

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2021] SCCA 24
SCA 60/2018
(Appeal from CC 16/2017)

In the matter between

INTERNATIONAL SCHOOL SEYCHELLES
(rep. by Mr Rouillon)

Appellant

And

ANNA MARZOCHI & OR
(rep. by Mr Frank Elizabeth)

Respondents

Neutral Citation: *International School Seychelles v Marzochi & Or* (SCA 60/2018) [2021]
SCCA 24 11 June 2021

Before: Robinson, Tibatemwa-Ekirikibinza, Dingake JJA

Summary:

Heard: 25 May 2021

Delivered: 11 June 2021

ORDER

- (1) The Appeal is allowed
 - (2) The judgment is overruled
 - (3) The plaint is dismissed
 - (4) With costs.
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JUDGMENT

ROBINSON JA (TIBATEMWA–EKIRIKIBINZA JA concurring)

1. This is the appellant’s appeal against a judgment of a learned Judge of the Supreme Court on 21 November 2017, in which he refused the appellant’s plea in *limine litis* to

dismiss the new plaint on the ground that it constituted an abuse of process.

2. The record revealed that the respondent had filed three previous plaints (C. S. No. 16/2016, C.S. No. 23/2016 and C.S. No. 3/2017), for the same cause of action, which had been dismissed for want of prosecution. The three previous plaints were dismissed because Counsel for the respondent was late to present himself in Court. The record revealed that the appellant had filed a defence in each case.
3. The learned Judge held the view that the new plaint does not constitute an abuse of process because "[12] ... *no hearing of this case had taken place or concluded*".
4. The appeal hearing bundle does not include any skeleton argument on behalf of the respondent. At the hearing of the appeal, Counsel for the respondent informed the Court of Appeal that the respondent was not interested in the outcome of the appeal.
5. For his part, Counsel for the appellant submitted principally that the learned Judge erred in not dismissing the new plaint for the same cause of action for abuse of process. He submitted that the new plaint constituted an abuse of process because the three previous plaints had been dismissed for want of prosecution.
6. I have considered the record and the submissions of Counsel for the appellant with care. Having considered the judgment of the learned Judge, I hold the view that the learned Judge was wrong to approach this case as one without an abuse of process. We find that taking all the matters set out in paragraphs 2, 3 and 4 and hereof, that as a matter of law, the respondent's filing of the new plaint for the same cause of action amounted to an abuse of the Court's procedure which would be manifestly unfair to the appellant or would otherwise bring the administration of justice into disrepute.
7. For the reason stated above I hold that the learned Judge erred in dismissing the appellant's plea in *limine litis*. I, accordingly, allow the appeal, overrule the decision of the learned Judge on the plea in *limine litis*. As a consequence I dismiss the plaint with

costs in favour of the appellant.

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 June 2021

Robinson JA

I concur

Tibatemwa

Tibatemwa-Ekirikibinza JA

I concur

Dingake JA