

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**CA P267/2020**

**SHERIDAN ABRAHAM  
HAZEL ABRAHAM**

Appellants

And

**KENRICK TITUS KENNY-ARTHUR BURKE**

First Respondent

**SHANTA YINKHA BURKE**

Second Respondent

**TRINIDAD AND TOBAGO MORTGAGE FINANCE COMPANY LIMITED**

Third Respondent

**ROWLE JORDAN**

Fourth Respondent

**MARK LYLE**

Fifth Respondent

**JENNIFER LYLE**

Sixth Respondent

**ANDY PERUZAR**

Seventh Respondent

**Panel:**

M. Mohammed JA

R. Boodoosingh JA

G. Henderson JA

**Appearances:**

Mr Anthony Manwah and Mr Frank Peterson for the appellants

Mr Christopher George and Ms Anuradha S. Dean for the first and second respondents

Ms Tamara Toolsie and Ms Zenitaa Singh for the third respondent

Mr Gerald Gray and Ms Mahalia George for the fourth, fifth and sixth respondents

The seventh respondent, not present and not represented

**Date of delivery: 08 July 2025**

### **Judgment**

Delivered by R. Boodoosingh JA

1. This is an appeal from the trial judge regarding his judgment on a claim for setting aside certain deeds of conveyance. Most of the facts are not disputed, and were helpfully stated in the judgment at paragraphs 2 to 5:

“2. The Claimants pleaded in their Statement of Case that they reside both in the United States of America as well as in this jurisdiction and became the fee simple owners of a parcel of land situate at No. 9 Bushe Street, Petit Bourg, San Juan by virtue of a deed of gift dated 17 January 2011 and registered as DE201102542926D001.

3. By deed of conveyance dated 15 May 2013 the parcel of land was conveyed from the Claimants to the Seventh Defendant for consideration in the amount of \$100,000.00 (hereinafter referred to as “the first deed”). The Claimants pleaded in their Statement of Case at paragraph 4 that this deed was a forgery as neither of them signed the deed nor did they authorize anyone to sign on their behalf.

4. By deed of conveyance dated 25 October 2013 and registered as DE201402338386D001 made between the Seventh Defendant as vendor and the Fourth, Fifth and Sixth Defendant as purchasers, the said parcel of land was conveyed to the Fourth, Fifth and Sixth Defendant in consideration of the selling price in the sum of \$360,000.00.

5. By deed of conveyance dated 15 July 2015 and registered as DE201501914003D001 made between the Fourth, Fifth and Sixth Defendants as vendors and the First and Second Defendant as purchasers, the said parcel of land was conveyed to the First and Second Defendant in consideration of the sum of \$575,000.00.”

2. In summary, the Abrahams became owners of the subject land by deed of gift.
3. A forged deed was made in favour of Andy Peruzar which professed that the Abrahams sold the land to Peruzar for \$100,000. Five month later Peruzar sold the land to Rowle Jordan and the Lyles for \$360,000. Jordan and the Lyles, two years after, sold the land to the Burkes for \$575,000. TTMF lent money to the Burkes for the transaction and held the land as mortgagee. All of these transactions were conducted by deeds.
4. The question in this appeal is whether the judge was correct when he held that the Abrahams had not discharged their duty to prove their case that the Peruzar deed was forged and were therefore not entitled to have the subsequent deeds set aside.

### **The Judge’s Findings**

5. In determining the case, the judge made two rulings which excluded the passport pages of the Abrahams which showed they were out of the

country at the time of the purported sale by them to Peruzar. He also excluded a forensic report of Glen Parmassar, a document examiner, who had determined the signatures on that deed were not executed by the Abrahams.

6. The judge decided that the Abrahams had to plead they were out of the country at the material time to rely on that evidence. The passport pages were also not disclosed before the witness statements were filed. He also found that the document examiner's report was not agreed upon by the parties and was not included in the list of documents of the Abrahams.

7. Ultimately, the judge concluded at paragraph 41 as follows:

"41. In considering the admissible evidence which was before the Court as a whole, the Court noted that no attempt was made to get Mr Yaseen Ali who prepared the first deed to testify before the Court, nor was any attempt made to have the witness who signed the affidavit of due execution examined nor was any admissible expert evidence adduced. All the Court had before it was the Claimants' "say so" and although there were many available avenues which could have been explored so as to demonstrate on a balance of probabilities that the first deed was fraudulently executed those avenues were not explored. Consequently, the Claimants did not put before the Court the required evidence so as to discharge the requisite burden of proof for the Court to conclude on a balance of probabilities that the deed of conveyance dated 15 May 2013 was fraudulently executed. The preparatory shortcomings in this case were pellucid and unfortunate."

8. At other parts of the judgment, however, the judge had noted that the Abrahams were forthright witnesses:

“35. These procedural failings and deficient pleadings were unfortunate as both Claimants instilled in the Court an unshakeable feeling that they were forthright witnesses. They did not appear to be evasive and the Court generally felt that their testimony was characterized by an ascertainable degree of candour. Their testimony however had to be evaluated against their pleaded case and the test of relevance had to be applied.”

9. Other aspects of the claim were considered odd by the judge at paragraph 42:

“42. The Court found however that there were aspects of this claim that appeared odd and there were certain issues which incited a measure of disquiet in the Court's mind. In particular the Court noted that the first deed purported to be a conveyance for which the consideration of \$100,000.00 was allegedly paid on 15 May 2013. The second conveyance which was between the Seventh Named Defendant and Rowle Jordan and Mark and Jennifer Lyle reflected that on the 25 October 2013, five months after the first deed, the property was sold for \$360,000.00. The increase in the value of the property seems to be highly unusual. The Court also noted with concern that the Seventh Defendant elected not to engage in the instant litigation. These concerns however were not sufficient to satisfy the Court that fraud was established.”

10. Of relevance, was that Peruzar had been served with the proceedings, but he did not take part in the case. The case of the Abrahams, therefore, was not contested by Peruzar. This is important in evaluating the judge's position.

11. Counsel for the respondents urged, in accordance with **Beacon v Maharaj Bookstores Limited [2014] UKPC 21** and other cases following, that the judge's findings here are not unreasonable and that the appeal court has

to restrain itself from interfering in the judge determining that the evidence was not enough. I accept the high hurdle the Abrahams faced.

12. Counsel on all sides also accepted that this was not a case in which everybody can win. Ultimately, either the appellants or the respondents will win and the others will lose.

13. Counsel on all sides have also accepted that if forgery was a legitimate case on the pleadings, and if it was proved on the evidence, the appropriate order would have to be to set aside the respective deeds starting with the purported deed of the Abrahams to Peruzar, so that the land would be returned to the Abrahams with adverse consequences to both the Burkes and TTMF.

### **The Pleadings**

14. The question was whether the Abrahams pleaded forgery or did so adequately. In examining the pleadings, there were some errors made in the framing of it. However, there were aspects of the pleadings which, when considered as a whole, squarely put forgery at the forefront of the case being advanced by the Abrahams.

15. At paragraph 4 of the statement of case, the Abrahams pleaded that the deed dated 15 May 2013 in favour of Peruzar “is a forgery as either one of the claimants did not sign that purported deed and neither did they authorise anyone to sign their names on their behalf and the same was done with the intent to defraud or deceive.” They then erroneously listed “Particulars of Fraud” as the heading although the heading should have reflected “forgery”. However, in the particulars, they stated the signatures “Sheridan Abraham” and “Hazel Abraham” were not theirs; the address stated was not theirs; the signature of Sheridan was a forgery and that of Hazel was a forgery. They stated further that they never entered

into an agreement for sale, they did not receive the consideration of \$100,000, they never went to Mr Yaseen Ali, the attorney-at-law who purportedly took execution of the deed, and the selling price was grossly undervalued. At paragraph 5, they asked that this deed be set aside. Additionally, they stated that they had commissioned a report by the document examiner Mr Glenn Parmassar, which confirmed that the signatures on the Peruzar deed were not executed by the Abrahams. A copy of the report was attached to the statement of case. The Abrahams were not required to attach the report to the statement of case but they did so. They therefore disclosed the report upfront to all of the parties. At paragraph 20, they stated that by reason of the matters of “fraud or forgery” they were denied their land.

16. It is plain therefore that forgery was at the forefront of the case brought by the appellants. In bringing such a case they had also brought supporting material in the form of the document examiner’s report and had disclosed this at the earliest opportunity. This was obviously evidence which was relevant to proof of their case, and that ought to have been clear to all Counsel in this case.

### **The Document Examiner’s Report**

17. A case may have been made that this forensic document report was not expert evidence within the meaning of Part 33 of the **Civil Proceedings Rules, 1998**, as amended, but was rather evidence of a witness with expertise in a particular field. This may be considered to be similar to the evidence given such as, for example:

- i. by a first responder medical doctor who gives evidence of what was observed at the Accident and Emergency Department about an injured person and who might have examined an X-ray or blood test results to assist with diagnosis and treatment;

- ii. an agricultural valuator who gives an estimate of damaged crops;
- iii. a quantity surveyor who gives an estimate of materials used in a simple home construction;
- iv. a land surveyor who establishes the boundaries in an adverse possession case; and
- v. an adjuster who examined the damage to vehicles after a motor vehicle collision.

18. These are witnesses with expertise, who depending on the nature of the evidence they are giving, need not be considered to be experts within Part 33 requiring their reports be in a particular format and requiring them to adhere to all of the duties of experts under Part 33. In this sense, they are witnesses with some professional expertise in a particular field called by a party to establish an aspect of their case.

19. The judge chose a rigid procedural approach on the forensic report at paragraph 32 of his judgment when he stated:

“32. The Court also excised from the witness statement a forensic report which was purportedly prepared by a forensic examiner, Mr Glenn Parmassar. While there was pleaded reference to the generation of this report and an assertion that the report suggested that the signatures on the first deed on the 15 May 2013 may not have been the signatures of the Claimants, the defendants put the Claimants to strict proof of the assertion as to fraud. The Claimants made no application pursuant to Part 33 of the CPR to rely on expert evidence, no hearsay notice was filed nor was any application made to have Mr Parmassar attend the trial. Accordingly, the information contained in the exhibit was not properly before the Court.”



20. On the assumption, however, that the evidence of the document examiner was expert evidence, within the meaning of Part 33, the judge erred in excluding this relevant evidence for the following reasons:

i. It was disclosed at the earliest opportunity.

ii. It was clearly relevant and probative. From the report, Mr Parmassar had conducted a comparison of specimen signatures of the Abrahams as against the signatures on the Peruzar deed and came to a definitive conclusion that the purported signatures of the Abrahams on the deed were not executed by them.

iii. While there was no application by the Abrahams under **Part 33** to rely on expert evidence, the court could, without any application, have permitted the evidence and directed a report be prepared in compliance with **Part 33**. While **CPR 33.5(1)** states no party may call an expert witness or put in an expert report without the court's permission, **CPR 33.5 (3)** states: "The court may give permission on or without an application." Thus recognising the relevance of the report, the judge could have considered the issue at the case management stage and given permission, even without an application, as the report was made part of the case of the Abrahams from the filing of the statement of case.

iv. The parties could have asked for Mr Parmassar to attend court and be cross-examined, but they did not. The judge did not exclude the evidence before the trial. It formed part of the witness statement of the Abrahams.

v. The judge placed emphasis on the respondents putting the claimants to "strict proof". But putting the claimants to strict proof is not a positive case disputing the claimants' case. And

importantly, Peruzar took no part in the proceedings so there was nothing contrary to the case advanced by the Abrahams. None of the parties in the defence disputed the qualifications, methodology or the process used by Mr Parmassar to arrive at his conclusion as stated in his report, and no contrary case was pleaded. The respondents to the appeal framed their cases on the basis that they were bona fide purchasers for value without notice. TTMF asserted it was a bona fide mortgagee without notice of any fraud or forgery.

vi. There was no prejudice to the cases of the respondents as they had not asserted a positive case that the report was flawed.

vii. There was no issue in this case that the respondents did not have notice of the document examiner's report and conclusions. If they wished to dispute it, there were several options available to them.

21. The positive cases of Jordan and the Lyles and Burkes and TTMF were that they were bona fide purchasers for value without notice of any forgery or fraud, not that the Abrahams were not speaking the truth about the fact they had not signed the deed in Peruzar's favour. They also did not advance any contrary evidence to dispute that the Peruzar deed was forged. The judge's exclusion of clearly relevant evidence was contextually harsh, in light of the respective pleaded cases, that the Abrahams had not filed a hearsay notice and they had not made an application for expert evidence. The Court of Appeal case of **Christianne Kelsick v Ajit Kuruvilla and Others, CA Civ. P277 / 2012**, delivered 10 April 2013 per Jamadar JA, Bereaux JA and Rajnauth-Lee JA, firmly establishes that a court should not deprive itself, on technical grounds, of relevant expert evidence which can reasonably assist to resolve an important issue. Further, the CPR permits the admission of hearsay evidence notwithstanding the non-service of a hearsay notice: **Rule 30.8**. None of the respondents had in their defence disputed the accuracy,

methodology, qualifications or conclusions of the document examiner. This key issue here therefore was the relevance of the evidence to the case brought by the Abrahams.

### **The Passports**

22. Regarding the passport record, the Abrahams could have pleaded that they were out of the country at the time the deed to Peruzar was purportedly made. It was a misstep on the pleader's part not to have advanced this as a particular. The judge considered that they ought to have pleaded this and disclosed the passport record earlier. That was within the judge's exercise of discretion.
23. From a pleading point of view, however, another view may be that the Abrahams, having pleaded they did not sign the deed, that they were not in the country might have been considered a matter of evidence. This evidence would support the pleaded fact that they could not have signed the deed on the purported date, because they were out of the country. This is an alternative view. We do not therefore criticise the judge's exercise of discretion in this instance even if another judge would have been entitled to exercise the discretion differently. Pleadings are intended to give notice to the other side of the case that has to be met so that the other side may be able to respond adequately to it. Thus, the pleading of a fact must be looked at in context. If notice had been given in the statement of case that the Abrahams were out of the country and their passports were annexed as proof, the question is what reasonably could have been the response of the defendants? Were they going to dispute that the passport pages were forged or that the Abrahams were out of the country at the time of the purported deed to Peruzar?

### **Acceptance of the Abrahams as credible witnesses**

24. In any event, and of particular significance, the judge at paragraph 35 had clearly stated he accepted the evidence given by the Abrahams. The main thrust and whole point of their evidence was that they both categorically stated that they did not sign the documents. That was sufficient to establish their case, if they were believed. The judge expressly stated he had an “unshakeable feeling” in their “forthrightness”. This could only mean he believed them. There was also no evidence from the respondents disputing their evidence. This was therefore incongruous with coming to the conclusion that they had not proved their case. It was also unnecessary for the judge to rely on the passport records, once he believed the Abrahams’ “say so” evidence. The judge also had before him his own perception stated at paragraph 41 that the transactions were odd. The judge could have relied on this finding to support his acceptance of the evidence given by the Abrahams.
25. The pleaded cases of the Burkes and Jordan and the Lyles were that they were bona fide purchasers for value without notice. TTMF stated they were a bona fide mortgagee without notice. Their cases were not that the Abrahams had not been the victims of a forgery, even though they put them to “strict proof”. Putting a party to strict proof simply means that the other party has to, prima facie, prove their case. Without a positive case otherwise disputing the other side’s pleaded case, putting a party to “strict proof” does no more than requires the other side to prove the elements of their case.
26. The judge at paragraph 41 stated that the Abrahams made no effort to call Mr Yaseen Ali who on the face of the document was the attorney at law who purported to prepare the first deed in favour of Peruzar. But the Abrahams’ case was that they had no knowledge of the transaction. They never went to Mr Ali. While they could have made enquiries of him, this was not fatal to their case. As far as they were concerned, Mr Ali could have been a part of the forgery. In the context of the case, and the judge’s own finding that the Abrahams were credible (forthright) witnesses, they had proved their case.

27. The judge, having accepted them as credible and truthful witnesses, erred in the context of this case, in considering that they had not proved their case that the deed to Peruzar was forged.

### **Law on Forgery**

28. In **Richard Dean v Myra Dick-Humphrey, Civil Appeal No. 93 of 2002**, decided 9 December 2004 (Nelson JA, W. Kangaloo JA, Mendonca JA) Mendonca JA made plain that where there was a forgery of a power of attorney, no title would have been acquired by the purported purchaser. As Mendonca JA stated:

11. With respect to the second ground of appeal, Counsel for the Appellant submitted that even if the Power of Attorney were forged, Boxhill could pass the interests and shares of the Respondents in the premises under the conveyance to the Appellant. This was because, Counsel submitted, that the Power of Attorney was voidable and not void, and accordingly any transaction by the attorney, before the Power of Attorney is set aside is valid. Counsel in support of the submission referred to the following passage in Kerr, *Fraud and Mistake* (7th edition) at p. 7: But a contract or other transaction induced or tainted by fraud is not void, but only voidable at the election of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded.

12. I agree with that statement of the law, but that does not deal with cases of forgery. None of the cases referred to by Kerr in support of the passage quoted above is a case of forgery. A forged document is not voidable and cannot bind the person whose signature is forged. I think there can be no doubt of that. But if

authority is required it is sufficiently illustrated by the case of *Boursot v Savage* [1866] L.R. 2 Eq. 134. In that case Holmer, one of three trustees, executed an assignment of leasehold property held jointly by them to a purchaser and forged the signatures of his two co-trustees namely Boursot and Stone. *Sir R. T. Kindersley V. C.* stated in his judgment (at p. 140):

.... I cannot hesitate to conclude that quoad, Boursot and Stone, the deed of assignment has no operation whatever. But as Holmer actually executed, I think the effect of this deed of assignment was to vest the legal interest of one third of the household property in the Defendant.

13. I therefore see no merit whatsoever in the second ground of appeal. If the Power of Attorney is a forgery, Boxhill had no authority to act on behalf of the Respondents' and their title and interest in the premises therefore would not have passed under the conveyance to the Appellant. Consequently both the conveyance and the mortgage would be of no effect.

14. Counsel also contended that notwithstanding that the Respondents' interest may not have passed to the Appellant, he is in a position of bona fide purchaser for value without notice and is entitled to the Respondents' interest in the premises. The Judge rejected this submission and I agree with him. I see no merit in it. The plea of bona fide purchaser for value without notice is available to a purchaser who has obtained the legal estate and will usually give him priority over equitable claims which rank before him in point of time (see 16 Halsbury's (4th edition) para. 1310). The plea cannot be set up by someone without the legal title to defeat the holder of the legal title. As is stated in *Ashburner's Principles of Equity* (2nd edition) at p. 50:

... generally speaking a court of equity will give effect to the plea of Purchaser for Value without notice in favour of a legal owner as against an equitable claimant, but not as between two legal or equitable titles.

15. If it were otherwise it means that a bona fide purchaser could obtain a title from a vendor without a title; “an extension to equity of the principle of sale in market overt for which there is no warrant” (see 16 Halsbury’s (4th edition) para. 1311, footnote 4).

16. If the Power of Attorney is a forgery, the Appellant would have acquired no title by the conveyance executed by Boxhill. The plea of bona fide purchaser for value without notice is therefore not available to the Appellant to defeat the legal title of the Respondents and to give him a title from Boxhill who had no authority to convey the interest of the Respondents in the premises.”

### **Did the first forged deed unravel the later deeds?**

29. Based on this dicta, the plea of bona fide purchaser for value without notice, in these circumstances, is not available to the purchaser. None of the parties have disputed the accuracy of the statement of law of Mendonca JA. It was suggested it may have been distinguishable because that case concerned a forged power of attorney and this case concerned a forged deed. This was not a basis to distinguish the case. As a matter of principle, there is no difference between the forgery of the power of attorney, which allowed the deeds to be prepared, and the direct forgery of the deed itself, which facilitated the transactions leading to the making of the other deeds. Forgery of a source document unravelled the subsequent deeds. The Peruzar deed was void and not voidable. This principle is directly relevant to the cases of the respondents in this appeal.

30. Once the Abrahams, on the evidence, proved their pleaded case that the deed in favour of Peruzar was a forgery this was the end of the case for the respondents as being bona fide purchasers or a bona fide mortgagee could not save the later transactions.

### **Conclusion and Order**

31. In the circumstances, the judge having made findings of fact, he erred in his application to the case before him. The judge's finding of the credibility of the Abrahams is not being interfered with. The Court of Appeal differs from the judge on the consequence of his making such a finding. The judge also erred in depriving himself of relevant and cogent evidence from the document examiner which went directly to the main issue in the case. The judge's order dismissing the appellants' case is therefore set aside.

32. Instead:

It is declared that the Deed of Conveyance dated 15 May 2013 registered as No. DE 2013 023263 22 D 001 purportedly made between Sheridan Abraham, Hazel Abraham and Andy Peruzar is a forgery and therefore null and void and it is set aside.

33. It follows that the subsequent Deeds of Conveyance are also null and void and they too are set aside:

i. The Deed of Conveyance dated 15 July 2015 registered as DE 2015 01914003 D001 made between Rowle Jordan, Mark Lyle and Jennifer Lyle and Kenrick Titus Kenny-Arthur Burke also called Kenrick Burke and Shanta Yinkha Burke is set aside.



ii. The Deed of Mortgage dated 15 July 2015 registered as DE 2015 019456 93D001 made between Kenrick Titus Kenny-Arthur Burke also called Kenrick Burke and Shanta Yinkha Burke and Trinidad and Tobago Mortgage Finance Company Limited is set aside.

iii. The Deed of Conveyance dated 25 October 2013 registered as No. DE2014 023383 86D001 between Andy Peruzar and Rowle Jordan, Mark Lyle and Jennifer Lyle is set aside.

34. These deeds identified in the order above are to be expunged from the records of the Registrar General's Department.

35. The Registrar of the Supreme Court is to forward a copy of this order to the Registrar General's Department for the appropriate action to be taken.

36. We will hear the parties on the costs of the appeal and the costs below.

Ronnie Boodoosingh

Justice of Appeal

I have read the judgment of Boodoosingh JA and I agree with it.

Mark Mohammed

Justice of Appeal

I too have read the judgment of Boodoosingh JA and I agree with it.

Geoffrey Henderson

Justice of Appeal