

IN THE SUPREME COURT OF SEYCHELLES

MICHEL BACCARIE

Appellant

VS.

PAUL ARNEPHY

Respondent

Civil Appeal No. 8 of 2005

Appellant - Unrepresented

Mr. Rouillon for the Respondent

JUDGMENT

Gaswaga, J.

This is an appeal against the judgment of the learned Magistrate who dismissed the appellant's claim before the lower court. The Respondent resists the appeal. The memorandum of appeal contains two grounds:

1. The learned Magistrate failed to consider the overwhelming evidence, which was totally in favor of the Defendant.
2. The judgment of the learned Magistrate was against the weight of evidence.

The grounds of appeal essentially dispute the findings of the lower court, assessment of the Appellant's testimony, and the general appreciation of the material evidence on record. In essence the Appellant contends that the lower

court erred when it disbelieved and therefore rejected the testimony of the Appellant. That the court did not give sufficient weight and credibility to the fact that the Respondent admitted having taken the Applicant's money amounting to SR 10.000.00 but he refused to give it back to him or his share thereof amounting to SR 5.000/-. The learned Magistrate summarized the facts of this case as follows;

“The Plaintiff testified that the Defendant organizes private parties and sometimes he, the Plaintiff, helps the Defendant. He stated that he got one to organize for the Ministry of Agriculture and asked the Defendant to help him. He received SR 20, 000/- from the Ministry of Agriculture and they, being the Plaintiff and the Defendant, made a profit of SR 10, 000/-. The day after he went to see the Defendant taking with him the sum of SR 10, 000/- . When he got to the Defendant's place, the Defendant asked him for the receipt for the car they had rented. He left the SR 10, 000/- with the Defendant and he went to get the receipt with the intention of sharing the money and banked it. He went back and forth to the Defendant but was not given his share of the money.”

She then examined the evidence and observed thus:-

“First of all it was unclear from the Plaintiff what sum the Plaintiff was claiming.

In paragraph 3 he alleged that he took SR 10, 000/- with him when he went to see the Defendant. There is no explanation as to where the money came from.

In the following paragraph 4, he alleges that they agreed to share the SR 10, 000/- profits equally.

Again the court is left in suspense as to the origin of this SR 10, 000/- and its relationship if any to that sum referred to in the preceding paragraph.

In the following paragraph 3, he alleges that he took the SR 10, 000/- with him when he went to see the Defendant. There is no explanation as to where this money comes from.

There then follows the prayer where the Plaintiff merely prays for an order that he Defendant return the sum taken. There is no indication as to what that sum is. Is it the SR 10, 000/- that the Plaintiff alleges that the Defendant took in paragraph 3 or is it half of the SR 10, 000/- referred to in paragraph 4.

As it will be recalled in his evidence the Plaintiff testified that he was claiming SR 5, 000/- being half of the SR 10, 000/- which they made as profit from a sum of SR 20, 000/- paid to him by the Ministry of Agriculture.

Whatever the sum being claimed is, there was no proof of payment of this SR 20, 000/- by the Ministry of Agriculture. Furthermore there was no proof other than the Plaintiff's testimony, that the profit left over from the sum of SR 20, 000/- was in fact SR 10, 000/-.

The Plaintiff merely testified that he incurred expenses totaling SR 10, 000/- for the transport, for the service and for the food but he did not produce one single receipt as proof of those expenses incurred.

The expenses he listed in his answer to request for particulars amount to SR7, 200/- and not SR 10, 000/-.

In the absence of such documentary evidence to support the Plaintiff's claim the only conclusion I can come to is that the Plaintiff has not proved its case."

To begin with, it should be noted that unlike the Respondent the Appellant was not represented during the hearing in the court below and the present appeal although he was granted legal aid for the purpose of advice and drafting of the relevant court papers (plaint) in the lower court while filing fees in respect of this appeal were waived. A reading of the plaint, and as rightly observed by the learned Magistrate, reveals that it does not clearly and distinctly set out the claim of the appellant against the Respondent. **Rule 24 of the Court's Act, Magistrate's Court (Civil Procedure) Rules Cap 52**, which is a replica of **section 71 of the Seychelles Code of Civil Procedure Cap 213** provides that:

"A plaint must contain a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action .Further, if the plaintiff has allowed a set-off or has relinquished a portion of his claim, the amount so allowed or relinquished."

Although the respondent did not appear nor file a defence in the lower court (as his counsel appeared and made a submission in denial and in response to the allegations in the plaint in line with Rules 11, 16, and 23 of **Cap. 52, supra**) it is incumbent upon the plaintiff to prove his case to the satisfaction of the Court otherwise *"he is not entitled to the relief sought except in regard to that which is*

alleged in the plaint and proved at the trial” See Tirant & Or Vs. Banane SCA 1977 No. 49 page 219. This does not in any way diminish his burden. It cannot be denied that the Appellant handed over SR 10, 000/- to the Respondent. However, the learned Magistrate found, in no uncertain terms moreover, that the Appellant’s claim, which was unclear, was not supported with any documentation in the form of receipts or otherwise. No witnesses were called to his aid. There was nothing to show how much he received from the Ministry of Agriculture and how the same was expended. Even the accountability he presented in response to the ‘request for further particulars’ did not match but contradicted his own testimony given before the court on oath.

For the above reasons, I find no merit in the grounds of appeal as the learned Magistrate was right in reaching the decision she did that the appellant had failed to prove his case. The appeal is dismissed but without costs.

D. GASWAGA
JUDGE

Dated this November, 2006.