

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2026] (27 April 2026)
SCA 22/2025
(Arising in CS 46/2021)

In the Matter Between

Stuart Leslie Hibberd
(rep. by Mr. Guy Ferley)

Appellant

And

Eden Island Village Management Association
(rep. by Ms. Aashah Molle)

Respondent

Neutral Citation: *Hibberd v Eden Island Village Management Association* (SCA 22 of 2025)
[2026] (Arising in CS 46/2021) (27 April 2026)

Before: Gunesh-Balaghee, De Silva, Sichinga, JJA

Summary: The appellant's appeal against Judgment of the learned Judge Dodin, delivered on 21 July 2025, by which the appellant was ordered to pay the sum of USD51,386.15 with interest at 1% per month until payment.

Heard: 14 April 2026

Delivered: 27 April 2026

ORDER

The appeal is dismissed for want of merit with costs to the Respondent.

JUDGMENT

Sichinga JA

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

Introduction

1. This is an appeal brought by Mr. Stuart Leslie Hibberd (the “**Appellant**”), against Eden Island Village Management Association (the “**Respondent**”), in a quest to challenge the Judgment of the learned Judge Dodin, of the Supreme Court, delivered on 21 July 2025.
2. In the Judgment, the Judge Dodin awarded the Respondent (previously the Plaintiff in the Supreme Court), the sum of USD51,386.15 with interest at 1% per month until judgment, to be paid by the Appellant (previously the Defendant in the Supreme Court).
3. The Judge, further, ordered that any delay in payment of the judgment debt would result in the interest of 4% per annum on the judgment debt.

The Background

4. The Respondent lodged a Plaint against the Appellant, in CS 46/2021, on 24 May 2021 (and subsequently amended on 23 June 2023), by which it was claiming that:
 - (i) the Appellant pay it the sum of USD77,053.72;
 - (ii) the Appellant pay it interest accruing at a rate of 1% per month on all outstanding amounts from the date of the breach until full settlement;
 - (iii) the Appellant continue to pay it all invoices which were not disputed in a timely manner and in accordance with the Respondent’s Constitution; and
 - (iv) the Appellant pay costs of the suit.
5. In the Plaint, the Respondent averred that the Appellant entered an agreement of sale, on 9 September 2006, by virtue of which he purchased a Maison and agreed to become a member of the Respondent Association. Although the Respondent was not a party to the sales agreement and the transfer deed, the stipulation stated that the transfer was subject to all the terms and conditions of the agreement of sale and that the Appellant would automatically become a member of the Respondent Association, subject to its Constitution.
6. The Respondent averred that under the Constitution, it would facilitate the provision of water, electrical and sewerage systems; refuse removal; security services; maintenance repair and upkeep of all gardens; maintenance of the berth used by members of the

Respondent Association; and provide all such services in so far as possible, as would be requested by the members. That, under the Constitution, the Respondent would charge levies on its members, for purposes of meeting all of its expenses and that such levies would be payable monthly, due on the first day of every month.

7. That, the Appellant had asked for, accepted and benefited from the services and had also been charged levies for the same. The Respondent averred that it had issued the Appellant invoices for the levies and services, which the Appellant was settling in piecemeal, and that as the debts were of the same nature, the Respondent had appropriated the payments for the oldest outstanding invoices first, save for instances where the Appellant had advised the Respondent otherwise. That, the Appellant had not on any occasion disputed the invoices issued, sums owed or terms of payment, and thus, in breach of the Respondent's Constitution and the laws of Seychelles, failed to settle the outstanding balance of USD77,053.72.
8. The Respondent averred that the Appellant had made payments in the sums of USD2,000.00 and USD158.78, to the Respondent, on 9 April 2021, but the debt had not been reduced, as further invoices had been issued to the Appellant. That, the Appellant continued to benefit from the Respondent's service and continued to be liable to the Respondent.
9. In response to the foregoing, the Appellant agreed having purchased the Maison, but denied having ever been a member of the Respondent Association; the Respondent's provision of services and imposition of levies; or that any invoices for the levies had always rightly been issued to the Appellant. The Appellant added that the sales agreement of 9 September 2006, which the Respondent was relying upon, was not enforceable against the Appellant because he had never signed it.
10. The Appellant denied asking for, accepting and benefiting from the Respondent's services. The Appellant averred that he always disputed the invoices issued by the Respondent on the basis that they were erroneous and had no contractual basis; and the levies and interest a contravention of the laws. The Appellant, however, did not deny having paid the sums of USD2,000.00 and USD158.78.

11. The Appellant, also admitted that he continued to receive the services alleged by the Respondent, but challenged the levies and the interest charged as exorbitant, oppressive and unlawful. The Appellant, thus, prayed that the court dismiss the Respondent's claim or make an order adjusting the levies and interest.

Decision of the Supreme Court

12. From my careful perusal of the Learned Judge Dodin's Judgment of 21 July 2025, it appears that the issues of contention that he determined (although not specifically outlined from the onset) were:
 - (i) the Appellant's *plea in limine litis*, that the Respondent's claims prior to 18 May 2016 could not be considered, *via-a-vis* the Civil Code of Seychelles;
 - (ii) the question whether or not the Appellant was a member of the Respondent's Association;
 - (iii) the obligations and rights of the Appellant and Respondent, arising under the relationship between the Respondent as an Association and the Appellant as member of said Association;
 - (iv) the amount that was due and payable to the Respondent and pertaining to what duration;
 - (v) the question whether the levies found due could legally carry an interest of 1% per month (12% per annum); and
 - (vi) whether the alleged legal fees to the tune of USD26,000.00 could be claimed as a debt in a *Plaint*.
13. The learned Judge Dodin, after analysing the evidence before him as well as the submissions of both Counsel for the parties determined that:
 - (a) with regard to the Appellant's *plea in limine litis*, and on the basis that prescription runs even if supplies, deliveries, works and services continue (Article 2274(1) of the Civil Code), some of the levies/debt incurred by the Appellant before commencement of this matter before the Supreme court were subject to prescription and not claimable.

However, the remainder of the debt/levies (having fallen due after commencement of this matter in the Supreme Court), were claimable;

- (b) in respect of the question whether or not the Appellant was a member of the Respondent's Association, at the date of the transfer of the Maison, the Respondent Association was already registered as an Association with its applicable Constitution. That, the Respondent's Constitution was enforceable on the Appellant as the transfer deed pertaining to the Maison, which was not disputed by the Appellant, stipulated that the Appellant would, by becoming the registered owner of the Maison, automatically become a member of the Respondent Association and would be bound by its Constitution. The learned Judge stated at page 10 of the Judgment that although the Plaintiff (Respondent herein) was never a party to the agreement of sale and the transfer deed, the stipulations set out in the transfer deed were made in favour of the Respondent, which had acted upon and enforced the benefits granted to it (in line with Article 1121, 1122 and 1165(1) of the Civil Code of Seychelles);
- (c) having established that the Appellant was, in fact, a member of the Respondent Association, the Respondent did offer services and the Appellant did receive the said services, whether satisfied with the quality and standard of the same, or not. That, for receiving the services provided by the Respondent, the Appellant was under the obligation to pay levies every first day of the month, which were charged in the form of invoices which the Appellant admitted to have had sight of;
- (d) flowing from the court's analysis and finding on the issue of the Appellant's *plea in limine litis*, which effectively excluded from being claimed, any levies ascribed to the period prior to commencement of this matter, the learned Judge found that the Appellant's debt account as at 31 December 2015 stood at USD51,537.34, while the debt as at January 2024 stood at USD102,923.49 (indicating a continuous increment since the matter was commenced in May 2021);
- (e) regarding the issue of interest on the accrued levies at 1% per month/12% per annum, the Appellant cannot dispute the rate of interest which is stipulated in an agreement. That, it is erroneous for the Appellant to construe that Section 3 of the Interest Act, to mean that a party can only charge interest of 4% per annum, when, in accordance with

Section 2 of the Act, where parties agree on an interest rate in a contract, they are lawfully bound by their stipulation; and

(f) with respect to the legal fees of USD26,000.00, the same were not specifically pleaded in the plaint, aside from the general prayer for costs of the suit, and thus, the claim for legal fees *ultra petita*.

14. After determining the issues as above, Judge Dodin, therefore, found as follows:

(i) *Any claim for debts arising prior to May 2016 is prescribed. The sum of USD51,537.34 due at the end of 2015 cannot be claimed in this plaint;*

(ii) *The evidence shows that at the time the case was filed, the total outstanding debt amounted to USD102,923.49 as at January 2024. I therefore deduct the amount of USD51,537.34 from the amount of USD102,923.49. The sum remaining and due is USD51,386.15 with interest at 1% per month until payment; and*

(iii) *The claim for legal costs of USD26,000.00 is ultra petita.*

15. The Judge thus, entered judgment for the Respondent in the sum of USD51,386.15, with interest at 1% per month until judgment. Further, that any delay in payment of the judgment debt would result in the interest of 4% per annum on the judgment debt.

The Appeal

16. Dissatisfied with Judge Dodin's Judgment, the Appellant has appealed against the same raising the ground that:

a. *The Learned Judge erred in awarding the Respondent USD51,386.15, when the evidence shows that the Appellant had, between 1 May 2016 and December 2023, paid a total sum of USD151,400.00 to the Respondent and consequently all payments due for said period were paid in full.*

17. It is the Applicant's prayer, therefore, that the appeal be allowed and this Court cancel Judge Dodin's award of the sum of USD51,386.15. as deciphered from his affidavit that if the motion succeeds, the Judgment delivered on 18 August 2025 be set aside.

The Appellant's Submissions

18. Referring the Court to page 829 of the record of appeal, it has been submitted by Mr. Ferley that the Learned Judge Dodin found that any debt arising prior to May 2016 was prescribed. In this regard, Mr. Ferley has highlighted that the Respondent's Complaint was filed on 24 May 2021, and thus, all payment arising prior to 24 May 2016 were prescribed.
19. Further referring the Court to page 263 of the record of appeal, Mr. Ferley submits that the following payments had been made by the Appellant:
 - (i) USD5,000.00 on 13 June 2016;
 - (ii) USD5,000.00 on 15 June 2016;
 - (iii) USD2,500.00 on 25 July 2016; and
 - (iv) USD2,500.00 on 11 August 2016.
20. Mr. Ferley has submitted, furthermore, that the account statements exhibited at pages 266 to 284 of the record of appeal, show that between 1 November 2017 and 4 January 2024, the Appellant paid a total sum of USD163,313.10 to the Respondent.
21. Counsel submits that the total sum paid from 13 June 2016 to 30 December 2016 was USD178,313.10.
22. That the invoices raised from 25 May 2016 to 4 January (Net of interest) were to the tune of USD128,734.00.
23. Mr. Ferley has also contended that the interest charged was on sums carried forward from prior to 2016. That, from the statement of 2016, a sum of USD51,537.00 was brought forward, and which continued to roll over each year, subsequent. In this regard, Counsel referred the Court to page 263 of the record.
24. Mr. Ferley, thus, submitted that the foregoing analysis demonstrates that there was an overpayment from the Appellant to the Respondent, in the sum of USD49,579.10. That, in the premises, this Court should allow his appeal herein and cancel Judge Dodin's award of the sum of USD51,386.15.

The Respondent's Submissions

25. In response, Ms. Molle, referring this Court to pages 826, 827 and 829 of the record of appeal, has submitted that the Learned Judge Dodin considered the point on prescription raised by the Appellant in his plea *in limine litis* and found that any claim for debts prior to May 2016 is prescribed. That, in so doing, the Learned Judge found that the sum of USD 51,537.34, due at the end of 2015 cannot be claimed by the Respondent.
26. Further referring this Court to page 286 of the record, Ms. Molle has submitted that the exhibit P21, thereon, shows a statement with a balance of USD 101,923.49, as at 31 January 2024.
27. Ms. Molle contends that the Respondent adduced two sets of evidence during trial in the Supreme Court, which contained paid invoices marked as exhibit P22, at pages 287 to 505 of the record of appeal; and outstanding invoices marked as exhibit P23 (from 2020 to 2024), appearing at pages 506 to 577 of the record. Ms. Molle submits, further, that the Respondent is relying on exhibit P21 at page 286 of the record, being the financial statement as at 31 January 2024, indicating an outstanding balance of USD 102,923.49. Ms. Molle has further clarified that the unpaid invoices adduced before Judge Dodin date from the year 2020 and not 2016, as alleged by the Appellant.
28. It is Ms. Molle's contention that the Appellant's calculations of the sum paid are misconstrued in that the levy invoices include interest charges which stem from the year 2016 to 2024. That, in the assailed Judgment, Judge Dodin had stated that the Appellant cannot dispute the rate of interest which is stipulated in the Agreement.
29. Ms. Molle has submitted that the Respondent denies the Appellant's averment as to an overpayment, since the invoices and interest charges are continuing in nature; and of which said sums are due and owed by the Appellant. Counsel further submits that the Learned Judge Dodin was, thus, correct in finding that the total outstanding debt owed as at the end of 2015, be deducted from the outstanding balance as at the end of January 2024, and thereby awarding the sum of USD 51,386.15.
30. With the foregoing, the Respondent prays that this appeal be dismissed and Judge Dodin's Judgment of 21 July 2025, be affirmed and the Appellant pay the Respondent the sum of

USD51,386.15, with 1% interest per month until judgment and in addition, pay interest at 4% per annum on the judgment debt.

The Hearing

31. At the hearing Mr. Ferley submitted that the appeal essentially turned on a straightforward accounting exercise concerning the quantum awarded. He acknowledged certain inaccuracies in the figures contained in his Skeleton Heads and, with the Court's leave, provided a revised summary prepared by an accountant. He clarified that the total payments made by the Appellant amounted to USD 181,767.74, while the invoices properly attributable to the relevant period totalled USD 124,500.49, resulting in an overpayment of USD 57,267.25. He further argued that, in line with the trial court's finding that all sums prior to May 2016 were prescribed, only invoices and payments after that date should be considered. On this basis, he contended that the Appellant had in fact overpaid the Respondent, and that the confusion arose from earlier prescribed sums being improperly carried forward in subsequent invoices.
32. In response, Ms. Molle submitted that the trial court's calculation, as set out in the Judgment of 21 July 2025, was correct and consistent with its finding on prescription. She explained that the Court had properly deducted the sum of USD 51,537.34, being the balance due as at the end of 2015 and therefore prescribed, from the total outstanding amount of USD 102,923.49 as at 31 January 2024. This approach, she argued, effectively reset the account from 1 January 2016, allowing only non-prescribed sums and the accruing 1% interest to be considered. She further indicated that, upon reviewing the figures together with the Respondent's accountant, both parties arrived at the same outstanding balance as that determined by the Court, thereby confirming the accuracy of the Court's methodology and conclusions.
33. In reply, Mr. Ferley maintained that the trial court erred in its approach to prescription by failing to apply a clean cut-off in respect of all sums arising prior to 18 May 2016. He argued that, once the Court found those earlier claims to be prescribed, they ought to have been excluded entirely from the calculation, rather than merely deducted from a running

balance. Accordingly, he submitted that the proper approach was to begin afresh from June 2016, considering only invoices raised and payments made after that date. On this basis, and following the tabulation exercise he presented, he contended that the payments made exceeded the valid invoices, resulting in an overpayment by the Appellant.

The Decision of the Court

34. I have carefully read the documents filed in support of this appeal, the accompanying exhibits on the record and the parties' submissions in support of their respective cases.
35. It is common cause that the Appellant upon executing an agreement of sale in respect of a Maison, sometime in 2006, automatically became a member of the Respondent Association, which was charged with offering various property maintenance services, a part of which the Appellant's acquired Maison was. It is further common cause that, by this relationship established, the Respondent offered its property maintenance services to its members, at a cost for which levies were charged. The Appellant, being such a member, was issued various invoices for the maintenance services and was expected to pay his levy for the same on the first day of each month.
36. The Appellant, from the time it acquired the Maison to the time that this action was commenced paid its levies in piecemeal, while maintaining a cumulative debt, plus interest, and thereby prompting the Respondent to commence the action herein to recover unpaid levies and interest, among other reliefs.
37. When the matter was heard by the lower court, the learned Judge Dodin entered judgment in favour of the Respondent, on 21 July 2025, and ordered that the Appellant pay the sum of USD51,386.15 with interest at 1% per month until payment, being the sum found payable after deducting the sum of USD51,537.34 from the amount of USD102,923.49, which by financial statements pertaining to the Appellant's account on the Respondent's books, was the amount unpaid as at January 2024.
38. The Appellant is assailing Judge Dodin's Judgment on the sole ground that the Judge erred in awarding the Respondent USD51,386.15, when the evidence shows that the Appellant

had, between 1 May 2016 and December 2023, paid a total sum of USD151,400.00 to the Respondent and consequently all payments due for said period were paid in full.

39. The disputed sum of USD51,386.15 was arrived at as a result of the learned trial Judge establishing that as at January 2024, what was outstanding as unpaid levies to the Respondent (from the Appellant) was the sum of USD102,923.49. This is a significant increase from the sum of USD77,053.72, initially claimed under the Plaint filed on commencement of this matter in the Supreme Court.
40. However, the learned Judge acknowledging that the figure of USD102,923.49 was constitutive of levies (to the tune of USD51,537.34) which fell due during a period captured by the rule on prescription, and thus, unclaimable, subtracted the latter figure from the former, to arrive at the figure of USD51,386.15, now disputed.
41. The Appellant contends that the evidence on record shows that between 1 May 2016 and December 2023, the sum of USD151,400.00 was paid to the Respondent and thus, the Appellant is no longer indebted. To demonstrate this, Counsel for the Appellant, Mr. Ferley, had referred this Court to the entries appearing in statements exhibited at pages 263 to 284 of the record of appeal. Mr. Ferley has submitted that between 1 November 2017 and 4 January 2024, the Appellant paid a total sum of USD163,313.10 to the Respondent; that the total sum paid from 13 June 2016 to 30 December 2016 was USD178,313.10. I have carefully examined the statements in question and when I weigh the figures Counsel for the Appellant is submitting as having been paid by the Appellant, against the closing balances, I am inclined to opine that Counsel for the Appellant must be labouring under misapprehension.
42. In the Appellant's submissions, Mr. Ferley in one breath, appears to invite us to examine statements which are indicating traceable closing balances, while in another he seems to be asking this Court to completely disregard what the statements are saying. He is purporting to rely on the entries in said statements, while conjuring random figures whose working he has not demonstrated to this Court or justified enough to sway this Court to prefer his figures over what is stated in the statements. For example, while the statement at pages 266 to 286 of the record, which capture the period 1 November 2017 to 1 January

2024, clearly indicates that the amount falling due to the Respondent is USD102,923.49, Mr. Ferley submits that the sum USD163,313.10 was paid to the Respondent during that period. A financial statement is a document that speaks for itself, and in order to dispute the credit column, which shows exactly what was paid and when, the Appellant was required to produce receipts or proof of bank transfers that were omitted from the statement. Submitting random figures without proving that a specific payment was missed remains a mere submission from the bar and cannot override the documentary evidence in the form of the financial statements on the record of appeal.

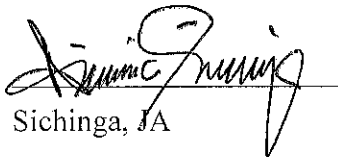
43. Mr. Ferley's submission, with respect, does not seem to disclose a coherent or intelligible line of reasoning, especially that the Appellant has not produced different statements indicating the new alleged figures. He ultimately relies on a totally new statement showing a cumulative total payment by his client of US\$181,767.74. Mr. Ferley is reminded of the trite principle that counsel's submissions, no matter how ingenious, cannot take the place of a party's evidence. Since Mr. Ferley suggested alternative figures to those in the exhibited financial statements, without a witness or document to justify the rebuttal, the figures he suggested cannot be relied upon.
44. Without the need to be an accounts' expert, even a superficial analysis of the statements appearing at pages 263 to 284 of the record of appeal clearly reveals that the Appellant's account as it sits on the Respondent's books is significantly overdue, and interest is piling up much faster than payments are being made by the Appellant. This appears to be a ripple effect of a huge portion of the debt not having been serviced for more than 120 days.
45. The learned trial Judge had found that sums falling due as payable prior to May 2016 were deemed to be prescribed, by virtue of the Civil Code of Seychelles, and were accordingly deducted from the final sum established as payable as at 31 January 2024. I agree with this finding.

Conclusion

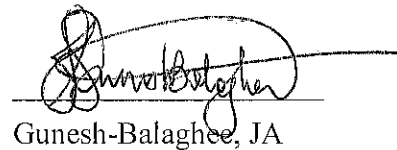
46. In view of the foregoing, it is the finding of this Court that the Appellant has failed to discharge the burden of proof required to disturb the lower court's primary finding of liability. The evidence on record, particularly, the financial statements exhibited at pages

263 to 286, clearly establishes the existence of an outstanding debt. While Counsel for the Appellant sought to dispute the figures in the statements and proposed alternative figures, the same remained mere submissions from the bar and speculative, in that they were unsupported by any forensic accounting or restorative evidence to contradict the *prima facie* accuracy of the statements. The misapprehension lies in Mr. Ferley's attempt to re-compute the debt through verbal argument rather than accounting logic.

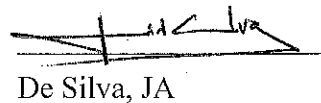
47. In the result, having carefully considered the grounds of appeal, the record, and the submissions of counsel, I am satisfied that the appeal discloses no merit. The appellant has failed to demonstrate any error of law or fact warranting interference with the decision of the court below. Accordingly, the appeal is hereby dismissed in its entirety with costs to the Respondent.


Sichinga, JA

I concur:


Gunesh-Balaghee, JA

I concur:


De Silva, JA

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