

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ...
CS84/2019

In the matter between

CHARLES MELLIE
(rep. by Karen Domingue)

PLAINTIFF

and

THE COMMISSIONER OF POLICE
(rep by Corrine Rose)

1ST DEFENDANT

DEAN ROSE
(rep. by Corrine Rose)

2ND DEFENDANT

Neutral Citation: *Mellie vs Commissioner of Police & ors (CS84/2019) [2022] SCSC*

Before: G. Dodin

Heard: Written submissions

Delivered: 08 April 2022

JUDGMENT

Dodin J

[1] The Plaintiff, Charles Mellie, is the owner of a car hire business, known as Lotus Car Hire. The Plaintiff rented out motor vehicle registration number S11542, a Kia Picanto, to the Seychelles Police since it was brand new and has continued to do so for approximately five years. On the 06th March 2018 whilst the vehicle was in the custody of the Seychelles Police and being driven by the 2nd Defendant, Dean Rose, a police officer in the employment of the Seychelles Police at the material time, the vehicle caught fire and was completely burnt thus causing the vehicle to be a complete right off. At the time the vehicle was valued at the sum of SR190,000 and the Plaintiff was still repaying a loan on the said vehicle. The Plaintiff's claim is for loss and damages suffered as a result of the loss of the vehicle.

[2] The Plaintiff's claim as follows:

- A. Loss of vehicle SR190,000;
- B. Loss of earnings at the rate of SR600 per day from 6th March 2018 continuing until the claim is settled;
- C. Moral damages for anxiety, stress and inconvenience at SR50,000

[3] The Plaintiff avers that the 1st and 2nd Defendants are jointly and severally liable to make good his loss and damages and despite repeated requests to the 1st Defendant who is vicariously liable of the act of the 2nd Defendant, the 1st Defendant has ignored, failed and refused to compensate the Plaintiff for his loss and damages.

[4] The Defendants contest the claim raising a plea in limine litis that:

The plaintiff discloses no reasonable cause of action against the Defendants and should be struck out under Section 92 of the Seychelles Code of Civil Procedures.

[5] On the merits, the Defendants admitted to having rented the vehicle from the Plaintiff but that the vehicle was not new. The Defendants also maintained that the vehicle caught fire after the 2nd Defendant parked the vehicle and after getting out of the vehicle when the 2nd Defendant noticed fire and smoke at its incipient stages in the engine compartment. The Defendants also contested the particulars of loss and damages particularly the value of the five-year-old vehicle, the alleged loss of earnings per day and the claim of the Plaintiff that he sustained any moral damages for anxiety, stress and inconvenience. The Defendants moved the Court to dismiss the plaintiff with costs.

Submission on the plea in limine litis.

[6] Learned counsel for the Defendants submitted that the claim discloses no reasonable cause of action against the Defendants and should be struck out under Section 92 of the Seychelles Code of Civil Procedure. The 1st Defendant cannot be held vicariously liable for any acts or omissions of the 2nd Defendant as the 2nd Defendant is an employee of the Government rather than an employee of the 1st Defendant. The 1st Defendant is also an

employee of the Government and therefore cannot be considered as the employer of the 2nd Defendant.

[7] Learned counsel submitted that in the case of Ernesta vs Commissioner of Police 2002 SLR 92 the Court stated that: “therefore a delictual action based on Private Civil Law cannot be instituted against the Commissioner of Police in his vicarious capacity as an employer of his subordinate officers. All Police Officers are in the employment of the state and are not employees of the commissioner, who is himself a state employee”.

[8] Learned counsel submitted that it was further stated in the case that:

“on the basis of these authorities, and on a consideration of the provision of the constitution, and also of the Police Force Act of Seychelles, any civil action based on any act or omission of a Police Officer must be instituted against the Government of Seychelles and not the Commissioner of Police”.

Learned counsel referred the Court to the cases of David Dine vs Commissioner of Police (CS13/2015) [2017] SCSC 49 and Antoine Emmanuel Madeleine vs The National Drugs Enforcement Agency (CS25/2016) [2017] SCSC 422 in support of her submission and moved the Court to dismiss this case against the Defendants.

[9] Learned counsel for the Plaintiff did not make any submission on the plea in limine litis.

Submission on the merits.

[10] On the merits learned counsel for the Defendants submitted it is not disputed that the vehicle caught fire and was completely destroyed by the fire. However, learned counsel argued that Article 1382 of the Seychelles Civil Code make provision for personal responsibility for fault and state that:

“every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.

Whereas Article 1384.1 extends the responsibility of the actions of others and states that:

a person is liable of damage that he has caused by his own act but also for the damage caused by the act of a persons for whom he is responsible or by things in his custody.

Article 1384.3 relates to the responsibility of an employer for the actions of employees and states that:

Masters and employers shall be reliable on their part for damage caused by their servants and employees acting within the scopes of their employments.

- [11] Learned counsel submitted that it is the evidence of the 2nd Defendant that he did nothing to prompt the fire, in fact he was not driving when the fire started and it was after parking the vehicle that he noticed smoke coming out of the bonnet. He testified that usually when there is an issue with the vehicle he contacts the person in charge to make arrangements for the vehicle to be taken to garage, but on the particular day of the incident he testified that he picked up the vehicle from the garage and he did not notice anything out of the ordinary before the incident happened.
- [12] Learned counsel submitted that there must be a causal connection between the act and the damage. In this case the vehicle caught fire for unknown reasons and the 2nd Defendant testified that he did nothing to prompt the fire. Exhibit P4 states that ‘*The SFRAS has not been able to determine the exact cause of the fire however, there is a possibility that the fire might have started due to an electrical fault in the wiring system.*’ Mr. Kevin Marie who testified also stated that the electrical system of the vehicle has been tampered with. It is important to note that the Plaintiff was aware of that and he was the one who purchased and give instructions to install the additional surveillance system in the vehicle when he was still in Police Force. The Plaintiff testified to that regard and this was also corroborated by Exhibit D1.
- [13] Learned counsel submitted that in the case of *Grand Jean vs. Seychelles Breweries Limited CS368/1996* the Court stated that:

“altogether sufficiently cogent evidence has been adduced by the Plaintiff to establish the presence of a decomposed lizard, the burden is on the Plaintiff to establish that such foreign body had entered the bottle due to an act, negligence or imprudence on the part of the Defendant company in terms of Article 1383 (1) of the Civil Code.”

Therefore, the fact that the vehicle was in the possession of the 2nd Defendant at the time that the vehicle caught fire does not mean that the 2nd Defendant is liable for the cause of the fire. The Plaintiff has to prove that the vehicle caught fire due to an act, negligence or imprudence on the part of the 2nd Defendant. In this case the Plaintiff has failed to prove so.

[14] Learned counsel further submitted that the Plaintiff's for an amount of SR190,000 which valuation is based on Exhibit P4. The incident report was compiled by a fire and rescue officer who was not brought in as a witness to explain as to how he has arrived to the amount written in this report. Therefore, the Defendants cannot accept this amount as the cost of the loss of the vehicle.

[15] In respect of the Loss of earnings at the rate of SR600 per day from 06th March 2018 continuing until the claim is settled, learned counsel admitted that the Plaintiff had a monthly contract with the 1st Defendant for the renting of vehicles which was renewed on a monthly basis. Therefore, the Plaintiff cannot claim the loss of future earnings from the day of the incident up to the claim being settled as the contract he had with the 1st Defendant was only on a monthly basis and there is no guarantee that the 1st Defendant would have renewed the contract every month as they had no obligation to do so. The Plaintiff and also Mr. Kevin Marie in their evidence both stated that there is an expectation that the contract would be renewed every month because the 1st Defendant had been doing so for years and the fact that their instrument were installed in the vehicle. However, the future cannot be predicted and the fact remains that the contract was for only a month only with no guarantee that it would be renewed. Hence, the Defendants cannot accept the loss of earning claimed.

[16] In respect of moral damage for anxiety, stress and inconvenience, learned counsel submitted that the Plaintiff did not prove how he has suffered from anxiety, stress and

inconvenience. As an owner of a Car Hire, he has a fleet of vehicles that could easily replace the damaged one, thus creating no inconvenience nor anxiety and stress.

[17] Learned counsel for the Defendant did not make a final submission on the merits.

Analysis and finding on the plea in limine litis.

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

“92. 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.”

The Defendants move the Court to strike out this claim on account that the 1st Defendant cannot be held vicariously liable for any acts or omissions of the 2nd Defendant as the 2nd Defendant is an employee of the Government rather than an employee of the 1st Defendant, and that the 1st Defendant is also an employee of the Government and therefore cannot be considered as the employer of the 2nd Defendant.

[19] The Constitution of the Republic of Seychelles provides thus in Articles 159 and 160:

159. (1) There shall be a Police Force of Seychelles.

(2) Subject to this Constitution and any other law, the Police Force shall be organised and administered in such manner as may be provided for by or under an Act.

160. (1) The Police Force shall be commanded by the Commissioner of Police who shall be appointed by the President subject to approval by the National Assembly.

(2) Nothing in this article shall be construed as precluding the assignment to a Ministry or Department of Government of responsibility for the organisation, maintenance and administration of the Police Force, but the

Commissioner of Police shall be responsible for determining the use, and controlling the operations, of the Force in accordance with law.

[20] The Police Force Act provides at section 8 and 9(1) that:

“8. (1) The Commissioner of Police shall, subject to the orders and directions of the President, have the command, superintendence, direction and control of the Force, and may, subject to the provisions of this Act make such appointments, promotions, and reductions in ranks and grades of subordinate officers as he may deem fit.

(2) The Commissioner of Police may subject to any orders and directions of the President, from time to time, make orders for the general government of police officers in relation to their enlistment, ranks, duties, transfer (including expenses in connection therewith), discharge, training, arms and accoutrements, clothing and equipment and places of residence as well as their distribution and inspection and such other orders as he may deem expedient for promoting the efficiency and discipline of such police officers.

(3) Any act or thing which may be done, ordered or performed by the Commissioner of Police may, subject to the orders and directions of the Commissioner of Police, be done, or performed by a Senior officer.”

“9. (1) The administration of the Force throughout Seychelles shall, subject to the orders and directions of the President, be vested in the Commissioner of Police.”

[21] There appears to be a clear delineation of power, control and authority granted to the Commissioner of Police and the ultimate legal liability or responsibility of the police force and the Commissioner of Police which lies upon the President or if the President so decides, assign such responsibility to a Government Ministry or Department.

[22] Several cases have considered the liability or standing of the Commissioner of Police and the issue of vicarious liability of police officers. In the case of *Dine v Commissioner of Police (CS 13/2015) [2017] SCSC 49 (27 January 2017)* McKee J. quoted with approval from the case of *Ernesta v Commissioner of Police (2002)SLR 92:*

[27] “Therefore a delictual action based on Private Civil Law cannot be instituted against the Commissioner of Police in his vicarious capacity as an employer of his subordinate officers. All police officers are in the employment of the State and are not employees of the Commissioner, who is himself a state employee.”

[29] “On the basis of these authorities, and on a consideration of the provisions of the Constitution, and also of the Police Force Act of Seychelles, any civil action based on any act or omission of a police officer must be instituted against the Government of Seychelles and not the Commissioner of Police.”

[23] Considering that this position is now well settled law in this jurisdiction, I am persuaded by the submission of the Defendants on the plea in limine litis that the Government of Seychelles should be the Defendant in this case. Consequently, I find no reason to address the merits of the case.

[24] This Plaintiff is dismissed.

[25] I make no order for cost.

Signed, dated and delivered at Ile du Port on 08 April 2022.

G. Dodin

Judge