

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 335/2017**

**(arising in CS 98/2017)**

**[2018] SCSC 245**

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**MARTIN AGLAE**

Petitioner

versus

**GERVAIS HENRIE**

1<sup>st</sup> Respondent

**XPRESS PRINTING**

2<sup>nd</sup> Respondent

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Heard:

Counsel: Ms. Alexandra Madeleine for petitioner

Mr. Anthony Derjaques for respondents

Delivered: 12 March 2018

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**RULING ON MOTION**

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L. Pillay, J

[1] This ruling follows a motion by the Petitioner (Plaintiff in the main case) to amend the Plaintiff to reflect the following in the heading “Regar Printing Ltd trading as X-Press Printing” and same in the corresponding paragraph 2 of the Plaintiff.

[2] Counsel for the Respondent (Defendant in the main case) objected to the motion to amend on the basis that the Petitioner (Plaintiff) is attempting to substitute Defendants

under section 114 of the Seychelles Civil Procedure Code and not amending under section 146 of the Code.

- [3] The procedure for amendment of pleadings is set out in **section 146 of the Seychelles Code of Civil Procedure** as follows:

*“The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”*

- [4] The principles regarding amendment of plaint are further set out and elaborated in the case of **Petit Car Hire versus Mandelson (1977) No.20** as well as **Morin v Pool (2002) SLR 144** in that no amendment of a plaint which seeks to convert a suit of one character into a suit of another and substantially different character should be allowed.

- [5] I also find the case of **Casamar v Aristotle SSC341/1996, 25 July 2002**, as reported in the Seychelles Digest, of relevance, in that “an amendment to the pleadings will be granted unless there are exceptional reasons why it should not be granted. An amendment will be refused if it is sought in bad faith, alters the nature of the suit, changes the cause of action, or causes prejudice or injustice to the other party that could not be compensated by costs.”

- [6] As far as substitution of defendants is concerned, **section 114 of the Seychelles Code of Civil Procedure** provides that:

*“Where a defendant is added or substituted, the plaint shall, unless the court directs otherwise, be amended in such manner as may be necessary, and a summons with a copy of the amended plaint attached shall be served on the new defendant and the proceedings as against such party shall be deemed to have begun only on the service of such summons. The court may order a copy of the amended plaint to be served on or supplied to the original defendant.”*

[7] In passing I note **section 112 of the Code** as well which provides thus:

*“No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court may at any stage of the proceedings, either upon or without application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or, matter be added.”*

[8] Noting the above the guiding principle seems to be that all parties who can assist the court to effectually and completely decide all the questions involved in the cause should be a party to the case, the key being to determine the real issues and bring finality.

[9] In the instant case it is not in doubt who the Plaintiff seeks to sue. As I see it, counsel for the Plaintiff seeks to clarify the status of the Second Defendant in order to enable the Court to try all issues in the matter. Furthermore I do not believe that the amendment will convert the suit into another. It will in fact allow the Court to adjudicate the matter fully, and so I find.

[10] I allow the motion to amend the Plaint in order for the Court to properly consider all the issues in the case and completely adjudicate all questions involved in the matter.

Signed, dated and delivered at Ile du Port on 12 March 2018

L. Pillay, J  
Judge of the Supreme Court