IN THE SUPREME COURT OF SEYCHELLES

RODDERICK LARUE **APPELLANT**

V

1. OSMAN LEGGAIE **1st RESPONDENT**

2. ATTORNEY GENERAL **2nd RESPONDENT**

Civil Appeal Side No.19 of 2011

Mr. Joel Camille Attorney at Law for the Appellant

Mr.K. Khalyaan State Counsel for the Respondent

JUDGMENT

Burhan J

This is an appeal against the order of the learned Magistrate Mr. B. Adeline dismissing the plaint of the Plaintiff-Appellant (hereinafter referred to as the Appellant).

The Appellant filed plaint in the Magistrates' Court seeking damages in a sum of Rs 23,055.00 from the 1st Defendant - Respondent (hereinafter referred to as the 1st Respondent) for damage caused to his vehicle bearing registration number S 4776, as a result of the 1st Respondent's vehicle GS 17208 colliding with his vehicle on the 2nd of December 2008 while being negligently driven by the 1st Respondent.

Learned counsel for the Respondents took up a preliminary objection, a plea in limine that the plaint be dismissed as the action was prescribed by virtue of section 3 (a) of the Public Officers (Protection) Act of 1976.

The learned Magistrate in a reasoned ruling dated 9th September 2011, upheld the objection that the plaint was prescribed by law and dismissed it with costs.

Being aggrieved by the said decision the Appellant seeks to appeal on the following grounds;

1) The learned Magistrate erred in law in holding that the action brought by the appellant was prescribed in law and in failing to allow the appellant case to be heard and determined on the plea in limine as raised by the Defendant in this matter.
2) The learned Magistrate erred in law in not allowing sufficient opportunity to the appellant or his attorney to address him on the point of law raised by the Defendant.
3) The learned Magistrate erred in law and on the facts as he could not be satisfied as to the whole circumstances of the case, whether the Appellant's action would have been lawfully justified, under one of the exceptions in the rule of prescription against public officers.

Both parties tendered written submissions. I have considered the submissions of learned counsel for the Appellant and learned counsel for the Respondent.

It is the contention of learned counsel for the Appellant that the Appellant was not afforded the opportunity of being heard. He further states that the said failure by the learned Magistrate is a clear denial of the rules of natural justice. On perusal of the proceedings of 15th March 2010 it is apparent that learned counsel for the Respondent had moved court that the plea in limine be taken before the evidence be recorded. However the learned Magistrate had stated:

"For practical reason and in order not to create inconveniences of the witnesses he shall do so later proceed Mr. Camille."

Thereafter the evidence of the Appellant was led and the case was adjourned to the 19th of April 2010. On the 4th October 2010 the evidence of Paul Isaac was led and the case thereafter adjourned several times until the 4th of July 2011 when in the presence of learned counsel for the Appellant, parties were informed that submissions would be heard on the plea in limine on Tuesday the 12th of July 2011 at 9.00a.m. However on the 12th of July 2011 learned counsel for the Appellant had moved for a further adjournment on the grounds he was not ready. Learned

counsel for the Respondents Mrs. Cesar had informed court that she was ready with her written submissions. As learned counsel for the Appellant was not ready further time was given to him to prepare his submissions in writing and the learned Magistrate fixed the case for ruling on the 7th of September 2011 specifically stating;

"Should counsel for the plaintiff not file his submissions a week earlier the court will make the ruling on the basis of what is on record."

When the case was taken up on the 7th of September 2011, the ruling was adjourned and the ruling delivered on the 9th of September 2011.

In his ruling the learned Magistrate has stated as follows;

"No written submissions was produced to the court by the defence counsel (correction should read as plaintiff's counsel according to the proceedings) *inspite that he agreed to do so in the proceedings of the 12th of July 2011, which submission should have been made in writing prior to the 7th of September 2011.*

On a reading of the aforementioned proceedings in the case it cannot be said that an *opportunity of being heard* was not given to the Appellant. Not one but several adjournments had been given for the Appellant to file his written submissions but it is apparent from the record, he has continuously failed to do so, despite several opportunities been given to him by court. The fact that the Appellant was not heard was not because he was not provided with an opportunity of being heard but because it appears he chose not to accept or act on any of the opportunities provided for by court. Therefore it cannot be said that the rules of natural justice have not been followed in this instant case. In fact the learned Magistrate has provided not one but several opportunities which the Appellant has failed to act on. For this reason grounds I and 2 of the appeal bear no merit.

Learned counsel next contended that nowhere in the pleading of the Appellant is it contended that the 1st Respondent had done the said act in the execution of his office. It is apparent from the

pleadings filed by the Appellant himself that he has proceeded not against the 1st Defendant only but on his own accord brought in the Attorney General as the 2nd Defendant (2nd Respondent in this case). Learned counsel for the Appellant has not sought to explain why he did so in his submissions but evaded this obvious question which comes to mind. It is apparent from the evidence led that the Appellant in his evidence specifically mentions that the vehicle was one belonging to the Ministry of Health. At paragraph 3 of his plaint, he mentions the 1st Defendant was acting during the course of his employment and the evidence bears out as a driver of the Ministry of Health and therefore a public officer. It is settled law that in such instances the Attorney General is made a party to the said case. Further at paragraph 4 of his own plaint he states the 2nd Defendant was vicariously liable for the said accident while in his evidence he admits he had gone to meet the Secretary Minister of Health when the insurance company had refused to pay him. Having mentioned all these facts in the plaint and evidence I am quite surprised that learned counsel has now taken up the position that it was a misnomer on his part to have named the Attorney General as a party as it is nowhere stated that the act of the 1st Respondent was executed during his office. It is quite obvious to this court that learned counsel for the Appellant is now taking up this sudden change in position and a new stance as his action against the public officer has been correctly declared by the learned Magistrate as been prescribed by law.

Further considering the nature of the accident and the subsequent events that followed as borne out in the evidence, up to the time the ruling was made in respect of the preliminary objection, it is evident that from the very time the accident occurred, the Appellant was aware that the act was done by a public officer in the execution of his duty, a fact even admitted by the 2nd Respondent the Attorney General. In the case of ***Simon Emmanuel & Attorney General v Edison Joubert SCA 49/1996,*** it was held a claim arises under article 1382(1) of the Civil Code when the act and the injury co exist and there is a casual link between the act and the injury, not when the damage has been quantified. In this instant case this court is satisfied that the act and the injury did co exist and there was a link between the act and the injury on the very day the accident occurred that is the 2nd of December 2008. Therefore the date the claim arose in this instant case was the 2nd of December 2008.

Section 3 of the Public Officers (Protection) Act reads as follows;

"No action to enforce any claim in respect of-

(a) any act done or omitted to be done by a public officer in the execution of his office;

(b) any act done or omitted to be done by any person in the lawful performance of a public duty; or

(c) any act done or omitted to be done by a person lawfully acting in aid of , or lawfully giving assistance to, a person referred to in paragraph (a) or (b),

shall be entertained by a court unless the action is commenced not later than six months after the claim arose."

As mentioned earlier, the date the claim arose in this case was the 2nd of December 2008. The action to enforce the said claim has commenced on the 13th day of August 2009. Therefore taking into consideration the provisions contained in section 3 of the Public Officer (Protection) Act, the action to enforce the said claim cannot be entertained by court as it has commenced later than 6 months after the claim arose. The learned Magistrate ruling in dismissing the plaint on this ground, cannot be faulted and is upheld by this court. The appeal is dismissed with costs.

M.N BURHAN

JUDGE

SUPREME COURT OF SEYCHELLES

Dated this 22st day of March 2013