[2025] UKPC 37
Privy Council Appeal No 0064 of 2024

JUDGMENT

Christo Gift and another (Respondents) *v* Dr Keith Rowley (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Briggs
Lord Hamblen
Lord Burrows
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
5 August 2025

Heard on 3 July 2025

Appellant
Ramesh Lawrence Maharaj SC
Margaret Rose
Robert Strang
(Instructed by Broadfield Law UK LLP)

Respondents
Anand Ramlogan SC
Daniel Goldblatt
(Instructed by Freedom Law Chambers)

LORD BURROWS:

1. Introduction

1. The essential question for the Board on this appeal is whether the Court of Appeal of the Republic of Trinidad and Tobago overstepped the mark of judicial restraint when it overturned the findings of fact made by the trial judge.

2. It is not for an appellate court to overturn the findings of fact of a trial judge just because it would itself have come to a different view. Determination of the facts is pre-eminently a matter for the trial judge who will have had the advantage of seeing and hearing all the relevant evidence. But there are limited circumstances in which the Court of Appeal can overturn factual findings. Expressed in a single short-hand phrase, this is so where the Court of Appeal is satisfied that the trial judge was plainly wrong.

3. The Board was referred by the appellant to *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48 ("*Volpi*") which is the leading recent case on these issues in England and Wales (although there are many earlier cases to similar effect) and was accepted as good law in Trinidad and Tobago by the Court of Appeal in *Marcia Ayers-Caesar v Judicial and Legal Service Commission* Civ App S241 of 2021, at para 33. In *Volpi* Lewison LJ (with whom Males and Snowden LJJ agreed) said at para 2:

> "(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> (ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

> (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

4. The claim in this case was commenced by Mr Christo Gift and Mrs Jocelyn Gift ("the Gifts") on 23 January 2009 against Ms Marcelle Latour (as executrix of the will of her father, Mr Frank Latour) and, as subsequently joined, Dr Keith Rowley. The Gifts seek specific performance (amongst other relief) of an agreement to sell land. That agreement to sell land was made on 9 September 1998 ("the 1998 Agreement") between Ms Latour, as seller, and the Gifts, as buyers. It was for the sale of the "remaining lands at Alma Estate". Alma Estate was a large area of land, initially spanning some 882 acres, owned originally by Mr Latour.

5. The Gifts allege that the "remaining lands at Alma Estate" agreed to be sold to them excludes only 56.5 acres that had agreed to be sold in 1975 by Mr Latour to Dr Rowley. Those 56.5 acres were shown on a survey plan drawn up by Mr Gordon Farrell in May 1976 ("the Farrell plan"). Dr Rowley counter-alleges, as did Ms Latour at trial (prior to her death before the hearing in the Court of Appeal), that the land that had been agreed to be sold by Mr Latour (as approved by Ms Latour) to Dr Rowley comprises a larger area of land of 85.6 acres. Those 85.6 acres comprise the 56.5 acres shown on the Farrell plan plus an extra 29.1 acres and are shown on a survey plan drawn up by Mr Horace Achille. Dr Rowley submits that the "remaining lands at Alma Estate" being sold to the Gifts therefore excludes that larger area. The dispute is therefore as to whether, in the 1998 Agreement, Ms Latour had agreed to sell the extra 29.1 acres to the Gifts.

2. The agreement in 1975 between Mr Latour and Dr Rowley

6. The agreement between Mr Latour and Dr Rowley ("the 1975 Agreement") was for the sale of land for $300 an acre. The agreement was evidenced by a receipt dated 19 July 1975 for a deposit of $1000 paid by Dr Rowley. Dr Rowley selected a parcel of land and agreed to have it surveyed. With Mr Latour's permission, Dr Rowley went into occupation of part of that land. In May 1976, Dr Rowley instructed Mr Farrell to survey the land he had chosen. Mr Farrell produced the Farrell plan, depicting a parcel of land comprising 56.5 acres. But there was no completion of the agreement for sale. This was, at least partly, because of the death of Mr Latour on 8 April 1977. But, at trial, both Ms Latour and Dr Rowley gave evidence that, in any event, Mr Latour had not accepted the Farrell plan. Ms Latour's evidence was that Mr Latour was not satisfied with the Farrell plan for two reasons. First, there were issues in respect of the eastern boundary because the land shown did not extend to the reserve road and the Courland River. Secondly, her father was concerned about the topography at the northern end of the Farrell plan because the area of land chosen by Dr Rowley cut across the natural contours. Ms Latour's evidence was that her father had requested Dr Rowley to carry out a resurvey so that the land to be sold to Dr Rowley would avoid those two problems.

7. There was a long delay before that resurvey was carried out. Eventually in February 2009, Dr Rowley had a resurvey carried out initially by Mr Trevor Isaac and then by Mr Achille. The resurveyed plan ("the Achille plan") mapped out a larger area of land than the Farrell plan and comprised 85.6 acres rather than 56.5 acres. It extended to the reserve road and the Courland River on the eastern boundary and followed the natural line of a valley at the northern end of the parcel of land.

8. It was submitted at trial, on behalf of Ms Latour and Dr Rowley, and before the Court of Appeal and the Board, on behalf of Dr Rowley, that the agreement with Dr Rowley which bound Mr Latour (and Ms Latour as his executrix) was for the sale of that larger area of land marked by the Achille plan following the requested resurvey.

9. It was implicit in those submissions, and not seriously in dispute before the Board, that there was a legally binding agreement between Mr Latour and Dr Rowley. As required by section 4 of the Conveyancing and Law of Property Act Chapter 56:01 (which is identical to the now repealed section 40 of the Law of Property Act 1925 in England and Wales) the 1975 Agreement was evidenced in writing by the receipt. The precise land being sold was conditional on a satisfactory survey of the relevant area of land.

3. The 1998 Agreement between Ms Latour and the Gifts

10. By the 1998 Agreement, Ms Latour agreed to sell land to the Gifts for $5000 an acre. That agreement was evidenced by a receipt, dated 9 September 1998, for a deposit

of $30,000 paid by the Gifts. The receipt specified that the sale was of the "remaining lands at Alma Estate… standing in the name of Frank Latour (deceased)" with the area "to be ascertained after survey". It is again to be noted that there was no challenge to this being a legally binding agreement.

11. The question in dispute on this appeal is what was covered, in the 1998 Agreement, by the "remaining lands at Alma Estate". That in turn depended on what Mr Latour had agreed to sell to Dr Rowley under the 1975 Agreement. Was it the 56.5 acres marked by the Farrell plan, as submitted by the Gifts, or was it the 85.6 acres identified on the resurvey marked by the Achille plan, as submitted by Dr Rowley?

4. The judgment of Kangaloo J

12. The trial before Kangaloo J was heard on 7-8 November 2016 and 3 April 2017. She delivered her judgment on 21 November 2017: CV2009-00227. Kangaloo J dismissed the claim by the Gifts but ordered Ms Latour to return to them the $30,000 deposit.

13. Kangaloo J's essential findings of fact were that Mr Latour had not agreed to sell the 56.5 acres marked by the Farrell plan. Rather he was dissatisfied with selling that area because of concerns about the road and Courland River boundary on the eastern side (including erosion) and because of topographical (ie contour) issues. He had therefore requested Dr Rowley to carry out a resurvey. It was the larger area of 85.6 acres, shown on the Achille plan, that Ms Latour, as Mr Latour's executrix, had approved as agreed to be sold to Dr Rowley. It was the need for a resurvey that explained why there had been such a delay in the completion of the sale to Dr Rowley. Kangaloo J also found that, at all material times, Mr Gift (and, according to Kangaloo J, although nothing turns on this, both the Gifts) had been aware that the agreement for sale to Dr Rowley required a resurvey. Kangaloo J was therefore accepting the evidence on these central issues of Dr Rowley and Ms Latour.

14. So, for example, Kangaloo J said the following at para 49:

> "This Court is entitled to ask itself why none of these parties has sought to finalize their respective deals with the First Defendant [Ms Latour] to purchase a portion of the Estate lands. On the evidence before this Court, the only reasonable conclusion that can be arrived at was that these parties were awaiting something; something which prevented the completion of the sale of lands to any of them. The Defendants [Ms Latour and Dr Rowley] are *ad idem* that this 'something', was a re-survey of the Estate lands to be approved by Frank

> Latour, and upon his death, by his daughter, the First Defendant, Marcelle Latour. The Claimants [the Gifts], as contended for by the First Defendant, [are] unable to supply any evidence to contradict this position, as neither were present in 1975 when arrangements were made between Mr Latour and subsequently his daughter for the sale of a portion of the Estate lands."

15. Then at para 50, she said:

> "The Court finds … that at all material times … the Claimants [the Gifts] have been aware that the sale of the remaining portion of the Estate lands was subject to a re-survey and to the sale of a portion of the Estate lands to the Second Defendant [Dr Rowley]."

16. Kangaloo J further said at para 52:

> "This Court also accepts the evidence of the First Defendant [Ms Latour] that her father rejected the Farrell plan presented to her father by the Second Defendant [Dr Rowley] for a number of reasons, including that it did not follow the topography of the Estate lands … and that Mr Latour requested a re-survey of the lands."

5. The Court of Appeal's judgment

17. Having set out extracts from *Beacon Insurance Co Ltd v Maharaj Bookstore Ltd* [2014] UKPC 21 on the restraint required of an appellate court in overturning findings of fact by the trial judge and the need for the trial judge to have been "plainly wrong", the majority of the Court of Appeal (Mendonca JA, with whom Aboud JA agreed, Lucky JA dissenting, Civil Appeal No T392 of 2017) decided that the trial judge had been "plainly wrong" in her central findings and therefore allowed the appeal of the Gifts.

18. Mendonca JA placed particular reliance on correspondence in 1980 and 1981 (including a draft deed of conveyance) between the solicitors for Ms Latour, Pollonais & Blanc, and the solicitors for Dr Rowley, Gopeesingh, Martineau, Edwards & Co. He looked at the details of that correspondence at paras 25 to 37 of his judgment. That correspondence was concerned with the 1975 Agreement. It indicated that the 1975 Agreement was for the sale of the land of 56.5 acres mapped by the Farrell plan and gave

no indication that Mr Latour had been dissatisfied with the area of land being sold or had required Dr Rowley to organise a resurvey.

19. Mendonca JA reasoned that Kangaloo J had not taken that correspondence into account. Yet it was important to do so because it was documentary evidence written five to six years after the 1975 Agreement when matters were relatively fresh in the minds of Ms Latour and Dr Rowley and before any litigation was contemplated. Kangaloo J's failure to take this evidence into account was a significant error and meant that her finding of fact that a resurvey was required was plainly wrong. He said the following at para 39:

> "The correspondence to which reference is made was written 5 to 6 years after the agreement between [Ms Latour] and [Dr Rowley] at a time when litigation was not contemplated and at a time when matters were relatively fresh in the minds of [Ms Latour] and [Dr Rowley]. It was clearly material and important evidence. It was therefore important for the Trial Judge to consider this documentary evidence and to take it into account in assessing the credibility of the evidence of the parties. The Trial Judge, however, did not do so. That is patently clear. The only reference to the correspondence appears at paragraph 24 of the judgment where the Trial Judge summarised the submissions of the Appellants. She appears not to have appreciated the relevance and importance of that evidence."

20. Mendonca JA continued at para 49:

> "the question cannot be properly answered without taking into account the correspondence, which the Trial Judge failed to do and which explained the delay at least up to 1981 in terms that made no mention that any party was awaiting the resurvey of the lands. That provides no basis to believe and every reason to doubt that after 1981 the cause of the delay was that the parties were waiting on a further survey the effect of which was to redefine the boundaries and enlarge the area of the lands to be sold to [Dr Rowley]. Further, if there was to be the resurvey by [Dr Rowley], the reality is that it took over 30 years for that to be done."

21. At paras 52 and 53 Mendonca JA said the following:

> "The short point is that on the evidence in this case it cannot be said that the [Gifts] were waiting on the resurvey of the lands

> as contemplated by the evidence of [Ms Latour and Dr Rowley]. Such a finding is plainly wrong… The Trial Judge could not have properly come to the conclusion that there was nothing to contradict [Ms Latour's and Dr Rowley's] cases not having given any consideration to the correspondence."

22. Then at para 61 he said this:

> "In my judgment, the Trial Judge made an error when she failed to consider and to take into account the correspondence. That error is sufficiently material to undermine the Trial Judge's findings of fact and in my judgment render them plainly wrong. It was not permissible in the face of the evidence as a whole, which includes the correspondence, for the Trial Judge to have come to the conclusion that the agreement between [Ms Latour] and the [Gifts] for the sale to them of the remaining lands was subject to the resurvey of the lands the deceased had agreed to sell to [Dr Rowley] as [Ms Latour] and [Dr Rowley] claim."

23. At para 64, he continued in the same vein:

> "If there had to be the resurvey it is startling that there is no mention of that in the correspondence. That adversely impacts on the reliability and credibility of [Ms Latour's and Dr Rowley's] evidence and renders their evidence unreliable and less than credible. The Trial Judge could not have come to the conclusion that she did in the face of the evidence as a whole, which of course includes the correspondence."

24. At para 65, Mendonca JA said:

> "The fact of the matter is that had the Trial Judge considered the correspondence as she was required to do, there was no logical basis for her to reject the evidence of the [Gifts]. The evidence of the [Gifts] is consistent with the evidence as a whole, which of course includes the correspondence, and is more reliable and credible."

25. At para 55, Mendonca JA had also earlier made clear that he regarded the trial judge's finding that Mr Gift was aware that the sale of the lands was subject to a resurvey as "erroneous".

26. Lucky JA dissented. She rejected the view of the majority that the trial judge had been plainly wrong in accepting the evidence of Ms Latour and Dr Rowley despite the 1980 and 1981 correspondence. In Lucky JA's view, Kangaloo J had taken that correspondence into account and she had been entitled to find that the delay was because a resurvey was required. Lucky JA pointed out that Ms Latour and Dr Rowley had been rigorously cross-examined but had stuck to their position that, despite there being no mention of a resurvey in the correspondence, a resurvey was required. Kangaloo J herself asked those witnesses relevant questions about that correspondence. Kangaloo J was therefore "very alive to the relevance of the correspondence in answering the main issue in the case" (para 22 of the dissent) and was entitled to form her own view as to whether the consistent answers being given were credible. Kangaloo J had also not been plainly wrong to find that Mr Gift knew of the need for a resurvey.

6. Why the appeal should be allowed

27. In the Board's view, the majority of the Court of Appeal was incorrect to have overturned Kangaloo J's central findings of fact. Although the majority correctly set out the law on the need for restraint before an appellate court can intervene in respect of findings of fact, the majority did not correctly apply that law. The majority decided what was credible and reliable evidence and in so doing usurped the accepted role of the trial judge. The Board particularly has in mind points (iii) – (v) in *Volpi*, set out in para 3 above.

28. Although the 1980 and 1981 correspondence was important, and should have been taken into account and given weight, Mendonca JA was incorrect to say that the trial judge had not taken it into account. That was the majority's main reason for intervention. But Kangaloo J did make an indirect reference to that correspondence in para 24 when, in setting out the Gifts' submissions, she said that it was their submission "that the call by [Dr Rowley] for the completion of sale to him would be premature if the portion was still be ascertained and if there was no binding agreement between the Defendants [ie between Mr Latour and Dr Rowley]. No mention was made of the need for a re-survey to be done." Although somewhat oblique, those sentences reflect the submissions being made on behalf of the Gifts in reliance on the 1980 and 1981 correspondence.

29. The Board also considers it inconceivable that the trial judge would not have taken the 1980 and 1981 correspondence into account. That is because it featured so prominently in the cross-examination of Ms Latour and Dr Rowley, including interjections by the trial judge. The transcript of the cross-examination of Ms Latour and Dr Rowley makes clear how central the correspondence was in that cross-examination and how alive Kangaloo J was to the relevance of the correspondence, as shown by her interventions.

30. Certainly, Kangaloo J could have dealt more fully with the 1980 and 1981 correspondence in her judgment. A paragraph could easily have been included explaining that the correspondence indicated that the lawyers appeared to negotiate on the basis that there was an agreement for 56.5 acres based on the Farrell plan, but that this was outweighed by the evidence given by, and the trial judge's assessment of the credibility of, Ms Latour and Dr Rowley. But in the view of the Board, the majority of the Court of Appeal was wrong in deciding that Kangaloo J had not properly taken the 1980 and 1981 correspondence into account. Lucky LJ in her dissent was correct. The majority substituted its own assessment of the evidence for that of the trial judge without a legitimate basis for so doing. That is impermissible.

31. The Board also has in mind that the correspondence was in respect of an agreement for the sale of land that was not executed. The suggestion that the correspondence represented a finalised or settled position as to the terms of the agreed sale flies in the face of there being no conveyance to Dr Rowley of the land shown in the Farrell plan. It is also entirely unsurprising that the plan being used as the basis for the negotiations in 1980 and 1981 was the Farrell plan because that was the only plan that existed at the time.

32. The Board accepts the view of the majority of the Court of Appeal (at para 49) that it must have been possible for Dr Rowley to have organised a resurvey many years before he did. But it must be remembered that Dr Rowley had already been in possession of at least part of the land being sold to him from as early as 1975. An obvious explanation for his delay (not explored in cross-examination) was that there may have been no pressing incentive for him to organise a resurvey, complete the sale and pay the price.

33. The Board further agrees with Lucky JA that the majority was not entitled to overturn the trial judge's finding that at all material times the Gifts knew that a resurvey was required. That was Kangaloo J's assessment of all the evidence on this point and it was not for the Court of Appeal to reassess what was a rational assessment of that evidence by the trial judge.

34. It is also important to emphasise that, in the Board's view, in focussing so much on the 1980 and 1981 correspondence, the majority of the Court of Appeal – and Mr Ramlogan in his submissions to the Board on behalf of the Gifts – may have lost sight of the point that what really matters is the interpretation of the 1998 Agreement. This turns on the objective common intention of Ms Latour and the Gifts at the time of the 1998 Agreement. In other words, the primary question is, what did the parties objectively mean by the "remaining lands at Alma Estate" at the time of the 1998 Agreement? In relation to that, Kangaloo J made two central findings. First, that Ms Latour was of the view that a resurvey had been required by her father so that the land being sold to Dr Rowley was not fixed at 56.5 acres under the Farrell plan but was dependent on a survey that had yet to be carried out. Secondly, that the Gifts were at all material times aware that the land being sold to Dr Rowley was subject to a resurvey. While it was relevant to consider what

had been agreed between Mr Latour and Dr Rowley in 1975, that was of secondary importance to what Ms Latour and the Gifts were agreeing in 1998. Put another way, even if Ms Latour had been mistaken (contrary to Kangaloo J's findings) as to what had been agreed between her father and Dr Rowley, it was her and the Gifts' objective understanding in 1998 that had to be focussed on; and Kangaloo J made findings as to that understanding which the Court of Appeal was not entitled to reject.

7. Conclusion

35. For all these reasons, the appeal is allowed. The Board asks the parties for submissions on the form of the order, within 28 days of the promulgation of this judgment, unless this can be agreed.