

IN THE SUPREME COURT OF SEYCHELLES

JOSEPH MONNAIE

Vs

HOUSING FINANCE COMPANY

Civil Appeal No: 11 of 2012

=====

Mr. Elizabeth for the Appellant
Mr. Robert for the Respondent

JUDGMENT

Renaud, J.

This is an appeal against the decision of Learned Magistrate Ng’hwani given on 14th October, 2011 in case CS 01/11.

The two grounds of appeal are:

- 1. The Learned Magistrate erred in law when she concluded that “the Court finds that the Plaintiff failed to prove his case beyond reasonable doubt...”*
- 2. The Learned Magistrate erred in law when she applied the provision of Article 1582 and 1583 of the Civil Code in this case.*

The original suit CS 01/11 was a civil matter where the Plaintiff then (the Appellant now) was claiming moral damage in the sum SR110,000.00 with interests and costs against the then Defendants (now Respondents).

At the original hearing Learned Counsel for the Plaintiff withdrew the case against the 2nd Defendant and proceeded against the 1st Defendant only.

The matter was heard *ex-parte* as the Defendant failed to put up appearance. Hence, there was before the Court only the evidence of the Plaintiff. The Learned Magistrate considered the evidence of the Plaintiff and in her judgment made reference to Article 1582 and 1583 of the Civil Code of Seychelles and ostensibly applied its provisions when determining the case.

In her final analysis the Learned Magistrate based herself on the premise that the required standard of proof in such case was that of “*beyond reasonable doubt*” as is applicable in a criminal case instead of that of “*balance of probabilities*”. The end result was that she found that the Plaintiff had failed to adduce evidence on that standard of proof to prove his case which she accordingly dismissed.

I find that the Learned Magistrate misdirected herself in law and applied the incorrect standard of proof and this is fatal to the case. I accordingly uphold the appeal of the Appellant with cost.

In the interest of justice I remit this matter to the Magistrate Court for the original matter to be heard by a different Magistrate.

.....
B. RENAUD
JUDGE

Dated this 2 April, 2013