

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC
CS31/2020

In the matter between:

JOSSY CEDRAS
(rep. by Joel Camille)

Plaintiff

and

THE ATTORNEY GENERAL
(rep. by Joshua Revera)

Defendant

Neutral Citation: *Cedras v AG* (CS 31/2020) [2021] SCSC 846 (9th December 2021)
Before: Burhan J
Summary: Scheme of Services within Seychelles People Defences Forces, Presidential Security Unit allowance, VVIP/VIP security allowance
Heard: 19, 23, November 2020, 19 April, 6th May, 28th June and 1st September 2021
Delivered: 09 December 2021

ORDER

JUDGMENT

BURHAN J

[1] The Plaintiff filed an amended plaint on the 13th of November 2020 seeking the following reliefs from the Defendant:

- (i) Loss of allowances payment from April 2004 to February 2019 at SCR 4,800 (SCR are Seychelles Rupees) monthly: SCR 854,400.00 (total);

(ii) Damages for inconvenience, anxiety and distress: SCR 200,000.00

Total SCR 1,054,400.00.

The Pleadings

- [2] It is undisputed that the Plaintiff was enrolled with the Seychelles People Defences Forces (hereinafter 'SPDF') since 25th January 1983 up to 1st April 2019 when he resigned. During the course of his enrolment he was promoted to the rank of Second Lieutenant. It is also not disputed that at all material times Plaintiff's salary and benefits were being paid by the SPDF in pursuance to a contract of conscription between him and the SPDF.
- [3] The Plaintiff avers that as part of his duty with the SPDF, he was posted as personal security officer for the ex-President France Albert Rene at State House and at the Barbarons Army Camp. This is denied by the Defendant and the Defendant avers that the Plaintiff was posted at the gates of the State House up to 2004 and later transferred to the Barbarons Army Camp as a regular officer.
- [4] The Plaintiff further avers that in 2004 ex-President Alix Michel took office as the President of Seychelles. A salary revision of all security personnel working with the SPDF was revised to include an allowance of SCR 4,800. It is the contention of the Plaintiff that despite the said revision in the salaries, all security personnel including the Plaintiff who was working at that time with the ex-President France Albert Rene were not paid the said allowance of SCR 4,800. The Plaintiff further avers that despite attempts to engage the Defendant to grant and pay the said allowance the Defendant has failed and refused to do so.
- [5] The Plaintiff further avers that in September 2017, the Defendant effected a salary review whereby all security personnel received a sum of SCR 2,100 as allowances. Despite this salary review in 2017, the Plaintiff avers that he was paid only a sum of SCR 600 as an

allowance on a monthly basis. The Plaintiff further states that on the 1st of April 2019, he resigned from being an Officer of the SPDF. It is his contention that the SPDF by failing to pay the said allowance of SCR 4,800 were in breach of the contract of conscription between him and the SPDF who at all materials times were paying his salary and benefits including allowances as per the agreement.

- [6] The Defendant denies that it has breached any agreement with the Plaintiff as the Plaintiff was not appointed as a bodyguard and the inducement allowance was allocated only to the sitting President's Security Unit. The Defendant further in the defence avers that the said allowance was allocated to the sitting President's sole bodyguard (President Michel's bodyguard); thereafter the allowance was revised in 2007 and all of the sitting President's Security Unit personnel received the said allowance. The Defendant states that none of the security personnel working with ex-President Rene were paid the inducement of SCR 4,800 as the said allowance was allocated to the sitting President's Security Unit and not the ex-Presidents security Unit.
- [7] The Defendant further admits that the allowance of SCR 2,100 was allocated in September 2017 and marked for the Special Forces Unit ('SFU') and the President Security Unit ('PSU') personnel. The Defendant, however, states that officers posted at Barbarons as a regular officers including the Plaintiff were not marked to receive the VVIP allowance from 2017 Scheme, nevertheless, due consideration was taken and the Barbarons Unit ('BU') received VVIP allowance of SCR 600. The Defendant states the Plaintiff was receiving SCR 600 VVIP allowance from April 2013 and it was increased to SCR 1,200 from November 2017 until he retired.
- [8] The contract that the Plaintiff alleges the Defendant has breached was not enclosed with the Plaintiff. The Plaintiff's Counsel however states in the Submissions of Plaintiff that since the Defendant has agreed and admitted that contract existed but has denied that the Plaintiff was entitled to the allowance, on the basis of the Defendant's admission, the only issue for the court's consideration is whether the Plaintiff was entitled to the allowance.

- [9] The allowances referred to by parties are specified in separate documents, Schemes of Services which in the view of this court form part of the contract. This court will proceed to examine these documents including Schemes of Service to decide whether the Plaintiff was entitled to the Rs 4,800 allowance under the Schemes of Services referred to by him.

Analysis of Evidence

- [10] The Plaintiff produced 2011 Scheme of Service (Exhibit P5). The Defendant produced 2007 and 2017 Schemes of Service (Exhibits D12 and D11). Although, the Plaintiff objected to the production of 2007 Scheme of Service as it is not signed document, it should be noted that neither of the provided Schemes of Service are signed and the Plaintiff himself provided Scheme of Service which is an unsigned booklet. As the documents emanated from the proper source and there was no direct challenge to its authenticity I will proceed to accept the documents as Exhibits.
- [11] Paragraph 35 of D12 (2007 Scheme of Service) specifies that VVIP Security Allowance is a monthly allowance of SCR 500.00 paid to “all personnel providing security to VVIP”.
- [12] Paragraph 14.10 of P5 (2011 Scheme of Service) provides that VVIP Security Allowance is a monthly allowance that shall be paid to “all personnel providing security to VVIP”. It is stated that the sum of the allowance is to be decided “by authority of the SPDF”. During examination in chief, witness for the Defendant, Major Pierre stated that ‘authority’ which approves the allowance is the Commander in Chief, meaning the President (see pages 13-14 of Court Proceedings on 20th April 2021 at 9:30AM). Therefore the Plaintiff needs to satisfy the court that the sitting President at that time (2011) has officially approved allowance of SCR 4,800 not only for his sole bodyguard and presidential security bodyguards but has approved it for all the VVIP/VIP bodyguards, which includes ex-President Rene’s bodyguards.

- [13] Allowance of SCR 2,100 is referred to in Part A and Part F of the 2017 Scheme of Services Exhibit D11. Part A refers to ‘Scheme of Service for SPDF – Defence Forces Order No 02/2007’. Part F refers to ‘Allowance Scheme – Special Forces Unit / Presidential Security Unit’ (SFU/PSU).
- [14] Paragraph 33 of the Part A of D11, states that all personnel providing security to VVIP shall be paid SCR 2,100.00 allowance. Summary of Allowances for the SFU and the PSU of Part F (Exhibit D10 and page 73 of Exhibit D11) distinguishes VIP allowance, which is SCR 2,100 and Presidential Security Allowance, which is SCR 4,800. It is to be noted that the Scheme of Service 2017 is the first official document from the ones provided by the parties where allowance of SCR 4,800 appears.
- [15] Therefore, according to the Scheme of Services 2007, 2011 and 2017 provided by the parties, if the Plaintiff can be considered to be personnel providing security to VVIP, from the date 2007 Scheme came into force, he should have been getting SCR 500 allowance (paragraph [11] herein); from the enactment of 2011 Scheme the amount is not specified and from 2017 Scheme the allowance depends on whether the Plaintiff can be considered as VVIP or VIP security or Presidential Security, even though he has been working with the ex-President. Therefore it would be pertinent at this stage to examine the career positions of the Plaintiff.
- [16] According to the Case History (Exhibit P8) Career Timeline, in 2004 when President Rene left office and President Michel became President, the Plaintiff was posted from PSU to Barbarons Unit (BU). This transition is confirmed by SPDF Letter dated 6th July 2004 (Exhibit D5) which states that SSP 1984 S/Sgt Jossy Cedras, together with other officers and soldiers, were posted from PSU to BU. Therefore, at this stage the Plaintiff ceased to be personnel of Presidential Security Service (PSU), which makes sense as President Rene with whom they worked had left the office. However it is to be borne in mind that Mr. Rene was now the ex-President of Seychelles.
- [17] During the court proceedings, it was discussed whether the Plaintiff was a sole bodyguard or part of the entourage of security for the ex-President. He was promoted to 2nd Lieutenant on the 12th April 2016 (Exhibits D6(a)-(c)). It was averred that the promotion

took place in order to make the Plaintiff in command of the unit attached to ex-President as Mr Frank Marie was retiring as Commanding Officer and he suggested that the Plaintiff could take over from him (Exhibit D8).

- [18] Witness for the Plaintiff, Frank Marie, who used to be personal bodyguard of ex-President Rene testified that he has never received the SCR 4,800 allowance as a bodyguard of ex-President (page 25 of the Court Proceedings on 23rd November 2020 at 2PM). During cross examination when asked for whom was the SCR 4,800 allowance created by President Michel in 2004, Mr Frank Marie replied that, “*The allowance was given to his bodyguard*”.
- [19] There is no written confirmation that the Plaintiff was appointed as a commanding officer after Mr Marie retired, nevertheless, it might actually be immaterial whether the Plaintiff was sole bodyguard or part of the entourage as even personal bodyguard of the ex-President. Mr. Frank Marie according to his evidence never received the SCR 4,800 allowance. This further indicates that the allowance was indeed introduced for security of the sitting president only not the ex-President.
- [20] Major Pierre, witness for the Defendant, also explained the difference of appointment of Presidential Personal Security back when the Plaintiff was security of President Rene and security for President Michel (see pages 4-7 of the Court Proceedings on 20th April 2021 at 9:30AM). As it appears from his testimony, new and additional training was introduced after President Michel became the President. Major Pierre stated that from the personal file of the Plaintiff he knows that he has commando training, which was sufficient training to be appointed to PSU at the time of Mr. Rene presidency but he is not aware whether the Plaintiff has further specialised training which the PSU officers and soldiers had to undertake when President Michel became the President. Therefore it is the view of this court that the SCR 4,800 allowances was meant only for the specially trained security of the sitting President and not the security of the ex-President a fact supported by the ex-President’s sole body guard evidence in that he did not receive any such payment.

[21] Major Pierre further explained that the SCR 4,800 allowance was introduced by President Michel for his close protection and Barbarons Unit was not entitled to the said allowance. Even during cross-examination Major Pierre reiterated that Presidential Security allowance was not meant to be given to the Barbarons Unit (pages 34 and 37 of the Court Proceedings on 20th April 2021 at 9:30AM):

COURT TO WITNESS:

Q: Your position is that, SR4800/- were only paid to the bodyguard?

A: My position is that, SR4800/-, during the time of President Michel was only paid to the bodyguard, then after the scheme of service, SR4800/- was only paid to personnel posted to the President's security unit which was at State House. That is my position.

Q: You are referring to the 2017 scheme of service?

A: Yes. after 2017, it was given to everybody serving the President based at PSU as written in the scheme of service, but commando posted to other units like, Exile were given VIP allowance. Only VIP allowance and not President security allowance. SR4800/- is President security allowance and not VIP allowance. VIP allowance is SR2100/-. This is what we offered Cedras which he refused.

[22] Major Pierre further testified that security personnel of former President Michel were still receiving Presidential Security Allowance of SCR 4,800 after President Michel left office in 2016. The Defendant's Counsel explains in the Submissions paragraph 10 that the decision to assign officers of the PSU to the Seychelles Police when a President leaves office was a new procedure decided upon by National Assembly and that maintaining VVIP allowance to these officers was a decision taken by the Seychelles Police Department and not the SPDF as they had budgeted for these payments.

[23] From all the aforementioned reasons, it cannot be concluded that the Plaintiff was entitled to the SCR 4,800 allowance that came into effect during the time of President Michel in 2004. The evidence indicates the said allowance was never officially intended to be paid or was paid to the personal bodyguards of the ex-President even though they may have expected it to be done. It is also apparent that when the 2017 scheme introduced the said SCR 4,800 payment officially, it did not include the personal body guards of ex-President Rene as they had never been paid the said allowance.

[24] In regards to payment of VVIP allowances the 2007 and 2011 Schemes speak of a VVIP allowance and do not make distinction between different units and refer in general to all

personnel providing VVIP security which in my view includes the Plaintiff. D12 (2007 Scheme of Service) specifies that VVIP Security Allowance is a monthly allowance of SCR 500.00 paid to “all personnel providing security to VVIP” P5 (2011 Scheme of Service) provides that VVIP Security Allowance is a monthly allowance that shall be paid to “all personnel providing security to VVIP”. It is stated that the sum of the allowance is to be decided *“by authority of the SPDF”*.

[25] Therefore the next issue to decide is whether the ex-President is a VVIP/VIP. The Plaintiff did not provide any documentary evidence that interprets persons who are VVIP and/or VIP for the purpose of the allowance. The Plaintiff submits that the ex-President was considered as a VVIP and that this fact was confirmed by the Defendant’s witness Major Alain Pierre, who testified that, *“even when Rene moved to Barbarons, the security personnel there was paid a VVIP allowance of SCR600 only”*; Major Pierre also testified that Mr Rene was a VVIP. When asked by the court whether ex-President was a VVIP, he replied (page 9 of the Court Proceedings on 20th April 2021 at 9:30AM):

“Yes, I believe as an ex-President you are a VVIP, but if there are means to be involved with you, that is another story.”

[26] Major Pierre explained that different allowances fall under different units for coast guards, air force, special forces; and Barbarons Unit was not entitled to the said allowance. The Scheme of Services 2017 (Exhibit D11) indeed contains separate Allowance Schemes for Seychelles Coast Guard (Part C of the Scheme), Air Force (Part D), Defence Forces Academy (Part E) and Special Forces/Presidential Security Unit (Part F).

[27] Paragraph 33 of Part A of the Scheme of Service of 2017 for SPDF – Defence Forces Order No 02/2007 also provides that VVIP Security allowance of SCR 2,100 shall be paid to all personnel providing security to VVIP. Part A as it appears is general part relating to Regular and Reserved Forces including Commissioned Officer (Schedule 1 (a) of the Defence Act includes Second Lieutenant) and Enlisted Soldiers (Schedule 1 (b) of the Defence Act includes Warrant Officers, Sergean, Staff Sergean etc). Therefore, since the allowance is included in the general part A, it can also apply not just to the PSU and SFU but other units as well. Therefore it is the view of this court that at the

commencement date of the 2017 Scheme, if the Plaintiff was providing security services to the VVIP even though he was not part of PSU and SFU, he would still be entitled to the allowance of SCR 2,100.

- [28] Paragraph 2 of the Case History in relation to the Plaintiff (Exhibit P8) states that the Plaintiff was receiving VVIP SCR 600 allowance from April 2013, which was increased in November 2017 to SCR 1,200. It is stated at paragraph 2(d) that the decision to increase the allowance was not found within the SPDF Scheme of Service and therefore cannot be justified with supporting documents. Paragraph 2(f) further states that the personnel working with the ex-President Rene should not have benefitted from the Presidential Security Allowance but should have been considered for the VIP allowance as per the 2017 Scheme.
- [29] The Defendant also produced Memo (Exhibit D9) from M. Boniface, DGHR&A, addressed to the Senior Accountant and dated 5th May 2016. The Memo refers to personnel being transferred to BU and specifies the allowances that they are entitled to, one of which is VVIP of SCR 600. Therefore, as it appears from the 2016 Memo, the allowance that was allocated to the BU personnel at least during 2016 was SCR 600.
- [30] It should be noted that VVIP allowance on the payslips provided by the parties was renamed from “VVIP” to “Inducement & Displacement” allowance from January 2017 payslip (Exhibit D3). Payslips for January 2014, 2015 and 2016 (Exhibit D2 & D3) include SCR 600 as VVIP allowance. Payslips for January 2017 (D3) refers to SCR 600 as location Inducement Allowance (unless it was a different allowance) and payslips onwards (Exhibits D4, P6(a)-(c)) contain amount of SCR 1,200 and refer to the sum as “Inducement & Displacement”.
- [31] The Plaintiff submits at paragraphs 7-14 that the intentions of the SPDF was that all security personnel including the ex-President Rene’s personnel to be paid the allowance of SCR 4,800. Alternatively, if it was not the intention and the Plaintiff was not entitled to VVIP allowance it begs the question why was due considerations taken in the Plaintiff’s favour and he was paid VVIP allowance of SCR 600 and revised sum of SCR

1,200. It is further submitted that the payments made, “*was but as an afterthought, trying to cure a breach of obligation*”.

- [32] It is my view however, that since the sitting president and the ex-President perform different functions and their respectful positions entail different kind of risk upon their security personnel, it might be logical that the allowances for security of sitting president and ex-President should not be the same. Furthermore, even if the ex-President’s security were entitled to the VVIP allowance it does not necessarily mean that they are entitled to Presidential Security allowance.
- [33] As noted earlier, the SPDF appear to be not entirely clear on who is VVIP/VIP. Perhaps that is the actual reason why they have offered various settlements to the Plaintiff. Schemes of Service do not define VVIP and no supporting documents were produced by the Plaintiff to indicate that ex-President is considered to be VVIP and/or VIP. Mr Marie, bodyguard of the ex-President also never received the SCR 4,800 allowance.
- [34] As noted earlier Major Pierre testified that there is no difference between VVIP and VIP; that ex-President can be considered to be VVIP. Further the Memo (Exhibit D9) to the Senior Accountant confirms that SCR 600 was the VVIP allowance paid to Barbarons Unit at least in 2016.
- [35] In any case, the allowance of SCR 4,800 claimed by the Plaintiff officially appears only in 2017 Scheme of Service and the Plaintiff has not produced any official documentation based on which he should have been paid SCR 4,800 from 2004. Considering that the Plaintiff cannot produce the official document based on which he, being the security of the ex-President, should have been receiving SCR 4,800 from 2004 and on consideration of the evidence of his own witness Mr Frank Marie that he had not received such an allowance being the personal body guard of Mr. Rene when he was President and ex-president, this court cannot come to a conclusion that as security of the ex-president he was entitled to be paid SCR 4,800. In my respectful opinion, the Plaintiff did not provide enough evidence to establish that SCR 4,800 was supposed to be paid to the ex-President’s security personnel. Such allowance formally appears only in 2017 document.

[36] Considering all the aforementioned factors, this court is satisfied that the Plaintiff has established on a balance of probabilities that the VVIP security allowances referred to in the 2007, 2011 and 2017 Schemes include the ex-President Rene's security of which he was part of. Therefore, the Plaintiff is entitled to receive SCR 500 allowance for 2007-2011 (from the date of 2007 Scheme coming into force to the date of 2011 Scheme coming into force). As the 2011 Scheme does not specify the amount of the allowance and the Plaintiff was being paid the SCR 600 VVIP allowance from 2013, I make order that he is entitled to receive the SCR 600 VVIP allowance for 2011-2017 (from the date of 2011 Scheme coming into force to the date of 2017 Scheme coming into force). Further the Plaintiff is entitled to receive the VVIP allowance of SCR 2,100 from the date of 2017 Scheme coming into force till his retirement date on 1st April 2019. The amount of the allowance already paid to the Plaintiff to be deducted.

[37] I therefore enter judgment accordingly in favour of the Plaintiff and order that he is entitled to the following monetary benefits only as per the findings of this court:

- a) Payment of SCR 500 from July 2007 up to January 2011, totalling sum of SCR 21,000 (SCR 3,000 being for 6 months of 2007 and SCR 18,000 being for years 2008-2011);
- b) Payment of SCR 600 from January 2011 up to November 2017 less the SCR 600 paid from January 2013 up to November 2017, totalling sum of SCR 14,400 (being for years 2011-2013, deducted amount for years 2013-2017);
- c) Payment of SCR 2,100 from November 2017 up to his retirement date on the 1st of April 2019, less SCR 1,200 which he had been paid during this period, totalling sum of SCR 15,300 (being the difference of SCR 900 to be paid for 17 months).
- d) Costs

Signed, dated and delivered at Ile du Port on the 09 December 2021.

M Burhan J