

**SUPREME COURT OF SEYCHELLES**

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**Reportable/ Not Reportable / Redact**  
**[2019] SCSC 649**  
**CS 83/2013**

**In the matter between:**

**LYNDA AGLAE**

*(rep by Mr. N. Gabriel)*

**Plaintiff**

and

**THE SEYCHELLES REVENUE COMMISSIONER**

*(rep by Mr. E. Chetty)*

**First Defendant**

**THE GOVERNMENT OF SEYCHELLES**

*(rep by Mr. Kumar)*

**Second Defendant**

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**Neutral Citation:** *Aglae Lynda v Revenue Commissioner and the Government of Seychelles* (CS 283/2013) [2019] SCSC 649 (30 July 2019)

**Before:** Andre J

**Summary:** Claim of damages –Articles 1382, 1384 of the Civil Code (CAP 33)-

**Heard:** 20<sup>th</sup> February 2019

**Delivered:** 30<sup>th</sup> July 2019

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**ORDER**

Plaint is dismissed with costs to the Defendants.

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**JUDGMENT**

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**ANDRE J**

**Introduction**

[1] This Ruling arises out of a plaint of the 2<sup>nd</sup> September 2013 as filed on the 23<sup>rd</sup> September 2013, wherein Lynda Aglae (*“Plaintiff”*), prays for Orders that the Seychelles Revenue

Commissioner (“*first Defendant*”) and the Government of Seychelles a (“*second Defendant*”) (*Cumulatively “Defendants”*) are made jointly and severally liable to pay to her the sum of Seychelles Rupees Four Hundred Seven Hundred and Ninety One (S.R. 402,791/-) as damages for loss of earnings and loss of a career and moral damages caused by her sudden manner of her dismissal especially bearing in mind that the Plaintiff has a family to maintain and same with costs and interests. The claim arises out of an alleged unlawful termination of employment of the plaintiff by the first Defendant on the 26<sup>th</sup> June 2012.

- [2] The Defendants by way of their statements of defence of the 25<sup>th</sup> November 2014 and 11<sup>th</sup> February 2015 respectively, raised two pleas ‘*in limine*’. Firstly, to the effect that this action was before the wrong forum and that this Court lacks jurisdiction; and secondly, that the action is *res judicata* as it was arbitrated before the Public Service Appeals Board (PSAB) and settled in that the Plaintiff was paid her dues in full and final settlement of her case subject matter of the current action.
- [3] The Defendants who joined defences also denied the plaint on the merits and put the plaintiff to the strict proof thereof and moved for dismissal with costs.

### **Factual and procedural background**

- [4] The Plaintiff was employed by the first Defendant the Seychelles Revenue Commissioner in the Seychelles Customs Division during the period 1995 to 2012, and she held various positions. In 2012, while holding the position of Senior Custom’s Officer the Plaintiff alleges that the first Defendant unlawfully terminated her employment and forfeited her privileges.
- [5] The Plaintiff claims that the termination of her employment amounts to a *faute* in law by the first Defendant with the second Defendant being vicariously liable as an employer of the First Defendant. The Plaintiff alleges that as a result of the *faute* she has suffered loss of earnings amounting to Seychelles Rupees One Hundred and Two Seven Hundred and Ninety Two (S.R. 102,791/-) and loss of a career and moral damages caused by her sudden dismissal for which the Plaintiff claims Seychelles Rupees Three Hundred

Thousand (SR.300, 000/-), totaling to Seychelles Rupees Four Hundred Seven Hundred and Ninety One (S.R. 402,791/-)

- [6] The Defendants aver as per the stated pleas *'in limine'* that the employment dispute subject matter of the plaint has already been addressed by a different forum the *PSAB* where the Plaintiff received financial compensation in full and final settlement.

### **Evidence**

- [7] At the hearing the Plaintiff testified on her own behalf and the Defendants did not call evidence.
- [8] The Plaintiff Lynda Aglae testified that she forgot when she started working at the Revenue Commission as well as what rank she held at the time of her dismissal. She testified that after the dismissal she brought a case against the second Defendant at the *PSAB* and won the case and there was no appeal to the Ruling. Under cross-examination, the Plaintiff testified that after winning her case against the second Defendant she received payment for unlawful termination of her employment by the first Defendant but does not remember the amount she was paid.

### **Legal analysis and Discussion of evidence**

- [9] Having illustrated the salient evidence pertinent to this matter, I shall now move on to the applicable law and its analysis thereto.
- [10] The Plaintiff prays for the Court to award her with damages due to the Defendants *'faute'* in law.
- [11] Articles 1382 and 1384 of the Seychelles Civil Code ("*Code*") address issues of *'faute'* and damages with the former stating that fault is:

*"an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused"*

and the latter Article 1384 provides that:

*“[a] person is liable for the damage that he has caused by his own act but also for the damage caused by the act of persons for whom he is responsible or by things in his custody”.*

[12] Now, it is clear in this case as per evidence on records of the Plaintiff herself (*supra*) and during cross-examination that she lacks understanding of the legal processes as she believed that the present case is, in fact, a legal challenge against the PSAB’s decision. This is deduced from her statement that:

*“There was a missing money that was said to be paid by PSAB but was not done”.*

[13] It is established legal principle that the Court is bound by the pleadings and as such, as the case before the Court is not an appeal against the decision of the PSAB, the Supreme Court is not the suitable avenue to address the present issue.

[14] Article 1351 (1) of the Code provides that:

*“The authority of a final judgment shall only be binding in respect of the subject matter of the judgment. It is necessary that the demand relates to the same subject-matter; that it relates to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities”.*

[15] This principle has been further treated and endorsed in the case of (***Gerald Pragassen v Margaret Vidot CS. No. 360 of 2005***), ***wherein the Court held that:***

*“for the plea of res judicata to be upheld there must be the threefold identity of subject matter, cause and parties between the first and second case.”*

[16] The difficulty with the present case is that the Court is in the dark of what transpired between the Plaintiff and the first Defendant during the PSAB proceedings. On one hand, it is not clear whether there was, in fact, a settlement reached between the Plaintiff and the Defendant or whether on the other hand, there was a ruling made against the first Defendant. However, the fact that the Plaintiff did not appeal the decision of the PSAB but received payment from the second Defendant suggests that the employment dispute between the Plaintiff and the First Defendant was settled.

## **Conclusion**

[17] It is evident, therefore that based on the above analysis as illustrated on the facts, that the Plaintiff has failed to satisfy that this Court has jurisdiction to hear this case as it was already addressed under a different forum namely the *PSAB* and settled with her consent and as admitted by the Plaintiff no appeal was lodged by either party.

[18] It follows that the plaint is dismissed and the pleas '*in limine*' upheld accordingly with cost to the Defendants.

Signed, dated and delivered at Ile du Port on 30 July 2019.

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**ANDRE J**