

IN SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 1016

CS 94/2017

ALAIN ST.ANGE

(rep. by Frank Elizabeth, Kieran Shah & Michelle Ebrahim)

Plaintiff

and

THE ATTORNEY GENERAL

Defendant

Representing the Government of Seychelles

(rep Chinnasamy Jayaraj)

Neutral Citation: *Allain St. Ange v Attorney General*, (CS94of 2018)

Before: Vidot J

Summary: Plaintiff discloses no cause of action, Faute, Act of State, State Sovereignty, National interest and Good faith

Heard: 23, 24 August 2018, 14 25 September 2018, 26 October 2018, 10 December 2018, 16, 29 Jan. 201, 19 March 2019, 09 April 2019, 03 May 2019

Delivered: 18 November 2019

JUDGMENT

VIDOT J

- [1] The Plaintiff is the former Minister of Tourism and Civil Aviation, Ports and Marine in the present Executive administration. In 2016 he decided to run for the post of Secretary General (SG) of the United Nations World Tourism Organization (UNWTO). The elections for the post was to be held in Madrid, Spain, the headquarters of the UNWTO on the 12th May 2017. In order to submit his candidature for the post it is a requirement

inter alia that he obtained the endorsement of the Government of Seychelles. That endorsement came in the form of a letter (exhibit P1) from the President of the Republic, Mr. Danny Faure addressed to the outgoing SG of the UNWTO, Dr, Taleb Rifai. The letter is dated 5th January 2017.

- [2] The Plaintiff when soliciting the President's endorsement for the post, alleges that together with the Government of Seychelles there was agreement that he should resign from his ministerial post. Therefore, he formally tendered his letter of resignation on 27th December 2016 (exhibit P10) which was accepted. He decided that such resignation was necessary so that he could apply all his effort towards his campaign. This, he was to do tirelessly between the period of December 2016 and May 2017. This was an international campaign that required a lot of travel which meant staying in hotels. He needed to garner international support. Therefore he secured the services of companies and/or individuals who had expertise in marketing, promotion and the like to assist with his campaign.
- [3] In the meanwhile on the 28th February 2017, his candidature was subject of a question in the National Assembly of Seychelles. At that session of the Assembly the Government very forcefully defended the position of the Government vis-a-vis the endorsement of the Plaintiff. This was because previously Seychelles had endorsed the candidature of the African Union ("The AU") candidate, of which Seychelles is a member. The AU candidate was the then Minister of Tourism of Zimbabwe. It is well known that the AU vote in block in a manner that will give them a greater chance of being elected by nominating one candidate from that block. If a member country fails to support the AU candidate or field in another candidate then the repercussion would be that sanction is imposed on that member state. However, with full knowledge of such reprisal, the Government remained committed to endorse Mr. St. Ange's candidature. The Plaintiff was also very much aware of repercussions. However, the authorities felt that it was a risk worth taking.
- [4] The Ministry of Foreign Affairs also issued notes verbale to various counties within the AU informing them of the decision to support the candidacy of the Plaintiff. The Plaintiff pursued his campaign with much vigour. In March 2017, the candidacy was given public

endorsement by the then Ministry of Tourism, Civil Aviation, Ports and Marine, Mr. Maurice Lousteau Lalanne at the ITB fair in Berlin.

- [5] The Plaintiff complains that on the 09th May 2017, after he had arrived in Madrid for the election of the UNWTO Secretary General, he received a disturbing phone call from the Vice President, Mr. Vincent Meriton that Seychelles was withdrawing its support for the Plaintiff's candidacy for the position and a letter was sent to the office of the SG, Taleb Rifai informing him of the same. Minister Lousteau Lalanne made a public announcement regarding the withdrawal of the endorsement. To the Plaintiff it was as if his world had crash. He was without doubt devastated and became literally sick. The Plaintiff alleges that withdrawal of endorsement at such late hour amounts to bad faith from the Government. He further alleges that the acts of the Government amount to a "*faute*" in law for which the Defendant is liable to him.
- [6] The Defendant denies having committed a *faute* against the Plaintiff. In fact the Defendant prays to Court to have the case dismissed on averment that the Plaintiff does not disclose a cause of action against the Defendant. That averment was raised as a plea in *limine litis*.
- [7] The Defendant states that the Plaintiff resigned from his ministerial post on his own volition and that the decision to lodge his candidature for the post of SG for the UNWTO was one that was personal. Whilst admitting various averments as they appear in the plaintiff particularly that the candidacy of the Plaintiff received the endorsement of the Defendant, they deny that the Government gave an undertaking that it would support the Plaintiff's candidacy financially. The Defendant further avers that they remained unaware that the Plaintiff was campaigning tirelessly to bolster international support for his candidature for the post and that the Plaintiff was incurring substantial expenses.
- [8] It is averred by the Defendant that the President withdrew its endorsement of the Plaintiff's candidature on the highest consideration of national interest, particularly due to the risk of sanction from the AU. It also did so as a way of enhancing its image within the African Union and that it was a matter of international comity and to protect national

interest that it decided finally to support the candidature of the AU candidate, Mr. Zambezi of Zimbabwe.

[9] The Defendant maintains that in its dealing with the Plaintiff's candidature for the post it always acted in good faith and therefore is free from any liability to the Plaintiff. It further alleges that there was no contractual agreement between the parties whereby the Defendant agreed to afford any undertaking to the Plaintiff that it would support the candidature at its own peril. It only decided to endorse the Plaintiff's candidature as a matter of policy discretion of circumstances existing at that moment. However, the Defendant exercised of its prerogative right in adopting a change in its decision. The Defendant prayed for the Court to dismiss the Plaintiff.

[10] The Plaintiff nonetheless makes the following claim from the Defendant, claims which the latter refutes completely and absolutely;

- (a) Travel expenses with costs of hotels and accommodations, €225,000.00
cost of printing and stationary, cost of media and promotion &
marketing and telecommunication costs, including telephone
and internet
- (b) Future loss of earnings as SG of UNWTO per year for 2 years €325,473.00
at €162,736.35 per year
- (c) Future loss of earnings as Minister of Tourism and Civil SR9,000,000.00
Aviation, Ports and marine
- (d) Damage for international humiliation and undue stress SR1,000,000.00
- (e) Moral damage for inconvenience and embarrassment SR1,000,000.00
- (f) Damage s for severe psychological and emotional SR1,000,000.00

Pain and suffering

(g) Damage for tarnished reputation on the national and

SR1.000.000.00

International scale

Synopsis of Evidence

Plaintiff Evidence

- [11] The Plaintiff reinforcing his Complaint gave evidence that he was a former minister with portfolio above mentioned. He had been contemplating at least 2 years before the election of the SG of the UNTWO to throw in his candidacy. So in 2016 he met with President Michel to express his intention. This was well received by the President. Thereafter, due to a change in administration he brought the matter before President Faure who also expressed his support. It was agreed that it was necessary that he resigns from his ministerial post. However, he admits that the decision to resign was his.
- [12] The matter was further discussed at the office of Foreign Affairs with Mrs. Marie-Louise Potter who was then Secretary of State for foreign affairs, the principal diplomat in the administration. Mrs. Potter talks of commitment made by the former President Michel to support the Plaintiff's candidacy and the decision of the current President to honour that commitment. Actually she was the one who handed the endorsement letter to Mr. St. Ange. Following that meeting note verbales were sent to various countries, particularly on the African continent informing them that Seychelles will be supporting the Plaintiff's candidacy. Seychelles had previously given it undertaking to support the AU candidate.
- [13] The candidacy received strong reservations if not complete objections from the Principal Secretary of Foreign Affairs, Ms. Michelle Murray. She reminded Mrs. Potter and the Plaintiff that Seychelles could face sanctions from the AU. As stated before the AU vote in block for its own candidate. The Zimbabwean candidate had already been nominated at a summit in Rwanda. However, Mrs. Potter believe that the candidature of the Plaintiff would be of immense benefit for Seychelles. Mrs. Potter mentioned that at that time the

President believed it was a difficult situation. She nonetheless thought that denying the Plaintiff the possibility of running for the post would be denying a Seychellois the possibility of being elected to such high office. She further believed that there was a risk, but a risk worth taking. Michelle Murray believed otherwise that she refused to sign the note verbales. Mrs. Potter evaluated that this candidature could have economic benefits for Seychelles.

- [14] That meeting according to Michelle Murray actually took place on 12 January 2017. Seychelles diplomatic missions particularly in South Africa and Addis Ababa were being contacted regarding Seychelles decision to support the Plaintiff's candidacy in breach of the AU rules. Formal complaints were made by some members of AU. Michelle wrote to Mrs. Potter to explain the situation as already AU members were expressing concern. She insisted that AU rules had to be respected especially if Seychelles needed to be seen as having serious commitment towards the AU. She expressed these concerns in the presence of Mrs. Potter and the Plaintiff. The former dismissed her as being obstructive whilst the latter noticing that she was firm in her objection remarked that she was a no nonsense lady and would tell the truth in terms of putting facts forward. However, Mrs. Potter noted that the AU had before made similar threats of sanctions against AU members that go against its rules. Mauritius defied the rules in one incident and the Mauritian candidate was elected to a post to which AU had endorsed a different candidate. No action was taken against Mauritius.
- [15] During the meantime the Plaintiff had started some rigorous campaigning. He visited numerous countries namely Spain, India, Uganda, London, Thailand, Egypt and Germany. He alleges that he was getting support such from various countries. He recruited services of promotional marketing, publication and Administration Company such as PR Media and the Indian Ocean Times. PR Media managed to thrust him into the spotlight by securing appearances with Richard Quest on CNN and Allen Bolton on Sky News. He was also interviewed by the BBC. He wrote to all the Ministers of the AU and others to garner support. He even managed to get the support of some members of the AU and he stated that many African countries sided away from the candidacy of Mr. Zambezi of Zimbabwe because these countries felt that that candidate had no chance of

winning and therefore threw the support to his candidature. He got the support from many international and local organizations of which he produced letters of their endorsement and support, of which were the Port Management Association of Eastern and Southern Africa and the Tanzania Society of Travel Agents (TOSATA). He also featured in various newspapers, magazines and other publications both internationally and locally and all reported positively on his candidacy. These included the E-Turbo News, World Tourism Wire, Africa Review and Ramadan Kareem. The Seychelles was so committed towards his candidacy that President Faure on a visit to Kenya undertook to take up the matter with the Kenyan president.

- [16] Meanwhile the issue of support of Mr. St. Ange candidacy was subject of a question in the Seychelles National Assembly. The response from Government which was pronounced by the Mrs. Macsuzy Mondon, Designated Minister, was that Seychelles was a sovereign state and as such it cannot abdicate that sovereignty to the AU or other international groupings. She also mentioned that if a request was made for financial assistance, it will be considered. Minister of Finance, Mr. Larose had echoed the same sentiment and there were exchanges of emails to that effect. However, the latter was clear that he had not received a "*definitive response*" from Government in that respect.
- [17] However, as time was approaching to vote the Seychelles Government was being placed under pressure from the AU as it had broken ranks with the organization by supporting Mr. St Ange. The AU summoned the Charge D'Affaires in Addis Ababa, Mr. Ralph Agrippine to express its disapproval of Seychelles reneging its obligations and not endorsing the AU candidate, something it had committed itself to do and therefore in no uncertain term was warned that Seychelles faced the possibility of sanctions. In fact the AU was alleging that Seychelles was in breach of Rules 16 and 23 of Rules of Procedure of the African Union Ministerial Committee. Sanctions will include trade sanctions whereby there Seychelles will not be able to engage in commerce with AU member states and that as per Rule 23 could extend to preventing air links and that could impact on Air Seychelles and prevent Kenya Airways and Ethiopian Airline from flying to Seychelles.

Defendant's Evidence

- [18] Indeed, it is *inter alia* submitted that pressure of sanction was the main crux of the defence's case. It is argued that the national interest outweighed far greater the support of the Plaintiff's candidature. The Defendant further tried to bring through its own witnesses and those of the Plaintiff, and particularly Mr. St. Ange himself that the Government acted always in good faith where the Plaintiff was concerned.
- [19] Mr. Ralph Agrippine, the Principal Counsellor of the Ministry of Foreign Affairs and Head of Mission at the Seychelles Embassy in Paris, testified that he was based in Addis Ababa from January to November 2017. He was nonetheless Acting Ambassador, meaning he was head of mission to the AU from April to August 2017. The AU is an organization which seeks political and economic integration of Africa. He confirmed that Rule 16 sets procedures for sanction as provided under Rule 23 of the Constitutive Act, provide that members states that do not comply with decisions can be subject to sanction.
- [20] He testified that the second part of Rule 23 refers to imposition of sanctions in the form of communications and transport to a State that does not observe a decision of the AU. Rule 16 refers to economic and political sanctions. Mr. Agrippine recounted how on the 08th May 2017 he was asked to report for a meeting at the AU with the Head of Political Affairs Department. That meeting was also assisted by the Head of Section for Democracy, Transparency and Elections. Mr. Agrippine was informed that the AU had received a letter from the AU countries that were part of the UNTWO regarding the candidature of Seychelles to the post of SG. They had requested that Seychelles withdraws its candidature for that post. They noted that the candidature of Mr. St. Ange violated the procedure laid down in the Constitutive Act. He tried his best to defend the candidature of Mr. St. Ange.
- [21] After that meeting he was handed a note verbale from Dr. Khabele Matsola. That copy had not been processed and that note verbale was intended to the Seychelles Government. He sent that copy to Ministry of Foreign Affairs and to that was attached a diplomatic report that he had prepared and he mentioned that the actual note verbale will come later. That note verbale in a nutshell referred to that the fact that 29th Executive Council that met in Kigali had endorsed the candidature of Dr. Zambezi and therefore Seychelles

should withdraw the Plaintiff's candidature and that should Seychelles insists on contravening the rules of procedure they run the risk of sanctions being imposed. However in his report despite suggesting that Seychelles could call AU' s bluff he nonetheless consented with the Defendant's position to withdraw Mr. St. Ange candidature was necessary because he felt that sanction was imminent and that decision was in the national interest.

[22] Mr. Agrippine most strenuously refuted accusations in cross examinations that he was negligent in not properly advising the Government and that the latter acted in bad faith. He outlined how from the beginning he had tried to promote and defend the Plaintiff and even did so when he was summoned to the AU headquarters to meet Dr. Khabele Matsola. That is because he believed in the Seychelles candidate for the post of SG of the UNWTO. He believed that Mr. St. Ange had a good chance of being elected. However, he said that Seychelles succumb to the AU's demand in the face of possible sanction. He emphasized that the AU has a zero tolerance policy for members who do not abide to its decision. Instead, he maintains that Mr. St. Ange was fully aware of the consequences of not complying with AU rules. He says that the Plaintiff should have done a feasibility study to assess the risk. It was in any case his responsibility to find out. He maintains that Seychelles decision was a sovereign decision and that the Plaintiff should have known that he was running on a ticket for Seychelles as the latter had endorsed him, Seychelles could also withdraw that endorsement.

[23] Minister Lousteau Lalanne is the current minister of Finance. His predecessor was Minister Larose. Actually the former became a minister following Mr. St Ange,s resignation. He testified about the support accorded to Mr. St. Ange publicly, namely in Madrid and ITB tourism fair in Berlin where the Plaintiff was present and the Seychelles was promoting him. He was given a platform for him to canvass and talk for himself. The Plaintiff's candidature received the unequivocal support of the Government. He personally believed that the Plaintiff would have been a good SG

[24] He stated that he is not aware that Government made commitment to extend financial support to the Plaintiff. He is unaware of an undertaking to make any reimbursement for

expenses incurred. Nonetheless he was not the minister of finance then. The Plaintiff in fact never requested financial assistance from him. However, if he received an invoice he would consider making payment against it, provided the court so orders.

- [25] Just like Mr. Agrippine he testified on the consequence of Seychelles if in defiance of AU had not withdrawn the endorsement of Mr. St. Ange.

Preliminary Objection

- [26] The plea in limine litis is that the Plaint does not disclose a reasonable cause of action. Counsel for the Defendant submits on the basis of the Plaintiff needed to establish 3 elements. These elements he claims are;

(i) The Plaintiff enjoyed a right to be a candidate of the UNWTO;

(ii) That right has been violated

(iii) The Defendant is liable to pay damages

- [27] Counsel for the Defendant relied on **Auto Garage v Markov [1971] JEA 154** which was cited in **Elizabeth v President of the Court of Appeal [2010] SLR 382** which stated the following;

“the person must appear as a person aggrieved by the violation of the right of the defendant as a person who is liable , I would summarise the position as I see it by saying that if the Plaint shows that the Plaintiff enjoyed a right, that the right has been violated and the Defendant is liable then in my opinion, a cause of action has been disclosed and any submission or defect may be put right by amendment. If on the other hand, any of those essentials are missing, no cause of action has been shown and no amendments is permissible.”

Counsels for Plaintiff seems not to have address this plea in limine as a separate matter but has touched upon it in its submission on the merits. I believe that that plea will be addressed when I go into the merit of the case. Therefore, I will treat it in that manner. At this point it suffices to say that the preliminary objection is dismissed.

Faute

[28] The Plaintiff is prosecuting under “*faute*”. He alleges that when the President representing the Government withdrew the endorsement they committed a *faute*. He claims that the Defendant is liable. He relies on Article 1382 of Civil Code. The provisions read in relevant parts as follows;

1. *Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.*
2. *Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage is caused. It may be the result of a positive act or an omission.*
3. *Fault may also consist of an act or omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in exercise of a legitimate interest.*
4. *A person shall be responsible for the fault to the extent that he is capable of discernment; provided that he did not knowingly deprive himself of the power of discernment.*

[29] To put it succinctly, Article 1382 makes a person liable for damages suffered by another, through his fault; that act caused damage to another. Fault is either negligent or intentional. Therefore, Article 1382 (2) states that fault can be an error of conduct which would not have been committed by a prudent person in the special circumstances in which damage was caused. Sub-article (3) encompasses a deliberate and intentional cause of harm.

[30] In order to establish fault (delict) these element have to be present (a) an act (or omission), (b) fault (negligent or intentional) (c) causation and (d) damages. The requirements generally, are said to only be three, and these are fault, injury or damage and a causal link. See **Emmanuel & Anor v Joubert** (SCA49/19960 [1997] SCCA 16

(28 November 1997). In **Civil Construction Company Limited v Leon & Ors** (SCA 36/2016)[2018] SCCA 33, a case also cited by Counsels for the Plaintiff, in which it was said that *“Every plaintiff who can prove fault, damage and causation can claim compensation. Furthermore, there is no restriction in delict on the type of faute (fault) which may give rise to liability”* The case goes on to state that *“Fault is an error of conduct which may be the result of a positive act or omission. Although fault is an amorphous term, French courts have given it content. According to Ripert, Note, DP [1907] 1. 385, it has been professed that that the word fault in the context of interferences with use and enjoyment of land, describes (i) acts intended to harm another, or (ii) acts that are harmful to another and arise out of negligence or imprudence imputable to the actor, or (iii) acts merely harmful to another if the harm is greater than ought to be tolerated (fault by implication).”*

Discussions

Mala Fides

[31] The Plaintiff averred that in withdrawing the endorsement the Defendant was acting in bad faith. This is however not supported by evidence adduced. Throughout the Plaintiff's campaign until such time that the endorsement was withdrawn, the Plaintiff enjoyed considerable support from the Defendant. Even after the withdrawal, there is not any indication that there was bad faith on behalf of the Defendant. In fact all the witnesses called by the Plaintiff and the Defendant testified that they provided support to promote and defended Mr. St. Ange candidature. What I find is that the Defendant was not prudent and did not evaluate the situation diligently in lending support to Mr. St. Ange candidacy.

[32] In fact, I find that the Defendant was willing to support the Plaintiff despite being fully aware that the national interest could be hurt. Seychelles had already given its support to the AU candidate. Mr. St. Ange candidature for SG of the UNWTO was primarily, first and foremost an act of self-aggrandisement, which is normal, though admittedly Seychelles would have benefited had he been elected to the post. I think that both the Plaintiff and the Defendant knew full well of the consequences to the national interest. In

the meeting with Mrs. Potter at the Ministry of Foreign Affairs, then then Principal Secretary, Michelle Murray, being labelled as obstructive by Mrs. Potter, was crying blue in the face about these repercussions. Neither party was willing to listen. I do not find any evidence to suggest that the Defendant acted in bad faith; they had come to a crunch whereby they had to succumb to AU's request. In fact chapeau to Ms. Murray for defending the national interest, though unfortunately neither party was willing to listen to reason.

National Interest

- [33] The issue to be decided is whether the Defendant committed a faute against the Plaintiff for which they will be liable to redress by paying damages. Did the withdrawal of the endorsement constitute a faute. The Defendant argues that it did not. The defence weighs heavily on the evidence of Mr. Agrippine and that of Minutes of Cabinet meeting produced as exhibit D1, to state that the Defendant being faced with imminent sanction from the AU was the overriding considerations for the withdrawal of the endorsement. This was a national interest which was paramount to all other considerations.
- [34] Mr. Agrippine testified that at the meeting of the 08th May 2017, he was told in no uncertain terms that impending and real imminent danger of the imposition of sanctions should Seychelles not withdraw the candidature of Mr. St Ange.
- [35] There is no doubt in my mind that the withdrawing of endorsement was due to threats of sanctions being imposed by AU against Seychelles. Seychelles was as per evidence in breach of Rules 16 and 23 of the Rules of Procedure of the African Union Ministerial Committee on Candidature within International System. Section 16 was clearly explained by Mr. Agrippine, provides as follows;

"Sanctions and Compliance With Decisions

Member State that fail to comply with the decisions of the Executive Council on candidatures for elective post s within the international system, in additions to sanctions provided for in Article 23 Constitutive Act of the African Union may be subjected to suspension of endorsement of their candidatures for a period of 5 years"

- [36] Mr. Elizabeth, Counsel for the Plaintiff had argued that the operative word of this Article was "*may*". He suggested that as was put forward by Mr. Agrippine in his report to Maison Quéo De Quincy (the seat of the Ministry of Foreign Affairs), the Government could have call the AU's bluff to maintain its support for the Plaintiff's candidature. However, I believe that the situation had already surpassed that stage. It is true that as per evidence of Mrs. Potter and Ms. Murray countries such as Mauritius had broken ranks with the AU and field in own candidate and was no repercussion in the form of sanction, but I find that the risk was too great after the meeting Mr. Agrippine had with Mr. Khabele Matsola. The national interest had to be protected.
- [37] Seychelles would have faced sanction has she continue to support the candidature of the Plaintiff. So was the threat of sanction enough to justify the withdrawal of endorsement of the Plaintiff's candidacy? This essentially leads to the consideration the severity of State. Was that cause enough to breach its obligation towards the AU? I believe Seychelles had been pushed into a corner whereby it had to withdraw that support. However, was that sufficient to absolve the Defendant of liability towards the Plaintiff.

Act of State

- [38] The Defendant submitted that the decision to endorse the candidature of the Plaintiff was an absolute discretion of the President. Therefore the withdrawal of that endorsement was equally a discretion of the President. However, he did it in the national interest. The President as head of state had to balance the interest of the Plaintiff with that of the country and latter completely surpassed that of the former. Therefore, he maintains that the Defendant was not negligent. Counsel for the Defendant emphasized that it is a public and private obligations of the state or Government and such is given different treatment depending on circumstances; see **Attorney General v Roch Labonte & Others SCA No. 24/2007 (judgment of 14 December 2007)**.
- [39] Counsel for the Defendant goes on to argue that a state is sovereign; a State is a legal person under international law with international personality and as such it is attributed with legal powers that cannot be derogated in respect of rights of sovereignty and sovereign equality. So the argument appears to be that the Plaintiff cannot claim redress

against the Defendant. This, it is averred is the universally recognised of act of state. An act of state protects the state from being sued for tortious liability for acts, commissions and omissions done in the realm of external affairs under treaty obligation. The Defendant is effectively canvassing the defence that the Plaintiff could not in such a case be sued. That, according to the Defendant is a matter that was non justiciable.

[40] In support of the foregoing argument, Counsel for the Defendant cited the case of **Rahmatulla (No. 2) v Ministry of Defence & Anor; Mohammed & Ors v Ministry of Defence [2017] UK SCI**, whereby the Supreme Court in England held that the Crown act of state is a prerogative act of policy in the field of international affairs, and the rules under this doctrine provide government with a defence to a claim arising from acts of state. The same sentiment was echoed in the United States in **Techt v Hughes , 229 N.Y 222, 247, 128 N.E 185, 193**. The courts recognised that where such acts of state exist, the Court should refrain from intervening. It emphasized that these doctrines, which might be termed judicial non-intervention doctrines, call for less judicial inquiry into the actions of the executive and legislative branches in foreign than in domestic affairs.

[41] I have accorded ample consideration to such principle. It is nonetheless my understanding that an act of state generally relates to activities of the executive with another state or collective states which in that case could be the AU albeit that it may take into account that there can be circumstances involving state and an individual such as the US case of **Goldwater v Carter 481 F. Supp. 949 (D.D.C Oct 17, 1979)**. The Supreme Court Justices in that case said that the case presented a political question and that the lower court should not have heard the case, since it involved the authority of the President in the conduct of the country's foreign relations. In L Henkin's *Foreign Affairs and the Constitution* (1972), I note that it was said that the political doctrine posits that there are certain issues to be resolved and decisions to be made by political branches of Government and not the Courts. Therefore despite the President having considerable authority in foreign affairs, it does not mean that all foreign affairs matters are not amenable to judicial intervention. I also find that in this case despite having an international dimension, that is in regards to its dealings with the AU, has also a domestic dimension that is in its dealings vis-a-vis one of its citizens.

[42] The Constitution does not provide any explicit provisions for act of state. Article 1 of the Constitution nonetheless states that Seychelles is a sovereign democratic Republic. Therefore in maintaining that sovereignty it has to pass laws and devise policies to ensure the effective promotion of its sovereignty. The President is bestowed wide powers in state dealings in international affairs. However, that power is to my mind not absolute. We are all aware what happens when one is granted absolute power. This is why laws are necessary. How and why we exercise our right or powers matter.

[43] The decision to withdraw the endorsement was a policy matter. Despite that exercise of sovereignty, the state has an obligation as per the Constitution (Chapter III) to ensure the fundamental rights of its citizen. That act of state cannot override these fundamental rights. An example is right to work under Article 35. This is only restricted to what is necessary in a democratic society. The Government in respect of its dealings with the AU was a policy decision. This leads to the consideration of the sovereignty of state's breach towards the AU. A state may commit an "international wrongful act" as per the definition provided in the draft Articles on the Responsibility of State for International Wrongful Act adopted by the International Law Commission in August 2001 which reads thus

Article 2

"Elements of international wrongful act of state

There is an internationally wrongful act of state when conduct consisting of an action or omission;

(a) Is attributable to the State in international law; and

(b) Constitutes a breach of international obligation of State."

[44] However, in the present case the act of state has to be divorced from the Defendant's duty towards its citizen. Effectively the Defendant had given its endorsement of the Plaintiff's candidature. That can be interpreted as support for the Plaintiff's right to work. The endorsement letter was ensuring that right. In withdrawing that endorsement it was

not promoting that right to work as provided for under the Constitution. It does not matter that the Plaintiff would not have won. The endorsement was almost on the border very much like a contractual obligation. The Defendant had to honour its commitment towards the Plaintiff. It decided to disregard its commitment to the AU as an exercise of its right to sovereignty. It could not have done the same to the Plaintiff and expect to be absolved of all responsibility. It is my opinion that the Defendant cannot in this instance rely on the defence of act of state.

The Negligent and Imprudent Act

[45] The Defendant granted a letter of endorsement on the 05^h January 2017, only to be withdrawn at the eleventh hour, on the 08^h May 2017. At the time of issuance of the letter the Defendant was fully appraised of the possibility of sanctions. The Rules of the AU was known to them. That was a faute that in this case constituted an “*acte sciemment nuisible*”; that is that the Defendant knowingly did an act that constituted a faute, aware of the injury that could be caused to the Plaintiff. At the time of endorsing the Plaintiff’s candidacy it was aware of its international obligations. A reasonable and responsible Government, appreciating the difficulties Seychelles would face in foreign relations, would have decided against the endorsement. In deciding to follow the route of endorsement, and as suggested by the evidence that it did so in exercise of its sovereignty, then it was negligent to withdraw the endorsement later on. There was expectation that the Defendant would have stuck to his determination to exercise its to sovereignty.

[46] This is evidence that the causation element was easily met. In **Denis v Ryland (CS135/2012) [2016] SCSC 10 (15 January 2016)** citing **Simon Emmanuel & Attorney General v Edison Joubert SCA 49/1996**, said that the claim arises under Article 1382 of the Civil Code when the act and the injury co-exist and there is a causal link between the act and the injury. The government’s decision allowed Mr. St. Ange’s candidacy to go forth, and the withdrawal thereof resulted in the suffering damages.

- [47] In fact in a case of delict it is immaterial whether damage is done or the prejudice suffered was foreseeable or not. The tortfeasor will have to compensate fully the consequences of his wrongdoing; see **Fontaine v Lefevre & Anor [1981] SLR 186**.
- [48] Another consideration is the present case is the matter of necessity. Though as I already held that I do not find that there was bad faith exercised by the Government, the State cannot claim ignorance of its AU obligation with regard with the candidature. The President met with the Plaintiff and assured him of the State's support. Due diligence should have been performed prior to the public endorsement of Mr. St. Ange. In that regard, the Defendant was clearly negligent. If the Government had advised Mr. St Ange that if the threats of sanctions became real, the support will be withdrawn, the former would not have been liable.
- [49] I therefore find that a faute was committed against the Plaintiff for which the Defendant is liable. Mr. St. Ange had a right to right to seek election to the post of SG to the UNWO provided he met the necessary criteria and one of which was the endorsement of the Government and that right was violated. It does not matter if he had lost or won.

Damages

- [50] I consider the Plaintiff to have contributed and is responsible for the losses he alleges to have incurred or suffered. However, the Defendant did not raise contributory negligent as part of the defence, so therefore I can only attribute the losses and damage in monetary terms to the Defendant alone. Invoices and receipts were produced. The Defendant did not admit liability and only allow these documents to be produced, not to the truth of their contents but only to show that such invoices and receipts exist.
- [51] It is trite that only claims of damages that have been proved will be awarded. Many of the heads of damages as per Plaintiff have not been established. In the recent case of **Civil Construction Company Limited v Leon & Ors (SCA 36 of 2016) [2018] SCCA 33 (14 December 2018)**, para 44-45, the Court of Appeal said the following in relation to assessment of damages, and the kinds of damages that may be claimed and awarded;

“our Civil Code contains provisions specifying the type of damage recoverable in delict namely, damages for injury, loss of rights of personality, pain and suffering, aesthetic loss and the loss of any amenities to life (see Article 1149 (2). Jurisprudence has classified these damages under material damage and moral damage.”

In **Barbe v Laurence (unreported) CS118/2013**, the court explained that there are in effect three types of damages in cases of delictual harm: corporal, material and moral. In explaining the differences between those three different heads of damages the court held;

“The corporal damage or injury is the bodily injury caused to the victim In some cases it can be death of a person. These damages are meant to compensate for the diminution in enjoyment of life in the victim. It includes the physical pain and suffering of the victim.

The material damage can be the destruction of things caused by the delict and also economic damage brought about by the inability of the victim to work or make a living.

The moral damage reflects the moral/ psychological suffering, pain , trauma and anguish suffered by the victim as a result of the delict.”

(a) Loss or Earning as a Minister

- [52] I find it rather peculiar that in the Plaintiff’s prayer of the Plaint claims damages for loss of earnings for both his position as a Minister and the SG of the UNWTO. If he was to be entitled to damages under these heads it would be for one only.
- [53] Despite efforts to state that the decision to resign was taken with the consent of the President, the evidence suggests otherwise. The letter of resignation clearly shows that it was the Plaintiff’s decision. He did admit it when testifying despite adding that the President agreed to it. In his address to the Executive Council after withdrawal of his candidature, he states that he resigned from his ministerial position after being inundated with support from various countries to run for the post; see exhibits P47 and P48. In fact in evidence it was established that the President suggested that he carries on in his Ministerial post whilst campaigning for the post of SG. The Plaintiff thought that it

would be unfair to the Government and the people of Seychelles as he would be spending a lot of time outside Seychelles and the President acquiesced with his decision to resign, but the decision was his and his alone. Therefore, he cannot benefit under that head of damages. That claim is denied.

(b) Loss of Earning as SG of the UNWTO

- [54] There is an African saying that says *"to run is not necessarily to arrive."* The Plaintiff was a candidate; he could have won and he could have lost. There was no guarantee of a win. He had endorsement from bodies with no voting capacity. The African countries with voting rights would not have necessarily voted for him as they would have been in breach of their commitment to vote for the AU endorsed candidate. As a result they too could have been exposed to sanctions. Irrespective if, as alleged by the Plaintiff that there was magazine who had printed his picture of their issue stating that he was the winner, that was no guarantee that he would have won. If there is anything I could agree with him is that his prospects of being elected looked seemingly good. Taleb Rifai said that the Plaintiff was not the only one with a good chance, but he was the best, if not one of the best runner in the race. That is no guarantee he would have won. He said he had a good campaign but does not translate into a win. The Plaintiff failed to bring forth evidence that he would have won the most votes. The Plaintiff has not proven that head of damage and the same is denied.

(c) Expenses Incurred During the Campaign

- [50] (i) Cash withdrawal and foreign Currency exchange receipts from Nouvobanq (Exhibits P87, P88 and P89) and overseas.

These cannot be allowed as the Plaintiff has not proved to my satisfaction on the balance of probabilities that such sum was money used during the campaign. Similarly for the same reason Exhibit P84 and P85 pertaining to purchase of foreign currency from Etilly Hotel and Bangkok are equally denied.

- (ii) **Telephone Bills.**

I note that P71 is a bill for January 2017. The Plaintiff would have stated his campaign after he received endorsement on 08th January 2017. In any case all are telephone invoices and save for exhibit P73 whereby a receipt of SR8,561.15 was received, cannot be allowed. It was not certain whether these invoices were paid or not. The Plaintiff did not produce any recent invoice to show that these were recurring debts. The Plaintiff was not able to satisfy court that he incurred the loss.

(iii) Promotional, Marketing and PR Services

Claims under these heads cannot be entertained. The Plaintiff produced invoices from the Indian Ocean Times and PR Media (Exhibits P14, P15, P16 and P17). Apart from that they relied on oral testimony. There is no evidence of any agreement between the parties and the costs of such services. At that level it is expected that the parties would have signed contracts for services. There are no receipts of part payment allegedly made and no explanation was provided as to why necessary documents, such as bank statements were not sourced, save to state that a court case was not anticipated.

(iv) Other out of pocket expenses

- Airfares (Exhibit P106, P107, P108 and P109) amounting to SR 33,586.00 is allowed. This is because at that time he was campaigning it can be safely assumed that such airfares were for such purpose. This equally applies to payment of stays at hotel.
- Exhibit P96; Hotel Melia Castilla in the sum of €682.00 is allowed
- Exhibit P94; Elilly Hotel Addis Ababa, US\$13,638.75
- Exhibit P92; Grand Sukhumvit Hotel THB 7,254.00 allowed
- Exhibit P91, Le Meridien Dubai; AED 2133.68 allowed

- Exhibit P95 Jumeriah Carlton Hotel Invoices. No receipt was provided but I note he was on the campaign trail at that time and will allow the claims; £585.04
- Exhibit 97; Avani Riverside Bangkok Hotel THB 2,483.47 allowed
- Exhibits P81, P82, P98,(only taxi receipts dated are allowed) P103, P104 and P105, all totalling to £227.79 allowed
- Exhibits P78, P79, P99, P100,P102 totalling €419.91 allowed

[55] Moral & Emotional Damage

The Plaintiff then lays claim to the following damages;

- Damages for international humiliation and stress which has not been proved. If anything the evidence shows that Mr. St. Ange was stoic in the face of adversity and delivered an emotional speech which received the acclamation of everyone. There is no evidence that any one thought less of him.
- Psychological and emotional pain and suffering; no evidence has been adduced to establish the same and therefore denied.
- No damages will be allowed for tarnished reputation international and nationally as these have not been established. No evidence was led to establish these.
- I shall allow SR70,000/- for inconvenience, stress and embarrassment.

[56] The parties did not agree as to the rate of exchange to be used, so I shall use today's rate and enter judgment in favour of the Plaintiff against the Defendant by making the following awards to the Plaintiff with interest from the date of this judgment;

(a) Airfares	SR 33,586.00
(b) Telephone Bills	SR 8,561.15

(c) Hotels & other travel and incidental expenses

(€1,101.91 x 15.33 = SR16,892.28), (US\$599.64 x 13.95= SR8,364.98),

(£812.83 x 17.90 x SR14,549.66), (AED2133.66 x 0.3869=SR8,024.50)

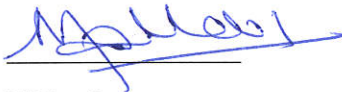
& (THB9773.47x 0.452 = SR4,417.60) SR52,249.16

(d) Inconvenience, embarrassment and stress SR70,000.00

Total SR164,396.31

[57] I make no order as to cost.

Signed, dated and delivered at Ile du Port on 18 November 2019



Vidot J