

(4)

IN THE SEYCHELLES COURT OF APPEAL

DANIEL AUGUSTE

V.

1. MARIE-MAY HOAREAU
2. KARL PAYET
3. SEYCHELLES HOUSING DEVELOPMENT CORPORATION



Civil Appeal No. 1 of 1995

Before: A.M. Silungwe, E.O. Ayoola, L.E. Venchard JJ.A.

Mr. B. Georges for the Appellant
Mr. K. Shah for the 1st and 2nd respondents
Mr. Rajasundaram for the 3rd respondent

REASONS FOR JUDGMENT DELIVERED BY AYOOLA, J.A

On 20th February 1996 we allowed the appeal of Daniel Auguste and ordered that the action be remitted to the Supreme Court for rehearing; reasons to be given later. Those reasons are now given.

The appellant who was the plaintiff in the action claimed by his plaint an order to set aside an order of repossession of a parcel of land described as V2881 made in favour of the Seychelles Housing Development Corporation ("S.H.D.C."); an order setting aside the sale of the said parcel to Marie-May Hoareau and Karl Payet, respectively the 1st and 2nd respondents in this appeal, and alternatively to the foregoing, an order that the 1st and 2nd respondents do jointly and severally pay the plaintiff the sum of R.400,000 being the value of the said parcel plus R.50,000 being moral damages for his anxiety and distress.

At the Supreme Court, a plea in limine litis was raised by the SHDC in the following terms:

"The action against the 3rd defendant is barred by section 4(c) of Public Officer's Protection Act, 1976 (Act 24/76) as the repossession application of 3rd defendant has lawfully been filed against the plaintiff pursuant to his serious default in payment of housing loan, on the advice of the Director General (Housing) of Ministry of Community Development. And the said action of the Plaintiff should have commenced not later than six months after claim arose."

After hearing counsel for the parties, the learned judge (Perera J.) ruled on the plea on 24th October 1994. Being of the view that "the limitation period in section 4 would apply to any action brought either against a corporation or

The action was commenced outside the period of six months after the claim arose. It was not contended at the Supreme Court, nor in this court, that the action was to enforce any claim in respect of any act done or omitted to be done in the lawful performance of a public duty. The claim was obviously in respect of an act done by the SHDC; the effort made by counsel on behalf of the SHDC to portray the SHDC as an aider notwithstanding. It is thus that the main question arose whether the SHDC was a public officer.

The Seychelles Housing Development Corporation is a body corporate with perpetual succession established by the Seychelles Housing Development Corporation Act, Cap. 215 (1991 Edn.) with the functions of ensuring the provision of housing in Seychelles in accordance with the policy of Government and advising the Minister on housing policy. The funds and property of the Corporation consist, inter alia, of money appropriated by an Appropriation Act and paid to the Corporation. The SHDC is no doubt a "public body", but is it thereby a "public officer"?

Mr. Georges, learned counsel for the appellant, referred us to several statutes, including the Constitution, to show that SHDC cannot be regarded as a "public officer." In the Public Officers Act (Cap. 191) "Public Office" is defined as meaning:

"An office in the service of Seychelles as defined by Paragraph 1 of Schedule 3 to the Constitution (namely any office, the emoluments attached to which are paid directly from the Consolidated Fund or directly out of monies provided by an Act."

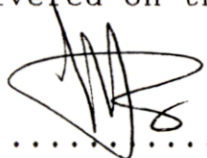
By Article 1(1) of the Constitution of the Republic of Seychelles 1993 ("the 1993 Constitution") "public office" means an office of emolument in the public service and "public officer" means, subject to certain exceptions, a person holding or acting in a public office. An earlier

notwithstanding that he is not a "public officer", enjoys the protection of the Act by virtue of section 4(c) if he is lawfully acting in aid of or lawfully giving assistance to a person referred to in paragraph (a) or (b) of section 4 of the Act. Contoret was decided on the facts, as found, that SHDC was rendering such aid or assistance.

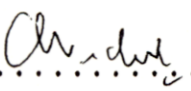
The appeal succeeded on the ground that the learned judge erred in holding that the action was prescribed against the SHDC. Although the action proceeded against the other respondents and was on the merits dismissed against them, it is manifest that judgment in their favour should not stand. The case which the appellant had set out against all of them must have been distorted by the erroneous termination of the case in limine against the SHDC.

It was for these reasons that the appeal was allowed and consequential orders made as earlier stated.

Delivered on the 1st day of March 1996.


..... JUSTICE OF APPEAL
(A.M. SILUNGWE)


..... JUSTICE OF APPEAL
(E.O. AYoola)


..... JUSTICE OF APPEAL
(L.E. VENCHARD)