

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 686
CS 84/2022

In the matter between:

NICHOL FANCHETTE
(rep. by Basil Hoareau)

Plaintiff

and

THE ATTORNEY GENERAL
(rep. by Brandon Francois)

Defendant

Neutral Citation: *Fanchette v AG* (CS 84/2022) [2023] SCSC 686 (15 September 2023)
Before: Burhan J
Summary: *Pleas in limine litis* – Plaintiff wrongly being brought in Delict – No cause of action as the Plaintiff agreed to reclassification of his post.
Heard: 28 June 2023
Delivered: 15 September 2023

ORDER

Pleas in limine litis dismissed with costs

RULING

BURHAN J

- [1] The Plaintiff filed a Plaintiff against the Defendant seeking the following reliefs:
- a) *Order the Defendant to pay damages to the Plaintiff in the sum of SR611,442.77, and damages representing the loss of SR10,855 per month for the period of July 2022 until the date of the judgment, with interest at the legal rate of 4%;*

- b) *Order the Defendant to pay the Plaintiff a monthly salary in the sum of SR41,873 from the date of judgment;*
- c) *Order the Defendant to pay costs to the Plaintiff; and*
- d) *Make any other order for the benefit of the Plaintiff as may be just and necessary in the circumstance of the case.*

[2] The Defendant in reply filed a defence taking up two preliminary objections to the Plaintiff namely that:

- a. *The Defendant's position is that the Plaintiff has wrongly been brought in delict and should, as a result, be dismissed on a point of law under section 90 of the Seychelles Civil Code of Procedure ('the SCCP').*
- b. *The Plaintiff discloses no reasonable cause of action under section 92 of the SCCP. For the reasons set out in this Defence, the Plaintiff agreed to the reclassification of his post and to the new terms and conditions in respect of that post.*

[3] The Defendant in submissions dated 4th April 2023, withdrew preliminary objection (a) referred to in paragraph [2] herein. However, the Defendant maintained the aforementioned preliminary objection (b) on the basis that the Plaintiff continued in his employment with the Defendant (therefore assuming duty in the reclassified post) and proceeded to sign the letter on 16 October 2019, thus demonstrating that he accepted and agreed to the proposed reclassification of his post and the variation of his terms and conditions of employment.

[4] It is the Plaintiff's contention that the variation in the terms of and conditions of his employment was illegal and unlawful and unilateral in nature. At present all these facts exist as averments in the pleadings which have to be proved by the parties. On perusal of the Plaintiff, I observe that it is averred at paragraph [11] by the Plaintiff that the Government of Seychelles unilaterally and illegally reduced his monthly remuneration which amounts to a *faute*. There is no mention or admission by the Plaintiff that he signed any agreement or agreed to such conditions being varied. It is clear to this Court that there is a dispute in the facts averred by both parties.

[5] It is clear in this instant case that the Defendant is relying on a letter dated 1st July 2019 as having been signed by the Defendant to have the preliminary objection upheld. In *Kasi Trading v United Africa Feeder Line (UAFL) & Ors* (SCA 30 of 2021) [2023] SCCA 18

(26 April 2023) a case relied on by learned Counsel for the Plaintiff, in setting aside the Supreme Court Order that upheld the *plea in limine litis* that the action was prescribed, Andre JA held:

“On a closer reading of the learned Judge’s decision he relied on email exchanges that were not in evidence. A reliance on the emails brings us to the principle that a case cannot be dismissed ex facie the pleadings if the court seeks to rely on a document that is referred to in the pleadings but not yet admitted into evidence (see Gem Management Ltd v Firefox Ltd and 21 others (Mauritius) [2022] UKPC 17)”

- [6] The said letter dated 1st July 2019 is not before this Court. It has not yet been admitted as evidence. Therefore, the case cannot be dismissed *ex facie* the pleadings, as the *plea in limine litis* is based on the said document, which has not yet been admitted as evidence.
- [7] Accordingly, the Application to dismiss the Plaint based on preliminary objection (a) is dismissed as the objection was withdrawn by the Defendant. The Application to dismiss the Plaint based on preliminary objection (b) at this stage of proceedings is dismissed with costs.

Signed, dated and delivered at Ile du Port on 15 September 2023.



M Burhan J