

IN THE SEYCHELLES COURT OF APPEAL

ANTHONY PAYET

APPELLANT

versus

MARK AH WENG

RESPONDENT

Civil Appeal No: 22 of 1998

[Before: Ayoola, P., Pillay & De Silva, J.J.A]

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Mr. S. Rouillon for the Appellant
Mr. F. Bonte for the Respondent

JUDGMENT OF THE COURT
(Delivered by Pillay J.A)

This is an appeal against a decision of the trial Court which -

- (a) ordered the defendant, now the appellant, to return a tortoise allegedly stolen from the respondent, then the plaintiff, or to pay to him Rs.10,000 as its value, and to pay to the respondent Rs.100/- as moral damages;
- (b) dismissed the appellant's counter claim against the respondent for material and moral damages of Rs.24,115 for "faute" i.e for having maliciously and unlawfully alleged that the tortoise belonged to the respondent and had been stolen, when this was not the case.

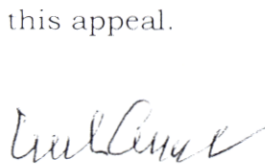
The fate of this appeal turns essentially on the identification of the tortoise by the respondent and the evidence of Sergeant Micock. The respondent deponed in Court to the effect that he could identify with his own naked eyes his tortoise among a consignment of 25 tortoises found at the airport which was due to be exported to Japan by the appellant. He conceded in the course of his testimony that he could not identify the tortoise by any special markings.

Sergeant Micoock stated that there was a complaint from a lady at Beau Vallon Police Station i.e one Mrs. M. Gertrude who confirmed in Court, that a tortoise belonging to her had been found in the park of the appellant. The tortoise was returned to Mrs. Gertrude after it had been identified by some of the visual marks found on the shell of the tortoise. It is clear, as rightly observed by Learned Counsel for the respondent, that this incident at Beau Vallon had nothing to do whatsoever with the present claims of the respondent and the appellant.

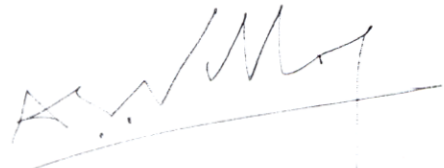
The Learned Judge after adverting correctly to the evidence of the respondent that "the material tortoise had no such special marks" and setting in detail the evidence given by Sergeant Micoock, came to the erroneous conclusion that the respondent was supported by the Sergeant when he identified the tortoise at the airport "by visual marks found on the shell of the tortoise."

It is clear beyond argument that the learned Judge misapprehended the evidence of both the respondent and Sergeant Micoock, as highlighted already. Since the Learned Judge misdirected himself in respect of his findings of fact which were not supported by the evidence on record, we have no other option than to quash the order made by him in favour of the respondent and dismiss the claim.

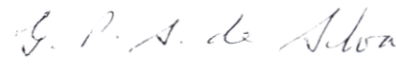
With regard to the counter claim of the appellant which was dismissed, we order that it should be allowed in the circumstances and that a differently constituted Court should determine the amount of damages, if any, to be awarded to the appellant. The respondent is to pay the costs of this appeal.



E.O. AYoola
PRESIDENT



A. G. PILLAY
JUSTICE OF APPEAL



G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 16th. day of April 1999.