

IN THE SUPREME COURT OF SEYCHELLES

Civil Appeal No. 37 of 2012

[Appeal from Magistrate's Court decision in CS 145/2011]

[2013] SCSC

ALLESANDRO MARZOCHIE

Appellant

versus

HERVE TOULON

Respondent

Heard: 7 March 2013

Counsel: Basil Hoareau for the Appellant

Frank Elizabeth for the Respondent

Delivered: 29 May 2013

JUDGMENT

Egonda-Ntende CJ

[1] This dispute arises from an accident involving a rented car. The appellant claims to be the proprietor of a business, 24 Hours Cars, which rented a car to the respondent. The accident allegedly happened in July 2009. The appellant filed this case in the Supreme Court in October 2010 but it was transferred to the Magistrate's Court in February 2011 in light of the limited amount involved (Rs 120,000). It took more than a year to begin the hearing in the Magistrate's Court. Both parties were legally represented. The appellant testified in person and called one witness, a mechanic. The respondent was to call one witness, from the Seychelles Licensing Authority. However, on the day set for continuation of hearing, learned counsel for the respondent, Mr. Elizabeth, made a "no case to answer" submission. The Magistrate heard argument on this submission and reserved her ruling. She initially indicated that she had decided

there was a case to answer. However, the ruling that was ultimately delivered held that there was no case to answer and struck out the plaint.

[2] The appellant seeks to overturn this decision on three grounds, the third of which is really an aspect of the second:

1. The “no case to answer” procedure does not exist in the civil jurisdiction of the Magistrate’s Court.
2. The Magistrate erred in law and on the evidence in concluding that there was no case to answer.
3. The defence was so vaguely pleaded that the facts alleged in the plaint should have been taken as admitted.

Procedural problems with the appeal

[3] As with many other memoranda of appeal in recent cases before me, there is no prayer for relief. I will not repeat here the reasons why this practice is unacceptable. It must cease immediately. Counsel are on notice that future appeals presented in this manner will be deemed withdrawn in accordance with r 14 of the Appeal Rules.

[4] There is a more fundamental procedural difficulty. Section 43(2) of the Courts Act precludes appeals as of right from interlocutory rulings of the Magistrate’s Court, even where (as in this case) the ruling had the effect of disposing of the suit. I shall set forth the said section 43(1) and (2) of the Courts Act.

‘43(1) Any person aggrieved by a final judgment of the court in any civil cause or matter to which he is a party may appeal to the Supreme Court.

(2) There shall be no appeal from any interlocutory judgment of the court except where, in the circumstances of a particular case, the interlocutory judgment has the effect of disposing of the claim, or of one of the claims, in the suit, in which event the Supreme Court may give leave to appeal on such terms as to security, costs and otherwise as may be just.’

[5] It is necessary to seek leave of the Supreme Court to bring the appeal. That was not done here. There is accordingly, at this point, no jurisdiction to entertain the appeal.

- [6] For the reasons given below, I am satisfied that this case has miscarried in the Magistrate’s Court and that it would not be in the interests of justice to dismiss the appeal on a technical ground. While I am mindful that the respondent has not had an opportunity to object to the granting of leave to appeal, it is difficult to see what objection could legitimately be raised. The respondent also failed to bring the jurisdictional point to the attention of the Court. In the unusual circumstances I have decided to grant leave to appeal at this very late stage. I will proceed as if it had been sought and granted at the appropriate time.

Is there a “no case to answer” procedure in the Magistrate’s Court?

- [7] On the first ground of appeal, Mr Hoareau, learned counsel for the appellant, acknowledged that the “no case to answer” procedure is available in civil proceedings in the Supreme Court. *Victor v Azemia* (1977) SLR 195 was correctly cited by the Magistrate for this point. Civil defendants in the Supreme Court are entitled to ask the Judge to rule that the plaintiff has not established a prima facie case. But the defendant must first elect to call no evidence of his own.
- [8] Mr Hoareau’s submission is that the position in the Magistrate’s Court is different. There is no equivalent as regards the Magistrate’s Court of section 17 of the Courts Act, which requires the Supreme Court to follow English procedure where Seychelles law is silent, or for that matter of s 17(10) of the Control of Rent and Tenancy Agreements Act, which enables the Rent Board to regulate its own proceedings. The Magistrate’s Court is accordingly confined to the procedures contained in its Civil Procedure Rules. Mr Hoareau described this position as a “lacuna” warranting legislative attention.
- [9] Mr Elizabeth’s response on this point was that the Magistrate’s Court, as a “validly constituted court”, must have the power to adopt rules of common law. Mr Elizabeth did not cite any authority for this submission.
- [10] This issue was not, unfortunately, considered by the learned Magistrate. The “no case to answer” submission was made orally by Mr Elizabeth and may have taken trial counsel for the appellant, Mr Chetty, by surprise. In any event, no objection was raised to the procedure at the appropriate time.

[11] Mr Hoareau is right to emphasise the difference between the unlimited original jurisdiction of the Supreme Court (which includes “all the powers, privileges, authority, and jurisdiction” capable of exercise by the High Court of Justice in England: section 5 of the Courts Act) and the limited jurisdiction of the Magistrate’s Court, which is exclusively conferred by sections 38 to 44 of the Courts Act. Magistrates, unlike Judges of the Supreme Court, do not have authority to invoke common law rules of procedure in cases where the law is silent. They are limited to the procedures established in the Act and the Magistrate’s Court (Civil Procedure) Rules. The “no case to answer” procedure adopted in *Victor v Azemia* was not accordingly available in this case.

[12] However, had either Mr Hoareau or Mr Elizabeth read the Civil Procedure Rules for Magistrates Courts in preparation for the trial at first instance or this appeal, they would have seen that rule 60(2) effectively codifies the *Victor v Azemia* procedure for the Magistrate’s Court. That sub-rule reads as follows:

At the close of the evidence for the plaintiff, if the plaintiff failed to make out a case which, in the opinion of the court, the defendant is required to answer, judgment shall be entered for the defendant.

[13] The Magistrate did not accordingly err in considering whether there was a case to answer, despite citing the wrong authority for that procedure. There is no merit in the first ground of appeal.

[14] I observe in passing that Mr Hoareau could also have sought to invoke r 39 of the Civil Procedure Rules, which reads:

The court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleadings to be [sic] frivolous or vexatious the court may order the action to be stayed or dismissed or may give judgment, on such terms as may be just.

[15] As with r 60(2), it was always open to the learned Magistrate to apply r 39 on her own initiative, had there been a proper basis for doing so.

Was there a case to answer?

- [16] The substantive question on appeal is whether the Magistrate erred in forming the opinion that there was no case to answer (the second and third grounds of appeal). The Magistrate's decision in this regard is not lightly to be interfered with on appeal. It must be shown that she erred in law or took a demonstrably unsupportable view of the evidence.
- [17] Mr Hoareau's first submission is that the Magistrate appears to have changed her mind while the ruling was reserved (first indicating that there was a case to answer, then delivering a contrary ruling one week later). This does not however in itself undermine her final decision.
- [18] The second submission is that the Magistrate erred in fact in ruling that there was "no any prove in court" (sic) of the connection between the plaintiff and the rental business. Only the business name, 24 Hours Cars, appears on the rental contract. There is no reference to the individual plaintiff in that contract, or in the mechanic's receipt which was the only other exhibit tendered by the plaintiff. Nor is there any reference to 24 Hours Cars in the pleadings. The relevant pleadings are that "[t]he Plaintiff was and is at all material times a [sic] carrying on the business of car hire operator", and that "the Defendant entered into a contract with the Plaintiff" in this capacity.
- [19] Although the defendant asked for further and better particulars of other aspects of the claim (relating to damages), he did not seek any particulars of the plaintiff's connection to 24 Hours Cars and the contract in issue. The relevant pleadings were simply denied. This brings into play Mr Hoareau's third ground of appeal, regarding the sustainability of such denials. Rule 25 of the Civil Procedure Rules confirms that:

The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alleged in the claim must be distinctly denied or they will be taken to be admitted.

- [20] There was no reference to this rule in argument before the Magistrate. Mr Elizabeth therefore submitted that it could not be relied on as a new issue before this Court.
- [21] As the learned Magistrate acknowledged, the plaintiff did testify (under cross-examination) that he is the sole owner of 24 Hours Cars. That evidence was consistent with the evidence given by the mechanic, the only other witness, about his interaction with the “owner” of the business. So it was not correct to conclude that there was no proof of the plaintiff’s association with the business. The plaint is certainly defective in not naming 24 Hours Cars as the business entity through which the plaintiff was trading. A defect of that kind is however remediable with leave of the Court. Contrary to Mr Elizabeth’s submission, a business like 24 Hours Cars (unlike a limited liability company) does not have a separate legal personality from its owner. Further, there has been no suggestion that the defendant in this case was prejudicially surprised by the fact that the case was filed in the owner’s name.
- [22] This defect in the plaint must also be seen in the context of a similarly unsatisfactory defence. In failing to consider r 25 before dismissing the plaintiff’s case for want of proof, the Magistrate made an error of law which it is the role of this Court to correct. It is immaterial that the point was not taken by counsel below. It goes directly to the sustainability of the Magistrate’s view of the evidence. A fact that is admitted does not require proof.
- [23] The existence of a contract between the plaintiff and defendant in this case was “specifically, individually and strenuously denied”. This wording was presumably adopted in view of the prohibition on general denials. But it was unsupported by any pleaded facts. It would have been a simple matter to plead that the plaintiff was not party to the relevant contract. The absence of that pleading makes it difficult to blame the plaintiff for not focusing on the issue. While I do not go so far as to accept Mr Hoareau’s submission that the plaintiff’s association with the business should have been treated as admitted, I also cannot accept the Magistrate’s conclusion that there was nothing for the defendant to answer in this regard. She was not (yet) being asked to consider whether the plaintiff had discharged his burden of proof, but only whether he had put forward a prima

facie case. At the time of the relevant ruling, no plausible alternative to that case had been identified.

Decision

- [24] Taking the matter as a whole, the ruling under appeal does not withstand scrutiny. Having adopted the wrong procedure, the learned Magistrate took an unduly narrow view of the concept of proof and failed to have regard to the absence of a properly articulated defence. Further, while I have given the Magistrate the benefit of the doubt in proceeding as if she had applied r 39 rather than *Victor v Azemia*, I observe that she struck out the plaint rather than entering judgment for the defendant as r 39 requires. The difference between these two methods of disposal is significant. Only the latter gives rise to res judicata. For all these reasons it would not be just to allow the ruling to stand.
- [25] In the absence of a prayer for relief, it is unclear how the plaintiff now wishes to proceed. The third ground of appeal suggests that Mr Hoareau may have hoped for a reversal of the ruling (effectively striking out the defence). The defence as filed is unsatisfactory. However, so is the plaint itself, particularly as regards the relationship between the plaintiff and the business which rented the car in question. Assuming that the plaintiff wishes to pursue the matter further, I am satisfied that the proceeding should be remitted to the Magistrate's Court for re-hearing. That process is likely to be significantly assisted by appropriately confined re-pleading on both sides.
- [26] I therefore set aside the ruling of the trial magistrate which had found no case to answer. I order a retrial in the magistrates' court. I make no order as to costs on the appeal.

Signed, dated and delivered at Victoria this 29th day of May 2013

F M S Egonda-Ntende
Chief Justice