

IN THE SUPREME COURT OF SEYCHELLES

XAVIER EULENTIN

APPELLANT

VERSUS

ALAIN SICOBO

RESPONDENT

Civil Appeal No 10 of 2007

Mr. W. Herminie for the Appellant

Mrs. Amesbury for the Respondent

JUDGMENT

B. Renaud J

On 5th October, 2007 the Appellant entered a Notice of Appeal against the decision of the Learned Senior Magistrate His Worship Mr. W. Mutaki given on 21st September and in a Memorandum of Appeal he set out the grounds of Appeal as follows:

1. The decision of His Worship is against the weight of the evidence.
2. The Learned Magistrate having found that there was a valid contract between the parties should not have dismissed the case for lack of cause of action.

Learned Counsel for the Appellant submitted that there is plenty of evidence on record to show that the work was incomplete. According to him, there is the uncontroverted evidence of Magdalen Helen Eulentin who stated - "*I do not*

know the detail of the contract, however part of work unfinished.” Learned Counsel also made reference to the evidence of Jean Philip Eulentin who under cross-examination stated – *“... the doors, not put on the cabinet, the cabinet have not complete.”*

Learned Counsel for the Appellant submitted that the work incomplete and this is supported by the finding of the Learned Senior Magistrate as follows – *“the Defendant was right to terminate the contract”*. Learned Counsel for the Appellant however agreed that the Learned Senior Magistrate was wrong to find that full payment had not been made to the Defendant, when the evidence shows otherwise, in that the Defendant had received a total sum of SR4,500.00 for the work over unspecified period.

On the second ground of Appeal Learned Counsel for the Appellant submitted that the Defendant being in breach of contract, it cannot be said that Plaintiff had no cause of action against him. He argued that the reasoning and decision of the Learned Senior Magistrate is clearly contradictory in that in his judgment, at some stage he acknowledged that the work was incomplete and whereas he concluded that the work was completed.

I have perused the record of the Learned Senior Magistrate in MC CS426/06 as well as the judgment given on 14th September, 2007. (*not the 21st September as stated by the Appellant*).

I note that Learned Senior Magistrate in his judgment made the finding that the payment of SR4,500.00 was not substantiated by evidence of the Plaintiff and his witnesses. He also found that – *“the Defendant had yet to fix the cabinet and to complete the base of the cabinet for which the Defendant claimed a balance of SR2250.00/- otherwise the Defendant was either entitled to terminate the contract for non-payment of the balance”*.

The Learned Senior Magistrate then concluded that in the absence of proof of full payment and terms of contract, he was unable to award any relief to the Plaintiff. He also concluded that the Defendant had a right to terminate the contract if part of his obligation to the contract was performed and the Plaintiff failed to execute his part. The Learned Senior Magistrate also found that there was evidence from the Plaintiff’s witnesses that there was no detail of the quality of work in the contract between the parties but the work agreed was performed by the Defendant and completed. In his final analysis the Learned Senior Magistrate reiterated that the Plaintiff had no cause of action since he failed to prove that the Defendant did not complete the work they had agreed.

It is obvious to me that the Learned Senior Magistrate gave his judgment based on findings of facts that he made based on the evidence before him. The Appellate Court will disturb such finding of facts if the Learned Senior Magistrate had glaringly made such findings in absence of evidence or he indeed wrongly evaluated such facts and based his judgment on such wrong premise. I find that the Learned Senior Magistrate correctly framed the issues as follows – *“the question here is whether the Plaintiff paid the Defendant the SR4,500. and the*

Defendant failed to deliver the work.” He then apportioned the onus of proof and stated thus- “The burden of proof whether the Defendant was paid the money and did not deliver the work is upon the one who alleges, that is the plaintiff”. Based on the evidence before him, the Learned Senior Magistrate found that only SR2,250.00 was received by the Defendant from the Plaintiff in part payment. I do not find any fault in this finding as this is borne out by evidence. There is no evidence on record that would lead me to conclude otherwise than to uphold the finding of the Learned Senior Magistrate.

In the final analysis I uphold the Judgment of the Learned Senior Magistrate that in the “*absence of proof of full payment and terms of contract, he was unable to award any relief to the Plaintiff*”.

For reasons stated above I find no merit in the grounds of appeal advanced by the Appellant. I therefore dismiss the appeal with costs.

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B. RENAUD

JUDGE

Dated this 4th day of March 2011