

**Finesse v Atalla & Or  
(2001) SLR 107**

Phillippe BOULLE for the plaintiff  
Dora ZATTE for the first defendant  
France BONTE for the second defendant

**Ruling on plea in limine litis delivered on 8 November 2001**

**PERERA J:** The plaintiff sues the first and second defendant in respect of a demolition of a wall. She avers that:

on 25 August 1998, the first defendant, in pursuance dated 9 March 1998, and with the Assistance and guidance of the second defendant, proceeded to demolish the wall built by the second defendant's land. In the process of the demolition, the defendants negligently destroyed part of the wall which was on the plaintiff's property. (emphasis added).

The cause of action therefore is the damage caused to that part of the plaintiff's land, allegedly by the two defendants, negligently. Mr Atalla, counsel for the first defendant, submitted that although the first defendant is a process server, he was acting in the discharge of his duties, he negligently demolished a part of the wall which was not authorized to be demolished. It was therefore submitted that the first defendant is not being sued as a Public Officer, although the Supreme Court, has been given in the caption of the plaint. It is submitted that the plaintiff has not sued the government of Seychelles in its capacity as a party defendant.

However, in the present case, the first defendant is being represented by State counsel, presumably considering him to have acted lawfully as a Public Officer. In a similar case, *Joe Dingwall v Gaetan Hoareau and Wholly Pillay* (1983) SLR 107, a Process Server of this Court, was sued in his personal capacity as a judgment-creditor. In that case his address in the caption was the address of the Court, as in the present case. The first defendant Process Server was acting in execution of a judgment of Court, but failed to follow the procedure prescribed in the Code of Civil Procedure. He was not represented by State counsel, but by a private legal practitioner. The Supreme Court entered judgment against both defendants jointly and severally. The Court of Appeal however set aside that judgment on the basis that the plaintiff had failed to establish that failure to follow the procedure resulted in damages being caused to him. It is however within the discretion of the Attorney-General to decide whether legal representation should be given to the first defendant in the circumstances of the present case.

The Attorney-General representing the first defendant has raised a plea in limine litis

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that the action against the first defendant is prescribed under the Public Officers Protection Act (Cap 192). The issue to be considered in that respect is whether, although the first defendant is a Public Officer who was admittedly acting in the execution of his office, negligently acted outside its scope and damaged a portion of the wall not authorised by Court to be demolished as averred by the plaintiff.

If the plaintiff succeeds in establishing such averment, the first defendant, although a Public Officer, will not be considered as having acted in the execution of his duty. The Public Officers (Protection) Act does not exempt Public Officers from liability but only restricts the right of action against them by requiring that any action be brought within six months from the date the claim arose. In fact, section 21 of the Code of Civil Procedure (Cap 213) provides that "the Process Officers are liable in damages for neglect in levying execution or, for fraud in relation thereto, at the suit of the party prejudiced". Hence the Public Officers (Protection) Act protects only acts done in execution of their service, and not acts done outside the scope of office which would then become their personal acts. As in the case of *Telemaque v Volcere* (1982) SLR 266 where a Public Officer driving a government vehicle outside his scope of duties on a "frolic of his own", was held to be personally liable in damages, the plea in limine that the action was time barred under the Public Officers (Protection) Act was considered at the end of the trial upon hearing evidence. In that case too, the action was filed only against the defendant who was a Public Officer. He was also represented by a private legal practitioner. In the present case the second defendant is being sued for "assisting and guiding" the first defendant. If the evidence discloses that the first defendant had acted lawfully, then the second defendant, though not a Public Officer, would also get protection under section 4(c) of the Act as a person lawfully giving assistance to a Public Officer, and hence action against both defendants would fail on the basis that the action is time barred.

Hence I rule that this is a fit case where the plea raised should be considered at the end of the hearing of the case.

**Record: Civil Side No 358 of 1999**