

IN THE SUPREME COURT OIF SEYCHELLES

Reportable

2021 SCSC 347
MC46/2019
(Appeal from Magistrate Court
CS110/2017)

In the matter between:

MODERN TRADING (PTY) LIMITED
(rep. by Guy Ferley)

Appellant

and

SETHURAM BALRAJ
(rep. by Kieran Shah & Asiyath Afif)

Respondent

Neutral Citation: *Modern Trading (Pty) Limited v Balraj* (MC46/2019] SCSC 347

Before: Dodin J.

Summary: Prescription – article 2272 of Civil Code – whether learned Magistrate erred in determining amount of outstanding debt

Heard: (Written submissions)

Delivered: 24th June 2021

ORDER

On appeal from the judgment of the Magistrate’s Court, this Court finds that prescription started to run from the date of the last payment which this Court determines to be 5th December 2013. The Respondent was therefore not prescribed in filing his claim on the 20th July 2017.

The Learned Magistrate was not patently or plainly wrong in her assessment of the facts considering the defence pleadings and evidence. The Learned Magistrate did not err in determining that the amount owing by the Appellant was US\$16,984.19 as claimed by the Respondent (Plaintiff). The judgment of the Learned Magistrate is upheld.

The appeal is dismissed with costs.

JUDGMENT

DODIN J.

- [1] The Appellant appealed the judgment of the Learned Magistrate awarding the Respondent the sum of US\$ 16984.19 as outstanding debt owed to the Respondent by the Appellant. The Learned Magistrate also determined that the debt became due from the last payment made by the debtor which was from 5th December 2013 and hence the claim is not prescribed as the Plaint was filed on the 20th July 2017, less than the prescribed period of 5 years.
- [2] The Appellant raised two grounds of appeal:
- i. The Learned Magistrate erred in her findings at paragraph 8 of the judgment that prescription runs from the last payment in satisfaction of the debt rather than from the last date of the last consignment of the good supplied; and
 - ii. The learned Magistrate erred manifestly in her assessment of the evidence which led her awarding the Plaintiff the full sum of US\$ 16,984.10 as claimed.
- [3] Learned counsel for the Appellant submitted on ground 1 of the appeal that the pleadings of the Plaintiff (Respondent) stated that he received payments between 13th May 2012 and 5th December 2013. However the evidence adduced through a bank statement produced by the Respondent (Plaintiff) as exhibit P2 showed that the last payment was made on 13th March 2012. Hence the cut-off date from when prescription started to run was 13th March 2012 which established that the claim was prescribed in excess of 4 months by the time it was filed on the 20th July 2017.
- [4] On the second ground of appeal learned counsel submitted that the Learned Magistrate erred manifestly in assessing the evidence of Povannan Ponslevan, defence witness number 2 who testified that his brother made cash payments into the account of the Respondent. Learned counsel further submitted that the Respondent admitted that the son of the Appellant paid money into his bank account but gave lame excuses that he was working for him and buying goods for him.

- [5] Learned counsel moved the Court to allow the appeal on ground 1 or to allow the appeal on ground 2 and find that the Appellant is only indebted to the Respondent in the sum of US\$ 6,984.19.
- [6] Learned counsel for the Respondent submitted on ground 1 that in this case the parties had a running account where goods are supplied at various times and partial payments are made towards partial satisfaction of the debt. Each time payment is made the debtor acknowledges the debt, therefore prescription starts to run from the last date of payment. Hence from exhibit P1, prescription only started to run from 1st February 2016. Learned counsel referred the Court to articles 2272, (2271) 2248 and 2274 of the Civil Code of Seychelles in support of his submission as well as to extract of *Dalloz on the Civil Code 102 edition* and also to the cases of *General Insurance Company of Seychelles Limited v Daniel Bonte No:6 of 1994* and *Hughes and Polkinghorne v North Island Company Ltd SLR [1984] 154*.
- [7] On the 2nd ground of appeal learned counsel submitted that the assessment of whether the learned Magistrate erred could only be considered on the evidence before the Court which came down to two issues: 1st whether or not the matter was prescribed and 2nd whether or not monies were owed to the respondent (Plaintiff) and if so what was the amount owed. The first part would be decided on the issue of prescription whilst the second part would be decided on the basis of the credits supplied by the Respondent to the Appellant which amounted to the sum of US\$69,834.67. The Respondent contends that there is an outstanding balance of US\$16,984.19 whilst the Appellant contends that the remaining balance is US\$6,368/- (or US\$6,984.19) based on their respective conversion rate.
- [8] Learned counsel submitted that the Learned Magistrate did not err in awarding the sum of US\$16,984.19 as it was taken to be admitted that the Appellant owed the Respondent a balance outstanding. The balance is calculated base on the exchange rate which varied between the parties. Learned counsel submitted that the difference of US\$10,616,19 which the Appellant claimed was not owed and had been paid was not substantiated by

any evidence and nor was it pleaded in defence and therefore there was no error in the Learned Magistrate's rejection of the contention.

[9] Learned counsel submitted that the contention of the Appellant that a certain amount was paid by a third party in cash to Visaram Impex (Pty) Limited was not supported by evidence before the Court. Hence the Learned Magistrate was correct to conclude on the analysis of the evidence that the evidence was not plausible, not sufficient and not credible in the circumstances.

[10] Learned counsel hence moved the Court to find that the decision of the Learned Magistrate was fair and just and to dismiss the appeal as having no merit.

[11] The relevant articles of the Civil Code of Seychelles Act provide as follows:

Article 2224

A right of prescription may be pleaded at all stages of legal proceedings, even on appeal, unless the party who has not pleaded it can be presumed to have waived it.

Article 2248

The prescription shall also be interrupted by an acknowledgement by a debtor or a possessor of the right of the person against whom the prescription was running.

Article 2271

1. All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.

Article 2274

Prescription, as established by the provisions of this Title, shall run even if supplies, deliveries, services and works continue. It shall cease to run only when there is an account stated or a writ of execution or legal proceedings still pending.

[12] Other relevant and unavoidable articles of the Civil Code are articles 2260 and 2261 which contain general provisions in respect of how the period of prescription has to be determined in its general provisions.

Article 2260

Prescription shall be calculated on the basis of days not hours.

Article 2261

Rights by prescription shall be acquired when the last day of the period has ended.

- [13] Learned counsel for the Appellant rightly points out that prescription can be pleaded at all stages including on appeal as per Article 2224 of the Civil Code. This provision contains two propositions. Firstly that prescription had not been pleaded at all until appeal in which case the appellate court must consider the issue as a new one; or like in this case, the issue has been raised in the lower court and that lower court has erred in its determination on that issue.
- [14] It is not in dispute that prescription in this case is a period of 5 years. The contention is the date prescription started to run. Learned counsel for the Appellant maintains that it started to run at the latest on the 13th March 2012 which is supported by exhibit P2 as the last date money was paid into the Respondent's account as direct transfer from Seychelles. However this argument defeats the Appellant's contention that more money was paid in cash by a representative of the Appellant. Furthermore, that contention is not supported by any evidence of the Appellant (Defendant) as to whether the money was paid before or after the 13th March 2012. On the other hand, the evidence of the Respondent (Plaintiff), in exhibit P1, although it seems self-serving but uncontroverted by the Appellant, it appears that two payments were made on the 3rd February 2013 and the 5th December 2013 respectively by the Appellant. It must be noted that exhibit D1 produced by the Appellant (Defendant) can only be given the same weight as exhibit P1. Hence the Learned Magistrate was correct to rely on the credibility of the witnesses.
- [15] I have carefully considered the judgment of the Learned Magistrate and the records of proceedings particularly concerning the testimonies of the witnesses in respect of how and when payments were made. I am satisfied that not only there was an outstanding balance owed by the Appellant to the Respondent but that the Learned Magistrate did not err to believe the Respondent's version and evidence as more plausible on the balance of

probabilities than the Appellant's. I also find that this finding extends to the date of the last payment received, which incidentally, the Appellant's own evidence supports the contention that some payments were not made by bank transfers but by direct cash payments. The Appellant cannot now rely on the bank transfers as the only evidence of payments.

[16] Although I reject the Respondent's contention that the prescription period started to run on the 1st February 2016 when the statement of account was drawn up by the Respondent, I find the Learned Magistrate's conclusion that the last payment was made on the 5th December 2013 which in fact reduced the Appellant's debt to be reasonable and well grounded.

[17] Having perused the records of proceedings and the exhibits adduced by both the Appellant and the Respondent, I am inclined to believe the Respondent (Plaintiff) for reasons to be included in my determination of the 2nd ground of appeal. The 1st ground of appeal is therefore not sustainable and is dismissed accordingly.

[18] The 2nd ground of appeal concerns facts which have been partly dealt with when considering the 1st ground of appeal. It is obvious that whether it was the Appellant and his witness or the Respondent who were more credible can only be determined by the Learned Magistrate who was tasked with making relevant assessment of the facts before her derived from the testimonies of the witnesses and documents tendered as well as the demeanour of the witnesses. As stated by this very Court in the case of Ronny Georges Fred v Sound and Vision CA 25/2016 (delivered on 22 November 2017) ;

“the Appellate Court although it can review the facts, unless it is satisfied that the conclusion of the Tribunal (in this case the Magistrate's Court) from the facts is perverse and patently unreasonable, should not substitute its own opinion on the facts only because the Appellate Court could have come to a different conclusion”.

See also the case of McGraddie v McGraddie [2013] UKSC 58; [2013] 1 WLR 2477 in which the appellate court stated;

“It was a long settled principle, stated and restated in domestic and wider

common law jurisprudence, that an appellate court should not interfere with the trial judge's conclusions on primary facts unless satisfied that he was plainly wrong."

[19] The contention of the Appellant however does not end here. The Appellant urges this Court to find that even if the Respondent is within the prescribed period, the sum owed to the Respondent is not US\$16,984.19 but somewhere around US\$6,000, (US\$6,368/- or US\$6,984.19 depending on the exchange rate used). The Appellant's defence however only consists of the following assertion:

"Save that it is admitted that the defendant made various payments to the plaintiff each and every averment contained in paragraph 3 is denied. By way of further answer the defendant avers that the plaintiff had caused the defendant to pay the balance of the money to another Visaram Impex (Pty) Limited which entity is owned by and was under the direct control of the plaintiff."

Article 75 of the Seychelles Code of Civil Procedure has the following provision:

"The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alleged in the plaint must be distinctly denied or they will be taken to be admitted".

Further article 79 in respect to set-off provides that;

"If the defendant relies upon a set off (compensation), his statement of defence must contain particulars of such set off and a statement of the material facts necessary to sustain the same. If the set off depends upon a document, he must annex a copy of such document to his statement of defence".

[20] It is obvious that the Appellant (Defendant) was seriously lacking in its defence pleadings and hence rendered the defendant much less credible in evidence than the Plaintiff (Respondent) and rightly so. I cannot therefore conclude that the Learned Magistrate was patently or plainly wrong in her assessment of the facts *vis-a-vis* the defence pleadings or that the Learned Magistrate erred in determining that the amount owing by the Appellant

was US\$16,984.19 as claimed by the Respondent (Plaintiff). I therefore find no reason to interfere with the assessment of the facts as undertaken by the learned Magistrate.

[21] I therefore find that the second ground of appeal lacks merit and cannot be sustained. I dismiss the second ground of appeal also accordingly.

[22] In final conclusion therefore, this appeal is dismissed in its entirety.

[23] I award costs to the Respondent.

Signed, dated and delivered at Ile du Port on 24th June 2021.

Dodin J