IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 25/2017

[2018] SCSC 717

SEIBEL SERVICES LTD

Appellant

versus

ALWINE LALANDE

Respondent

Heard: 23rd May 2018

Counsel: Mr J.Renaud for appellant

Mrs A.Amesbury for respondent

Delivered: 26th July 2018

JUDGMENT

ANDRE J

[1] This Judgment arises out of an Appeal before the Supreme Court by Seibel Services Ltd represented by Clive *Barker ("Appellant")* of the 25th September 2017, against Alwine Lalande *("Respondent"),* wherein the Appellant seeks that the decision of the Learned Senior Magistrate B. Adeline *(as he then was),* given ex-parte of the 8th March 2017 be set aside and a retrial be ordered.

[2] The grounds of appeal as raised by the Appellant as per notice of appeal of the above-mentioned date, are namely that: *'(i) The appellant had no knowledge of the case until he received a mail in his P O Box on 22nd August 2017, that the taxing master had fixed Thursday the 19th September for the taxation of the bill of costs. That during the whole process of the case the Appellant had never been served any summons or other method to appear before the Magistrate Court. That the Appellant has never been given the opportunity to defend his case against the allegations brought against him and his company in which ex-parte Judgment was given on the 8th March 2017 by the Senior Magistrate Brassel Adeline (ii) That all the allegations as stated in the Judgement are false and Appellant need to be given the chance to defend is case; (iii) That the Respondent gave evidence of a debt that exceed 5000/- and no contract was produced in court; and (iv) That the court ought to have given notice to the Appellant for the impending ex-parte hearing.'*

[3] The Respondent on his part filed a Reply *(by way of submissions)* of the 23rd May 2018 stating that the Appellant failed to bring evidence to prove that he was not served with the summons; that the appellant had fourteen (14) days to appeal and he failed to comply with the stipulated time period for filing of his appeal as per Rule 6 (2) of the Appeal Rules of the Courts Act. Further, that under section 22 of the Magistrates Court Civil Procedure Rules, *"if in any case where one party does not appear on the day fixed in the summons, Judgment has been given by the court, the party against whom Judgment has been given may apply to the court to set it aside by motion made within one month after the date of the judgment if the case has been dismissed, or within one month after execution has been effected if judgment has been given against the defendant, and if he satisfies the court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall set aside the judgment upon such terms as to costs, payment into court or otherwise as it thinks fit and shall order the suit to be restored to the list of cases for hearing. Notice of such motion shall be given to the other side"*, and that in this case Judgment was delivered on the 8th March 2017 and appeal filed on the 28th September 2017 which is deemed out of time; that the third ground of appeal *(supra)*

should have been raised as a defence on the merits and since the Appellant failed to show up in court to defend himself he cannot raise same on Appeal; and finally moves for dismissal of the Appeal for want of merits.

[4] Both Learned Counsels filed written submissions in this matter and of which contents have been duly considered.

[5] For the purpose of this Judgment the following is the relevant factual background as per the Records.

[6] As per the Plaint filed by the Respondent/*(Plaintiff)* before the Magistrates Court on the 12th October 2015, the Respondent was in the business of plumbing services in Seychelles, whilst the Appellant a registered company incorporated in Seychelles. That on or around the 28th March 2012, the Plaintiff and the Appellant*/(Defendant)* entered into a contract whereby the Appellant subcontracted certain works to the Plaintiff in respect of a project at Glacis which the Defendant had been contracted to carry out. That it was an express term of the sub-contract that the Respondent would carry out the plumbing works and the Appellant would pay the consideration price being plumbing works on 17 chalets/apartments at *(S.R 15,000/-)* per unit; plumbing works on one office at *(S.R 14,000/-)*; setting up 18 solar panels at *(S.R 4500/-)* per unit; and carrying out pipe works in 9 villas at *(S.R 6000/-)* per unit.

[7] Further, that the Respondent had commenced plumbing works in March 2012 and completed the works in June 2015 and the total sum payable in terms of the sub-contract was *(S.R 408,500/-)* and that the Appellant had only paid the sum of *(S.R 116,000/-)* and this in breach of his obligation under the sub-contract. Further that the Appellant had refused and or failed to pay the Respondent the outstanding mentioned sum for the completed works done by the Respondent despite owing and undertaking to pay the said sum. The Respondent thus moved for an Order for the payment of the sum of *(S.R 116,500/-)* by the Appellant to the Respondent.

[8] The Learned Magistrate B. Adeline, on the 16th December 2016 heard and on the 8th March 2017 delivered an ex-parte Judgment as against the Appellant to the effect that:-

> *"I have meticulously analysed the uncontroverted evidence adduced before this court by the plaintiff. I am satisfied that the plaintiff Alwine Lalande of Le Niole Mahe a sole trader trading as A and A Plumbing entered into a subcontract with the Defendant Seibei Services Ltd to provide plumbing services including installation of sanitary equipment in 17 chalets and one office building at Glacis. Mahe. The agreed contract sum between the Plaintiff and the Defendant for the works which the which the Plaintiff had to perform was S.R. 408,500 which the Defendant had to pay the plaintiff as per invoice issued by the plaintiff monthly in the sum of S.R. 15,000 or less. The plaintiff performed the obligations that were required of him under the contact. As of the date of the filing of the plaint by the plaintiff, the Defendant had the Plaintiff the total sum of S.R. 116, 500. I therefore find that the Plaintiff has proved on the balance of probabilities, that there was a subcontract between the Plaintiff and the Defendant for the former to provide the latter its plumbing services for a contract sum of S.R. 408, 500 as the balance due to him. I therefore enter Judgment in favour of the Plaintiff against the Defendant in the total sum of S.R. 116,500 plus cost. I make no Order as to order as to interest on the total sum of S.R 116, 500 because was not pleaded."*

[9] On the 14th June 2017, an application for execution of Judgment was filed by the Plaintiff wherefore, the Judgment creditor *(Plaintiff)* moved the Deputy Registrar to order the process server to execute the said Judgment by way of *"saisie execution"*, on all the Judgment debtor's assets, including any immoveable at the company's Le Niole, Mahe, premises satiated at the Seibei Services Ltd at Le Niole, Mahe and any property.

[10] With the above layout of the background of the case *(supra)*, I hereby move to consider the legal standard to be applied in this case and its analysis thereto.

[11] This Court notes that in the Records of proceedings before the Magistrates Court, *there is a summons duly served on the Appellant on the 14th day of September 2016 at 10:16*

o'clock in the forenoon to appear before the Magistrates Court at 8:30 am o'clock in the morning of the 29th day of September 2016 to answer the plaint and on the latter date the Records of proceedings of the Magistrates Court show clearly that the Appellant failed to put up appearance hence the Learned Magistrate proceeding ex-parte upon stating that "the defendant has been served as per the return of summons on record. As part of case management, this court on its own motion, fixes the case for an ex-parte hearing on the 16th December 2016 at 9 am."

[12] It follows thus that upon proof of service of the Appellant with summons as above illustrated, the 1st and fourth grounds of Appeal have no merits and accordingly fail.

[13] With respect to the time limit as fixed for filing of a notice appeal, the court refers to the provisions of Rule 6 (2) of the Appeal Rules [Section 8] Courts Act (Chapter 52) which Rule provides for a fourteen day period to do so upon the date of the decision appealed against unless some other period is expressly provided by the law which authorizes the appeal (latter not applicable in this instance). In this case, the impugned Judgment was delivered on the 8th March 2017 and the notice of appeal filed on the 28th September 2017 hence more than five months after the Judgment was delivered and there are no good reasons shown for such a delay by the Appellant and neither has the Appellant applied for leave under section 22 of the Magistrates' Court (Civil Procedure) Rules [Section 50] to set aside Judgment given ex-parte within one month as of the date of the Judgement after the execution has been effected if Judgment has been given against the Defendant. It follows thus that based on the clear non-observance of the above stated provisions of the Courts Act (supra), the Appeal cannot be entertained for it is out of time hence the second and third grounds of appeal fail accordingly.

[14] It is to be made clear in this Appeal, that it is the Appellant himself who failed to allow himself the opportunity to be heard on the basis of the above analysis.

[15] It follows thus in my final analysis that this Appeal is dismissed with costs to the Respondent.

Signed, dated and delivered at Ile du Port on 26th July 2018

S. Andre J
Judge of the Supreme Court