

SUPREME COURT OF SEYCHELLES

Reportable

[2024]
MA 302 of 2023
Arising in CS 121/2021

In the matter between:

JERRIS JOLICOEUR
(rep. by Olivier Chang-Leng)

Petitioner

and

RICKYL LEON
(rep. by S. Rajaundaram)

Respondents

HSAVY INUSRANCE COMPANY LIMITED
(rep. by S. Rajaundaram)

Neutral Citation: *Jolicoeur v Leon and H Savy Insurance Company Limited* (MA302/2023 Arising in CS 121/2021) [2024] (14 February 2024).

Before: Pillay J
Summary: Amendment of Complaint
Heard: 20th October 2023
Delivered: 14th February 2024

ORDER

- [1] The Motion to Amend the Complaint is granted.
 - [2] Costs awarded to the Defendant.
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RULING

PILLAY J:

- [1] The Petitioner by his motion with supporting affidavit both dated 22nd August 2023 seeks to amend his Complaint under section 146 of the Seychelles Code of Civil Procedure.

- [2] The reasons for his request to amend the Plaintiff is that “due to the length of time that has transpired since the Plaintiff was filed, and in view that the vehicle remains severely damaged, unrepaired and unusable, I sold the vehicle in its current state to a third party for the sum of SCR 40, 000/-”.
- [3] The Respondents objected to the motion for amendment of the Plaintiff on the basis that the Petitioner “has not divulged the date of the sale of the vehicle” and “has wantonly suppressed the fact as to the date of the sale of the vehicle” which is “a material issue in respect of and for the purpose of this Notice of Motion”. The Respondent asserts that the Motion is an abuse of the process of the Court which should be restrained and not condoned. He further contends that the change is “substantial in nature namely, the difference in claim in amount does alter the nature of suit in terms of jurisdiction of court”.
- [4] The matter was heard on 20th October 2023. However, the recording system failed and upon being informed counsels opted to file submissions to expand on the notes that the Court had taken. However, only counsel for the Petitioner provided the Court with his typed up submissions on which I relied for this ruling as well as the notes I had taken on the day of the hearing of the motion.
- [5] The Petitioner relies on the cases of *Casamar v Aristotle SSC 341/1996, 25 July 2002* in support of his Motion. He submits that since he has sold the vehicle he cannot claim the cost of repair as the vehicle is no longer his but has to amend the pleadings in order to claim the loss of value of the vehicle in lieu.
- [6] He submits that his proposed amendments satisfy the criteria espoused in the case of *Helene Lesperance & Ors v Maria Elizabeth [2020] SCSC 262* in that the application has been brought in good faith; the amendments do not cause prejudice to the Respondents; it is necessary to determine the real questions in controversy between the parties; and the nature of the suit has not been altered in that it is still on the basis of fault and breach of contract and has only changed the cost of the repair of the vehicle to the loss of value.
- [7] Learned counsel for the Petitioner further submits that the issue of the date the vehicle was sold is a matter of evidence and does not result in the motion lacking merit. In terms of the

issue of the amendment causing the claim to fall below the threshold and being within the jurisdiction of the Magistrates Court, Learned counsel submits that the argument is misguided because the Supreme Court is one of unlimited original jurisdiction and there is nothing in law precluding the Supreme Court from hearing cases below the SCR 350, 000 threshold. He relies on the case of *Marcel Santache v HFC (CS151/2018) [2020] SCSC 262* in support of his argument. He prays for the Court to allow his motion.

- [8] Learned counsel for the Respondent did not file submissions but had argued on 20th October 2023 that the sale of the vehicle is pertinent as had the Respondent been informed of such sale it could have valued the vehicle. He had further stated that section 146 of the Seychelles Code of Civil Procedure is not so liberally applied. The sale of the vehicle is the act giving rise to the amendment and as a result it is changing the value it changes the nature of the action.
- [9] This Court in the case of *Marcel Santache v HFC* considered the issue of the jurisdiction of the Magistrate’s Court and concluded that “the amendment [to section 24 of the Courts Act by Act 28 of 2010] simply was to the “Limit of Jurisdiction’ of the Magistrates Court. It does not exclude the Supreme Court from hearing cases involving matters below SCR 350,000 so much as it grants the Magistrates Court extended jurisdiction.”
- [10] No arguments have been made to sway this Court to come to any other conclusions on this issue.
- [11] As regards the Motion to Amend per se, amendments are governed by section 146 of the Seychelles Code of Civil Procedure.
- [12] The procedure for amendment of pleadings is set out in **section 146 of the Seychelles Code of Civil Procedure** as follows:

“The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

- [13] The principles regarding amendment of plaint are further set out and elaborated in the case of *Petit Car Hire versus Mandelson (1977) No.20* as well as *Morin v Pool (2002) SLR 144* in that no amendment of a plaint which seeks to convert a suit of one character into a suit of another and substantially different character should be allowed.
- [14] I also find the case of *Casamar v Aristotle SSC341/1996, 25 July 2002*, as reported in the Seychelles Digest, of relevance, in that “an amendment to the pleadings will be granted unless there are exceptional reasons why it should not be granted. An amendment will be refused if it is sought in bad faith, alters the nature of the suit, changes the cause of action, or causes prejudice or injustice to the other party that could not be compensated by costs.”
- [15] In the case of *Yakub v Red Cross Society of Seychelles (MA 100/2022 and MA 153/2022 (Arising in MC 05/2022 & ET 14/2021)) [2022] SCSC 1114 (14 December 2022)* Dodin J opined that “Two things that are clear in section 146 is that all pleadings may be amended at any time before judgment with leave of the Court “as necessary for the purpose of determining the real question of controversy between the parties” but the proviso provides that “a plaint shall not be amended so as to convert a suit of one character into a suit of another and substantially different character.”
- [16] In the case of *Multichoice Africa Ltd v Intelvision Network Ltd & Ors (SCA 45 of 2017) [2019] SCCA 1 (8 April 2019)* the Court of Appeal was guided by the case of :

Petit Car Hire v Mandelson [1977] SLR 68, 72-73, in which Sauzier J stated that an amendment to a plaint before the close of one’s case should not be refused (1) if sought in good faith, (2) would not cause prejudice to the other party, (3) would not be compensated by costs and (4) did not alter the nature of the suit. He added that apart from the specific prohibition in the proviso to section 146, the provision was couched in very wide terms and must be given a liberal meaning.

The Court was of the view that “the decision in *Petit* which seems to have withstood the test of time is the correct statement of the law applicable with regard to amendments of pleadings.”

[17] In the case of *Gill & Ors v Film Ansalt (SCA 28 of 2009) [2013] SCCA 11 (3 May 2013)* the Court held that “*The court becomes a vehicle of unjust outcomes in the hands of those who advertently or inadvertently abuse the justice system. Organized society in a democratic set-up needs a minimum of discipline which, for all the rights and liberties guaranteed, goes to secure the rule of law on sure foundations. Abuse of process was developed by the courts to protect the judicial process from abuse and misuse. Courts have a duty to intervene to put a stop to such misuse of legal and judicial process: see Bradford & Bingley Building Society v Seddon [1999] 1 WLR 1482; House of Spring Gardens v Waite [1990] 2 All ER 990; and In Re Norris [2001] 1 WLR 1388; Gomme v Morel SCR 06/2010. There was a duty on the Judge to look beyond.*”

[18] In the case of *Lotus Holding Company Ltd v Seychelles International Business Authority (121 of 2010) [2010] SCSC 19 (29 July 2010)*; the Court noted the words of Lord Phillips of Worth Matravers M.R., in *Dow Jones and Co Inc v Jameel [2005] EWCA Civ. 75 at paragraph 54,*

‘An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirement of justice.’

[19] True it is that the Plaintiff sought leave to amend his Complaint on the day the case was meant to be heard. However, I do not believe that his lateness in seeking such order rises to the threshold of being an abuse of process of the Court though not to be condoned.

[20] In the circumstances the Motion to Amend the Complaint is granted.

[21] Costs awarded to the Defendant.

Signed, dated and delivered at Ile du Port on14th February 2024

Pillay J

