

**IN THE SEYCHELLES COURT OF APPEAL**

PETER POOL

APPELLANT

VERSUS

DANIELLA SOURIS

RESPONDENT

Civil Appeal No. 20 of 1995

*Before Goburdhun, P., Silungwe and Venchard, JJA.*

Mr. J. Hodoul for the Appellant

Mr. A. Derjacques for the Respondent



**JUDGMENT OF THE COURT**

The Respondent averred in her plaint that she had entered into a lease agreement with the Appellant for occupation of premises in consideration of a monthly rent of Rs.1800. It was agreed that the electricity and water supplies and the telephone communication would be maintained in the Appellant's name but would be paid for by the Respondent. She complained that the Appellant disconnected or caused to be disconnected the amenities maintained in the Appellant's name and paid for by her as a result of which she suffered loss and damage in the sum of Rs.26000 particularised as follows:-

- 1. Moral damages for loss of water - Rs 6,000
- 2. Moral damages for loss of electricity - Rs 5,000
- 3. Moral damages for loss of phone calls - Rs 5,000
- 4. Special damages for economic loss as seamstress - Rs. 10,000

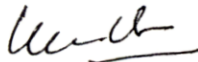
The Appellant did not dispute that the amenities had been disconnected as he had not wished to be liable for payment of bills for those amenities presumably in the event those bills were not paid for by the Respondent. He averred that those amenities were restored 28 days after the initial disconnection as a result of a court order.

paragraph 7 of the plaint. The nature of the damages claimed are clearly indicative that the Respondent had elected to proceed in tort.

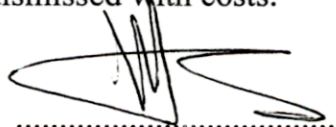
As regards Ground 2, we are alive to the fact that a plaintiff has an obligation to minimise costs. However, in the present case, we are satisfied that the Respondent was justified to initiate the action before the Supreme Court. It was crucial that the provision of the amenities should be restored expeditiously and hence the application to the Supreme Court for the restoration of the amenities as such an application could not have been entertained by a Magistrate's Court. It may be, with the benefit of hindsight, that the costs incurred would have been less if the Respondent had sought separate reliefs. However, the course of action taken by him cannot be faulted more specially as it avoided a duplication of proceedings.

We have examined grounds 3 and 4 and are of the view that the moral damages awarded for the loss of amenities essential in our modern life and to which the Respondent had been used are, if at all, on the low side. It was not open to the trial judge to award a higher sum than Rs. 5000 under each of heads 2 and 3 of paragraph 7 of the claim. The reduction of Rs1000 under the 1st head was obviously prompted by the fact that for the loss of the other amenities the Respondent had only claimed Rs. 5000.

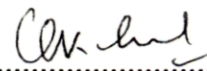
The appeal is dismissed with costs.



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H. Goburdhun P.



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A.M. Silungwe J.A.



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L.E. Venchard J.A.

Dated this 29... day of Feb.. 1996.