

THE REPUBLIC OF SEYCHELLES
IN THE SUPRME COURT OF SEYCHELLES

Civil Side No. 22 of 2010

Marie-Neige Basset

Plaintiff

versus

Ronnie Mousbe

Defendant

Nichol Gabriel for the Plaintiff

Joel Camille for the Defendant

JUDGMENT

Egonda-Ntende, CJ

1. The plaintiff brings this action to recover from the defendant the sum of R 56,800 on account of a loan, interest and moral damages. It is contended for the plaintiff that she borrowed R40,000 from the Barclays Bank Seychelles Ltd on 24 September 2008 which she passed onto the defendant as a loan repayable by December 2008. This loan was to assist the defendant purchase a vehicle. Contrary to the agreement between the parties the defendant has refused to pay this money to-date
2. By reason of the defendant's actions the plaintiff has suffered loss which includes the principle amount, interest at 17% totalling to R6,800.00 and moral damages of R 10,000.00, which she now claims from the defendant.
3. The defendant denies that he ever borrowed from the plaintiff the said sum of

R40,000.00. To the contrary it is the plaintiff that borrowed from the defendant a sum of R15,000.00 which was the sum paid back to him with the money that the plaintiff borrowed from Barclays Bank Seychelles Ltd. The defendant prayed that this suit be dismissed with costs.

4. At the trial the plaintiff and defendant testified in person. Neither of them called any other witness. Basically this case revolves around which version of the two contending stories is more probable than the other. It is a question of one's word against the other.
5. It is not in dispute that at the time the events in question arose the parties had an intimate relationship that was on going with the defendant spending some time with the plaintiff at her residence. The plaintiff testified that the defendant saw an advert in the Nation for a car. He pressurised the plaintiff to borrow money so that he could buy the said car. Both the parties went to Barclays Bank and the plaintiff applied for the loan. It was granted. The plaintiff withdrew the money and paid it to the defendant at Pirates Arms. When she asked the defendant to pay it back to him the defendant started dodging her and being scarce.
6. The loan at Barclays Bank is now being paid back by the plaintiff over a 5 year period with monthly payments from the plaintiff's salary. She works with the Ministry of Education at Plaisance Secondary School.
7. The defendant in his testimony refuted the plaintiff's story. He stated that the plaintiff borrowed from him R 15,000 when he sold his land cruiser. He told her that that she will have to pay the money back when he finds another vehicle he wished to buy. When he saw an Escudo in the Nation, he asked for his money back. The plaintiff went to Barclays Bank and borrowed R40,000.00

of which she paid him only R15,000.00. The defendant requested for an additional R15,000.00 as a loan but she declined to advance the same.

8. Exhibit P1 is a loan agreement between the plaintiff and Barclays Bank Seychelles Ltd. It is for the sum of R40,000.00. The purpose of the loan is stated to be 'purchase of motor vehicle.' In procuring this loan the plaintiff was accompanied by the defendant who was the one that was really purchasing the motor vehicle. Those facts are not in dispute. What is in dispute is which version of the two before the court is more probable than the other.
9. It appears to me that the defendant wanted to obtain a sum of money within the region of around R 40,000 for the purchase of a vehicle. This is apparent from his own story that he had to borrow an additional R 20,000 from another person once he received R 15,000.00 from the plaintiff. The defendant did not call this person to testify in support of his case.
10. It is not in dispute that the only person who was to purchase a vehicle was the defendant. The defendant accompanied the plaintiff to the bank to apply for the loan. Given the relationship obtaining between the parties at the time, I am inclined to accept the plaintiff's story that the defendant pressurised her to obtain this loan. Escorting her to the bank appears to have been intended to make sure that she applies for the loan. The purpose of the loan was to buy a vehicle. The only person that was buying a vehicle was the defendant. I accept the plaintiff's version, to be more probable than that of defendant and that she passed on all the money she received from Barclays Bank to her lover the defendant. The defendant promised to pay it back. That had been their agreement.
11. In breach of the said agreement the defendant refused to pay the plaintiff back

the money so advanced. I am satisfied that owing to that refusal the plaintiff has suffered both material and moral damages. The material damage is in relation to the principal and interest of the loan that the plaintiff has had to shoulder and continues to pay to-date. I allow the plaintiff's claim for the principal amount of R40,000.00.

12. The plaintiff has claimed interest at of R 6,800.00. She has not shown that this is either the legal interest or conventional interest. However, there is no written agreement necessary for a claim of conventional interest to succeed in terms of article 1907 of the Civil Code of Seychelles. In the result I will only allow the legal rate of interest at 4% per annum from the date of default of payment of the loan. It shall run from 1 January 2009 till payment in full.

13. With regard to moral damages I am satisfied that the plaintiff has suffered some inconvenience due the defendant's breach of their agreement. R10,000.00 is awarded as moral damages. The defendant shall in addition pay the plaintiff's costs for this action.

Signed, dated and delivered at Victoria this 13th day of the January 2011

FMS Egonda-Ntende
Chief Justice