IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. Fernando (J.A), M. Twomey (J.A), F. Robinson (J.A)**]**

Civil Appeal SCA 37/2016

(Appeal from Supreme Court Decision CS 124/2012)

Sylvette Monthy — Appellant

Versus

Seychelles Licensing Authority — 1st Respondent

Elvis Chetty — 2nd Respondent

Heard: 07 December 2018

Counsel: Mr Elizabeth for the Appellant
Mrs Lansinglu for the First Respondent
Mr Hoareau for the Second Respondent

Delivered: 14 December 2018

JUDGMENT

F. Robinson (J.A)

The background

1. This is an appeal against the judgment of a learned trial Judge of the Supreme Court whereby he found that the appellant (then the plaintiff) had failed to prove her case against the first and second respondents (then the first and second defendants, respectively), on a balance of probabilities, under articles 1382 and 1384 of the Civil Code of Seychelles Act (hereinafter referred to as the *"Civil Code"*), with respect to the transfer of title to the appellant's vehicle to one Marcus Macgaw, which the appellant had claimed was illegal and amounted to a *"faute"* in law, for which the first and second

respondents were jointly and severally liable. The learned trial Judge did not make any order as to costs.

2. The relevant facts giving rise to this appeal can be summarised as follows. In his personal answers, the second respondent, an Attorney-at-Law, answered that he signed and stamped P1 on the 7th December 2011.

3. P1, a letter, dated the 5th December 2011, contained the following:

> "Seychelles Licensing Authority
> P.O.Box 3
> Mahe
> Seychelles
>
> 05/12/2011
>
> Dear Sir/Madam
>
> I am giving my son Aubrey Monthy to do the transfer of my car S18870 to the above mention name ………… As i m selling the car is on my name than currently I not available to do so as I out of the country, the car is on my name Sylvette monthy *(Sic)*.
>
> Your sincerely
> […]
> S Monthy".

4. He was not present and did not see the appellant sign P1. P1 stated that the appellant had given her vehicle to her son, Aubrey Monthy, and that she was selling her vehicle to her son. Aubrey Monthy brought P1 to him [the second respondent] requesting him to sign and stamp it. The second respondent knew Aubrey Monthy as a client of his Chambers. He did not speak to the appellant at any point in time in relation to P1.

5. When cross-examined by Counsel for the first respondent, the second respondent stated that he did not know the appellant. He denied the suggestion of Counsel that he attested P1 and reiterated that he only signed and stamped it after being told by Aubrey Monthy that *"it was a procedure that the licensing department needed because everything else was resolve between all parties."*

6. He received a call from Miss Contoret, who asked him if he had stamped and signed P1 and told him that the appellant was saying that she had not given her son the authority to transfer title to her vehicle. He told Miss Contoret that she should refuse to do the transfer, but she responded by stating that the first respondent had already made the transfer.

7. When cross-examined by his Counsel, he reiterated that he did not attest P1. He could not confirm whether the handwritten signature on P1 was that of the appellant. He explained that if he had attested P1, he would have written by hand on P1 that the appellant had signed it in his presence on such a date. He added that the hand written words *"no objections"*, which appeared on P1, were not written by him. He stated that no officer or representative of the first respondent had contacted him in relation to P1, before making transfer of title to the vehicle.

The evidence of the appellant

8. The appellant is the mother of Aubrey Monthy who has passed away. She filed a case against the first respondent because it *"unlawfully allowed and permitted the transfer and registration and sale of [her] motor vehicle without [her] prior knowledge authorization permission or consent".*

9. She contacted the first respondent in relation to her vehicle after she had seen a person, whom she did not know, driving it. She neither authorised anybody to transfer title to her vehicle, nor did she sell her vehicle to anybody. With reference to P1, she stated that she did not sign it, and that the signature which appeared on it, was not hers. She did not know who had prepared P1. The second respondent communicated with her in relation to P1 after the first respondent had contacted her with regards to what had happened. A supervisor of the first respondent had told her by phone that the first respondent had transferred title to her vehicle on the basis of a letter which she [the appellant] and the second respondent had signed. She repeated her amended plaint which stated, in part *"<u>the act or omission of both defendants amount to a "faute" in law and she was holding them jointly and severally liable</u>"*. (Emphasis supplied)

10. When cross-examined by Counsel for the first respondent, she stated that she had lent her vehicle to her son during the months of November and December 2011. She neither gave her son the authority to sell her vehicle, nor did she enter into an agreement with him to sell it.

11. When cross-examined by Counsel for the second respondent, she stated that she had not been in contact with the second respondent until the second respondent called her after the incident. She was aware of P4, a letter, dated the 27th December 2011, written by her Counsel, Mr. Elizabeth, and sent to the first respondent. She referred to and approved the following extracts from P4:

> "We act for the above-named and we are instructed that your employee, servant or agent allowed or permitted motor vehicle registration number S18670 belonging to our client to be illegally transferred to and registered in the name of a third party without the knowledge or consent of our client.
>
> We are further instructed that the person purporting to have authority to transfer the said motor vehicle had allegedly forged the name of our client on a letter which Mr. Elvis Chetty, Notary Public, had counter-signed and stamped…
>
> It is also our instructions that Mr. Chetty had neither acknowledged nor endorsed the said letter on the basis that he had witnessed the signature of our client on the said letter.
>
> The Seychelles Licensing Authority was therefore at fault in accepting this letter as authority to illegally effect the transfer of our client's motor vehicle thereby depriving her ownership of her car."

12. When re-examined, she stated that she was in Singapore between the 5th December 2011 and the 7th December 2011.

The evidence of Miss Flavia Contoret

13. Miss Contoret has been the Principal Licensing Officer of the first respondent for over thirty years. She stated that the first respondent can transfer title to the vehicle of an owner who is out of the country when the owner has signed a letter granting authorisation to another *"to sign on his or her behalf and the letter must be stamped and*

signed by a lawyer." With reference to P1, she stated that the hand written words *"no objections"* meant that the first respondent was satisfied that procedures for the transfer of title had been fulfilled.

14. When cross-examined by Counsel for the appellant, she stated that at the relevant time, she was the *Manager Traffic Licensing.* On the 7th December 2011, she performed the transfer of title to the vehicle, on behalf of the first respondent. She is unaware as to whether the second respondent witnessed or attested P1. The second respondent signed P1, and that the stamp and signature of the second respondent on it, was adequate for the first respondent to make transfer of title.

15. She admitted that she phoned the second respondent who told her that he had signed and stamped P1. She also agreed with Counsel that the second respondent did not tell her that he had witnessed the appellant's signature.

16. The following discourse between Counsel for the appellant and Miss Contoret is pertinent with respect to the allegation of liability against the first respondent:

> "Q: I put it to you that you were therefore at fault in accepting this letter and authorizing the transfer of the motor vehicle belonging to Sylvette Monthy.
>
> A: **No we were not at fault.**
>
> Q: I also put it to you that because of your fault Mrs Monthy has now been deprived of her motor vehicle which was sold unlawfully by Aubrey Monthy with your authorisation.
>
> A: Witness does not answer the question.
>
> Q. I put it you madam that you are therefore liable that Seychelles Licensing Authority your employer to pay Mrs. Sylvette Monthy the sum of 350,000/- rupees…
>
> A: I not know about Mrs Monthy life anyway her son is also involved in this case.". (Emphasis supplied)

17. When cross-examined by Counsel for the second respondent, she stated that the appellant's son signed the transfer of title to the vehicle. She spoke to the second respondent about the transfer after the appellant had complained to her about that

transfer.

18. The second respondent inserted *"7th December 2011"* on P1. The second respondent did not attest P1. She is unaware as to whether the appellant had signed and dated P1 on the 5th December 2011, because she was not present when it was prepared. She had observed that there were two dates inserted on P1, but that it did not occur to her to contact the second respondent about the dates. When asked by Counsel how the appellant could have signed P1 on the 5th December 2011, since, as stated in P1, she was *"… out of the country "*, her response was *"A: I was not there at that time how could I know."*. Moreover, when asked by Counsel *"Q: You just accept any statement when a person is out of the country without ascertaining it"*. She answered *"A: We do because we are not responsible."*

19. When re-examined, she stated that it is not a requirement for an Attorney-at-Law who signs a letter granting authority to transfer title to a vehicle to state on the letter that *"he is the person who attest*[ed] *the document."*

The evidence of Miss Cheryl Shammane

20. Miss Shammane is an Assistant Licensing Officer of the first respondent. She stated that Aubrey Monthy brought P1 to her which granted authority to transfer legal title. Miss Contoret wrote the words *"no objection"* by hand on P1, and signed below the said words. Aubrey Monthy signed the transfer of title form. A letter of authorisation from an owner of a vehicle to another person that is signed and stamp by an Attorney-at-Law, is adequate for that person to sign the transfer of title form.

21. When cross-examined by Counsel for the second respondent, she stated that she believed that P1 was an *"authentic document"* because it was signed and stamped by an Attorney-at- Law. If P1 had not been signed and stamped by an Attorney-at-Law, then transfer of title to the vehicle would not have been effected. She added that she had read P1 to mean that the appellant had signed it in the presence of the second respondent because the signature of the appellant, which appears in the first respondent's *"system"*, is the same as that on P1. She stated that although the word *"authority"* did not appear on P1, Miss

Contoret approved the transfer of title.

22. When cross-examined by Counsel for the second respondent, she stated that she noticed that there were two dates on P1. When asked by Counsel *"Q: Did not that give you an indication or got you thinking that this document has not been made before Mr. Chetty therefore?"* Her response was *"A: I do not know."* Later in the proceedings she stated that she did not rely on the signature and stamp of the second respondent to effect the transfer of title, rather that she verified whether the signature of the appellant was correct.

The evidence of the second respondent

23. The second respondent stated that Miss Contoret, of the first respondent, gave him the phone number of the appellant during the same conversation when she was informing him of the transfer of title to the appellant's vehicle.

24. When cross-examined by Counsel for the appellant, in relation to P5, a letter, dated the 13th January 2012, *"from G. Samson (Mrs) For Chief Executive Officer"* of the first respondent, which stated *"our traffic manager Ms Contoret phoned Elvis Chetty who confirmed that he witnessed a letter of authorisation"*, the second respondent denied that he *"witnessed the letter of authorisation"*.

The appeal

25. The grounds of appeal on which the appellant relies to challenge the judgment, have been narrowed down to four. They are as follows:

> "1 The learned Judge erred in law and in fact when he concluded that "I cannot find any other action that the 1st Defendant was reasonably expected to take so as to prevent the son of the Plaintiff to transfer that vehicle."
>
> 2. The learned Judge erred in fact when he concluded that "Both witnesses for the 1st defendant, Ms. Shammane and Ms. Contoret verified the signature on Exhibit P1 as against the Transfer Form held by the 1st Defendant and they were satisfied that the signature was similar."

> 3. The learned Judge erred in his finding that ″… the Plaintiff had not made her case against the 1st Defendant I therefore find the action of the 1st Defendant had not caused any injury to the Plaintiff thus did not make her to suffer any loss and damages as a result.″
>
> 4. The learned Judge erred in his findings that ″I accept the contention of the 2nd Defendant that by signing, dating and stamping Exhibit P1, he was not attesting that the Plaintiff actually signed Exhibit P1 in his presence and that the said signature is indeed that of the Plaintiff.″

<u>Grounds 1, 2 and 3 of the grounds of appeal formulated against the first respondent</u>

26. In the light of the pleadings, we consider it appropriate to consider for the first time on appeal, whether the appellant's pleadings disclosed a reasonable cause of action under article 1384 *alinéa* 3 of the Civil Code against the first respondent, a body corporate, established under the Licences Act. The plaint must clearly disclose whether direct or vicarious responsibility is being alleged: see *Confait v Mathurin SCA 39/1994*, JD 9.3.1995, LC 63. This point of contention was argued at length on the day of the hearing of this appeal. Counsel for the appellant was unable to assist the court with any reliable submissions.

27. Section 92 of the Seychelles Code of Civil Procedure provides: *″92 The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer…″.*

28. We are allowed to intervene at this stage, on the basis of Rule 31 (3) of The Seychelles Court of Appeal Rules 2005, enabled under article 136 (1) of the Constitution, which provides for the powers of the Court of Appeal on appeal:

> ″31 (3) The court may draw inferences of fact, and give any judgment, and make any order which the Supreme Court ought to have given or made, and make such further or other orders as the case requires.″.

29. We are satisfied that it is fair and reasonable for us to intervene at this stage, for the

following reasons:

(a) the averments in the plaint expressed that the cause of action relied on by the appellant against the first respondent is its liability under article 1382 of the Civil Code;

(b) the plea was understood by Counsel for the appellant as expressing a cause of action against the first respondent under articles 1382 and 1384 of the Civil Code;

(c) the learned Judge read the plea in the same way, as can be interpreted from his judgment.

In so doing we remain alive to the fact that we are deciding this issue ex facie the amended plaint. We do not propose to recite the whole amended plaint. It is adequate to state that the case for the appellant was essentially that:

> "5. The Plaintiff avers that on or about the 17th January 2013 the 1st Defendant filed their defence wherein they denied liability and averred that they relied on an attested copy of a letter purporting to allow the Plaintiff's son to conduct the transfer on behalf of the Plaintiff.
>
> 6. The Plaintiff avers that the 1st Defendant attached a copy of a letter dated 5th December 2011 stamped with the name of the 2nd Defendant which stamp is dated 7th December 2011 and allegedly signed by the 2nd defendant purporting to confer authority on the Plaintiff's son to sell the said motor vehicle S 18870.
>
> 7. The Plaintiff avers that the said letter contained a forged signature and that she never signed the said letter nor gave her son or anybody else the power, authority, permission or consent to sell, transfer, dispose of or otherwise deal with the said motor vehicle in such a way so as to deprive her of the ownership and title of her motor vehicle so as to deprive her of the ownership and title of her motor vehicle.
>
> 8. The Plaintiff avers that the said sale and registration of her motor vehicle in the name of the unknown third party unlawfully and permanently deprived her of ownership of and title to, her property, namely vehicle registration number S18870.
>
> 9. **The Plaintiff avers that the act or omission of the Defendants amount to a *"faute" in law*** for which both Defendants are jointly and

severally liable to make good to her.

10. By reason of the matters aforesaid the Plaintiff has suffered loss and damages for which the Defendants are jointly and severally liable." (Emphasis supplied)

30. We have carefully considered the pleadings that we have narrated above. It is plain to us that the first respondent has been directly sued as a tortfeasor under article 1382 of the Civil Code. Having considered the evidence in the light of the submissions of the appellant, the learned trial Judge took the view that the first respondent a body corporate, could only act through its préposés under article 1384 *alinéa* 3 of the Civil Code. That was, to our minds, the correct approach. However, later in the judgment, the learned trial Judge held the view that:

"[35] In the light of the reason stated, I find that the **action of the 1st Defendant in relying on Exhibit P1 to allow the transfer of motor vehicle S18870 to a third party, by the son of the Plaintiff does not constitute a "faute" in law in terms of Article 1382 of the Civil Code of Seychelles**.". (Emphasis supplied)

That was, to our minds, an incorrect approach. We give reasons.

31. The first respondent is a body corporate, which can only be vicariously liable for the wrongdoings of its *préposés*. *"Suivant une formule maintes fois reproduite par la Cour de Cassation, "la responsabilités des faits du préposé, mise par l'article 1384, paragraph 3, du code civil à la charge du maître ou du commettant, suppose que ce dernier a eu le droit de donner au préposé des ordres ou des instructions sur la manière de remplir les fonctions auxquelles il est employé" (V. notamment : Civ. 15 juin 1926,…", Dalloz Repertoire de Code Civil Tome IV Préemption-Servitudes.* The first respondent may, therefore, be sued in its capacity as master for the *"fautes"* committed by its officers who would be its *"préposés" f*or any tortious act or omissions which they may have committed in the discharge of their duties.

32. The cause of action against the first respondent should be founded on article 1384 of the Civil Code. Therefore, the *"lien de préposition"* of master and *"préposés"* and the *"faute"* of the *"préposés" in the* discharge of their duties are essential requirements and must be

specifically pleaded or satisfactorily apparent from the wording of the plaint to articulate an action within the ambit of article 1384 *alinéa* 3 of the Civil Code. A reading of the averments in the plaint, established that they fail to convey that the cause of action relied on by the appellant against the first respondent is its vicarious liability under article 1384 *alinéa* 3 of the Civil Code and not its liability under article 1382 of the Civil Code.

33. In the light of the above, we hold the view that the plaint does not disclose a reasonable cause of action against the first respondent. In view of our conclusion, it is unnecessary to consider the evidence on the merits on the basis of the issues raised by the appellant's grounds 1, 2 and 3 of her grounds of appeal against the first respondent. Grounds 1, 2 and 3 of the grounds of appeal fail.

Ground 4 of the grounds of appeal formulated against the second respondent

34. In the light of ground 4 of the grounds of appeal framed against the second respondent, we consider it appropriate for the first time, on appeal, to consider the question as to whether the plaint discloses a reasonable cause of action against the second respondent. This issue was raised by Counsel for the second respondent in his main heads of arguments, in reply to ground 5 of the appellant's grounds of appeal, which ground 5 was subsequently dropped.

35. The submission of Counsel for the second respondent is that the appellant's amended plaint does not disclose any material facts which establish that the second respondent had committed any wrongdoing. In that regard, Counsel explained that the amended plaint did not contain any averment to the effect that the second respondent attested or witnessed the document, nor that the second respondent had illegally signed and stamped the document.

36. Section 71 (d) of the Seychelles Code of Civil Procedure provides: *"71 The plaint must contain the following particulars: ... (d) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action;"*.

37. We may for that purpose consider the principles that obtain in England under Order 18, r 7 (1) which reads as follows:

> ″Every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits″ (Order 18, r. 7 (1).
>
> This rule involves and requires four separate things:
>
> (i) Every pleading must state facts and not law.
>
> (ii) It must state material facts and material facts only.
>
> (iii) It must state facts and not the evidence by which they are to be proved.
>
> (iv) It must state such facts concisely in a summary form.″

38. *"The word "material" means necessary for the purpose of formulating a complete cause of action, and if any one "material" fact is omitted, the statement of claim is bad.'* (*Bruce v Odhams Press Ltd.* [1936 1 KB at p. 697]). The same principle would apply to the defence.

39. It is also useful to bear in mind the object of pleadings as laid down in Odgers' Principles of Pleading in Civil Actions in the High Court of Justice, Twenty-Second Edition (1981) by D. B. Casson and I. H Dennis at page 88:

> ″The function of pleadings then is to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision. In order to attain its object, it is necessary that the pleadings interchanged between the parties should be conducted according to certain fixed rules,… The main purpose of these rules is to compel each party to state clearly and intelligibly the material facts on which he relies, omitting everything immaterial, and then to insist on his opponent frankly admitting or explicitly denying every material matter alleged against him. By this method they must speedily arrive at an issue. Neither party need disclose in his pleading the evidence by which he

> proposes to establish his case at trial. But each must give his opponent a sufficient outline of his case.".

40. We have stated the case for the appellant at paragraph 29 of this judgment. It is incumbent upon us to determine ex facie the amended plaint whether paragraphs 5, 6, 7 and 8 state facts necessary for the purpose of formulating a complete cause of action against the second respondent.

41. Having considered paragraphs 5, 6, 7 and 8 of the amended plaint and the submissions made by Counsel for the second respondent, we agree with Counsel that the statements made in the said paragraphs of the amended plaint, relate only to the wrongful and unlawful acts and omissions allegedly committed by the first respondent. The appellant did not state in her amended plaint the material facts on which she relies to meet her claim against the second respondent.

42. In the light of the above, we hold the view that the plaint does not disclose a reasonable cause of action against the second respondent. In view of our conclusion, it is unnecessary to consider the evidence on the merits on the basis of the issues raised by the appellant's ground 4 of her grounds of appeal against the second respondent. Ground 4 fails.

43. In the case of *Marie-Ange Pirame v Armano Peri SCA 16 of 2005* (unreported), the Court of Appeal at paragraph 8 of the judgment, held *"this court did state in (CA 8/97) inter alia that evidence outside the pleadings although not objected to and the relief not pleaded for …, cannot and does not have the effect of translating the said issues into the pleadings or evidence. Indeed we should reiterate here that the above quoted views of this court still remain good law".* (Emphasis supplied)

44. In *Tex Charlie v Marguerite Francoise Civil Appeal No. 12 of 1994* (unreported), the Court of Appeal held thus *"the system of Civil justice in this country does not permit the court to formulate a case for the parties after listening to the evidence and to grant a relief not sought by either of the parties that such evidence may sustain without amending the plaint. In the adversarial procedure the parties must state their respective cases on*

their pleadings…". (Emphasis supplied)

45. More recently in the case of *Lesperance v Larue SCA 15 of 2015* (unreported), the Court of Appeal reiterated the fact that a court cannot formulate the case for a party.

The decision

46. For the reasons given above, we uphold the decision that the appeal should be dismissed but for the reason that the plaint discloses no reasonable cause of action against the first and second respondents. We make no order as to costs.

F. Robinson (J.A)

I concur:. **………………….** M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 14 December 2018

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. Fernando (J.A), M. Twomey (J.A), F. Robinson (J.A)**]**

Civil Appeal SCA 37/2016

(Appeal from Supreme Court Decision CS 124/2012)

Sylvette Monthy	Appellant

Versus

Seychelles Licensing Authority	1st Respondent
Elvis Chetty	2nd Respondent

Heard: 07 December 2018

Counsel: Mr Elizabeth for the Appellant

Mrs Lansinglu for the 1st Respondent

Mr Hoareau for the 2nd Respondent

Delivered: 14 December 2018

JUDGMENT

A.Fernando (J.A)

I agree with the conclusion reached by Robinson J.A that the appeal should be dismissed.

A.Fernando (J.A)
Signed, dated and delivered at Palais de Justice, Ile du Port on 14 December 2018