

IN THE SEYCHELLES COURT OF APPEAL

COLETTE JEAN

APPELLANT

versus

GEORGE ANDRE

RESPONDENT

Civil Appeal No: 41 of 1998

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

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Mr. F. Elizabeth for the Appellant
Mr. A. Juliette for the Respondent



JUDGMENT OF THE COURT
(Delivered by De Silva, J.A)

The appellant (plaintiff) in her plaint averred that on the 26th of January 1994 the respondent (the defendant) assaulted her and caused serious injuries. She claimed a total sum of SR145,000.00 for the loss and damage suffered by her. It is to be noted that the injuries sustained by her as a result of the assault included, inter alia, "compound fracture of the 8th thoracic vertebra" and the fracture of the "two front teeth". In paragraph 4 of the plaint she further pleaded that "the defendant was convicted for the above unlawful act of assault in Criminal Side No. 15 of 1994 by the Honourable Judge Steven Bwana, in the Supreme Court of Seychelles..." In the statement of defence the conviction before the Supreme Court was admitted. Thus on the pleadings it was clear that there was a serious matter to be heard and determined by the trial Court.

The case was fixed for hearing on 31st July 1998. The appellant was present in Court but her lawyer was absent. The appellant was a recipient of legal aid by reason of her poverty. At the commencement of the

proceedings of 31st July 1998 the Court questioned the appellant as follows:-

“Q: Is your lawyer present?

A: I have not received any contact with my lawyer?

Q: What about costs, you are not prepared to pay costs for the postponement?

A: No, the responsibility to pay costs does not lie on me. It is the negligence of my lawyer who was supposed to be present in Court and on top of that the respondent is in arrears. Therefore I am not in a position to pay costs”.
(Emphasis added)

In the course of further questioning by the Court the appellant reiterated that she is not prepared to pay costs and that it was a matter for her lawyer to decide whether to pay costs or not.

Thereafter the learned Judge decided to proceed with the trial. The appellant was called to give evidence and it was the Court that questioned her and elicited the evidence. The Court put to her the following questions while she was giving evidence.

“Q: What are the injuries which you suffered?

A: It is all indicated on the medical report.....

Q: Do you have your medical certificate with you?

A: All my documents are with my lawyer.

Q: How are you able to go on without a lawyer?

A: I had informed the Court that I was not in a position to proceed without my lawyer but the defendant's counsel wanted me to pay SR500 for costs and therefore I objected to that and this is the reason I come to give evidence". (Emphasis added)

At this stage it was apparent to the Court that the appellant was unable to proceed with the case. Thereupon the learned Judge made the following order:-


"...I direct that subject to the payment of a sum of SR500 on or before the next date, the case to be postponed to a further date of hearing In the event of her failure to pay the costs on or before the next date, the plaintiff's action will be dismissed with costs. The case is adjourned to 29th September 1998 at 9.30 am to fix a date for further proceedings and also for the payment of costs."


On 29th September 1998 the lawyer for the respondent informed the Court that the appellant "has defaulted in the payment of costs." Mr. Elizabeth who was now appearing for the appellant submitted that this was a legal aid case and costs have to be paid by the legal aid scheme. He further emphasised the fact that on the date fixed for trial the appellant

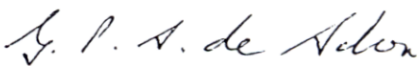
was present in Court but not the lawyer who was appearing for her on that date. The learned Judge, however, made order dismissing the appellant's action with costs.

What is relevant and what needs to be stressed is that the learned Judge dismissed the plaintiff's action on the ground "that the costs as ordered by Court and consented to by the plaintiff on the last date has not been paid". (Emphasis added) In our view, the learned Judge was in grave error when he concluded that the appellant had consented to the payment of costs. There is nothing in the record to suggest that the appellant ever consented to the payment of costs. On a reading of the proceedings as a whole the conclusion is irresistible that the appellant was at all times opposed to the payment of costs. The order dismissing the appellant's action was founded on the mistaken view formed by the learned Judge that the appellant had consented to the payment of costs.

The appeal is accordingly allowed with costs, the order of the learned Judge dated 29th September 1998 dismissing the plaintiff's action is set aside, and the case is remitted to the Supreme Court for hearing on the merits.


E.O. AYOOLA
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 21st day of April 1999.