

**Vital v Chetty**  
**(2010) SLR 442**

William HERMINIE for the appellant  
Antony JULIETTE for the respondent

**Judgment delivered on 10December2010**

**Before MacGregor P, Domah, Fernando JJ**

In this case, prompted by the Court which took the view on examination of the brief, the grounds of appeal and the respective Heads of Arguments, that this was a fit and proper case for a settlement by consent. Both counsel expressed their willingness to proceed to the negotiating table and use their professional skills to settle the differences between the parties. Goodwill from both counsel bore fruits.

Enhanced professional practice demands that, through their specialized knowledge of the law and life, counsel should attempt to minimize litigation rather than generate it. The trend nowadays is to keep the courts at bay from matters which may best be resolved by conciliation, mediation and arbitration and reserve our courts for matters which genuinely could not be resolved between the parties with the assistance of counsel and which may require a finding of material as opposed to collateral facts in dispute and the determination of respective rights of parties based on an interpretation of the law where counsel differ.

Use of alternative dispute resolution systems under the able guidance of professionals trained in the law is a preferred system of resolution of disputes between citizens in a society becoming more and more complex with untold variables and solutions which only the parties are best able to bring forth in confidence to their counsel.

In many jurisdictions intent upon ringing in the new era of judicial development, there is a formal requirement that parties to a civil suit should first try to proceed to mediation and a party which unreasonably refuses to do so may be mulcted with costs. In Seychelles, there is no such formal requirement but that does not stop parties from adopting this principle based on common sense. In a majority of situations, “un mauvais arrangement est mieux qu’un bon jugement.”

The conventional court system is based strictly on the conflict theory of dispute resolution in society. It is also one where the winner takes all. The new system imports a consensus theory of resolution of disputes between subjects. The virtues of a consensus theory which complements the conflict theory are many. It engages the parties themselves to reach a win-win solution under the skilled guidance in law of counsel and the magic of the court. It does not help to go to the battleground and shed blood all the time, in all matters, for all things.

The world over, legal practice is developing along new approaches from which our jurisdiction could derive immense benefits. However, many would say that these new

approaches always existed in society but had been abandoned when too much emphasis was given to the text of the law rather than the outcome of the dispute.

We encourage parties to make greater use of section 131 of the Code of Civil Procedure. It provides:

The parties may at any stage of the suit before judgment, appear in court and file a judgment by consent signed by both parties, stating the terms and conditions agreed upon between them in settlement of the suit and the amount, if any, to be paid by either party to the other and the court, unless it see cause not to do so, shall give judgment in accordance with such settlement.

We have intervened in many cases with positive results: see for example, *Jamshed Pardiwalla v Naheed Pardiwalla* SCA 15/1993, LC 48; *Viral Dhanjee v Suzan Margaret Dhanjee* SCA 13 of 2000, LC 208; *Samuel Butler Estico v Doris Songoir* SCA 37 of 2007; *Jessley Cecile v Rose* SCA 8 of 2009, LC 338.

Coming back to this case, having perused the agreement reached to ensure that it is in compliance with section 131 and, finding no cause for not doing so, we give judgment in accordance with the settlement as reached between the parties.

Counsel are commended for their efforts.

#### **Judgment by consent**

The parties to the above suit have agreed to a sum of nine thousand Seychelles Rupees (R 9000) for loss of earnings in favour of the appellant.

Each party to bear his own cost.

**Record: Court of Appeal (Civil No 9 of 2010)**