

IN THE SUPREME COURT OF SEYCHELLES

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Reportable

[2019] SCSC 436  
CS 57/2019)

**MALEKMOHAMMAD BALOUCHZEHI**  
(rep. by Clifford Andre)

**Plaintiff**

versus

**SEYCHELLES POLICE**

**Defendants**

**SEYCHELLES COAST GUARD**

**ANTI-NARCOTIC BUREAU**

**GOVERNMENT OF SEYCHELLES**  
(all represented by Chinasamy Jayaraj)

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**Neutral Citation:** *Balouchzehi v Seychelles Police & Others* (CS57/2019) [2019] SCSC 436 (3 June 2019).

**Before:** Dodin J.

**Summary:** Post-mortem and repatriation of the body of a detainee. Who is responsible to make the arrangements and meet the costs.

**Heard:** [22 May 2019]

**Delivered:** [3 June 2019]

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**ORDER**

Order that the defendants repatriate the body of the deceased, Abed Raz to Iran after post-mortem and embalming, all at the costs of the defendants.

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**JUDGMENT**

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**DODIN J.**

[1] This is a partial judgment on the prayer by the plaintiff for an autopsy to be performed on the body of the late Abed Raz, an Iranian national who died in Seychelles and whether the

defendants are responsible for the repatriation of the body of the deceased to Iran. It was agreed that the claim for compensation shall be heard and determined at a later date.

- [2] The plaintiff is an Iranian businessman and the owner of a vessel “Mubarak” which was arrested and brought to Seychelles on the 17<sup>th</sup> February, 2019 in an operation mounted jointly by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. On the way to Seychelles, the vessel caught fire and one of the crew members, Abed Raz, an Iranian national, sustained serious burnt injuries. The said Abed Raz was taken to Seychelles Hospital for treatment but he succumbed to his injuries on the 5<sup>th</sup> March 2019. The remaining crew members were repatriated to their respective countries with no charges laid against any of them. The body of the late Abed Raz remains in the mortuary and an order for post mortem issued by learned Magistrate Burian has not been complied with to date. A request by the applicant for the body of the deceased to be repatriated to Iran for burial by his family has up to now not been acceded to by the defendants.
- [3] The plaintiff avers in his plaint that all the crew members of vessel Mubarak were arrested by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and were placed in custody at the Central Police Station on the 22 February 2019, the late Mr. Abed Raz was hospitalized until his death on the 5<sup>th</sup> March 2019. All the crew members that were arrested and detained at Central Police Station were repatriate to Iran by the Government of Seychelles and the late Mr. Abed Raz was left behind as he was still in hospital. The late Abed Raz died whilst under arrest at the Victoria Hospital as there were Police Officers stationed there and guarding him.
- [4] The plaintiff maintains that it is urgent that the body of the deceased be repatriated after autopsy has been performed so as to allow the late Mr. Abed Raz to be laid to rest in peace by his family in Iran and that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants along with the 4<sup>th</sup> Defendant pay for the repatriation of the body of the late Mr. Abed Raz from Seychelles to Iran.
- [5] The defendants responded with a plea *in limine litis*, raising the following grounds:
- i. The Plaintiff does not disclose any reasonable cause of action against 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants.

ii. The plaintiff has no locus standi to institute this suit.

iii. No injunction can be brought against the state/Government as there is no violation of any statutory or contractual or other obligation towards the Plaintiff from the 4<sup>th</sup> Defendant.

[6] On the merits, the defendant admitted that the vessel Mubarak and its crew were taken to the Seychelles in an operation by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants but the vessel was piloted by the Iranian crew. It is averred by the defendants that the burnt victim on board called Tony, later on identified as Abed Raz was the one who threw a bucket of water on the engine and it created vapour. It is further averred by the defendants that as a result of it the engine blew up and the said Abed Raz was caught on fire. It is averred that it was the fault of the victim Abed Raz, a crew member that the fire took place.

[7] The defendants also submitted that alternatively, it was the fault of the captain of the vessel who was at the wheel navigating who had the duty of care safety of the vessel and the crew. The defendants aver that the defendants are not liable to expatriate the body of late Mr. Abed Raz and no injunction can be brought against the state/Government as there is no violation of any statutory or contractual or other obligation towards the plaintiff from the 4<sup>th</sup> defendant.

[8] It is not disputed that the deceased Abed Raz died in the Intensive Care Unit of the Seychelles Hospital on the 5<sup>th</sup> March 2019 and according to Dr Sanjeev K. Pugazhendhi, the cause of death was ...as a result of the burnt injuries he had suffered.

[9] Shepperd Leon, a sub-inspector of police testified that he conducted an investigation and made a report with certain recommendations in respect of the incident. He confirmed that the deceased was still under arrest in hospital when he died. He was also the officer who obtained the request for post-mortem from learned Magistrate Burian and took to the Seychelles Hospital. He also recommended the repatriation of the body of the deceased. Neither the post-mortem nor the repatriation of the body has been made to date. He testified that he had contacted the Ministry of Foreign Affairs whilst Sergeant Dogley had obtained

the address of the family of the deceased but the pathologist said that a member of the deceased's family had to be present and take responsibility if post-mortem was to be performed because the body has to be embalmed and repatriated the same day. The plaintiff was asked to take responsibility but he declined. Hence nothing has been done to date.

- [10] The Plaintiff testified that he was the owner of the vessel Mubarak which the crew called it by the name "Mujid". The vessel was registered in Chowdhar, in the province of Baluchistan, Iran had had registered number 4-3783. It was on its third fishing trip when it was arrested and brought to Seychelles. The family of the deceased are now putting severe pressure on him to repatriate the body of the deceased for burial. He has been given all the details and authority necessary from the family but he cannot take responsibility for the costs of post-mortem, embalming and repatriation for the reasons that firstly he or the crew are not responsible for taking the boat to Seychelles and secondly if he accepted responsibility the family in Iran would expect him to pay "blood money" for the death of the deceased which he cannot accept. He testified that the Seychelles authorities should take responsibility to do all that is necessary to repatriate the body of the deceased just as it has repatriated the rest of the crew.
- [11] I start with the issue of locus standi. In law, standing or *locus standi* is the term for the ability of a party to demonstrate to the Court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. At common law, the test for standing is whether the plaintiff has a sufficient or special interest in the subject matter of the action that is, a person whose interests are adversely affected by the decision or conduct complained of. This has generally been referred to as the common law test.
- [12] In Makarudze & Anor v Bungu & Ors 2015 (1) ZLR 15 (H) (Zimbabwe) the court pointed out that *locus standi in judicio* refers to one's right, ability or capacity to bring legal proceedings in a court of law. One must justify such right by showing that one has a direct and substantial interest in the outcome of the litigation. Such an interest is a legal interest in the subject-matter of the action which could be prejudicially affected by the judgment of the court. The court will be slow to deny locus standi to a litigant who seriously alleges that a state of affairs exists, within the court's area of jurisdiction, where someone in a

position of authority, power or influence abuses that position to the detriment of their members or followers.

- [13] In the present case, the plaintiff is the owner of the vessel "Mubarak" which was intercepted and brought to Seychelles by the joint actions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant all acting under the authority or as agents of the 4<sup>th</sup> defendant. In respect of the vessel which caught fire and sank whilst in the custody of the defendants, there is no doubt that the plaintiff has sufficient interest in the matter and hence the right to institute legal action for the loss of his vessel. However, the plaintiff's claim goes further by praying for the repatriation of the body of a crew member after post-mortem and embalming.
- [14] Ideally, the claim for the loss of the vessel should have been a separate legal action from the claim for repatriation of the body of a crew member. Further, issues of locus standi in respect of the repatriation of the deceased's body might not have arisen if the plaintiff was the deceased's family member. In this case it is an employer-employee relationship. However, the plaintiff testified that he had handwritten documents made by the father of the deceased authorising him to do the necessary to have the body of the deceased repatriated to Iran for burial. The defence did not raise any issue in respect of the authority given to the plaintiff although based on their defence I can assume that the defendants do not find such authority to be sufficient to give the plaintiff locus standi in the matter.
- [15] I am further intrigued by the position of the defendants. Initially, the defendants were making arrangements for the repatriation of the deceased's body as a matter of course, without even the intervention of the plaintiff. However, for reasons not disclosed to the Court, the arrangements came to a standstill and the plaintiff was asked to take responsibility for the post-mortem, embalming and repatriation of the deceased's body at his own cost. At the same time, it is a fact that the defendants had repatriated all the other crew members on the defendants' own initiative and at the defendants' own costs. Considering the global context of this situation it is logical for the plaintiff to claim that the defendants have impounded his ship and repatriated his crew, therefore the defendants should complete the repatriation of all members of his crew including the deceased's body. The plaintiff is therefore a person who has sufficient interest in having all the members of

his crew repatriated to their respective countries and therefore has locus standi to initiate legal proceedings in that respect.

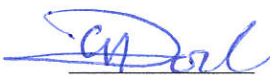
[16] It follows also that grounds i. and iii. of the plea in limine litis cannot stand since the evidence show that it was the defendants' action which resulted in the loss the plaintiff's vessel and the death of one of the crew members. As to what extent could the defendant's liability be established or reduced and if there was any contributory negligence on the part of the plaintiff or the crew of the vessel would be determined by a subsequent hearing set for that issue.


[17] I therefore find that the defendants were responsible for intercepting the vessel "Mubarak" from its route on the high seas and bringing it to Seychelles. That the vessel caught fire and sunk whilst in the custody of the defendants. That the defendants were responsible to repatriate the crew members to their respective countries. That the defendants fulfilled part of their obligations by repatriating 12 of the 13 crew members but have failed to date to repatriate the body of the deceased Abed Raz who died in the custody of the defendants. I therefore find the defendants jointly responsible for the repatriation of the body of the deceased Abed Raz and meet all the costs and logistical arrangements necessary for the repatriation.

[18] I therefore order the defendants to repatriate the body of the deceased, Abed Raz to Iran after post-mortem and embalming, all at the costs of the defendants.

[19] Cost is reserved until the determination of the claim for damages.

Signed, dated and delivered at Ile du Port on 3<sup>rd</sup> June, 2019.

  
Dodin J.

The seal of the Supreme Court of Seychelles is circular, featuring a central emblem with a bird and a tree, surrounded by the text "SEAL OF THE SUPREME COURT \* SEYCHELLES".