

**IN THE SEYCHELLES COURT OF APPEAL**

**PAUL NOURICE**

**APPELLANT**

versus

**INTER LOTTO LTD**

**RESPONDENT**

Civil Appeal No: 21 of 1999

*[Before: Ayoola, P., Pillay & Matadeen, J.J.A]*

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Mr. J. Hodoul for the Appellant  
Mr. K. Shah for the Respondent

**JUDGMENT OF THE COURT**

*(Delivered by Matadeen, J.)*

This is an appeal against a judgment of the Supreme Court dismissing a claim by the appellant, then plaintiff, against the respondent, then defendant, for failing to pay the prize money to him although he had played the five winning numbers on his lotto ticket, thus entitling him to the first prize.

At the outset of the appeal, we have, on motion of counsel for the respondent, and counsel for the appellant not objecting, amended the judgment by correcting certain errors which had crept in the judgment in relation to the name of the appellant as well as that of the representative of the respondent.

The short issue raised in this appeal is essentially whether the learned Judge was right in finding that the authorised Lotto Sales Agent was the agent of the appellant and not that of the respondent.

The evidence adduced by the appellant before the learned Judge reveals that the appellant had on 21 October 1996 played a number of lotto tickets by selecting a set of numbers on each ticket in accordance with the playing instructions printed on the verso of the ticket and had submitted them to one Serge Hoareau, an authorised Lotto Sales Agent, for validation and return to the respondent against payment of a certain sum of money. The tickets were properly validated by Mr. Hoareau by stamping a serial number thereon and the duplicates were returned to the appellant.

The respondent called evidence before the learned Judge to show that neither was the original ticket with the winning numbers returned by Mr. Hoareau to the respondent, nor was the money paid by the appellant remitted to the respondent. Further, in view of the serial numbering of the tickets, the respondent realised that some tickets were missing and, acting under the rules regulating the game, not only informed Mr. Hoareau accordingly but also “declared” the tickets as missing before microfilming all the returned tickets and effecting the draw. As the appellant’s ticket containing the winning numbers was never returned by Mr. Hoareau to the respondent, it was not, again pursuant to the rules, microfilmed and did not take part in the draw.

The respondent had relied on the Inter Lotto Rules which provide as follows –

- “1. By submitting a Lotto ticket for validation, players agree to the rules and regulations of the Inter Lotto Ltd Game ...
2. Lotto tickets are not effective until microfilmed ...

4. Players acknowledge that Lotto Sales Agents are acting on behalf of the players in validating the Lotto tickets and returning them to Inter Lotto's Office ...”

Acting on those rules, the learned Judge had no difficulty in coming to the conclusion that Mr. Hoareau was, for the purpose of validating and returning the ticket to Inter Lotto, the agent of the appellant and dismissed the appellant's plaint.

Learned counsel for the appellant submitted before us, first, that the appointment of Mr. Hoareau as the agent of the appellant was wrong as it fell foul of the provisions of Article 1984 of the Civil Code inasmuch as the agent was never appointed by the appellant and, secondly, that Mr. Hoareau was the agent or employee of the respondent and that the latter was liable under Article 1382 of the Civil Code.

As regards the first submission, it is clear that by accepting to play the Lotto ticket the appellant player was, pursuant to rule 4 of the Inter Lotto Rules, constituting the Lotto Sales Agent as his agent for the purpose of validating and returning the ticket. The evidence which the learned Judge accepted shows that the appellant in fact selected the set of numbers and remitted the tickets to Mr. Hoareau thereby acknowledging the agency. There was no evidence at any rate that the agency was denied by Mr. Hoareau.

Consequently, in view of the express stipulation in rule 4, the appellant cannot now be heard to say that Mr. Hoareau was not his agent but that of the respondent. Mr. Hoareau may have been the agent of the respondent for the purpose of sale but was expressly made the appellant's agent for the purpose of the validation and return of the tickets. That disposes of the first submission.

As regards the second submission of learned counsel for the appellant, we need only say that the appellant had sued in contract and not in tort. To that extent Article 1382 is irrelevant.

For the reasons given above, we dismiss the appeal, with costs.



**E. O. AYoola**  
**PRESIDENT**



**A. G. PILLAY**  
**JUSTICE OF APPEAL**



**K. P. MATADEEN**  
**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 17 day of December 1999.