

# **IN THE SUPREME COURT OF SEYCHELLS**

MARC DONALD THOMAS      APPELLANT  
VERSUS  
FRANK PAYET                RESPONDENT

**Civil Appeal No 8 of 2003**

Mr. J. Renaud for the Appellant

Mr. Rajasundaram for the Respondent

## **JUDGMENT**

### **B.Renaud**

This is an appeal against the decision of the Learned Senior Magistrate delivered on 27<sup>th</sup> May 2003.

The matter started by a Plaint entered by the present Respondent in February 2000 claiming a total of SR23,315.00 from the present Appellant, as follows:

|    |  |                 |                       |
|----|--|-----------------|-----------------------|
| 1. | <i>Lawyer's Fees</i>                                       | 3,000.00        |                       |
| 2. | <i>Witness summons</i>                                     |                 | 315.00                |
| 3. | <i>Loss of business</i>                                    |                 | 15,000.00             |
| 4. | <i>Moral damage for inconvenience anxiety and distress</i> | <u>5,000.00</u> |                       |
|    |  |                 | <b><u>23,315.</u></b> |
|    | <b><u>00</u></b>   |                 |                       |

The claim arose as a result of the Appellant having filed a complaint on 19<sup>th</sup> July 1999 in the Magistrate' Court in case number 581/99 against the Respondent under Section 31 of the Criminal Procedure Code and the Appellant being not present when the matter was set for hearing, the Learned Magistrate dismissed the case for want of prosecution and made no award as to cost.

The Respondent in his Plaint claiming damages averred that he is self-employed and following the complaint entered against him he had to attend Court as well as the Probation Services, had to retain Lawyer and issue summons to witnesses. He appeared at the hearing with his Lawyer as well as his witnesses, but neither the Appellant nor his Lawyer appeared to prosecute the matter

and offered no reasonable excuse, leading the Court to dismiss the matter for non-appearance of the Appellant. The Learned Magistrate did not make any order as to costs despite his having incurred considerable expenses to defend what was essentially a frivolous and vexatious case against him. Respondent averred in his Plea that the action of the Appellant amounted to an abuse of the due process of law and a faute in that his action had caused the Respondent to suffer extreme prejudice.

The matter was duly heard and the Learned Senior Magistrate in his considered Judgment delivered on 27<sup>th</sup> May, 2003 awarded the Respondent the following as damages:

|    |   |                 |                 |
|----|---|-----------------|-----------------|
| 1. | Lawyer's Fees                                       | 3,000.00        |                 |
| 2. | Witness summons                                     |                 | 315.00          |
| 3. | Loss of business                                    |                 | no award        |
| 4. | Moral damage for inconvenience anxiety and distress | <u>3,500.00</u> |                 |
|    |   |                 | <u>7,815.00</u> |

The grounds of appeal of the Appellant are as follows:

1. *That the Learned Senior Magistrate erred in law in finding that the Defendant (now Appellant) was liable;*
2. *That the Plea in the Court below disclosed no cause of action.*

I will consider both grounds of appeal together.

The Learned Senior Magistrate correctly pointed out in his judgment that Article 1382 of the Civil Code of Seychelles provides that – *‘Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.’* He agreed that a losing party usually pays the costs to the winning party in a civil case but the award of costs is at the discretion of the trial Court. He correctly stated that a case for breach of the peace is neither a civil nor a criminal matter. Upon an order being made no order to pay costs is made against the other party and similarly when a case is dismissed for whatever reason no order as to cost is made by the Court. I find no fault in the approach and reasoning of the Senior Learned Magistrate.

Since the Magistrate's Court when dismissing the case did not make any order as to costs, can the other party now claim for damages?

In the case of **Mondon v Hoareau (SLR) 1956-1962 P.53** – the Plaintiff therein sought to recover damages from the Defendant on the basis that the latter had committed a *“faute”* by falsely, maliciously and without reasonable or probable cause preferring a charge on oath that the Plaintiff was likely to commit a breach of the peace – his Lordship Bonnetard C.J (*as he then was*) in dismissing the case held thus:

- (1) That the Defendant could escape liability if he could satisfy the Court that:

- (a) *he had an honest belief in the guilt of the Plaintiff;*
  - (b) *the said belief was based on an honest conviction of the existence of circumstances which led him to that conclusion;*
  - (c) *such belief was based on reasonable grounds;*
  - (d) *the circumstances so believed and relied upon by the Defendant must be such as to amount to reasonable ground for belief in the guilt of the Plaintiff.*
- (2) That the Defendant had satisfied the above requirements.

In the present case, the Respondent (*Plaintiff*) did not explicitly plead that the Appellant (*Defendant*) committed a "faute" by falsely, maliciously and without reasonable or probable cause, preferred a complaint against him. The original matter having been dismissed for want of prosecution no evidence was adduced by either party. This evidence if it was available, could have enable the Court to determine with certainty whether or not the allegation was false, malicious and without reasonable probable cause. This being lacking, the other recourse to assess this, would be to look at other facts laid before the Court. It is fact that the Appellant (*Applicant below*) swore on oath and made an application to Court in conformity with Section 31 of the Criminal Procedure Code. There is also the Report of the Probation Officer, who interviewed both parties, in the case 581/99 which indicates that the complaint of the Appellant had substance and he recommended that the Learned Magistrate gave both the Appellant and Respondent a strong warning. In fact in his version to the Probation Officer the then Defendant did not deny the incident complained of by the then Applicant and did not claim that it was false and/or malicious. All these to go show that, the Applicant was acting *bona fide* at the time and the complaint was not false or malicious.

I believe that it is a right of every citizen to make an application before the Magistrate's Court under Section 31 of the Criminal Procedure Code and that every person who does so without malice and in good faith and with an honest belief in the guilt of the accused and basing himself on reasonable grounds does not commit a "faute" in law.

In the circumstances, applying the principle set out the case of **Mondon v Hoareau**, I find that the grounds of appeal of the Appellant have merit. I accordingly set aside the judgment of the Learned Senior Magistrate.

I made no order as to cost.

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B. RENAUD

**JUDGE**

Dated this 27<sup>th</sup> day of June 2005

