FMU v BARCLAYS BANK

(2011) SLR 370

B Galvin, State Counsel, for the applicant
S Divino for the respondent

Ruling delivered on 31 October 2011 by

EGONDA-NTENDE CJ: This is a section 4 application under the Proceeds of Crime (Civil Confiscation) Act, hereinafter referred to as POCA. A similar application was previously made as Civil Side No.343 of 2010 which was heard on its merits and determined on 11 May 2011. In the previous application there were 14 respondents. Now there is only one respondent, formerly respondent no. 14. At the hearing of this application Mr Sabino Divino, counsel for the respondent, objected to it on the ground that the matter was res judicata having been decided in Civil Side No 343 of 2010. It should therefore not be revived again.

Mr Barry Galvin submitted that as this was an interlocutory matter, a ruling upon the same could not be final between the parties. Secondly as the matter had proceeded ex parte against the 14 parties who had not appeared before the court there, ought to have a default ruling against the said absent parties.

Res judicata in this jurisdiction is governed by article 1351 of the Civil Code of Seychelles which states:

> The authority of a final judgment shall only be binding in respect of the subject matter of the judgment. It is necessary that the demand relate to the same subject matter; that it relate to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities.

For res judicata to apply there must be three fold identity of subject matter, cause and parties in the first and the subsequent case. This was ably explained by SirGeorges Souyave, CJ in *Hoareau v Hemrick* (1973) SLR 272at 273;

> For the plea of res judicata to be applicable, there must be between the first case and the second case the threefold identity of “objet”, “cause” and “personnes”. The “objet” is what is claimed. “La cause” is the fact, or the act, whence the right springs. It might be shortly described as the right which has been violated.

In *Attorney-General v Joseph Marzocchi and Anor* SCA No 8 of 1996 the Court of Appeal held that the doctrine of res judicata is based on the rationale that there is a public interest in finality of Court decisions (*interest republicae ut finis litium sit*) and that individuals should not be troubled twice on the same subject matter (*nemo debet vexari pro eadem causa*). For the plea of res judicata to succeed there must be a final and binding decision that encompasses the same subject matter, on the same cause of action, and the same parties.

It is true that in the first case the ruling sought was an interlocutory ruling. Nevertheless it appears to me where the ruling sought is denied on its merits that the decision assumes a finality as the applicant is then unable to proceed further under POCA with the possible steps he may take had its application been successful. To that extent it may well qualify to be a final decision, even though not a judgment, as such.

If it is then regarded as a final decision between the parties it would appear to me that no action similar can be brought again between the same parties over the same subject seeking the same relief unless under the Seychelles Code of Civil Procedure, permission by the Supreme Court for a new trial has been obtained on the grounds that the code permits for new trials. Otherwise it would be an abuse of court process in my view for one to try a second bite at the cherry by saying last time I did not have sufficient evidence. You dismissed my action. Now I have brought a new action with more evidence than I laid before the court last time. I think there is now sufficient evidence to satisfy the court to give a decision in my favour.

Judgment is not defined under the Interpretation and General Provisions Act. Nor is it defined under the Civil Code of Seychelles. Neither is it defined under the Seychelles Code of Civil Procedure. I have also not been able to come across any decision in this jurisdiction which defines judgment. If I take it that it must refer to a final decision of the court by whatever name called, then it would appear to me that a decision rejecting on the merits an application under section 4 of POCA is final and would qualify to bar the applicant from bringing the same action against the same parties for the same relief a second time.

However even if that were not to be the case I am satisfied that it would an abuse of court process for a person to continue bringing the same action before court against the same parties for the same relief when the court had already entertained an earlier application and provided a decision on its merits. This court has inherent powers to prevent the abuse of its process. In exercise of the inherent powers of this court to prevent the abuse of its process I dismiss this application with costs.

Record: Civil Side No 121 of 2011