

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES

CIVIL SIDE NO. 08 OF 2009

Daniel Joseph Burka

Plaintiff

Versus

Rolex Ventigadoo
Defendant

Serge Rouillon for the Plaintiff

Antony Derjacques for the defendant

JUDGMENT

FMS Egonda-Ntende, CJ

1. In this action the plaintiff is seeking the sum of SR 100,000/- with interest and costs of the proceedings from the defendant. The plaintiff was the owner of motor vehicle registered as no. S5457 and the defendant was the owner of a motor vehicle registered as no. S7013. It is contended for the plaintiff that on the 19th July 2008 opposite Army Headquarters at Bel Eau, Mahe, the defendant while driving his motor vehicle referred to above drove it into the plaintiff's vehicle aforesaid who was driving in the opposite direction. The defendant's vehicle hit the front part of the plaintiff's vehicle, badly damaging it. The plaintiff's attempts to avoid the accident did not succeed. It is further contended for the plaintiff that the defendant was at the time under the influence of alcohol above the prescribed limit of 35 mg.
2. The plaintiff further contends that by reason of the said accident he has suffered injuries, embarrassment, loss and damage in the sum of Rupees 100,000.00 which he claims from the defendant. The defendant did not enter a defence in spite of the fact

that he was served with summons and appeared in person before the court on 3rd March 2009 and was subsequently represented by Mr. Julie. The case was on 14th July 2009 fixed for ex parte hearing on 16th October 2009. On that day it was heard hence this judgment.

3. The plaintiff testified in person and he was the only witness. He stated that he is Radio Technician at SBC and part time DJ. On the 19th July 2008 he was driving to town in his motor vehicle S5457. When he reached Bel Eau opposite the Army Camp a white jeep came and hit his vehicle. All the time the plaintiff was in his lane. He stopped. The white jeep drove off. The army assisted the plaintiff. The police came. Though he did not know who was driving the white jeep he came to learn, with the assistance of the police, that it was the defendant.
4. At the time the accident occurred the white jeep was being driven at high speed and it hit the plaintiff's vehicle while the plaintiff's vehicle was on its side of the road. He took his vehicle to a workshop for repairs. He was told by the mechanic that his vehicle was a write off. The plaintiff's insurance company declined to compensate him on the grounds that the person who caused the accident, the driver of the white jeep, was drunk at the time of the accident according to a police report.
5. The plaintiff stated that he is claiming SR 100,000.00. The value of his vehicle before the accident was SR 60,000.00. Since its loss he had to hire a vehicle to take his children to school and his wife to work. He has had to hire a vehicle to transport the equipment for his music business of a DJ. At the time of the accident he was building a house and would use the said vehicle to deliver some building materials like cement. At the time of the accident the economy was stable but things have now gone up.
6. Though this case was fixed for ex parte hearing which has taken place, I am under the impression that Section 128 of the Code of Civil Procedure is sufficient to dispose of the same. The hearing may well have been superfluous in the circumstances of this case. Section 128 provides,

‘On the date to which the suit has been adjourned under the last preceding section, the parties shall appear and the court shall then adjourn the suit to a date to be fixed by the court for hearing. ***If the defendant has neglected to file his statement of defence within the time ordered by the court, the court may either give judgment for the plaintiff on his claim*** or grant further time, subject to such order as to costs, as to the court may seem fit.’ (*Emphasis is mine.*)

7. The defendant appeared in person on the 3rd March 2009. He was given time to consult a lawyer before filing his defence. He appeared by an attorney, Mr. Julie, on 31st March 2009. The case was fixed for mention on 12th May 2009 to allow the filing of a defence. On 12th May 2009 Mr. Derjacques appeared for the defendant. He applied for more time to file a defence. The Master ordered him to file his defence by the 2nd June 2009. Mr. Derjacques again appeared on 2nd June 2009. He had not filed a defence. He applied for more time. He was granted until 30th June 2009.
8. No defence was filed by the 30th June 2009. On that day Mr. Julie appeared, holding brief for Mr. Derjacques, and indicated that an insurance company was to take over the defence. The case was adjourned to 14th July 2009. On that day Mr. Julie appeared and stated that he had been told Mr. Chang Sam would take over, presumably for the insurance company. Mr. Chang Sam was in court. He stated that he had no such instructions. The advocate for the plaintiff then applied for an ex parte hearing date which was fixed for 16th October 2009.
9. It appears to me that under Section 128 of the Code of Civil Procedure a court is provided with two alternate courses of action. It could enter judgment for the plaintiff or it could provide the defendant with more time within which to file a defence. Given the numerous opportunities that had been afforded to the defendant to file a defence, the court was not prepared to give more time. Rather than fix the case for ex parte hearing, the only option available to court at the time was to enter judgment for the plaintiff on his claim in default of the defendant’s failure to file a defence.

10. As the defendant failed, in spite of repeated opportunities availed to him, to file a defence in the matter, the plaintiff is entitled to judgment on his claim under Section 128 of the Code of Civil Procedure. I enter judgment for the plaintiff in the sum claimed of SR 100,000.00 with interest from date of judgment until payment in full and costs of these proceedings.

Signed, dated and delivered at Victoria this 16th day of November 2009

FMS Egonda-Ntende

Chief Justice