

**SUPREME COURT OF SEYCHELLES**

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**Reportable/ Not Reportable / Redact**  
[2021] SCSC ...  
CS 48/2019

In the matter between:

<b>LINSEN PHELEN WAYE-HIVE</b>	<b>1<sup>st</sup> Plaintiff</b>
<b>LEONEL AH-MAN WAYE-HIVE</b>	<b>2<sup>nd</sup> Plaintiff</b>
<b>DAREN SAMUEL WAYE-HIVE</b>	<b>3<sup>rd</sup> Plaintiff</b>
<b>MAGGIE JONATHAN WAYE-HIVE</b>	<b>4<sup>th</sup> Plaintiff</b>
<b>MALETTE ERNESTA (NEE WAYE-HIVE)</b> <i>(rep. by Anthony Derjacques)</i>	<b>5<sup>th</sup> Plaintiff</b>

and

<b>THE ATTORNEY GENERAL</b> <b>(Representing the Seychelles Licensing Authority)</b> <i>(rep. by Ananth Subramanian)</i>	<b>Defendant</b>
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**Neutral Citation:** *Waye-Hive and Ors v AG representing Seychelles Licensing Authority*  
(CS48/2019) [2021] SCSC ..... (18 October 2021).

**Before:** Carolus J

**Summary:** Vicarious liability of the Seychelles Licensing Authority for the acts of its employees – Article 1384(3) Civil Code of Seychelles Act - Faute of employees not proved therefore liability of the SLA not engaged.

**Heard:** 10 February 2020

**Delivered:** 18 October 2021

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**ORDER**

The appeal is dismissed. Each of the parties shall bear their own costs.

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**JUDGMENT**

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**CAROLUS J**

## Background & Pleadings

- [1] This judgment arises from a claim in delict against the defendant, the Seychelles Licensing Authority (“SLA”), a statutory body established under section 3 of the Seychelles Licensing Act herein represented by the Attorney General. The plaintiffs claim loss and damages in the total sum Seychelles Rupees One Million One Hundred and Twenty Three Thousand (SCR1,123,000.00) occasioned by the acts or omissions of the servant’s employees or agents of SLA rendering the SLA vicariously liable.
- [2] The facts giving rise to this action as averred in the plaint, are that the five plaintiffs are the business owners of Chalet Bamboo Vert with business registration number B.R.N. B8421466, operating as a small guesthouse at La Digue at all material times. On 1<sup>st</sup> May 2015, Tournesol Pty Ltd leased the guesthouse to a third party namely Compagnie Des Iles Ltd (hereinafter referred as “CDI”) which was granted a license for 10 rooms by the defendant on 10<sup>th</sup> June 2015. By letter dated 25<sup>th</sup> April 2017 CDI gave the plaintiffs six months’ notice of termination of the lease agreement and the plaintiffs applied to the defendant to operate the guesthouse making the necessary payments therefor. On 24<sup>th</sup> November 2017 the defendant granted a licence to the plaintiffs for only 6 out of the ten rooms. They were only licensed to operate the remaining four rooms on 27 August 2018.
- [3] The plaintiffs aver that the servants, employees or agents of the defendant, acting within the scope of their duties with the defendant, acted or omitted to act prudently, occasioning damage to the plaintiffs, thereby rendering the defendant vicariously liable in law to the plaintiffs. They aver that the defendant is liable to the plaintiffs in law and bound to make good, adequate compensation and particularise their loss and damages as follows:
- (1) *loss of profits for four rooms at €110 per room at a 50% occupancy rate per month amounting to the sum of €6,600 per month, for 10 months at the rate of SCR15.50 for €1 – SCR1,023,000.00;*
- (2) *Moral damages - SCR 100,000,*

amounting to a total sum of Seychelles Rupees One Million One Hundred and Twenty Three Thousand Only (SCR1,123,000.00). The plaintiffs also claim costs and interests at the commercial rate 7% per annum from November 2017.

[4] In its statement of defence, the defendant has raised a plea in *limine litis* to the effect that the plaintiffs have not availed themselves of the statutory remedy of appeal provided for under section 17 of the Licenses Act Cap 113 and that this Court therefore does not have jurisdiction to entertain this claim. It avers that it is an abuse of process on the part of the plaintiffs to file the present action in the Supreme Court as they not only have a statutory right to appeal under the Licenses Act against the orders or decisions of the defendant but also have the option to apply for judicial review of such orders or decisions. It therefore prays for dismissal of the plaint.

[5] On the merits the defendant avers that the defendant issued licenses for Chalet Bamboo Vert to operate with six rooms from 1995 onwards. It avers that at the time the lease agreement was entered into with CDI the license to operate with 10 rooms was not granted by the defendant and was only granted on 10<sup>th</sup> June 2015 subject to the other conditions of the license.

[6] The defendant avers that the license granted on 24<sup>th</sup> November 2017 to operate only 6 rooms out of 10 were granted in accordance with normal procedures. It avers that on 7<sup>th</sup> November 2017, the plaintiffs applied for renewal of the license following which a joint inspection of the premises was carried out on 15<sup>th</sup> November 2017 by officers of the SLA, STB and the Health Department. On 23<sup>rd</sup> November 2017, they recommended that the establishment's license be issued for only six rooms. The plaintiffs were further informed that the remaining four rooms did not comply with the required criteria and that additional documents in relation to those four rooms had to be submitted for them to be included in the license already granted. The defendant avers that the license was amended to include the remaining four rooms after compliance with the required criteria in this regard, and the amended license was issued on 27<sup>th</sup> August 2018.

[7] The defendant denies any liability. It avers that the officers of the SLA acted in accordance with law, that there were no omissions and irrational acts on their part, that

the averments made against them are baseless and unsustainable and that they have always acted in good faith and performed their duties in accordance with the provisions of the law.

- [8] The defendant also avers that the relief and damages claimed by the plaintiffs are unconscionable and without merit. Further that the claim is imaginary, manifestly exorbitant, unrealistic and without any factual or legal basis. It prays for dismissal of the plaint with costs.

## **The Evidence**

### *Testimony of Leonel Waye-Hive*

- [9] The 2<sup>nd</sup> plaintiff Leonel Waye-Hive is a 47 year old truck driver residing at La Passe, La Digue. He testified that he and his four siblings, the other plaintiffs in this suit, jointly own the hotel operating under the business name Chalet Bamboo Vert located at La Passe, La Digue which was transferred to them by their parents after the latter's retirement. He produced an agreement dated 28<sup>th</sup> January 2017 between Mr. Flobert Hermann Waye-Hive and the 5 plaintiffs for the transfer of LD 638 situated at La Passe as proof of ownership of the hotel (**Exhibit P1**). The agreement was registered on 16<sup>th</sup> February 2017. He also produced a Certificate of Registration dated 1<sup>st</sup> September 2017, certifying the registration of the business name Chalet Bamboo Vert by the 5 plaintiffs (**Exhibit P2**) under section 14 of the Registration of Business Names Act. He stated that the hotel comprises 5 bungalows of 2 rooms each making up 10 rooms altogether, a restaurant and kitchen. The 2<sup>nd</sup> plaintiff has overall responsibility for the hotel with managers and other workers working under him. Other than in the month of June when there are less clients, hotel occupancy is normally at 85%.

- [10] The 2<sup>nd</sup> plaintiff explained that in the past the hotel was run by the plaintiffs' parents operating as a company namely Tournesol Pty Ltd. It was run as a family business with the involvement of all the family members since he was of a young age. At some point he stopped working in the family business but remained his father's right hand and would regularly drop in and still continued to do a lot of things at the hotel. His sisters, the 4<sup>th</sup> and 5<sup>th</sup> plaintiffs, remained actively involved in the business until they decided to start

their own businesses, whereupon their parents leased the hotel to CDI in 2015. He produced an agreement dated 1<sup>st</sup> May 2015 between Tournesol Pty Ltd (represented by its Director Mrs. Linsen Jeremi –the 1<sup>st</sup> plaintiff) as the lessor, and CDI (represented by its Director Mr. Louis D’Offay operating as Bamboo Chalets as the lessee, for the lease of “a small hotel complex” which included among its facilities “five bungalows (2 rooms each)” situated on “a property situated at La Passe, La Digue registered as LD368” (**Exhibit P3**). The duration of the lease was for a period of four years commencing on 1<sup>st</sup> May 2015. He stated that at the time the lease agreement was entered into, the hotel comprised ten rooms of which six were licensed. The remaining four rooms were used as staff facilities and Mr. D’Offay who was responsible for CDI proposed that these rooms also be licensed and said that he would take care of that. The 2<sup>nd</sup> plaintiff added that although the property was leased to Mr. D’Offay, he was always helping out at the hotel and everyone including Mr. D’Offay would come to him if something needed attending to.

[11] The 2<sup>nd</sup> plaintiff produced as **Exhibit P4** a letter dated 10<sup>th</sup> June 2015 addressed to CDI from the SLA informing it that its application for an “ACCOMODATION CATERING ENTERTAINMENT (GUESTHOUSE)” license had been approved. Attached to the letter was Licence No. 256753 with Licensee No. 24703, dated 10<sup>th</sup> June 2015, granted by the SLA to Bamboo Chalets “to keep and manage the premises as a Guest House of 10 rooms”. The period of validity of the license was from 8<sup>th</sup> June 2015 to 7<sup>th</sup> June 2020. He clarified that Bamboo Chalets is the same property that was leased to CDI by Tournesol Pty Ltd, and subsequently transferred to the plaintiffs. He stated that in between the time that the business was run by his parents and the time that the license was granted to CDI, no extension, renovation or repair works had been done on the four rooms used as staff facilities. He did not know the reason why SLA had granted a license to Tournesol (Pty) Ltd to operate six rooms but had granted CDI a license to operate ten rooms for the same premises.

[12] He then produced a letter dated 25<sup>th</sup> April 2017 addressed to Mrs. Linsen Jeremi from Mr. Louis D’Offay giving six months’ notice of termination of the lease agreement and urging her to contact him should she require the premises before the end of the notice

period (**Exhibit P5**). After CDI terminated the lease, the running of the hotel was immediately taken over by the plaintiffs with the 2<sup>nd</sup> plaintiff representing them. They changed the name of the business to Chalet Bamboo Vert, undertook the necessary legal procedures and continued running it by renting out the rooms.

[13] The 2<sup>nd</sup> plaintiff recalls that in February 2018, he was present together with his manager at the hotel when an officer of the SLA accompanied by another person came to visit the hotel. They enquired as to whether the four rooms were occupied and he answered that they were. The officers stated that the rooms were not supposed to be occupied as they were not licensed. When the 2<sup>nd</sup> plaintiff showed them CDI's licence for ten rooms, they said that it was not valid as the licence was granted to CDI and applied only to it. Given that the Minister of Tourism at the time, Mr. Lousteau Lalanne had recently announced that all owners of hotel facilities which were being illegally operated would face legal consequences unless they regularised their affairs, the 2<sup>nd</sup> plaintiff engaged the services of a draftsman to do the necessary in preparation for making the application for a license for the four rooms. Two weeks later he received a document from the Planning Authority with a stamp of refusal thereon without any explanation as to why his application had been refused.

[14] He produced an "*ACCOMODATION CATERING ENTERTAINMENT (GUESTHOUSE)*" Licence Number 278809 with Licensee Number 103120 dated 24<sup>th</sup> November 2017 and issued to Chalet Bamboo Vert by the SLA "*to keep and manage the premises as a Guest House of 6 rooms*" (**Exhibit P6**). The period of validity of the license was from 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022. After he was refused a license to operate the four rooms, he applied for a change of use from staff facilities to tourism accommodation for the said rooms, and proceeded to renovate and improve them. This involved changing the structure of the rooms, replacing the tiles and ceilings and modifying everything in the bathrooms.

[15] He confirmed that between the time that CDI had been running the hotel with all ten rooms and the plaintiffs were granted the licence to operate it with only six rooms, there was no change to the four rooms which they had not been allowed to operate. No

explanation was given either in writing or verbally as to why the plaintiffs had been granted a license to operate with only six rooms while CDI had previously been licensed to operate the same premises with ten rooms, but Mervyn Cathene who is the licensing officer on La Digue for the SLA had told him that someone at the SLA had done something illegal in that regard.

[16] In between the time that CDI had terminated the lease agreement and the license to operate only six rooms was granted to the plaintiffs, no inspection of the premises had been conducted to ascertain whether the four rooms which had not been licensed met the required standard. Further, no inspection of the premises was conducted when he was given the document telling him to renovate, or after the renovations were completed. Only one inspection was conducted on 18<sup>th</sup> February 2018 which did not entail a visit of the rooms. The officers only came on the premises to talk to 2<sup>nd</sup> plaintiff. The 2<sup>nd</sup> plaintiff does not know why Mr. Louis D'Offay obtained a licence for ten rooms but the plaintiffs were denied the same.

[17] After the plaintiffs were refused a license for the four rooms, 2<sup>nd</sup> plaintiff contacted Minister Lousteau Lalanne who gave him an undertaking that he would look into the matter but unfortunately his portfolio was changed to the Ministry of Finance two weeks later. He contacted Mrs. Sinon from the SLA who told him that if it was up to her the four rooms would have been licensed. Mr. Andre Pool a top ranking officer from the SLA also gave him hope but never got back in touch with him although one of the Members of the National Assembly said that Mr. Pool had stated that he did not see any reason why the four rooms could not be licensed. SLA never got back to him. In August 2018, after explaining the situation to then Minister for Tourism Mr. Didier Dogley who had come to La Digue for a meeting, the 2<sup>nd</sup> plaintiff was contacted by phone the very next day by Mrs. Anne Lafortune from the Ministry of Tourism who informed him that they had looked into his case and that they were going to allow him to operate the four extra rooms. No inspection of the premises was conducted before that decision was taken.

[18] Shortly after, he went to collect the license from Mrs. Sinon at the SLA office which he produced as **Exhibit P7**. The licence is dated 27<sup>th</sup> August 2018 and is an

“ACCOMODATION CATERING ENTERTAINMENT (GUESTHOUSE)” issued to Chalet Bamboo Vert by the SLA “to keep and manage the premises as a Guest House of 10 rooms”. It bears the same License Number (278809) and Licensee Number (103120) as the previous licence for 6 rooms granted to Chalet Bamboo Vert (Exhibit P6) and its period of validity is also the same as Exhibit P6 (from 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022). He reiterated that by the time this license was granted, the four rooms had already been renovated but they had not been inspected prior to it being issued. Neither Mrs. Sinon nor Mrs Lafortune told the 2<sup>nd</sup> plaintiff why he had not been granted a license for ten rooms in the first place. He did not get any written explanation either.

- [19] In respect of the damages the plaintiffs claimed to have suffered, the 2<sup>nd</sup> plaintiff produced a document setting out the hotel rates for 2017 - 2018 for Chalet Bamboo Vert for the period 1<sup>st</sup> November 2017 to 31<sup>st</sup> October 2018 (**Exhibit P8**). He explained that the hotel rooms are classified in two categories namely standard and superior, and that the four rooms which were licenced last fell into the former category. Such rooms would normally cost €110 per day but could go up to €124 or €162. He testified that after CDI terminated the lease and the plaintiffs took over the business, they initially rented out the four rooms but stopped when the SLA officer visited the premises and informed him that he could not do. When they were granted the license dated 27<sup>th</sup> August 2018 to operate 10 rooms, renovation of two of the four rooms had already been completed and the other two were still under renovation. Therefore when the license was granted only two of the rooms were ready. From the time that they stopped operating the four rooms in February 2018, to the date the license allowing them to do so was issued in August 2018, approximately seven months had elapsed. During that time each room could have been rented out at the rate of €110 per day amounting to a total loss of €440 per day for all four rooms. The loss claimed by the plaintiffs in terms of the plaint is based on a 50% occupancy rate and not 85%. The 2<sup>nd</sup> plaintiff explained that although the occupancy rate is usually 80%, they do not expect to be fully occupied all the time, so he used a figure which he believes they would have reached in terms of occupancy, which is neither too high and could maybe not have been reached nor too low. The figure is also based on reservations already made. The exchange rate used is SCR15.50 per Euro which the 2<sup>nd</sup> plaintiff claims was the bank rate at the time. He confirmed that the plaintiffs are



claiming loss of profits for four rooms at €110 per room at 50% hotel occupancy rate per for 7 months, at the rate SCR15.50 per Euro.

[20] The 2<sup>nd</sup> plaintiff testified that the plaintiffs were not happy about what had happened and felt that the authorities had been dishonest. They had refused to allow them to rent out the four rooms without a valid reason. The plaintiffs were never formally informed of such refusal or the reason therefor. No proper inspection of the four rooms was carried out by the Tourism, Licensing or Health Authorities before refusing to licence them or even before eventually deciding to grant the licence. They were not informed that the rooms did not fulfil requirements for rental to tourists and no conditions were set for them to fulfil so that they could be so rented out. Furthermore the plaintiffs incurred unnecessary expense in paying a draftsman SCR10,000 for the change of use which the officers of the Licensing Authority later informed him had not been necessary after all. He felt that if they had been able to rent out the rooms they could have earned a profit and even extended their business. The refusal of the authorities to allow them to rent out the four rooms for seven months constituted a set-back to their business. The plaintiffs all felt angry and upset about the whole thing. They collectively claim moral damages of a sum of SCR100,000.00 which amounts to SCR20,000.00 each.

[21] The 2<sup>nd</sup> plaintiff further testified that none of the plaintiffs could have been refused a license for the reasons stated in section 5 of the Licenses (Accommodation Catering and Entertainment Establishments) Regulations, 2011. Furthermore they were never informed that the license for the four rooms was being refused for those reasons.

[22] The 2<sup>nd</sup> plaintiff denied defendant's averment at paragraph 5 of its defence that upon receipt of the plaintiffs' application dated 7<sup>th</sup> November 2017, a joint inspection of the premises was conducted on 15<sup>th</sup> November 2017 by a team comprising officers of SLA, STB and the Health Department. He claims that he never saw them. As for the averment that the plaintiff was informed that the four rooms did not comply with the required criteria he states that the inspection team never communicated with him personally or with Chalet Bamboo Vert as a business. He also stated that he never received any report

stating that pursuant to his inspection conducted on 15<sup>th</sup> November 2017, Inspector Cathene found the premises with six rooms to be clean and of good standard.

- [23] Under cross-examination the 2<sup>nd</sup> plaintiff confirmed that other than the period when CDI was operating the guesthouse with ten rooms, only six of its rooms were licensed at all other times.
- [24] He agreed with counsel that normally the Licensing Authority and other officers conduct routine inspections of all tourism establishments and conduct random visits to such establishments.
- [25] He confirmed that after taking over from CDI, he applied for a licence to run the business under the name Chalet Bamboo Vert on 7<sup>th</sup> November 2017 which was granted on 23<sup>rd</sup> November 2017 for six rooms. He agreed with counsel that when an application for a license is made, normally an inspection of the premises is carried out and thereafter a license is issued on the basis of recommendations made pursuant to such inspection. However he maintained that the authorities never conducted any inspection of the premises prior to the grant of the license although they should have done so, and that they only carried out a visit after he had received the license.
- [26] The 2<sup>nd</sup> plaintiff confirmed that Mr. Selby Pool is the Manager of Chalet Bamboo Vert and has held that position since 2017. It was put to him that maybe he was therefore not aware that an inspection was carried out on 15<sup>th</sup> November 2017 which he neither denied nor confirmed but stated that he neither saw nor received any documents from anyone who allegedly visited the premises. He further stated that normally the officers carrying out such an inspection take photographs of different parts of the facilities and draw up a report.
- [27] He confirmed that two officers visited the premises in February 2018 and informed him that four of the rooms that he was operating were not licensed. He admitted that he had been illegally operating the said rooms but explained that he had not been aware that he was not permitted to operate ten rooms. He stated that although the licence (Exhibit 6) specifically mentions “*six rooms*”, when the business moved from CDI to Chalet

Bamboo Vert from November up to February, they continued operating the business under the license for ten rooms. He explained that the license (Exhibit 6) might have come after they had started operating as Chalet Bamboo Vert. As an example he drew attention to CDI's licence for ten rooms (Exhibit 7) which is dated 27<sup>th</sup> August 2018 but stated to be valid for the period 23<sup>rd</sup> November 2017 until 22<sup>nd</sup> November 2022, which shows that it was back-dated.

[28] The 2<sup>nd</sup> plaintiff clarified that when CDI ceased its operations, there was a transition period where the plaintiffs' business name had not yet been registered. Around January, the business's operations "*froze*" as CDI took everything with them and the plaintiffs had no knowledge of their reservations.

[29] It was put to the 2<sup>nd</sup> plaintiff that Exhibit 6 clearly shows that the validity of the license for Chalet Bamboo Vert to operate six rooms is from 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022, and that therefore he was operating the remaining four rooms illegally, hence the reason the officers came to inform him that the licence did not permit him to do the same.

[30] He confirmed that after being granted the licence to operate six rooms, certain repairs and renovations were carried out on the remaining four rooms. He agreed that when an application for a licence is made, the applicant has to fulfil certain requirements for the grant of the license, failure of which may result in the refusal of the license. It was put to him that this is what happened in this case and that only six of the rooms fulfilled the requirements, hence the reason why the license was granted to operate only these six rooms. He denied this, stating that no visit had been carried out for them to conclude that only six rooms met the requirements for the grant of a licence. It was further put to him that this is the reason why he carried out repairs and renovations on the remaining four rooms after the grant of a license for six rooms (Exhibit 6) and that it was only after these works were carried out making these rooms compliant with the requirements that a licence was issued for the operation of all ten rooms, which he denied. He further stated that when the licence for ten rooms was granted (Exhibit 7) two of the four rooms were still under renovation.

- [31] He also clarified that since originally the business belonged to and was run by his parents, he has never had to make an application for a license specifying the number of rooms to be licensed but y merely applied for renewal of the license. When Mr. D'Offay took over the business it was Mr. D'Offay himself who applied for the ten rooms to be licensed and the plaintiffs simply took it from there. He did not recall whether, when he applied for a licence in 2017, he specified that it was for ten rooms but stated that over the past ten years he has only been renewing the license.
- [32] In reply to whether he made any complaints or appealed against the grant of a licence for six rooms, the 2<sup>nd</sup> plaintiff claims that from November 2017 up to February 2018, he was not aware that a license for only six rooms had been granted and only became aware of the same when the authorities visited the premises. This is because they were undergoing a transition period with the change in management of the hotel. He denied that he did not make any such complaints or appeal because he was satisfied with the grant of a license for six rooms and accepted it, and maintained that he only had knowledge of the same with the officers' visit. He agreed with counsel that he had applied for the licence in November 2017 when he took over the business, but stated that transitioning from one business name to another is a long procedure requiring a lot of things to be done including registering the new business name.
- [33] It was put to the 2<sup>nd</sup> plaintiff that there was no violation of any of the plaintiffs' rights and there was therefore no need to claim any damages from the Government to which he replied that they did sustain damages for which he should be compensated. He denied acting in bad faith by claiming damages for the time that the four rooms were not in use after he had been granted a licence to operate the same. He stated that he made losses during the seven months that he was not able to operate the four rooms, and if he had not been refused the license he would not have renovated them and would probably have made progress in the business. He denied that his claims were unfounded and that the defendant was not liable to pay damages as claimed. He also maintained that the room rates set out in Exhibit P8 were the ones used by the hotel at the time and stated that he did not believe that there is no evidence of the 50% occupancy rate of the hotel as per the plaintiffs' claim.

[34] In re-examination, the 2<sup>nd</sup> plaintiff stated that he does not recall whether on 15<sup>th</sup> November 2017 officers of three departments visited the hotel. He did not recall receiving any communication stating that they visited the hotel. In reply to whether he received any communication as a result of the alleged visit on 15<sup>th</sup> November 2017 to the effect that a licence would not be granted for ten rooms because four of them do not meet the requirements, he confirmed that they never sent any documents to him.

[35] Pursuant to the Court's request for clarification regarding the change of use for the four rooms, the 2<sup>nd</sup> plaintiff explained that he applied for the same before the four rooms were renovated. He had done so on the advice of Mr. Cathene who had informed him that the Minister had called upon all those who were operating illegally to regularise their situation which included change of use of rooms from staff to tourism accommodation. Despite the fact that Mr D'Offay operating as CDI had been operating all ten rooms as tourism accommodation, he followed Mr. Cathene's advice and applied for the change of use because although he told Mr. Cathene there were ten rooms the latter insisted that only six could be used as tourism accommodation. The 2<sup>nd</sup> plaintiff also applied for the change of use because Mr. Cathene told him that CDI had been granted a licence for ten rooms illegally by someone in the SLA.

#### *Testimony of Mervin Cathene*

[36] Mervin Cathene, works as a licensing inspector with the SLA on La Digue. His work generally is to inspect premises for issuance and renewal of licenses. Whenever an application or a licence is made, a licensing officer enters it into SLA'S system and forwards it to the Principal Licensing Officer who in turn forwards it to a licensing inspector who then carries out an inspection.

[37] He stated that pursuant to an application for a license made by Mr. Leonel Waye-Hive, he carried out an inspection of the premises of Chalet Bamboo Vert guest house on La Digue in November 2017. He was accompanied by Dona-Rose Lesperance from the Public Health Authority and Christophe Madeleine from the Tourism Department. The only representative of the establishment who was present during the inspection was the manager Mr. Selby Pool.

[38] When a new application is made, the inspection is carried out having regard to the number of rooms as per the certificate from the Planning department. The rooms and other facilities on the premises are all inspected. In regards to this case, he recalls that the first visit that he conducted at the premises when he joined the SLA was in 2006 and there were only six rooms then. After that four more rooms were added which he was informed by the owner himself, were staff facilities. At the time therefore the license was issued for only six rooms. When the management changed to Bamboo Chalets Mr. D'Offay from Praslin applied for a license. While conducting the inspection, the manager informed Mr. Cathene that they were renting out had ten rooms to which Mr. Cathene replied that he only had documents in respect of six rooms. He asked the manager to provide him with documents for the additional four rooms as the SLA only had documents in respect of six rooms in its system. The manager undertook to do the necessary formalities and provide him with documents for the additional four rooms but this was never done. After the management changed again, Mr. Leonel Waye-Hive applied for a license and an inspection of the premises was again carried out. At the inspection, the manager Mr. Pool informed Mr. Cathene that they had ten rooms to which he replied he only had documents for six rooms and requested to be provided with documents for the four additional ones so that they could be licenced and the necessary adjustment made in SLA's system. Mr. Pool agreed and said he would talk to the boss about it. The next day the 2<sup>nd</sup> plaintiff came to see Mr. Cathene and told him that the premises comprised ten rooms. He reiterated that there were planning documents for only six of the rooms and that once he provides the documents for the four additional rooms they could be licensed. The 2<sup>nd</sup> plaintiff then asked him why the previous owner had been given a license to operate ten rooms and he replied that he knew nothing about that. The 2<sup>nd</sup> plaintiff showed him a copy of the previous owner's license to operate ten rooms and he reiterated that he knew nothing about it, that he only has document for six rooms and that the 2<sup>nd</sup> plaintiff would have to provide documents for the other four rooms. He confirmed that the license that was granted pursuant to the inspection carried out in November 2017 was and has always been for six rooms although there were actually ten rooms on the premises.

[39] Mr. Cathene stated that after an inspection, the Public Health Officer, the officer from the Tourism Department and he all compile their reports and submit it to the Principal Licensing Officer for processing of the licence but that after the November 2017 inspection he did not submit any report. However after the 2<sup>nd</sup> plaintiff met with the CEO of the SLA he was asked to submit a report to the CEO to give an explanation on the amount of rooms on the premises, which he did, by email. The report dated 16<sup>th</sup> November 2017 together with a covering letter dated 17<sup>th</sup> May 2019 stating that the report “*was submitted on the Seychelles’s Licensing Authority’s computer records on 16<sup>th</sup> November 2017*” and was retrieved from the SLA’s computer records, were admitted as **Exhibit D1**. The report states that “[*a*] joint inspection was conducted on 15<sup>th</sup> November 2017 by officer from Public Health (Ms Dona-Rose Lesperance), Mr. Christophe Madelaine (Seychelles Tourism Board) and [Mr. Cathene] to ascertain suitability of premise for license”; that “[*t*]he premises was found with six rooms. The same were found clean and on good standard”; that “it was observed that all the facilities and equipment needed to operate the named business is in place and in good working condition. There were no adverse comment”; and that “We recommend the issuance of the Guesthouse license”.

[40] He further testified that when CDI applied for a license he also recommended that they be granted a license for only six rooms.

[41] In cross examination, Mr. Cathene confirmed that Exhibit 4 is a valid license issued on 10<sup>th</sup> June 2015 to Bamboo Chalets by the SLA to operate ten rooms and that it is signed by Julie Rabat an official of the SLA. He admitted that as the Licensing Inspector on La Digue he had the said license in his file since 2015 when it was issued, up to the time that the 2<sup>nd</sup> plaintiff applied for a license, two years later. Therefore he knew that the hotel was being operated with ten rooms.

[42] On further cross-examination he stated that although he had the license in his file for those two years he did not know that the hotel was catering for tourism accommodation for ten rooms during that time. He explained that it is the licensing officer who has a copy of the license but that as an inspector, he does not. Counsel reminded him of his

admission that he had the license on his file and he denied knowing know that Mr D'Offay had obtained a license for ten rooms. He maintained that he was ignorant of the fact that the hotel was operating for two years with ten rooms despite being the Licensing Inspector for La Digue.

[43] Mr Cathene confirmed that in his report drawn up after the inspection on 15<sup>th</sup> November 2017, which was carried out after the 2<sup>nd</sup> Plaintiff's application for a license, he had stated that the premises was found with 6 rooms. He explained that the other four rooms were located at the back of the premises and he had been told that they were staff facilities which do not concern him. He confirmed that when the 2<sup>nd</sup> plaintiff told him in February 2018 that he was operating ten rooms he insisted that it was illegal. It was put to him that he was the one who did not know that there was a valid license for the hotel to operate with ten rooms but who had nonetheless accused the plaintiffs of operating illegally, and because of his actions penalised and victimised the plaintiffs. He maintained that when he inspected the premises, only six rooms were approved to be licensed and he does not know how the ten rooms came to be licensed. It was put to him that there must be major problems in the SLA and he responded that he is only an inspector and not the CEO. Counsel put to him that he was the eyes and the ears of the SLA in respect of hotels on La Digue and he stated that this is why he issued a license for only six rooms because only the six rooms had relevant documentation and the remaining four rooms had nothing. Counsel asked him what better documentation is there than a license issued for ten rooms and he stated that the first time he saw the license was when the 2<sup>nd</sup> plaintiff showed it to him. He asked him how come the ten rooms were licensed and nobody knew about it and he stated that he does not know if it was a typing error. It was put to him that it cannot be a typing error because Mr D'Offay was operating the hotel for two years with ten rooms. He reiterated that when he carried out the inspection he had indicated that only six rooms can be licensed and Mr. Waye-Hive had told him that the other four rooms were staff facilities.

[44] Finally he admitted that there had been a problem with that particular file and did not deny that someone at the SLA had caused the problem. He stated that because of that he had to insist that as at February 2018 the plaintiffs could only operate six rooms instead



of ten, and advised them to get relevant documents from the Planning Authority so that a license to operate ten rooms could be issued. He further stated that he did not want to accuse anyone but he remembers that after he returned from inspecting the premises the Senior Inspector told him to leave the case in her hands, which he did. He does not know what happened after that.

[45] In re-examination Mr Cathene stated that when he carried out the inspection in 2017 he found only the six rooms they visited to be in standard condition and that is why they granted a license for only six rooms.

[46] The Court sought clarification from Mr. Cathene as to whether after a license is granted he carries out any inspections to ensure compliance. He stated that they do routine checks every three to four months. He admitted carrying out such checks on the hotel when it was being run by CDI, and stated that when he inspected the premises about four months after the initial inspection for issue of the license, the manager had informed him that the procedure had been done to legalise the four rooms.

#### *Testimony of Christophe Madeleine*

[47] Christophe Joseph Madeleine is a Standards and Quality Officer with the Ministry of Tourism. In that capacity he conducts inspections of hotel establishments including guest houses, and works with other authorities and departments in that respect. He works closely with the SLA for the issuance of new licenses and renewal of existing ones. In 2017 he visited the guest house Chalet Bamboo Vert on La Digue for the renewal of its license. He was accompanied by Mr. Cathene from the SLA and someone he believes is Ms Dona from the Public Health Authority. Only the manager Mr. Pool was present at the time. Normally when conducting an inspection they check all the hotel facilities including the restaurant and bedrooms. After the inspection he prepared a report which he produced as **Exhibit D2**. The report is dated 15<sup>th</sup> November 2017 and contains information of the establishment Chalet Bamboo Vert, details of the inspection, a checklist of things to be inspected as well as the recommendation of the Tourism Department. He explained that he has to fill up the checklist and then make a recommendation. The checklist covers all the facilities at the hotel including the

reception, bedrooms, guest bathrooms, restaurant, food and beverage, maintenance and security and safety. If any shortcomings are observed during the inspection they are written in the comments part of the checklist and the operator given a time frame to rectify them. According to **Exhibit D2** the purpose of the inspection was for renewal of license. As to his recommendations, during the inspection he noticed that the establishment had ten rooms but according to his records it was only supposed to have six. Since the inspection was for renewal of a license he informed Mr. Pool that he was going to recommend that only six bedrooms be licensed but that he should do the necessary for the other four rooms to be licensed by contacting the Planning Authority and the SLA. He recommended that only six bedrooms be licensed because according to his records they were already licensed to operate six bedrooms and not ten.

[48] In cross-examination Mr. Madeleine agreed with counsel that normally when a license is being renewed there must be a copy of the old license on file. He admitted having heard that the previous operator of the guest house was CDI but stated that there were a number of licenses on the Ministry's file the latest one of which was to operate six rooms and not ten. He was not sure whether there was a license for CDI on the file and stated that to his knowledge there was no license for ten rooms on the file. He was also not sure whether the license for the period 2015 to 2017 was in that file.

[49] He was asked whether he went to La Digue without the licence which was going to be renewed and he replied that before proceeding to the inspection he checked his file and the license was for six rooms.

[50] Mr. Madeleine was shown **Exhibit P4** the license for ten rooms issued to CDI but maintained that he was satisfied that the licence that was in his file was the one that should have been renewed. However he could not remember whether it was Exhibit P4 as this happened in 2017.

[51] He stated that at the time that the license for CDI was issued he had not been working with the Ministry of Tourism. Hence he could not explain why the license in the file which was to be renewed was for six rooms, when it was the licence for ten rooms namely Exhibit P4 which ought to have been renewed. He maintained that the file only

showed that six rooms had been licensed and he does not know how the ten rooms came to be licensed.

[52] He also explained that before a licence is renewed SLA normally sends a form to the Ministry in which the number of rooms for the license to be renewed is stated.

[53] Mr. Madeleine stated that he never saw the license for ten rooms and does not have a copy of it. When he inspected the premises of Chalet Bamboo Vert he believed that the hotel was licensed to operate six rooms only. He agreed with counsel for the plaintiffs that if he had known that the hotel had previously been licensed to operate ten rooms he would have had no problems in recommending renewal of a license for the same number. He agreed that at some point in time someone must have substituted a license for six rooms for the one for ten rooms in the file. However he did not agree that he had been misled and explained that as there were no supporting documents in the file for the four additional rooms he recommended renewal of the license for only six rooms.

[54] He stated that having seen the license, now he knows that CDI was licensed to operate with ten rooms but reiterated that the information had not been in the Ministry's file and when he conducted the inspection he did not know that and made his recommendation on the basis of the documents that he had at the time.

[55] Mr. Madeleine stated that he did not know who at SLA caused the confusion by informing them that the hotel was licensed to operate six rooms when it had been licensed to operate ten. He also stated that he was not sure why Mr. D'Offay who represented CDI was issued a license for ten rooms but that when the lease was terminated and the plaintiffs took over the business the number of rooms were reduced to six.

[56] He stated that he visited all the ten rooms and did not find the four inadequate in any way or below the required standard. He agreed that if he had known that the license issued to CDI for the previous two years had been for ten rooms there would have been no problem.

[57] In re-examination Mr. Madeleine confirmed that whenever he conducts an inspection, his recommendations are based on that inspection but in this case his recommendations were based both on the inspection and the previous licenses. He also pointed out that although CDI had a license for ten rooms there was no planning application for four of the rooms.

*Testimony of Yannick Lucas*

[58] Yannick Lucas, the Legal Officer for SLA has been working in that position since September 2018. He explained the procedure for renewal of a license as follows: Where the applicant had previously been granted a license, in the case of a guest house, an inspection of the premises is carried out; if the premises are being leased an up to date copy of the lease agreement has to be provided; and the license fee paid.

[59] He also explained that the people who conduct the inspection depends on the type of licence sought to be renewed. If the license requires inspection by specialised agencies, a joint inspection is carried by officers of those agencies together with an officer from SLA. In the case of a guesthouse, an officer from each agency which was represented at the initial inspection for grant of the licence has to be present, namely SLA, the Tourism Department and the Public Health Authority. At times the Seychelles Fire and Rescue Services Agency are also present at the inspection. All the agencies submit their reports to the SLA and if they all give their approval for renewal of the license, the applicant is asked to pay the fee upon payment of which the license is renewed.

[60] He testified that in the case of Chalet Bamboo Vert, a new license was applied for. The application was not for renewal of an existing licence. This is because previously the guesthouse was being managed by another licensee namely CDI. Upon A change of ownership of a business the new business owners apply for a new licence. He further explained that a license is not transferable, and where, as in the present case, the licensee changes the person taking over the business has to apply for a new license. Since the licence is to operate an establishment, certain documents which relate to the establishment itself which were originally submitted by the first licensee such as an occupancy certificate or other permissions granted remain valid, but an inspection must still be conducted to ensure that the premises are still suitable to be used for the business

activity. He agreed with counsel that in a case such as the present one, a new license would be granted for an entirely new business. He stated that where a new license is issued to operate an establishment the previous licence ceases to be valid and the old license has no bearing on the new one.

[61] In regards to Chalet Bamboo Vert, although he only started working with SLA in September 2018, he has knowledge of the facts of that case from documents and information on file.

[62] He explained that after an application for a new license is made and a joint inspection is carried out by all the relevant authorities, these authorities are given time to submit their reports which are then forwarded to the SLA. Officers of SLA enter the reports in SLA's digital records and any physical paper reports are attached to the relevant file. Since in most cases inspection is usually the final step, if the criteria set by the various agencies are satisfied, the file is sent to the CEO for approval. After approval is granted the licensee is asked to pay the fee upon payment of which the license is issued.

[63] At the time of payment, the licensee would have been informed how many rooms he would be permitted to operate under the license.

[64] Mr. Lucas identified Exhibits D1 and D2 as the inspection reports relating to Chalet Bamboo Vert which were prepared by Inspector Cathene from the SLA and Mr. Christophe Madeleine from the Tourism Department respectively, and entered into the SLA's digital database from which they were extracted for the Court proceedings. He stated that the reports recommended the issue of a license to operate only six rooms and therefore a license for only six rooms was issued. He identified **Exhibit P6** as the license issued to Chalet Bamboo Vert on 24<sup>th</sup> November 2017 to operate six rooms with a validity period from 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022. Although there were no complaints in writing from the licensee there were records on file that verbal complaints had been made in July 2018. After the complaints were made, it was decided by management to approve an amendment to the license to permit the licensee to operate ten rooms and the license for ten rooms (**Exhibit P7**) was issued on 27<sup>th</sup> August 2018 with the same validity period as the previous one i.e. **Exhibit P6** namely 23<sup>rd</sup> November

2017 to 22<sup>nd</sup> November 2022. The validity period is the same because only an amendment to an existing license had been made but the amendment applies from the date of issue of the amended license so that the licensee was permitted to operate ten rooms from 27<sup>th</sup> August 2018 only. All amendments to existing licenses are done in this manner. If a new license had been issued, a new license number would have been given and the period of validity would have changed beginning with the date that the license was issued. In the present case both licenses **(Exhibit P6 and P7)** have the same license number. An amended license will only have effect for the future from the date of its issue, in this case 27<sup>th</sup> August 2018.

- [65] With regards to the damages claimed to have been sustained by the plaintiffs, Mr. Lucas stated that he does not believe that the SLA is responsible for any such loss or that it or Government are liable for any such damages.
- [66] In cross-examination counsel for the plaintiffs asked Mr. Lucas to confirm that on 24<sup>th</sup> November 2017 the only reason a license was not issued for ten rooms was because the SLA believed that the previous company running the business namely CDI had a license for only six rooms. He replied that the SLA staff would have believed that because according to the documents that the SLA had, only six rooms had valid planning permission to be licensed as a guest house and the occupancy certificate was for six rooms only.
- [67] He admitted that CDI had a license to operate ten rooms and stated that he did not know who would have informed Mr. Madeleine prior to the inspection that CDI only had a license to operate six rooms. However he pointed out that after the inspection Mr. Madeleine recommended for six rooms to be licensed. Counsel pointed out to him that Mr. Madeleine had stated that he had not found the additional 4 rooms inadequate and the only reason he had recommended that only six rooms be licensed was because in the Ministry of Tourism's file the previous licence had been for six rooms. He stated that he did not know why the Ministry of Tourism did not know that the previous licence for Bamboo Chalet had been for ten rooms.

- [68] As to whether the Licensing Inspector on La Digue was supposed to know the details of the previous license before proceeding on an inspection he stated that normally the Inspector would check the records and the license documents in case there were any matters identified in the previous inspection that needed to be looked at again. As to why the Inspector insisted in the first place that he did not know that CDI had a licence for ten rooms and that in his file the hotel was licensed for six rooms, he explained that the Inspector had not known that there had been a mistake which led to CDI being licensed to operate ten rooms. Although he had gone through the file himself he did not know who had caused the mistake as it was not clear from the file. He explained that in 2015 SLA had not yet started using the new database (“BLS”) and the inspection reports were not sent or recorded digitally as they are done now. At the time the record keeping system did not show who had made changes to a license whereas the current system does.
- [69] As to why he did not recommend settling the present case because the plaintiff had sustained losses as a result of a mistake on the part of SLA, instead of defending them and claiming that their officers acted in accordance with the law with no omissions and irrational acts on their part when Mr. Cathene’s testimony clearly shows the contrary, he stated that the mistake only resulted in CDI getting a license for ten rooms but did not affect Chalet Bamboo Vert’s license which was a separate matter. The inspection reports made pursuant to inspections carried out after Chalet Bamboo Vert’s application for a license stated the findings of the inspectors that only six of the rooms had the necessary documents. It was put to him that Exhibit P4 the previous license for ten rooms was just as relevant and he responded that it is only valid and can be relied upon for the period of its validity and once it is revoked or has expired it cannot be used for further reference.
- [70] As to why SLA does not accept responsibility for its fault when the Minister rectified the matter only 24 hours after the plaintiffs had complained to him, he stated that he is not aware of the complaint.
- [71] He stated that the amendment to the licence permitting the plaintiffs to operate ten rooms which was made on 27<sup>th</sup> August 2018 was not intended to be retrospective although the

period of validity of the amended license was stated to be 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022.

[72] Mr. Lucas maintained that although there was a problem with the issuing of the licence to CDI, there was no problem with the subsequent license issued to Chalet Bamboo Vert in the present case.

[73] In re-examination he reiterated that when an amendment is made to an existing license, the period of validity of the original licence is maintained. It is only if a new license is issued that the validity period changes. He explained however that the amendment only has effect from the date thereof and does not apply retrospectively.

### **Submissions**

[74] Counsels for both parties filed written submissions in which they addressed both the plea in *limine litis* and the merits of the case. Both submissions were carefully considered and will be referred to as relevant in the analysis below.

### **Analysis**

#### *Plea in Limine Litis*

[75] The defendant has pleaded in *limine litis* that the plaintiffs not having appealed against or sought judicial review of the decision of the SLA to grant them a licence for only six rooms, this Court has no jurisdiction to hear the present action against the SLA. It is further pleaded that it is an abuse of process for the plaintiffs to bring the present action without having recourse to those remedies. He relies on the authority of *In the Matter of Ailee Development Corporation Ltd* (CS No 27 of 2008) [2008] (23<sup>rd</sup> June 2008) and *Hudson Oreddy v Marcel Desaubin* (1988) SLR 144 in support of the point raised.

[76] Counsel for the plaintiffs has submitted that the role of the Court is to deliver justice and ensure fairness to all parties. He states that procedural rules having been established to provide guidelines on how to proceed with a given case. Consequently where strict adherence to a procedural rule such as section 17 of the Licenses Act may lead to an unfair outcome or grave injustice to either party, the Court has the inherent jurisdiction to ensure justice by making a final determination on the merits of the case. The Court is



referred to section 105 of the Australian Court Procedure Rules 2006 in that respect but I do not see the relevance of that provision which deals with the circumstances in which a defendant may rely on a defence not stated in his pleadings. In addition counsel has not explained how Australian statutory rules of civil procedure are applicable in this jurisdiction when we have our own rules of procedure.

[77] Furthermore a provision providing a right of appeal is not a procedural rule. Procedural law in contrast to substantive law, encompasses legal rules governing the process for settlement of disputes. Substantive law on the other hand sets out rights and obligations. In *Anscombe v Indian Ocean Tuna Limited* (CS277/2005) [2009] SCSC (28 January 2009) Karunakaran J stated that a right of appeal “*is a distinct statutory right created or required to be granted by a law or statute in favour of a person whose interest is affected or likely to be affected by the judgment or decision in question*”. A right of appeal is therefore a substantive right although certain procedural rules have to be followed in order to exercise such right of appeal.

[78] Section 17 of the Licenses Act gives a right to a person aggrieved by any decision of the SLA to appeal to the Appeals Board established under section 18 of that Act to hear and determine appeals against the decisions of the SLA. That is the substantive part of the provision. Over and above its substantive aspect, section 17 also contains a procedural one. It provides that a person aggrieved by any decision of the Authority may submit a notice of appeal in writing to the Appeals Board. The procedural aspect here is the manner of initiating the appeal process which is by way of submission of a notice of appeal. However this does not affect the substantive part of the provision which provides for a right of appeal.

[79] I also find the case of *Gilbert Elisa v Public Utilities Corporation* (CS 244/2005) [2009] SCSC (26 June 2009) relied upon by counsel for the plaintiffs irrelevant to the point in issue. In that case Renaud J held that non-compliance with sections 18(2) and 18(3) of the Public Utilities Act was not fatal to the plaintiff’s action against the Public Utilities Corporation. Section 18(2) lays down the requirement for a notice in writing of intended proceedings against the Corporation not less than one month before commencement of

such proceedings. Section 18(3) sets out the matters which such notice must contain. These provisions are procedural in nature and differ from section 17 of the Licenses Act which creates a right of appeal. The case does not help to resolve the point in issue.

[80] Counsel for the plaintiffs further submits that the remedy sought by the plaintiffs in these proceedings is not available in an appeal under section 17 of the Licenses Act. In terms of section 19 of the Act the Appeals Board is empowered to decide an appeal against a decision of the SLA by -

*(a) confirming the decision of the Authority;*

*(b) varying the decision;*

*(c) quashing the decision;*

*(d) ordering the Authority to reconsider the Authority's decision as directed by the Appeals Board.*

[81] It is clear that the Board is not empowered under the Act to order payment of damages sustained by the plaintiffs. Its powers on appeal are limited to what is stated in section 19. It would appear therefore, that the plaintiffs are not precluded from bringing an action in damages against the SLA without first appealing to the Board as this remedy is not provided for under section 19 of the Licenses Act. To do so would not therefore amount to an abuse of process.

[82] The cases cited by Counsel for the defendant also does little to support the plea in *limine litis*. The judgment in *Oreddy v Desaubin* (supra) is relied upon as authority that whilst the exercise of a right of appeal is not mandatory, where a person does not exercise a right of appeal there is no other relief available to him. In that case, the plaintiff had invoked the grievance procedure prescribed by the Employment 1985, alleging unlawful termination of employment, pursuant to which the termination was held to be lawful. Thereafter the plaintiff brought an action before the Supreme Court for damages for wrongful dismissal. In dismissing the plaintiff's action, the Court held *inter alia* that “*a party to a contract of employment had no right to bring a regular action in Court for matters regulated under the Employment Act 1985*”. In that regard the Court stated that the Employment Act is “*a special enactment applicable to contracts of employment for service in Seychelles other than those exempted under section 4(2) of the Act and*

*determines the rights and duties of workers and employers*”. It went on to explain that “[u]nder the Act the right of a worker who is aggrieved by a determination of his contract of employment is to invoke the grievance procedure and thereafter the right of appeal or review under the Act. No other rights are available under the Act in these circumstances”. Emphasis added. In response to counsel for plaintiff’s contention that recourse to the grievance procedure by an aggrieved worker is not mandatory, the Court stated –

*Section 69 of the Act [which prescribes the grievance procedure] is an empowering section. It grants an aggrieved person a right. If he does not wish to exercise his right no person can compel him to do so. It is similar to a right of appeal granted against a judgment of a Court. An appeal is not mandatory but where he does not exercise the right of appeal, there is no other relief available to him.*

[83] It is this last passage that defendant’s counsel is relying on. It is clear that the Court’s reference to the right of appeal in that context, was only to explain that the grievance procedure is not mandatory and that it is up to the aggrieved employee to decide whether or not to have recourse to it, as is the case for a right of appeal against a Court’s judgment. It is up to a person who is dissatisfied with a Court’s judgment to decide whether or not to appeal against such judgment. And indeed where such person decides not to do so no other relief is available to that person. In my view it was not intended to be taken as a general statement preventing a person from initiating an action against a statutory body such as the SLA, if that person has not first exercised the statutory right of appeal against the decision of such statutory body. More so in the circumstances of this case where the appellate body is not empowered to provide the remedy sought by the plaintiffs. The words of the Court in that regard must be taken in context.

[84] Counsel for the defendant further relied on the judgment in *Ailee Development* (supra) to support his plea in *limine litis*. Whilst this case establishes that a decision of the SLA may be appealed against and is also subject to judicial review, it does not really assist this Court in determining whether the plaintiffs, not having availed themselves of these remedies, are precluded from bringing the present action in delict.

[85] This case concerned a winding up petition filed by the Government as a shareholder of the company under the provisions of the Companies Act 1972. The basis of the petition was that the substratum of the company had disappeared as a result of the Seychelles Licensing Authority (SLA) refusing to renew the licence to operate beyond 31<sup>st</sup> December 2007, hence the main object for which the Company was formed which was to carry on business as an hotelier had become impracticable. The decision of the SLA not to renew the company's license was due to the state of the hotel which was not up to the required standard and required major repair, renovation and upgrade. The company had undertaken to submit a master plan for that purpose and to close the hotel on 31<sup>st</sup> May 2007 for carrying out the works, but had not done so by 31<sup>st</sup> December 2007 when the company's licence expired and was not renewed by the SLA, as they had previously indicated they would do. The decision not to renew the licence was also based on the company not having the means to finance a major renovation project.

[86] The passage from the judgment in that case relied upon by counsel for the defendant must be taken in context. It had been averred on behalf of the company that *“even if the Company is unable to manage the resort without proper licences, it does not follow that the substratum of the Company has disappeared since there are other options open to the Company to pursue in order to resume operation. Amongst these are; pursuing an appeal against the refusal to licence; seeking judicial review of the decision not to licence; finding the funds to renovate and seek renewal of the licence upon this being effected; finding a strategic partner for the Company with a view to effecting the renovations and reopening, selling the resort”*. In regards to the company's option to appeal against the SLA's decision, The Court stated that *“the SLA, by letter dated 4<sup>th</sup> January 2008, informed the Company that the licence which expired on 31<sup>st</sup> December 2007 would not be renewed, and that consequently all business operations should cease by 31<sup>st</sup> January 2008. The present petition for winding up was filed on 4<sup>th</sup> February 2008”*. This is followed by the passage quoted by counsel for the defendant which is reproduced below:

*Therefore the Company had one month to pursue its legal option. Under Section 15 of the Licenses Act (Cap 113) the Company, if aggrieved with the decision of*

*the S.L.A. could have appealed to the Minister within 15 days thereof. This they failed to do. Further, the Company could have sought judicial review of the S.L.A. decision within three months, and sought a stay of the present proceedings pending the decision of the Court, as the essence of the present petition is the disappearance of the substratum due to the non-renewal of the licence by the S.L.A. No such application for judicial review was made, and in any event such application may now be considered time barred under Rule 4 of the Supreme Court (Supervisory Jurisdiction) Rules, 1995.*

[87] The company had argued that since the remedies of appeal and judicial review could be used for the company to resume its operations, it could not be said that “*the substratum of the Company has disappeared*”, and hence the ground on which winding up of the company was sought was not justified. It is in that light that the Court made the above statement and it is in that light that it must be taken.

[88] It is to be noted that the Court did not accept the reasons given for the company not having pursued these remedies. The company’s reason for not appealing against the SLA’s decision was that it would be a futile exercise given that the Minister of Finance, the appellate authority, would not hold in their favour as the government was in any event contemplating filing a winding up petition. The Court found that “*legally untenable, as a person aggrieved by any order or decision must exhaust all remedies provided in law*”. In regards to the company’s reason for not filing Judicial Review proceedings namely that there were no grounds for doing so as the S.L.A. had followed the rules of natural justice and had statutory powers to make the decision, the Court stated that on the basis of the evidence, “*there were possible grounds of illegality, acting ultra vires, bias and unreasonableness available to the Company*”. The Court went on to state that -

*...the very basis of the present petition is the disappearance of the substratum consequent to the SLA not renewing the licence. The Company had the legal right to file an application for judicial review within three months of the SLA decision and to seek a stay of the winding up petition. This [it] failed to do. It was held inter alia in the case of The Indian Ocean Fishing Club v. M.E.S.A. (1996) that the Applicant’s failure to contest the decision of the Minister, by way of a writ of certiorari, implied a tacit acceptance of the decision. In these circumstances, the*

*Company cannot in the present proceedings, legitimately seek to canvass the validity of the SLA decision, except as a defence to the present petition.*

[89] The Court ultimately held that the substratum of the Company had disappeared, and that consequently it was just and equitable to wind up the Company. Counsel for the defendant further submitted that since the plaintiffs did not prefer any appeal or judicial review against the decision to grant them a licence for operating six rooms on 24<sup>th</sup> November 2017, this implies a tacit acceptance by the plaintiffs of the decision. He further submitted that the filing of the present plaint and claim for damages is only an afterthought, and that doing so without seeking the statutory remedies open to the plaintiffs amounts to an abuse of process.

[90] As stated the *Ailee Development* case does not help in determination of the issue in question. The plaintiff's claim in the present case arises from the SLA's decision to grant them a license to operate six rooms instead of ten rooms. Admittedly there is some resemblance to the facts in the *Ailee Development* case, where the basis for the winding up proceedings namely that the substratum of the company had disappeared, arose from the SLA's refusal to renew the license. However the nature of the actions (one being a delictual claim and the other a winding up petition) and the remedies sought by such actions are very different. One seeks payment from the SLA of damages allegedly suffered for the acts of its employees while in the other, a shareholder seeks the winding up of the company to recover its investments in that company.

[91] As stated at paragraph [81] above, and for the reasons stated, the plaintiffs are not precluded from bringing a delictual action in damages against the SLA without first having recourse to other statutory remedies. Accordingly the plea in limine litis fails.

#### *On the Merits*

[92] Our law of delict is found in Articles 1382 to 1386 of the Civil Code of Seychelles Act ("the Civil Code"). The plaintiffs' claim is based on the vicarious liability of the defendant for the acts of its servants, employees or agents, acting in the scope of their duties with the defendant, in that they acted or omitted to act prudently thereby occasioning damage to the plaintiffs, for which the defendant is liable to compensate

them. It is clear that the cause of action against the defendant is grounded on Article 1384 (3) of the Civil Code which provides as follows:

*Article 1384*

1. *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.*

*[...]*

2. *Masters and employers shall be liable on their part for damage caused by their servants and employees acting within the scope of their employment. A deliberate act of a servant or employee contrary to the express instructions of the master or employer and which is not incidental to the service or employment of the servant or employee shall not render the master or employer liable.*

*[...]*

[93] To prove their case under Article 1384, the plaintiffs have to prove a “*lien de preposition*” between the employer and its employees and the “*faute*” of the employees in the discharge of their duties which caused “*prejudice*” to the plaintiffs.

[94] This Court therefore has to determine whether the employees of the defendant committed a “*faute*” while acting within the scope of their employment. “*Faute*” is defined in Article 1382(2) and (3) as follows:

*Article 1382*

*[...]*

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 was caused. It may be the result of a positive act or an omission.*

3. *Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.*

*[...]*

[95] Article 1383 (1) also provides -

*Article 1383*

1. *Every person is liable for the damage it has caused not merely by his act, but also by his negligence or imprudence.*  
[...]

[96] The “*faute*” attributed to the employees of the SLA by the plaintiffs is that they granted a license to the plaintiffs to operate their business with only 6 rooms instead of 10 whereas CDI had previously been granted a license to operate all 10 rooms for the same premises, with no justification. Furthermore the plaintiffs were later granted a license to operate with 10 rooms for the same premises. The plaintiffs claim that as a result they suffered loss of profits for the period that they were permitted to operate with only 6 rooms amounting to SCR1,023,000.00 and moral damages of SCR100,000.00. In order to determine whether the employees of the defendant committed a “*faute*”, this Court has to consider whether the SLA was justified in issuing a license to plaintiffs for only 6 rooms.

[97] The defendant does not dispute, and indeed there is evidence to show that CDI operating under the business name Bamboo Chalets was on 10<sup>th</sup> June 2015, granted a license “*to keep and manage the premises as a Guest House of 10 rooms*” (Exhibit P4) valid for the period 8<sup>th</sup> June 2015 to 7<sup>th</sup> June 2020. It is also not disputed that the premises referred to in the licence are the same that were leased to CDI represented by its Director Mr. Louis D’Offay by Tournesol (Pty) Ltd represented by its Director Mrs. Linsen Jeremi, the 1<sup>st</sup> plaintiff, by agreement dated 1<sup>st</sup> May 2015 (Exhibit P3) for a period of four years commencing from the date of the agreement. The premises are described in the lease agreement as “*a small hotel complex*” which included among its facilities “*five bungalows (2 rooms each)*” situated on “*a property situated at La Passe, La Digue registered as LD368*”.

[98] These premises were transferred to the five plaintiffs by an agreement dated 28<sup>th</sup> January 2017 (Exhibit P1) which was registered on 16<sup>th</sup> February 2017.

[99] By letter dated 25<sup>th</sup> April 2017, Mr. Louis D’Offay on behalf of CDI gave notice to Mrs. Linsen Jeremi in her capacity as Director of Tournesol (Pty) Ltd six months’ notice of termination of the lease agreement (Exhibit P5). It is observed that the notice period would end on 25<sup>th</sup> October 2017.



- [100] The plaintiffs registered the business name Chalet Bamboo Vert as shown by the certificate of registration dated 1<sup>st</sup> September 2017 (Exhibit P2) under which they continued to run the guest house. Pursuant to their application for a license made on 7<sup>th</sup> November 2017, a license “*to keep and manage the premises as a Guest House of 6 rooms*” dated 24<sup>th</sup> November 2017 (Exhibit P6) was issued to Chalet Bamboo Vert. The validity period of the licence was from 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022.
- [101] On 27<sup>th</sup> August 2018, the SLA issued a licence to Chalet Bamboo Vert “*to keep and manage the premises as a Guest House of 10 rooms*” (Exhibit P7) with the same validity period (23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022) as Exhibit P6, the license for 6 rooms previously issued to it. I also note that both P6 and P7 bear the same License Number and Licencee Number.
- [102] Although after CDI terminated their lease agreement, the plaintiffs were granted a licence (Exhibit P6) on 24<sup>th</sup> November 2017, it is unclear when the plaintiffs actually started to run the business. As noted previously the notice period would have ended on 25<sup>th</sup> October 2017. In his letter of 25<sup>th</sup> April 2017, Mr. D’Offay had informed the 1<sup>st</sup> plaintiff to contact him should the premises be required before the end of such notice period. There is no evidence of any communication to that effect. The 2<sup>nd</sup> plaintiff stated in evidence that after CDI terminated the lease the plaintiffs immediately took over, changed the name of the business to Chalet Bamboo Vert for which the certificate of registration is dated 1<sup>st</sup> September 2017, did the necessary legal procedures and continued running the hotel (see page 11 of proceedings of 10<sup>th</sup> February 2020). In cross-examination the 2<sup>nd</sup> plaintiff confirmed having applied for a licence on 7<sup>th</sup> November 2017 under the name Chalet Bamboo Vert. The license “*to keep and manage the premises as a Guest House of 6 rooms*” (Exhibit P6) was issued to Chalet Bamboo Vert on 24<sup>th</sup> November 2017 with a validity period from 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022. The plaintiffs should therefore have started operating on 23<sup>rd</sup> November 2017. However the date of commencement of their operations remains unclear especially in view of 2<sup>nd</sup> plaintiff’s testimony that they were operating under CDI’s licence during the transition period when they took over from CDI.

[103] In order to show *faute* on the part of the defendant's employees, the 1<sup>st</sup> plaintiff testified that prior to the grant of the licence for Chalet Bamboo Vert to operate only 6 rooms (Exhibit P6), no inspection of the premises was carried out by the SLA. Further there were no changes to the premises from the time when it was being managed by CDI to the time that Exhibit P6 was issued. He claims that Mr. Cathene, the licensing inspector of the SLA accompanied by another person, only visited the premises on 18<sup>th</sup> February 2018 which is when he was informed by Mr. Cathene, that he should not be operating with the additional four rooms because he did not have a license to do so. He sought to justify the same by showing Mr. Cathene the license issued to CDI permitting it to operate with 10 rooms. The 2<sup>nd</sup> Plaintiff went on to state that after he had been informed by Mr. Cathene that he should not be operating with the four additional rooms he made an application for the same which was refused. In that regard he stated that two weeks after his application he received a document from the Planning Authority with a stamp of refusal thereon. No such document was produced to this Court.

[104] I am not at all convinced by the 2<sup>nd</sup> plaintiff's explanation. Firstly, I am at a loss to understand why he would seek to rely on CDI's licence (Exhibit P4) when the plaintiffs had themselves been issued a licence (Exhibit P6) on 24<sup>th</sup> November 2017. It is noteworthy that CDI'S licence as well as Exhibit P6 expressly stipulates that "*Licence is not transferable*". This is in accordance with section 23 of the Licences (Accommodation, Catering and Entertainment Establishments) Regulations, 2011. The plaintiffs were therefore not entitled to rely on CDI's license. The proper course for the plaintiffs to follow, if they had been dissatisfied with the decision of the SLA to allow them to operate with only 6 rooms, was to appeal against that decision using the appeal procedure prescribed under the Licenses Act and ultimately seek Judicial Review of the decision of the Appeals Board if still unsatisfied with it. Instead they chose to operate with all 10 rooms against the explicit terms of their own licence.

[105] The 2<sup>nd</sup> plaintiff also sought to justify operating the business with 10 rooms despite having a license for only 6 rooms by stating that during the period from November 2017 to February 2018 when the business was transitioning from being managed by CDI to being run by the plaintiffs, the plaintiffs were operating under CDI's licence because their

licence might have been issued after they actually started running the business although as stated previously it is unclear when the plaintiffs actually commenced operating the business. The 2<sup>nd</sup> plaintiff drew a parallel with the licence for 10 rooms which was issued to Chalet Bamboo Vert on 27<sup>th</sup> August 2018 (Exhibit P7) but the validity period of which is stated to be 23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022. I am satisfied with the explanation given by defence witness Yannick Lucas that this is because the original license to operate 6 rooms (Exhibit P6) granted for that period (23<sup>rd</sup> November 2017 to 22<sup>nd</sup> November 2022) was simply amended to permit the plaintiffs to operate 10 rooms instead of 6, and hence the validity period as stated in Exhibit P7 remained the same. This would have been different if a new licence had been granted. I further note that the same situation did not arise in respect of the original license to operate 6 rooms (Exhibit P6) as it was not issued to reflect an amendment to an existing licence but was issued pursuant to an application for a new licence.

[106] I also find no merit in 1<sup>st</sup> plaintiff's claim that the plaintiffs only became aware that the licence allowed them to operate only 6 rooms in February 2018 when informed of the same by Mr. Cathene when he conducted his visit on that date, on the basis that they were undergoing a transition period with the change of management from CDI and further that transitioning from one business name to another is a long procedure. In that regard, I note that the certificate of registration for Chalet Bamboo Vert was issued on 1<sup>st</sup> September 2017 and the licence issued on 24<sup>th</sup> November 2017. Further, the plaintiffs having applied for and been granted a licence it was their responsibility to ensure that they understood the terms and conditions of that license. It is also noteworthy that the 2<sup>nd</sup> plaintiff in his testimony stated that he does not recall whether, when he applied for the licence, he specified that it was for 10 rooms. I also find Yannick Lucas' testimony that a licensee is informed of how many rooms he would be permitted to operate at the time of payment of the license fee pertinent in that respect.

[107] The fact that the license to operate 6 rooms (Exhibit P6) was issued to the plaintiffs on 24<sup>th</sup> November 2017, renders plausible Mr. Cathene's testimony that pursuant to the plaintiffs' application for a licence made on 7<sup>th</sup> November 2017, an inspection of the premises was carried out by him on 15<sup>th</sup> November 2017. It also renders improbable, the

2<sup>nd</sup> plaintiff's version that an inspection was only carried out on 18<sup>th</sup> February 2018. In that regard I note that the 2<sup>nd</sup> plaintiff in his testimony shows a degree of uncertainty as to whether an inspection was carried out prior to the granting of the licence to operate only 6 rooms. He could not categorically state that the inspection was not carried out in his absence and in the presence of Mr Selby Pool, the manager. Importantly, in re-examination he stated that he could not recall whether on 15<sup>th</sup> November officers of the three departments (SLA, PHA and Tourism Department) visited the hotel.

[108] Mr. Cathene on the other hand testified that he did conduct an inspection of the Chalet Bamboo Vert guest house in November 2017 pursuant to the application of the plaintiffs for a license. He stated that he was accompanied by an officer of the PHA and a representative of the Tourism Department and that the only representative of the establishment present was Mr Selby Pool. His report dated 16<sup>th</sup> November 2017 (Exhibit D1) which was extracted from the SLA's database confirms that a joint inspection was carried out on 15<sup>th</sup> November 2017 by Ms Dona-Rose Lesperance an Officer of the PHA, Christophe Madeleine from the Seychelles Tourism Board and himself. Defence witness Christophe Madeleine an officer of the Ministry of Tourism, also confirmed that an inspection was carried out on that date by the two aforementioned persons and himself and that only the manager Mr. Pool had been present. Exhibit D2 an inspection report dated 15<sup>th</sup> November 2017 compiled and produced by Mr. Madeleine provides further corroboration of the same. I am therefore satisfied that an inspection was conducted by Mr. Cathene, Mr Madeleine and an officer of the PHA on 15<sup>th</sup> November 2017. I also find no reason to doubt their testimony that only Mr. Selby Pool was present at the time of the inspection. It may be argued that the 2<sup>nd</sup> plaintiff had been unaware of the inspection conducted on 15<sup>th</sup> November 2017 because only Mr. Pool had been present but this is unlikely given Mr. Cathene's testimony that the 2<sup>nd</sup> plaintiff had on the following day, paid him a visit to show him CDI's licence for 10 rooms to explain why they were operating 10 and not 6 rooms. It is my view that the 2<sup>nd</sup> plaintiff did know that an inspection was carried out on 15<sup>th</sup> November 2017 and was aware that he should not be operating the business with 10 rooms.

[109] To determine whether a *faute* had been committed by the defendant's employees the circumstances surrounding the grant of the licence for 10 rooms granted to CDI on 10<sup>th</sup> June 2015 are also relevant. Mr. Cathene testified that further to CDI's application for the same, he had carried out an inspection of the premises and requested that he be provided with necessary documents for the 4 additional rooms as the SLA only had documents in respect of 6 rooms. He stated that ever since the establishment had started operating under the management of the plaintiff's parents only six rooms had been licenced as the remaining four rooms were used as staff facilities. This is confirmed by the 2<sup>nd</sup> plaintiff's own testimony that prior to the lease of the premises to CDI, his parents who had been running the business had only been given a license to operate 6 rooms as the four remaining rooms had been used as staff facilities, and that in between the time that the business was run by his parents and the time that CDI was granted the license, no extension, renovation or repair works had been done on the four rooms.

[110] The second plaintiff further testified that Mr. Cathene had explained that CDI had been granted a license for 10 rooms illegally by someone working for SLA hence the reason why the plaintiffs had only been granted a licence for 6 rooms. He also testified that this is the reason why he applied for a change of use for the four rooms from staff to tourism accommodation so that they could also be licensed for that purpose. This appears to be a plausible explanation given the 2<sup>nd</sup> plaintiff's testimony that when the premises were leased to CDI they were in the same state as when his parents had been granted a licence for 6 rooms and further that there had been no change to the premises from the time that it had been leased to CDI and the time when the plaintiff's took over management of the business after CDI terminated the lease.

[111] Mr. Cathene testified that the documents he had requested for the additional 4 rooms following the inspection carried out pursuant to CDI's application for a licence were never provided, and that he had recommended that CDI be granted a license for only 6 rooms. In cross examination Mr. Cathene further admitted that there had been a problem with the CDI file which had been caused by someone at SLA. He remembers that after he returned from the inspection the Senior Inspector told him to leave everything in her hands which he did and he does not know what happened after that. Mr. Cathene also

stated that whilst conducting a routine check of the premises whilst it was being managed by CDI, four months after the initial inspection for issue of license to CDI, the manager had informed him that the procedure had been undertaken to regularise the four rooms.

[112] I also find Yannick Lucas' testimony that there had been a "*mistake*" which led to CDI being granted a license for 10 rooms relevant. He stated that the "*mistake*" did not have any effect on the licence subsequently issued to the plaintiffs for 6 rooms, as these were two separate licences applied for by different persons albeit for the same establishment. The licence issued to CDI was irrelevant and could not be relied upon for the purpose of issuing a license to the plaintiffs. He further explained that the plaintiffs had been issued with a license for 6 rooms because according to SLA's record, only 6 rooms had valid planning permission to be licensed as a guest house and occupancy certificate. This is confirmed by Mr Cathene who stated under cross-examination that the plaintiffs were granted a license for only 6 rooms because there was only relevant documentation for the same. Mr. Christophe Madeleine's report is also pertinent in that in recommending the granting of a licence for 6 bedrooms he requested "*the necessary documentation regarding planning approval, occupancy, etc for the extra 04 rooms*" in regards to which he stated that the plaintiffs would have to "*rectify the same with the SLA to have the extra rooms licensed*".

[113] The above shows that the licence granted to CDI to operate 10 rooms had not been done in accordance with prescribed procedures in that, despite CDI's manager's assurance to Mr. Cathene that the procedure to regularise the four rooms had been done, the SLA had not been provided with planning approval and occupancy certificates for the four rooms. In my view therefore the SLA was justified in granting the plaintiffs a licence to operate only six rooms in the circumstances. No fault can be laid at the feet of its employees for insisting on compliance with the prescribed procedures. I note in that respect that Regulation 3(1) of the Licences (Accommodation, Catering and Entertainment Establishments) Regulations, 2011 lays down the requirement for obtaining a certificate of occupancy from the Planning Authority prior to applying for a licence to keep or manage a guesthouse. Furthermore regulation 4(1) read with Schedule 2, paragraph 1(i) (g) lays down the requirement for submitting with an application, planning approval that

the premises comply with all planning requirements. It is clear that these requirements had not been complied with in respect of the four rooms. This being the case, the plaintiffs cannot rely upon the licence granted to CDI to state that they should also have been granted a licence for 10 rooms. I wish to add here that the grant of a licence is not based solely on previous licenses and on physical inspections of premises but also on necessary documentation. Therefore even if a previous license has been issued for the same premises and the physical inspection reveals no defects with the rooms, the applicant still has to provide the proper documentation.

[114] Counsel for the plaintiff laid great emphasis on the fact that the refusal of SLA to licence the four additional rooms could not have been on the grounds provided for in regulation 5 of the Licenses (Accommodation, Catering and Entertainment Establishments) Regulations 2011. Regulation 5 provides in relevant part that the SLA shall not grant a licence to an individual who (i) is less than 18 years old; (ii) is an undischarged bankrupt; or (iii) is not a fit and proper person to hold a licence due to the bad character or physical infirmity of the individual; (iv) has, within the five years preceding the date of the application, been convicted of any offence involving dishonesty or immorality; and (v) does not have the qualifications and experience referred to in Schedule 2. He submitted that none of those grounds being applicable to the plaintiffs, the defendant's servants, employees and agents had erred in not granting the plaintiffs the license to operate the additional four rooms in their guesthouse. Suffice it to say that if the refusal of the SLA to grant the license for the additional ten rooms was grounded on the qualities of the licensee, the argument would have made sense. However as stated the refusal was because necessary documentation in respect of the additional four rooms had not been submitted.

[115] The matter however does not end here. The SLA, after its officers had refused to grant a licence to operate the four additional rooms on the ground that the necessary documentation had not been provided by the plaintiffs, proceeded to amend the licence to permit the plaintiffs to operate ten rooms. This is evidenced by Exhibit P6 issued by the SLA on 24<sup>th</sup> November 2017.

[116] The respondent in its defence avers that the licence was amended to include the remaining four rooms after compliance with the required criteria. However there is no evidence on record to show that, before Exhibit P7 was issued by the SLA permitting the plaintiffs to operate the additional 4 rooms, they had submitted the documentation which they were required to submit previously and which would have regularised the situation and justified the amendment to the licence. Consequently I have my reservations as to whether the amendment to the licence was done in accordance with the prescribed procedures. However the legality of the licence is not being challenged by the defendant and no counterclaim has been filed to that effect and therefore the issue does not arise for this Court's determination.

[117] The 2<sup>nd</sup> plaintiff on the other hand claims that the licence was amended after he met the Minister of Tourism at the time in August 2018, and explained what had happened to him. He stated that only one day after he had spoken to the Minister he was informed that he would be allowed to operate the four extra rooms and that the decision was taken without any further inspection of the premises being conducted. This casts doubts on the propriety of the amendment to the licence.

[118] I have taken note of the 2<sup>nd</sup> plaintiff's testimony that he had applied for a change of use from staff to tourism accommodation for the four rooms after having been granted a licence to operate them, which might have explained the amendment to the licence. However no evidence was adduced as to whether this change of use was allowed. He further stated that after he had applied for the change of use, he proceeded to renovate the said rooms quite substantially by changing the structure of the rooms, replacing the tiles and ceilings and changing everything in the bathrooms. However at the time of amendment to the license, only two of the four rooms had been renovated and the other two were still under renovation. Given his testimony that no inspection was carried out prior to the amendment of the licence, my doubts as to whether the amendment to the licence was properly made, subsist. The plaintiffs cannot therefore rely on the amendment to the license to justify its claim that the defendant's employees had committed a *faute*.



[119] Accordingly, I find that the plaintiffs have failed to prove on a balance of probabilities that any *faute* was committed by the employees of the SLA and hence I cannot find that the vicarious liability of the SLA has been engaged. Having found thus there is no necessity to consider the issue of damages.

[120] Before concluding I wish to make the following comment. Mr. Cathene's credibility is somewhat put into question by certain inconsistencies in his testimony, and the fact that he was not very forthcoming regarding some aspects of this case especially regarding the granting of the licence for 10 rooms to CDI, and his knowledge thereof. It is clear that he was not always being totally truthful. Nevertheless, I have mostly relied on parts of his testimony which are corroborated by other evidence, and where it is not where he has shown a measure of consistency, bearing in mind that the testimony of the 2<sup>nd</sup> plaintiff also casts some doubt as to the correctness of certain of his assertions and consequently on his reliability as a witness.

### **Decision**

[121] For the reasons given, I dismiss the plaint. Each party shall bear their own costs.

Signed, dated and delivered at Ile du Port on 18<sup>th</sup> October 2021.

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Carolus J