SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CS 90/2020

In the matter between:

ANNA JEANNE D'ARC MARIE-THERESE MARZOCCHI **PLAINTIFF**
(rep. by Frank Elizabeth)

and

INTERNATIONAL SCHOOL SEYCHELLES **DEFENDANT**
(rep. by Basil Hoareau)

Neutral Citation: *Anna Marzocchi vs International School* [2022] SCSC …… CS90/2020
Before: Dodin J
Heard: Written Submissions
Delivered: 09 August 2022

RULING

DODIN J

[1] This is a ruling on a plea in limine litis raised by the Defendant as part of its defence to a claim by the Plaintiff for the sum of SCR 900,000, claiming breach of agreement by the Plaintiff.

[2] The Defendant in its amended defence raised the following two points of law:

a) The Plaint ought to be dismissed – in accordance with Section 92 of the Seychelles Code of Civil Procedure – as it is frivolous or vexatious.

b) Further the Plaint 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.

Learned counsel for the Defendant submitted that it is trite law that by virtue of section 4 of the Courts Act, the Supreme Court has all the inherent powers of the High Court of England. Learned counsel referred to paragraph 18/19/7 of the Supreme Court Practice 1979, in respect of Order 18/19 – which is couched in more or less similar terms as our section 92 of the Seychelles Code of Civil Procedure Act. Learned counsel submitted that a plaint which is plainly and obviously untenable, that cannot possibly succeed and bound to fail, or obviously unsustainable, is one which is frivolous or vexatious. In other words a plaint which cannot be sustained by the law is one which is frivolous or vexatious.

[3] Learned counsel submitted that from paragraph 19 and 20 of the Plaint, it is clear that the Plaintiff's alleged cause of action, against the Defendant, is one of unjust enrichment or action *de in rem verso*.Despite, the Plaintiff basing her case on unjust enrichment, yet the plaint contains lengthy averments that there was a contractual relationship between the Plaintiff and Defendant. The Plaintiff has averred that there was a contract between the Plaintiff and Defendant and that the Defendant has breached the said contract.

[4] Learned counsel referred the Court to article 1381 of the Civil Code of Seychelles Act, 1976 – now repealed but which was applicable at the time the plaint was instituted on 22 September 2020. Learned counsel also referred the Court to the case of *Fostel v Ah-Tave [1985] S.L.R* arguing that a party cannot legally based his/her claim on the basis of unjust enrichment if there exist a contractual relationship between the Plaintiff and Defendant, in which case the cause of action ought to be grounded on breach of contract. Consequently, in view of the contract between the Plaintiff and Defendant and the alleged breach of contract – as averred by the Plaintiff at paragraphs 5, 7, 8, 9, 10, 15, 16 and 17 of the Plaint – the Plaintiff, ought to have based her cause of action against the Defendant for breach of contract and not on the basis of unjust enrichment.in accordance with Article 1381 of the Civil Code of Seychelles Act.

[5] Learned counsel submitted that on that basis, the plaint ought to be struck out in accordance with section 92 of the Seychelles Code of Civil Procedure Act, as it is frivolous or vexatious.

[6] Learned counsel submitted further that our law does not contain any express provision which permits the Court to dismiss a plaint on the ground that it is an abuse of process. However, Order 18/19 (d) of the Supreme Court Practice Rules provides rules to that effect. Moreover, paragraph 435 of Halsbury's Law of England – Volume 37 states that in addition to its powers under the Rules of the Supreme Court, the Court has an inherent jurisdiction to strike out pleadings and other documents which are shown to be frivolous vexatious or scandalous, and to strike out or dismiss an action or to strike out a defence which is an abuse of the process of the Court.

[7] Therefore, the High Court in England has the power to strike out pleadings on the basis that it is an abuse of the process of the Court – in accordance with order 19 (1) (d) of the Supreme Court Practice Rules – and to dismiss an action which is an abuse of process under its inherent jurisdiction. By virtue of section 4 of the Courts Act, our Supreme Court enjoys both powers that the High Court of England has, under Order 19 (1) (d) of the Supreme Court Practice Rules and under the inherent jurisdiction of the Court. In the present case in view that the cause of action of unjust enrichment cannot be maintained in law, as the Plaintiff has an alternate remedy in contract, the Plaint is clearly an abuse of process.

[8] Learned counsel submitted that in addition, the Defendant agreed to the Court taking judicial notice and examining all the files, of all the previous plaints instituted by the Plaintiff against the Defendant in respect of the same subject matter, as the present Plaint. This is the fifth plaint instituted by the Plaintiff against the Defendant, in respect of the same subject matter as the present suit, namely the tuck-shop owned by the Defendant and which is situated at the school belonging to the Defendant. The first of such suits was instituted on 17 June 2016, namely suit CS16/2016. The suit was dismissed on 21 September 2016, due to non-appearance of Counsel of the Plaintiff. The institution of the fifth plaint, filed more than four (4) years after the first plaint was dismissed and at a time when the fourth plaint was still pending before the Supreme Court, is clearly an abuse of process of the Court and as such the Court ought to dismiss the plaint.

[9] Learned counsel for the Defendant concluded that this Court ought to dismiss the suit on the basis of the plea in limine litis raised by the Defendant.

[10] Learned counsel for the Plaintiff submitted that the Defendant's plea is misconceived in law and the Court should dismiss the same outright. Learned counsel for the Plaintiff referred the Court to articles 90, 91 and 92 of the Seychelles Code of Civil Procedure arguing that as per section 90, the general rule is that any party can raise a point of law and any point of law so raised shall be dealt with at trial. If the party who raises the point of law wants the Court to deal with it before trial, contrary to the general rule, then that party must first make an application for the point of law to be dealt with before the trial. When such an application is made, the Court can only deal with it before trial only if the parties consent to it being dealt with before trial or by order of the Court.

[11] The Court will only make the order for the plea in limine to be dealt with before trial, only if the party raising the plea is able to satisfy the Court of the grounds contained in article 91, namely that, "…such point of law substantially disposes of the whole cause of action, ground of defence, set off or counterclaim,…" The Plaintiff submits that it was therefore incumbent on the Defendant to file an application under section 90 for the Court to hear the plea in limine litis before the trial; something which the Defendant failed to do, since there was no consent of the parties that the plea in limine litis be dealt with before the trial.

[12] Learned counsel for the Plaintiff further submitted that on that basis alone; that is, the failure of the Defendant to make and file a specific application seeking an order of the Court for the plea in limine litis to be taken up before trial, it is sufficient for the Court to dismiss the Defendant's plea. Furthermore, the Plaintiff submitted that according to article 91, the Court can only grant an application for the plea in limine litis to be heard before the trial only if the Court is satisfied that "…in the opinion of the Court the decision of such point of law substantially disposes of the whole cause of action, ground of defence, set off or counterclaim."

[13] Learned counsel further submitted that since the Defendant is relying on previous

proceedings and judgments to support its case, it is necessary for the Court to fix the matter for hearing on its merits so that these evidence can be properly adduced. Learned counsel referred that Court to the case of *Gomme and Another v Maurel and Another (19 of 2004) (19 of 2004) [2006] SCCA 15 (28 November 2006*). Learned counsel submitted that there is a need for the parties to adduce evidence at the hearing proper to dispose of the case in its entirety rather than at this stage of the proceedings as the facts and the law are so intertwined that the Court would find impossible to dispose of the case on the point of law alone at this early stage of the proceedings. Learned counsel also referred the Court to the case of *Ah-Kong v Sangalia Pty Ltd & Ors (CS 36/2019) [2020] SCSC 289* (22 May 2020).

[14] Learned counsel submitted that in the event that the Court disagrees with the Plaintiff's arguments as enunciated above, then on the merits, the Plaintiff submits that the Defendant' points of law are misconceived and without merit in law and should be dismissed accordingly. Learned counsel submitted that the claim of the Defendant, that the Plaintiff's action is frivolous and vexatious, merits an in depth investigation at the hearing and cannot be decided at this preliminary stage. On the face of the pleadings, the Plaintiff has a genuine and real grievance against the Defendant for unjust enrichment.

[15] Learned counsel then made a tour of the definition of frivolous and vexatious, referring to various Court's judgments and dictionary definitions, concluding that the Plaintiff 's action is a far cry from the definition of the words, frivolous and vexatious. The Plaintiff's claim has substance, merit and weight and is not merely paltry, trifling, trumpery or lacking seriousness. The Plaintiff's case shows that it has more than a reasonable chance of success; it being grounded and anchored in an action for breach of contract by the Defendant. On the issue of vexatious the Plaintiff's action is not seeking merely to annoy the Defendant; forcing the Defendant to defend something that would not succeed. Learned counsel submitted that the plea in limine litis, as filed by the Defendant, in order to stop the Plaintiff's action dead in its track, should therefore fail. Learned counsel also referred the Court to the case of *Figaro and*

Another v Nanon [1986] SLR 117 where Seaton CJ stated; *"Unless it is prima facie clear that the plaintiffs have no cause of action, a Court should be cautious in exercising its discretion to dismiss a plaint in limine litis."*

[16] Learned counsel then submitted on the issue of abuse of process referring the Court to several cases dealing with abuse of process and res judicata concluding that the Court should not embark on an exercise where it sets clearly delineated boundaries as to what would amount to an abuse of process as there is a real and genuine danger that the exercise would shut out genuine instigation of litigation by one party or the other and that the Court should not attempt to define or categorise fully what may amount to an abuse of process and that the doctrine should not be "circumscribed by unnecessarily restrictive rules" inasmuch as the purpose was to prevent abuse by not endangering the maintenance of genuine claims.

[17] Learned counsel submitted that the Plaintiff has not embarked on a multitude or successive suits against the Defendant in order to oppress the Defendant by successive suits. The Defendant is the master of its own demise and the parties are here today, at this point, through no fault of the Plaintiff, but that of the Defendant, who has sought and obtained, the dismissal of the Plaintiff's case, merely on the basis that the Plaintiff was 5 minutes late in attending to her case at the time it was called by the Court. The plea of abuse of process therefore, should be placed squarely at the door of the Defendant.

[18] Learned counsel further submitted that the Plaintiff is not seeking to embark on a "re-litigation of a case which has already been decided upon as the Plaintiff's case has not been heard at all.

[19] Learned counsel concluded by urging the Court to find that the facts and the law in this case is so intertwined that the Court would need to hear evidence and give a

final decision on the point of law and the merits of the case after a proper hearing and investigation of all the facts and evidence. In the alternative that the Court rule that the plea in limine litis as raised by the Defendant has no merit and to dismiss the same with costs and fixed the case for hearing on its merits.

[20] Articles 90, 91 and 92 of the Seychelles Code of Civil Procedure are the most relevant provisions governing plea in limine litis.

> *"90. Points of law*
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> *Any party shall be entitled to raise by his pleadings any point of law; and any point so raised shall be disposed of at the trial, provided that by consent of the parties, or by order of the court, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.*
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> *91. Decision on point of law only*
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> *If in the opinion of the court the decision of such point of law substantially disposes of the whole cause of action, ground of defence, set off or counterclaim, the court may thereupon dismiss the action, or make such other order therein as may be just.*
>
> *92. Striking out pleadings*
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> *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."*

[21] The parties in any proceedings may raise points of law and may agree on whether those points should be heard prior to the trial or at the trial, but in the event that they do not agree it is up to the Court to determine when the Court should determine the points of law so raised as part of the Court's management of the proceedings.

[22] The points of law raised by the Defendant are in reference to article 92 of the Seychelles Code of Civil Procedure (SCCP) and also asking the Court to exercise its inherent powers

of the Court. Both points however raise the same issue which is that the Plaint is frivolous, vexatious or an abuse of the Court's process.

[23] Learned counsel for the Plaintiff raised an objection to the plea in limine, namely that since there is no agreement between the parties to hear and determine the plea separate from the trial and the Court had made no order to that effect, the plea in limine can only be determined by the Court after hearing evidence and after the hearing. A cursory reading of article 90 of the SCCP indeed indicate that learned counsel has correctly stated the procedures to be followed by the parties and the Court. However, it is important that inherent powers of the Court to manage proceedings should be vectored in this process. In other words, the process set out in article 90 is not cast in stone. The Court has ample discretion to determine and manage the procedures to be followed in each case so long as such do not cause an injustice to either party and is not specifically prohibited by law. The Court need not make a separate order to hear the plea in limine litis before trial. The fact that the Court did set a date for hearing the plea before trial leaves no doubt that such was the decision of the Court.

[24] In any event, the Plaintiff should have objected to the hearing being held prior to trial before or at the time the Court was setting the date for the hearing of the plea in limine litis and not in its final submission on the issue. This ground of contention is therefore not only late but is unsustainable.

[25] The remaining issue is now whether the Plaint is frivolous or vexatious or an abuse of the court's process. As per the Free Encyclopaedia Wikipedia;

> *"Frivolous" and "vexatious" generally mean different things, however both are typically grouped together as they relate to the same basic concept of a claim or complaint (or a series of many) not being brought in good faith:*
>
> *A "frivolous" claim or complaint is one that has no serious purpose or value. Often a frivolous claim is one about a matter that is so trivial, meritless on its face, or without substance that investigation would be*

> *disproportionate in terms of time and cost. The implication is that the claim has not been brought in good faith because it clearly has no reasonable prospect of success and/or is not significant enough to warrant its mention.*
>
> *A "vexatious" claim or complaint is one being pressed specifically to cause harassment, annoyance, frustration, worry, or even bring financial cost (such as the engagement of a defence lawyer) to their defendant or respondent."*

In the case of *Keaveney v. Geraghty [1965] I.R. 551* the plaintiff's libel proceedings were stayed on the grounds that they were amongst others frivolous, vexatious, and an abuse of the process of the Court and the plaintiff was declared a vexatious litigant.

[26] Learned counsel for the Plaintiff and the Defendant have both gone to great length to provide this Court with supporting literatures and authorities to persuade this Court in favour of their respective case. I am grateful and it shows that the concept is very much understood in this jurisdiction. Having considered the submissions, they both come down to this: a case is frivolous if it has no reasonable chance of succeeding and is vexatious if it would bring hardship on the opposite party to defend against an unnecessary and inevitably unsuccessful claim and if the claim has no chance of success, it is an abuse of the process of the Court.

[27] The current case has been in and out of the Court apparently since 2016 and for one reason or another not currently brought to the attention of this Court, has had to be refiled on each occasion. This tends to support the Plaintiff's contention that evidence need to be heard before determining whether there is an abuse of the process of the Court. On the other hand, the current Plaint seems to be claiming breach of contract but also pleading unjust enrichment. It appears that the sum of SCR 900,000 being claimed was paid to a person not a party to this claim and that there was an agreement between the Plaintiff and the Defendant in respect of the running of the tuck-shop. These also tend towards showing that there is a reasonably serious issue to be tried. The Court should always

exercise extreme caution when determining whether a case should be dismissed on a preliminary point of law.

[28] The Plaintiff could have brought a claim for unjust enrichment under article 1381-1 of the Civil Code of Seychelles, as long as she could not have pursued another action in contract, or quasi-contract, delict or *quasi-delict* and provided that detriment has not been caused by her own fault. If the Plaintiff brings a claim in contract then it follows that she cannot simultaneously in the same pleadings claim unjust enrichment. This is a matter that learned counsel for the Plaintiff must attend to, otherwise it might be fatal to the Plaintiff's claim. It is also a matter that is best left to be determined when considering the merits of the case.

[29] Having considered the submissions of the parties and viewed the pleadings, I am satisfied that despite the deficient pleadings, the Plaintiff has raised a sufficiently serious issue to be tried. Consequently, I shall not at this stage declare the matter to be frivolous or vexatious or an abuse of the process of the Court. This however does not preclude the Defendant from raising the matter anew after having heard the evidence adduced. The plea in limine litis therefore fails.

[30] Cost shall follow the event.

Signed, dated and delivered at Ile du Port on 09th August 2022

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G. Dodin J