

SUPREME COURT OF SEYCHELLES

	<u>Reportable</u> CS 56/2025
In the matter between:	
ANDREW TERRY CAMILLE	1st Plaintiff
And	
MARYAN NELLA PAMELA CAMILLE	2nd Plaintiff
And	
CYNTHIA MARY-JANE CAMILLE <i>(Represented by Mr Wilby Lucas)</i>	3rd Plaintiff
v/s	
EPHNA PAULETTE CAMILLE	1st Defendant
And	
REMSY VICTOR SAMUEL HENEKA <i>(Represented by Ms Edith Wong)</i>	2nd Defendant

Neutral Citation: *Camille & Ors vs Camille & Or* (CS 56/2025) (26 February 2026)
Before: Adeline J
Summary: Civil suit commenced by way of a plaint – Reliefs sought include declarations of heirship, nullity of deed of transfer – Acquisitive prescription in the alternative – Plea in limine litis raised – Misjoinder of causes of action – Section 105 of SCCP – Prescription under Article 2271 and 2262 Civil Code – Locus standi when dealing with deceased’s estate – Article 721 and 1028 of the Civil Code.
Heard: By written submissions of counsel for the parties
Delivered: 26th February 2026

FINAL ORDER

The plea in limine litis raised by the Defendant to the effect that, 1. the plaint suffers from misjoinder of causes of action contrary to Section 105 of the Seychelles Code of Civil Procedure,

2. that the Plaintiffs' claims are prescribed under Article 2271, 2262 and 1304 of the Civil Code of Seychelles Act, 3. that the Plaintiffs' lack locus standi for not being in a representative capacity under Article 721 and 1028 (d) of the Civil Code to call for invalidation of transfer deed are allowed, and accordingly, the plaint is dismissed for not being maintainable in law.

RULING ON PLEA IN LIMINE LITIS

Adeline, J

[1] In a joint civil suit filed into court on the 6th June 2025 by way of a plaint, the Plaintiffs jointly commenced legal proceedings against the Defendants jointly, praying this Honourable Court for the following orders;

“(a) To declare the Plaintiff as the legal heirs by representation of the late Regina Camille.

(b) To declare that the 1st Plaintiff has acquired right interest in title V3115 with the house thereon situated at Mont Buxton, Mahe by way of acquisitive prescription.

(c) In the alternative, to declare that the 1st Plaintiff has acquired right and interest in the house and its curtilage on title V3115 situated at Mont Buxton, by way of acquisitive prescription.

(d) To declare the deed of transfer of title V3115 executed on 13th January, 2005 as null and void.

(e) To direct the Land Registrar to rectify the land register accordingly, and

(f) Any other order as the court deems reasonable and necessary in the circumstances”.

[2] In their joint statement of defence of the plaint, pursuant to Section 90 of the Seychelles Code of Civil Procedure, the Defendants raise the following points of law in limine, notably;

“1. The plaint contains multiple causes of action and the Plaintiffs are suing in two different capacities.

2. The Plaintiffs’ right of action (if any) have been prescribed by reason of Article 2271 (1) of the Civil Code of Seychelles Act

In alternative to paragraph 2 above,

3. The Plaintiffs’ right of action (if any) have been prescribed by reason of Article 2262 (1) of the Civil Code of Seychelles Act,

4. The plaint is improperly brought by the Plaintiffs as neither of them are executors of the late Regina Camille.

The plaint discloses no cause of action against the 2nd Defendant”.

[3] In line with the statutory requirements of the provisions of Section 90 of the Seychelles Code of Civil Procedure, the parties in this suit gave their consent, albeit orally, for the points of law so raised to be heard and disposed of prior to the hearing of the plaint on its merits.

[4] The crux of the Plaintiffs’ case, is that they seek, *inter alia*, declarations of heirship, nullity of a 2004 deed of transfer pertaining to property title V3115, and alternatively, acquisitive prescription in favour of the 1st Plaintiff.

[5] By way of the plea in limine litis raised, the Defendants challenge the maintainability of the plaint on three main grounds, notably,

(i) Firstly, that the plaint suffers from misjoinder of causes of action contrary to Section 105 of the Seychelles Code of Civil Procedure

- (ii) *Secondly, that the claims are prescribed under Articles 2271, 2262 and 1304 of the Civil Code of Seychelles Act, and*
- (iii) *Thirdly, that the Plaintiffs lack locus standi to invalidate the deceased's transfer in the absence of representative capacity pursuant to Article 721 and 1028 (d) of the Civil Code of Seychelles Act.*

THE PLAINTIFFS' CASE BASED ON THEIR SUBMISSIONS

- [6] As per the written submissions of counsel based on the Plaintiffs' pleadings, the Plaintiffs are the grandchildren of the late Regina Camille, the original registered proprietor of Land parcel V3115 situated at Mont Buxton, Mahe, Seychelles. Their mother, Marjorie Camille, was the biological daughter of the late Regina Camille who passed away at the age of 93 years old. At the time of her death, Regina Camille, deceased, left behind the Plaintiffs who were aged between four months and seven years, in the care and custody of their grandmother.
- [7] It is submitted by counsel for the Plaintiffs, that the late Regina Camille raised them and provided for them as if they were her own children until they attained adulthood. It is also submitted by counsel, that the Plaintiffs plead that, the land parcel V3115, as well as a two bedroom prefab house built thereon, were at all material times owned by the deceased and that the same used to be her family home. Learned counsel submits that, based on the Plaintiffs' pleadings, the 1st and 2nd Plaintiffs provided daily care and support to the late Regina Camille until she passed away on the 30th April 2021, at the age of 93 years old.
- [8] It is the submission of counsel that, the Plaintiffs maintain, that at the time of the death of the late Regina Camille, the 1st Plaintiff continued to occupy the property V3115 and house thereon, as the sole occupant of that property. It is also the submission of counsel that, by letter dated 13th November 2024, written by one Joseph Athanasius, a Public Notary, the 1st Plaintiff was issued with a notice to vacate the land and house thereon, informing the 1st Plaintiff that the land and house is owned by the 2nd Defendant.
- [9] It is the submission of counsel, referring to the Plaintiffs' pleadings, that, following a search in the Land Registry, it transpired, that land parcel V3115 had been sold and transferred

into the name of the 1st Defendant by way of a deed of transfer executed on the 13th January 2004. Learned counsel submits, as averred by the Plaintiffs, that the 1st Defendant who is their maternal aunty, never disclosed this information to the Plaintiffs neither before, or after the passing away of the late Regina Camille.

[10] It is submitted by counsel, that it is pleaded by the Plaintiffs that, the late Regina Camille promised the Plaintiffs that after her death they would inherit the land and house thereon, and that in reliance of such promise, the 1st Plaintiff continued to occupy the house, catered for its upkeep and paid the electricity bills whilst considering the house as a family home. It is the submission of counsel, that the late Regina Camille never mentioned any sale of parcel V3115 and the house thereon to the 1st Defendant.

[11] Counsel submits, that as per the Plaintiffs' pleadings, they were never consulted, informed or made aware of any intention to sell land parcel V3115 to the 2nd Defendant. Learned counsel also submits, that it is the contention of the Plaintiffs that, the purported transaction took place without their knowledge and that the sum of SCR 150,000.00 purported to be the purchase price for the land did not reflect the correct market value of the land. It is the submission of counsel that, at the time of the purported sale and purchase transaction, the late Regina Camille was at an advanced age and did not hold a bank account. The Applicants contend that there is no record of receipt of the alleged SCR 150,000.00.

[12] It is submitted by counsel that, the Plaintiffs maintain, that for a period of 20 years after the transfer of title V3115 was executed, the 1st Plaintiff lived in the house next door to the 1st Defendant with peaceful enjoyment, without interruption and with full knowledge and acquiescence of the 1st Defendant, and that even if the 2nd Defendant claimed ownership of title V3115 and the house thereon in 2024, it was only on the 11th April 2025 that, the said title was registered in the name of the 2nd Defendant.

[13] In summary, learned counsel argues that, the Plaintiffs are the legal heirs by representation of the late Regina Camille. Counsel also argues, that at the time that the deed of transfer was executed, the said Regina Camille was unable to understand the object of the document, and that the purchase price of SCR 150,000.00 was never received by her from the 1st Defendant. Counsel submits, that the Plaintiffs rely on the fact that the 1st Plaintiff

had occupied the house for 20 years peacefully without any interruption and with full knowledge and acquiescence of the 1st Defendant. As such, it is the submission of counsel, that the 1st Plaintiff is of the view, as averred, that he has acquired right and interest in the property by way of acquisitive prescription under the provision of the Civil Code of Seychelles Act.

[14] In the light of counsel's submissions, the Plaintiffs pray this Honourable Court to declare them as follows;

“(a) As the legal heirs by representation of the late Regina Camille.

(b) Declare that the 1st Plaintiff has acquired right and interest in title V3115 with the house thereon situated at Mont Buxton, Mahe by way of acquisitive prescription, or in the alternative, that, he has acquired right and interest in the house and its curtilage on tile V3115 by way of acquisitive prescription.

(c) Declare the deed of transfer of title V3115 executed on 13 January 2004 as null and void, and direct the Land Registrar to rectify the land register accordingly, and

(d) Grant any other order as the court deem reasonable and necessary in the circumstances”.

[15] In its submissions to canvas against the plea in limine litis, learned counsel for the 1st and 2nd Defendants state that, the plaint contains multiple causes of action and that the Plaintiffs are suing them in two different capacities. Learned counsel submits that, the Plaintiffs have conflicted distinct causes of action, and add, that it is the contention of the Defendants that the plaint, particularly at paragraphs 13 and 15, suggests an allegation of breach of promise or lesion under Article 1674 of the Civil Code of Seychelles Act, which permits rescission where the price paid is less than one half of the value of the thing sold. Learned counsel also submits that, such a cause of action is personal in nature and would lie, if at all, between the transferor and the transferee.

[16] It is the submission of counsel, that, the Plaintiffs have attempted to combine the alleged cause of action with a claim for acquisitive prescription, relying on paragraph 17 of the

plaint and the alternative relief sought. Learned counsel submits that, it is the Defendants' contention that, these are fundamentally different causes of action involving different parties in different capacities. Counsel added, that in a claim for nullity or rescission of transfer, the relevant parties are the transferor and the transferee, whereas in acquisitive prescription the relevant parties are the registered proprietor and the person in occupation.

[17] Counsel submitted that, there is a foul of Section 105 of the Seychelles Code of Civil Procedure in that the causes of action pleaded do not arise between the same parties, the parties are not suing and be sued in the same capacities, and the causes cannot conveniently be tried together. Learned counsel relies on Section 105 of the Seychelles Code of Civil Procedure and the court's decision in *Maurel & Or v Geers & Or (CS 30 of 2015) [2022] SCSC 460* in which case, the court held that joinder of causes of action is permitted only where three conditions are met, (i) that the causes arise between the same parties (ii) that the parties sue and are sued in the same capacities, and (iii) that the causes can conveniently be tried together. It is the submission of counsel, that the Defendants are of the view that none of these conditions are met in the present case.

[18] Counsel submits that, firstly, the parties are not the same, as a claim for nullity of the transfer would require the estate of the deceased, represented by an executor to be a party, whereas, the claim for acquisitive prescription is brought by the 1st Plaintiff in her personal capacity. Secondly, counsel also submits, that the capacities are not the same, given that challenge to the transfer would have to be brought in a representative capacity on behalf of the deceased's estate, whereas the acquisitive prescription claim is a personal claim. Thirdly, counsel further submits, that the evidence required to determine nullity or lesion would differ substantially from that required to determine acquisitive prescription, and the causes cannot conveniently be tried together.

[19] It is also the submission of counsel that, the Defendants' contention is that the Plaintiffs' right of action, if any, is prescribed by reason of the law under Article 2271 (1) of the Civil Code of Seychelles Act, which law provides that all rights of action are subject to prescription after a period of five years except as the law provides under Article 2262 of the Civil Code of Seychelles Act. Counsel submits that, in the alternative, the Defendants

are of the view that, even if the court was to characterise the claim as one *in rem* relating to rights of ownership of land, the action is nevertheless prescribed by reason of Article 2262 (1) of the Civil Code of Seychelles Act which bars all *in rem* actions in respect of rights of ownership of land.

[20] Submitting on the facts as pleaded by the Plaintiffs, counsel states, that the transfer occurred on 13 January 2005 and that the plaint was filed on 3rd June 2025, more than 20 years later. Counsel contends that, if the claim is characterised as personal, it is prescribed under Article 2271 (1), which provides for a five-year prescription period. If characterised as an action *in rem* relating to ownership of land, it is prescribed under Article 2262 (1) of the Civil Code of Seychelles Act, which provides a twenty year prescription period, which expired on 13 January 2025.

[21] Counsel submits that, the Defendants maintain that the plaint has been improperly brought against them for the reason that neither of the Plaintiffs are the executor of the late Regina Camille. Counsel states, that as the succession of the late Regina Camille includes immovable property, it vests in an executor pursuant to Article 721 of the Civil Code of Seychelles Act, and Article 1028 (d) of the Civil Code of Seychelles Act requires the executor to represent the estate in legal proceedings. It is the submission of counsel that, as the Plaintiffs do not plead that they are executors or that they sue in a representative capacity, they cannot maintain an action to nullify the transfer.

[22] Counsel submits that, in respect of the 2nd Defendant, the plaint contains no pleaded allegation of fraud, or other actionable wrong doing against him, and that mere fact of registration of title does not disclose a cause of action. It is the submission of counsel that, for the reasons discussed and argued above, the 1st and 2nd Defendants pray that the plea in *limine litis* be upheld and that the plaint be dismissed with cost awarded to the Defendants against the Plaintiffs jointly and severally.

[23] In its answering submissions on the plea in *limine litis*, counsel for the Plaintiffs takes issue with the proposition that the plaint contains multiple causes of action and that the Plaintiffs are suing in two different capacities. It is the submission of counsel that, the Plaintiffs rely

on Section 105 of the Seychelles Code of Civil Procedure to show that they are not foul of the law. Counsel quotes Section 105 as follows;

“Different causes of action may be joined in the same suit, provided that they be between the same parties and that the parties sue and are sued respectively in the same capacities but if it appears to the court that any such causes of action cannot be conveniently tried or disposed of together the court may, either on its own motion or on the application of the defendants, order separate trials of any of such causes of action, or may make such other order as may be necessary or expedient for the separate disposal thereof, or may order any of such causes of action to be excluded, and may make such order as to cost as may be just”.

[24] Prima facie, looking at the plaint and the pleadings, the Plaintiffs’ argument seems to be the following;

- (i) That the causes of action have arisen between the same parties
- (ii) The parties are suing in the same capacity, and
- (iii) The causes of action can conveniently be tried or disposed of together in the same suit.

[25] As regards to the point raised by counsel for the Defendants in respect of the provision of Article 2271 of the Civil Code of Seychelles Act that, *“all rights of action shall be subject to prescription after a period of five years*, it is the submission of counsel for the Plaintiffs that, prescription does not arise here for the reason that the Plaintiffs became aware that the property is no longer for Mrs Regina Camille, their late grandmother, and that the 2nd Defendant is the new owner, when the 1st Plaintiff received a letter dated 13th November 2024 from the 2nd Defendant’s Attorney giving him notice to vacate the property.

[26] As regards to the points raised by counsel for the Defendants in respect of Article 2262 (1) of the Civil Code of Seychelles Act which provides that, *“All in rem actions in respect of rights of ownership of land or interest in land are barred by prescription after twenty years,*

learned counsel for the Plaintiffs argues that, the period of occupation of the property V3115 is less than 20 years, and therefore, Article 2262 (1) is not relevant.

[27] As to the proposition of the Defendants that the plaint discloses no cause of action against the 2nd Defendant, it is the submission of counsel for the Plaintiffs, that by a deed of transfer executed on the 13th day of January 2004, the late Regina Camille transferred parcel V3115 with a two bedroom house thereon into the name of the 1st Defendant and without the knowledge of the Plaintiffs. It is submitted by counsel that, all the Plaintiffs have been living with the late Regina Camille and at the time of the transfer, the 1st Plaintiff was the occupant of the said property.

[28] Counsel for the Plaintiffs submits that, the 1st Plaintiff has pleaded for a declaration under (b) & (c) that he has acquired right and interest in land title V3115 with house thereon situated at Mont Buxton, Mahe by way of acquisitive prescription under Article 2229 and 2262 (1) of the Civil Code of Seychelles Act. It quotes the provisions of Article 2229 and 2262 (1) as follows;

Article 2229

“In order to acquire property by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of owner”.

Article 2262 (1)

“All in rem actions in respect of rights of ownership of land and interest in land are barred by prescription after twenty years”.

[29] It is submitted by counsel for the Plaintiffs, that the Plaintiffs’ contention is that 1. the 1st Plaintiff have been in occupation of the property at the time the late Regina Camille transferred the property into the name of the 1st Defendant on the 13th day of January 2004. 2. the property in question is next door to the residence of the 1st Defendant, meaning they are neighbours. 3. the Plaintiffs paid electricity and water bills, which is still in the name

of Regina Pouponneau, the maiden name of Regina Camille. Counsel submits that, this is a demonstration as if the property is owned by the Plaintiffs.

[30] It is also submitted by counsel that, 4. there has been no interruption of occupation, that 5. the occupation by the 1st Plaintiff was known to the 1st Defendant, and that, 6. from the date of the transfer from Regina Camille to the 1st Defendant in January 2004 to the date of the transfer to the 2nd Defendant in April 2025, is 21 years.

[31] It is the submission of counsel for the Plaintiffs that, the Plaintiffs' argument is that the provision of Article 2229 as read with Article 2262 (1) has been satisfied, in that the elements of an acquisitive prescription exist, and therefore, there is a cause of action.

[32] Learned counsel for the Plaintiffs submits that, the plaint filed by the Plaintiffs is in compliance with the provisions of Section 105 of the Seychelles Code of Civil Procedure, in that the Defendants and the Plaintiffs are the same parties and that the parties are sued in the same capacity with regards to one subject matter which is land title V3115 with a two bedroom house thereon.

[33] Learned counsel for the Plaintiffs also submits, that the court can conveniently tried and dispose of the subject matter without the need to order for a separate trial. Addressing the issue of prescription, it is the submission of counsel that, for the purpose of Article 2271, the time for prescription start running when the cause of action came to the knowledge of the Plaintiffs which is the day the 1st Plaintiff was served with the letter dated 13th November 2024 from the 2nd Defendant's attorney to vacate the property. Finally, counsel submits, that Article 2229 & 2262 (1) of the Civil Code of Seychelles Act when apply, give rise to an acquisitive prescription of which the court ought to adjudicate upon, and therefore, the plea in limine litis must be dismissed.

COURT'S LEGAL ANALYSIS, DISCUSSION AND REASONING

[34] At the preliminary stage of these proceedings, this court is being called upon to determine, whether the plea in limine litis raised by the Defendants ought to be upheld so as to fully dispose of the plaint. In that regard, the areas of law which has to be examined and discussed are;

- (i) Misjoinder of causes of action under Section 105 of the Seychelles Code of Civil Procedure.
- (ii) Prescription under Articles 2271 and 2262 of the Civil Code of Seychelles Act, and
- (iii) Locus standi of the Plaintiffs in the light of Articles 721 and 1028 of the Civil Code.

[35] As regards to misjoinder of causes of action, this is provided for under Section 105 of the Seychelles Code of Civil Procedure (“SCCP”). Under the provisions of Section 105 of the SCCP, joinder of different causes of action in the same suit is only allowed where the court is satisfied that, three cumulative conditions exist, namely;

- (i) Firstly, that the causes arise between the same parties
- (ii) Secondly, that the parties sue and are sued in the same capacities, and
- (iii) Thirdly, that the causes can conveniently be tried or disposed of together.

[36] In the case of *Maurel & Or vs Geers & Ors [2022] SCSC 460*, the court by way of the following extract, addressed the principles governing Section 105, when it said, that where different causes of action are joined against different parties or in different capacities, the plaint is not maintainable and must be dismissed once the defect is properly raised in a *plea in limine litis*. The court held that;

“In the present case, the Defendants have raised the issue of misjoinder of causes of action as a plea in limine litis and the Plaintiffs have not made any applications for joinder of causes of action and hence following the principles in the case of Andre vs Jupiter SCA 19/2018, I accordingly uphold the first plea in limine litis of the Defendant as I find that the plaint is not maintainable in law”.

[37] In *Servina v Servina [2022] SCSC 864*, the court adopted similar approach and upheld a plea in limine litis on the ground that a contractual claim and a delictual claim had been improperly joined in the same suit contrary to Section 105 of the SCCP. The court emphasised that, the three requirements are cumulative and must strictly be satisfied to be

in compliance with Section 105 of the SCCP. At paragraphs 43 and 44 the court had this to say;

“43. It is very clear that Section 105 of Seychelles Code of Civil Procedure when it comes to joinder of causes of action that in principle joinder cannot be raised proprio motu by the court and hence counsels have to raise it on behalf of their clients to join parties to their pleadings. If the courts were to do that, they would be juxtaposing themselves in the places of parties and this would be unethical. This court takes note that no necessary application for joinder was made by counsel for the Plaintiffs.

44. Furthermore, although joinder of causes of action is permitted under Section 105 of the Seychelles Code of Civil Procedure, the proviso thereunder stipulates that it should satisfy three conditions which are that the causes of action should have arisen between the same parties. Secondly, that the parties should sue and be sued in the same capacities, and thirdly, that it should appear to the court that such causes of action can conveniently be tried or disposed of together in the same suit”.

- [38] In the case at hand, the Plaintiffs seek (i) for a declaration that they are heirs by representation, (ii) a declaration that the 2004 deed of transfer is null and void, and (iii) alternatively, a declaration that the 1st Plaintiff has acquired rights by acquisitive prescription. Clearly, therefore, these are distinct juridical remedies sought for.
- [39] Challenging the deed of transfer is an action impugning the validity of a judicial act allegedly executed by the deceased, Regina Camille. Such a claim or a remedy necessarily implicates the estate, and concerns the rights of succession. By contrast, a claim for acquisitive prescription under Article 2229 of the Civil Code is a real action grounded in possession as owner against the registered proprietor. The heirship declaration concerns status in succession law.
- [40] Clearly, therefore, these causes of action do not arise in identical capacities. A challenge to transfer would ordinarily be brought in a representative capacity on behalf of the estate, whereas, acquisitive prescription is pleaded by the 1st Plaintiff in his personal capacity. The capacities are obviously not the same.

- [41] Furthermore, the evidentiary basis for these claims differ materially. The nullity claim requires proof of incapacity, fraud, non-payment or *lesion*. The acquisitive prescription claim requires proof of continuous, peaceful, public and unequivocal possession as owners for the requisite statutory period. They are not dependant on the same legal footing. Applying the strict approach as held in the case of Maurel (Ibid) and Servina (Ibid) this court finds that, the cumulative requirements of Section 105 of the SCCP have not been satisfied. The plaint accordingly suffers from misjoinder of causes of action.
- [42] As regards to prescription, the Defendants' plea is that the Plaintiffs' action is prescribed by law given the statutory provisions of Articles 2271, 2262, 2265 and 1304 of the Civil Code of Seychelles Act. It is therefore necessary for the court to first determine the judicial nature of the action as the applicable prescriptive period depends on whether the action is personal or real. Article 2271 (1) provides that, all actions shall be subject to prescription after a period of five years, except as provided in Articles 2262 and 2265. This provision, therefore, governs personal actions.
- [43] Article 2262 provides that, all real actions in respect of rights or ownership of land or other interests therein, shall be barred by prescription after twenty years, whether the party claiming the benefit of such prescription can produce a title or not, and whether such party is in good faith or not, and Article 2265 further provides that, where a party produces a title acquired for value and in good faith, the twenty- year period under Article 2262 is reduced to ten years.
- [44] In law, there is a clear distinction between real and personal actions. This was reaffirmed in *Servina v Servina* (ibid), where the court emphasised that the characterization of the action is determinative. The court cited *Attorney General v Robert* CS 428/1995 (1997) in which case it was held that, where the action is in substance a real action asserting ownership of land, article 2262 applies and the twenty year prescription governs. Alternatively, where the action is personal in nature, the five-year prescription period under Article 2271 of the Civil Code of Seychelles Act applies. In the case of *Yves Maurel v Mary Geers* (CS 30/2015), the court reiterated the distinction between a *droit réel* (right of ownership) and a *droit personnel* (right to recover value or enforce a personal obligation),

holding that, where the action is for recovery of value or based on a personal obligation, the five year prescription applies.

- [45] Thus, under the provisions of the Civil Code of Seychelles Act, there is a distinction between real actions and personal actions. The general rule for personal actions is that they are barred by extinctive prescription of five years after the cause of action arose. Article 2271 of the Civil Code of Seychelles Act stipulates that personal actions are barred by extinctive prescription of five years as follows;

“All rights of action shall be subject to prescription after a period of five years except as provided in Articles 2262 and 2265 of the code”.

- [46] Conversely, the general rule for real actions is contained in Article 2262 and 2265 of the Civil Code of Seychelles Act and reads as follows;

“All real actions in respect of rights of ownership of land or other interest therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not”.

Hence, Article 2262 of the Civil Code of Seychelles Act contains a limitation in respect of real actions for rights of ownership of land.

- [47] In this case at hand, the Plaintiffs seek, *inter alia*, a declaration that the 2004 transfer is null and void on the ground of fraud. An action for nullity or rescission of a contract is specifically governed by Article 1304 of the Civil Code of Seychelles Act. Article 1304 provides that, in all cases where an action for nullity or rescission of a contract is not limited by special legislation, that action shall be available for five years, and in the case of fraud, the period shall run from the day the fraud was discovered. Article 1304 of the Civil Code of Seychelles Act as regards to fraud and action for nullity or rescission of a contract is couched in the following terms;

“In all cases in which the exercise of action for nullity or rescission of a contract is not limited to a short period by special legislation, that action shall be available for 5 years.

That period shall only run in the case of duress as from the day that the duress came to an end, in the case of mistake or fraud, as from the day when they were discovered”.

- [48] In the case of *Edita Ladouce vs Julita Rath (CS 21/2020) 2024*, the court directly addressed this issue after the Plaintiff had sought for nullity of a land transfer on the ground of fraud, and had argued that, Article 2262 applied because the subject matter concerned land. That argument was rejected by the court, which proceeded to add, that Article 2262 does not apply to an action for nullity on the ground of fraud. Such an action is governed solely by Article 1304 and is subject to a five-year prescription running from discovery of the fraud. In *Ladouce*, (ibid) the court further analysed the evidence to determine when fraud was discovered, and then held that where more than five years had elapsed between discovery and the filing of the action, the claim was prescribed. The plea in *limine litis* was accordingly upheld and the plaint dismissed.
- [49] Therefore, the reasoning in *Ladouce* (ibid) is consistent with the earlier jurisprudence distinguishing between real actions asserting vested ownership rights and personal actions seeking annulment of contract. Although the subject matter may be land, an action seeking to annul a transfer for fraud is contractual in nature and does not fall within Article 2262. When one applies these principles to the facts of the present case, the Plaintiffs’ primary relief seek nullity of the 2004 transfer on the ground of fraud. That claim falls squarely within the provision of Article 1304. The prescriptive limitation period is therefore five years from the date of discovery of the alleged fraud.
- [50] The impugned transfer was executed in January 2004. The present action was instituted in 2025. Even assuming that discovery occurred at a later date, the Plaintiff bears the burden of establishing that the action was brought within five years of discovery. Alternatively, if the claim was to be characterised as a real action asserting ownership of land under Article 2262 of the Civil Code of Seychelles Act, the twenty-year period would have commenced in 2004 and expired in 2024. The present action was filed after that date. On the facts of the instant case as pleaded, whether the action is characterised under Article 1304 as one for nullity on account of fraud, or under Article 2262 as a real action, the applicable prescriptive period has lapsed.

- [51] The relief of acquisitive prescription sought for by the Plaintiffs is on the basis of Article 2229 of the Civil Code of Seychelles Act, which provides that in order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public and unequivocal and exercised by a person acting in the capacity of owner. To be successful, these requirements are cumulative and must be strictly met at the satisfaction of the court.
- [52] In *Payette v Nicette* (SCA 24/2021) [2023] SCCA 22 (26 April 2023) the Court of Appeal held that, possession must not only satisfy the physical element (*corpus*) but must also demonstrate *the animus domini*, that is to say, possession exercised in the capacity of owner. The court in *Payet* (*Ibid*) upheld the finding of the trial court that where a possessor acknowledges the title of the true owner, he cannot be said to be acting in the capacity of owner for the purpose of acquisitive prescription.
- [53] In *Payette* (*Ibid*) the court went further as to say that, an acknowledgement of the owner's right interrupts prescription pursuant to Article 2248 of the Civil Code of Seychelles Act, and that such acknowledgment defeats the continuity required under Article 2229 of the Civil Code of Seychelles Act. The court agreed with the finding and conclusion of the trial judge that the possession was interrupted and not continuous once the acknowledgment was made.
- [54] In the present case, as pleaded by the Plaintiffs, possession originating from family occupation, or arrangement with the late Regina Camille, may not satisfy the requirement of possession *as owner*. The Plaintiffs' own pleadings suggest occupation that began under the late Regina Camille. In the absence of a clear transfer of title, such possession may remain permissive and incapable of founding acquisitive prescription. Furthermore, if the period relied upon runs from 2004 transfer, 20 years would have been completed in January 2024. The present action was instituted thereafter. Even assuming uninterrupted possession from that date, the statutory period had not accrued at the time proceedings were filed.
- [55] It is to be noted that, there is an inherent inconsistency between simultaneously challenging the validity of the registered title and asserting acquisitive prescription against that same title. While in principle, alternative pleading is permissible, the case of *Payette* (*Ibid*), underscores the point that, acquisitive prescription requires possession exercised openly

and unequivocally as owner against the registered proprietor. A party who denies the validity of the title while seeking to prescribe against it must clearly and coherently plead such alternative relief. Therefore, in the light of the principles discussed above and reaffirmed by the Court of Appeal in *Payet v Nicette*, the Plaintiffs have not demonstrate possession of the requisite quality under Article 2229 capable of defeating the registered title by way of acquisitive prescription.

[56] On the face of the pleadings, there is also the need to address locus standi. Article 721 (1) of the Civil Code of Seychelles Act, provides for the following;

“Where a succession includes immovable property, the succession shall vest in an executor”.

Furthermore, Article 1028 (d) provides that;

“The executor shall represent the succession in all legal proceedings”.

[57] It is therefore clear from these statutory provisions, that where the deceased’s estate comprises of immovable property, the executor is the legal representative of that estate for all purposes including litigation. Thus, a challenge to the validity of a transfer allegedly executed by the deceased necessarily concerns the patrimony of the estate and affects rights vested in the succession. Essentially, therefore, such a claim must be brought by the executor in his or her representative capacity.

[58] It is observed that, the Plaintiffs do not plead that they are joint executors of the estate of the late Regina Camille. It is also observed that, nor that they sue in any representative capacity pursuant to Article 721 of the Civil Code of Seychelles Act. In fact, there is no averments of probate, letters of administration, or other legal authority entitling them to represent the succession. In essence, the fact that the Plaintiffs are not in compliance with the Articles 721 and 1025 (d) of the Civil Code of Seychelles Act, the Plaintiffs lacks locus standi to impugn the deceased’s transfer. The nullity claim, in so far as it affects the estate is therefore not maintainable in law.

HOLDING AND IMPLICATIONS

- [59] In the light of the forgoing discussions, analysis and reasoning, the plaint cannot be sustained. The Plaintiffs have failed to satisfy the cumulative requirements of Section 105 of the Seychelles Code of Civil Procedure, and the joinder of distinct causes of action in different capacities renders the action procedurally defective. The Plaintiffs attempt to challenge the 2004 transfer is prescribed, whether characterised as a personal action under Article 1304 of the Civil Code of Seychelles Act, or as a real action under Article 2262 of the Civil Code of Seychelles Act.
- [60] The plea of acquisitive prescription is not supported by possession of the requisite legal qualify under Article 2229, and is further weakened by internal inconsistency in the pleadings. Finally, the Plaintiffs have also not established proper representative capacity pursuant to Article 721 and 1028 (d) of the Civil Code of Seychelles Act.
- [61] For those reasons, therefore, the plea in limine litis raised by the Defendants are allowed. Accordingly, the plaint is dismissed for not being maintainable in law.
- [62] Costs is awarded in favour of the Defendants against the Plaintiffs jointly and severally.

Signed, dated and delivered at Ile du Port 26th February 2026.

