

IN THE COURT OF APPEAL OF SEYCHELLES

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**Reportable**

[2022] SCCA 71  
(16 December 2022)  
SCA 52/2020  
(Arising in CS 53/2019)

**THEOLENE AUGUSTE**

*(rep. by Guy Ferley)*

**Appellant**

and

**SINGH CONSTRUCTION**

*(rep. Karen Domingue)*

**Respondent**

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**Neutral Citation:** *Auguste v Singh Construction* (SCA 52/2020) [2022] SCCA 71  
(16 December 2022)

(Arising in CS 53/2019) [2020] SCSC 788

**Before:** Twomey-Woods, Robinson, Tibatemwa-Ekirikunbinza, JJA

**Summary:**

**Heard:** 7 December 2022

**Delivered:** 16 December 2022

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**JUDGMENT**

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**Robinson JA (DISSENTING JUDGMENT)**

[1] The case before the Supreme Court concerned whether or not the Respondent, the then first defendant, "[6] [...] *has a legal status as a partnership with capacity to be sued in that manner*".

[2] The learned trial Judge ruled on the defence in *limine litis* that —

*"[15] [she] find[s] no reason to depart from the finding in **Ernestine & Ors** above. If anything the two persons registered a business name under which they traded. The Plaintiff has to show that in fact there was a*

*partnership between the two persons and the manner in which that has to be shown in line with Article 1834 is to provide proof by way of an agreement in writing which the registration of a business name is not.*

*[16] In the circumstances, the plea in limine litis succeeds and the Plaint is struck out against the first Defendant."*

[3] The Appellant, the then first defendant, appealed the judgment. On the 7 December 2022, at the hearing of the appeal, the majority judgment dismissed the appeal for reasons contained in it. The dismissal of the appeal by the majority judgment was premised on the late filing of written submissions by the Appellant by Counsel of record. I am not here concerned with the reasoning and conclusion of the majority judgment.

[4] At the appeal, I concluded that the appeal should not be dismissed. I informed the parties that my reasons would follow. I now give reasons.

[5] I have considered the Seychelles Court of Appeal Rules, 2005, as amended, hereinafter referred to as the "*Rules*", relevant to what is being discussed. The President of the Seychelles Court of Appeal makes the Rules in the exercise of the powers conferred under Article 136 (1) of the Constitution of the Republic of Seychelles [CAP 42]. I bear in mind that we, the People of Seychelles, adopt and confer on ourselves the Constitution as the fundamental and Supreme law of our sovereign and democratic Republic. Having considered the provisions of the Rules applicable to this judgment, I decided not to discuss those applicable provisions without the aid of the parties' submissions. I also decided not to embark on such a discussion as I believed it was unnecessary.

[6] For this judgment, I have considered the proceedings at the Roll Call of 1 December 2022 and the appeal hearing of 7 December 2022.

[7] At the Roll Call on the 1 December 2022, the Court of Appeal comprised the President of the Court of Appeal and the four Justices of the Court of Appeal. I have reproduced in part the proceedings at the Roll Call of 1 December 2022 concerning this case —

**"IN THE SEYCHELLES COURT OF APPEAL**

*SITTING OF THURSDAY 1 DECEMBER 2022 AT 9.00 AM BEFORE THEIR LORDSHIPS A. FERNANDO, PRESIDENT, M. TWOMEY-WOODS, F. ROBINSON, L. TIBATEMWA AND S. ANDRE, JUSTICES OF APPEAL – ASSISTED BY MS. STEPHANIE JOUBERT, COURT ORDERLY - TRANSCRIBED BY THE UNDERSIGNED COURT REPORTER MARIE-CLAIRE JULIE*

***Theolene Auguste***

***Appellant***

*V/S*

***Singh Construction***

***Respondent***

*Civil Appeal No: SCA 52 of 2020*

*Mr. Guy Ferley, Counsel for the Appellant*

*Mr. Basil Hoareau, standing in for Ms. Karen Domingue, as  
Counsel for the Respondent*

***Mr. Hoareau: Ms. Domigue is unavailable today. I believe there has been a death in the family.***

***Court (Twomey-Woods JA): Yes.***

***Court (President): What about the written submissions?***

***Mr. Hoareau: I believe it has not been filed yet. May she be granted until Monday to file her Skeleton Heads?***

*Court (Andre JA): Sorry?*

*Mr. Hoareau: Until Monday, this coming Monday.*

*Court (Andre JA): For?*

*Mr. Hoareau: For her to file her Skeleton Heads of Argument.*

*Court (President): **This case is coming up on Wednesday, next.***

*Mr. Hoareau: Yes.*

*Court (President): You will inform her that?*

*Mr. Hoareau: I will do so, I will advise her.*

***Court (President): Yes, we will give time till Monday. Please inform her, because otherwise we will have to proceed with the case, or, I mean, as per the Rules, we will have to go on the basis that she will not be able to argue the matter and we will proceed on the basis of his arguments.***

*Mr. Hoareau: I will inform her accordingly.*

*Court (President): Please, do inform her.*

*Mr. Hoareau: Yes.*

*Court (President): That is what the Rules provide for.*

***So, this case would be taken up for hearing on the 7<sup>th</sup> of December 2022 in the morning (at 9.00 am.). Right?***

*Mr. Hoareau: Much obliged.*" Emphasis supplied

- [8] I mentioned that Mrs Karen Domingue did not file written submissions by the 5 December 2022. Mrs Domingue caused to be sent, by an e-mail to the Registry of the Court of Appeal, a *medical certificate* in which it was stated that she was ill. She neither attended the appeal nor filed any written submissions. I state no more about the conduct of Counsel for the Respondent at the appeal since the whole Court did not probe.
- [9] I consider the proceedings at the Roll Call — The President of the Court of Appeal, mindful of the Rules, ordered that the case should proceed based on the arguments of the Appellant by Counsel if Counsel for the Respondent were not to file her written submissions by the 5 December 2022. Having made the aforesaid order, the President of the Court of Appeal went on to order that the case "*would be taken up for hearing on the 7<sup>th</sup> of December 2022*". I mentioned that the Court of Appeal was correctly constituted under the Rules when the President of the Court of Appeal made these orders. The Court of Appeal did not raise the late filing of written submissions at the Roll Call when these orders were made. Also, I mention out of interest that the Court selected by the President of the Court of Appeal to sit to hear the appeal did not comment on the orders made by the President of the Court of Appeal at the Roll Call.
- [10] In the light of the above, I find that the Court of Appeal, at the Roll Call, had ordered that the appeal hearing should proceed on the 7 December 2022 based on the written submissions of Counsel for the Appellant. I am not here concerned with the course the appeal should have taken, given that Mrs Domingue had sent a *medical certificate* stating that she was ill. With all due respect to the two Justices of Appeal, it suffices to state that it is unclear why they decided to dismiss the appeal on the 7 December 2022, when it came up for hearing. No question of late filing of written submissions arose for consideration by the Court of Appeal, at the appeal.

[11] I am mindful that rules of court are made to be complied with by parties. In the case of *Chetty v Esther (SCCA 44 of 2020)[2021] SCCA 12 (13 May 2021)* concerning the Rules, this Court, stated —

*"[i]t is important to note that Rules of Court are made in order to be complied with. Without complying with and should the Court allow that to happen, then it is both sending wrong signals and establishing precedent, which may eventually lead to flouting and abuse of the whole court process. That should not be allowed to happen. This Court had an opportunity, recently, to re-emphasise this point (see Central Stores vs Minister William Herminie and Another, judgment dated 25 February 2005; Harry Berlouis and Francis Gill, SCA No. 13 of 2003)".*

[12] As mentioned above, no question of late filing of written submissions arose for consideration by the Court of Appeal, at the appeal.

[13] Hence, I make an order that this Court should hear this appeal.

[14] I make no order as to costs.

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F. Robinson JA.

Signed, dated and delivered at Ile du Port on 16 December 2022.