

**(1) Kenneth Polinere  
(2) Patricia Jules and  
(3) Maria Mark**

*Appellants*

v.

**Lucy Felicien**

*Respondent*

FROM

**THE COURT OF APPEAL OF THE EASTERN  
CARIBBEAN SUPREME COURT (ST. LUCIA)**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 26th January 2000

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*Present at the hearing:-*

Lord Hoffmann  
Lord Clyde  
Lord Saville of Newdigate  
Lord Hobhouse of Woodborough  
Mr. Justice Henry

*[Delivered by Lord Hoffmann]*

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This is an appeal from a judgment of the Court of Appeal of the Eastern Caribbean Supreme Court which held that a gift of land in St. Lucia made in 1978 by the late Merilese Velinor to Kenneth Polinere, Patricia Jules and Lazarus Hyacinth (“the donees”) and in respect of which they or their successors in title have been registered proprietors since 1986, was void for non-compliance with the formalities required by certain articles of the St. Lucia Civil Code. The Court of Appeal ordered rectification of the register by deletion of the names of the registered proprietors and the substitution of the personal representatives of Merilese Velinor. The donees or their representatives appeal to the Privy Council.

The facts of the transaction may be shortly stated. By a Deed of Sale dated 14th February 1978, Eva Mongroo and Mary DeFreitas Mongroo, as vendors, conveyed certain land at Derniere Riviere in the Quarter of Dennery, St. Lucia, to the donees, who at the time were all minors, subject to a usufruct in favour of Merilese Velinor. The deed recited that the entire purchase price had been paid out of the separate funds of Merilese Velinor and that she was purchasing on behalf of the donees, who were described as her grandson, granddaughter and nephew respectively. The Deed of Sale was notarially authenticated and duly registered under the system of registration of deeds which then existed. When the Land Registration Act 1984 came into force, the land was registered in the Registration Quarter for Dennery as Block 1642B Parcel No. 1. The donees were registered as joint proprietors and the usufruct in favour of Merilese Velinor was registered as an incumbrance. In 1984 Lazarus Hyacinth died and by a deed of sale dated 25th July 1988 his personal representative sold his share in the land to Patricia Jules for \$3,000. She was registered as proprietor of his share (in addition to the share she had originally acquired) on 2nd August 1988.

There appears to have been a family falling out in which Merilese Velinor's daughters Agatha and Lucy took the view that the donees had not shown themselves deserving of the gift. On 28th November 1994 Merilese Velinor, who was said to be over 80 years old but showing no evidence of any serious disturbances of memory or cognitive functioning, issued proceedings claiming that the gift was void or liable to be revoked for ingratitude. The argument for invalidity was based on Articles 696 and 717 of the Civil Code, which read as follows:-

“696. Gift *inter vivos* is an act by which the donor divests himself, by gratuitous title, of the ownership of a thing, in favour of the donee, whose acceptance is requisite and renders the contract perfect. This acceptance makes it irrevocable ...

717. Deeds containing gifts *inter vivos* must under pain of nullity be executed in notarial form and the original thereof be kept of record. The acceptance must be made in the same form.”

The plaintiffs argued that the deed constituted a gift within the meaning of Article 696 which required acceptance and by virtue of Article 717, both gift and acceptance had to be in the form of a notarially authenticated deed. But the donees had never executed such a deed.

The claim to revocation for ingratitude was based on Article 751, which provides that gifts *inter vivos* accepted are liable to be revoked on various grounds including “ingratitude on the part of the donee”. Article 753 states what can amount to ingratitude and includes “refusal to maintain donor, regard being had to the nature of the gift and the circumstances of the parties”. The plaintiff alleged that the donees had failed to maintain her.

The summons came before Matthew J. who rejected the claim to invalidity on the ground that the transaction was not a gift within Article 696. He said that the plaintiff did not divest herself of any property in favour of the donees because she never owned the land which the original vendors had conveyed to them.

As for the claim to reject on the grounds of ingratitude, this raised a question of fact as to whether, having regard to the nature of the gift and the circumstances of the parties, the donees could be said to have refused to maintain the plaintiff. By the time of the trial in 1995 Merilese Velinor was too old to give evidence, one of the original donees was dead and another had been away from the island for many years. The parties therefore agreed to the judge making findings of fact on the basis of the affidavits without cross-examination. He found that having regard to the fact that the gift was reversionary and that there was no evidence that the donees had the means to maintain the plaintiff, the claim to revoke should be rejected.

Soon after the trial Merilese Velinor died and her daughter and personal representative, Lucy Felicien, was substituted as a party. She appealed to the Court of Appeal (Byron, Acting C.J., Satrohan Singh and Redhead J.J.A.) which held that the transaction was a gift and that Article 717 had not been complied with. The court therefore found it unnecessary to deal with revocation, except that Redhead J.A., who gave the judgment of the court, observed that the

judge's finding of fact was one which “this court will not lightly upset”.

Against that decision the donees appeal to the Privy Council. Unfortunately the respondent was not represented at the hearing before their Lordships but Mr. Guthrie Q.C., who appeared for the appellants, put the points upon which he considered that the respondent would have relied if she had been represented.

Their Lordships consider that anyone attempting to interpret the Civil Code must bear in mind that it is derived, in most cases word for word, from the Quebec Civil Code of 1865, which in turn was derived from the Code Civil of France. In adopting the St. Lucia Civil Code, the legislature must in their Lordships' view have intended that its terms should be construed with due regard to what they had been understood to mean in Quebec and France. The jurisprudence which has been attached to the provisions of the Code by the courts and legal writers of those countries must at the very least have considerable persuasive authority. Their Lordships therefore consider that it was unwise for the judge and the Court of Appeal to have attempted to construe them without any reference to their civilian background.

Their Lordships have been unable to find any relevant authority on the law of Quebec, but the French jurisprudence on the subject is clear. Articles 931 *et seq.* of the Code Civil also contain requirements that both the gift and its acceptance should be authenticated before a notary, in language very similar to articles 696 and 717 of the St. Lucia Code. In fact, such requirements existed under the *ancien régime* and can be traced back to a royal ordinance of 1539: see Dawson, *Gifts and Promises* (1980) pp. 43-44. But the French courts have never applied these provisions to what the writers call “indirect gifts”: see, for example, M. Planiol and G. Ripert, *Traité pratique de droit civil français* (2nd ed., 1957) tome V, A. Trasbot and Y. Loussouarn *Donations et testaments* no. 411, p. 534 and Ph. Malaurie and L. Aynès, *Droit civil, les successions, les Libéralités* by Ph. Malourie with P.-J. Claux and N. Gouzigou-Suhas (4th ed. 1998), no. 415, p. 239. The clearest example of an indirect gift given by authoritative French writers is a purchase in the name of another, by which the transaction is

a gift because the beneficiary gives no consideration, but it is indirect because the gift arises out of the purchase and sale and not from a direct conveyance of the property by donor to donee. On the traditional French construction of the Code Civil, the specific formalities of notarial authentication for gifts in Articles 931 *et seq.* have never been applied to such purchases for the benefit of a third party. All that is necessary is that the purchase and sale should be concluded with the formalities appropriate to such a transaction and that there should have been acceptance by the donee, which may be express or implied, before the donor attempts to revoke the gift: see G. Baudry-Lacantinerie and M. Colin, *Traité théorique et pratique de Droit civil, Des donations entre vifs et des testaments*; 3rd ed. tome I (1905) at nos. 1227-1228, pp. 554-555.

Their Lordships consider that it would be right to follow the French jurisprudence in the interpretation of the St. Lucia Civil Code. The deed of sale of 1978 was an indirect gift and was notarially authenticated and registered with the formalities appropriate to a deed of sale. All that therefore remained was for the donees expressly or impliedly to accept the gift. Their Lordships consider that implied acceptance must at the very latest have taken place when the donees were registered as owners of the land in 1986. The process of first registration, and in particular the preparation of the adjudication record in accordance with the Land Adjudication Act 1984, would have required the consent of the donees to their registration as proprietors. In addition, Patricia Jules plainly ratified the gift both in respect of her own share and that given to Lazarus Hyacinth when she bought his share from his personal representative in 1988.

For these reasons their Lordships consider that the gift had become irrevocable before Merilese Velinor attempted to revoke it in 1994. Mr. Guthrie also argued that Merilese Velinor must be treated as having constituted herself trustee of the property for the donees pursuant to article 916A of the Civil Code. But since their Lordships consider that the gift was valid as such under the Civil Code, they express no view on whether a trust was also created. As for revocation for ingratitude, their Lordships consider that there are no grounds for interfering with the judge's findings of fact. They will therefore humbly advise Her Majesty that the appeal should be allowed and the decision of Matthew J.

restored. The respondent must pay the appellants' costs before their Lordships' Board and in the Court of Appeal.

