

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA), F. Robinson (J.A) , L. Tibatemwa-Ekirikubinza(J.A)]

Civil Appeal SCA 31/2017

(Appeal from Supreme Court Decision CS 25/2016)

Antoine Madeleine

Appellant

Versus

The National Drugs Enforcement Agency
(Seychelles)
(rep. by its Chief Executive Officer,
Mr. Kishna Labonte, Mahe

Respondent

Heard: 04 December 2019

Counsel: Mr. Anthony Derjacques for the Appellant

Mr. Georges Thachett for the Respondent

Delivered: 17 December 2019

JUDGMENT

L. Tibatemwa-Ekirikubinza (J.A)

Background

1. This is an appeal against the judgment of the Supreme Court. The appellant filed a suit against the respondent claiming that the conduct of the Defendant's officers (which he referred to as his arrest, detention) with respect to their enquiries to the trafficking of dangerous drugs at his premises at La Louise and also at the Port Area had resulted in loss and damages to him.
2. The defendant's Counsel pleaded immunity and submitted that the claim in the Plaintiff was statutorily prohibited pursuant to section 7 of the Act; further that no fault is pleaded or

alleged against the Defendant; and that the Plaintiff is bad for joining multiple causes of action.

3. In other words, a Plea in *limine litis* was raised by the Defendant in respect of the Plaintiff. The Supreme Court disposed of the case on this premise, a point of law. The Learned Chief Justice ruled that the Plaintiff did not disclose any *faute* or any illegality on the part of the Defendant because of the statutory presumption of good faith.
4. The Defendant had also submitted that the Plaintiff was bad for pleading a multiplicity of actions because the Plaintiff had alleged both a delict on the part of the Defendant and a breach of the constitutional rights of the Plaintiff. The Court ruled that the Plaintiff contravened Article 1370 (2) Of the Civil Code which bars duplicity of action for contracts and delicts. It was further held that claims for the breach of constitutional rights are preferred before the Constitutional Court and cannot be joined in a civil claim for delict.
5. The Defendant further submitted that the Agency cannot be made vicariously liable for the acts of its agents because its agents are the employees of the State and not the employees of the Agency. The plaintiff argued that as a statutory authority the Agency is the employer of its agents.

The court ruled that a civil action based on an act of an agent must be instituted against the Government of Seychelles and not the Agency.

6. Based on the plea in *limine litis* and on the provisions of section 92 of the Civil Procedure Code which empowers a court strike out a case on the ground that it discloses no reasonable cause of action, the court dismissed the case with costs.

Dissatisfied with the decision of the Supreme Court, the appellant filed an appeal in this Court based on the following grounds:

- 1) The Learned Chief Justice erred in law in finding that the Plaintiff did not disclose a reasonable case of action against the Respondent.

- 2) The Learned Chief Justice erred in law in stating that the Respondent could not in law be vicariously liable for the acts or omissions of its agents as the employer.
- 3) The Learned Chief Justice erred in law in determining that bad faith could not be found or implied from the unlawful acts pleaded on the face of the Plaintiff.

He prayed that the Supreme Court Judgment is dismissed with costs for the Appellant in the Supreme Court and Seychelles Court of Appeal and that the action should proceed in the Supreme Court of Seychelles.

8. Although the appellant filed a Notice of Appeal with three grounds, his filed submission did not canvass ground 2 which deals with vicarious liability and whether the National Drugs Enforcement Agency was the right party to be sued.
9. In my view, the issue of whether the agency could be sued must be resolved before the court can delve into the legal issues arising from the other grounds. If the issue is answered in the negative there would be no need to resolve the other grounds since there would be no possibility to bind a party wrongly before court.
10. During Court proceedings on appeal, counsel for the appellant was specifically asked whether the “failure” to make submissions on ground 2 meant that the appellant had dropped the other grounds of appeal. His answer was equivocal. Consequently, I have proceeded on the assumption that the Appellant was still interested in pursuing all three grounds of appeal.
11. Is the National Drugs Enforcement Agency (NDEA) a body corporate and has the ability to sue and be sued?
12. In his oral submissions counsel for the appellant submitted that at the time the case was filed, the NDEA was a legal body that could be sued. He acknowledged that the NDEA Act of 2008 has since 2017 been repealed but referred to the essence of Section 31 (1) of the Interpretation and General Provision Act of Seychelles 2014 Cap 103 which provides

inter alia that once a suit is filed, a repeal of the relevant legislation does not affect an action already commenced in Court.

13. I have carefully studied the 2008 NDEA and have found no provision that recognizes the agency as a body capable of suing or being sued. The Appellant also referred this Court to the case of *Fanchette and ors v Estico* (unreported) SCA 30/2014 as an authority for the proposition that the agency can be sued in law. I find that the authority cited by counsel is of no help to the appellant's case. First to be noted is that the NDEA was sued *jointly* with the Commissioner of Police as well as the Government of Seychelles. Consequently, the question whether NDEA could be sued as a legal personality was never in issue. Similarly, in the case of *Sarah Carolus & Ors V Niall Scully & Ors (Civil Appeal SCA 23/2015) [2017] SCCA 45*, a case that was before this very court, filed in 2015 and thus before the 2008 NDEA was repealed, the agency was jointly sued with the Attorney General – recognition that the NDEA could not stand as the only defendant/respondent due its lack of legal personality.
14. Section 29(2) of the Seychelles Code of Civil Procedure stipulates that in all claims made against the Government of Seychelles, the Attorney General should be the defendant.

Finding

15. In conclusion, it is the finding of this Court that the NDEA was not the proper Defendant in the court below and therefore not the right Respondent before us on appeal.
16. Be that as it may, I must also make mention of the fact that the in the Supreme Court, the case was dismissed on preliminary points of law that both the plaintiff and the respondents agreed to take on. I therefore find that the appellant cannot in the circumstances seek to adduce evidence of unlawfulness or bad faith on appeal.

Conclusion.

17. The appeal is dismissed with costs.

L. Tibatemwa-Ekirikubinza (J.A)

I concur:.

F. MacGregor (PCA)

Signed, dated and delivered at Palais de Justice, Ile du Port on 17 December 2019