

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 355

Arising in CS42/2020

In the matter between:

H. SAVY INSURANCE
(rep. by S. Rajasundaram)

Plaintiff

and

SATISH NAIDOO
(rep. by Bernard Georges)

1st Defendant

VINCENT POOL
(rep. by Basil Hoareau)

2nd Defendant

ANDY ACCOUCHE
(unrepresented)

3rd Defendant

Neutral Citation: *H. Savy Insurance v Naidoo and Ors* (CS 42/2020) [2021] SCSC 355 (23rd June 2021).

Before: Pillay J

Summary: Plea in limine – cause of action

Heard: By way of submissions

Delivered: 23rd June 2021

ORDER

[1] In the circumstances the plea in limine is dismissed.

[2] Each side shall bear their own costs.

RULING

PILLAY J

- [3] This ruling arises from a plea in limine filed by the first Defendant and the second Defendant
- [4] The first Defendant's plea is to the effect that
- (1) *The Plaintiff establishes no action known in law.*
- (2) *The Plaintiff discloses no cause of action against the First Defendant.*
- [5] The second Defendant's plea is to the effect that
- (1) *The Plaintiff ought to be dismissed – in accordance with section 92 of the Seychelles Code of Civil Procedure – as it discloses no reasonable cause of action and/or it is frivolous or vexatious.*
- (2) *Further the Plaintiff ought to be dismissed – under the inherent powers of the Court – on the ground that it is frivolous or vexatious or an abuse of the Court's process.*
- [6] The parties agreed that the matter would be dealt with before the trial and would be addressed by way of submissions. However only the first Defendant filed submissions.
- [7] The first Defendant's counsel submitted that the Plaintiff is the insurer of the third Defendant's vehicle and in terms of the Motor Vehicle Insurance (Third Party Risks) Act the Plaintiff as the insurer cannot avoid payment of a judgement making the vehicle liable for the death or injury so long as the insurer has received notice of the case which has resulted in the judgment. He enclosed copy of the notice sent to the Plaintiff dated 14th November 2019.
- [8] He further submitted that the Plaintiff has no action against the first and second Defendants in law. It was his submission that it is trite in law that there are two species of obligations in our law which arises by contract and by operation of law usually delicts.
- [9] Counsel submitted that there is no contract between the Plaintiff and the first Defendant no. He further submitted that the Plaintiff had not pleaded any obligation in law binding the Plaintiff and the first Defendant.

[10] Though submissions were not filed by counsel for the second Defendant, in terms of his defence, the second Defendant admits that the Plaintiff was notified by the second Defendant in accordance with section 10 (2) (a) of the Motor Vehicle Insurance (Third Party Risks) Act, within fourteen days of commencement of the proceedings against the third Defendant.

[11] In essence the question for the Court at this point in time is whether or not the Plaintiff discloses any cause of action against the Defendants.

[12] Section 92 of the Seychelles Code of Civil Procedure provides that

The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleading to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or may give judgment, on such terms as may be just.

[13] The Plaintiff in its claim states that the third Defendant's vehicle was at all material times insured in a motor vehicle insurance policy with the Plaintiff in the matters in CS 17/2019 and CS 21/2019. The Plaintiff claims that "the Judgment Debt affects the rights, causes financial prejudice to the Plaintiff in that the Plaintiff being the insurer is constrained and construed to pay the Judgement Debt wherein the Plaintiff was neither a party nor was heard either in terms of liability and or quantum, thus Plaintiff is a third party in respect of the Judgment Debt, thus the impugned Judgement Debt is not proper."

[14] The prayer of the Plaintiff is as follows "this Plaintiff being a third party objecting to the Judgment dated 28th November 2019 and opposing the same prays this Honourable Court for a judgement in its favour ..."

[15] In effect what the Plaintiff seeks to do is to object to the judgment dated 28th November 2019 in accordance with section 172 of the Seychelles Code of Civil Procedure which reads as follows:

Any person whose interests are affected by a judgment rendered in a suit in which neither he nor persons represented by him were made parties, may file opposition to such judgment.

[16] The manner in which such opposition is to be made is provided in section 173 which reads as follows

Such opposition shall be formed by means of a principal action to which the parties to the suit, in which the judgment ought to be set aside was obtained, shall be made defendants.

[17] Whether or not the rights of the Plaintiff have been affected and the effect of section 10 (2) (a) of the Motor Vehicle Insurance (Third Party Risks) Act, if any, can only be decided at the end of a hearing.

[18] With that said it cannot be said the plea in limine cannot succeed. In the circumstances the plea in limine is dismissed.

[19] Each side shall bear their own costs.

Post Script:

[20] After I had completed the ruling counsel for the Plaintiff filed submissions on 10th May 2021.

[21] It was his submission that the underlying issue of the instant suit is based on section 172 and 173 of the Seychelles Code of Civil Procedure, opposition by third parties.

[22] He submitted that three conditions are necessary to sustain opposition by a third party:

- (1) That the judgment is of such a nature that it causes prejudice to a third party*
- (2) That the third party was not a party to the case when it was heard; and*
- (3) That the third party was not represented at that hearing.*

[23] He submitted that the Plaintiff being insurer of the vehicles involved, specifically the insurer of the third defendant's vehicle, objects to the judgement dated 28th November 2019 and seeks an order to set aside the said judgment and retract the award made in the two earlier suits.

- [24] It was his submission that the Plaintiff has every locus standi to oppose the said judgment in that it is the Plaintiff whose interest is substantially affected by the judgment dated 28th November 2019 being the insured of the third Defendant.
- [25] Counsel further submitted that the judgment dated 28th November 2019 is erroneous in that it was given without proper evidence on record, based on Practice Direction and omitting the procedure laid down in Seychelles Code of Civil Procedure.
- [26] Counsel relied on the case of **Zoobert Limited vs Zalazie (2011) SLR 205** in support of his submissions.
- [27] The Plaintiff's counsel further submitted on the significance of notice to insurance companies under the third party risks act. However as stated at paragraph 15 this is essentially the issue for determination in the main case and not the subject of this ruling.
- [28] With regard to his submission that the judgment dated 28th November 2019 was erroneous in view that it was given based on Practice Direction and omitting the procedures laid down in the Code, that is not relevant for the purposes of this ruling but rather for the case proper, if at all.
- [29] For obvious reasons therefore there is no necessity for this Court to give any additional consideration to the submissions filed by the Plaintiff' counsel.

Signed, dated and delivered at Ile du Port on ...

Pillay J