

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 72 (16 December 2022)
SCA 18/2020
(Appeal from CC 49/2015)

Massimo Longobardi

1st Appellant

Felicita Pirozoalo

2nd Appellant

*(rep. by Mr. Rene Durup together with
Mr. Audrick Govinden)*

Versus

Roberto Rocchi

Respondent

(rep. by Mr. Joel Camille)

Neutral Citation: *Longobardi and Anor v Rocchi* (SCA 18/2020) [2022] (16 December 2022)
Arising in CC 49/2015)

Before: Twomey-Woods, Tibatemwa-Ekirikubinza, Andre, JJA

Summary: **Breach of oral agreement – Applicability of the “moral impossibility”
exception under Article 1348 of the Civil Code.**

What constitutes moral impossibility is not defined by law and the court has the discretion to decide in each case whether, having regard to all the circumstances, the defendant could not obtain written proof of payment.

When a party pleads Article 1348 of the Civil Code - (the principle of moral impossibility) - the Judge is expected to rule on whether the circumstances of that particular case fit within that principle. The relationship between the parties in the dispute is but just one such factor to be considered.

A Notice of Appeal is supposed to point out where the Trial Judge erred either in law or in fact or both. Consequently, on appeal, a party is prohibited from raising a ground based on a matter they did not raise in the court below and which necessarily was not adjudicated upon.

Heard: 5 December 2022

Delivered: 16 December 2022.

ORDER

The appeal is dismissed with costs and the orders of the Supreme Court are upheld.

JUDGMENT

DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.

The Facts

1. The Respondent, an Italian national, came to the home of the 1st and 2nd Appellants in November 2013 following a virtual meet up.
2. The Appellants proposed that the Respondent should invest in their company – Seycake & Biscuits Ltd – which was dealing in the business of importing bulk biscuits and sweets from Italy and repackaging them for distribution and sale in Seychelles by buying 35 shares. The Respondent agreed to the proposal. It was also agreed that the Appellants obtain a license for the business and thereafter the Respondent would move to the Seychelles together with his family. The Respondent was also to be employed in the said Company and be paid a salary of SR 25,000.
3. After the above meeting, the Respondent transferred money in the sum of 85,700 euros to the account of the 1st Appellant through the Mauritius Commercial Bank to finance the importation of stock (biscuits and sweets) to Seychelles.
4. Following the said transaction, the 1st and 2nd Appellants gave the Respondent 35 shares in the said Company.
5. The Respondent claimed that the 35 Shares were equivalent to SR 3,500. The Appellants were supposed to refund to him any excess of the 85,700 euros not used up by the business. However, the Appellants used the excess funds for all kind of things and did not hand over the extra sum to the Respondent.

6. The Respondent filed a case in the Supreme Court against the Appellants for damages in the sum of Euros 85,976 (less the 3,500 rupees paid for 35 shares) and 205,000 rupees for moral damages for breach of the oral agreement concluded between himself and the Appellants.
7. The Appellants denied the claim and asked the Court to dismiss the plaint with costs.
8. The 1st Appellant sought to adduce oral evidence to show that he paid off the total amount which the Respondent had paid in his account through Mauritius Commercial Bank.
9. In the course of the proceedings at the Supreme Court, the 1st Appellant sought to adduce oral evidence of various sums of money above 5,000 Rupees which he alleged to have returned to the Respondent. Counsel for the Respondent invoked Article 1341 of the Civil Code and objected to oral evidence being adduced in relation to sums above 5,000. Counsel for the Appellant then invoked Article 1348.
10. According to the rules of procedure, a trial within a trial was conducted. The 1st Appellant led evidence showing that he enjoyed a very close, trusting and amicable relationship with the Respondent and that he refunded the entire sum in cash through a physical handover. That the ties between the Parties arose from the following facts:
 - a) The Respondent and Appellants are Italians, and their families enjoyed an amiable relationship and aspired to live in Seychelles.
 - b) The Respondent's main contact in Seychelles being the 1st Appellant most especially during his initial visits and that when the Respondent came to Seychelles with his entire family, they wore shirts showing their trust and friendship with the 1st Appellant.

- c) The Respondent's claim being based on an oral agreement in his plaint admits that there was trust between him and the 1st Appellant despite allegations of the trust wearing out fast.
 - d) That the Respondent attempted to transfer Euros 17,500 from an insurance company in Italy into the account of the 1st Appellant thereby demonstrating the very close and trusting relationship.
 - e) That the families of the Respondent and the 1st Appellant went out together and spent Christmas and birthdays of both their spouses together.
11. That the nature of their relationship brought into play **Article 1348 (1) and (2) (e) of the Civil Code**. The essence of this Article is that under certain circumstances, individuals involved in a transaction whose value is above SR 5,000, may be permitted to prove their claims by adducing oral evidence.
12. This is an exception to **Article 1341 (1) and (2) of the Civil Code** which provides that transactions above **SR 5,000** must be evidenced by a document. It is this exception that is referred to as the moral impossibility exception.
13. On the other hand, in objecting to the Appellant's oral evidence that he had handed the Respondent the sum claimed in cash, the Respondent's Counsel evoked **Article 1341 of the Civil Code** which as indicated above provides that transactions above **SR 5,000** must be evidenced by a document.
14. The Respondent's Counsel submitted that it was not sufficient for a party to plead the existence of a special relationship and argued that the party must in addition, prove that the relationship was so close and intimate that it was morally impossible for the party to ask the other party for a receipt of payment. That in the circumstances of the present case, the exception provided by Article 1348 of the Civil Code could not apply.

15. It was further submitted for the Respondent that the relationship with the Appellants was neither within the exception of “*lien de parente*”¹ nor one of “*usage et les convenience*” for the Court to be called upon to apply the exception under Article 1348.
16. It was also argued by the Respondent’s Counsel that the relationship was not intimate as the 1st Appellant wanted it to appear. That much as the relationship was excellent at the start, later on the Respondent had lost trust.
17. The Supreme Court Judge was not satisfied with the credibility of the 1st Appellant and rejected his evidence that it was not possible for him to obtain written proof of the refund due to moral impossibility. The Judge rejected the oral evidence of the 1st Appellant that he returned the money in total to the Respondent. The Court therefore accepted the evidence of the Respondent that he did not receive any money from the Appellants.
18. Consequently, the Supreme Court held in favour of the plaintiff (who is the Respondent in this Court) and ordered that:
- (a) the 1st and 2nd Appellants jointly and/or severally pay the Respondent the sum of Euros 85,964 (less the sum of rupees 3,500 and Euros 800) with interest at the legal rate of 4% from the date of filing of the plaint until the date of payment of the entire sum of Euros 85,964 (less the sums of 3,500 rupees and Euros 800).
 - (b) The 1st and 2nd Appellants should jointly and severally pay the Respondent the sum of 100,000 rupees with interest at the rate of 4% thereon from the date of judgment until payment of the entire sum.
 - (c) Costs granted to the Respondent.
19. Dissatisfied with the decision of the Supreme Court, the Appellants appealed to this Court on the following grounds reproduced verbatim:

¹ the state of being related by birth or because of marriage.

- 1. The Learned Judge had erred in finding the 2nd appellant liable as there is no evidence on record to show that the 2nd appellant entered into any arrangement or agreement with the respondent.**
- 2. The Learned Judge had erred by not allowing the 1st appellant to testify on oral evidence since clear evidence of 'moral impossibility' was given in the trial within a trial.**
- 3. The Learned Judge erred in concluding that the oral arrangement for the transfer of money into the bank account was to buy products for the company 'Seycake & Biscuits Ltd'.**
- 4. The Learned Judge erred, if it concluded that the transfer of money was for the company 'Seycake & Biscuits Ltd, in finding, as there was no evidence from the said company, that the company did not receive the funds.**
- 5. The Learned Judge erred in making conclusions which are ultra petita to the Plaintiff.**
- 6. The Learned Judge had erred in concluding that the alleged obligations imposed on the appellants in the plaint were in fact obligations imposed on the company 'Seycake & Biscuits Ltd' and not on the appellants.**
- 7. The Learned Judge had erred in finding all the alleged obligations on the applicants had been breached.**
- 8. The Learned Judge erred in granting moral damage in the sum of R.100,000 against both appellants.**

Prayers

20. For relief, the Appellants asked this Court to set aside the entire order of the Supreme Court.

Grounds of Appeal considered

21. It must be noted that grounds 3,4 and 5 were withdrawn by Counsel and were thus not argued.

22. I find ground 7 vague and in contravention of Rule 18 (3)² and 18 (7)³ of the Rules of this Court. The ground is thus dismissed without much ado.

23. The appeal result will therefore be based on grounds 1,2, 6 and 8.

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Ground 1

Appellants' submissions

24. The Appellants' Counsel submitted that the Learned Judge erred in finding the 2nd Appellant liable, as there is no evidence on record to show that the 2nd Appellant entered into any arrangement or agreement with the Respondent. That all the documentary evidence adduced in Court were correspondences exchanged between the 1st Appellant and Respondent. Furthermore, that the testimony of the Respondent specifically at page 59 of the Record of Proceedings showed that all correspondence was done with 1st Appellant.

25. Counsel further submitted that the Respondent while giving his testimony during the hearing, mentioned only the 1st Appellant in respect of the contract. He highlighted the following extracts of the Respondent's testimony:

² Such grounds of [appeal](#) shall set forth in separate numbered paragraphs the findings of fact and conclusions of law to which the appellant is objecting and shall also state the particular respect in which the variation of the judgment or order is sought.

³ No ground of [appeal](#) which is vague or general in terms shall be entertained, save the general ground that the verdict is unsafe or that the decision is unreasonable or cannot be supported by the evidence.

(i) At page 11 of proceedings during examination in chief, Mr. Rocchi alleged that it was the 2nd Appellant who proposed the business.

(ii) At page 19 of proceedings, Mr. Rocchi stated that it was the 1st Appellant who ought to have refunded him the funds.

26. It was also the Appellants' argument that all matters of employment were between the Respondent and the Company (Seycake and Biscuits). There was no evidence that the 2nd Appellant had a personal obligation towards the Respondent.

Respondent's reply

27. The Respondent's Counsel invited the Court to dismiss this ground on two reasons. First he argued that the Trial Judge was satisfied with the evidence adduced that the agreement was made with both the First and Second Appellants. And secondly that in any event, the 2nd Appellant never pleaded on a preliminary point that she entered into no agreement.

Ground 2

Appellants' submissions

28. Counsel also submitted that contrary to the finding of the Trial Judge, there was sufficient evidence adduced to show that the relationship between the Appellants and the Respondent was based on friendship and trust. He argued that the Judge erred in reaching the finding that the 1st Appellant had failed to establish the moral impossibility exception.

29. Counsel relied on the testimony in chief by the 1st Appellant at page 154 of the proceedings where he stated that his relationship with the Respondent was based on mutual friendship and therefore he did not request anything in writing to prove the refund.

30. To buttress the above argument, counsel relied on the following cases defining what constitutes moral impossibility:

(a) **Esparon vs Esparon & Anor**⁴ where Allcar J held that, the principle of impossibility had extended to relationships such as friends.

(ii) **Michaud v Cuifrini**⁵ where Hodoul JA held: *moral impossibility may arise from a special relationship between the parties, resulting from family ties or parentage, ties of affection and ties based on trust.*'

(iii) **Delcy vs Camille**⁶ where Perera CJ held that, *unlike in situations where there is a legal requirement that parties must express their intentions or agreements in writing, the only factor to be considered when deciding on moral impossibility would be the relationship between the parties and the closeness of that relationship.*

Respondent's reply

31. It was submitted by the Respondent that the admission of oral evidence under Article 1348 is at the discretion of the court depending on the circumstances of the case. That the learned Trial Judge adopted the corrected legal principles while considering the matter. Counsel submitted that the Trial Judge correctly analysed the law on moral impossibility through her consideration of **Michaud vs Cuifrini**⁷ and **Vidot vs Padayachy**⁸. That it was on the basis of the law and the facts that the court rejected the evidence of the first Appellant that it had not been possible for him to obtain written proof due to moral impossibility. That in any event, the issue which had to be determined was whether the Appellant returned the money to the Respondent and it was the court's finding that he had not.

Ground 6

Appellants' submissions

⁴ [1991] SLR 59

⁵ SCA 26 of 2005/SCAR [2006-2007]

⁶ [2002] SLR 84

⁷ SCA 26/2005

⁸ SLR 279

32. The Appellants argued that the learned trial Judge erred in her conclusion that the alleged obligations imposed on the appellants in the plaint were in fact those imposed on the company. Counsel further submitted that the purported agreement entered into between the Respondent and the Company was invalid because the obligation to obtain a Gainful Occupation Permit and employ the Respondent for a salary of R. 25,000/- and pay rent for his family for a year, was a term to be performed by the 1st Appellant and not the Company.
33. In light of the above, counsel argued that, an agreement based on an obligation whereby a person must cause another person to act or not to act infringes on principles of public policy provided for in **Articles 1108 and 1133** of the **Civil Code** and therefore such an agreement is deemed invalid.
34. Counsel further argued that the company is a legal person having 'separate legal personality' from its directors and shareholders. Being a legal person, the company acts in its own name when undertaking obligations such as being the employer providing salary, applying to Immigration Department to obtain GOP for one of its foreign workers and being a party to an employment agreement which had a clause providing salary and accommodation. That other than the case of a guardian, it is contrary to public policy that a person can cause another person (being it a natural or legal) to act or not to act in a certain matter. Counsel contended that the decision of the Supreme Court is contrary to elementary company principles of 'separate legal personality' and 'veil of incorporation'.

Respondent's reply

35. In reply, the Respondent submitted that the Appellants never raised this matter as an issue before the Trial. That since the issue was being raised for the first time on appeal, the ground should be dismissed.

Ground 8

Appellants' submission

36. Under this ground, the Appellants faulted the Learned Judge for awarding moral damage in the sum of SR. 100,000 against both Appellants yet the Respondent did not provide any evidence to substantiate the claim.

Respondent's reply

37. The Counsel submitted that the Respondent had testified in regard to the prejudice he had suffered and his evidence was accepted by the Trial Judge.

Court's Consideration

38. In handling this appeal, I am guided by the authority of **Beeharry vs R**⁹ wherein it was held that:

(a) An appellate court does not rehear the case. It accepts findings of facts that are supported by the evidence believed by the trial court unless the trial judge's findings of credibility are perverse.

(b) An appellate court should only interfere with the findings of facts of a trial court when satisfied that the trial judge has reached a wrong decision about a witness.

(c) The court can evaluate the inferences drawn from the facts by the trial judge. Where there is no question of credibility of witnesses and the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good as a position to evaluate the evidence as a trial judge. The appellate court should form its own opinion, giving due weight to the opinion of the trial judge.

39. Bearing the above principles in mind, I now proceed to address the grounds of appeal.

⁹ (2012) SLR.

Ground 1

40. Under this ground, the 2nd Appellant faulted the trial Judge for holding her liable yet there is no evidence of a contractual arrangement between herself and the Respondent.
41. In reply the Respondent submission that the Trial Judge was satisfied with the evidence adduced that the agreement was made with both the First and Second Respondent.
42. The Responded submitted further that in any event, at the Trial Court, the 2nd Appellant never pleaded on a preliminary point that she did not as an individual, enter into an agreement. The plea was being raised for the first time – on appeal.
43. I will first deal with the second aspect of the Respondent's Reply because it has the potential to dispose of the whole ground.
44. A look at the pleadings tendered in by the defendants in fact reveal only two aspects differentiating the role of the 1st Appellant on the one hand, and of second Appellant on the other hand. First is that whereas the 1st Appellant became acquainted with the Respondent before the end of 2013 (albeit on the internet), acquaintance with the 2nd Appellant was at the end of 2013. The other difference in roles was that the funds in dispute were deposited on a Bank Account in the names of the 1st Appellant. Apart from these differences, each paragraph in the written statement of the defence was couched to absolve both defendants of liability.
45. The plea has been raised for the first time – on appeal - and not in the court of first instance. Seychelles case law has firmly established that a party is bound by its pleadings. The court itself is as bound by the pleadings of the parties as they are themselves. It follows that the point could not have been adjudicated upon on trial since it was not raised. A Notice of Appeal is supposed to point out where the Trial Judge erred either in law or in fact or both. Consequently, the party is prohibited from raising a matter they did not raise in the court below.

Based on this principle alone, this ground would fail.

Ground 1 is dismissed.

Ground 2

46. Under this ground, the Appellants faulted the learned Judge for not admitting their oral evidence on the premise of moral impossibility. On the other hand, the Respondent argued that the moral impossibility exception did not apply to the facts of the present case.

47. The Parties' arguments call for a juxtaposition of **Article 1341 of the Civil Code** on the one hand and **Article 1348** on the other hand.

48. **Article 1341** provides that:

(1) Any matter (toutes choses) the value of which exceeds R5,000 shall be evidenced by a document drawn up by a notary or under private signature, even for a voluntary deposit.

(2) No oral evidence shall be admissible against and beyond such document nor in respect of what is alleged to have been said prior to or at or since the time when such document was drawn up, even if the matter relates to a sum of R5,000 or less.

49. On the other hand, **Article 1348** provides that:

(1) Articles 1341 to 1346 are also inapplicable whenever it is not possible for the creditor to obtain written proof of an obligation undertaken towards him or her.

(2) This exception applies —

(e) to instances of moral impossibility which arise from a special relationship between the parties such as family ties, parentage, ties of affection, or ties based on trust.

50. The Appellants' argument was that the existence of close ties between the Appellants' and Respondent's family made it impossible for the Appellants to demand a written document from the Respondent as proof of acknowledgment of the refund.

51. More specifically, Counsel for the Appellant submitted that the Judge did not give a determination on the relationship of the parties in her adjudication, but rather only on the credibility or truthfulness of the parties regarding the refund of the money.

52. It is noted that during the examination in chief of the 1st Appellant, after he had testified in regard to how he had met the Respondent and the various communication exchanged between the parties, the Appellant sought to give oral evidence of various sums of money above 5,000 Rupees which he alleged to have returned to the Respondent. Counsel for the Respondent invoked Article 1341 of the Civil Code and objected to oral evidence being adduced in relation to sums above 5,000. Counsel for the Appellant then invoked Article 1348.

53. I opine that the trial within a trial was for purposes of determining whether the circumstances of the case fit under Article 1348. The nature of the relationship between the Respondent and the Appellants was only but one factor to be considered. Were the circumstances of the case such as would make it impossible for the Appellant to obtain written proof of payment/refund?

54. The trial judge made a finding that the circumstances of the case did not fit within Article 1348.

In her judgment the Trial Judge said:

... when Article 1348 is invoked, the court has at the outset, to decide whether or not to admit oral evidence. This court proceeded to hear evidence from the parties to determine whether or not the exception under Article 1348 applies.

Having carefully gone through the evidence and written submissions with respect to the question in issue, this court ruled that the objection of Counsel for the Plaintiff was well founded, and that the exception under Article 1348 did not apply as the issue of impossibilite morale finds no application in this case. The oral ruling informed the Plaintiff and the first defendant that this court would justify its ruling at the time of judgment.

55. Case law, which Counsel for the Appellant himself cites in his submissions is to the effect that what constitutes impossibility is not defined by law and the court has the discretion to decide on each case having regard to all the circumstances, including the relationship between the parties (supra Vidot vs Padaychy and Esparon vs Esparon)
56. I opine that what the Judge is expected to do is rule on whether in **the circumstances** of the case, which circumstances may include the relationship between the parties, fit within the principle of moral impossibility. It was not necessary for the judge to make specific mention of each circumstance she considered, not necessary to make a finding specifically mentioning that she considered the relationship and found it wanting. It is enough that she stated that: the issue of *impossibilite morale* **finds no application in this case**. The judge made a determination of the issue based on evaluation of the evidence adduced and not on isolated pieces.
57. And what was the implication of the Judge's finding that that the Appellant was not a credible witness?
58. To prove that he refunded the money, the Appellant gave oral evidence/testimony. To prove that he had a special relationship which in the circumstances would bring Article 1348 into play, the Appellant gave oral evidence.
59. The Trial Judge after having listened to the testimony of the Appellants, came to the conclusion that the moral impossibility exception did not apply to the case. In the considered view of the Trial Judge, the Appellants were not credible witnesses. In contrast, the Respondent gave evidence in a clear and concise manner and his evidence contained no material inconsistencies or contradictions.

60. If the Judge made a finding that the Appellant was not a credible witness, the finding necessarily has a bearing on his testimony that he had a special relationship with the appellant on the one hand, as well as his testimony that he had refunded the plaintiff's money. The two aspects of the testimony are inextricably linked.
61. A Trial judge is in a privileged position to assess the credibility of a witness and their evidence. It is an established principle that, where a finding turns on the judge's assessment of the credibility of a witness, an appellate court will take into account that the judge had the advantage of seeing the witness give their oral evidence, which is not available to the appellate court. **It is, therefore, rare for an appellate court to overturn a judge's finding as to a person's credibility.** An appellate court will only interfere with the findings of the Trial Judge if:
- (a) The findings are not supported by evidence;
 - (ii) the findings are based on misunderstanding of the evidence; and
 - (iii) no reasonable Judge could have made such a finding.
62. I have carefully read the proceedings and the decision of the Trial Judge. I hold that the Judge reached her findings and conclusions after a correct assessment of the evidence adduced by the parties. Therefore, there is no reason for me to depart from the said findings.
63. Having come to the conclusion that the Appellants did not qualify for the moral impossibility principle, it would follow that if the Appellants did not adduce written evidence of having refunded the Respondent the funds in issue, the Appellants failed to discharge the evidential burden of proof. It was not denied by the Appellants that they owed funds to the Appellant. As a matter of fact, their defence was that the 1st Appellant gave the money to the Appellant in cash through a physical handover.
64. It is also a fact on record that the Appellants and Respondent first met virtually and thereafter physically for the sole purpose of business. On this aspect, the Respondent testified that that he kept a strictly business-like relationship with the Appellants so far as

his investment was concerned. Given that the relationship was premised on business, the 1st Appellant was able to ask for proof of receipt of funds or an acknowledgment from the Respondent showing receipt of the money.

65. I therefore come to the same conclusion that the moral impossibility exception in **Article 1348** of the **Civil Code** does not apply in the circumstances of the present matter.

From the foregoing analysis, I hold that ground 2 of the appeal fails.

Ground 6

66. The essence of the Appellants' Counsel's submissions was that the Judge failed to recognize the well-established legal principle that a company is a legal person, separate from its directors and shareholders. Counsel further extensively submitted that the purported agreement between the Respondent and the Appellants was invalid for breach of public policy.

67. Counsel for the Respondent submitted that the issues being raised in this ground were never raised in the court below and could thus not be adjudicated upon on appeal.

68. I have carefully scrutinized the pleadings filed by the Appellants at the Supreme Court. I have also looked at the proceedings and indeed neither the issue of public policy nor of the company's legal personality formed part of the case. It is also clear that the orders the Trial Judge gave were not in regard to the Respondent as a shareholder or an employee in the company.

69. I will repeat what I stated while resolving ground 1. Seychelles case law has firmly established that a party is bound by its pleadings. The court itself is as bound by the pleadings of the parties as they are themselves. It follows that the point could not have been adjudicated upon on trial since it was not raised. A Notice of Appeal is supposed to point out where the Trial Judge erred either in law or in fact or both. Consequently, the party is prohibited from raising a matter they did not raise in the court below.

Therefore, ground 6 is dismissed.

Ground 8

70. I now move on to address ground 8 of the appeal which faulted the learned trial Judge for awarding 100,000 rupees as moral damages to the Respondent.

71. Moral damages are non-pecuniary damages which cannot be quantified in terms of money. They include mental suffering, wounded feelings, anxiety and humiliation among other things.

72. The general rule is that damages arising out of breach of contract or agreement are those which are equal to the loss sustained by the victim of the breach. Nevertheless, moral damages arising out of breach of contract can be awarded where they have been proved.

73. In making the award of moral damages, the trial Judge considered the fact that the Respondent was prejudiced by the Appellants' actions of refusing to return his money despite his persistent requests. The Judge also considered the fact that the Respondent had to pay his living expenses out of his pocket due to the Appellants' failure to refund his money.

74. It is trite law that an appellate court should not normally interfere with the award of moral damages unless the Judge made some error of principle or misunderstood the facts, or the award is manifestly insufficient or excessive¹⁰.

75. It was the finding of the Trial Judge that the evidence of the Respondent as to the prejudice caused to him by the conduct of the Appellants was credible.

¹⁰ see for example: *Vidot v Libanotis* (1977) SLR 192, *Michel & Ors v Talma & Ors* (SCA 22/10); *Government of Seychelles v Rose* SCA 14/2011, *Ah-Kon v Benoiton & Or* (SCA No. 3/2016).

76. I note that the Respondent claimed for rupees 205,000 as moral damages. However, the learned trial Judge exercised her discretion and awarded him rupees 100,000. It is my considered view that the Judge did not act on a wrong principle of law in making the said award as it is neither excessive nor dismal.

77. I therefore come to the conclusion that the Appellants' contention that the learned Judge erred in awarding the Respondent moral damages has no merit.

78. **Thus, ground 8 of the appeal fails.**

Conclusion and Orders.

79. In the result, I find that this appeal fails and is hereby dismissed with costs to the Respondent.

80. Consequently, the decision and orders of the Supreme Court are upheld. For ease of reference, the orders of the Supreme Court are reproduced below.

(a) the 1st and 2nd Appellants jointly and/or severally pay the Respondent the sum of Euros 85,964 (less the sum of rupees 3,500 and Euros 800) with interest at the legal rate of 4% from the date of filing of the plaint until the date of payment of the entire sum of Euros 85,964 (less the sums of 3,500 rupees and Euros 800).

(b) The 1st and 2nd Appellants should jointly and severally pay the Respondent the sum of 100,000 rupees with interest at the rate of 4% thereon from the date of judgment until payment of the entire sum.

(c) Costs granted to the Respondent.

Dr. Lillian Tibatemwa-Ekirikubinza, JA

I concur

Dr. M. Twomey-Woods, JA

I concur

S. Andre, JA

Signed, dated and delivered at Ile du Port on 16 December 2022