

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , B. Renaud (J.A), F. Robinson (J.A)]

Civil Appeal SCA 12/2014

(Appeal from Supreme Court Decision CS 155/2012)

The Estate of the late Berard Fanchette
Represented by its executrix Juliana
Gretel Tirant

Appellant

Versu
s

The Attorney General

Respondent

Heard: 03 May 2018

Counsel: Mr. Joel Camille for the Appellant

Ms. Brigitte Confait for the Respondent

Delivered: 11 May 2018

JUDGMENT

F. MacGregor (PCA)

1. This is a case in respect of an order of the Family Tribunal against the Appellant for imprisonment for domestic violence. The Appellant on 8th April 2011 was sentenced to a three month period of imprisonment which was suspended for one year by the Family Tribunal. That order lapsed on 7th April 2012. On 1st June 2012, almost 14 months after the order was made and two months after it had lapsed, the Family Tribunal wrongly activated the three month prison sentence and the Appellant was sent to Montagne Posee prison. The Appellant filed a plaint against the Respondent, challenging the decision of the Family Tribunal.

2. A *plea in limine* was raised by the Respondent on the issue of no cause of action and immunity of the Tribunal.
3. In its decision, the court held that the Attorney General could not be held responsible or vicariously liable for the conduct of the Family Tribunal.
4. It also held that by virtue of the Children’s Act read with the Constitution, the Family Tribunal had statutory immunity unless malice, bad faith, *inter alia*, was pleaded and proved.
5. Accordingly, the trial Judge dismissed the plaint on the strength of the plea, stating particularly that the preliminary objections raised by the defendant are upheld.
6. The Appellant appealed the ruling but during the course of the appeal process he passed away and the appeal was continued by the executor of his estate.
7. The grounds of appeal filed are that:
 - i. The Learned Judge erred in law and in concluding that the plaint does not disclose any cause of action against the Defendant
 - ii. The Learned Judge erred in law in concluding that in such matter alleging “faute”; the action should disclose failure to act in good faith or malice
 - iii. The Learned Judge erred in law for relying on the case of *Edmond Adeline v/s The Chairman, Family Tribunal of Seychelles & Constitutional case No.3 of 2000* in this matter.
8. At the very start of the hearing of the appeal, the Appellant conceded on the issues that are relevant for our determination namely that there was no cause of action since there was neither vicarious liability nor liability due to the Family Tribunal having immunity.
9. The matter before this Court then is purely a matter of law relating to the immunity of the members of the Family Tribunal.

10. The relevant provisions of law on the issue of immunity are found in the Constitution and the Children's Act.

i. – The Constitution provides in Article 119 (1)

(1) The judicial power of Seychelles shall be vested in the Judiciary which shall consist of -

*(a) the Court of Appeal of Seychelles;
(b) the Supreme Court of Seychelles; and
(c) such other subordinate courts or tribunals established pursuant to article 137.*

ii. – It also provides in Article 119(4) :-

“an Act establishing a subordinate court or tribunal referred to in clause (1) (c) may grant to the person exercising judicial functions in the court or tribunal immunity from proceedings or suit to the extent provided in clause (3).”

iii. – Article 137 provides

“Acts may –

(a) provide for the establishment of courts or tribunals which are subordinate to the Court of Appeal and Supreme Court, in this article referred to as “subordinate courts and tribunals”;

iv. – The Children's Act established the Family Tribunal, granted immunity in its section 78(7) :-

“A member of the Tribunal and its Secretary –

(a) shall not be liable for anything done by any one of them in good faith in performance of their functions under this Act;

(b) shall be deemed to be public officers for the purposes of the Penal Code.”

11. In view of the above provisions, we uphold the findings of the trial Judge below which we find further supported in the case of *Edmond Adeline v/s The Chairman, Family Tribunal*

of Seychelles [Constitutional case No.3 of 2000] and other authorities cited from other jurisdictions as listed herein below.

12. The case of *Edmond Adeline [Supra]* held firstly that the members of the Family Tribunal were immune from prosecution for acts done in good faith in the course of their duties and secondly that the government is not responsible directly or otherwise for the judicial acts of persons in the judiciary. Justice Karunakaran in that case went further to state –

“The very concept of vicarious liability in my view is the antithesis of direct liability. They cannot co-exist or at any rate be attributed to one and the same tort-feasor, who cannot play a double role in the same cause of action.” [Emphasis Ours]

13. In the Indian case of ***P. Sujanapal v State of Kerala & others [W.A No: 1524 of 2014]***, the following was held –

“...even under circumstances, where a Judicial officer may pass erroneous order, in the absence of misuse of such judicial power for personal gains or where the erroneous use of judicial power is shown to be dishonest or mala fide, such an officer is completely immune from consequences ensuing from such orders. It was observed as follows “A Judge may be liable to be proceeded against for a wrongful act done by him while acting in his personal capacity. He may also become liable to be proceeded against if he misuses his judicial power for personal gains or where the erroneous use of judicial power is shown to be dishonest or mala fide. Except in these exceptional circumstances, a judicial officer is protected from legal action of whatever nature for wrong orders rendered by him. Thus, when a judicial officer is acting judicially, even if he commits an error and passes an erroneous order, he would be protected from legal action”.

14. Having laid down the law, the bench went on to add a note of caution and supplement of its legal reasoning –

“The maintenance of the independence of the judiciary being a larger public interest which overrides the public law rights of individual citizens, an action for

compensation against a judicial officer for the issuance of an erroneous order is also opposed to public interest...”

15. The question whether the Attorney General is vicariously liable for the negligent conduct of a judicial officer (member of the Tribunal) requires a consideration of the concept of judicial independence in the context of delictual liability. There is ample authority to the effect that judicial independence for judicial officers means that they are protected from liability for their negligent conduct. (see ***Harms JA in Telematrix (Pty) Ltd v Advertising Standards Authority SA 2006 (1) SA 461 (SCA)***)
16. The fact that the judicial officer is immune from liability for his or her negligent conduct means there is no basis to hold any other party vicariously liable for such negligent conduct. Vicarious liability is in general terms defined as the strict liability of one person for the delict of another. What it means is that a person may be held liable for the wrongful act or omission of another even though the former did not strictly engage in any wrongful conduct. But, as liability is closely linked to the wrongful conduct of the primary wrongdoer it is inconceivable that there could be vicarious or secondary liability where there is no primary delictual liability. Consequently, because the judicial officer’s conduct is not regarded as wrongful in delict, vicarious liability cannot be imposed upon the government.
17. Accordingly, we dismiss the appeal with no order as to costs given the particular circumstances of this case.
18. Given the fact that the Family Tribunal may have exceeded authority, we invite the Appellant to consider the ex gratia payment that was offered by the Respondent. It is in any case on record that such an offer had already been made but not accepted by the Appellant.

F. MacGregor (PCA)

I concur:.

B. Renaud (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018

F. Robinson (J.A)

1. I had the advantage of reading in draft the judgment prepared by my learned Brother, the President of the Court of Appeal. I am also of the opinion that the appeal should be dismissed. I will give my reasons in a separate judgment which I will deliver on 25 May, 2018, at 10 a.m.
2. It is my view that the question as to whether or not the Family Tribunal may have "*exceeded authority*" does not arise for consideration.

F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018