IN THE SEYCHELLES COURT OF APPEAL

YVON AZEMIA APPELLANT

V

1. GOVERNMENT OF SEYCHELLES
2. PAUL LABALEINE
3. DUNCY SAUZIER RESPONDENTS

Civil Side No. 17 of 1971

Mr. J.M.R. Renaud for the appellant
Mr. D.P. De Liverra for the respondents

JUDGMENT OF SILUNGWE J.A.

In the court below, the appellant claimed R.20,000 as damages from the respondents on the ground that the latter had entered his home on October 30, 1990 without his authority or any power conferred upon them by law, and taken his son.

At the material time, the second and third respondents were social workers employed by the first respondent in the Ministry of Employment and Social Affairs.

The appellant's son, Edward Jean-Baptiste Azemia, had been born to one Rita Aglae on April 7, 1989, apparently during the period when she lived in concubinage with the appellant. After Edward's birth, the parties separated; Rita took Edward away and lived with him.

The appellant moved to live with another concubine, Mrs. Orelina Joubert, in a house belonging to her son, Mr. Charles Joubert. On October 26, 1990, the appellant, who had

ever threatened or intimidated Orelina in any way

The learned Chief Justice did not find the appellant or his witnesses to be worthy of credit. Further, he held that as the action had been founded on trespass which is an offence against possession, the appellant could not succeed as he was neither the owner of the house, the subject matter of the action, nor was he in possession of it. He then came to the conclusion that the action was totally misconceived and that the appellant had failed to prove any tresspass or damage allegedly caused to him by the respondents.

It was conceded on appeal that there was no evidence to show that the appellant had whisked his son away. I would, reject Mr. Renaud's submission that there was no evidence on which the court could reach the decision that it did. In the view that I take, the learned Chief Justice's decision in the matter was justified. I would uphold the judgment and dismiss the appeal with costs.

..... A.M. Silungwe
Justice of Appeal

Dated this ..... day of March, 1994.

Judgment delivered in open court before both Counsel.

A. M. Silungwe
JUDGE
31/3/94

previously made unsuccessful applications to N.C.C. to see his son Edward or to have access to him, found the son in a market with the son's mother. allegedly, when he asked how the son was, Rita left the child, without saying anything. According to the appellant, he then indicated to Rita that he was taking the child to the second respondent from whose office he had just come. From the market, the appellant took his son to where he was residing with Orelina.

Four days later, when the appellant went off to work leaving Edward under the care of his concubine, the second and third respondents allegedly came and forcibly took away the child.

The second and third respondents denied the claim both in their defence and in their evidence. It came to light that earlier on October 26, 1990, the appellant had gone to see the second respondent in his office and that the second respondent had intimated to him that the mother of the child had been contacted and that it would not be possible for him to have the child for that particular week-end. On hearing this, the appellant got very furious and left the second respondent's office.

Looking at the sequence of events, the learned Chief Justice in his judgment came to the conclusion that when the appellant left the second respondent's office, he purposely went to the market place to "hunt for the child, Edward, and to take him away ..."

Returning to the defence case, when the appellant took Edward away, Rita immediately reported the matter to the police and to the second and third respondents to help her retrieve the child. With the assistance of Corporal Hermitte, the second and third respondents, Edward was traced. According to the defence, no one in their party entered the house to which Edward had been brought by the appellant and the child was handed over to them voluntarily and peaceably by Orelina. It was asserted that none of them

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1. Government of Seychelles — Respondents
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Civil Appeal 17/91

Renaud for appellant
Deliviera for the Republic

Judgment of Goburdhun P.

In a plaint entered before the Supreme Court appellant claimed from respondents the sum of R20,000 as damages on the ground that the second and third respondents entered his house without his authority or permission or without any power conferred upon them by law and took away his son.

The second and third respondent were employees of the first respondent.

The defence denied the allegations of appellant and averred that "at no time did the second and third respondents enter the house of appellant". The child was handed over by one Rita Algae on her own volition.

Evidence was heard and the learned Chief Justice in a considered judgment opted for the version of the defence and dismiss the plaint.

Appellant is challenging the findings of fact of the learned then Chief Justice.

In his judgment the learned Chief Justice had this to say: "On the consideration of the evidence, I was of the views that the action was totally misconceived and that the plaintiff failed to prove any trespass or any damage that had been caused to him by the two defendants. Neither did the plaintiff suffer morally or otherwise by the two defendants peacefully retrieving the child and giving the child back to his mother".

On the facts of the case the learned Chief Justice was fully justified to come to the conclusion he did. I find no merit in the appeal which I would dismiss with costs.

H GOBURDHUN
(PRESIDENT)

Dated this day Judgment delivered in open Court before both Counsel.

A. R. Mohamed
JUDGE
31/3/94

IN THE SEYCHELLES COURT OF APPEAL

YVON AZEMIA APPELLANT

1. Government of Seychelles
2. Paul Labaleine
3. Duncy Sauzier

CIVIL APPEAL 17/91

Renaud for appellant
Deliviera for the Republic

JUDGMENT OF VENCHARD J.A.

I have had the advantage of taking cognisance of the Judgment of my learned brethren. I agree that there is no merit in this appeal which should be dismissed with costs.

Ven.chd

L.E. VENCHARD

Read in open court on 2nd August 1994.