

SUPREME COURT OF SEYCHELLES

Reportable

CA14/2022

In the matter between:

NADIA SOPHOLA

1st Appellant

(represented by Ms. Karen Domingue)

And

NORCY LEON

2nd Appellant

(represented by Ms. Karen Domingue)

JOVANIE ROSE

Respondent

(unrepresented by Mrs. Alexia Amesbury)

Neutral Citation: *Sophola & Or v Rose* (CA14/2025) 19th March 2025

Before: Adeline J

Summary: Appeal against the judgment of the Magistrate's Court.

Heard: By submissions of Counsels

Delivered: 19th March 2025

FINAL ORDER

Based on the fact that the Appellants did not have a license to rent the equipment to the Respondent, the decision of the Magistrate is however correct that the Plaintiff's claim for damages against the Defendant for breach of contract cannot succeed being one pursuant to an agreement contrary to public policy.

JUDGMENT ON APPEAL

Adeline, J

INTRODUCTION

- [1] By way of a joint Notice of Appeal Dated 13th July 2022, filed in Court on the same date, the Appellants Nadia Sophola and Norcy Leon who were Defendants in the Court *aquo*, appeal to the Supreme Court against the decision of her Worship Magistrate B. Confait in a judgment delivered on the 23rd June 2022 in CS53/2019.

GROUND OF APPEAL

- [2] In its Memorandum of Appeal filed in Court on the 16th May 2023, the Appellants states their grounds of Appeal to be the following;

“1. The learned Magistrate erred in coming to the finding that she could pronounce herself on a point of law when it is not raised as it was not raised in the present case.

2. The learned Magistrate erred in her finding that the 1st Plaintiff abused her position and that her act amounted to corruption on her part when there was no evidence for her to come to such a finding.

3. The learned trial Magistrate erred in her findings that the 1st Plaintiff had abused her position and that this was tantamount to corruption as there was no evidence of such abuse or corruption.

4. *The learned trial Magistrate erred in not addressing her mind on whether the point of law she outlines as a point of law was indeed a point of law or not, and whether indeed the agreement between the Plaintiff and the Defendants were against public policy.*

5. *The learned trial Magistrate erred in not addressing her mind on whether the threshold of proving corruption had been met.*

SUBMISSIONS

- [3] It is submitted by the Appellants, that neither the Appellants nor the Respondent raised any point of law as raised by the Court. The Magistrate raised the question of “*whether the agreement of renting construction equipment by the Plaintiffs, including the 1st Plaintiff who was then an employee of the Seychelles Land Transport Agency (SLTA) to the Respondent to perform work for the SLTA not contrary to public policy?*”

- [4] The 1st Appellant argues, that she was an employee of the SLTA at the time the construction equipment was rented to the Respondent and this in itself does not show that the Appellant abused her position, thereby committing an act of corruption. At no point was any evidence adduced before the Court to show that the Appellant had used her position to enter into a contract of renting equipment from her business and that of her partner to the Respondent.

- [5] The Appellants argue, that what was led in evidence was the fact that the Respondent had approached the 1st Appellant, as a friend, to lease a compressor from her for which he admitted that he had paid for. However, the Respondent then goes on to deny leasing the rest of the equipment from the Appellants. The Appellants argue, that the fact that the Respondent agreed in his evidence that he leased and agreed to pay the Appellants for the compressor for a period of 10 days, gives credit to the Appellants’ claim that the Respondent also took other equipment from them which he did not pay for, thereby breaching the agreement he had with the Appellants.

- [6] The Appellants aver that throughout the case, the Respondent denied having knowledge that the Appellants had a licensed Repairs and Maintenance business under which they leased out to him the equipment, which he did not pay the Appellants for. However, the Respondent still approached the 1st Appellant to request that she lease the equipment to him and he paid for the use of the compressor.
- [7] The 1st Appellant argues, that the evidence shows, that it was not through her work at SLTA that the Respondent had met the Appellants for the first time. It was in fact led in evidence and admitted further by the Respondent, that the Appellants had known the Respondent for an ongoing time and that he was a friend of the 2nd Appellant. The 2nd Appellant had grown up in the same district as the Respondent and both Appellants knew the Respondent whilst they were living at La Gogue for 7 years. Further, the 1st Appellant had interacted with Respondent before and she once liaised with the Respondent in the past to construct a retaining wall on their property, although they did not retain his service.
- [8] The Appellants argue that there was no evidence to show that the 1st Appellant had any authority in who was awarded a contract by the SLTA and how the work was to be carried out by the contractors employed by SLTA. It was led in evidence, that the Respondent's name appeared on the list of contractors performing work for the SLTA, a list that the Appellant was bound to come across given that she was an Administrative Officer at the SLTA.
- [9] There was no evidence that was adduced before the Court to show that the Respondent had been granted a contract with SLTA by virtue of any acts or favour done or dispensed by the 1st Appellant. There was in fact no link or connection between the renting of the equipment by the Appellants to the Respondent save that the Respondent was doing a job for the SLTA and that it was a coincidence that the 1st Appellant worked for SLTA.
- [10] The Appellants cited the following case law authority to support their arguments, and argued, that the public policy has been substituted for cause in Seychelles Law. In Corgat v Maree (1976) SLR 109, Sauzier J approximated the cause of an agreement to the reason

for making the agreement. In *Jacob and Anor v Devoud (1978) 164, SLR*, the Judge further stated that where the cause of an agreement is against the law or against public policy, the obligation is invalid under Article 1108.

- [11] In this case, the cause of the agreement was for the Appellants to rent a friend (the Respondent) some equipment in consideration for a payment to complete his work. It is submitted that the cause of the agreement between the Appellants and the Respondent, as led by evidence, is clearly not against public policy as the learned Magistrate has pronounced herself on as a point of law raised by the Magistrate herself.
- [12] As previously argued by the 1st Appellant, it was the Respondent who approached the 1st Appellant to subsequently form the cause of the agreement. The agreement was not solicited by the 1st Appellant nor accepted by her by way of bribe or inducement. It was equally not an abuse of a public officer for her advantage or her benefit. In that respect the act of the 1st Appellant cannot be categorized as an act of corruption on her part, especially since she knew the Respondent from years back and from outside her workplace.
- [13] Their agreement had no connection whatsoever with the 1st Appellant's workplace. In fact, it was led in evidence, that although the 1st Appellant had access to the list of SLTA contractors, as an Administrative Officer, she had never approached nor solicited any of the listed contractors to try and rent her equipment for her advantage. It was further led in evidence, that the Appellants already had the compressor and the equipment as part of their repair and maintenance contractor business while working at SLTA.
- [14] The Appellants also themselves testified, that it is not their usual practice to rent their equipment to anyone, but that they are used in their own business. The circumstances in this case, therefore, clearly does not fall under the scope and definition of corruption as per the Anti-Corruption Act, 2016.
- [15] The Appellants aver that the equipment was rather leased to the Respondent as a friend to help him complete his work at SLTA. If anything, the Appellants were acting in good faith

and the goodness of their heart to lease the Respondent the equipment. The Respondent himself testified, that the Appellants rented him the compressor because one of his compressors was not working.

- [16] The Respondent testified, that the Appellants had agreed to charge him only the days that he used the compressor for thereby signifying the flexibility and good faith of the Appellants to help a friend who they felt they could trust.

- [17] The Appellants argue that the evidence adduced does not point to corruption on the side of the 1st Appellant as concluded by the Magistrate to come to a conclusion that the 1st Appellant abused her position thereby committing an act of corruption. The learned Magistrate further used this argument to pronounce herself on a point of law when it was not raised at all in the case. The learned Magistrate in that respect stated that “the Court therefore cannot endorse an agreement that is against public policy”.

- [18] The Appellants referred to the case of F.B Choppy (Pty) Ltd v NS.J Construction (Pty) Ltd & Ors CS27 & CS29/2019 where the Court noted, that the Civil Code of Seychelles Act does not provide a definition of public policy. As a result of this, what constitutes public policy has been largely left to the Courts to determine. It however submitted, that while the determination of what constitutes public policy is said to have been largely left to the Court, the Court should equally assess thoroughly the adduced evidence before pronouncing itself on the infringement of public policy. It is further submitted in that respect, that a Court should not ‘*pluck out of the air an argument on a point of law or fact*’ as was pointed out in the case of Banane V.Lefevre (1986) SLR 110.

- [19] The Appellants argue that the finding of the learned Magistrate that the 1st Appellant had abused her authority and position to the point of her acting corruptly to enter into an agreement with the Respondent is completely unsupported by the evidence led before the learned Magistrate, and it indeed shows, that she has simply plucked out of the air the argument on a point of law in this case.

- [20] The 1st Appellant submits, that the learned Magistrate erred in her findings by alluding to matters which should have been proved but had not been proved before her because they were matters which had not been raised by either the Appellants or the Respondent.
- [21] In respect of the 5th Ground of Appeal, the Appellants argue that the Magistrate erred in not addressing her mind on whether the threshold of proving corruption had been met. The learned Magistrate failed to take into account that corruption as well as abuse of authority being criminal offences must be proved on a higher threshold than that on the balance of probabilities. In this case, the elements which constitute both the offence of corruption or abuse of authority have not been met.
- [22] The Appellants argue that their submissions clearly show errors made by the Magistrate, which has caused a serious aspersion cast on the character of the 1st Appellant without a shred of evidence, but rather, an attempt by the learned Magistrate to accuse the Appellant of corruption and abuse of office.
- [23] It is submitted, that the Court should correct the injustice made in the judgment of the learned Magistrate by negating the finding of corruption and abuse of office. In addition, one must bear in mind, that such allegations must, and should not be made lightly and must be supported by evidence as such allegations may, and do have far reaching effects. For instance, such allegations may be used by the superiors of the 1st Appellant as a ground to terminate the services of the 1st Appellant in her work place.
- [24] Further, the Appellants argue that given the errors of the learned Magistrate which are highlighted in the submissions of the Appellants, the Appellants pray this Honourable Court to be pleased to reverse the decision of the Magistrate and find in favour of the Appellants.
- [25] In his written submissions, the Respondent submits, that the points of law addressed by the Magistrate was raised and addressed by the Respondent in his submissions on the legality of the agreement between the parties.

- [26] As submitted by the Appellant, the Grounds of Appeal 1 to 4 will be addressed together as they are interlinked. The Respondent relies and repeats the reasoning of the Magistrate as well as quotes provisions of the law, and case law in the judgment dated 23rd June 2022 and found at paragraphs 20 to 37.
- [27] The Respondent submits, that Ground 5 of the Appeal has no merit and the Respondent will rely on the definition of corruption as found in the Anti-Corruption Act, 2016, which states that “corrupt” means “*the acts of soliciting, accepting, obtaining-giving, promising or offering of a gratification by way of a bribe or inducement, or the misuse or abuse of a public office for advantage or benefit for oneself or for another person, and “corruption” shall be construed accordingly*”
- [28] The Respondent submits, that in order for the Court to make a determination on this ground the Court will have to determine whether the actions of the 1st Appellant was the misuse and abuse of a public office.
- [29] The Respondent submits, that based on the above submissions, the present appeal has no merit and it should be dismissed with costs to the Respondent before this Court and the Court below.

DISCUSSIONS OF THE FACTS AND LAW

GROUND 1 – 4 POINT OF LAW RAISED BY MAGISTRATE IN RESPECT OF CORRUPTION

- [30] The Appellants argue that the Magistrate raised a point of law that was not argued by either parties. In respect of this point, it is common cause that a Magistrate may raise a point of law that had not been raised by either party if a certain threshold is met. This principle was laid down in the case of Banane v Lefevre (1986) SLR 110 where the Court held that “A

Court or Tribunal should not ignore a point of law even if not raised by the parties, if to ignore it would mean a failure to act fairly or to err in law”

- [31] This case shows clearly, that a Court may raise a point of law on its own volition. Therefore, the argument in respect of this ground holds no basis as case law clearly provides for a Court to raise a point of law if failure of such would mean a failure to act fairly or err in law.
- [32] Nonetheless, the question one would therefore ask, is whether the Magistrate by raising the point that the Appellants' actions amounted to corruption, would be to act *fairly or prevent an error in law*.
- [33] The Magistrate on her own volition, did ask Counsels of both parties on the 02nd August 2021, to address her on the legality of the agreement.
- [34] The Appellants' argument on this point raised by the Magistrate, was that the Appellants entered into a verbal agreement to rent their equipment to the Respondent and this was admitted in Paragraph 5 of the pleadings by the Respondent with regards to the compressor.
- [35] Further, the Appellants pleaded, that they were carrying on a commercial transaction, which has been proved, because there is no requirement that there be any documentary proof when it comes to commercial transactions. They argue, that they entered into an agreement with the Respondent and this agreement bound the parties.
- [36] The Appellants further argued, that according to Article 1108 of the Civil Code only four conditions need to exist to prove an agreement. These are;

1. The consent of the party who binds himself,
2. His capacity to enter into a contract,
3. A definite object which forms the subject-matter of the undertaking.
4. That it should not be against the law or against public policy.

- [37] Further, the Respondent stated in his response to this point raised by the Magistrate, that save for the averment in paragraph 3 of the Plaint that “*both the Plaintiff and the Defendant whilst conducting the business of leasing equipment are acting in a commercial capacity*”, there is no cause of action pleaded.
- [38] The Respondent argues that there was no legally binding agreement between the parties whether oral or written, and in fact no agreement at all. In paragraph 3 of his defence, the Respondent specifically denies that he was involved in any commercial activity with the Appellants as he had no knowledge that the Appellants were the owners of a business or that they were carrying on any commercial activity when he approached them as his friend to lease a compressor for which he paid.
- [39] The Respondent states, that the Appellants during the hearing produced a number of what can best be called “*self-serving*” documents, and that did not prove the existence of a contract between the parties or who are dealing with each other in a “commercial capacity”. It is argued, that there must be established a course of dealings between the parties which would bring them into a category persons dealing with each other in a commercial capacity, and neither has it been proved on a balance of probabilities that such “commercial capacity” existed.
- [40] The Respondent submits, that an averment that the parties were in a “commercial capacity” raised a presumption that parties intended to transact in a commercial capacity or that they intended their dealings to form the basis of a legal relationship, and this had not been pleaded nor proved by the Appellant.
- [41] The Respondent held, that under Article 1101 of the Civil Code, a contract is an agreement whereby one or several persons bind themselves to do or refrain from doing something, and Article 1108 of the Civil Code stipulates the four essential conditions for a legally binding contract.

[42] The Respondent cites the case of *Chetty v Chetty SCA 15/2009*, which reaffirms the requirements for a valid contract. This was also reaffirmed in *Bossy (heirs V Chow [2005] SLR 100* that the person seeking to prove that a contractual obligation and the obligation arising therefrom did not fulfil the obligation must prove that the term existed.

[43] The Magistrate in her judgment held at paragraph 36 that

“In the present case, not only did the Plaintiffs not have a license to rent construction equipment but the 1st Plaintiff as Administrative Officer of the SLTA, which is a Service Organisation fully funded by the Government of Seychelles, had used information obtained in her position pertaining to work performed by the Defendant for her place of work, as well as information pertaining to date of completion of the project by him, and based on same she and the 2nd Plaintiff rented the Defendant construction equipment of their personal business to be used by him for the said work, from which the two Plaintiffs would benefit from payment for such rental upon the Defendant being paid by the SLTA.”

[44] The Magistrate did correctly point out that the Appellants did not have a license to rent construction equipment. This was also confirmed by the 1st Appellant in her examination-in-chief. Both the Appellants and Respondent confirmed, that they had a friendly relationship and that on this basis the compressor was given to the Respondent to use while conducting his work at SLTA.

[45] At no point was there any evidence led by either party that the 1st Appellant had used her position as administrative Officer to obtain a contract with the Respondent from which she will benefit. The Respondent specifically denies that he was involved in any commercial activity with the Appellants as he had no knowledge that the Appellants were the owners of a business or that they were carrying on any commercial activity when he approached them as his friend to lease a compressor for which he paid.

[46] There was no evidence presented to establish that the Respondent was granted a contract with SLTA as a result of any acts or favours done or dispensed by the 1st Appellant. There

was no link or connection between the Appellants renting the equipment to the Respondent, except that the Respondent was conducting a job for the SLTA and that it was a coincidence that the 1st Appellant worked for SLTA.

[47] While a Court may raise a point of law on its own volition, in the Banane (Supra) the Court also held that the Court should not “*pluck out*” of the air an argument on a point of law.

[48] Looking at the evidence given by both parties, it does seem as if the point of law in respect of the corruption on the part of the 1st Appellant was so to say “*pluck out of the air*” as there is no evidence that points to this.

[49] The mere fact that the 1st Appellant works at SLTA and the Respondent is a contractor for SLTA, is not indicative of corruption on behalf of the 1st Appellant. Due to the seriousness of an allegation of corruption, there is a specific law in Seychelles that provides the definition of such. This being the Anti-Corruption Act.

[50] While the Magistrate states in paragraph 37 that “*Although the Court had invited both Counsels to address it on the legality of the agreement, neither Counsel addressed the Court on the second point addressed. A Court should not ignore a point of law even if not raised by the parties, if to ignore it would mean a failure to act fairly or to err in law*”. From this it is clear, that there was no evidence of corruption placed before the Court, and this was not pleaded by either parties.

[51] It can be argued that the Magistrate over-stepped when raising the point of corruption.

Legality of the contract

[52] The Magistrate held, that there were two points on which the legality of the contract between the parties was put to question. One was that the 1st Appellants conduct amounted to corruption and violates public policy, and the second being the fact that the Appellants did not have a license to rent construction equipment.

- [53] The Magistrate in her ruling held that *“In the present case, not only did the Plaintiffs not have a license to rent construction equipment but the 1st Plaintiff as Administrative Officer of the SLTA, which is a Service or Organisation fully funded by the Government of Seychelles, had used information obtained in her position pertaining to work performed by the Defendant for her place of work, as well as information pertaining to date of completion of the project by him, and based on same she and the 2nd Plaintiff rented the Defendant construction equipment of their personal business to be used by him for the said work, from which the two Plaintiffs would benefit from payment for such rental upon the Defendant being paid by the SLTA”*.
- [54] The 1st Plaintiff in examination-chief admitted, that they did not have a license to rent construction equipment and that the agreement was one between friends to assist the Respondent to complete his contract for SLTA. These assertions also go against her argument, that a commercial relationship was established between the two parties.
- [55] This basis alone is to prove that all the elements of a valid contract is not met as provided for in Article 1108 of the Civil Code.
- [56] The Magistrate cited the case of Monthy v Buron (SCA 6 of 2013) [2015] in which case it was held, that the agreement was against public policy and the Court added that *“A Court cannot endorse an agreement that is against public policy. The rule is contained in the maxim of ex turpi causa which is also a concept known to the English common law.”*
- [57] And also the case of Jacobs and anor v Devoud (1978) SLR 164 where Sauzier J stated, that where the cause of an agreement is against the law or against public policy, the obligation is invalid under Article 1108.
- [58] In Avalon Ltd & Ors vs Ogilvy Berlouis SCA 25/2002, the Plaintiff had claimed damages for having found a buyer to buy the Defendant’s land which sale did not go through because of the Defendant’s subsequent decision not to sell. The Plaintiff was not paid the sum of

money he had been promised. The appeal was allowed. The Court held, that the Plaintiff was not entitled to operate as a commission agent because he was unlicensed. The Court also stated that no remedy can be claimed under a contract tainted by illegality. Due to the fact that the Appellants did not have a license to lease construction equipment, on that basis, the Magistrate was correct to state, that this is against public policy and the contract is therefore not valid and enforceable.

- [59] In the persuasive case of Ebrahim Dawood Ltd vs. Co-operative Centrale De Beau Bassin [1957] MR 363, wherein the Appellant company claimed from the Respondent society, payment of the sum of Mauritian Rupee 896.45 for goods sold and delivered although the Respondent society had not complied with Rule 57 of the Co-operative Credit Society Ordinance to permit it to carry on the business of operating credit services. That, despite the invalidity of the contract of sale reached between the parties, the Supreme Court of Mauritius observed that;

.... As the plaint did not comprise a claim for “enrichment aux dépens d’autrui”, even if the Magistrate had found, contrary to what he did, that the transaction had benefited the Respondent, he could not have granted any amount to the appellant.”

- [60] In the instant case, the decision taken by the Magistrate in respect of the contract being against public policy due to the fact that the Appellants did not have a license to rent construction equipment is therefore correct.

GROUND 5 – THE LEARNED TRIAL MAGISTRATE ERRED IN NOT ADDRESSING HER MIND ON WHETHER THE THRESHOLD OF PROVING CORRUPTION HAD BEEN MET.

- [61] The Magistrate when making her determination on the actions of the 1st Appellant amounting to corruption, made no mention of the threshold that is provided for in the Anti-Corruption Act.

- [62] The Magistrate held that “*1st Plaintiff as Administrative Officer of the SLTA, which is a Service or Organisation fully funded by the Government of Seychelles, had used information obtained in her position pertaining to work performed by the defendant for her place of work, as well as information pertaining to date of completion of the project by him*”
- [63] This statement was not substantiated by any evidence or application of the law. As stated by the 1st Appellant, the Anti-Corruption Act provides for the definition of “*corrupt*” and the Act itself provides definition of the acts of corruption.
- [64] The effect of this, is that the Magistrate is pronouncing herself on a point of law that is not within the scope of her discretion. Corruption is a criminal offence provided for in section 91 of the Penal Code of Seychelles, and must be proven as such. For a Court to make a pronouncement of an act of Corruption being committed, the Burden of Proof must be discharged within a criminal case. In these circumstances, this was made during a civil matter regarding the enforcement of a contract. As a result, the Magistrate has put the 1st Appellant in a position where she was not able to “defend” herself against the assertions made by the Magistrate.
- [65] The Magistrate can therefore not have been said to act “fairly” when raising the point of law that the 1st Appellant’s conduct amounted to corruption and therefore was not permitted to raise such a point of law.
- [66] When the Magistrate gave the parties the opportunity to address her on the issue of legality, the response of both parties was solely on the fact that the agreement was not in line with public policy as the Appellants had no license to rent commercial equipment. The point of law of the conduct of the 1st Appellant amounting to corruption was never raised.
- [67] For persuasive value, the French Code of Civil Procedure regulates the question whether or not Judges can raise a point of law on their own motion, and Article 16 third sentences declares that “*il ne peut fonder sa decision sur les moyens de droit qu’il a relevés d’office*

sans avoir au préalable invite les parties à presenter leurs observations”. (A Judge must not base his decision on points of law which he raised on his own motion, without having first invited the parties to comment thereon).

[68] The *a contrario* interpretation of this provision points out that French Judges have the possibility to raise points of law on their own motion if certain conditions are met. That is, they can base their decisions on these autonomously raised points. On the other hand, this power is strongly limited by the ‘*principe de la contradiction*’, a corollary of the fundamental requirement of fair trial.

[69] The Magistrate did not give either party the opportunity to address this point of law and therefore violated the fundamental requirement of a fair trial.

CONCLUSION

[70] The Magistrate erred in basing her decision on the fact that the 1st Appellants conduct amounted to corruption and therefore the contract was void because it violated public policy.

[71] The Magistrate was however correct in determining that the contract is void based on the fact that the Appellants did not have a license to rent out construction equipment, therefore, rendering the contract void based on the legality of the above.

[72] Ground 1, 4 and 6 should therefore be dismissed and Ground 2, 3 and 5 upheld.

[73] Based on the fact that the Appellants did not have a license to rent the equipment to the Respondent, the decision of the Magistrate is however correct that the Plaintiff’s claim for damages against the Defendant for breach of contract cannot succeed being one pursuant to an agreement contrary to public policy.

Signed, dated and delivered at Ile du Port 19th March 2025.

Adeline J