

BETWEEN: **Tristin Lal**
Appellant

AND: **Philippe Carillo**
First Respondent

AND: **Maxine Carillo**
Second Respondent

Date of Hearing: 17 November 2020

Before: Chief Justice V. Lunabek
Justice J. Mansfield
Justice R. Young
Justice O. Saksak
Justice D. Aru
Justice G.A. Andrée Wiltens

In Attendance: Ms S. Mahuk for the Appellant
Mr D Yawha for the First Respondent

Date of Decision: 20 November 2020

JUDGMENT

A. Introduction

1. There was dispute in the Magistrate's Court between Mr and Mrs Carillo regarding the disposal of a motor vehicle to Mr Lal. Mr Carillo alleged that Mrs Carillo had no right to dispose of the vehicle or to sign the transfer documentation, without his consent which he had not given, as the vehicle was registered in his sole name. He sought to recover the vehicle from Mr Lal who had subsequently purchased it, but who claimed to be a bona fide purchaser for value.
2. As there had been no service of the Claim on Mrs Carillo, the learned Magistrate heard the aspect of the case regarding the ownership of the vehicle, which resulted in a finding that Mr Lal was a bona fide purchaser for value and entitled to keep the vehicle.
3. Mr Carillo appealed that determination in the Supreme Court. The result there was that Mr Lal was found to have had actual or constructive knowledge of the fact that Mrs Carillo had no authority to



sign the transfer documents and sell the vehicle. Accordingly, he was found to have no legitimate claim to the vehicle, and the vehicle was restored to Mr Carillo.

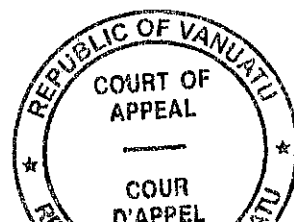
4. Mr Lal now appeals the Supreme Court decision.

B. Leave

5. Section 30(4) of the Judicial and Court Services Act 2000 requires the leave of this Court in order to challenge the Supreme Court decision on a question of law. In the course of discussions with counsel, we were satisfied that the appeal was not simply challenging factual findings as submitted by Mr Yawha, but was also based on a point of law. Accordingly, we heard the substantive matter on appeal.

C. Background

6. In October 2017, Mr and Mrs Carillo purchased an Isuzu motor vehicle. The purchase price was VT 930,000. It was registered in Mr Carillo's sole name.
7. In early 2018, Mrs Carillo was involved in an accident while driving the vehicle, which caused significant damage to the vehicle. The vehicle was towed to C.A.R.S., a vehicle repair business, which was operated by Mr Lal's brother.
8. Mrs Carillo advised Mr Lal's brother that the damaged vehicle was to be sold "as is". She provided Mr Lal's brother with a completed transfer of ownership form which properly recorded Mr Carillo as the registered owner and which was purported to be signed by the transferor, Mr Carillo.
9. Mr Lal's brother gave evidence before the Magistrate's Court to the effect that he had previously met and dealt with Mr and Mrs Carillo. Accordingly, he trusted Mrs Carillo was selling the vehicle on behalf of her husband, and he gave evidence that she had advised him that her husband had signed the transfer. That information was passed on to Mr Lal.
10. It was accepted at trial that Mrs Carillo's advice as to that was untrue, and that in fact she had signed the transfer – a fact unknown to and not consented by Mr Carillo. The issue therefore before the learned Magistrate was whether Mr Lal was aware at the time that the signed transfer document was fraudulent, or whether he should have been aware of that from the surrounding circumstances. If so, he would lose the shield of bona fide purchaser for value.
11. Mr Lal's brother spoke with Mr Lal about the sale of the damaged car, and Mr Lal expressed an interest in purchasing the vehicle at the price mentioned of VT390,000; and he did subsequently buy the vehicle. Significant repairs were completed on the vehicle before the registration into Mr Lal's name occurred in April 2018 – the costs amounted to VT412,569.



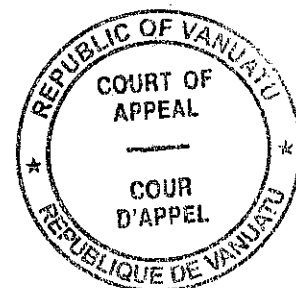
12. In June 2018, Mr Carillo discovered what had occurred and sought to rectify the situation with Mr Lal. Resolution between them proved impossible, and accordingly Mr Carillo brought his Claim in the Magistrate's Court against Mrs Carillo for theft and/or fraudulent conversion of the vehicle, and against Mr Lal for his participation in obtaining possession of the vehicle by means of fraud.

D. In the Magistrate's Court

13. The Magistrate accepted Mr Lal as a credible and reliable witness. He satisfactorily explained the VT90,000 discrepancy between what he had paid for the vehicle and what was recorded as the purchase price on the transfer document. The differential was attributed to a charge by Mr Lal's brother for the towage costs of getting the damaged vehicle from the accident site to the C.A.R.S. premises.
14. Mr Lal's evidence was that he did not know who had signed the transfer document, but that he trusted his brother who had told him the papers had been provided by the owner of the vehicle, and that they "were in order".
15. The learned Magistrate found that Mr Lal had paid for the value of the vehicle, given its damaged condition. She found further that Mr Lal had acted in good faith with no knowledge of the fraudulent signing of the transfer document by Mrs Carillo. She found that Mr Lal knew that Mr Carillo was the registered owner of the vehicle, but that he believed Mrs Carillo was entitled to sell the vehicle as the transfer had been correctly signed by Mr Carillo. Mr Lal was accordingly found to be a bona fide purchaser for value and entitled to retain the vehicle.

E. In the Supreme Court

16. The factual scenario was unchanged. The primary judge came to the same conclusion that Mrs Carillo had fraudulently signed the transfer document, not Mr Carillo.
17. However, the primary judge, in looking at Mr Lal's defence of bona fide purchaser for value, saw the transfer registration document as critical. Due to the fact that it recorded that Mr Carillo was the registered owner, Mr Lal was found to have had actual or constructive notice of Mr Carillo's rights of ownership. That finding led to the conclusion that Mr Lal could not avail himself of the bona fide purchaser for value defence.
18. Accordingly, the learned Magistrate's findings were set aside and the vehicle was returned to Mr Carillo, with the transfer to Mr Lal cancelled.

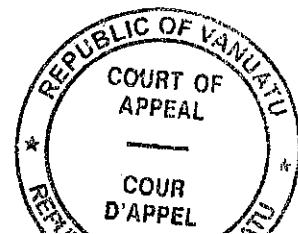


F. The Appeal

19. The short point of the appellant's submissions was that the primary judge had failed to take into account relevant evidence. We consider, as stated above, that equates to a submission that the primary judge erred on a point of law.
20. The submission was that, once the primary judge had dealt with Mr Lal's actual or constructive notice of Mr Carillo's rightful ownership of the vehicle, the primary judge ought to have gone on to consider the evidence referable to Mr Lal's defence. It was submitted that the points in favour of the defence were overlooked.
21. Mr Yawha submitted that the transaction was fraudulent, and that Mr Lal was aware of that. He pointed to the evidence of a Customs Officer, M Bani, who twice attempted to check with Mr Carillo that he had actually signed the transfer but was unable to contact him. The officer made the same inquiry of Mr Lal and was told the signing had been completed by the owner. Mr Yawha characterised that evidence as a lie, further, that it evidenced Mr Lal's complicity in the fraud.

G. Discussion

22. The signature on the transfer document gives no clue as to whether it was completed by Mr Carillo or Mrs Carillo, or indeed anyone. It is indecipherable. That alone would not have put an innocent purchaser on notice.
23. Shortly before the accident the vehicle was purchased for VT930,000. The damage was significant. The learned Magistrate accepted that the VT390,000 paid by Mr Lal was a fair price for the vehicle in the condition it was then in. Mr Lal has demonstrated by unchallenged evidence that he paid a further VT412,569 to return the vehicle to a roadworthy condition. In the circumstances, the learned Magistrate's finding of value is unimpeachable.
24. The learned Magistrate accepted that Mr Lal was a credible and reliable witness. His statement that he had no knowledge there was anything amiss with the transaction must accordingly be given weight. In our view Mr Yawha's submission regarding Mr Lal's veracity does not take into account the possibility that Mr Lal was simply repeating what he had been told.
25. In our view, the evidence supports Mr Lal's defence of being a bona fide purchaser for value. The fact that Mrs Carillo had fraudulently put Mr Carillo's signature on the transfer, and that Mr Lal knew that Mr Carillo was the registered owner of the car did not routinely lead to the conclusion that Mr Lal knew of that fraudulent behaviour. The evidence the Magistrate accepted, and the finding based on that evidence, was that Mr Lal did not know of the fraud. He had no dealings with Mr Carillo. There is no evidence that he had knowledge or should have had knowledge that the transfer document had been fraudulently completed. He acted as a reasonable person would in the circumstances then prevailing.



26. These factors were not taken into account by the primary judge, which we consider is an error of law.

H. Decision

27. The appeal is allowed.

28. Counsel advised from the bar table that subsequent to the judgment under appeal being published and before a restraining order could be obtained to maintain the status quo, Mr Carillo has on-sold the vehicle. It is assumed that the purchaser had no knowledge of this case, and that he/she is in the position of a bona fide purchaser for value. It is too onerous to also attempt to unwind that transaction, even if there is a valid basis for attempting to do so.

29. Accordingly what was sought by Ms Mahuk was an order for damages; for recovery of the sums expended by Mr Lal in originally purchasing the vehicle and subsequently making the vehicle roadworthy. He has lost the value of that expenditure due to this latest transaction.

30. We are satisfied such an order is appropriate in the circumstances. We are comforted in that view by the absence of any counter argument by Mr Yawha.

31. Accordingly, we enter judgment in favour of Mr Lal in the sum of VT802,569.

32. That amount, together with costs of the appeal set at VT75,000, is to be paid within 21 days. Interest on the total sum due is to run at 5% per annum from the date of 25 September 2020, the date the Notice of Appeal was filed, until payment in full has been completed.

Dated at Port Vila this 20th day of November 2020

BY THE COURT



Chief Justice V. Lunabek

