

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 25/2016

[2017] SCSC 422

Antoine Emmanuel Madeleine

Plaintiff

versus

The National Drugs Enforcement Agency

Defendant

Heard: Submissions in plea limine litis 19 May 2017

Counsel: Mr. Anthony Derjacques for the plaintiff
Mr. George Thatchett for the defendant

Delivered: 19 May 2017

RULING

M. TWOMEY, CJ

[1] The Plaintiff filed a suit against the Defendant in which he claimed that his arrest, detention and the conduct of the Defendant's officers with respect to their enquiries to the trafficking of dangerous drugs at his premises at La Louise and also at the Port Area had resulted in loss and damages to him in the sum of SR500, 000. The officers of the Defendant are not named, not are their specified instruments of appointment in terms of whether their functions, duties and protections were inter alia those of police officers or customs officers as provided for in section 13 (4) of the National Drug Enforcement Agency Act (hereinafter the Agency or the Act) .

[2] The facts of this case need not be explored as a Plea in *limine litis* was raised by the Defendant in respect of the Plaintiff.

[3] It is submitted by Defendant's Counsel that the claim in the Plaintiff is statutorily prohibited pursuant to section 7 of the Act; that no fault is pleaded or alleged against the Defendant; and that the Plaintiff is bad for joining multiple causes of action.

[4] In *Pothin v Both* (unreported) SC40/2015 on a similar action against the police I made reference to the issue of *faute* and cited Article 1382 of the Civil Code which provides its definition as follows:

2. Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.

3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.

[5] The Defendant has also pleaded the immunity of the Defendant's agents under section 7 of the Act. It has in this respect referred the Court to the case of *Fanchette v AG C. S.* 155/2012

[6] In *Pothin* (supra) I also referred to Article 2268 of the Civil Code which provides that:

Good faith shall always be presumed. The person who makes an allegation of bad faith shall be required to prove it.

[7] Of relevance to this particular case are the powers of the agency's agents which are contained in section 9 and 13 of the Act. Section 13 (4) (a) of the Act provides in relevant form:

(4) Where in an instrument of appointment the President vests in an NDEA agent the power, functions duties, protections and authorities that vest in a person by virtue of him being —

(a) a police officer;

...

c) an officer of Customs...

such appointment shall be deemed to be an appointment of the NDEA agent under the relevant Acts and shall operate to vest in the NDEA agent all the powers, functions, duties, protections and authorities of a duly appointed and fully authorised police officer, officer of the Revenue Commission, officer of Customs, and/or an immigration officer, and/or as may be otherwise specified in the instrument of appointment, and so that any subsequent amendment of any such Act shall be deemed to apply to the NDEA agent as if the amended Act was in force at the time of his appointment.

[8] Section 18 of the Criminal Procedure Code permits a police officer to arrest any person whom he suspects on reasonable grounds of having committed a cognizable offence. Similarly, section 46 of the Customs Management Act 2011 provides in relevant form that:

(1) An officer or police officer may without warrant arrest any person who the officer has reasonable grounds to believe is concerned in the commission or attempted commission of any of the following offences —

(a) unlawful importation or exportation of goods chargeable with any import or export duties, taxes or levies;

(b) importation of any prohibited or restricted goods...

[9] The totality of the above provisions result in the Defendant in the execution of its statutory duties being permitted to arrest and detain persons in the course of their investigations and such course of conduct is presumed to be performed in good faith.

[10] The Plaintiff in those circumstances does not disclose any *faute* or any illegality on the part of the Defendant because of the presumption of good faith. The NDEA have powers to

investigate and ought to conduct such investigations thoroughly and in the manner that best seem fit according to the law and codes of conduct.

[11] The Plaintiff has submitted that despite not pleading bad faith in his Pleint, he has pleaded the unlawfulness of the acts of the Defendant which amounts to bad faith. I am unable to agree as the Pleint does not disclose what acts of unlawfulness amount to the bad faith. The Plaintiff's reliance on the case of *Fanchette and ors v Estico* (unreported) SCA 30/2014 is misguided as *Fanchette* disclosed clear bad faith in the conduct of the NDEA agents during a heavy handed search which was founded on a discredited suspicion.

[12] The Defendant has also submitted that the Pleint is bad for pleading a multiplicity of actions. Article 1370 (2) Of the Civil Code does not permit duplicity of action for contracts and delicts. In the present case, the Plaintiff has alleged both a delict on the part of the Defendant and a breach of the constitutional rights of the Plaintiff. Claims for the breach of constitutional rights are preferred before the Constitutional Court in any case and cannot be joined in a civil claim for delict.

[13] The Plaintiff has submitted that the breach of constitutional rights are pleaded to explain the acts of unlawfulness of the Defendant. However, that cannot be so as the claim for damages clearly indicate an amount solely for the breach of those same constitutional rights. It cannot therefore be said that there is no multiplicity of action.

[14] The Defendant has further submitted that the Agency cannot be made vicariously liable for the acts of its agents. Its agents are the employees of the State and not the employees of the Agency. It has relied on the cases of *Ernesta v Commissioner of Police* (2012) SLR 92, *Fanchette v Attorney General* (unreported) SC 155/2012 and *Dine v Commissioner of Police* (unreported) CS 13/2015. The Plaintiff's submission in reply to this point is unclear. He submits, I think, that as a statutory authority the Agency is the employer of its agents. I agree with the Defendant that the authorities of *Ernesta*, *Fanchette* and *Dine* (supra) and the provisions of the Constitution and the specific Acts applicable to the employment of the agent (for example the Police Force Act) that a civil action based on an act of an agent must be instituted against the Government of Seychelles and not the Agency.

[15] Section 92 of the Seychelles Code of Civil Procedure empowers the Court of its own volition to dismiss a claim which discloses no cause of action or if the pleading appears frivolous or vexatious. In *Pothin*, I pointed out that such a process is worded in similar fashion to Rule 3.4 of the Civil Procedure Rules of England (White Book). I said:

“Rule 3.4(2) provides in relevant part that:

The court may strike out a statement of case if it appears to the court-

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim

(b) that the statement of case is an abuse of the court’s process...

In the comment on the rule the authors of the White Book make the following observation:

Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous, or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence...

Statements of case which are suitable for striking out on ground (a) include those which raise an unwinnable case...”

[16] In view of all the circumstances and the authorities above both on the plea in limine litis and on the provisions of section 92 of the Code, I find that the Plaintiff does not disclose a reasonable cause of action and I accordingly strike it out. The Plaintiff is therefore dismissed with costs.

Signed, dated and delivered at Ile du Port on 19th May 2017.

M. TWOMEY
Chief Justice