

# IN THE SEYCHELLES COURT OF APPEAL

**[Coram: F. MacGregor (PCA) ,A.Fernando (J.A) ,J. Msoffe (J.A)]**

## **Civil Appeal SCA 29/2014**

**(Appeal from Supreme Court Decision CS 30/2010)**

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Public Utilities Corporation

Appellant

Versus

Giovani Julienne

Respondent

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Heard: 12 April 2017

Counsel: Mr. S. Rajasundaram for the Appellant

Mr. France Bonte for the Respondent

Delivered: 21 April 2017

## **JUDGMENT**

F. MacGregor (PCA)

- [1] Case of the material provision of utilities of water and sewage by the Public Utilities Corporation, the Appellant met with complaint of Respondent over whose property water pipes etc of the Appellant lay. The complaint was of “continually digging our client’s premises in-order to repair main piping carrying huge amounts of water. Our client’s concern is not only the inconvenience of drilling, digging, blockage of entrance, patchy replacement of concrete, uneven surfaces and broken road grill but the possible structural damage to our client’s main building” for which the Respondent claimed were a nuisance, threats and causing damages therefrom. The Supreme Court below found the Appellant/Defendant liable and awarded damages to the Plaintiff now Respondent here.
- [2] There are 4 grounds of appeal essentially arguing the Judge below made too much out of an apology letter from the Appellant and that there was no evidence to otherwise support his finding on liability and quantum of damages.

[3] This case is essentially concerned with evidence of facts, the general rule being the trial Judge is the best judgment of facts unless exceptional ground is shown otherwise.

[4] The evidence is easily gleaned from admissions and other factors reflected in,

- a) correspondence between the parties
- b) the pleadings in court
- c) the conduct of the parties in court
- d) witness of Respondent consistent with a, b, & c above
- e) the settlement “attempts” between the parties.

[5] Correspondence

From 17<sup>th</sup> March to 9<sup>th</sup> September 2009, all without reservations of, without prejudice of, or with reservation, in

Exhibits P1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Of these exhibits of particular note exhibit 2 refers to:-

*We understand that the polythene pipe found on the above property is old and causing continuous burst. We do hope by next week work will be started to replace the old pipe with a new ¾” polythene pipe of which it will be put in a sleeve to avoid the occurring of continuous burst.*

*PUC (Water and Sewerage Division) apologise for the inconvenience caused by the above matter.*

*Thanking you for your understanding and cooperation.*

*Yours faithfully.*

*PLACIDUS DE SILVA (MR)*

PRINCIPAL ENGINEER (WATER DISTRIBUTION)”

And there is no denial of Plaintiff’s complaint and claim of damages referred to, in exhibit 1 replied to here in exhibit 2 above quoted.

[6] The Pleadings

Of the Defence in paragraphs 2, 3, 4, 5, 7, 9, 10 & 12 clearly implicates concedes and admits facts of damages pleaded in the Plaint. Of particular note in paragraphs 3, 5 and 7 which read as follows:

- “3. The defendant admits the paragraph 3 of the Plaint in that the defendant has acted *bonafide* to remedy the technical issues that the Plaintiff was facing with at that time.
5. The Defendant admits the averments of paragraph 5 of the Plaint in that the Defendant, once again on *bonafide* grounds, wanted to remedy the situation by offering two options as averred in the Plaint, but the defendant by virtue of his Attorney’s letter of 21<sup>st</sup> May 2009, wanted only cash amount of SR80,000.00 being purported damages. The Plaintiff was aware that the defendant wanted to fix the problems with no costs payable by the Plaintiff and fixed the problem but insisted the damages in the sum of SR80,000.00 which is malafide on the part of the Plaintiff.
6. In the premise of paragraph 5 above, the averments of the paragraph are admitted but specifically denies that those reasons for rejection of two options as baseless and untenable. The defendant was and is the best person, technically to arrive at a suitable conclusion so as to remedy the situation and the defendant is not expected therefore simply to pay off the Plaintiff as was claimed.
7. The contents of the letter of 1<sup>st</sup> June 2009 by this defendant are self explanatory for which the Plaintiff issued a letter through his

Attorney, dated 10<sup>th</sup> June 2009 insisting and reiterating the payment of SR80,000.00 without responding to the Plaintiff's further suggestion averred in its letter of 1<sup>st</sup> June 2009. The Defendant submits that there was and is no justification for the Defendant simply to pay the sum claimed while it was continuously willing to repair and redo the necessary tasks at its own costs."

[7] Conduct of Appellant's Counsel, including cross-examination by Appellant's Counsel and absence at certain sittings, of 2<sup>nd</sup> November 2012, 16<sup>th</sup> May 2013.

[8] Witness of Respondent's testimony was consistent with the correspondences referred to, of material admissions and evidence with the pleadings referred, plus the settlement attempts to be referred to.

[9] Settlement attempts:

There were 15 adjournments in the court below for that purpose spanning over 3 years, from 14<sup>th</sup> July 2011 to 4<sup>th</sup> April 2014. It is startling to question whether this concerned responsible conduct of litigation. What are we to make of it? The Appellant recognized a matter to settle but was probably obstinate to an acceptable quantum.

[10] Standard of Proof:

Appellant tried to argue in certain matters of evidence that there should have been documentary evidence vis-à-vis damages and independent corroboration of Respondent's evidence. On being asked for authorities of this, he was unable to do so. Not surprisingly as the standard in civil cases is that of the balance of probabilities which is what the trial Judge went by and rightly so.

[11] Conclusion:

We will respect the general rule that the trial Judge is the best judge of facts unless there are exceptional reasons to differ from him. It is clear to us the trial Judge had ample evidence to find for the Respondent and so have no reason to disturb his findings.

[12] In the circumstances this appeal fails in its entirety, with costs to the Respondent.

F. MacGregor (PCA)

**I concur:.** ..... A.Fernando (J.A)

**I concur:.** ..... J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 April 2017