

# IN THE SEYCHELLES COURT OF APPEAL

**[Coram:** F. MacGregor (PCA) , A. Fernando (J.A), F. Robinson (J.A)]

## **Civil Appeal SCA 30/2013**

**(Appeal from Supreme Court Decision CS 13/2009)**

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Robert Horwath

Appellant

Versus

Gilles Pinchon

1st Respondent

Chantal Pinchon

2nd Respondent

Elite Excursion (Proprietary) Ltd

3rd Respondent

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Heard: 04 May 2018

Counsel: Mr. Divino Sabino for the Appellant

Mr. Anthony Derjacques for the Respondents

Delivered: 11 May 2018

## **JUDGMENT**

F. MacGregor (PCA)

1. This is a case of disputed ownership of a boat by contesting claimants. The boat was purchased in the United States of America and shipped to the Seychelles. Both claimants were good friends initially but fell out later when an issue arose as to who owned the boat.
2. The matter went before the Supreme Court and the Trial Judge found in favour of the Respondents. The Trial judge found the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to be bona fide purchasers for value.
3. It is against this background that the Appellant is appealing to this court. The Appellants grounds of appeal are as follows:

- (1) With regards to ownership of the vessel, the learned Judge failed to appreciate [paragraph 13 of the judgment] that genuine title documents were submitted to court [Exhibit P1 and P2] as proof that the Appellant is the owner of the vessel.
  - (2) With regards to ownership of the vessel, the learned Judge failed to consider email correspondence from the 2<sup>nd</sup> Respondent to the Appellant [Exhibits P5 and P6] wherein the 2<sup>nd</sup> Respondent admits that the Appellant is the owner of the vessel.
  - (3) The learned Judge erred in attributing greater credibility on the part of the 2<sup>nd</sup> Respondent [paragraph 10 of the judgment] and the Respondents' witnesses despite contradictions in their evidence.
  - (4) The learned Judge erred in allowing the Counterclaim [paragraph 12 of the judgment] when it is based on Malicious Prosecution.
  - (5) The learned Judge failed to take into consideration evidence from the Appellant with regards to his unchallenged title of ownership of the Trailer [Exhibit P2] that accompanied the vessel.
4. In ground one referring to Exhibit P1 and P2, we find that they do in fact contradict each other as follows:

P1 cites the Owner as Robert Horwath the Plaintiff, date of issue as 24<sup>th</sup> July 2008 whereas P2 at the overleaf describes the Buyer again as Robert Horwath, Appellant as buying on 15<sup>th</sup> August 2008. How could he be owner before buying the boat as per P1?

This ground fails as it is a blatant contradiction.

5. In ground two, with respect to the e-mails from 2<sup>nd</sup> Respondent to the Appellant, 2<sup>nd</sup> respondent during cross-examination strenuously denied receiving those emails and explained that they were possibly fraudulent at page 249 of the records. On a balance of

probabilities I find the balance of proof required to refute this claim was not attained. As such ground two fails.

6. In ground three, the Appellant submits that the learned Judge erred in attributing greater credibility on the part of the 2<sup>nd</sup> Respondent despite contradictions. As that may be, it was for the trial Judge to determine what and who to believe in the circumstances. The Trial Judge had the opportunity to see the demeanor and was better placed to determine the credibility of the witnesses before him. Ground three hence fails.
7. In ground four on the Counter-Claim based on Malicious Prosecution. The Respondents' counsel has conceded this ground and accordingly it is allowed.
8. In ground five as to the unchallenged title of ownership of the trailer. Taking a critical look at the very pleadings of the Plaintiff below and the Affidavit at page B2 of the records as well as the Statement of Claim at page C of the records, there is no reference or claim to a trailer. It was not canvassed at the lower court at any point, accordingly, the trial Judge did not consider the trailer title claim as the issue was not before him. In any event Exhibit P2 refers to a boat as was Exhibit P1 at page B2 of the record and so does the 2<sup>nd</sup> Exhibit P1 at page L of the record. This ground therefore, leads us nowhere and accordingly fails.
9. Over and above all the grounds referred to, I note the following observations: the mode of evidence has been mostly documentary and partly testimonial. The lengthy and numerous modes of evidence can be summarised through the following;
  - a) Certificates of Title
  - b) Bills of sale
  - c) Payments receipts, some in French
  - d) Bank statements, some in French
  - e) Bank correspondence
  - f) Insurance documents
  - g) Testimonies
  - h) Shipping documents

i) E-mails

10. Ownership is synonymous with title and we have in this case Certificates of Title, of which that very wording directly refers or implicates Certification of Title.
11. It is also to be noted that in the Certificates of title is the wording “This document is your proof of ownership .....

.....” To dispose of your ..... boat, complete the transfer section on the back and give this title to the new Owner. Accordingly, Plaintiff produced Exh. P1 and P2, showing exactly that; a person referred to as owner signed indicating that he was selling the boat to the Seller who also signed at the back of the certificate of title.
12. The presentation of P1 and P2 could have been the end of matter on proving ownership. However the very same Plaintiff also produced an Exhibit referred to also as Exhibit P1 in his pleadings through an affidavit at page B2 of the record headed Certificate of Title which was contradictory to the two documents been referred to. This document cites Appellant as owner with date of issue as 24<sup>th</sup> July 2008 contrary to another document produced also by Appellant as Exhibit P1 entitled Certificate of Title which cites Lasell, Michael as Owner and overleaf refers to the Buyer i.e. Appellant as at 15<sup>th</sup> August 2008.
13. What are we to make of this? Obviously this contradictory presentation of fact/evidence as to the person cited as owner, the different dates of issue of Certificate to Appellant and the date of his supposed buying of the boat by his signature as at 15<sup>th</sup> August 2008 leaves us with no option but to state that the trial Judge was in a better position to make a determination on these facts than this court ever can.
14. This leads me, having gone through all the grounds of appeal and supporting arguments to say the Appellant appears to have a “blurred or messy” case. This case can best be described or characterised by a barrage of confusing, contradictory and awkward evidence through 26 Exhibits. Put in another way somehow things do not seem to add, match or tally. Something is amiss and the court is supposed to make sense or weight of it!! This clearly seems impossible.
15. The general rule is that the trial Judge is the best Judge of facts unless clearly perverse in his judgment. The trial Judge had the benefit of determining demeanour and

comportment inter alia, as to whom to believe, what credibility, what weight to give to the evidence. The case of *Jean Francois Adrienne & Another v R* [2017] SCCA 25 at paragraph 35 states that “*credibility of witnesses and the weight of evidence is ultimately a matter of the trier of facts.*”

16. In all the circumstances even if both parties appear suspicious and doubtful the fact remains the onus of proof is on the Appellant.
17. Onus in a civil matter is for the Appellant to prove his or her case on a balance of probability. This principle has been articulated in a plethora of authorities such as *Ebrahim Suleman & Others v Marie-Therese Joubert & Others SCA no7 of 2010*, *Nanon & Another v Ministry of Health services & Others (SCA 05/2012) [2015] SCCA 47*, *Seychelles Broadcasting Corporation v Beaufond & Others (SCA 29/2013) [2015] SCCA 21*, *Kozhaev v Eden Island Development Company (SCA 35/2013) [2016] SCCA 34*
18. Therefore even if the Respondents were to be of the same culpability as the Appellant, because the onus of proof is on the Appellant there cannot be any other way out than for the Appellant to prove his case up to the standard required of him by law.
19. On the contrary, if the Appellant fails to do so as in this case, it works in favour of the Defendant, because of the onus of proof placed on the Appellant has not be discharged.
20. Article 2279 of the Civil Code states;

*“With regard to movables, possession in good faith establishes a presumption of ownership.*

*Nevertheless, a person who has lost something or whose goods were stolen may vindicate these during a period of five years from the date of the loss or the theft against any person in whose hands the goods are found; but the latter shall have a remedy against the person from whom he obtained them.”*

21. As the Article points out, to rebut that presumption, evidence has to be adduced to show otherwise, in this case, the evidence produced by the Appellant was not convincing enough to rebut the Respondents ownership to the boat in question.
22. Accordingly we find the Appellant has not proved his case on a balance of probabilities, as a result we uphold the decision of the court below.
23. This appeal is therefore dismissed save for ground 4 of the appeal of which the Respondent's counsel conceded in Court that he will not oppose.
24. Also in the circumstances of this case there will be no order as to costs.

F. MacGregor (PCA)

<b>I concur:.</b>	.....	A.Fernando (J.A)
<b>I concur:.</b>	.....	F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018