Francis Claude Freddie Chung- Leng, whom he then indicated was his brother-in-law. When asked whether he as director of ACM & Associates (which had a contract with the respondent's company) and which supposedly has a power of attorney executed by the respondent in its favour, saw any ethical anomalies with the transaction, Mr. Moutia's response was in the negative. He insisted that the respondent was the one who issued the instruction and ACM acted on it (See: page 403 of the brief). It must be noted that the record discloses at pages 414–415 that a new company was incorporated in which power-of-attorney holders acquired a 20% stake in the respondent's Company Limited - a transaction equally unexplained and equally unacknowledged as a conflict of interest by Mr. Moutia.

134. Mr. Moutia's narration of why and how ACM & Associates wound up transferring the respondent's property to Mr. Moutia's brother-in-law is inconsistent with the respondent's response during his interrogation, when he denied having transferred any property of his recently. The apparent breach of fiduciary duties owed by Mr. Moutia to the respondent's company cannot be over-emphasised. The holder of a power of

attorney over another person's assets transferred one of those assets to his own brother-in-law, cannot say with certainty who signed the deed, cannot recall the consideration, and perceives no ethical difficulty in any of this.

135. Mr. Moutia's elusive behaviour in addressing questions put to him during trial, as well as the appearance of irregularity in him transferring the respondent's property to his brother-in-law, I opine, are all factors that should have been taken into consideration by the learned trial Judge when deciding whether the respondent truly was capable of managing his business and personal affairs. That, the respondent is recorded to have refused ever transferring any of his property in the recent past, while Mr. Moutia concedes to transferring the respondent's property to his brother-in-law, and other properties, the details of which, were not communicated to the Court. This should have been an alarm prompting the learned trial Judge to interrogate meticulously why that was so and whether it had any bearing on the respondent's vulnerability and his properties. I am of the considered view that, in such a case, where the question before the court is the possible diminished capacity of the respondent, the court bears a heightened duty to vigilantly safeguard the interests of the person concerned.

136. In *casu*, the court a quo fell into error by failing to subject the evidence relating to the transfer of the subject property of the respondent to Mr. Moutia's brother-in-law, to the requisite level of scrutiny. The lower court could, for instance, have adjourned the matter and requested the parties to file further documentation clearly demonstrating that the transfer of the respondent's property to Mr. Chung- Leng was as legitimate and transparent as Mr. Moutia claimed it to be. This level of thoroughness lay at the heart of the inquiry, particularly in light of the allegations of the respondent's diminished mental and physical capacity and Mr. Moutia's denial of irregularity of the property transfer. The subject transaction and the persons involved, clearly gave rise to a prima facie concern of undue influence or breach of fiduciary duty.

137. The lower court's failure to interrogate this scenario beyond the verbal responses provided by Mr. Moutia, in my view, constitutes a serious misdirection and undermines the court's findings that the respondent needed neither a guardian nor an interdiction granted in his regard.

138. Before concluding this matter, I wish to address the broader pattern of events disclosed by the record, which gives essential context to the concerns raised under this ground. The evidence discloses the following sequence of events. Gregoire Company Limited, in which the respondent holds majority shares, and which owns La Digue Lodge, Gregoire Boutique and numerous immovable properties, has been the subject of the following developments since the respondent's condition began to deteriorate. In or around 2020, when the respondent had already begun suffering from Parkinson's disease, and at approximately the same time as an earlier interdiction application was made and declined, the respondent granted a general power of attorney to ACM & Associates, authorising management of his personal affairs and those of his affiliated companies and assets.

139. In or about 2021, ACM & Associates took over the accounting and auditing affairs of Gregoire Company Limited. Thereafter, between 2020 and 2025, properties of either the respondent or his company were transferred, at least one to Mr. Moutia's own brother-in-law, without any explanation being placed before the court as to who authorised the transactions, to whom the various properties were transferred, for what consideration, or the whereabouts of the proceeds of sale. Mr. Moutia further informed the court that ACM & Associates holds 20% of Gregoire Company Limited on behalf of the respondent, without any explanation of when those shares were transferred, on what authority, for what purpose, or when and in what circumstances they are to be returned.

140. A review of the Certificates of Official Search issued by the Land Registrar on 17 April 2025, admitted as exhibits in the proceedings, discloses that six of the respondent's properties bear encumbrances of striking magnitude, the details of which were never explained to the court. Title LD923 (a sub-division of LD404, 2,790 sq. metres, registered in the name of Gregoire Payet) bears a charge of R8,160,000 in favour of Seychelles International Mercantile Banking Corporation Limited. Title LD1015 (3,179 sq. metres, registered in the name of Mr Gregoire Payet) bears three separate charges: R6,000,000 in favour of the Development Bank of Seychelles, R2,000,000 in favour of Seychelles Savings Bank, and SR1,250,000 in favour of Seychelles Savings Bank, together with a restriction, four encumbrance entries in total on a single title.

Title LD1230 (a sub-division of LD1024, 2,474 sq. metres, registered in the name of Gregoire Christian Payet) bears a restriction and a charge of R8,160,000 in favour of Seychelles International Mercantile Banking Corporation Limited. Title LD1247 (a sub-division of LD915, 897 sq. metres, registered in the name of Gregoire Christian Payet) bears no fewer than seven encumbrance entries: a charge of US$1,000,000 in favour of Seychelles International Mercantile Banking Corporation Limited; a charge of SR8,160,000 in favour of the same institution; a charge of R10,000,000 in favour of the Development Bank of Seychelles; a charge of Rs400,000 in favour of the Development Bank of Seychelles; a charge of R35,000,000 in favour of a private individual, one Chinnakanna Sivasankaran; a charge of SR17,000,000 in favour of the Development Bank of Seychelles; and a restriction. Title LD1248 (a sub-division of LD915, 960 sq. metres, registered in the name of Gregoire Christian Payet) bears the identical constellation of seven encumbrance entries as LD1247: charges totaling US$1,000,000, SR8,160,000, R10,000,000, Rs400,000, R35,000,000 and SR17,000,000, and a restriction, suggesting these two adjacent sub-divisions were pledged together as a single security package, potentially in circumstances that post-date the respondent's cognitive deterioration. Title LD1352 (a sub-division of LD1348, 16,349 sq. metres, registered in the name of Mr Gregoire Payet) bears a charge of Rs20,000,000 in favour of Seychelles International Mercantile Banking Corporation Limited and a restriction, and has since been closed on sub-division into parcels LD2708 to LD2710, the encumbrances on the sub-divided parcels and the circumstances of the sub-division remaining entirely unexplained.

141. The aggregate value of the charges disclosed across these six titles runs to many tens of millions of Seychelles Rupees and US Dollars. The searches disclose nothing as to when any of these charges were created, by whom they were authorised, for what purpose the properties were pledged as security, whether the respondent himself gave instructions to create them, or who holds and controls the loan proceeds. The presence of a private individual, Chinnakanna Sivasankaran, as the proprietor of a charge of R35,000,000 on two of the respondent's properties is itself a matter that demands scrutiny and explanation that was never forthcoming before the lower court. These concerns represent a substantial encumbrance on the assets of a man who, on the evidence, cannot speak, cannot write, cannot give instructions, and whose affairs are

managed entirely by persons whose own interests the record has shown to conflict with his. The lower court's failure to address any of this, and its acceptance of Mr Moutia's bland assurances that all transactions were duly authorised, represents a profound failure of the heightened duty of vigilance that proceedings of this nature demand.

142. In the premises, I find merit in the Appellant's fourth ground of appeal.

143. Having carefully weighed all the evidence adduced before the lower Court, it irrefutably establishes the respondent's inability to administer any aspect of his personal affairs. Day-to-day care is wholly entrusted to professional carers, while property and financial management have been absent and entrusted to a private firm from 2020. Such unremitting reliance, upon carers for personal needs and accountants for fiscal oversight, plainly demonstrates the respondent's incapacity. It is evident that the respondent cannot act *sui juris*.

144. It is, therefore, my view, regarding all four grounds of appeal herein, that the circumstances in *casu*, are such that they present a fit case in which this Court is justified in departing from the trite principle that an appellate court generally ought not to interfere with the findings of fact of a court a quo. In the circumstances at hand, the record clearly reveals irregularities and anomalies which, if any tribunal properly and objectively applying itself, would not have arrived at the same findings of fact as did the lower court, in light of the evidence on the record/brief.

145. Accordingly, the Court invokes the powers bestowed upon it in hearing appeals as provided under ***Rule 31(2) and (3) of the Court of Appeal of Seychelles Rules, 2023,*** to *reverse the decision of the trial court and make an order which in its opinion the Supreme Court ought to have made.*

146. With full cognisance of the gravity of interdiction and its legal consequences, I accept the facts of this case merit oversight. I am satisfied that an interdiction is therefore necessary, proportionate, and in the respondent's best interests for safeguarding his person and property. An interdiction is accordingly granted in respect of the respondent.

Conclusion and Orders

1. The appeal herein is successful.

2. The judgment of the learned Judge D. Esparon, delivered on 31 October 2025, is hereby set aside.

3. An Interdiction in respect of the respondent is accordingly granted pursuant to Article 489(1) of the Civil Code of Seychelles.

4. This case is hereby remitted back to the Supreme Court of Seychelles for the urgent appointment of a Guardian(s) of the respondent pursuant Article 505 of the Code.

5. Pending the appointment of a Guardian by the Supreme Court, and pursuant to the provisions of Article 497(1) of the Civil Code, Mr. Peter Roselie is appointed to act as Provisional Guardian of the respondent.

6. The Provisional Guardian shall exercise limited and protective functions only, consistent with Articles 450 - 453 and subject to the supervision of the Supreme Court.

7. The Provisional Guardian shall not without prior authorisation of the Supreme Court:

   (a) sell, transfer, lease charge or otherwise dispose of any property, including land and shares of the respondent and/or in his affiliated companies;
   (b) enter into any significant commercial arrangement or vary existing ones in any material aspect;
   (c) withdraw, invest, or otherwise deal with the respondent's funds beyond what is strictly necessary for the respondent's maintenance and ordinary expenses of the administration;
   (d) take any steps that will alter the ownership, control or structure of the respondent's interests;
   (e) engage in any transaction that will give rise to a conflict of interest.

8. I make no order as to costs.

Sharpe-Phiri JA

I concur:

Gunesh-Balaghee JA

I concur:

De Silva JA

Signed, dated and delivered on 27 April 2026.