

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 235

CS18/2022

In the matter between:

CHARLES BOUCHEREAU
(Represented by Mr. Joel Camille)

Appellant

And

HEATHER LONGHURST
(Represented by Mr. Daniel Cesar)

Respondent

Neutral Citation: *Bouchereau v Longhurst* (CS18/2022) [2023] SCSC 235 (31 March 2023)

Before: Adeline, j

Summary: Appeal from the Magistrates' Court to the Supreme Court against judgment on quantum of damages.

Heard: By submission

Delivered: 31 March 2023

RULING

Adeline J

BACKGROUND FACTS

- [1] The Appellant, who was the Plaintiff in the Court at first instance, had sued the Respondent who was the Defendant then, for loss and damages in the total sum of SCR 189, 563.00 plus interest and costs in delict following a road traffic accident that occurred on the 5th January 2019.
- [2] The Respondent (Defendant then) who had in her pleadings denied liability for the accident did admit liability in the course of the proceedings. Therefore, the Court had to make a determination on quantum only.

- [3] In a judgment delivered on the 11th July 2022, the Court awarded the Plaintiff the total sum of SCR 40, 530.00. The Appellant now appeals against this judgment which appeal was triggered by the Appellant filing a notice of appeal on the 18th August 2022, and the memorandum of appeal on the 22nd February 2023.

GROUND OF APPEAL

- [4] The grounds of appeal in the memorandum of appeal are stated to be the following;

“Ground 1

The learned Magistrate erred in law and on the facts for having failed to accept the Appellant’s evidence pertaining to his claim for cost of spare parts damaged, this in the face of evidence tendered by the Appellant in support of the same claim before the court.

Ground 2

The Learned Magistrates erred in law and on the facts for having awarded the sum of SCR 15, 000 as moral damages, this in the face of the evidence tendered by the Appellant in support of the same claim before the Court.”

- [5] In her memorandum of appeal, “the Appellant prays the honourable Court to be pleased to reverse the finding of the learned Magistrate, and award the Appellant the cost of spare parts in the sum of SCR 87, 533 and reverse the award for moral damages to the sum of SCR 50, 000.00.”
- [6] It is noted, that the Respondent has not filed any written answer to the memorandum of appeal but has raised a *plea in limine litis* in his submission, as well as submitted on the grounds raised by the Appellant in the memorandum of appeal.
- [7] By not filing any written answer, the Respondent has not fallen foul of the rule given that under Rule 19 of the Appeal Rules, there is no obligation for her to do so. Rule 19 reads;

“19. the Respondent is not required to file answer to the memorandum but he may, at any time before the hearing, file written answer with a copy thereof for each separate appellant, and the Registrar shall send the copies to the appellants”.

- [8] The parties to the appeal opted to make written submission rather than seeking to be heard at a hearing in accordance with Rule 20 of the Rules.

SUBMISSION BY THE RESPONDENT

- [9] In his written submission, there is a *“plea in limine litis”* raised by learned Counsel for the Respondent moving that the appeal be dismissed for the reason that the notice of appeal was filed outside the prescribed time limit of 14 days as was the memorandum of appeal that was also filed outside the limitation period of 14 days in violation of the Appeal Rules, and the Appellant had not seek for an extension of time to file appeal out of time.

- [10] In view that the point of law raised will dispose of the appeal altogether without the need to consider the grounds of appeal on their merits and to make a determination, I will now proceed to establish whether or not the *“plea in limine litis”* is sustainable and should succeed.

- [11] Rule 6(1) of the Appeal Rules made under the Courts Act, Cap 52, governing Civil appeals from the Magistrates’ Court reads;

“6(1) Every appeal shall be commenced by a notice of appeal

(2) The notice of appeal shall be delivered to the clerk of the Court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorises the appeal”.

- [12] As regards to this case, there is no other period expressly provided by law authorising the appeal. Therefore, the notice of appeal should have been filed within 14 days from the date of the judgment being appealed against. The record pertaining to the case shows, that the judgment of the Magistrates’ Court was delivered on the 11th July 2022, and the notice of appeal was filed on the 18th August 2022. Clearly, therefore, the Appellant was out of time when the notice of appeal was filed in Court.

[13] The question that follows is, did the Appellant applied and obtained from the Supreme Court an extension of the prescribed time limit of 14 days to file notice of appeal under Rule 5 of the Rules? The answer to the question is “no” because there is no record that the Appellant did apply for an extension of time to file notice of appeal pursuant to Rule 5 of the Rules. Rule 5 is couched in the following terms.

“5 Any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient”.

[14] Another “*plea in limine litis*” raised by the Respondent, is that the memorandum of appeal was filed on the 21st February 2023, more than 7 months after the judgment was delivered and that was a breach of the appeal rules. The record shows, that the memorandum of appeal was not filed in Court on the 21st February 2023, but on the 22nd February 2023, still more than 7 months after the judgment was delivered. At this juncture, it is appropriate to spell out the rule as regards to the filing of memorandum of appeal. Rule 11 of the Appeal Rules reads;

“11. If the Appellant wishes to proceed with the appeal he shall, within fourteen days from the date of the service of the copy of the record referred to in the preceding rule, deliver to the clerk of the Court a memorandum of appeal”

[15] Interestingly, both, Section 6(1) and (2) in respect of notice of appeal, and Section 11 in respect of memorandum of appeal impose an obligation on the Appellant to do certain things within the prescribed period of 14 days, by using the word “shall” in the Rules.

DISCUSSION AND CONCLUSION

[16] With regard to the *plea in limine litis* that the notice of appeal was filed out of time, Section 6(1) of the Appeal Rules made under the Courts Act, provides for appeals as of right from the decrees, orders or judgments of a Magistrate Court in exercise of its original jurisdiction to the Supreme Court. According to Rule 6(1) of the Appeal Rules, every appeal should be filed” within 14 days from the date of the decision appealed against unless some other period is expressly provided by the law which authorises the appeal.

[17] It can be said, that these time specifications are aimed of avoiding unnecessary delays and designed to dictate a time schedule within which certain steps ought to be taken. As such, as was held in *Lagesse v CIE Ltd v Commissioner of Income Tax* 1991 MR46, in which case the case of *Dependants Pursun v Vacoas Transport Co ltd* 1969 MR148 and *Espitalier – Noel Ltd v Svriet* 198 were cited, for any delay to be excused, it must be shown that the “non- compliance was not due to the Appellant’s fault or that of his legal advisors”.

[18] The notice of appeal was filed in Court on the 18th August 2022 which notice of appeal should have been filed the latest 29th July 2022 given that the judgment was delivered on the 11th July 2022.

[19] Clearly, as per the record pertaining to the case, the Appellant did not apply to the Appellate Court for an extension of time to file notice of appeal out of time.

[20] Given that the resolution of this *plea in limine litis* effectively disposes of the appeal, I will not delve in the grounds of appeal as featured in the memorandum of appeal.

In the circumstances, I find this appeal to be incompetent, and accordingly, the appeal is hereby dismissed.

Signed, dated and delivered at Ile du Port on the 31st March 2023.

