

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2019] SCSC ~~278~~ **278**

CA 06/2018

(Arising from Magistrate Court in
246/2015)

In the matter between

ISLAND DEVELOPMENT COMPANY LTD

(rep. by Ms. Wong)

Plaintiff

and

STEVEN SAVY DE ST. MAURICE

(rep. by Mrs. Amesbury)

1st Respondent

CHRISTINA SAVY DE ST. MAURICE

(rep. by Mrs. Amesbury)

2nd Respondent

Neutral Citation: *Island Development company Ltd v De St. Maurice & or* (CA 06/2018)
[2019] SCSC ~~278~~ **278** 3rd April 2019

Before: Nunkoo Judge

Summary:

Heard: [27th February 2019]

Delivered: [3rd April 2019]

ORDER

**Contract of employment; bond agreement –payment of totality of bond money – reduced
payment-Law of contract does not allow terms to be imported by the court- court to give
effect to the intention of the parties.**

JUDGMENT

NUNKOO J

[1] The Appellant is appealing against a decision of the Magistrate Court which had to decide whether the Respondent had to repay the amount of USD 14,056 spent by them for the

training of the Respondent as pilot upon his failure to perform for a period of three continuous years.

[2] The ground of appeal is the following:

‘The Learned Magistrate erred in law in ordering the Respondents to pay only half the what they were contractually obliged to pay the Appellant for a breach of obligation, despite the Learned Magistrate accepting that the Respondents were bound by their contractual obligations and had breached their obligations.’”

[3] As the Respondent had performed for a period of two and a half years so the Learned Magistrate ordered for the payment of a reduced sum instead of 14056 USD.

[4] The Appellant is claiming the full amount as per Article 2 of the Bonding agreement which reads as follows:

“For and in consideration of the above obligation of the above obligation assumed by the IDC, the candidate binds himself either on completion of his course, or failure to complete his course to continue to serve the IDC for a period not less than three years from the date (24 December 2012) he resumes duty as pilot in the Republic of Seychelles.” (Exhibit P3)

[5] This clause must also be read together with his contract of employment which at para 2.1 reads as follows:

Subject to the terms of this agreement, the Person Engaged shall be engaged for a continuous period commencing from 2 August 2010 ending on 01 August 2012. (Exhibit p 1)

[6] The first question to be answered is whether the contract of employment was still in force when the Plaintiff decided to resign in July 2012? That is, was there a contract of employment still in force. Indeed there was one as supported by the evidence. The Appellants did file a copy of a new contract dated 2 August 2012 which document (P2)

clearly shows that the Respondent was to work for the Appellant company until 1st August 2015.

- [7] So the submission of Learned Counsel for the Respondent that there was no contract of employment at the time the Defendant resigned is not correct
- [8] The next question is whether the Appellant was entitled to claim the sum of USD 14056 spent on the training of the Respondent. The Bonding agreement fully entitles them to do so and this amount is payable in its totality. There is no theory of quantum meruit that can apply as it seems unknown in the Seychelles law of contract. The amount USD 14056 cannot therefore be apportioned on the basis of the performance of the contract for a period of two and a half years.
- [9] By deciding that the Respondent should pay only half the amount of the above sum the Learned Magistrate was importing a term into the contract that was clearly not intended as per the terms of the written agreement. The submissions of Learned Counsel for the Appellant that the obligations under the contract could not be altered by the Learned Magistrate is correct. Learned Counsel has referred this court to the case of *CCCL v Leon SCA 36 of 2016*, wherein the Twomey JA states at para 26
- [10] *Our private law is based on French civil law ..Our legal system is mixed in the sense that it contains aspects of both these sources. However individual areas of law remain distinct each other..*
- [11] It is trite law that the contractual obligations have the force of law between the parties; I would like to refer to the case of *Katz v Ward & Anor (CS 11/2015, CS 12/2015) [2017] SCSC 780 (04 September 2017)*;
- [12] *Hence, of paramount importance in the law of contract is the recognition of the principle that as between the parties their wills are autonomous and the obligatory force of their agreement must be given effect. The court is therefore bound to interpret the terms of the contract as concluded by the parties. In the event of a conflict between the parties as to*

their intention as expressed, it is the contract that prevails (Ladouceur v Bibi (1975) SLR 278).

[13] The points raised by Learned Counsel for the Respondent are not relevant.

[14] I therefore allow the appeal and order the Respondent to pay the full amount of 14056 USD, representing expenses incurred by the Appellant in the training of the Respondent.

[15] No order as to costs.

Signed, dated and delivered at Ile du Port on 3rd April 2019.

A handwritten signature in black ink, appearing to read 'Nunkoo J', written over a horizontal line.

Nunkoo J