

# Selected Cases on Evidence 1983 – 2010

[LC refers to *Leading Cases of Seychelles 1988-2010*;

p/pp refers to the relevant pages in this book]

## A *Court of Appeal*

- 1 ***Banque Francaise Commerciale v Fayon*** [1983-1987] 1 SCAR 66
  - admission of liability based on a mistake of fact; admission of no effect; pp 30-34
- 2 ***Didon v Leveille*** [1983-1987] 1 SCAR 164
  - proof of handwriting; pp 22-25
- 3 ***Port Louis v Central Stores Development*** [1983-1987] 1 SCAR 165
  - contest of signature or handwriting of a document under private signature; pp 22-25
  - oral evidence and presumptions; pp 26-27
- 4 ***Renaud v Dogley*** [1983-1987] 1 SCAR 202
  - admission of oral evidence; pp 30-34
- 5 ***Tirant v Kreckman*** [1983-1987] 1 SCAR 287
  - copy of holograph will admissible after loss of original proved; p 26
- 6 ***Chez Deenu v Loizeau*** SCA 17/1987, 22 July 1988; LC 2
  - decisive oath; pp 35-38
- 7 ***Appasamy v Appasamy*** SCA 9/1988 , 4 October 1989; LC 11
  - the contents of a holographic will can be proved by secondary evidence in cases where the document cannot be found after due search; p 26

- 8 ***Botel v Ruddenklau*** SCA 8/1992, 31 March 1993; LC 27
  - article 1341 Civil Code of Seychelles; pp 7-13
  - back-letters; p 12
  - writing providing initial proof; p 16
  - unsworn personal answers; p 17
- 9 ***Larue v Husser*** SCA 23/1994, 16 June 1995; LC 73
  - judicial admission; pp 30-33
- 10 ***Ruddenklau v Botel*** SCA 4/1995, 1 March 1996; LC 105
  - back-letter agreements are void unless they are in writing; p 12
- 11 ***Hoareau v Hoareau*** SCA 30/1996, 3 April 1997; LC 112
  - written evidence for simulated sale proof
  - back-letter cannot be proved by oral testimony; p 12
- 12 ***Savy v Krishnamart*** SCA 19/1999, 14 April 2000; LC 173
  - in the absence of other laws, the English law of evidence and procedure applies (Evidence Act s 12); pp 1 and 5
- 13 ***Adonis v Marie*** SCA 39/1999, 3 November 2000; LC 180
  - back-letters: an agreement not in writing is not able to be registered as formally required under art 1321(2) Civil Code of Seychelles; p 12
- 14 ***Gayon v Collie*** SCA 8/2001, 16 November 2004; LC 251
  - bringing oral evidence requires initial proof in writing; p 16
- 15 ***Seychelles Construction v Braun*** SCA 9/2004, 20 May 2005; LC 264
  - Court has discretion to admit hearsay evidence in conjunction with other credible evidence
  - documentary evidence admissible
  - invoice as evidence; pp 22-25

- 16 ***Michaud v Ciunfrini*** SCA 26/2005, 24 August 2007; LC 302
- article 1341 Civil Code of Seychelles provides that oral evidence is not permissible to prove an obligation. exceptions can be found in arts 1347 to 1348 Civil Code of Seychelles; pp 16-18
  - moral impossibility because of the special relationship of the parties; p 19
  - party objects oral evidence; pp 17-18
  - handwriting; pp 12, 22-25
- 17 ***D'Offay v Louise*** SCA 34/2007, 14 August 2009; LC 332
- it is in the public interest that there is finality in litigation
  - *res judicata* applies not only to the points which the court was required to pronounce a judgment, but to every point which properly belongs to the litigation and which a party who is exercising reasonable diligence might have brought forward at the time of the case
  - due to the principles of *res judicata* and finality of judgment, a decision of the Court of Appeal cannot be stayed or challenged in proceedings in a lower court; p 27
- 18 ***Anscombe v Indian Ocean Tuna*** SCA 40/2009, 13 August 2010; LC 352
- A person who seeks to admit oral evidence to prove a contract above R 5000 should apply to the court under the Personal Answers Procedure; this application should be made before the date of hearing; p 8

## **B Supreme Court**

- 1 ***Herbert v Hossel*** [1984] SLR 127
  - the court has a discretion to permit evidence by affidavit; however, this has not as much weight as evidence by oath (s 167 (now s 168) Seychelles Code of Civil Procedure)
- 2 ***Central Stores v Adelina*** [1984] SLR 147
  - private signature, handwriting arts 1324, 1326 Civil Code of Seychelles; pp 12, 22-25
- 3 ***State Assurance v Petrousse*** [1987] SLR 104
  - any matter the value of which is over R 5000 requires a voluntary document drawn up by a notary or under private signature; this rule is inapplicable where the document has been lost as a result of an accident which was inevitable and unforeseen or which was a consequence of an act of God
  - merchants are required to keep books or accounts; pp 25-26
- 4 ***Appasamy v Appasamy*** [1988] SLR 132
  - a holographic will is a document under private signature; pp 12, 22-25
- 5 ***MacGaw v Jean*** [1990] SLR 149
  - authentic document; p 21
  - oral evidence shall not be admissible to vary the terms of a deed except where -
    - i the deed contained terms or clauses ambiguous or imprecise
    - ii there was writing providing initial proof
    - iii the parties have expressly or tacitly waived the prohibition
    - iv the person affected was a third party

- 6 ***Dominion Traders v Govinden (2)*** [1990] SLR 266
  - books kept by merchants within the meaning of the Commercial Code are admissible in evidence between them in respect of commercial transactions; pp 25-26
- 7 ***Vidot v Padayachy*** [1990] SLR 279
  - oral contract over R 5000; admissibility of oral evidence
  - impossibility to obtain written proof because of the special relationship between plaintiff and defendant; oral evidence admissible; p 18
- 8 ***Esparon v Esparon*** [1991] SLR 59
  - documentary proof
  - moral impossibility under art 1348 Civil Code of Seychelles; p 18
- 9 ***Francoise v Herminie*** [1992] SLR 111
  - the court has a wide discretion to decide what constitutes moral impossibility under art 1348 Civil Code of Seychelles based on the facts of each case; p 18
- 10 ***Soffa v Melanie*** [1994] SLR 152
  - public document, secondary evidence
  - admissibility of copies where there was some internal reference in an original; p 26