

## IN THE SEYCHELLES COURT OF APPEAL

KATHLEEN PILLAY

APPELLANT

v

AEROFLOT SOVIET AIRLINES

RESPONDENT

Civil Appeal No. 13 of 1994

Before Silungwe, Ayoola &amp; Adam, JJA.

Mr P. Boulle for the appellant  
Mr F. Bonte for the respondent

JUDGEMENT OF SILUNGWE, J.A.

The appellant, a Seychellois, was the plaintiff in an action against the respondent, then defendant, before the Supreme Court for the recovery of damages for kidnapping while on Seychelles soil; and for committing criminal activities including extortion of money and threatening imprisonment while on Russian soil and for carrying her out of Russia to the United Kingdom (U.K.) under the pretence of being a deportee. Perera, J.S., dismissed the action and thereby gave rise to this appeal.

A brief background to this case is that when the appellant's relationship with the Government of the day apparently became somewhat strained because of her active participation "in a crusade for promoting democracy in Seychelles," she went to the U.K. and took political asylum there for about three and a half years. Intending to return home, she applied to the Seychelles High Commission in London for a new passport to replace her old

when she was told in the lounge that she had to be flown back but that when she was being escorted to the aeroplane, she was "in a calm state." Mr Jeffrey Marie testified, however, that while inside the aircraft, she was crying and she said to him: "Jeffrey, I will come back to Seychelles one day."

When the aeroplane was about to take off, Mr Jeffrey Marie disembarked. The appellant was flown back to Moscow where, on arrival, someone at the Immigration counter demanded a ticket from her and threatened to put her into a Moscow prison if she failed to comply with the demand. However, despite her failure to meet the demand, she was flown back to London on the following day. In his judgement, Perera, J.S., said, inter alia:

"Gilbert Albert (PW 7) testified that the plaintiff was aggressive and protested when told that she had to return while in the arrival lounge, but after she was escorted out to the aircraft she was 'in a calm state.' She then stated that she would eventually come back one day. Jeffrey Marie (PW 8) testifying regarding the condition of the plaintiff while inside the defendant's aircraft the plaintiff had resigned to her fate that she would not be accepted in Seychelles. There was therefore no purpose in protesting with the defendant's airline. On the contrary she impliedly consented to be carried back to London. Hence when the defendant airline carried the plaintiff outside Seychelles they could not be said to have 'kidnapped' her.

It would however be reasonable to infer that the plaintiff was sent back by Government authorities without her consent. However, the legality of the order or the activities of the various officers acting under such order is outside the scope of the instant case as they are not parties to this action. Hence even if delictual liability could have been attributed to them yet the causal link should be established against the defendant. Admittedly, none of the staff of the defendant engaged in bringing the plaintiff on board the aircraft against her consent."

Mr Boulle presented five grounds of appeal which, in my



appellant, a Seychellois citizen, out of Seychelles.

On the other hand, Mr Bonte submitted that the Government employees had acted under a Government order and that section 7(3) of the Immigration Decree does not provide that such order shall be in writing. He said that his client had done nothing wrong; and that the real or main tortfeasors were the Government employees, including the police, who had taken the plaintiff back to the aeroplane and stood guard at the door to make sure that she did not get out. It was pointed out that the plaintiff's grievance should have been directed at the Government, rather than at the defendant; and that the main tortfeasors got off the hook because of a mere technicality of the law of prescription. He submitted that there was no causal link between the defendant and the actions of the Government employees which actions put the defendant in a dilemma.

On a reading of Article XV Para. 3 of the I.A.T.A. Rules and of section 7 (3) of the Immigration Decree in so far as they relate, inter alia, to the inadmissibility of a passenger into Seychelles, it is crystal clear that these provisions have no application whatsoever to a citizen of Seychelles; they are irrelevant and cannot, therefore, be relied upon by the respondent. To the same effect is the case of Thornton v The Police (1962) 3 A.U.E.R. 88 where it was held that -

"It was the essence of citizenship that a citizen should have the right to enter and reside in, as and when he chose, the territory of the country of which he was a citizen, and this right was established by international law."

against the appellant and, if so, to ascertain further the appellant's national status and whether it was proper to fly her back to London. It was not only obvious to the respondent that the security officers were intent on ensuring that the appellant was flown out of the country but, more importantly, it provided them with the means of achieving their purpose. Evidently, the respondent's conduct in the matter was not that of a prudent person. Hence, the respondent was guilty of fault in terms of Article 1382 (2) which provides that-

"(2) Fault is 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."

Section 239 of the Penal Code defines kidnapping from Seychelles in these terms:

"239 Any person who conveys any person beyond the limits of Seychelles without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Seychelles."

It follows that the respondent's conduct in this case places it in the position of a joint tortfeasor and is accordingly amenable to this action. The respondent's plea that it was put in a dilemma by the actions of the security officers is not a defence but may be a factor in mitigation; and so too may be the fact that this case was instigated by the said officers.

With regard to the allegations of criminal activities against the respondent, including extortion of money and threatening imprisonment while the appellant was on Russian soil, I would uphold the findings of the learned trial judge to the extent that, on the appellant's own testimony, "it was the