

IN THE SEYCHELLES COURT OF APPEAL

DANIEL BONTE

APPELLANT

VERSUS

STATE ASSURANCE CORPORATION

RESPONDENT



**STATE ASSURANCE CORPORATION
OF SEYCHELLES**

CROSS-APPELLANT

VERSUS

**BONTE AND COMPANY INSURANCE AND
REINSURANCE BROKERS LIMITED**

RESPONDENT

Civil Appeal No: 58 of 1998

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

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Mr. P. Boulle for the Appellant & Respondent in Cross-Appeal

Mr. R. Scott for the Respondent & Appellant in Cross-Appeal

JUDGMENT OF THE COURT

(Delivered by Pillay, J.)

On a joint motion made by Counsel appearing on both sides, C.S. No. 152 of 1994 in which Daniel Bonte, now the appellant, sued the State Assurance Corporation of Seychelles, and C.S. No. 82 of 1995 in which the State Assurance Corporation of Seychelles sued Bonte and Company Insurance and Reinsurance Brokers Ltd, were consolidated.

Daniel Bonte had in suit No. 152 of 1994 (“the first case”) claimed damages on the ground that the termination of an agency agreement between the parties was an abuse of right and a fault. After the first case

had been instituted the State Assurance Corporations in suit C.S. No. 82 of 1995 ("the second case") claimed against Bonte and Company Insurance and Reinsurance Brokers Ltd a sum of Rs. 929,107.40, being premiums collected by the defendant and not remitted to it.

The two cases were heard as a consolidated suit and the learned Judge, Amerasinghe, J., dismissed the first case, and gave judgment for State Assurance Corporation of Seychelles in the second case in a sum of Rs.437,916.66, with interest. Daniel Bonte ("the appellant") appealed from the decision dismissing his claim. The State Assurance Corporation of Seychelles ("the respondent") appealed from part of the decision in the second case. Bonte and Company Insurance and Reinsurance Brokers Ltd did not appeal.


On appeal, learned Counsel appearing for the appellant in the first case (and the respondent in the second case) submitted that, by virtue of Section 106 of the Seychelles Code of Civil Procedure, the two cases are plainly not cross-suits which have been entered between the same parties. Consequently, a material irregularity has occurred which goes to the root of the trial in that it is difficult for any Court, least of all the Court of Appeal, to sift the evidence given by Mr. Bonte in his personal capacity and that given by Mr. Bonte in his capacity as representative of Bonte and Company Insurance and Reinsurance Brokers Ltd. Consequently, the requirement of a fair trial demands that the two cases should be heard anew separately.

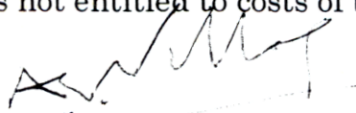
Learned Counsel for the respondent (the cross-appellant in the second case), to his credit, conceded that this was indeed the position in law and fact but contended that costs should be awarded in favour of his client for two reasons. First, learned Counsel for the appellant did not object to the two cases being consolidated and second, his point relating to the misconsolidation of the two cases, had been taken at a very late stage.

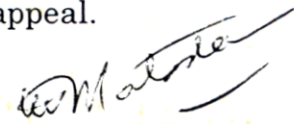
We agree with both Counsel that consolidation of the two cases was not proper in the circumstances for the reasons already advanced by counsel. This is abundantly clear from Section 106 of the Seychelles Code of Civil Procedure which reads as follows:-

106. "If more than one suit has been entered by the same plaintiff against the same defendant or if more than one suit has been entered by different plaintiffs against the same defendant in respect of claims arising out of the same transaction or series of transactions or if cross-suits have been entered between the same parties, and the parties sue and are sued respectively in the same capacities, the court may either of its own motion or on the application of any of the parties order such suits or any of them to be consolidated and tried as one suit, if it appear to the court that they can be conveniently tried or disposed of together, and the court may make such other order as may be necessary or expedient for the purpose of trying such suits together, and may make such order as to costs as may be just" (the underlining is ours).

We consequently quash the judgment of the trial Court in respect of the two cases which have been wrongly consolidated and order two fresh separate trials. Since consolidation was made on the joint motion of counsel, the respondent (the cross-appellant) is not entitled to any costs. Moreover, since it is an accepted fact that the point regarding misconsolidation had not been raised at any stage of the proceedings at the Supreme Court by the appellant who had acquiesced in the procedure adopted at the trial, he is not entitled to costs of this appeal.


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.