IN THE SEYCHELLES COURT OF APPEAL

CEDRIC PETIT - Appellant

v.s

MARGUITA BONTE - Respondent

SCA Civil Appeal No. 11 of 2003

==========

(Before: RAMODIBEDI, P; BWANA AND HODOUL, JJA)

Counsel: Mr. B. Georges for the Appellant
Mr. F. Elizabeth for the Respondent

Heard on: 11 May 2005

Judgment delivered on: 20 May 2005

JUDGMENT OF THE COURT
(Delivered by Bwana, JA)

1. The appellant entered a possessory action (actions possessoires) against the respondent before the Supreme Court (Karunakaran, J) in respect of a house situated on parcel Nos. J203 and 204 (hereinafter referred to as the "suit premises"). The trial court found the action not tenable in law and was dismissed, hence this appeal. If we may note at the outset, this appeal is but one of the many suits that have been adjudicated upon by the courts – both the Supreme Court and this Court – involving the same parties and evolving around the same subject matter, the suit premises.

2. An alleged verbal agreement is said to have been entered between the present appellant on the one hand, and the defendant (together with her former husband) on the other. Under that agreement the latter parties were to sell the suit premises to the former. Before the sale agreement could be

effected, the appellant was to occupy the suit premises as a tenant, paying Sr.3,000/- per month. The purchase negotiations fell through and the appellant failed to pay the monthly rent. That set in motion a series of litigations before the courts as stated above. In turn those litigations produced a mish mash of legal issues leading, eventually, to this suit for prossessory action filed under section 97 of the Seychelles Code of Civil Procedure (the Code).

3. The sole ground of appeal before this Court is couched in the following words:-

"The trial judge erred in the interpretation of sections 97 and 98 of the Code and as a result the entire judgment is based on an erroneous proposition of law."

That sole ground attracted an application by the respondent for an order to strike out and dismiss the appeal with costs, because –

"1. The only ground of appeal raised in this case is vague and in general terms and discloses no reasonable ground of appeal in contravention of Rule 54 (3) and (6) of the Seychelles Court of Appeal Rules (the Rules).

2. The appellant has not lodged his skeleton heads of arguments."

So it was averred by the respondent's Notice of Motion to this Court.

4. Before the Supreme Court and until the filing of this appeal, Mr. Boulle had represented the appellant. Mr. Georges' application was resisted and when both parties appeared before the Court, counsel for the appellant was informed of the shortcomings in the ground of appeal and was ordered to conform with the requirements of Rule 54 (3) and

(6) of the Rules. That direction of the Court has not been complied with and when Mr. Georges appeared before us, a year later, he conceded to that fact and asked this Court to allow him to file an amended document of grounds of appeal and give it retrospective effect. Mr. Elizabeth, Counsel for the Respondent, objected. Meanwhile, Mr. Elizabeth had filed two other points in limine litis in the following words:-

1. The ground of appeal advanced by the appellant does not amount to grounds of appeal in law.

2. Counsel for the appellant actively participated in the hearing of the case as a witness and deponed for and on behalf of the appellant as well as acted as the appellant's attorney during the negotiation stage. Therefore the respondent submits that it is not proper for a witness to now appear as counsel in the case.

5. Mr. Georges did concede on both grounds. As to the first issue, he did agree with Mr. Elizabeth that the way the ground of appeal has been drafted, needed improvement in order to conform with the requirements of the Rules. He submitted that he had not drafted the grounds of appeal and that he had taken up the appeal with a lot of reluctance (as it is shown later) after the appellant had failed to engage another Counsel, following Mr. Boulle's withdrawal. He, however, asked the Court to allow him to amend the grounds of appeal and give the same retrospective effect.

6. Mr. Elizabeth did resist that application and rightly so. It is common ground that the way the sole ground of appeal has been framed leaves much to be desired. At any rate, it does not meet the requirements of Rule 54(3) and (6) of the Rules as amended under S. I. 49 of 2000. The said Rule states -

"54 (3) – Every notice of appeal *shall set forth concisely and under distinct heads, without argument or narrative, the grounds of the appeal, specifying the points of law or fact which are alleged to have been wrongly decided together with particulars of such errors, such grounds to be numbered consecutively and to state the exact nature of relief sought and the precise form of the order which the appellant proposes to the Court to make …"*

6) "No ground of appeal *which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence and any ground of appeal or part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on the application by the respondent …"* (emphasis provided).

Therefore the fundamental requirements as outlined under sub-rules (3) and (6) and as emphasized above, are of a mandatory nature. A party wishing to successfully come before this Court by way of an appeal, must comply with them. It is important to note that Rules of Court are made in order to be complied with. Without complying with and should the Court allow that to happen, then it is both sending wrong signals and establishing precedent which may eventually lead to the flouting and abuse of the whole court process. That should not be allowed to happen. This Court had an opportunity, recently, to re emphasise this point (see Central Stores vs Minister William and Another, judgment dated 25 February 2005; Harry Berlouis and Francis Gill, SCA No. 13 of 2003).

7. It is not in dispute that the draft ground of appeal before this Court does

not conform to the requirements of Rule 54 (supra). Both parties do agree, so does this Court. Mr. Georges has given his reasons for this inadequacy. With due respect to him, he has not succeeded in convincing us to agree with him and grant him leave to amend the said ground of appeal and give it retrospective effect. Counsel who takes over a case from another, takes over as well the duties, responsibilities and requirements. He cannot be heard to argue that he did no draft the notice of appeal, or the like. However, we do note with appreciation that Mr. Georges did concede to this fact or as much. This is particularly important in this case where this Court did direct Counsel to make the necessary amendments. A period of over one year has elapsed since that "directive" by the Court to Counsel.

It would be improper, therefore, if further time was extended to Counsel to comply with that directive of the Court. Likewise it should not be encouraged that Counsel would successfully ask the Court to accept "a skeleton" (or "heads of") arguments as an amendment to the grounds of appeal and give the same retrospective effect. Therefore failing to comply with the requirements of Rule 54 empowers this Court to strike out this appeal.

8. The issue of conflict of interest has also been raised by the respondent against Mr. Georges appearing in this case. Mr. Georges, as stated earlier, did concede this aspect as well. He, however, submitted that two issues have led him to appear before us and argue this appeal, though reluctantly. First is that his client had failed to get another Counsel to represent him. He had taken up the matter with much reluctancy in order to ensure that this appeal moves forward and, if possible, reach its finality. Second, initially he was not aware of his exact extent of involvement in this case or series of cases involving the same parties and same subject matter.

It is his submission that the earlier case that he gave evidence as a witness concerned “specific performance” while the present one is for actions possessoires. Mr. Elizabeth, on the other hand, has laboured, to show us that all the cases that have come before this court in respect of the parties hereto hinge on the same matter – the suit premises. It is also uncontroverted that Mr. Georges, apart from testifying as a witness in an earlier case, did also play an active part in the unsuccessful negotiations for the purchase of the suit premises by the appellant. It cannot therefore, in our opinion, convincingly be argued that because the former case was on specific performance and the present one is a possessory action – these are two distinct cases. Truly they are two distinct on technical points of law. But they both lead to the same conclusions and so are their effects.

However, as stated earlier, comprehensively the various cases (these two included) between the parties zero to one point – the suit premises. It is not disputed that Mr. Georges has played a key role as stated earlier. Therefore his appearance now before us as Counsel for the appellant raises a key issue of conflict of interest – an issue or obstacle that Mr. Georges cannot surmount. Therefore we agree with Counsel for the Respondent in respect of this issue of conflict of interest as well.

8. When the parties appeared before us, we did allow Mr. Georges to argue the appeal subject to our findings on the two points above. We did so for two fundamental reasons. Were we to enter a finding favourable to Mr. Georges then we would proceed to determine the arguments of the main appeal as presented by both Counsel. We consider this to be a good approach instead of remitting the matter to the Supreme Court to deal with some peace meal issues that would be determined. It is a deep-seated principle of justice that litigation must come to finality within a reasonable time. It is one of the Constitutional guarantees (Article 19 (1)) of the Constitution.

Prolonged and repetitive litigations between parties on the same or similar subject matter does not only breed injustice to the parties (in terms of delays, costs, etc) but may also lead to an abuse of process of the Court – something that should be avoided.

10. However, now that we have come to the conclusion that the two points raised in the plea in limine litis should be decided in favour of the Respondent herein, there is strictly no need to go further than invoke the provisions of Rule 54 (6) of the Rules and strike out this appeal.

11. As stated under paragraph 8 above, we did however allow the parties to argue their appeal and consider the same. We have given weight to their arguments and came up with a considered conclusion that were this appeal to be determined on its merits, still we would come to the conclusion similar to the one reached by the trial judge. His reasoning on the points of law involved is sound and his conclusions therefore, acceptable.

For reasons stated herein, this appeal is dismissed in its entirety. Costs for this appeal awarded to the respondent. It is accordingly ordered.

……

S. J. BWANA

JUSTICE OF APPEAL

I concur:

……

M. RAMODIBEDI

PRESIDENT

I concur:

……

J. HODOUL

JUSTICE OF APPEAL

Delivered at Victoria, this 20th day of May 2005