

IN THE SEYCHELLES COURT OF APPEAL

ROUCOU CONSTRUCTION (PTY) LTD
(Rep. by Cyril Roucou)

APPELLANT

VERSUS

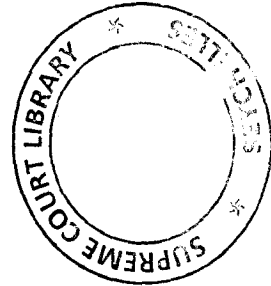
WILL DEWEA
PHILOMENA DEWEA

RESPONDENT
RESPONDENT

Civil Appeal No. 9 of 2003

[Before: Ayoola P, Silungwe & De Silva, JJA]

Mr. C. Lucas for the Appellant
Ms. L. Pool for the Respondents



JUDGMENT OF THE COURT
(Delivered by Silungwe, JA)

In the proceedings before the Supreme Court the appellant company and the respondents were the defendant and plaintiffs, respectively. The respondents instituted an action in delict against the appellant for trespass on their land and claimed consequential damages amounting to R128,250/- in aggregate. The trial Court found for the respondents and accordingly entered judgment in their favour for damages to the tune of R65,625/-. Aggrieved by that turn of events, the appellant lodged this appeal, imploring the Court to set aside the entire judgment on both liability and damages.

It was averred by the respondents that at all material times, the appellant was a contractor with Seychelles Housing Development; that it was mainly engaged in excavating a road at Les Canelles; and that the respondents were/are owners of parcel of land No. C3983, situated at Les Canelles. It was further averred that, in the process of carrying out the excavation work, the appellant, through its servants and/or agents, trespassed upon the respondents' land, thereby causing extensive

damage to that land; and that the acts of the appellant, its servants and/or agents amounted to a faute in law for which the appellant was liable in damages.

In response to the respondents' averments, the appellant denied having trespassed on any property; and alleged that it "*had sub-contracted a third party to carry out works on (sic) its behalf and in no way did (sic) it instruct (sic) that sub-contractor to trespass on any privately owned land*". The sub-contractor was one Georges Vandage who carried out excavation works of levelling the site on which a road was to be built. The sub-contractor, assisted by Hansell Boniface, used a J.C.B. excavator. The appellant maintained that Georges Vandage was an independent contractor and that he was thus not liable for anything done by him outside the scope of the duties entrusted to him.

When all was said and done, the learned trial judge made the following finding of fact:

"In any event, the parties are ad idem that the construction of the road was done by the defendant company as a contractor of SHDC and Georges Vandage as a sub-contractor"

The decisive issue in this appeal is whether Georges Vandage was an independent contractor.

It is settled law that an independent contractor (unlike a servant,) is one who is his own master in the sense that he is employed to bring about a given result in his own manner and not according to orders or directions given to him as to how the work is to be carried out. In other words, an independent contractor is one who is not under the control or direction of someone else as to how the work entrusted to him is to be performed. See: *Lucas v Government of Seychelles* (1977) SLR 99 at 101; *Lorenzo v Uzice & Another* (1977) SLR 93 at 95.

Miss. Pool contends, on behalf of the respondent that, in the present case, there is sufficient proof in support of the fact that a lien of sub-construction existed between the appellant and the sub-contractor.

She relies, as does Mr. Lucas (for different reasons) on certain partern of the evidence given by Cyril Roucou, the Managing Director of the appellant company; and by Georges Vandage, as the following excerpts show:

"Evidence of Cyril Roucou (DW1)

Q *How did you proceed to build that road, could you explain it to the Court?*

A *When I got this contract of building the said road, I contacted one Mr. Vandage, who is owner of the excavator, I hired the said excavator.*

Q *You hired the excavator, or you hired it to do the job?*

A *I hired Georges Vandage to do the job.*

.....
Q *When did you hired Mr. Georges Vandage, to do the work, did you show him where he had to cut the road?*

A *I accompanied him on site and I even showed him all the pegs as demarcated by SHDC.*

Q *Did you agree with him as to what was to be done with the extra soil if any, once the road is cut?*

A *When he was cutting the road, the soil, he was to level the road with and with the extras, he took it way, I did not know what happened to that."*

Evidence of Georges Vandage (DW2)

Q *Do you hire your services to contractors or excavation of road?*

A *Yes.*

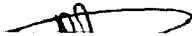
Q *What were the specific instructions that Mr. Roucou gave you?*

A *There were a few pegs that Mr. Roucou had put along the way, he told me to do the road in the pegs itself and not to go beyond the pegs and I told my workers.*

- Q *Mr. Will Dewea and his wife... aver that Mr. Roucou and his servant or... meaning you... have excavated their land. Did you do that?*
- A *Mr. Roucou showed us what we were supposed to do within the pegs. I gave proper instructions to my operator.*

On a proper reading of those excerpts, let alone other portions of the evidence of the two witnesses referred to by both learned counsel, we are unable to find any material in support of Miss. Pool's argument that Georges Vandage worked under the direction and control of the appellant as to how he was to carry out his mandate. On the contrary, the evidence shows that the sub-contractor was told what to do but not how it should be done. In the circumstances, we are satisfied that Georges Vindage was an independent contractor.

In consequence of what we have said above, the judgment is set aside and the appeal is allowed with costs.



Delivered at Victoria, Mahe, this 5th day of December 2003