

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 144/2018
(arising in CS 26/2018)**

[2018] SCSC 752

IN THE MATTER OF:

AISHA RATH

Plaintiff

Versus

SIMON GILL

Respondent

Heard: 26th day of July 2018
Counsel: Mr. J. Camille for Plaintiff
Mr. B. Hoareau for the Respondent
Delivered: 3rd day of August 2018

RULING ON MOTION TO AMEND A PLAINT

ANDRE-J

[1] This Ruling arises out of a Motion of the 11th June 2018, filed by Aisha Rath (“Plaintiff”), for leave to amend her plaint filed on the 30th January 2018. The Plaintiff relies on an Affidavit in support of the same date as the Motion.

- [2] The Defendant vehemently objects to the Motion by way of an affidavit in reply of the 3rd July 2018.
- [3] Both Learned Counsels were heard for and against the Motion on the above-mentioned date of hearing and submitted in a gist as follows.
- [4] Learned Counsel for the plaintiff submitted that the plaintiff relied on paragraph 2 of her said affidavit in support in that, *“I am advised by my attorney Mr. Joel Camille and verily believe that the plaint filed by me in this matter needs an amendment so as to better represent our case before the Honourable Court. There is now shown to me, annexed and marked as P1, a copy of the proposed amendment to my plaint in this matter.”*
- [5] The Respondent is resisting the Application by way of Affidavit in Reply of the 18th January 2018, submitted in furtherance to paragraph 4 (i) and (ii) thereof, that the affidavit sworn by Plaintiff in support of the notice of motion, is not in accordance with the law and ought to be disregarded by this Honourable court and that the facts set out in the affidavit do not disclose any ground, so as to justify the granting of leave to amend the plaint.
- [6] Learned counsel for the defendant submitted that the affidavit of the Plaintiff was not one setting out the facts warranting her motion and merely stating that she needs to amend to better represent her case is not sufficient hence not disclosing any ground to warrant the amendment.
- [7] Following the brief background to the current motion, I find no necessity for the purpose of this Ruling, to dwell in the merits of the pleadings, for the objections as raised are to be considered ex-facie the pleadings.
- [8] Now, moving on to the legal standards applicable in this matter, Article 146 of the Seychelles Code of Civil Procedure (Cap 213) (*“the Code”*) entitled (*amendment of pleadings*) provides that, *“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.”*

- [5] Further, Article 170 of the *Code* provides that, “*Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds thereof, may be admitted.*”
- [9] Now, what is important to note from the above mentioned Articles for the purpose of amendment of pleadings is that inter alia, ‘amendments are to be granted provided an affidavit of facts is filed in support and facts averred shall be within the knowledge of the deponent for the furtherance of the application made’.
- [10] It is obvious in this case, that reference and a close scrutiny of paragraph 2 of the affidavit of the plaintiff does not disclose the facts leading to the application but rather the belief of her attorney which is unknown not only to her but to the Court also, hence inability of the court to determine whether the application falls within the parameters of Article 146 of the *Code* inter alia, as to, “*whether it should be allowed for the purpose of determining the real questions in controversy between the parties*”
- [11] In the latter respect, it is irrelevant that the proposed amended plaint is attached to the application, for it is not for the court to decide on the cause of action on behalf of the pleadings but it is for the plaintiff to prove by way of facts to substantiate the application.
- [12] In this matter, noting the arguments of both Learned Counsels, as above-illustrated, I find that the affidavit filed by the plaintiff is deficient in that it lacks to state the facts required to support the application and hence the objection of the defendant is allowed and the motion dismissed accordingly.

Signed, dated and delivered at Ile du Port on 3rd day of August 2018.

S. Andre

Judge of the Supreme Court