

**Ernesta v La Passe Football Club
(2003) SLR 110**

Frank ELIZABETH for the Plaintiff
Charles LUCAS for the Defendant

Judgment delivered 31 October 2003 by:

KARUNAKURAN J: This is an action in delict, wherein the Plaintiff claims a sum of R50,000 from the Defendant for loss and damage suffered in consequence of a "fault" allegedly committed by the Defendant.

The facts of the case as transpire from the evidence are as follows.

The Plaintiff is a resident of La Digue and a self-employed taxi driver. He is an active football fan. He is also an executive member of the Anse Reunion football team of La Digue. He loves watching football matches. As an ardent fan, he used to watch the regular matches held almost every week in the La Digue "Multi Purpose Sports Complex", the premises of which undisputedly belongs to the Government of Seychelles. According to the Plaintiff, watching those matches was the only entertainment he had and one could have on La Digue in the weekends. Be that as it may.

The Defendant is a football club known as "La Passes Football Club", which is an affiliate of the Seychelles Football Federation. Although the Defendant is a separate entity managed by a committee of its own, it is subject to the rules and regulations made by the Federation. Thus, the Federation appears to exercise control over the management of the club. Generally, the Federation supplies the club the tickets for the home matches and the club in turn sells those tickets to the spectators and remits a 20 of the sales- amount to the Federation. It is not in dispute that the Defendant is responsible for the organization, management and conduct of the home matches using the stadium in the Complex. According to Mr Wilhem Boniface-PW2- the Secretary General of the Federation the Defendant being the home team, it is solely responsible for the security of the match officials, visiting teams and spectators vide exhibit D4. The Plaintiff testified that on 10 May 1999 the Defendant issued him with a notice of ban and prevented him from entering the Complex to watch football matches. He produced the said notice exhibit P1in evidence, which reads thus:

La Passe Football Club
La Digue

10th May 1999

Mr Jemmy Ernesta
Anse Reunion

La Digue

Dear Sir,

Ref: Insulting La Passe Players During Home Matches

We wish to inform you (that) in regard to the above, certain decisions have been taken by the management of the team.

We have found it necessary to prevent these continues and aggravating insults to your fellow Digois players while playing, which is becoming embarrassing and annoying as well. It is not our intention to stop you from enjoying a high level of Football Match rarely played outside Mahe, but despite the fact that you have shown disrespect to the foreign players as well we have decided to ban you from entering the La Digue Sports Complex during all La Passe matches until further notice.

We look forward to your cooperation and understanding,

Thank you

Yours sincerely

(Sd) F. Franchette (Mr)

La Passe Sports Club Secretary

CC: La Digue Police Station
La Digue District Administration
Seychelles Football Federation
La Passe Fan Club

After receiving the above notice, the Plaintiff did not take any steps to get the ban revoked by the Defendant. However, on 15 May 1999 he admittedly, attempted to enter the Complex to watch a football match, using a ticket bought by one of his friends, a sample of which was also produced in evidence and marked as exhibit D3. The officials of the Defendant at the gate refused the Plaintiff admittance into the Complex. Moreover, the Plaintiff stated that since the Sports Complex belongs to the Government of Seychelles, the Defendant had no right to stop him from entering the Complex. The Plaintiff further testified that he never caused any disturbance during any of the matches held in the said Complex. He never insulted any of the players. He did not have any criminal case filed against him before the Magistrate's Court. In the circumstances, the Plaintiff testified that because of those unlawful acts of the Defendant he suffered humiliation, embarrassment and anxiety for which he claims damages in sum of R25,000 from the Defendant. In addition, he testified that his good reputation as a taxi driver and a football fan has been tarnished in the eye of the public because of those unlawful acts, for which he estimated damages in the sum of R25,000. According to the Plaintiff, the Defendant's unlawful acts amount to a "fault" in law. As a result, the Plaintiff claims that he suffered loss and damage in the total sum of R50,000 for which the Defendant is liable to make good. Hence, the Plaintiff seeks this Court to enter a

judgment against the Defendant accordingly.

On the other side, the Defendant denies the Plaintiffs claim in its entirety. Mr Gerald Lablache- DW1- the chairperson of the Defendant-club testified that the Plaintiff on 10th of May 1999 came to watch a match on the stadium. He was sitting on the side of the grand stand. During the match, he started causing disturbances. He insulted and disturbed a group of players as they were playing on the pitch and provoked their supporters. Despite several requests, he did not stop but continued his insulting behaviour and created disorder and commotion during the match. After the match, he again went to the same group of players and continued insulting them. He also went to their home and wanted to fight with them. The Defendant reported the matter to the police. The police registered a criminal case - Criminal Side No: 129 of 1999 - against the Plaintiff before the Magistrate's Court of La Digue. The Court accordingly convicted the Plaintiff of the offences of criminal trespass and using obscene language in a public place. A copy of the relevant judgment was produced in evidence and marked as exhibit D1. According to DW1, the Plaintiff also insulted the coach of La Passe Team, a Ghanaian national and particularly two players in the team namely, Mr Ahmed Aboudo and Mr Bruna Sandina. DW2 in his evidence stated thus:

The Federation has sent us a letter saying that the security for all matches on home ground is the sole responsibility of the committee and if the security is not (provided) to the standard all matches would be cancelled on the Island (La Digue) so we had no option. At the same time, we had the interest of the public of La Digue on all matches. It was either we let Mr Ernesta (Plaintiff) continue doing what he was doing or we have the matches cancelled.

For these reasons, Mr Lablache testified that the Defendant had to ban the Plaintiff from entering the Complex and refused him entry to watch matches. In the circumstances, the Defendant denies fault, liability and damages. Hence, it seeks a dismissal of the action with costs.

I meticulously perused the entire evidence available on record including the documents produced as exhibits in this matter. Obviously, this action is based on Article 1382 of the Civil Code of Seychelles, which reads thus:

1. Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.
2. Fault is an error of conduct, which would not have been committed by a prudent person in the special circumstances, in which the damage was caused. It may be the result of a positive act or omission.
3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.

4. A person shall only be responsible for fault to the extent that he is capable of discernment, provided that he did not knowingly deprive himself of his power of discernment.
5. Liability for intentional or negligent harm concerns public policy and may never be excluded by agreement; however, a voluntary assumption of risk shall be implied from participation in a lawful game.

Now, the fundamental question before the Court is whether the acts of the Defendant in banning and preventing the Plaintiff from entering the Complex to watch the football matches amount to a "fault" in law.

First, on the question of credibility I believe DW1 as a truthful witness. I accept his evidence in that, the Plaintiff on 10 May 1999 insulted the players on the pitch and caused disturbance to the detriment of the match and continued to insult them even at their home. The copy of the judgment in exhibit D1. corroborates this fact. Indeed, the evidence adduced by the Defendant in this respect is clinching, cogent, reliable and consistent. I do not attach any credibility to the testimony of the Plaintiff to the contrary. Accordingly, I find that the Plaintiff did behave in a manner not only causing a security threat to the players, the coach and the spectators alike but also likely to cause a breach of the public peace and tranquility in the small island of La Digue. These unlawful acts of the Plaintiff have evidently, warranted the Defendant to issue the ban in question. Any prudent person in the given matrix of facts and circumstances would have acted in the same way as the Defendant did. Indeed, the Defendant was the one who has unlawfully attempted to gain entry into the complex by clandestine means of using a ticket, which was not sold to him. As testified by Ms. Juliana Ah Kon -DW2- she would not have sold the ticket to any third party, if she had known that the Plaintiff would be using that ticket to gain entry into the Complex. In the circumstances, I find that the Defendant did not commit any error of conduct in issuing the ban or in preventing the Plaintiff from entering the Complex to watch the matches. Obviously, the act of issuing the ban against the Plaintiff was not intended to cause any harm or damage to him for any reason whatsoever, but rather to secure public peace and order during football matches in the larger interest of the community and so I find.

Turning now to the question of ownership it is true that the Government holds the legal ownership of the Sports Complex in La Digue. However, it does not mean that the Complex is a public thoroughfare and every citizen has the right to enter and loiter without authority. The ownership held by the Government on premises cannot be taken as a licence by any citizen to enter the premises without any authority and to commit unlawful acts therein. Especially, when an entity like Social Club or any other Institution for that matter is lawfully holding the possession of those premises for the purpose of conducting its business then such entity to my mind, is deemed to be the special owner of the premises, as long as it holds the possession thereof. In the present case, it is clear that the Defendant was holding the possession of the premises for the purpose of conducting the home matches on the stadium. In the circumstances, I conclude that the Plaintiff cannot claim any right of admittance to enter the Complex during the hours of

the match without authority from the Defendant.

Having said that, it is quite obvious, when one reads the ticket - exhibit D3 - the conditions No: 6 and 9 thereof stipulate as follows:

6. A spectator will not cause a civil disturbance or conduct himself in a manner detrimental to the maintenance of discipline in the stadium.
9. Any person in breach of the above conditions will be removed from the stadium and repeated offences by the same person may result in a ban from entering the stadium during football matches.

Indeed, a ticket issued to a spectator in this respect to watch any match on the stadium is nothing but a licence granted to that person for a specific purpose. It is the common law principle that once the licensee breaks the conditions of a licence, then the very entry of the licensee into premises shall become unlawful and the licensee shall become a trespasser ab initio. The licensee therefore, will lose all the privileges given under the licence. In this case, obviously the Plaintiff has been in breach of condition 6 of the licence, namely the ticket. Therefore, the Defendant has rightly denied the Plaintiff of his privileges under the ticket and banned the Plaintiff from entering the premises. Having considered all the circumstances of the case, in my judgment, the acts of the Defendant in this matter do not constitute a fault in terms of Article 1382 above. Hence, I find this action is not tenable in law. Accordingly, I dismiss this action with costs.

Record: Civil Side No 313 of 1999