

**IN THE SUPREME COURT OF SEYCHELLES**

**ROBERT ANDRE**

Vs

**THE ATTORNEY GENERAL**

*Civil Side No: 365 of 2007*

=====

Mr. Chetty for the plaintiff  
Mr. Esparon for the defendant

**Judgment**

**Introduction**

The Plaintiff entered this Plaint on 11<sup>th</sup> December, 2007 claiming a total sum of **SR112,615.00** from the Defendant for the loss and damages he allegedly sustained upon the sale of his motor vehicle. The Plaintiff is also claiming costs and of this suit and interest.

The Plaintiff particularized his loss and damages as follows:

1. Loss made on vehicle S346 taking into account the purchase price of SR55,000.00 paid by the Plaintiff and the sale price of SR14,000.00 - SR41,000.00
  
2. Expenses made by the Plaintiff on S346 from purchase dated to date of the incident referred to in paragraph 3 of the plaint - SR10,875.00
  
3. Loss made by the Plaintiff upon non-payment

- of loan with arrears and accrued interests - SR10,740.00
4. Loss of earnings estimated at the sum  
of SR5,000.00 per month as from January 2007  
to date
5. Moral damages - SR50,000.00

### **The Parties**

The Plaintiff is a self-employed Building Maintenance Contractor and the Defendant is the legal representative of the Government of Seychelles.

### **Prayers of Plaintiff**

The Plaintiff is praying this Court for judgment:

1. ordering the Defendant to pay him the sum of SR41,000.00 which is the loss sustained by him on the sale of motor vehicle S346;
2. ordering the Defendant to pay him the sum of SR10,875.60 which represents the sum of money spent by him on the repairs of S346;
3. ordering the Defendant to pay him the sum of SR10,740.00 which is the arrears and accrued interests on the loan taken by him from the Development Bank of Seychelles;
4. ordering the Defendant to pay him the sum of SR5,000.00 per month from January 2007 to the date of the judgment;
5. ordering the Defendant to pay him the sum of SR50,000.00 as moral damages;
6. ordering the Defendant to pay costs of this case.

### **Plaintiffs' Case**

On the night of the 16<sup>th</sup> to 17<sup>th</sup> January, 2007, the Plaintiff had parked his motor vehicle S346 on a property registered as Parcel H1790, situated at Ma Joie, belonging to Marlene Valentin and Gabriel Valentin.

During the early morning of the 17<sup>th</sup> January 2007, an albizia tree from the adjoining property registered as parcel H6870 belonging to the Government was partly uprooted and fell on the Plaintiff's motor vehicle.

As a result the front part of the Plaintiff's motor vehicle was extensively damaged and the Plaintiff was unable to use the motor vehicle.

The Plaintiff took a loan of SR37,500.00, from the Development Bank of Seychelles, in August 2006 to enable him to purchase the said vehicle. The Plaintiff was to pay the loan over a period of 24 months starting from January 2007 to December 2008, at the rate of SR1709.00

On the 22<sup>nd</sup> January 2007, the Plaintiff obtained a quotation from Elm Pty Ltd garage for the costs of the repairs to the said vehicle. The quotation was for the sum of SR37,975.00.

The Plaintiff was unable to meet the costs of the repairs and in March 2007, the Plaintiff had no option but to sell the motor vehicle for the sum of SR14,000.00.

When the Plaintiff bought the motor vehicle in September 2006 he bought it for the sum of SR55,000.00. In addition the Plaintiff spent the sum of SR10,875.60 in order to repair certain defects of the said vehicle thus making it more reliable to be used in the course of his employment.

In order for the Plaintiff to repay his loan he had to take money out of his savings and as from June 2007 to October 2007 the Plaintiff was unable to repay his loan and to respect his commitment with the Development Bank of Seychelles and the repayment of the loan fell in arrears, with accrued interests.

In addition as the Plaintiff had no means of transport to get him to and from the different places on Mahe where he was and is commissioned to do certain jobs, and as a result the Plaintiff has lost and continues to lose earnings which he estimates in the sum of SR5,000.00 per month as from January 2007 to date.

Despite repeated verbal and written requests to the Ministry of Land Use and Habitat, now Ministry of National Development, herein represented by the Defendant, the Defendant has failed to pay the Plaintiff any compensation for his loss and damages.

The Ministry of National Development, has so far only make an offer of compensation for the sum of SR8,000.00.

The Plaintiff avers that in view of the losses and damages that he has sustained as outlined in paragraph 11 of his Plaint, the offer is far too low and thus unacceptable.

### **Defendant's Case**

By its Statement of Defence entered on 19<sup>th</sup> June, 2008, the Defendant raised a plea *in limine litis* as follows:

*"The action is time barred under the Public Officers Protection Act."*

On the merits, the Defendant admitted the averment of paragraph 1 of the Plaint and put the Plaintiff to proof of each and every allegations mentioned in the Plaint.

On that basis the Defendant moves this Court to dismiss the Plaintiff with cost.

### **The issues**

For good reason, the point raised by the Defendant *in limine litis* was not taken up as an issue during the hearing. This Court is now not required to address this issue.

The Defendant has called on the Plaintiff to prove the allegations contained in his Plaintiff. This, the Plaintiff is required to do on a balance of probabilities to the satisfaction of the Court. By its statement of defence the Defendant has not joined any other issue for determination by this Court.

### **The evidence of Plaintiff**

The Plaintiff testified under oath that he was a Maintenance Contractor and was undertaking works for SHDC on its various flats and houses at the material time of the incident in issue.

During the early evening of 16<sup>th</sup> January, 2007 he had parked his vehicle at Ma Joie in front of the house of one Mrs. Marlene Labiche. During the early morning of 17<sup>th</sup> January, 2007 he was alerted by Mrs. Labiche that an Albizia tree felled on the front part of his motor car. He went to see and arriving on the scene he found that the Police was already attending the scene of the incident.

The Plaintiff found out that the Albizia tree that fell on his car was situated on the property of the Defendant. He made a search at the Land Registry and established the Albizia tree was situated on land parcel H6870 and that parcel belonged to the Defendant. A Certificate of Official Search to that effect is now **Exhibit P1.**

The Plaintiff's car was a Nissan Sunny BII, light blue in colour and had sun roof, body kits and other things which he installed on it. The car is registered as S346 and a certificate of registration from the Seychelles Licensing Authority dated 19<sup>th</sup> October, 2006 is **Exhibit P2** which also shows that that motor vehicle belonged to the Plaintiff Robert Clement Andre.

The motor vehicle in issue was extensively damaged on its front part, including its hood, its chassis, its engine, its air conditioning unit etc. It was not possible for the vehicle to be driven after the incident.

The Plaintiff purchased the vehicle for SR50,000.00 by means of a loan of SR37,500.00 from the Development Bank of Seychelles (DBS) and together with his savings of SR12,500.00. The loan agreement with DBS is dated 29<sup>th</sup> August, 2006 and is now **Exhibit P3**.

After he purchased the vehicle, the Plaintiff carried out certain repairs underneath by a garage known as ELM, which cost him an additional SR10,875.00. The original copy of the quotation is now **Exhibit P5**.

The Plaintiff produced a GPS Cadastral Plan of the area where the incident happened and this is **Exhibit P4**.

After the incident the Plaintiff could not afford to have his vehicle fixed as he had other commitments including the repayment of the loan to DBS and therefore to mitigate his loss he had to sell the "salvaged" for SR14,000.00. Prior to that the Plaintiff had obtained a quotation for the repair of his vehicle and a mechanic Mr. Jany of ELM quoted SR35,000.00 for the repairs.

From June to October, 2007 he had difficulty to get jobs to do because the type of work he was doing he encountered problems when it comes to receiving payments from clients. He also had difficulty to get to the various jobs he was undertaking because of lack of transport. As a result he had to completely stop

undertaking any jobs. At that time, only from SHDC, he was earning about SR4,000.00 per month for maintenance works.

The Plaintiff stated that after purchasing the vehicle for SR50,000.00 then doing additional repairs to it for SR10,875.00 and having sold it for only SR14,000.00, he estimated that he made a loss of SR41,000.00.

The Department of Risk and Disaster Management of the Defendant compensated him in the sum of SR9,000.00 and offered him a further SR8,000.00 only. He accepted the offers and received a total of SR17,000.00.

The Plaintiff instructed his then Lawyer to write to the Defendant. Copy of letter dated 5<sup>th</sup> September, 2007 is **Exhibit P6** and copy of a letter of demand dated 18<sup>th</sup> October, 2007 is **Exhibit P7**.

### **Evidence of Defendant**

The Defendant did not adduce any evidence.

### **Submissions of Defendant**

Learned Counsel for the Defendant submitted that the Plaintiff did not bring expert evidence to prove that the Albizia tree was indeed from parcel H6870 belonging to the Government of Seychelles. The burden of proof lies on the Plaintiff to prove that that Albizia tree was from parcel H6870 belonging to the Defendant which fell on his car.

Learned Counsel for the Defendant also submitted that the Plaintiff did not plead that the Defendant was at fault and as such the Plaintiff does not disclose any reasonable cause of action.

Learned Counsel for the Defendant further submitted that in any event the amount claimed is manifestly excessive. It was incumbent on the Plaintiff to sell his car at the maximum possible price.

Learned Counsel for the Defendant also submitted that any loss made by the Plaintiff upon non-payment of loan are damages that are too remote. Further, the loss of earnings claimed is also remote and no causal link has been shown between the fault of the Defendant and such damages.

Finally, the Learned Counsel for the Defendant submitted that the amount claim as moral damages is manifestly excessive and such damage has not been proved.

### **Submissions of Plaintiff**

Learned Counsel for the Plaintiff submitted that the Defendant simply made mere denial of the allegations in the Plaint and also failed to bring any evidence before the Court. A mere denial is simply a denial and not a defence. Hence, the necessity of expert evidence to prove any matter pleaded is not called for in the circumstances of mere denial.

Learned Counsel for the Plaintiff also submitted that the issue of causal link raised by the Defendant has been established by evidence.

### **The Law**

In the context of this suit, it is Article 1382-1 read with Article 1383-1 which is applicable.

**Article 1382-1** states:

*“Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.”*

**Article 1383-1** states:

*“Every person is liable for the damage it has caused not merely by his act, but also by his negligent or imprudence.”*



## **Findings and Conclusions**

What follows are my findings and conclusions based on my analysis of the evidence before the Court.

The Plaintiff is a self-employed Building Maintenance Contractor.

During the early evening of 16<sup>th</sup> January, 2007 the Plaintiff had parked his car, registration number S346, at Ma Joie on the property of Mrs. Marlene Labiche. The car was a Nissan Sunny BII, light blue in colour and had sun roof, body kits and other things which he installed on it.

In the early morning of 17<sup>th</sup> January, 2007 an Albizia tree felled on the front part of his vehicle S346. That Albizia tree was situated on the property of the Defendant particularly on land parcel H6870. The motor vehicle in issue was extensively damaged on its front part, including its hood, its chassis, its engine, its air conditioning unit etc.

In determining any award of damages I take judicial notice of and bear in mind the devaluation of the Seychelles Rupee since the occurrence of the incident and the date of the entering of the claim in Court.

The Plaintiff purchased the vehicle for SR50,000.00 by means of a loan of SR37,500.00 from the Development Bank of Seychelles (DBS) and together with his savings of SR12,500.00. After purchasing the vehicle, the Plaintiff carried out certain repairs underneath which cost him an additional SR10,875.00.

The cost to have the vehicle repaired after the incident was SR35,000.00. The Plaintiff could not afford to undertake the repairs. To mitigate his loss he sold the "salvaged" for SR14,000.00. I believe that that was the maximum price the salvage was worth as I am sure that he would not sold it for less than what it was worth.

From June to October, 2007 the Plaintiff had difficulty to get jobs to do because he had difficulty to get to the various jobs he was undertaking because of lack of transport. As a result he had to completely stop undertaking any jobs. At that time, only from SHDC, he was earning about SR4,000.00 per month for maintenance works.

The Plaintiff having purchased the vehicle for SR50,000.00 and doing additional repairs to it for just over SR10,000.00. In my view the value of the Plaintiff's car at the time of the incident was SR60,000.00. Having sold that car for SR14,000.00, he made a loss of **SR44,000.00**, so I find.

The Department of Risk and Disaster Management of the Defendant compensated the Plaintiff in the sum of SR9,000.00 and offered him a further SR8,000.00 only. He accepted the offers and received a total of **SR17,000.00**. This sum will be deducted from any award of damages.

The Plaintiff having taken a loan to purchase the car and to service that loan even his car was not roadworthy. He claims the sum of SR10,740.00 which was the arrears and accrued interests on the loan taken by him from the Development Bank of Seychelles. I believe that the Plaintiff should have applied the proceeds of sale of the "salvaged" towards the loan and interest thus reducing it. I do not believe that the Defendant ought to make good the total amount of accrued interest. It is my judgment that the Plaintiff ought to be awarded only 50% of his claim under this head as I also believe that that claim has an element of remoteness as submitted by the Defendant. I award the Plaintiff **SR6,000.00** as accrued interests.

The Plaintiff claimed the sum of SR5,000.00 per month from January 2007 to the date of the judgment. I do not see any justification or merit for such claim. I do not make any award.

The Plaintiff also claimed the sum of SR50,000.00 as moral damages. In my view this amount is on the high side and I reduce it to what I believe to be a just and fair sum. I award the Plaintiff **SR25,000.00** as moral damages.

From the total awards made in favour of the Plaintiff as set out above, the sum of SR17,000.00 already received by the Plaintiff from an Agency of the Defendant, shall be deducted.

In the final analysis I enter judgment in favour of the Plaintiff as against the Defendant in the total sum of (SR44,000.00 + SR6,000.00 + SR25,000.00 less SR17,000) **SR58,000.00** with interests and costs.

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B. RENAUD  
JUDGE

*Dated this 6 June, 2012 at Victoria, Mahe, Seychelles*