

# **IN THE SUPREME COURT OF SEYCHELLES**

**Lorraine Lewis  
Of Sussex  
England**

**Petitioner**

Vs

**The Government of Seychelles  
Herein represented by  
the Attorney General  
Of National House  
Victoria**

**Respondent**

Civil Side No. 107 of 2000

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Mr. F. Elizabeth for the plaintiff  
Mr. B. Hoareau for the defendant

**D. Karunakaran, J.**

## **JUDGMENT**

This is an action in delict. On 19<sup>th</sup> of April 2000, the plaintiff commenced this action by filing a plaint praying this Court for a judgment against the defendant, the Government of Seychelles in the sum of Rs.85,000/- as damages, following a “faute” allegedly committed against her by the defendant.

In her plaint, she has averred the following:

1. *At all material times, the plaintiff is and was a British Airways stewardess and the defendant through its Ministry of Tourism and Transport is and was responsible for the construction and maintenance of public roads in Seychelles.*

2. *On the 13<sup>th</sup> September 1995 at around 8 p. m the plaintiff was walking on the pavement at Beau Vallon, when she fell into a hole in the pavement up to her hips and suffered cuts, bruises, swelling and bleeding on both her legs and sprained her ankle.*
3. *The plaintiff avers that the defendant is and was responsible to maintain the pavement and to ensure that there were no holes in the same and that as a result of their failure to do so she suffered the said injury.*
4. *Further the plaintiff avers that the act or omission of the defendant in not maintaining and keeping the pavement in a good state of repairs amount to a "faute" in law for which the defendant is liable to the plaintiff.*

In a statement of defence, the defendant raised a plea in limini litis stating that the action brought against the defendant in this matter is time-barred in terms of section 3 of the Public Officers (*Protection*) Act, hereinafter referred to as the Act, which reads:

*"No action to enforce any claims in respect of:*

- (a) *any act done or omitted to be done by a public officer in the execution of his office.....*

*shall be entertained by a court unless the action is commenced not later than six months after the claim arose"*

According to Mr. B. Hoareau, learned counsel for the defendant, the protection offered by Section 3(a) above, that is, the period of six months' limitation to commence any civil action covers not only the public officer, the employee, as tortfeasor but also, the Government for vicarious liability for being his or her employer. In support of this proposition, Mr. Hoareau cited the case of ***Joseph Labrosse Vs. Government of Seychelles SCA Civil Appeal No: 1 of 1998***. It is the submission of the defendant that in the instant case, the cause of action or the claim arose on 13<sup>th</sup> of September

1995 as and when the damage manifested due to the alleged fall of the plaintiff into the hole on the pavement. Hence, the plaintiff should have filed this action within six months after the damage manifested or the claim arose. However, the plaintiff has chosen to file this action on 19<sup>th</sup> of April 2000, that is, five years after the claim arose or the accrual of the cause of action. Therefore, the defendant urged the Court to dismiss this action since it is time-barred.

On the other side, the learned counsel for the defendant Mr. Elizabeth at the outset contended that the plaintiff after sustaining the injuries went to a doctor for treatment and obtained a medical report. Only on the basis of the medical report she found that there were grounds to file a case against the defendant and hence she did. In the same breath Mr. Elizabeth submitted that the plaintiff did not file the case within the statutory period because the plaintiff was waiting in the hope that the matter would be settled without going to Court in view of an ongoing negotiation between the parties. Moreover, Mr. Elizabeth contended that the plaintiff had no knowledge that cause of action arose on the date of the incident that is, on 13<sup>th</sup> of September 1995. Certain fact and circumstances according to Mr. Elizabeth, might be revealed by the evidence yet to be adduced by the plaintiff during the hearing of the case on the merits. Those facts and circumstances might constitute a good cause for the delay occurred in filing this action. Therefore, the plaintiff urged the Court to dismiss the *plea in limine litis* and proceed to hear the case on the merits.

I carefully considered the arguments advanced by the counsel on both sides. First of all, I note the plaintiff is not disputing the correctness to the interpretation given by the Court of Appeal to Section 3 of the Act in **Joseph Labrosse** (*supra*). That is, the protection offered by this statutory provision covered, not only the employee namely, the public officer as tortfeasor, but also the employer for vicarious liability or the public officer and the employer

as joint tortfeasors, provided the acts or omissions complained of occurred during the performance of the public officer's function is brought after the prescribed six month period of limitation. However, it appears that the defendant in this case is simply attempting to give reasons as to why she did not file the case within the period of six months. With due respect to the views of Mr. Elizabeth none of the reasons given by the plaintiff is valid in law, as section 3 does not provide any exception to the rule of six months' limitation.

Admittedly, the right of action in this case is grounded on article 1382 (1) of the Civil Code of Seychelles, which reads that:

*"Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it"*

Fault is defined by article 1382 (2) as *"an error of conduct which would not have been committed by a person in the special circumstances in which the damage was caused. It may be the result of a positive act or omission."* When a party claims a right of action under article 1382 (1) the two elements required to constitute the cause of action are fault and damage that must have been caused by the fault alleged. Therefore, it is evident that the earliest time an action in delict can be maintained is that earliest point in time when fault and damage co-exist vide **Attorney General Vs. Ray Voysey and others SCA CA No: 12 of 1995**. In the instant case, it is clear from the pleadings in the plaint that the plaintiff knew on 13<sup>th</sup> of September 1995 that there was a hole in the pavement of the public road as and when she fell into the hole. She also knew on the same day that she had sustained injuries and was medically treated for those injuries. In the circumstances, the plaintiff on the same day -as any prudent person in her place should have- had the knowledge of the alleged fault, which arose from improper maintenance of the road and of the damage, which she suffered following the injuries. As I see it, the fact of fault and damage co-existed on 13<sup>th</sup> of

September 1995. However, the plaintiff despite her knowledge as to the existence of the fact essential to the accrual of right of action has failed to commence the action to enforce her claim within six months after the claim arose. Hence, the present action is time-barred and not tenable in law in terms of section 3 of the Public Officers (Protection) Act and so I find.

In view of all the above, I uphold the submission of the learned counsel for the defendant on *the plea in limine litis*. The suit is therefore, dismissed in limine with costs.

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D. Karunakaran  
**Judge**  
Dated this 6<sup>th</sup> day of May 2004