

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 19/2070 SC/CIVL

BETWEEN: Philippe Carillo
Appellant

AND: Maxine Carillo
First Respondent

AND: Tristine Aureal Lal
Second Respondent

Date of Hearing: 25 June 2020
Before: Justice V.M. Trief
In Attendance: Appellant – in person
First Respondent – no appearance
Second Respondent – Mr R. Tevi
Date of Decision: 9 September 2020

JUDGMENT

A. Introduction

1. This is appeal from the Magistrates' Court judgment dated 20 March 2019 dismissing the Appellant Philippe Carillo's claim against the First Respondent Maxine Carillo ('Ms Carillo'), and which held that the Second Respondent Tristine Aureal Lal was a bona fide purchaser of the Isuzu vehicle owned by Mr Carillo.

B. Extension of time to file appeal

2. Having heard Mr Carillo and Mr Tevi not opposing, I ordered that the time for the filing of Mr Carillo's appeal is extended pursuant to r. 18.1(1) of the *Civil Procedure Rules* as he had instructed his lawyer within time to file an appeal but the lawyer did not do so despite



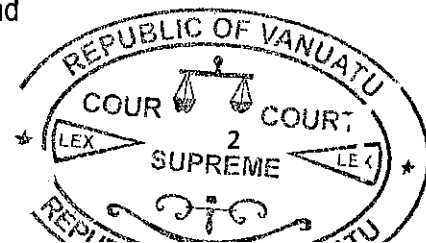
numerous follow-ups, that he was driven eventually to file the appeal himself out of time and is now self-represented. I note also that Mr Carillo has filed a complaint against that lawyer with the Law Council.

C. Background

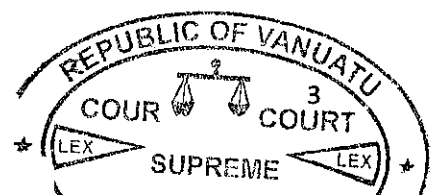
3. Mr and Ms Carillo were married and are now divorced.
4. On 18 October 2017, Mr Carillo purchased a silver Isuzu vehicle with registration number 16591 (the 'car') from Carpenters Motors for VT930,000.
5. The car was registered solely in Mr Carillo's name.
6. On 21 November 2017, Mr and Ms Carillo separated.
7. Ms Carillo damaged the car in a motor vehicle accident.
8. The car was taken to the Second Respondent's brother Alpha Lal's garage, who sold it to the Second Respondent in or about April 2018.
9. In April 2018, the Second Respondent changed the registration of the vehicle at the Department of Customs to his own name.
10. In June 2018, Mr Carillo informed Alpha Lal and the Second Respondent that the car had been transferred without his knowledge.
11. Mr Carillo commenced action in the Magistrates' Court against Ms Carillo alleging theft and fraudulent sale of the car to the Second Respondent without Mr Carillo's knowledge or consent, and that the Second Respondent had failed or refused to return the car.
12. Ms Carillo has not taken any steps in the Magistrates' Court proceedings nor in this Court.
13. The Second Respondent filed a Defence that at all material times he believed that the First Respondent acted in good faith in the process of selling and transferring the car to him. Further, that he is a bona fide purchaser.
14. After a trial, the Court issued the judgment now appealed.

D. Grounds of Appeal

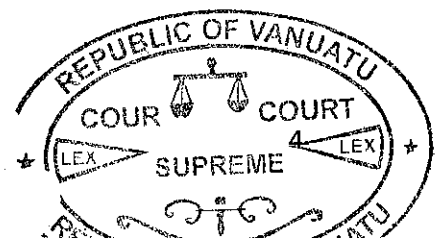
15. Mr Carillo advanced three grounds of appeal:
 - i) The Magistrates' Court judgment is not fair at all and that the Magistrate did not ask the Second Respondent the right question;
 - ii) The judgment contains false data, false names and lies; and



- iii) The Magistrate did not ask any question about the first buyer of the car, Alpha Lal who issued an invoice from his company Classic Auto Restoration services ('C.A.R.S.') to the Second Respondent.
16. During the hearing, Mr Carillo clarified that grounds 1 and 3 are to the effect that the Magistrate did not deal with the factual question of the sale of his car without his knowledge or consent. Ground 2 is to the effect that the judgment contains many errors including what business Alpha Lal manages, references to Arvin Lal and Pacific Autronics instead of to Alpha Lal and C.A.R.S., and not dealing with whether or not the vehicle transfer document was fraudulent.
- E. Discussion
17. From the Claim and Defence filed in the Magistrates' Court, the issues between the parties were:
- i) Whether or not Ms Carillo fraudulently sold the car to the Second Respondent without Mr Carillo's knowledge or consent; and
 - ii) Whether or not the Second Respondent was a bona fide purchaser.
18. The Second Respondent asserted that he was a bona fide purchaser who had bought the car from his brother Alpha Lal without any knowledge of fraud on Ms Carillo's part. The sale of the car by Alpha Lal to the Second Respondent is evidenced by an invoice dated 24 April 2018 from Alpha Lal's garage, C.A.R.S. selling the car to the Second Respondent for VT389,999.50.
19. However, the document that effected the transfer of ownership of the car to the Second Respondent was the Vanuatu Government Transfer of Ownership of Motor Vehicle form dated 24 April 2018. The vendor named on that form is Philippe Carillo. Alpha Lal is not named as the vendor, therefore before the Court could determine whether or not the Second Respondent was a bona fide purchaser, it had to first determine whether or not Ms Carillo fraudulently sold the car to the Second Respondent.
20. The Magistrate set out the following issues in the judgment:
- a) Whether or not the First Respondent fraudulently signed the documents to allow sold [sic] the Isuzu vehicle?
 - b) Whether or not the Second Respondent knew that the First Respondent fraudulently signed transfer of ownership documents of the vehicle?
 - c) Whether or not the Second Respondent was a bona fide purchaser?
21. The Claimant's case and the Defence case are then set out. However, instead of determining whether or not Ms Carillo fraudulently sold the car to the Second Respondent, the Court dismissed all claims against her as it would be an abuse of process to enter judgment against her.



22. The issue for the Court's determination was not whether or not judgment should be entered against Ms Carillo. The issue for its determination was whether or not Ms Carillo's sale of the car to the Second Respondent was fraudulent. At no point in the Magistrates' Court judgment was that question determined. Accordingly, the Magistrate erred in not doing so. Grounds 1 and 3 of the appeal are made out. The Magistrates' Court judgment dated 20 March 2019 must be set aside.
23. The Magistrate referred in her judgment to Mr Carillo's sworn statement dated 20 July 2018 and that she found him to be a credible and reliable witness.
24. Rule 11.7(1) of the *Civil Procedure Rules* provides that a sworn statement that is filed and served becomes evidence in the proceeding unless the court has ruled inadmissible. There is no suggestion that the Magistrate ruled any part of Mr Carillo's sworn statement inadmissible.
25. Having found that Mr Carillo was a credible and reliable witness, it follows that the Court accept his evidence as filed. Mr Carillo attached to his statement a copy of the Vanuatu Government Transfer of Ownership of Motor Vehicle form dated 24 April 2018 (Annexure "PC5") and stated that on that date, while he was away from Port Vila, Ms Carillo sold the car to the Second Respondent without his (Mr Carillo's) knowledge or consent. Further, that on that date, she knowingly and fraudulently transferred the ownership of the car by writing Mr Carillo's name on the Transfer of Ownership form and signing it without Mr Carillo's knowledge, consent or authorisation. It is undisputed that it is Ms Carillo's signature on the form, not Mr Carillo's.
26. In the circumstances, I am satisfied that Ms Carillo signed for Mr Carillo on the Vanuatu Government Transfer of Ownership of Motor Vehicle form dated 24 April 2018 without Mr Carillo's knowledge or consent. I find therefore that Ms Carillo fraudulently sold the car to the Second Respondent without Mr Carillo's knowledge or consent.
27. The remaining issue for determination is whether or not the Second Respondent was a bona fide purchaser. The Magistrate set out that principle in the judgment as follows:
- The bona fide principle [is] that a purchaser of a property must acquire title through payment of value, he or she must with good faith purchase the property, be an innocent purchaser for the value and without actual or constructive notice of another's rights.*
28. The Magistrate recorded in her judgment that the Second Respondent bought the vehicle in good faith and was not aware of any fraud until Mr Carillo approached him in June 2018. However, the very document relied on by the Second Respondent – the Vanuatu Government Transfer of Ownership of Motor Vehicle form dated 24 April 2018 – sets out that Mr Carillo is the owner of the car. I am satisfied therefore that the Second Respondent had actual or constructive notice of Mr Carillo's rights of ownership of the car. In those circumstances, the Second Respondent does not have the protection of the bona fide principle. My finding therefore is that the Second Respondent was not a bona fide purchaser.



F. Result and Decision

29. The appeal is **allowed**. The Magistrates' Court judgment dated 20 March 2019 is **set aside**.
30. This judgment having disposed of the matters before the Magistrates' Court, the Magistrates' Court files for CC 18/1969 and 19/1754 are hereby closed.
31. Judgment is entered for the Appellant Mr Carillo as follows:
- a. The Second Respondent is to forthwith return the silver Isuzu vehicle registration number 16591 to the possession of the Appellant together with the keys used to operate the vehicle;
 - b. The Transfer of Ownership of Motor Vehicle form dated 24 April 2018 recording a purported transfer of ownership of vehicle registration number 16591 from Philippe Carillo to Tristine Aureal Lal is **fraudulent** therefore any registration of transfer of ownership to Tristine Aureal Lal is to be cancelled forthwith;
 - c. Costs should follow the event. The Second Respondent is to pay the Appellant's costs in the Magistrates' Court and of this appeal as agreed or taxed by the Master. Once settled, the costs are to be paid within 21 days.

**DATED at Port Vila this 9th day of September 2020
BY THE COURT**


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Viran Molisa Trief
Judge

