

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 30/2010

[2014] SCSC 370

GIOVANNI JULIENNE

Plaintiff

versus

PUBLIC UTILITIES CORPORATION

Defendant

Heard: 25 September 2014

Counsel: Mr. F. Bonte for plaintiff

Mr. Rajasundaram for defendant

Delivered: 25 September 2014

JUDGMENT

D. Karunakaran, Acting Chief Justice

- [1] This is an action in delit. The plaintiff in this action claims the total sum of Rs.155,000/- from the defendant for loss and damages which he suffered as a result of an alleged fault committed by the defendant. The defendant in his defence completely denies liability and also objects to the amount of damages claimed by the plaintiff in this matter. Moreover, it is the case of the defendant that they acted bone fide, they took all reasonable steps to rectify the bursting pipes which caused damaged to the plaintiff's

property. Moreover, it is the case of the defendant that there is no justification for the defendant simply to pay the damages claimed while it was continuously willing to repair and redo the necessary task at its own costs. Besides, it is the case of the defendant that the plaintiff is only interested to receive sums of money in the pretext of an alleged nuisance or inconvenience and other heads of claim made in the plaint.

- [2] The plaintiff briefly testified that he is a resident of Talbot and owner of two buildings known as Jule's Complex on Parcel S2174, whereas the defendant is the sole service provider of water and sewerage facilities and has the sole responsibility for maintaining, diverting or the laying of the pipes in connection with these facilities. According to the plaintiff, on the 17th of March 2009 through his Attorney, he wrote to the defendant informing the defendant that the polythene pipe belonging to the latter which was on the plaintiff's property was old and causing continuous burst. For which the defendant wrote back to the plaintiff's Attorney accepting that the polythene pipes found on the defendant's property were old resulting in continuous bursts which the defendant proposed that the following week it would replace the old pipes with $\frac{3}{4}$ inch polythene pipe and will put in sleeves to avoid the recurring continuous bursts.
- [3] It is interesting to note that in Exhibit P2, that is the letter dated the 7th of April 2009 the defendant has clearly apologised for the inconvenience it caused to the plaintiff as a result of the repeated bursting of the pipe. Subsequently, there were a number of correspondence between the parties, which clearly show that the pipes repeatedly broke and caused inconvenience and hardship to the plaintiff. As a result, the plaintiff claims that the continuous bursts not only caused nuisance and also the acts of the defendant in the continuous drilling, digging, blockage of entrance, patchy replacement of concreted concourse, uneven surfaces after the digging and drilling, broken road grill and the possible structural damage to the plaintiff's buildings and his land amounts to a 'faute' in law which the defendant is liable to make good to the plaintiff.
- [4] I carefully considered the evidence adduced by the plaintiff in this matter. Also, I gave careful thought to the evidence given by Mr. Mussard, the MD of the defendant company who is in charge of water and sewerage section. Having gone through the entire evidence I am of the view that the plaintiff has established his case to the required degree in law

namely: the defendant committed a 'faute' by omission, in that he did not take proper and effective measures to stop the repeated bursting of the pipes on the plaintiff's property. However, on the question of intention, I quite agree with the submission made by Mr. Rajasundaram that intention is not an ingredient for fault. In fact, if an act committed by a person or omission by a party causes damage to the other then the person who caused that damage is liable to compensate the other irrespective of the fact whether the act or omission was intentional.

[5] Having considered the point of law as well as the submissions made by both counsel, I find that the defendant in this matter has committed a fault; as a result, the plaintiff suffered loss and damages. However, the quantum of loss and damages claimed by the plaintiff appears to be exorbitant and unreasonable in the given circumstances of this case. Having given careful consideration to the entire circumstances of this case, I award the following sums to the plaintiff:-

- (i) for the cost of concrete concourse and road grill I award the sum of Rs.50,000/- as damages; and
- (ii) for moral damage in respect of mental anguish, inconvenience and distress I award Rs.25,000/-.

[6] According, I entered judgment for the plaintiff and against the defendant in the total sum of Rs.75,000/-. Moreover, I award costs in favour of the plaintiff and interests on the said sum, that is Rs.75,000/- at 4% per annum the legal rate, as from the date of the plaint.

[7] Judgment entered accordingly.

Signed, dated and delivered at Ile du Port on 25 September 2014

D Karunakaran
Acting Chief Justice