

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC 665
CS 93/2016

In the matter between:

RUTH FRICHOT
(rep by Mr. C. Lucas)

Plaintiff

and

YVONNE OTAR
(rep by Mr. E. Chetty)

Defendant

Neutral Citation: *Frichot Ruth v Otar Yvonne* (CS 93/2016) [2019] SCSC 665
Before: Andre J
Summary: Claim of damages –Articles 1382 and 1384 of the Civil Code (CAP 33) -
Heard: 7th February 2019
Delivered: 2nd August 2019

JUDGMENT

ANDRE J

Introduction

[1] This Judgment arises out of a Complaint of the 8th November 2016, wherein Ruth Frichot (“*Plaintiff*”), prays for orders that Yvonne Otar (“*Defendant*”) make good of loss and damages in the sum of Seychelles Rupees Three Hundred Thousand (S.R. 300,000/-) and issuing of an injunction against the Defendant forbidding her from trespassing onto the Plaintiff’s property, verbally abusing and threatening or executing bodily injuries to the Plaintiff and all with costs and interests of the action. The action arises out of alleged trespass and interference of the Defendant with the quiet and peaceful enjoyment of her land and ancillary loss and damages arising out of physical and moral injuries.

[2] The Defendant by way of statement of defence of the 15th February 2017 denies liability and moves for dismissal of the plaint with costs.

Factual and procedural background

[3] The Plaintiff Ruth Frichot and the Defendant Yvonne Otar are neighbours with the former being the possessor and occupier of the parcel Title V 8801 (*“Plaintiff’s property”*), which adjoins the parcel Title V4874 (*“Defendant’s property”*).

[4] In her plaint the Plaintiff alleges that since 2012 the Defendant has been claiming ownership of a portion of her property and harassing her. The harassment consists of acts of malicious lawsuits, trespass, verbal abuse, physical abuse in the form of stones being thrown at the Plaintiff.

[5] That on the 14th May 2016, the Plaintiff alleges that she was verbally abused and physically attacked by the Defendant resulting in serious bodily harm.

[6] As a result of the Plaintiff’s alleged actions she has suffered from stress and anxiety. As such, the Plaintiff is requesting that the Court issues an injunction prohibiting the Defendant from verbally abusing or inflicting bodily injuries on the Plaintiff and trespassing the Plaintiff’s property; and seeking Seychelles Rupees Three Hundred Thousand (*SR 300,000/-*) in damages which is broken down into Seychelles Rupees Fifty Thousand (*S.R.50,000/-*) for trespassing and interfering with the peaceful enjoyment of her land; Seychelles Rupees Fifty Thousand (*SR50,000/-*) for prejudice, anxiety and public humiliation; and Seychelles Rupees One Hundred Thousand (*SR100,000/-*) for physical injury, pain and suffering; and Seychelles Rupees One Hundred Thousand (*SR100,000/-*) for anxiety, fear and moral damage.

[7] In her Defence the Defendant denies inflicting physical harm, harassing and verbally abusing the Plaintiff. The Defendant denies the Plaintiff’s version of what transpired on 14th May 2016 and claims that she was acting in self-defense when she threw a stone at the Plaintiff. Furthermore, the Defendant denies interfering and trespassing on the Plaintiff’s property and moves for dismissal of the plaint with costs.

Evidence

- [8] At the hearing the Plaintiff testified and called three witnesses namely Tommy Camille and Lydie William and Vicky Elizabeth and the Defendant testified on her own behalf.
- [9] Tommy Camille testified that on 14th May 2016, he was working as a handyman cleaning the Plaintiff's property at the back of Plaintiff's house when the Defendant started asking him what he was doing on her land.
- [10] That when the Plaintiff heard this exchange she asked the Defendant to leave him alone. It was after this that he witnessed the Defendant throwing rocks and a bottle at the Plaintiff.
- [11] Tommy Camille further testified that the Plaintiff ran to hide from the rock-throwing but after some time returned to where he was working and that he does not remember what happened when the Plaintiff returned but the Plaintiff was injured and he helped her get into her house, where the Plaintiff proceeded to call the police. He testified that the Plaintiff went to the police station and the hospital.
- [12] Lydie William is a neighbour of both the Plaintiff and the Defendant. Lydie William testified that on 14th May 2016 between 10:30-10:45 a.m., she was at her house when she heard a commotion outside. When she went outside to find out what was happening she saw Tommy Camille cleaning the Plaintiff's property and the Defendant throwing bottles and stones at the Plaintiff. She witnessed one of these stones hit the Plaintiff.
- [13] Lydie William further testified that when Plaintiff picked up a stone the Defendant ran to hide.
- [14] Under cross-examination, Lydie William revealed that the Defendant threw stones and ran hiding behind a wall. Furthermore, under cross-examination Lydie William testified that she heard the Defendant swearing at the Plaintiff and telling her to get out of her land but the Plaintiff remained calm and did not swear back.
- [15] Vicky Elizabeth is the Plaintiff's niece and testified that on 14th May 2016, she received a phone call from the Plaintiff that she had been injured and was at the English River Clinic. She then visited the Plaintiff at the clinic and took photographs of her injuries using her smartphone (*Exhibit P7*).

- [16] The Defendant Yvonne Otar testified and admitted being a neighbour of the Plaintiff for around thirty years.
- [17] She testified that in the past she has had several problems with the Plaintiff but denied abusing and or threatening and or harming the Plaintiff as alleged in the plaint.
- [18] With respect to the incident of the 14th May 2016, she testified that the incident arose at around 9:30 to 10 a.m. when she was in her house and heard noise on her property and she looked out from the window and saw a boy with a spade and she then told him to stop as he was on her property.
- [19] That the boy did not reply but instead the Plaintiff replied and said “*madam Otar langet liki ou manman ou pou donn mwan en lape se ou la? Si se ou met case ankour*”. That she then told the Plaintiff her case is in Court.
- [20] Then after that interaction between her and the Plaintiff the Plaintiff came down with a rock in her hand and threw it at her and it fell down and this is when she picked that rock and threw it at her . She denied seeing the third and fourth witnesses on the scene of the incident at the time.
- [21] That the police came on the scene upon being notified and she denied the claims of the Plaintiff and testified that she did not hit the Plaintiff as alleged and further testified that she cannot pay the Plaintiff the sum claimed and hence would move for dismissal of the case as filed against her.
- [22] In cross-examination, the Defendant admitted conviction before the Magistrates Court (*Exhibit P6*) for assault occasioning actual bodily harm of the 17th January 2019 with reference to the same incident and admitted not appealing the conviction and or sentence.
- [23] That she had a case filed against the Plaintiff before the Supreme Court in the year 2016 and the same was dismissed.
- [24] She continually denied the allegations of the Plaintiff as per plaint and testified that since the incident she has no access to the Plaintiff and not harassing her either.

Legal analysis and Discussion of evidence

[25] Having illustrated the salient evidence pertinent to this matter, I shall now move on to the applicable law and its analysis thereto.

[26] The issues arising to be determined by the Court are first, as to whether the Defendant's actions are delictual in nature and caused harm to the Plaintiff and damages arising and payable to the Plaintiff.

[27] The Seychelles Civil Code ("*the Code*"), provides for the recovery of damages in delict by virtue Article 1384 thereof stipulating 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".

[28] Article 1382 (2) of the Code further describes fault as:

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

[29] Firstly, the Plaintiff prays for the Court to award Seychelles Rupees Fifty Thousand (SR50, 000/-) in damages for the Defendant's trespassing and interfering with her peaceful enjoyment of her property.

[30] In that regards, the Plaintiff testified that she witnessed the Defendant trespassing her property and that the Defendant watered her house. The Court in the (***Belize v Nicette (2001) SLR 264***) held that:

"The Plaintiff also claims R10, 000 for trespass to land. It has been established that the vegetation damaged was on the Plaintiff's land. However, for delictual damages, trespass must be accompanied by any loss or damage caused to the owner of the land. Punitive damages are not payable for trespass".

[31] Drawing from the ***Belize case*** which reiterates that damages are not supposed to be punitive, I am satisfied that the Plaintiff has made a convincing case about the nature of the loss or damage she has suffered as a result of the Defendant's trespassing. The

Defendant watering her house has not been proven to have resulted in any damage to the house though.

[32] However, the issue of peaceful enjoyment of the Plaintiff's property is protected under Article 26 of the Constitution which provides that:

“Every person has a right to property and for the purpose of this article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others”.

[33] I am satisfied that the Plaintiff has proved that since the assault in 2016 and because of fear of verbal harassment by the Defendant she has not accessed a part of her property in over 2 years. Lydie William testified further, that on 14th May 2016, she witnessed the Defendant swearing at the Plaintiff who remained calm. The evidence suggests that indeed, the Defendant's actions resulted in the violation of the Plaintiff right to peaceful enjoyment of her property.

[34] The Plaintiff has sought Seychelles Rupees One Hundred and Fifty (SR 150, 000/-) in damages for prejudice, anxiety, fear, moral damage and public humiliation. The evidence before the Court reveals that the Plaintiff and the Defendant have been neighbours for approximately thirty years and their relationship has been strained because the Defendant believes that part of the Plaintiff's property belongs to her.

[35] The evidence before the Court further reveals that in 1995 the Defendant brought a case to the Court over the disputed piece of property. In 2014, the Defendant sued the Plaintiff and two other Defendants over the construction of a road on her property. The case was dismissed by the Court in 2016.

[36] Now, Article 1149 (2) of the Code provides that:

“Damages shall also be recoverable for any injury to or loss of rights or personality. These include rights which cannot be measured in money such as pain and suffering and aesthetic loss and the loss of any amenities of life”.

[37] In the case of **(Michel & Ors v Talma & Anor (2012) SLR 95)**, the Court of Appeal held that:

“The Court of Appeal in Cable and Wireless v Michel (SLR 1966 253) referring to Planiol and Ripert make the case that where a right has been violated, compensation can be awarded for moral damages even in the absence of a claim for material damages. These rights can be patrimonial or extra patrimonial as in this case. We agree that it is difficult to assess moral damages but the exercise must still be carried out and the plaintiff is entitled to them. There has however never been a method established in Seychelles to assess moral damages. No method of assessment is set out either in the Constitution or in the Civil Procedure Code”.

[38] In the present case, the Plaintiff testified that she has suffered from moral damage and that:

“because even at home, even when people pass by, she would always accuse me as the bad person but I never brought her to Court”.

[39] The Plaintiff further testified that she has been harassed by the Defendant since 2012 with the police getting involved in some of the disputes. The Plaintiff further testified that when she commenced construction work to extend her house in 2013 the Defendant not only verbally harassed the Plaintiff but also swore at the construction workers.

[40] The witness Tommy Camille testified that while he was cleaning the Plaintiff’s yard the Defendant was asking him what he was doing at her property. While it is difficult to assess moral damages, the evidence points out that the Plaintiff has suffered moral damages.

[41] Moral damage is linked to public humiliation. The evidence reveals that the Defendant verbally harassed the Plaintiff publicly and also verbally harassed different people employed by the Plaintiff to work on her property which is without a doubt humiliating experiences.

[42] The evidence proves that the Plaintiff has been anxious as a result of the ongoing legal disputes about the portion of land between her and the Defendant that go back to 1995 and a lawsuit brought by the Defendant dismissed in 2014. Furthermore, the Plaintiff testified that she has not cleaned a portion of her property in two years because she is fearful of being harassed by the Defendant. The fact that on the 17th January 2019, the Defendant was convicted by the Magistrate’s Court for the offence of injuring the Plaintiff on 14th

May 2016 gives credence to the Plaintiff's claim that she is anxious and fearful of being assaulted and harassed by the Defendant.

[43] The Plaintiff has made a claim of Seychelles Rupees One Hundred Thousand (SR 100,000/-) for physical injury, pain and suffering. The medical report clearly reveals that the Plaintiff was physically injured by the Defendant resulting in pain and suffering.

[44] The current cause of action arising out of a determination of Articles 1382, 1384 and 1149 (2) of the Code and as per evidence as analyzed, I am satisfied that the Plaintiff has proved that she suffered pain and suffering due to the 'faute' of the Defendant, thus, the Defendant is liable to pay damages as ordered below.

Conclusion

[45] It follows, firstly, that this Court is satisfied that the Plaintiff has proven her case, that an injunction Order is hereby granted prohibiting the Defendant from verbally abusing or inflicting bodily injuries on the Plaintiff and trespassing the Plaintiff's property.

[46] Secondly, as it is established and settled case-law that damages are not supposed to be punitive and or to coin profit, the Plaintiff has failed to prove the damages she allegedly suffered as a result of the Defendants trespassing but she has proved that her constitutionally protected right to peaceful enjoyment to her property has been violated by the Defendant's actions. As such the Defendant is ordered to pay the Plaintiff the sum of Seychelles Rupees Five Thousand Rupees (S.R. 5000/-).

[47] Thirdly, the Plaintiff has proven that she has suffered prejudice, anxiety and public humiliation, fear and moral damage as a result of the Defendant's actions, is thus further order that the Defendant pays tot eh plaintiff a sum of Seychelles Rupees Five Thousand (S.R. 5000/-) under that count.

[48] Fourthly, the Plaintiff has further proven that she has been physically injured and endured pain and suffering by the actions of the Defendant and thus Defendant is additionally ordered to pay to the Plaintiff a sum of Seychelles Rupees Five Thousand (S.R. 5000/-).

[49] It follows thus, that the plaint is partially granted and both parties shall bear their own costs.

Signed dated and delivered at Ile du Port on 2nd August 2019.

ANDRE J