SEYCHELLES / JUDGMENT

# Joubert V Philoe & Ors (CS 75/2014) [2016] SCSC 243 (5 April 2016)

[2016] SCSC 243

| COURT | CASE / FILE NUMBER |
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| Supreme Court | CS 75/2014 |

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## Source record

**IN THE SUPREME COURT OF SEYCHELLES**
**Civil Side: CS 75/2014**
**[2016] SCSC243**
**GEMMA JOUBERT OF CASCADE, MAHE**
**Plaintiffversus**
**1. DAVIDSON PHILOE OF MONT BUXTON, MAHE**
**1stDefendant**
**2. DEVELOPMENT BANK OF SEYCHELLES OF VICTORIA, MAHE, SEYCHELLES**
**2nd Defendant**
**3. SEYCHELLES LICENSING AUTHORITY OF VICTORIA, MAHE, SEYCHELLES**
**3rd Defendant**
**4. REGISTRAR GENERAL OF INDEPENDENCE HOUSE, MAHE**
**4th Defendant**

**Heard:**

| | |
| --- | --- |
| **Counsel:** | 3rd day of February 2016.<br>Mr. C. Andre for the plaintiff<br>Mr. F. Elizabeth for the 1st defendant<br>Mrs. Burian for the 2nd Defendant<br>Mr. Esparon for the 3rd and 4th Defendants |
| **Delivered:** | 5th day of April 2016 |

**RULING**

Govinden J

1. The 3rd and 4th Defendants in this case have raised a two-fold "plea in limine litis" dated the 24th day of June 2015 to the following effect: 1. Firstly, that the Plaint does not disclose a reasonable cause of action against the 3rd Defendant and the 4th Defendant; and 2. Secondly, that the action is prescribed by law against the 4th Defendant as provided for in the Public Officers (Protection) Act. [2] Both Learned Counsels as above-referred filed written submissions on behalf of their respective clients as to their legal stance vis-a-vis the points of law as raised on the 1st day of December 2015 and 3rd day of February 2016 respectively of which contents have been duly considered for the purpose of this Ruling. [3] A 'resume´' of the facts giving rise to the Plaint as transpired on pleadings filed thus far, reveals in a gist, that the Plaintiff became legal owner of vehicle Hyundai Accent registered as S 14733 upon purchase of same from the 1st Defendant on or during the month of March 2012. That the purchase was possible through a Government of Seychelles loan giving rise to payment voucher of the 14th day of March 2012 directly to the 1st Defendant in the sum of S. R. 67,000/-. In furtherance to the loan, a pledge was registered on the 14th day of March 2012 bearing CB No. 3017 in favour of the Government of Seychelles, by the 4th Defendant. Change of ownership was effected on the 13th day of March 2012. On the 17th February 2014, at the instance of the 2nd Defendant Process server Tony Alcindor assisted by C. Freminot, seized the vehicle from the Plaintiff and was subject to a judicial sale and subsequently transferred to a third party by the 3rd Defendant. Now, for the specific purpose of this Ruling, I will treat only the salient cause of action as regards the third and fourth Defendants. The Plaintiff reproaches the 3rd Defendant of having committed a "faute and or negligence" towards her in view of the transfer to a third party without her consent or signature upon judicial sale. Plaintiff further reproaches the 4th Defendant for "faute and negligence" arising out of registration of a pledge for the Plaintiff in favour of the Government of Seychelles without giving proper attention as to if the vehicle was already pledged or not and which pledge was effected as above indicated on the 14 th day of March 2012. (Emphasis is mine). [4] Learned Counsel Mr. D. Esparon submitted in support of the pleas in limine litis as raised at paragraph [1] of this Ruling on behalf of the 3rd and 4th Defendants in a gist as follows: 1. Firstly, as to the first plea in limine litis in that, 'the Plaint does not disclose a reasonable cause of action against the 3 rd Defendant and the 4th Defendant', it is submitted that, ex-facie the pleadings the Plaintiff has averred at paragraph 3 of her Plaint that the 1st Defendant informed her verbally that the 2nd Defendant had given him permission to sell the said vehicle. Therefore the Plaintiff was well aware that the car was subject to a loan agreement and she should have showed due diligence and verified whether the vehicle was subject to a pledge before purchasing the said vehicle. Further, since it is clear that the vehicle had been sold by way of judicial sale and as such the 3rd Defendant was obliged to make the transfer of the vehicle in accordance with the law in the

absence of a stay Order. Hence it follows, that the 3rd Defendant acted bona fide and in good faith in the discharge of its statutory duties. Vis-a-vis the 4th Defendant, it was further submitted that the 4th Defendant's duty is to maintain such registration of public documents being the custodian of such public documents so that the public has access to the said documents and records and it is not the obligation of the 4th Defendant to inform the Plaintiff whether there is a pledge on the vehicle of which the duty was on the Plaintiff to verify such documents the more so that the Plaintiff had knowledge that the vehicle was subject to a loan and as such the action should be dismissed against the 4th Defendant for not disclosing any reasonable cause of action against the 4th Defendant since ex-facie the pleadings it is apparent that no averment of bad faith has been pleaded against the 4th Defendant and in support of the latter submission Court was referred to the case of (Jean Louis Dugasse v/s SylvetteHoareau and Gustave Dodin Civil Side No. 103 of 2003) 2. Secondly, in respect of the second plea in limine litis as raised in that, 'the action is prescribed by law against the 4th Defendant as provided for in the Public Officers (Protection) Act',it is submitted that again, ex-facie the pleadings, it is clear in paragraph 5 of the Plaint that the pledge was fully registered on the 14 th day of March 2012 in favour of the Government of Seychelles by the 4th Defendant and in paragraph 13 of the same Plaint, the Plaintiff avers that it was the fault of the 4th Defendant who registered a pledge for the Plaintiff in favour of the Government of Seychelles without giving proper attention as to if the vehicle was already pledged or not. As such, it is clear that the cause of action arose on the 14th day of March 2012 and the Plaint filed on the 11th day of August 2014. In that instance, Section 3 of the POPA provides that no action to enforce any claim in respect of any act done or omitted to be done by a public officer in execution of his office or any act done or omitted to be done by any person in the lawful; performance of a public duty shall be entertained by a Court unless the action is commenced not later than six months after the claim arose. As such an action was filed more than six months after the claim arose, such action should be dismissed against the 4th Defendant since it is prescribed by law. [5] Learned Counsel Mr. C. Andre on his part on behalf of the Plaintiff, objected to both points of law as raised and briefly submitted in respect of the first plea in limine litis that, there is a good cause of action pleaded in the Plaint and that the Plaintiff pleaded fault as against both 3rd and 4th Defendants which needs to be disposed of and Judgement accordingly given. In respect of the second plea in limine a l'egard the 4th Defendant, it is further submitted that the matter to which the Plaint is based arose on the 17th day of February 2014 and not from the date that the Plaintiff registered the vehicle in 2012 hence that plea in limine litis should be dismissed.

**[6]** With the above background in mind, I will firstly treat the first plea in limine litis namely that, 'the Plaint does not disclose a reasonable cause of action against the 3rd Defendant and the 4th Defendant'. [7] Now, a Motion for striking out pleadings which disclose no reasonable cause of action under Section 92 of the Code of Civil Procedure (hereinafter referred to as "Code") is to be decided solely on the pleadings. It has been further decided that "where the non-existence of a reasonable cause of action is not beyond doubt ex-facie

the pleadings, the pleading ought not to be struck out. (Vide: (Gerome v Attorney General (1970) SLR 57); Albest v Stravens (No. 1)

(1976) SLR 158; and Oceangate v Monchouguy (1984) SLR 111). [8] Section 92 of the Code provides that: "The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case...., the Court may Order the action to be stayed or dismissed, or may give Judgement on such terms as may be just." [9] The Court of Appeal for East Africa considered the meaning of 'Cause of action' in the matter of (Auto Garage v Motokov [1971] EA 514), wherein at page 519 thereof, Spry P, ruled that "I would summarize the position as I see it by saying that if a Plaint shows that the Plaintiff enjoyed a right that has been violated and that the Defendant is liable, then, in my opinion, a cause of action has been disclosed."

[10] Now, in the current matter, it is evident at paragraphs 12, 13 and 14 of the Plaint, the Plaintiff alleges that the 3rd and 4th Defendants have committed a 'faute' as against her based on the background above highlighted at paragraph [3] of this Ruling.

[11] The Court of Appeal's decision in the case of Attorney General v/s Ray Voysey and Others (SCA No. 12 of 1995), held on the very issue that: "Fault is defined by article 1382 (2) as an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission. When a party claims a right of action under article 1382 (1) the two elements of the cause of action are fault and damage which must have been caused by the fault alleged. It is thus clear that the earliest time an action in delict can be maintained is that earliest point in time when fault and damage co-exist."

[12] The Plaint in this instance clearly sets out a statement of the material facts and circumstances constituting the cause of action and a description of the relief sought which with respect does not necessitate the specific averment of 'bad faith' for same is not required for the relief sought as against the 3rd and 4th Defendants. In that respect, the case law as cited (paragraph 4 (1) of this Ruling, by Learned Counsel for the relevant Defendants does not apply unless and until such a defence is proved to be permissible under a legal provision and same to be proved at the stage of hearing of the case on the merits. [13] It follows, therefore that the first plea in limine litis at this stage cannot be entertained without the Court having heard the matter on the merits.

[13] As for the second plea in limine litis as raised in respect of the 4th Defendant namely that, 'the action is prescribed by law against the 4th Defendant as provided for in the Public Officers (Protection) Act', the provisions of Section 3 of the Act provides thus: "3. No action to enforce any claim in respect of-

(a) Any act done or omitted to be done by a public officer in the execution of his office; (b)Any act done or omitted to be done by any person in the lawful performance of a public duty; ... Shall be entertained by a Court unless the action is commenced not later than six months after the claim arose." [14] In that regards, Court has considered the case of Joseph Labrosse

v Seraphin Allisop and Government of Seychelles (C. S. No 285 of 1996), wherein the Supreme Court quoted its own previous decision in the case of Gemma Contoret v/s The Government of Seychelles, SHDC & Another (C. S. No. 101 of 1992) before the Supreme Court, as follows: "The Government exercises its executive functions through its Ministers and Public officers. It is therefore clear that this section limits any action either against the Government or a Public officer when the claim is based on the act of a public officer and therefore admits no ambiguity as Learned Counsel for the Plaintiff sought to establish. The action against the 1st Defendant therefore is prescribed as it has not been filed within six months after the alleged claim arose."

[16] Normally, a right of action accrues when the essential facts exists and, barring statutory intervention does not arise with the awareness, for instance, of the attributability of the injury to the fault of the other party unless there has been a fraudulent concealment of facts.

[19] Now, it is, ex-facie the pleadings, abundantly clear upon a careful scrutiny of the averments at paragraphs 12 as read with Paragraph 13 of the Plaint, that the action for which the 4th Defendant is being reproached on the basis of "faute" arose on the 14 th day of March 2012, when the pledge was as stated "duly registered in favour of the Government of Seychelles" and not on the 17th day of February 2014 as claimed by the Plaintiff. This would be so as against the 3rd Defendant as admitted by the 3rd Defendant's Counsel but not vis-à-vis the 4th Defendant, with respect.

[20] The existence of facts essential to the accrual of a right of action must be distinguished from the evidence of such facts. There is no statutory provision that confers power on the Court in this Jurisdiction to postpone the accrual of a right of action by reason of ignorance of the plaintiff of material facts relating to the cause of action. The same principle of interpretation as to the accrual of a right of action subject matter of section 3 of the Act, arose and was endorsed as set in the case of Voysey (supra), in the case of Yvon Camille v Government of Seychelles (SCA No. 57 of 1998), Lorraine Lewis v/s The Government of Seychelles (Civil Side No. 17 of 2000); Roderick Larue v /s Osman Leggaie & Attorney General, (Civil Appeal No. 19 of 2011) and Jusheila Cecile Madeleine v/s Land Transport Agency represented by CEO & Attorney General representing the Government of Seychelles (Civil side No. 67 of 2013), amongst others.

[21] On the above basis, I do not believe there is a need to elaborate further on this argument and hence I allow the second plea in limine litis as raised on behalf of the 4th Defendant and hence it follows that the 4th Defendant shall be struck off the Plaint as a Defendant accordingly.

[37] As indicated earlier, since the first point of law has not been entertained at this stage of the proceedings in favour of the 3 rd Defendant, then the matter shall proceed on a hearing on the merits as against the second and 3rd Defendants noting that Judgement has been entered as against the 1st Defendant. Signed, dated and delivered at Ile du Port on 5th day of April, 2016. Govinden J Judge of the Supreme Court 9

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