Camille v The Seychelles Government
(1998) SLR 139

Philippe BOULLE for the plaintiff
Romesh KANAKARATNE for the defendant

Ruling on plea in limine litis delivered on 14 day of December 1998 by:

PERERA J: The plaintiff originally sued two defendants, one Francis Philoe as the first defendant, and the Government of Seychelles as the second defendant. It is averred that on 15 August 1983 around 8:10 pm the first defendant went to the shop and shot the plaintiff. Consequent to the injuries received, he claims a sum of R1,420,000 from the two defendants jointly and severally.

Pending the hearing of this case the first defendant died, and counsel for the plaintiff informed the Court that he would prosecute the action only against the second defendant as a joint tortfeasor on the basis of vicarious liability.

Counsel for the second defendant raised the following points in limine:

1. That the first defendant was not acting within the scope of his employment at the material time and the alleged act was not incidental to the service of employment of the first defendant.

1. That the question of vicarious and joint liability on the part of the second defendant does not arise in view of the denial by the second defendant of the incident itself.

2. That this action is prescribed under article 2271 of the Civil Code of Seychelles (Cap 33).

Article 2271(1) is as follows:

> All rights of action shall be subject to prescription after a period of five years as provided in articles 2262 and 2265 of this Code.

Article 2219 defines “prescription” as involving “loss of rights through a failure to act within the limits established by law.” Hence by the operation of Article 2271(1), a plaintiff loses his accessory right of action or the judicial remedy for his grievance if such action is commenced after a period of five years from the date the claim arose.

Counsel for the plaintiff invited the Court to exercise the equitable jurisdiction of this Court under section 6 of the Courts Act to deprive the defendant of the defence of prescription. In this respect he cited the following of section 6 in relation to limitation of

actions –

> Its liberal interpretation would however invest the Court with the power where there is an element of unfairness in the conduct of the defendant, in the interest of justice, and in the exercise of the general jurisdiction to administer justice, to prevent a party whose conduct has caused delay from pleading prescription.

The learned Justice of Appeal however added that –

> What must be considered in exercising that power is the conduct of the defendant. The power is not exercised on the basis of mere sentimental sympathy for the plight of the plaintiff.

Counsel also relied on the view expressed by Ayoola JA in that that:

> The essence of the exercise of an equitable jurisdiction i type of case is to avoid the deprivation of the plaintiff of an advantag ich he would have had, had the conduct of the defendant been proper

In the *Voysey* case (supra) one Mark Voysey, a helicopter pilot e Air Force, died on 30 August 1987 when the helicopter he was piloting crashed o slin. The parents of the deceased corresponded with the Seychelles People's Def Forces (SPDF), to which the helicopter belonged, for the cause of the accident. SPDF replied to the correspondence but offered only vague reasons or calculate esses. The closest reply the plaintiff received was on 9 December 1993, after the p of prescription had lapsed, in the following terms –

> … whilst there is no indication that there was a mal on, it is not possible to say with absolute certainty that there was not er.

There was therefore a qualified admission of a possible malfun which if established would have made the government liable in damages. The iff filed action and sought to defeat the defendant's defence of prescription on th und that an action could not be filed without knowing the cause of the accident. T ourt of Appeal held inter alia that -

> There is no statutory provision that confers power on Court in this jurisdiction to postpone the accrual of a right of act y reason of ignorance of the plaintiff of the material facts relating he cause of action.

As regards the application of the equitable jurisdiction, the C eld that there was "nothing of material significance that any delay in releasing inf ion concealed" and that the Government had no information of any use to the resp its in relation to the cause of the crash. Hence the equitable powers were not exerc n that case.

Whereas the plaintiff in the *Voysey* case (supra) awaited the cause of the crash which gave rise to their action, the plaintiff in the instant case allegedly awaited the name of the person who inflicted the gun shot injuries, although admittedly he had knowledge of his identity. Ayoola JA stated, albeit obiter, in the case of *Voysey* stated that –

> Normally, a right of action accrues when the essential facts exist and, barring statutory intervention, does not arise with the awareness, for instance, of the attributability of the injury to the fault of the other party, unless there has been a fraudulent concealment of facts. The date of manifestation of damage may be specifically made the commencement of a right of action.

Hanbury on *Modern Equity* (8th edition) dealing with equity in relation to the Statute of Limitations states at page 307–

> The doctrines of laches and acquiescence in the case of purely equitable claims, substituted by equity for the statutes of limitation as deterrents to the tardy assertion of rights, unless one of those statutes had expressly included equitable claims within its orbit. In the case of legal claims, or even of equitable claims which it would regard as analogous to legal claims, equity rigidly enforced the observance of the statutory periods. But one important reservation equity permitted to itself. If there had been fraud on the part of the defendant, and the plaintiff did not discover it, through no fault of his own, until the statutory period had elapsed, equity would consider that the period had not begun to run until the date of its discovery.

Applying this test to the facts of the case, was the plaintiff ignorant of the name of his assailant, although he knew of his identity, and if so, was it due to fraud and concealment by the Government as alleged, or due to his own laches or acquiescence?

The plaintiff testified that he knew that it was an army officer on duty at Colonel Vidot's residence, which was close by, who shot him on 15 August 1983. He further stated that that person who shot him had looked at him in a strange manner the previous day. He did not know his name until in 1995 he heard from one Phililp Figaro, an ex-army officer who was also on duty at Colonel Vidot's residence at that time. Philip Figaro corroborated the plaintiff on this matter. Philip Figaro further testified that he met Francois Philoe at Colonel Vidot's after the shooting. He was excited and told him that it was the first time that he shot someone. He further stated that everyone in the camp knew who shot the plaintiff and that Philoe continued to perform guard duties at Colonel Vidot's residence thereafter.

The wife of the plaintiff, who rushed out of the house on hearing gun shots, also testified that she saw an army officer dressed in army uniform with a gun in his hand and another person without a gun, in civilian clothes. She further testified that as she was sure that her husband was shot by an army officer on duty, she met with Mr Berlouis

(the then Minister of Defence) to ascertain the name of that officer, but was told that the information was confidential. Mr Berlouis, though listed as a witness, was not called by the plaintiff and hence her evidence on that matter remains to be hearsay.

Unlike in the *Voysey* case, the plaintiff did not produce any documentary evidence to show that any meaningful attempts were made to ascertain the name of the army officer before the lapse of the period of five years prescription under the general law. In fact, as the plaintiff and his wife knew full well that the injuries were caused by an army officer on duty, the action was barred by the six month period of limitation under section 3 of the Public Officers (Protection) Act (Cap 192). Even in the circumstances alleged by the plaintiff, an action could have been instituted against the Government in its capacity as joint tortfeasor on the basis of vicarious liability within the period of 6 months.

In the recent case of *Joseph Labrosse v Government of Sey* ...*es* (unreported) CA 11/1998) determined on 4 December 1998, the Court of Appe... ...animously held that the time bar contained in the Public Officers (Protection) Act a... ... to a Public Officer (tortfeasor) alone, against the Public Officer and the employe... ...oint tortfeasors, or against the employer on the basis of vicarious liability.

In the instance case, the Government has denied that the firs... ...endant, the original tortfeasor, was acting within the scope of his employment as al... ... Hence there was no consideration of vicarious liability, and accordingly the Go... ...ment, who alone is being sued in that capacity rightly relies on the general period o... ...cription.

The evidence adduced by the plaintiff does not establish any ... ... or concealment on the part of the government. The tortfeasor was known to th... ...aintiff and his wife, although not by name. It is inconceivable that they were unab... ...ascertain the name of that person if they exercised due diligence. No formal req... ... were made to the Defence Forces, or the police. According to the evidence of C... ...nt Potter and Jean Larue of the Port Glaud Police Station, the police conducted an... ...stigation. Moreover there was the possibility of a direct action against the ... ...rnment within the prescriptive period. Hence more than in the *Voysey* case this ... ... does not merit the exercise of the equitable jurisdiction of this Court to defeat the... ...ndant's defence of prescription.

The plea in limine litis is therefore upheld, and since this decisio... ...poses of the whole cause of action, the action is dismissed, but without costs.

Record: Civil Side No 8 of 1997