

**GS Pillay & Company Pty Ltd v Sinon
(1997) SLR 107**

Ramniklal VALABHJI for the Plaintiff
Frank ELIZABETH for the Defendant

Ruling delivered on 11 July 1997 by:

PERERA J: The instant ruling concerns the validity of a writ of summons served by the Senior Process Officer of this Court in terms of section 295 of the Seychelles Code of Civil Procedure (Cap 213) read with schedule D of the said code.

On 26 May 1994 the attorney for the plaintiff filed a copy of the writ of summons and the endorsements thereon, for the signing of final judgment by this Court: according to the report of service, the writ of summons dated 17 August 1993 had been issued to a process officer for service as an "extra-judicial process" envisaged in section 22 of the previous Courts Act (Cap 93). That section was repealed by the Administration of Justice Act No. 6 of 1983, and the present practice is that all process for service are tendered by Attorneys at the Registry of this Court for taxation and payment of the necessary fees and thereafter handed over to the process officers for service. This is consistent with section 20(2)(d) of the present Courts Act (Cap 52). However Process Officers still retain the power to serve judicial as well as extra-judicial process as is recognised in section 23(1). Hence service in the instant matter cannot be invalidated as it entails only a fiscal irregularity.

According to the Process Officer's Report, the writ of summons was served on Andre Sinon, the defendant, on 20 August 1993. The writ warned the defendant that unless within 12 days after the service of the writ, inclusive of the day of service, leave to defend was not obtained from a judge; the plaintiff would proceed to judgment and execution.

The defendant having failed to apply for leave, the plaintiff applied for final judgment on 26 May 1994, 9 months after the alleged service on the defendant. Judgment was signed on 30 May 1994. Application for execution was filed on 19 December 1994, and the warrant to levy was issued on 9 January 1995. Consequently certain moveables were seized on 22 May 1996 and the defendant was appointed legal guardian.

Prior to the seizure, the Defendant filed a motion dated 16 August 1995 seeking to set aside the final judgment on the basis that –

1. The defendant was never served with summons or writ to attend court.
2. There is no return of service to show that the defendant was duly served with summons.

Section 297 of the Code of Civil Procedure provides that –

'After judgment the court may, under special circumstances, set aside the judgment and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it shall appear reasonable to the court so to do, and on such terms as to the court may seem just.

counsel for the defendant produced the writ of summons which he stated was served on the defendant and questioned the process officer why he had not signed or dated it. The process officer replied that the copy served is not signed and that it is on the original writ returned to the attorney that the process officer appends his signature and date of service. Hence there is a judicial admission by the attorney as agent of the defendant that the writ of summons was served. It has not been sought to be established that the date of service on the original writ filed in this Court after the defendant had defaulted obtaining leave to defend is incorrect. The specimen form provided in schedule D of the said Code requires the server to make an endorsement "on the writ after service thereof". This endorsement is the report of service to the person who caused it to be served. There is no legal requirement that the copy of a writ of summons served on the defendant in a case under summary procedure should be signed and dated by the process server.

Section 295 requires that before final judgment is signed, the court must be satisfied that the writ has been personally served on the defendant. When the Court signed final judgment in this case on 30 May 1994 the Court accepted the report of service of the process officer. The admission that the writ was served on the defendant shows that the Court had acted on reliable material. Hence the motion dated 16 August 1995 is dismissed.

I find that a subsequent motion dated 24 May 1996 has been filed to stay execution of judgment. In view of the order made in respect of the motion dated 16 August 1995, that motion is also dismissed.

The process officer shall accordingly proceed with the sale of the items seized.

The plaintiff will be entitled to costs.

Record: Civil Side No 126 of 1994