

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 44/2017

[2018] SCSC 242

SAMICANNOU CAILACHAME

Plaintiff

versus

SERGE MONTHY

Defendant

Heard:

Counsel: Mr. Chetty for plaintiff

Ms. Domingue for defendant

Delivered: 12 March 2018

RULING

R. Govinden, J

[1] Following the filing of the Plaint in this case by the Plaintiff, the Defendant has raised a plea in *limine* to the effect that the Plaintiff is time barred and the Plaint has to be stuck off.

[2] The plea is founded on Article 2271 of the Civil Code of Seychelles Act which provides that all right of action shall be subject to a prescription after a period of 5 years, except as provided in Article 2262 and 2265b of the Code.

- [3] It is not disputed in this suit that there is a 5 years prescription that is applicable. It is also not in disputed that the cause of action of the Plaintiff arose on the 20th of May 2011. The facts upon which this plea in *limine* is founded is admitted by the Defendant's Counsel.
- [4] Mr. Chetty admitted that it is clear that the matter was filed in 2017, more than 5 years from the rise of the cause of action. However, he submitted that the Court has a discretion that can be exercise when the Court finds it is justify to do so. Mr. Chetty further submitted that if his client was present he would have further explained why this case is prescribed and why he got his two legal aid certificates, one on the 2nd of August 2016 the other on the 12th of August 2016.
- [5] Having carefully listen to the submissions of both Counsels and having scrutinised the law in the light of the pleadings filed in this case I am of the view that Article 2271 has strictly applied.
- [6] If a matter is prescribed it will stand prescribed by a fluxion of time.
- [7] The only thing that can stop the flow of prescription is if there are grounds to show that it is interrupted or suspended by virtue of the provision of Article of Chapter 4 of Article 10 of the Civil Code. No such grounds had been shown to exist in this case.
- [8] As to the absence of the Plaintiff in this case it should have been the duty of Counsels to ensure that he got sufficient instruction, whether the Plaintiff was present in Court or out of Court. He is none appearance would therefore has no impact on this *plea limine* which at any rate is decided on the law and *ex facie* the pleadings.
- [9] In my final determinations I find that this cause of action arose to the latest on the 20th of May 2011 when the Plaintiff allegedly found that his car had vanished from the Defendant premises. Therefore, the obligation was for him to file his action before the 20th May 2016 and that he has failed to do so.
- [10] As the matter is filed on the 3rd of May 2017, accordingly I will dismiss this Petition.
- [11] No cost is awarded, given that it is not applied for by the Defendant. I rule accordingly.

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

R. Govinden , J
Judge of the Supreme Court