

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC ...

CS119/2020

In the matter between :

EAGLE AUTO PARTS (PTY) LTD

(rep. by Mr Anthony Derjacques)

Plaintiff

and

THE ATTORNEY GENERAL

(rep. by Mr Ananth)

Defendant

Neutral Citation: Eagle Auto Parts v/s The Attorney General [CS 119/2019] [2020] SCSC

(30 January 2020).

Before:

Govinden J,

Summary:

Heard: 30 January 2020

Delivered: 30 January 2020

RULING

GOVINDEN J

- [1] The Defendant in this matter has filed a Statement of Defence in response to the Plaint. In the Defence it has raised a number of Plea in Limine Litis.
- [2] The Pleas are 6 in total. They range from a demurer under Section 92 of the Civil Procedure Code to pleas of immunity and prescriptions under the Civil Code, (Cap 33) the Public Officers Protection Act (Cap 192) and the Custom Management Act 20 of 2011 and a plea based on the non existence of the Plaintiff and lack of legal personality.
- [3] The Representative of the Defendant has in a comprehensive written submission, supported the pleas, with legal arguments.

- [4] On the other hand, Learned Counsel for the Plaintiff, in his counter written submission, has strenuously objected to the relevancy, merits and applicability of the pleas raised.
- [5] Out of all the preliminary objections taken I find that the 6th one to be of fundamental significance in this case as it goes to the root of the case. This is so as it goes to the very existence of the Plaintiff as a legal person with all the legal consequences which follows. If this plea is to be sustained the Plaintiff would not exist and this case will amount to a nullity.
- [6] The facts of this case so far shows that the Plaintiff Company was struck off the Register of Companies since 2004 and that since then it has not been restored in the said Register through an Application under the Companies Act. As a result of this state of fact, Learned Counsel for the Defendant contended that the Plaintiff for, all intent and purposes, is now nonexistent and that its claim amounts to a nullity and is unsustainable in law. On the other hand Learned Counsel for the Plaintiff, whilst impliedly conceding on the deregistration of the Plaintiff, countered the arguments of the Defendant as follows” *as per the Companies Act 1972, the Plaintiff has not been liquidated and as per Section 202 it is still exist in law for the purpose of filing an action with respect to its properties. In order for the Plaintiff Company to be no longer in existence, the winding up provisions should be followed, a liquidator appointed and an official receiver approved.*”
- [7] I have thoroughly considered the arguments and submissions of both Counsels on this plea. I have addressed my mind to the relevant provision of the Companies Act dealing with the subject matter at hand.
- [8] I find that the law governing deregistration of Companies, as compared to liquidation of Companies, to be found in S 305 to 306 of the Companies Act. These Sections read together shows that the effects and consequences of a deregistration by the Registrar of Companies under the Companies Act is a dissolution of the Company. S 306 of this Act is very pertinent here and it provides as follows:-

“Where a company is dissolved all assets whatsoever vested in or held on behalf or for the benefit of the Company immediately before its dissolution (including lease hold

interest but not including assets held by the Company on behalf of or for the benefit of any other person) shall subject and without prejudice to any order which may at any time be made by the Court under Section 304 and 305 be deemed to be bona vacantia and shall accordingly belong to the government in right of Seychelles and shall vest and may be dealt with in the same manner as other bona vacantia accruing to government as aforesaid.”

- [9] Therefore, to my mind once a Company is dissolved it's ceased to exist as a separate legal person. As a result of the Company ceasing to exist all assets and properties of the Company automatically and by operation of law are deemed to be “*bona fide vacantia*” (ownerless good) and are vested in the State. The Company having no longer existence it cannot sue or be sued in its own name unless re registered in accordance with the provisions of the Companies Act. The proper course of action in this regards is for creditors to make an application for re-registration before any debts against the Company can be legally secured.
- [10] On the other hand if the Company wants to recover any debts it also has to apply for re-registration. The effect of re-registration under Section 304 of the Companies Act is that all the assets and properties are reversed into the Company, the corporate personality is reinstated and the shareholders and officers are empowered de novo.
- [11] The effect of registration and restoration in the judicial status of a Company and its activities was endorsed in the South African case of *Newlands Surgical Clinic versus Penninsula Eye Clinic (0860/214) [2015] ZAS CA25*). The Court reason that “*reinstatement would hardly serve any practical purpose if it did not at least have the effect of revesting the Company with its title to its property.*” The Court went on to hold that the Company is not only restored with its mere identity but with its contractual and legal capacity as if it was never deregistered, hence giving retroactive effect to the re-registration.
- [12] So much for re-registration. The Plaintiff in this case is not a re-registered Company it is a deregistered Company. In the same case the Court had this to say with regards to status

of deregistered Company “broadly the general principles as envisaged in the law and jurisprudence that emanates from the Courts regarding a deregistered Company is that the latter loses its legal status as of the date of the removal from the Companies register. Its legal status as envisaged in Section 19 of the Companies Act as of the date of inception continue to exist until its name is removed from the Register of Companies. Its removal until that it can no longer operate in its name as it does not have the legal and contractual capacity to enter into any binding transaction because it is not registered as a legal person. It has therefore ceased to exist and all its asset will accrue to the State in “bona vacantia.”

[13] In the same breath and for similar reasons I hold that the Plaintiff having been deregistered from the Register of the Companies Act of Seychelles has ceased to exist and has no legal personality to sue or be sued in its own name.

[14] In my final determination I therefore dismiss the Complaint and uphold the 6th Plea in Limine of the Defendant. The other Pleas will remain on record given that this Ruling substantially disposes of this case.

Signed, dated and delivered at Ile du Port on 30 January 2020

Govinden J