

SUPREME COURT OF SEYCHELLES

Reportable
CC 19/2025

In the matter between

RALPH LABLACHE
(rep. by Mr Frank Elizabeth)

Plaintiff

And

ANTOINE LABLACHE
(rep. by Ms Edith Wong)

Respondent

Neutral Citation: *Lablache v Lablache CC 19/2025* [23rd May 2025]
Before: N. Burian, J
Summary: *Point of law- use of Digital Signature*
Heard: 21st May 2025
Delivered: 23rd May 2025

ORDER

I find that find that the plaint is procedurally defective but do not wish to waste time striking out a case which will ultimately be refiled and therefore I will take a more liberal approach. In the circumstances, I am satisfied that this irregularity can be cured with an amendment. I shall grant leave to Counsel to amend the plaint with a wet-ink signature. A copy of which should be served on Counsel for the Defendant.

Counsel is hereby warned however that until a proper structure is put in place to verify authenticity of digital signatures, he should not use be using them on any court documents and if the situation arises again I will be taking a harder approach.

RULING ON PLEA IN LIMINE

N. BURIAN, J

Introduction and background facts:

- [1] This Ruling arises from a point of law raised by Counsel for the Defence objecting to the use by Counsel for the Plaintiff of a digital signature in his pleadings before the Court.

Submissions:

- [2] Counsel for the Defence has argued that as per section 24 of the Seychelles Code of Civil Procedure (hereinafter 'the Code') every plaint must be signed by the Plaintiff's attorney or the Plaintiff in person. The Code does not make provisions itself for the use of electronic signatures which use is governed by the Electronic Transactions Act 2001 in which guidelines have been laid out for the use of digital signatures. If they guidelines are not complied with then the use of the digital signature should not be accepted by the courts.
- [3] In reply to the objections raised, Counsel for the Plaintiff has argued that section 24 of the Code only uses the word 'signed' and does not say in which form this must take and as such it does not exempt the use of digital signatures. Counsel has stated that as the document was accepted by the cashier upon filing of the plaint then the plaint should be deemed validly filed.

Law and Analysis:

- [4] In Seychelles, the Electronic Transactions Act 2001(hereinafter 'the Act') provides the legal framework for electronic signatures, specifically focusing on digital signatures. While the Act recognizes digital signatures, it doesn't explicitly cover other forms of electronic signatures. Generally, electronic signatures are considered acceptable subject to authentication, but certain public authorities might require wet-ink signatures.
- [5] I will start by covering some of the definitions as laid out in the Act:

"affixing digital signature" means adoption of any procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

"asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

"**digital signature**" means the authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with section 3.

"**private key**" means the key of a key pair used to create a digital signature;

"**public key**" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate.

[6] Section 5 goes on to state as follows:

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any documents should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is authenticated by means of the digital signature affixed in such manner as may be prescribed.

[7] Therefore I agree that section 5 would allow for the use of digital signatures subject to proper authentication (section 3) and would in theory apply to documents filed pursuant to the Code if not exempt by regulations.

[8] The authentication of the signature shall be effected by the use of an asymmetric crypto system and hash function. A "hash function" means an algorithm mapping or translation of one sequence of bits into on 3 of another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible—

(a)to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b)that two electronic records can produce the same hash result using the algorithm.

(3)Any person by the use of a public key of the subscriber may verify the electronic record.

(4)The private key and the public key are unique to the subscriber and constitute a functioning key pair.

[9] I note in the present case however there is no way to authenticate the digital signature in question as no private key has been provided to allow for the authentication process. The Judiciary also does not yet have in place a policy to regulate the use of digital signatures and therefore I am of the view that until such use has been regulated, we continue to use only wet-ink signatures.

[10] I would also like to draw Counsel's attention to the Electronic Transactions (Amendment) Regulations of 2018 which provided a long list of exempted legislation and stated as follows:

All documents and transactions other than electronic documents and transactions made under the following Acts are exempt from the applicability of the Act-

- (a) Civil Code of Seychelles Act;*
- (b) Companies Act;*
- (c) Mortgage and Registration Act;*
- (d) Land Registration Act;*
- (e) Security on Movables Act;*
- (f) Insolvency Act; ,*
- (g) Notaries Act;*
- (h) Registration of Association Act;*
- (i) Industrial Property Act; 162*
- (j) Auctioneers and Appraisers Act;*
- (k) Curatelle Act;*
- (l) Registration of Business Names Act;*
- (m) Bills of Exchange Act; ,*
- (n) Official baths Act;*
- (o) Merchant Shipping Act; ,*
- (p) Seychelles Code of Civil Procedure;*
- (q) Immovable Property (Judicial Sales) Act;*
- (r) Criminal Procedure Code;;*
- (s) Presumption of Deaths Act;*
- (t) Evidence Act;*

(u) Matrimonial Causes Act;
(v) Probates (Re-sealing) Act; and
(w) Proceeds of Crime (Civil Confiscation) Act

- [11] I note that the Seychelles Code of Civil Procedure was on this list, however there has been a recent amendment whereby the schedule was repealed as replaced as follows:

S.I. 12 of 2024 ELECTRONIC TRANSACTIONS ACT (Cap 263) Electronic Transactions (Amendment of Schedule) Regulations, 2024

- 1. Civil Code of Seychelles Act;*
- 2. Notaries Act;*
- 3. Bills of Exchange Act;*
- 4. Merchant Shipping Act;*
- 5. Immovable Property (Judicial Sales) Act;*
- 6. Criminal Procedure Code; and*
- 7. Evidence Act*

- [12] The Seychelles Code of Civil Procedure is no longer on this list of exemptions and therefore subject to proper authentication the courts may soon be able to accept pleadings affixed with a digital signature. However, until procedures are in place for authentication, I am of the opinion that Counsel must continue to physically sign his documents with wet-ink. I would also like to make it clear that the Registry accepts document upon payment of filing fees but they do not screen documents submitted and all issues of validity of pleadings remain the decision of the Judge.

Conclusion and order:

- [13] In the instance case, I must agree with counsel for the Defendant that the plaint is procedural defective as it is not in compliance with section 24.

- [14] Counsel having knowledge of the objections raised and concerns in respect of his use of digital signatures could have taken steps to seek leave to amend his pleadings, but he has chosen to stand by his pleadings and let the Court decide.
- [15] I find that find that the plaint is procedurally defective but do not wish to waste time striking out a case which will ultimately be refiled and therefore I will take a more liberal approach. In the circumstances, I am satisfied that this irregularity can be cured with an amendment. I shall grant leave to Counsel to amend the plaint with a wet-ink signature. A copy of which should be served on Counsel for the Defendant.
- [16] Counsel is hereby warned however that until a proper structure is put in place to verify authenticity of digital signatures, he should not use be using them on any court documents and if the situation arises again I will be taking a harder approach.

Signed, dated, and delivered at Ile du Port on 23rd May 2025.



N. Burian, J

