

**Payet v Knowles
(2001) SLR 60**

Kieran SHAH for the plaintiff
Nichol TIRANT for the defendant

[Appeal by the plaintiff was dismissed on 19 April 2002 in CA 14/2001]

Judgment delivered on 31 May 2001 by:

JUDDOO J: The plaintiff brings this action in tort against the defendant for damages caused by a Bois Blanc tree which fell from the defendant's land onto the plaintiff's house at Mare Anglaise on a date in the month of November 1997. The claim is resisted by the defendant who is the daughter of the plaintiff.

It is averred on behalf of the plaintiff that the Bois Blanc tree standing on the defendant's plot of land fell on the plaintiff's house and outbuildings causing extensive damage and that, prior to that date, the plaintiff had requested the defendant to cause the tree to be chopped or felled so as to avert any danger to her property, but the defendant refused or neglected to do so. Accordingly, it is claimed that the damage caused by the falling tree was due to the fault or negligence of the defendant. It is averred in the alternative that the defendant had custody of the said tree and is liable for resulting the loss and damages.

On behalf of the defence, it is averred that the incident was due to an act of God or some inherent defect in the tree and was not due to the fault or negligence of the defendant. It is denied that the plaintiff had made any request to the defendant to fell the said tree and that the tree was not in the defendant's custody at the material time.

The plaintiff, an old lady of 72 years gave evidence that, in November 1997, a bois blanc tree from the property of the defendant fell onto the house which she had constructed with her son. The incident caused damaged to the roof of the house and the witness produced five photographs thereof, marked as exhibits P1-P5. The plaintiff added that the defendant lives in Australia but visits Seychelles regularly. During one of her visits the plaintiff drew her attention to the fact that leaves had fallen off the bois-blanc tree and it was leaning towards the house and had to be chopped down. The plaintiff added that the defendant refused to do anything about the tree and on a day in November "the tree fell because the trunk had already rotten and it crushed down part of my wall, some of the furniture and affected the roof". At the material time, the plaintiff was renting the house to one Norman Bastien for a monthly rent of R4000 and the plaintiff claims that as a result of the damage caused she did not receive rent for three months.

The plaintiff agreed that she had applied for Government assistance and received R7000 and some corrugated iron sheets. The plaintiff remitted R7000 to one Gilbert

Banane, the carpenter and explained that the said assistance was not sufficient and she had to incur additional expenses for materials of which she produced a bundle of receipts (exhibit P6) and paid the carpenter another R13,000. The plaintiff denied that the weather was gusty at the time the tree had fallen down and that it was the heavy rain in September 1997 which caused the tree to fall. Lastly, the plaintiff admitted to not being on the best of terms with the defendant and that there has been other Court proceedings between them.

Norman Bastien testified that he was renting the house for a monthly rent of R4000. One night in 1997, he recalls the tree falling on the house. The weather was calm and he had the opportunity to examine the tree after it fell down. There was a hole inside the tree and it was rotten. The witness added that he remained in the house when it was being repaired but had to move from one room to another for the repairs to progress. Accordingly, he did not pay the rental for four months. Under cross-examination, the witness revealed that he was paying R400 instead of the full rent. He maintained that the tree which fell was rotten.

Gilbert Banane, the carpenter, gave evidence on behalf of the plaintiff. He repaired the damage caused to the house, mainly the roof, except for the paint work. He had to remove and replace all the wood in the ceiling and the roof and lift the pillars. The repair works lasted for seven weeks and he was paid R7000 and a further sum of R13,000 for the said work. He had the opportunity to examine the tree which had fallen on the house and found the tree trunk to have been rotten.

Joseph Payet, son of the plaintiff, gave evidence that he had ownership of the house whilst his mother enjoys the usufructory rights. He had taken charge of purchasing and transporting the building materials needed for the repairs made to the house. He was aware that the plaintiff had received assistance from the Government for the repairs but added that the said assistance was insufficient.

Lastly, Mr Gerald Pragassen, land surveyor, was called on behalf of the plaintiff. He had surveyed the parcels of land belonging to the plaintiff and the defendant. According to his survey and as per his plan, exhibit P7, the ascertained position of the bois blanc tree which fell was on the defendant's land is shown.

On behalf of the defence, only one Patrick Bijoux was called as a witness. He is an officer of the Disaster Relief Fund. He agreed that in August 1997 the country experienced a particular increase of incidents due to bad weather and falling trees. However, he stated that most of the trees which fell were "too old or rotten or hollow inside". The incident of a tree which had fallen on the house of the plaintiff was reported to his office and a site visit was made which revealed that the tree was hollow inside, had broken down and damaged the house of the plaintiff. The plaintiff received R7000 as financial assistance. Under cross-examination, he agreed that the financial assistance provided does not cover the full costs of the repairs.

The plaintiff stood as a strong lady of 72 years of age and gave evidence in a most straightforward and consistent manner. Her demeanor in the witness box was both

serene and lucid. She strikes me as a witness of truth when she testified that the tree was showing signs of deterioration and she informed the defendant of the danger that the 'bois blanc' tree represented to her house despite her candid admission that their relation had deteriorated thereafter.

I also find from the evidence on record that the tree was hollow and rotten inside and was defective in itself. Mr Gilbert Banane is a Carpenter of some thirty years of experience and his testimony that the tree was 'rotten' inside cannot be taken lightly. Additionally, all of the other witnesses including the plaintiff, Mr Bastien and Mr Banane witnessed that the tree was rotten and hollow. This is supported by the testimony from the officer of the Disaster Relief Fund called on behalf of the defendants and by the photographs (*exhibit P2*) produced on behalf of the plaintiff. It has been established that from the testimony of Mr Pragassen the land on which the tree was situated belongs to the defendant and I have already found that the defendant was made aware of the danger that the tree represented and refused to act.

Accordingly, I find liability to be established in favour of the plaintiff as against the defendant. I shall now turn to the issue of damages.

In essence the plaintiff claims R12,000 for 3 months loss of rent, R18,000 for additional expenses incurred in rebuilding the house and outbuilding and R10,000 for moral damages.

As far as the claim for loss of rent, the evidence from Mr Banane is that the repairs works lasted for six weeks which if one takes account of an additional time for the paint work can be equated to two months during which time one can rightly expect the tenant not to pay the full rent. The tenant, Mr Bastien admitted that he paid R400 during that time. Accordingly I award a sum of (3600×2) R7,200 under this head.

As far as the claim for R18,000 additional expenses, I am satisfied from the evidence on record that an additional sum of R13,000 was paid to Mr Banane, the carpenter for repairs. However as far as the receipts produced from SMB, they disclose expenses for a much later period except for two receipts in November 1997, amounting to R574.74. Additionally, I take into account the damages to the chicken coop as per exhibit P2 and outbuilding and award a total sum of R15,000 under this claim.

I find it just and reasonable to award a sum of R5,000 for moral damage. In the end result, I enter judgment in favour of the plaintiff in the sum of R27,200 in full and final settlement of the claim with interest and costs.

Record: Civil Side No 398 of 1998