

IN THE SEYCHELLES COURT OF APPEAL

JOSEPH LABROSEE

APPELLANT

Versus

GOVERNMENT OF SEYCHELLES

RESPONDENT



Civil Appeal No: 11 of 1998

[Before: Goburdhun, P., Silungwe & Ayoola, JJ.A]

.....

Mrs. N. Tirant-Gherardi for the Appellant

Mr. F. Ally for the Respondent

JUDGMENT OF THE COURT

(Delivered by Silungwe J.A)

By his plaint filed on August 9, 1996, the appellant (plaintiff) prayed the Supreme Court (Perera, J.S.) for judgment against one Seraphin Allisop, then (1st defendant) and the respondent (then 2nd defendant), jointly and severally, in the sum of Rs.298,000/-, with interest and costs, following a faute allegedly committed against him.

In a statement of defence, the respondent raised a plea in limine litis, which was subsequently upheld in a ruling made by Perera, J.S., in these terms:-

“The plea therefore succeeds, and accordingly the 2nd defendant, Government of Seychelles, is struck out from the action. The plaintiff may however proceed against the 1st defendant Seraphin Allisop, if so advised.”

Both the plea in limine and the ruling thereon hinged on the provisions of Section 3 of the Public Officers (Protection) Act, Cap. 192, which impose a six month limitation period on any claim arising from any

act or omission of a public officer's performance of his official functions. It is against the said ruling that this appeal now lies before us.

The appellant's plaint contains these averments:-

1. The plaintiff was at all material times an ordinary citizen going about his business and making use of the medical facilities offered by the 2nd defendant.
2. On the 1st April 1995, the plaintiff was wrongfully and tortiously stabbed in the neck at Beoliere, Mahe, by the tortious and unlawful action of the 1st defendant, thereby causing the said plaintiff serious injuries which resulted in the plaintiff requiring medical assistance.
3. As a result of the said injury, the plaintiff was taken to Beoliere Clinic and from there admitted to Victoria Hospital where the said Plaintiff was seen by members of the medical staff of the 2nd defendant, acting in their capacity as a préposé of the 2nd defendant and was kept in confinement after a wrongful diagnosis of alcoholic polyneuropathy until the 3rd April 1995 when he was discharged by the 2nd defendant or its préposé.
4. After discharge from the hospital and as a result of the lack of medical follow-up arising out of the wrongful diagnosis, the plaintiff's injuries were further aggravated and the said plaintiff was re-admitted to Victoria Hospital for further examinations and tests.
5. The said injury was caused by the fault and/or negligence of the 1st defendant, and was compounded by the fault and/or negligence of the 2nd defendant whether by itself, its servants or agents.
6. By reasons of the aforesaid, the plaintiff suffered injury, loss and damage.

PARTICULARS OF INJURY

- i) Loss of sensation to the right side of the body
- ii) Wrist drop in left hand

- iii) Limp and stiff leg gait with reduced muscle in left leg
- iv) Partial loss of use of left arm and leg and general weakness in left side due to severement or partial severement of nerve fibres from the spinal cord.

PARTICULARS OF LOSS AND DAMAGE

-	Partial loss of use of left arm and leg	130,000
-	Pain and suffering, anxiety, distress and discomfort	100,000
-	Moral damages	50,000
-	Loss of earnings	18,000
	Total	Rs.298,000

By reason of the aforesaid, the plaintiff suffered injury, loss and damage (all of which is quantified in monetary terms).

This appeal rests on the grounds that:- (1) the learned Trial Judge erred in extending the provisions of the Public Officers (Protection) Act to Government; and (2) the learned Trial Judge erred in law in finding that the action was time-barred.

Although Mrs. Tirant-Gheraldi, learned counsel for the appellant, has laboured the definition of "Public Officer", this is certainly not in issue here. Mr. Ally, learned counsel for the respondents, confirms this in his submission (with reference to Section 3(a) of the Act) by stating that:- "At the outset it should be noted that it is not in dispute that the employees of the Victoria Hospital, who are the alleged tortfeasors, are public officers within the meaning of the Act."

As regards the first ground of appeal, Mrs. Tirant-Gherardi's argument may be summarised thus:- with reference to the preamble to (and the title of) Act No. 24 of 1976, the main purpose of that Act was to make provision with respect to certain actions against "public officers" that the principal concept was to offer protection to public officers as individuals from being sued for acts done or omitted to be done in the course of their employment; and more importantly, that it was not the intention of the legislature to extend the said protection to the Government, otherwise such intention would have been explicitly stated.

It should be noted that Act no. 24 of the 1976 now appears in the 1991 edition of the Laws of Seychelles as Cap. 192 but without the preamble, and that section 4(a) is now renumbered as section 3(a). Besides the fact that the current edition of the Public Officers (Protection) Act bears no preamble, a preamble is an internal aid to the interpretation of statutes and may be invoked only when the contents of the section sought to be interpreted are obscure or ambiguous. See, for instance, Green v Minister of Interior 1968(4) SA 321(A) 372 (D), S v Davidson 1988 (2) SA 259(25). There is no allegation that Section 3(a) of the Public Officers (Protection) Act (hereafter referred to as the Act) is either obscure or ambiguous.

Whether Section 3(a) of the Act offers protection to Public Officers only; and whether the legislature did not intend to extend such protection to the Government, is a matter for interpretation. The section reads:-

- “3. No action to enforce any claims in respect of:-
(a) any claim done or omitted to be done
by a public officer in the execution of
his office; ...

shall be entertained by a court unless the action is commenced not later than six months after the claim arose.”

The question to be answered is whether in the context of this case, and on a proper interpretation of Section 3(a) of the Act, the protection offered covers the 1st respondent only, in line with Mrs. Tirant-Gherardi's submission?

To answer the question, it seems to us that the provisions under consideration are clear and admit of no obscurity or ambiguity. They do not speak of offering protection to a public officer: rather, they impose a period of limitation for an action to enforce any claim in respect of any act or omission of a public officer in the execution of his office; thus, such an action instituted later than six months after the claim arose will be time-barred. In practical terms, however, the protection offered by the provisions covered, not only the employee public officer, as tortfeasor, but also the


employer, for vicarious liability, or the public officer and the employer as joint tortfeasors, provided the acts or omissions complained of occurred during the performance of the public officer's functions and the action in respect of the said acts or omissions is brought after the prescribed six month time of limitation. In other words, the period of limitation under section 3(a) of the Act applies to actions brought (under the section) against the public officer (tortfeasor) alone; against the public officer and the employer as joint tortfeasors; or against the employer alone.

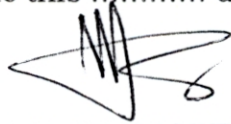
In the light of what we have said above, it is a misnomer to say that the trial judge extended the provisions of section 3(a) of the Act to the Government; the said provisions themselves embrace the Government.


It follows that the action against the respondent was time-barred. The ruling of Perera J. in favour of the respondent cannot be faulted. In the result, the second ground is a non-starter, since the trial judge's finding that the action was time-barred was justified.

In conclusion, the appeal is dismissed with costs.

Dated at Victoria, Mahe this ^{4th} day of ~~August~~ ^{December} 1998.


H. GOBURDHUN
PRESIDENT


A.M. SILUNGWE
JUSTICE OF APPEAL


E.O. AYoola
JUSTICE OF APPEAL

Handed down: