

# IN THE SEYCHELLES COURT OF APPEAL

**[Coram:** F. MacGregor (PCA) , M. Twomey (J.A) , B. Renaud (J.A)**]**

## **Civil Appeal SCA 20/2015 (Appeal from Supreme Court Decision CS 80/2014)**

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Giselle Walter

Appellant

Versus

Wellinson Baker

Respondent

Also known as Wilson Baker

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Heard: 30 November 2017

Counsel: Mr. John Renaud for the Appellant

Mr. France Bonte for the Respondent

Delivered: 07 December 2017

### **JUDGMENT**

F. MacGregor (PCA)

This case involves a number of issues involving threats by a neighbour and erosion and damage to neighbouring land and property by the same neighbouring land owner.

However, before the Court below could hear the plaint on the merits it was dismissed by a default judgment for the Plaintiff, apparently for the reason that the Defendant failed to appear and to file a statement of defence within the time ordered by the Court as per

section 128 of the Seychelles Civil Procedure Code, hereinafter referred as “the Procedure Code”.

That section reads as follows:

*“On the date to which the suit has been adjourned under the last preceding section, the parties shall appear and the court shall then adjourn the suit to a date to be fixed by the court for the hearing. If the defendant has neglected to file his statement of defence within the time ordered by the court, the court may either give judgment for the plaintiff on his claim or grant further time, subject to such order as to costs, as to the court may seem fit.”*

The proceedings of the case indicate that the Applicant failed to appear and file the statement of defence on the date ordered by the Court. The issue remains as to whether the matter was heard at the time previously set by the Court.

4. The transcript of proceedings clearly show at page 16 that the time fixed for the submission of the statement of defence was 10.00 a.m. on 28<sup>th</sup> October 2015, yet the records show at page 17 that the case was called at 9.00 a.m. and the Plaintiff now Appellant being absent, default judgment given there and then. Clearly 9.00 a.m. was not the time ordered by the Court as per the record and the Appellant cannot be faulted for that particular failure.

Ground 1 of the Appellant/Plaintiff is that the time of that particular court fixture was changed and not to the knowledge of the Appellant. On the face of the record of proceedings alone this ground succeeds.

Grounds 2 and 3 refer to the fact that a request for further and better particulars had been served on the Respondent’s Attorney by the time he made application for default judgment and to which presumably an answer was expected before a statement of defence could be filed.

On the record at page C, a copy of that request dated 23<sup>rd</sup> October 2015 and received by the Registry of the Supreme Court on 26<sup>th</sup> October well before the material date of 28<sup>th</sup> October for the filing of the statement of defence can be seen. This was either ignored or not noted by the Court. Accordingly, those grounds also succeed.

We find that the end result is to allow the appeal. We set aside the judgment of the court below remit the matter to the Supreme Court for continuation. We grant the costs of this appeal.

F. MacGregor (PCA)

**I concur:.** .....

M. Twomey (J.A)

**I concur:.** .....

B. Renaud (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 07 December 2017