

IN THE SUPREME COURT OF SEYCHELLES

INNOCENT ALPHA VENTIGADOO GANGADOO

Vs

CABLE & WIRELESS SEYCHELLES LTD
(Rep. by its Chief Executive Office Mr. Charles Hummond)

Civil Side No: 175 of 2011

Mr. Rajasundaram for the plaintiff
Mr. Sabino for the defendant

Ruling

The Plaintiff entered her claim against the Defendant on 8th September, 2011. The Defendant entered its Statement of Defence to the claim on 16th November, 2011, which statement included “pleas in limine litis” as follows:

1. This matter is Res Judicata as per Article 1351 of the Civil Code of Seyhelles.
2. As an alternative to the above plea of Res Judicata, this matter is an abuse of process; it is an attempt to re-litigate on substantially the same issues.
3. The claim is prescribed. According to the Plaintiff the claim was actionable upon from the date of the registration of the land transfer i.e. 5th April 2004, over 7 years ago.

4. No cause of action can be discerned from the Plaintiff. There is what appears to be a claim for rent but no mention of any rental agreement or contract.

Plea *in limine litis* when raised in a matter before the Court is determined by the Court based only on the pleadings of the parties. In the present suit there is only the Plaintiff entered by the Plaintiff and the Statement of Defence entered by the Defendant upon which this Court has to base its findings and conclusions. Each point will now be considered in the order set out above.

Is this suit Res Judicata? To determine this issue the Court needs to compare the previous suit before the Court as against the present suit in order to verify whether the conditions set out in **Article 1351 of CCsey** exist. The conditions are that - the demand relates to the same subject-matter; that it relates to the same class, that it be between the same parties and that it be brought by or against them in the same capacities.

This Court, being not aware as to what was the subject matter in suit CS 274 of 2009 as stated in the pleadings, is therefore unable to uphold that first point.

As an alternative to the above plea of Res Judicata, the Defendant stated that this matter is an abuse of process in that it is an attempt to re-litigate on substantially the same issues. Again for the same reason as stated earlier above this Court being not aware as to what was the subject matter in suit CS 274 of 2009 as stated in the pleadings is therefore also unable to uphold that second point.

The third point raised by the Defendant is that the claim is prescribed because, according to the Learned Counsel for the Defendant basing on the Plaintiff, he

stated that the suit was actionable upon, from the date of the registration of the land transfer i.e. 5th April 2004, over 7 years ago. This Court cannot ignore the pleading where it is stated that CS 274 of 2009 must have been entered in 2009 but it is not known whether it was before 5th April, 2009, being less than 5 years. The filing of a suit in Court can serve as an interruption of the prescribed period. There is established on the face of the pleading that the parties were before the Court in 2009 which could have served to interrupt the period of prescription. This point will be better determined after hearing evidence.

The fourth point being that no cause of action can be discerned from the Plaintiff and that there is what appears to be a claim for rent but no mention of any rental agreement or contract. From the pleading it is evident that the Defendant has a building situated on the property of the Plaintiff without the latter's permission and the Plaintiff is now claiming indemnity for that, in the form of rent and moral damages and/or for the Defendant to remove its structures from the Plaintiff's land. In the interest of justice the suit ought to be allowed to proceed to hearing in order to adjudicate on that apparent issue. That point of law is also dismissed.

In the light of the foregoing all the points of law raised by the Defendant are dismissed and the suit shall proceed to be heard on the merits.

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B. RENAUD
JUDGE

Dated this 31 October 2012