

# IN THE SUPREME COURT OF SEYCHELLES

Civil Suit No. 158 of 2012

[2013] SCSC

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Marjoire Serret

Plaintiff

versus

Attorney General

Defendant

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*Heard:* 25 March 2013

*Counsel:* Chinasammy for the Defendant  
Basil Hoareau, Amicus Curie

*Delivered:* 06 May 2013

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## RULING

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### **Egonda-Ntende CJ**

1. This ruling is in respect of preliminary objections raised by the defendant to this suit against it. The main suit raises a fundamental issue and that is whether a person can make a claim for damages in respect of a judicial tort or the infraction of a constitutional right by the judicial arm of Government other than by appeal to a higher court.
2. The facts of this matter as can be gathered from the plaint are that the plaintiff was a litigant in the Supreme Court in a civil matter. On 4 July 2011 there was some altercation with the judge as a result of which the plaintiff was imprisoned for contempt of court for 7 days. On appeal this conviction was quashed and or set aside by the court of appeal as the trial leading to her conviction had violated the right of the plaintiff to a fair hearing contrary to article 19 of the Constitution of Seychelles.
3. The plaintiff had by that time served her sentence. She brought this action against the Attorney General by plaint alleging both a faute and a violation of her right to a fair trial and seeking damages of SR800,000.00 for unlawful imprisonment. It is to this action that the Attorney General raises preliminary objections.

4. In its written statement of defence the defendant raised 2 preliminary objections.  
Firstly that this plaint is unsustainable against the Government of Seychelles as it has never been a party to the contempt proceedings out of which this action arises.  
Secondly that the plaintiff's action cannot lie against the Government of Seychelles as there is no casual link between the defendant and the loss and suffering incurred by the plaintiff either directly or by vicarious liability. In effect that there is no cause of action against the defendant.
5. In his submissions to this court Mr Chinnasamy, learned State Counsel for the Attorney General submitted that before an action can lie against the Government of Seychelles there must an an officer of Government named for whom Government could be vicariously liable. Secondly Judicial Officers were clothed with immunity for their actions and no action could lie against them. It should follow that no action should lie against Government on the basis of action that is barred by the Constitution.
6. Mr Basil Hoareau, appearing as Amicus Curie, submitted that the Attorney General was confining section 29 of the Seychelles Code of Civil Procedure to only the Executive arm of Government which was wrong. Attorney General was the proper defendant in respect of any actions against the either or all the arms of Government including the Judiciary. Mr Hoareau further submitted that this court should consider referring this matter to the Constitutional Court in light of article 46(7) of the Constitution.
7. The plaintiff appeared in person. She opposed the preliminary objections and insisted that she was entitled to relief in accordance with Article 19(13) of the Constitution of Seychelles.
8. Article 19(3) of the Constitution states, 'Every person convicted of an offence and who has suffered punishment as a result of the conviction shall, if it is subsequently shown that there has been a serious miscarriage of justice, be entitled to be compensated by the State according to law.'
9. It appears to me that in light of the foregoing provision the plaintiff has an arguable case to present to the Supreme Court, whether in its ordinary jurisdiction or in its

jurisdiction as a Constitutional Court. That provision must have had in mind such circumstances as the plaintiff found herself. She was convicted and sentenced to imprisonment. She served her sentence pending the hearing of her appeal. On appeal the conviction was set aside and sentence quashed on the ground that she had been denied a fair hearing contrary to the Constitution. This reminds me of the words of Dr Martin Luther King Jr in his famous 'I have dream' speech at the Lincoln Memorial in 1963.

'In a sense we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and Declaration of Independence, they were signing a promissory note to which every American will fall heir. This note was a promise that all men, yes, all men, black men as well as white men, the inalienable rights of Life, Liberty and the pursuit of happiness.'

It is obvious today that America has defaulted on this promissory note in so far as her citizens of colour are concerned. Instead of honouring this sacred obligation, America has given the Negro People a bad check, a check which has come back marked "insufficient funds." But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we have come to cash this cheque, a check that will give us upon demand the riches of freedom and security of Justice.'

10. To paraphrase Dr King the plaintiff in this case is heir to the promises of the Constitution of the third Republic, the Seychellois Charter of Fundamental Rights. She has come to nation's Supreme Court to enforce the promise of that Constitution under Article 19(3) thereof. She cannot afford legal representation. She is unrepresented. Are we to turn her away that the 'bank of justice' is bankrupt? Are we to say to her that she cannot enforce the clear promise contained in Article 19(13) of the Constitution against the state because of judicial immunity? Can we turn her away without hearing her?
11. I think not. Judicial immunity is not implicated in this proceeding. The Bank of Justice is not bankrupt. It may well be that the plaintiff should have proceeded straight away to the Constitutional Court to enforce her claim. Nevertheless she has come to the Supreme Court, the home of the Constitutional Court. She is at the right address.
12. The objections of the Attorney General are answered by article 19(13) of the

Constitution. The plaintiff is entitled to seek redress under the said provisions given the circumstances in which she found herself. There is a cause of action made out on her plaint even though it was only presented in person unrepresented.

13. I would dismiss the objections of the Attorney General. In light of the provisions of article 46(7) of the Constitution I would refer this matter to the Constitutional Court to determine whether or not the plaintiff is entitled to compensation under article 19(3) of the Constitution and if so how much.

14. This suit is adjourned pending the determination by the Constitutional Court of the question referred to it.

Signed, dated and delivered at Victoria this 6<sup>th</sup> day of May 2013

FMS Egonda-Ntende

**Chief Justice**