

**IN THE SUPREME COURT OF SEYCHELLES**

**ALLIED BUILDERS (SEYCHELLES) LTD**

**PLAINTIFF**

**VERSUS**

**ROALD NILSEN**

**DEFENDANT**

**Civil Side No 76 of 2010**

Miss T. Micock for the Plaintiff

**JUDGMENT**

**B. Renaud J**

The Plaintiff Company Allied Builders (Seychelles) Limited entered this suit against the Defendant Roald Nilsen on 5<sup>th</sup> March, 2010 claiming the total sum of SR360.382.42 together with interest at the commercial rate of 18% per annum and cost of this suit.

The Defendant was duly served with the summons and Plaint on 25<sup>th</sup> March, 2010 to appear before Court on 11<sup>th</sup> May, 2010.

By letter dated 29<sup>th</sup> March, 2010 the Defendant informed Court that he was out of the jurisdiction for a series of medical tests and shall not be able to appear in Court until after his return between 10<sup>th</sup> June and 20<sup>th</sup> June.

In paragraph 2 of the Defendant's letter of 29<sup>th</sup> March, 2010, the Defendant stated as follows:

*"Furthermore, in order to save the court's time I take the liberty to suggest that there be appointed a neutral Quantity Surveyor to appraise all faults and shortcomings in the work done on my house. A schedule of this (not complete) has been duly announced to the Plaintiff's Attorney."*

At its sitting of 11<sup>th</sup> May, 2010 the Learned Presiding Judge made reference to the Defendant's letter and fixed the case for mention on 15<sup>th</sup> June, 2010 with notice to the Defendant. The Defendant was notified of this by letter dated 4<sup>th</sup> June, 2010. The Defendant responded by-mail dated 11<sup>th</sup> June, 2011 stating-

*"...I regret that due to a cancer treatment schedule I shall not be available in Seychelles before the first week of July for approximately one week".*

As a result of that letter, the Court at its sitting of 15<sup>th</sup> June, 2010 adjourned the case to 13<sup>th</sup> July, 2010 and ordered fresh service of summons on the Defendant for that date. Summons having not been served by that date, the Court further adjourned the case to 21<sup>st</sup> September, 2010 and again summons was issued on the defendant.

The Court record shows that the Defendant did not receive that summons. Again the matter was adjourned to 26<sup>th</sup> October, 2010 and the Defendant was supposedly served with summons on 14<sup>th</sup> October, 2010 by Process Server C. Freminot who stated that -

*"A copy of the above-mentioned summons and plaint has been duly served by me the undersigned Usher at 10 O'clock in the forenoon on the 14<sup>h</sup> day of October,*

2010 by **delivering same to Roald Nilsen G A Praslin**".

On 25<sup>th</sup> October, 2010 one Anders Hennie faxed a letter to Court Registry stating that -

*"A summons to appear to a plaint" was **delivered to Black Pearl Sey Ltd.***

*Roald Nilsen is not in the country, as he is in Norway receiving medical treatment for cancer. He is however expected to return to the Seychelles from the second week of January."*

At its sitting of 26<sup>th</sup> October, 2010, the Court noted that the Defendant had been duly heard. The Defendant having failed to respond to the summons, the Plaintiff then moved for *ex-parte hearing*. The Court granted leave for the matter to be heard *ex-parte* on 18<sup>th</sup> November, 2010 at 9.00 a.m.

I presided the *ex-parte hearing* on 18<sup>th</sup> November, 2010 when the suit was cause listed before me for that purpose. Previous to 18<sup>th</sup> November, 2010 I did not have the benefit of having anything to do with the case as it was either being handled by the Master or another Judge.

The witness for the Plaintiff testified and after its conclusion, I reserved judgment and the party was to be informed of the date for the delivery of judgment.

At the time of writing this judgment now, I perused all the records of proceedings and took

note of what I have stated above.

It is now of utmost concern to me as to whether any injustice had been caused to the Defendant and that possibly the Defendant might have not received a fair trial in the circumstances.

The Court Process Server made a "return" to the Court attesting as follows:

*"A copy of the above -mentioned summons and plaint has been duly served by me the undersigned Usher at 10 O'clock in the forenoon on the 14<sup>th</sup> day of Oct., 2010 by **delivering same to Roald Nilsen G A Praslin**".*

Yet, this Court appears received a letter from one **Anders Hennie** who faxed a letter to Court on 25<sup>th</sup> October, 2010 at 09.12 a.m. stating that -

*"A "summons to appear to a plaint" was **delivered to Black Pearl Sev Ltd.***

*Roald Nilsen is not in the country, as he is in Norway receiving medical treatment for cancer. He is however expected to return to Seychelles from the second week of January."*

**Section 34 of the Seychelles Code of Civil Procedure** states as follows:

*"Service of the summons shal be effected by delivering or tendering a copy thereof*

*to the Defendant personally, or if he cannot be found, to any member more than sixteen years old of the family of the Defendant residing with him, or to any agent or manager of the Defendant at the place where he carries on his business."*

There is in my view what appears to be a serious contradiction which obviously raises a serious doubt as to whether really Defendant was properly served.

It is evident that when he made the ex-parte order on 26<sup>th</sup> October, 2010 at 9.00 a.m. the Presiding Judge was not aware of the letter from Anders Hennie since the record shows that he made no reference to that effect.

Therefore, another doubt is raised in my mind as to whether the Court Registry did indeed place the above-stated letter for the attention of the Learned Judge. I doubt so, as if that had been done, the Learned Judge would have made reference to it.

Furthermore, I take note that the Court did not notify the Defendant of the ex-parte hearing date as is the usual practice.

In all fairness, I do not believe that the matter should have proceeded with this ex-parte hearing had my attention be drawn to the points I have raised above.

Having heard the matter ex-parte, I will now proceed to deliver my judgment based on the uncontroverted evidence of the Plaintiff.

The Plaintiff is and was at all material times a Company registered in Seychelles carrying

out the business of construction, and, the Defendant is and was at all material times a businessman on Praslin.

On the 14<sup>th</sup> April, 2007, the Defendant engaged the services of the Plaintiff for the extension of the Defendant's house at Amitie, Praslin *{hereinafter "the works" for the sum of SR900.000.00}*. (see **Exhibit P3**). A term of the agreement provided that the Defendant would make periodic payments upon the Plaintiffs completion of the various stages of the Works, wages or allowances in respect of labour, the price of fuel, power and added tariffs and duties imposed during the course of the agreement, any increase would be paid to the Plaintiff.

The Plaintiff duly carried out the Works and variations in accordance with the Defendant's instructions and has submitted claims to the Defendant for the completed works per **Exhibits 05 to 11**.

1. Interim payment application for **SR 452,000.00** dated 9<sup>th</sup> May, 2007.
2. Interim payment application for **SR 40,984.00** dated 15<sup>th</sup> June, 2007
3. Interim payment application for **SR143,809.00** dated 13<sup>th</sup> August, 2007
4. Interim payment application for **SR 44,251.00** dated 26<sup>th</sup> November, 2007

Interim payment application for **SR229,331.58** dated 1<sup>st</sup> March, 2008

Interim payment application for **SR100,674.42** dated 24<sup>th</sup> March, 2008

5. Interim payment application for **SR 28,140.00** dated 7<sup>th</sup> April, 2008

**Total SR 1,039,190.00**

By letter dated 14<sup>th</sup> June, 2008 (**Exhibit P12**) the Plaintiff referred to the site visit of the Defendant on 5<sup>th</sup> June, 2008 whereby the Defendant - "confirmed for *completion of all*

*works for the above project and keys of the building were handed over..."*

That letter continued stated that - *"In view of the above, we hereby request you kindly release the overdue payments as follows at the earliest"*. The Plaintiff set out a breakdown of its remaining unpaid claim amounting to **SR141,470.42** as being for Interim Application No. 06 for SR100,674.42 and No 07 for SR28,140.00 plus **SR12,656** being for variation in connection with vanity cabinet.

The total cost of the works and variation carried out and claimed by the Plaintiff from the Defendant as at 14» June, 2008 was (SR1,039,190.00 plus SR12,656.00) **SR1,051,816,00.**

The Plaintiff produced a summary admitted as **Exhibit P15** which shows the following as certified payments for the Defendant:

30.05.07	SR	450,000.00	against claim No.01
30.05.07	SR	40,984.00	against claim No. 02
30.05.07	SR	143,809.00	against claim No. 03
28.12.07	SR	44,251.00	against claim No. 04
06.03.08	SR	229,331.58	against claim No. 05
15.04.08	SR	50,000.00	against claim no. 06
Total	<b>SR</b>	<b>958,375.58</b>	

The amount of **SR958,375.58** is pleaded at paragraph 9 as admitted by the Plaintiff that the Defendant had so paid that sum. The remaining unpaid balance due to the Plaintiff from the Defendant as at that date therefore must have been (SR1,051,816.00 less

SR958,375.58) **SR93.44Q.42.**

The Plaintiff claims the amount of **SR270,000.00** as being fluctuations that occurred during the course of the agreement for which the Plaintiff claimed that the Defendant was informed and was invoiced accordingly for that sum. In the absence of contrary evidence I accept this claim.

The claims of the Plaintiff which has not been paid by the Plaintiff is, according to my calculation, (SR93.440.42 plus SR270,000.00) **SR363.440.42.** The Plaintiff having claimed **SR360,982.42** being a lesser amount, I will therefore bound the Plaintiff in the lower sum as pleaded.

The Plaintiff is claiming interest at the commercial rate of 18% per annum. In support of its claim for that level of commercial rate of interest the Plaintiff produced **Exhibit P30** being a letter dated 18<sup>th</sup> January, 2008 from Nouvobanq. That letter sets out terms for its Banking Facilities in affording the Plaintiff an overdraft facility of SR5,000,000.00 for working capital purposes repayable on demand, which facility would expire on 31<sup>st</sup> January 2009.

The interest for such facility was to be calculated on the daily outstanding balances and compounded monthly at the NOUVOBANQ prime rate 7% plus 3.5% i.e. 10.5 % per annum at present but subject to change at the Bank's sole discretion. I believe the rate of interest being claimed is exaggerated in the circumstances of this case. In particular the Plaintiff has claimed a total of SR270,000.00 on a contract worth SR1,051,816.00, which is over 25% over the original agreed contract price.



It is my judgment that it is fair and just in the circumstances to award the Plaintiff interest at the commercial rate of 10.5% per annum from the date of this judgment.

In the final analysis I enter judgment in favour of the Plaintiff as against the Defendant in the sum of **SR360.982.42** plus interest at the commercial rate of **10.5% per annum** from the date of this judgment.

I also award cost to the Plaintiff.

B. RENAUD  
JUDGE

Dated this 14<sup>th</sup> day of July, 2011