IN THE SEYCHELLES COURT OF APPEAL

Philip Rath **APPELLANT**

VS

Berard Monthy **RESPONDENT**

SCA No: 33 of 2012

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Before: MacGregor, P., Domah, Twomey, JJA

Counsel: For Appellants: Mr. France Bonté

For Respondent: Mr. Frank Elizabeth

Date of Hearing: 08th August 2014

Date of Judgment: 14th August 2014

JUDGMENT

F. MacGregor, President

1. This case arose ten years ago as a result of the collapse of a retaining wall between the Respondent's property and the adjoining property of the Appellant, at La Misere, ostensibly because of exceptionally heavy rainfall in mountainous terrain.

2. The Appellant claimed damages arising from the collapse of the wall. An agreement was reached in court between the parties and the court ordered the Respondent to repair the damages caused by the collapse of the wall. The repair

3. of the wall did not however materialize as the Appellant claimed the conditions for undertaking the repair to the wall were not complied with whilst the Respondent claimed his workers were refused access to the Appellant's property on several occasions and thus was not able to comply with the agreement.

4. As a result of the wall not being repaired the Appellant filed a second suit, this time claiming breach of contract, encroachment, trespass to property, loss of enjoyment of retaining wall, space and privacy and moral damage. The Respondent resisted the claim stating that the matter was *res judicata*as it had been previously heard and that in any case the collapse of the wall was an act of God, force majeure and a result of the heavy rain. He also claimed that in the alternative the collapse of the wall was also due to the fault and negligence of the Appellant as the wall had been built without proper plans and expertise or permissions from the Department of Planning.

5. Having perused the transcript we agree that the Respondent had a point as far as res judicata is concerned. The matter had been resolved by learned Judge Perera. It is unclear how the present case was entertained anew but it is certain that it has contributed to the delay of ten years from the time of filing of the original suit to the final determination of this matter.

6. In his judgment dated 31st October 2012, the learned Chief Justice held that the Appellant had neither established the cause of action nor the injury, loss and damage arising there from.

7. The Appellant has appealed this decision on two grounds, namely:

(1) The whole of the decision above-referred is wrong in law.

(2) The learned Judge above referred wrongly appreciated the evidence on record and reached a decision which is contrary to the principles of natural justice and grossly unreasonable in all the circumstances of the case.

Ground 1

8. We are unable to consider this ground of appeal as it is too vague and general. No submission to enlighten this court on the legal principles challenged was advanced at the hearing of the appeal either. Rule 18(7) of the Seychelles Court of Appeal Rules provides:

> *"No ground of appeal which is vague or general in terms shall be entertained, save the general ground that the verdict is unsafe or that the decision is unreasonable or cannot be supported by the evidence."*

In the circumstances we dismiss this ground of appeal.

Ground 2

8. Although couched in one ground, this ground of appeal raised three issues, namely that:

(1) the evidence on record was wrongly appreciated by the trial Judge.

(2) the trial judge reached a decision contrary to the principle of natural justice.

(3) the decision of the trial judge is grossly unreasonable in all the circumstances of the case.

We consider them in turn.

Evidence

9. The only evidence adduced was the testimony of the Appellant, reproduced verbatim by the learned Chief Justice in his judgment and clearly analysed before he came to the conclusion that there was no imputation of fault or cause of the incident on the Respondent. In fact it was never established who had ownership or control of the wall. We are of the view that the trial judge is the best judge of facts and we can find no reason to interfere with his finding. That part of the ground of appeal has no merit and is dismissed.

Natural Justice

10. Counsel for the Appellant did not make any convincing submission on this issue. We understand natural justice to mean procedural fairness both in the sense of the parties being given a fair chance to argue and defend their case and also in terms of an unbiased decision maker. We are unable to find evidence of either principle having been breached and dismiss this part of the ground of appeal.

Unreasonable decision

11. Counsel for the Appellant submitted that the Respondent failed to adduce any evidence in support of his case and simply relied on "a submission of no case to answer" which he states is a concept unknown to our civil law. It is true that the Seychelles Civil Procedure Code makes no clear provision in civil proceedings for the procedure used in criminal cases when the defendant elects not to call any evidence and relies on the fact that the prosecution has not discharged its burden of proof. However, section 134 of the Code provides:

> *"If any part to a suit to whom time has been granted fails to produce his evidence or to cause the attendance of his witness or to perform any other act necessary to the further progress of the suit, for which time*

has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith."

We are therefore of the view that on this basis it can reasonably be inferred that defendants in civil suits after electing not to call any evidence are entitled to as the trial judge to rule that the plaintiff has not established a prima facie case (see *Victor v Azemia* (1977) SLR 195, *Marzorchi v Toulon* (unreported) SC (Civ App) 37/2012). The term "no case to answer" might be infelicitous and more appropriate in criminal cases but the purpose of the procedure is the same.

12. In the event we are of the view that it was the correct procedure adopted as, as has been pointed out by Respondent's Counsel no cause of action was established by the Appellant against the Respondent. We are therefore unable to agree with Counsel for the Appellant that the decision reached by the learned Chief Justice was "grossly unreasonable" in the circumstances.

13. Accordingly this appeal is dismissed with costs.

F. MacGregor	S.B. Domah	M. Twomey
Msoffe President	Justice of Appeal	Justice of Appeal

Dated this 14th day of August 2014, at Palais de Justice, Ile Du Port