(22)

IN THE SEYCHELLES COURT OF APPEAL

MARIE-PAULE MAFFIODO APPELLANT

V.

JOHN TALMA RESPONDENT

CIVIL APPEAL NO. 7 OF 1995

Before: Goburdhun, P., Silungwe & Adam JJA.

ORDER

The appeal is dismissed with costs. Reason to follow later.

Dated this day of 1996.

H.GOBURDHUN
PRESIDENT

A.M. SILUNGWE
JUSTICE OF APPEAL

M.A. ADAM
JUSTICE OF APPEAL

Handed down on 5th July 1996
Adam JA

(23)

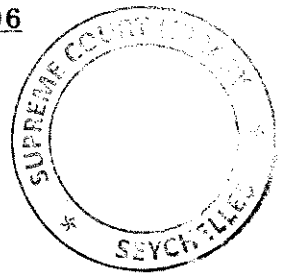
IN THE SEYCHELLES COURT OF APPEAL

MARIE-PAULE MAFFIODO APPELLANT

V

JOHN TALMA RESPONDENT

Civil Appeal No. 9 of 1996



Before: Goburdhun P., Silungwe & Adam JJ.A.

Mr. Boulle for the Appellant
Mr. Juliette for the Respondent

REASONS FOR JUDGMENT OF THE COURT OF APPEAL HANDED DOWN BY ADAM J.A.

This Court dismissed the appeal with costs. In the amended Plaint the Respondent claimed SR.40,000 for moral damages for anxiety, distress, inconvenience as a result of the Appellant's action in failing, ignoring and refusing to fell two dangerous "agati" trees by reason of which the Respondent suffered loss and damages. In response the Appellant in a Defence firstly, in limine litis pleaded that the Plaint discloses no cause of action and secondly, on the merits denied the allegations contained in the Plaint.

Before Amerasinghe J. the Appellant had argued that Articles 671 to 673 of the Seychelles Civil Code ("Sey C.C.") dealt with all the rights of neighbours, that there was no right in law for the Respondent to demand that the Appellant cut down her tres and so there was no cause of action. The Respondent had argued that his cause of action had been brought entirely on "faute" under Article 1382-3 of the Sey. C.C. In his ruling, Amerasinghe J. held that if the trees complained about were of any danger to the Respondent's electricity lines or to his house, it could

cause a nuisance to him which was actionable under the Sey.C. C. and the trial would determine whether the Respondent had established his cause of action. The Appellant did not appeal against that Ruling.

The pleadings state that the Appellant had cut the two offending trees in March 1994 but the Respondent had commenced his proceedings in November 1993. Further, the learned Judge accepted that the two offending trees standing on the Appellant's land on a higher elevation but dangerously slanting towards the Respondent's house caused fear in the Respondent as testified by him in that these two trees might fall causing damage to his house and injuring inmates therein. The Respondent had not only informed the Appellant but also her predecessor in title but this had been of no avail. Amerasinghe J. found that on the Respondent's complaint, Peter Volcere of the Environment Department carried out an inspection in February 1993. At which time he discovered that the two trees left uncut that were very close to the boundary between them were a potential danger to the Respondent's infrastructures. Peter Volcere had advised the Appellant of this. He had further discovered that these two trees were also exposed to the trade winds blowing during the Northwest Monsoon (from November till the end of April) which made most of their branches lean towards the Respondent's house. Prior to this on 4 January 1993 the Appellant had been granted a permit by the Environment Department to cut trees including the two offending trees but she had left these two offending "agati" trees uncut. Thereafter, it was only in March 1994 when her permit had been renewed that she cut these two trees.

Amerasinghe J. held that Article 673 of Sey.C. C. conferred certain rights to prevent an adjoining landowner growing trees and allowing them to invade his or her neighbour's land.

In her Memorandum of Appeal the grounds were that Amerasinghe J erred in awarding damages based on the Appellant's negligence and imprudence as neither fault nor negligence or imprudence had been pleaded; that his finding of her action of cutting other trees and leaving the two tall well grown trees exposed as constituting the negligence or imprudence was not pleaded and was not supported by the evidence; that his finding that the delay of 10 months before these trees were cut had undoubtedly caused the Respondent anxiety for the safety of his property and life of the occupants therein and the inconvenience in compelling them to seek alternative accommodation was flawed in that Amerasinghe J. failed to take note of Peter Volcere's evidence that these two trees became dangerous on being exposed to the Northwest Monsoon and that there was no evidence that there was Northwest Monsoon blowing during the relevant 10 months and that there was no causal connection between the anxiety and inconvenience and the cutting down of the other trees and neither was it alleged in evidence that there was any such connection; that the learned Judge erred in his application of the law to the facts and failed to consider the Appellant's rights of ownership of the trees, the exercise of which right could only constitute a tort when she abused that right with a dominant purpose to cause harm under Article 1382 of the Sey.C.C., and that the damages are manifestly excessive.

In his judgment Amerasinghe J. rejected the authorities cited to him on behalf of the Appellant as having no relevance to the matters before him as liability arose under Article 1383 and not Article 1384 which concerned damages caused by things in a person's custody.

Mr. Boulle submitted that a Plaint must use the words "negligence" and "with intention to cause harm" before

a plaintiff could be said to have pleaded a cause of action under Article 1383. Mr. Juliette submitted that a party does not plead the law but facts on which a cause of action is founded. He referred to section 71 of the Civil Procedure Code. There was the Respondent's testimony that these two trees were a danger to him, his house and his environment as they were sloping onto his house which could fall on to his house and that the danger was evident when there was a strong wind. When there was a strong wind and also when it was raining he had to evacuate the house and go to a friend. Peter Volcere confirmed the Respondent's testimony that these two "agati" trees had become exposed to the trade winds - Northwest Monsoon - after the other trees had been cut; that during his visit in February 1993 he had found that the winds blowing towards these two trees made their branches lean menacingly towards the house. The evidence of Peter Volcere and the Respondent was not contradicted and the Appellant called no witnesses at all to refute this.

Amerasinghe J. found that the Respondent in his letters to the Appellant of 30 August 1991 and 5 July 1993 pointed out that her trees were a danger to electricity lines and neighbouring houses but, relying on Peter Volcere's expert evidence, Amerasinghe J. concluded that the Appellant's liability commenced after January 1993 and ended when she cut the trees (March 1994) after proceedings had been instituted in November 1993. He made a finding on a balance of probabilities in favour of the Respondent that the Appellant had undoubtedly caused him anxiety for the safety of his property and life of the occupants therein by her delay of about 10 months to cut the two offending trees. In the absence of proof of material damages he awarded oral damages to compensate for the anxiety and convenience suffered by the Respondent on account of Appellant's negligence and imprudence. He awarded a sumof SR.10,000.

Section 71 of the Civil Procedure Code provides that a Plaint must contain particulars such as the name of the court, name, description and place of residence of the plaintiff and the defendant, a plain and concise statement of the circumstances constituting the cause of action and when and where it arose and of the material facts which are necessary to sustain the action and a demand of the relief which the plaintiff claims.

In our view Amerasinghe J. came to the right decision "in holding that Mr. Boulle's contention that the Plaint failed to disclose a cause of action was without merit." There is no requirement in law that a plaintiff has to follow a set formula in a Plaint as long as section 71 of the Civil Procedure Code is satisfied. In the amended Plaint the Respondent averred particulars upon which his cause of action was based and by reason of which he had suffered loss and damage for which he claimed moral damages of SR.40,000.

It certainly cannot be asserted that there was no evidence before the court that the Northwest Monsoon trade winds were blowing at the relevant period. Amerasinghe J. found that the Appellant's liability commenced after January 1993 when she was granted permission by the Environment Department and ended when she cut the two offending trees in March 1994. Peter Volcere had testified about his visit in February 1993 and whose evidence was accepted by Amerasinghe J. Also, the anxiety or inconvenience suffered by the Respondent according to his evidence was as a result of the Appellant's keeping her two offending "agati" trees that she left uncut when her other trees were cut which made them dangerous when the Northwest Monsoon was blowing. In light

of this the Respondent had established the necessary causal link. Again Amerasinghe J. cannot be faulted on his finding.

We are further satisfied that the moral damages of SR.10,000 was not manifestly excessive. The Appellant has not shown this to be the case by reference to awards made in related cases.

Accordingly we had dismissed the appeal with costs.

Dated at [illegible] this 31 day of October 1996.

M.A. ADAM
JUSTICE OF APPEAL

H. GOBURDHUN
PRESIDENT

A.M. SILUNGWE
JUSTICE OF APPEAL