

## ISAAC v QUILINDO

(2011) SLR 112

B Hoareau for the appellant

F Bonte for the respondent

**Judgment delivered on 29 April 2011**

**Before MacGregor P, Hodoul, Fernando JJ**

In this appeal, Macdonald Isaac disputes the finding of Perera CJ in an action (CS No122/05) based on unjust enrichment. The Chief Justice awarded Andre Quilindo the sum of R478,000, with interest and costs. The appellant is aggrieved and has appealed to this Court on the following grounds:

1. The trial Judge erred in law in applying the principle of unjust enrichment as the enrichment had a cause, in that the construction effected, was a gift by the respondent to Mr Victor Quilindo.
2. The trial Judge erred in law in applying the principle of unjust enrichment as the construction was effected by the respondent voluntarily, for his own eventual benefit.
3. The trial Judge erred in law in applying the principle of unjust enrichment as the principle was not applicable in the circumstances of the case, since the case was one based on breach of contract rather than unjust enrichment as disclosed by the plaint filed by the respondent.

Unjust enrichment is available as a cause of action only if the alleged impoverished party - the respondent in this case - has no other cause of action. It is provided for in article 1381-1 CCS which reads:

If a person suffers some detriment without lawful cause and another is correspondingly enriched without lawful cause, the former shall be able to recover what is due to him to the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict. Provided also that the detriment has not been caused by the fault of the person suffering it.

We consider it advisable and useful to set out the pertinent and coherent account emanating essentially from the pleadings:

- The plaintiff avers that prior to his death, one Victor Quilindo, the deceased gave him full consent and authority to construct a two bedroom house on Parcel C1131, construct a retaining wall and an access road to the house. In consideration for the said constructions the deceased agreed that in his last will and testament dated 24 January 1992, the late Victor Quilindo bequeathed and devised all his said movable and immovable properties whatsoever to the plaintiff. The plaintiff was also appointed executor in the said will and testament.

- Andre Quilindo alleges that in breach of the agreement mentioned above, the deceased made another will and testament dated 11 March 2004, in which he left all his movable and immovable properties in Seychelles, including land Parcels C1131 and C547 at Dame le Roi and the house thereon and furniture therein and all monies and any other property that he may died possessed of to the defendant and further he revoked all previous wills.
- After the death of the said Victor Quilindo, the defendant made all necessary procedures to register the will dated 11 March 2004 mentioned above and have the properties, ie C1131 and C547 in his name.
- According to the plaintiff, the first defendant would be unjustly enriched in the sum of R468,000 unless he paid the plaintiff the sum of R468,000 which sum he has "invested" in the property of the deceased, in reliance on the agreement referred to above.
- According to the plaintiff, the executor of the estate of the deceased should repay him the said sum before the property is vested in Macdonald Isaac.
- To prevent any dissipation of the property, an order of inhibition preventing the sale and/or disposal of the property should be made.

Also –

The plaintiff avers that the first defendant would be unjustly enriched should he fail, refuse, or neglect to pay him the sum of R 468,000, which sum he has spent on the deceased's property as averred in paragraph 3 above and in reliance on the agreement referred to above.

The cause of action as disclosed in the plaint is not rooted in unjust enrichment as averred by Andre Quilindo but one based on breach of contract. So we find.

In his judgment, at page 85 of the record, the Chief Justice finds:

The plaintiff has based his cause of action on unjust enrichment as provided in article 1381-1 of the Civil Code, ... Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that the detriment has not been caused by the fault of the person suffering it.

This finding of the CJ is erroneous for at least two reasons.

First, the impoverishment suffered must be "without lawful cause"; secondly, the impoverished person must have no action other than an action *de in rem verso* available. In the instant case, the alleged enrichment had a legal cause, namely, it was intended to be a gift to Victor Quilindo, to improve his living conditions. The legal position does not change despite the fact that Macdonald Isaac may have expected to be the ultimate owner of the property by virtue of the second last will and testament.

**Breach of contract:** The above notwithstanding, the cause of action which we find to be the most obvious and glaring is rooted in contract or breach of contract. However, according to the Chief Justice, the plaintiff has based his action on unjust enrichment, which constitutes an error. (See paragraph [5] above).

Following the death of Victor Quilindo, the status of the appellant is that of a sole heir of the deceased and this, by virtue of the last will and testament dated 11 March 2004, and of an Acknowledgement of Child dated 11 March 2004.

**Enrichment had a cause:** It is trite law that for an action in unjust enrichment to be successful, the enrichment must be "without a lawful cause" and provided that the action shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract ... provided also that the detriment has not been caused by the fault of the person suffering it. In this case, the enrichment had a lawful cause in that the house was a gift from the respondent to Victor Quilindo. Hence, as the house was a gift to Victor Quilindo, the enrichment of Mr Victor Quilindo has a lawful cause and the appellant having inherited the two bedroom house from Victor in terms of article 711 read with article 1003 SCC, the respondent cannot have a claim of unjust enrichment against the appellant.

The following citation from *Code Civil Dalloz*, 102e edition, is apt and pertinent: "*N'est pas sans cause l'enrichissement qui a son origine dans l'undes modes legaux d'acquisition des droits. Civ.lre, 10 mai 1984: Bull. Civ. 1,no.153.*" Hence, enrichment which results from property bequeathed by will or testament is not without cause.

By reason of the above, we allow the appeal and reverse all decisions of the Chief Justice in respect of the claims against the appellant in CS No122/05. We award costs below and in this Court to the appellant.

Before we conclude, we wish to express our very deep concern as regards the circumstances of the death of Victor Quilindo. In his judgment, Perera CJ wrote:

On 4 May 2004, he (Macdonald Isaac), saw a white pickup belonging to the Special Support Unit (SSU) when the plaintiff's workers came to that land and removed some building materials. Victor was found murdered in that house on 24 May 2004. He was arrested the following day as a suspect and remanded for 3 days, and released. Again he was arrested for robbery, but was released after 3 days.

The witness stated that he went to live with his father in February 2004. On March 2004, he was legally acknowledged as his child before Notary B Georges. On the same day, the second last will was executed before a different Notary M Vidot. He was murdered two months later. The post-mortem report (P6) certifies that death was caused due to a head injury. There were also fractures of the 2nd, 3rd and 4th ribs of the right side. Victor Quilindo was 84 years old at that time of his death. It was submitted by counsel that this murder remains a mystery until today.

Although on the basis of the oral and documentary evidence, the execution of an acknowledgement of child before one notary, and the execution of a last will before another notary on the same day by an 84 year old person, in favour of a person who had come to live with him only one month before the

execution of those documents leaves room for doubts as to their authenticity, yet this Court cannot make any pronouncement on that matter, ...

In CS No 122/05, Andre Quilindo claimed in unjust enrichment, *inter alia*, the sum of R478,000 with interest and costs from the succession of Victor Quilindo. The deceased did leave a succession comprised essentially of immovable property. However, the most treasured and valuable property which was taken from him is the gift of life; the first right is the right protected in our Constitution: "Everyone has a right to life and no one shall be deprived of life intentionally." The Chief Justice and the advocate for the respondent did show some concern:

Court: Was there a case for the murder case?

Mr Bonte: No, this is a mystery and it is a mystery that I am dealing through.

Court: It is a post-mortem report

Mr Hoareau: How do we know that it was signed by a doctor?

Mr Bonte: It is an official document my lord.

Mr Hoareau: Mr Bonte is trying to conduct his case through the witness.

Court: Do you have anything to say about that?

A: What I have to say when I came back to the house I saw my father was dead in the house. I called the police, the next day I was put in jail as a suspect. I was remanded for 3 days two times and when I came to court he say the case has been dismissed, I have nothing to do with the case. When I went out of the Court police officers arrested me again they say I was suspected in a robbery case. I was remanded again for 3 days and then I was remanded for another 4 days and then I was discharged by the Court.

For all the above reasons, an inquest is obligatory, in accordance with the provisions of article 351(b), Criminal Procedure Code (Cap 54). It provides as follows:

Where a person other than a member of the Defence Force has died under circumstances raising a reasonable suspicion that the death of that person might be due to a crime or foul play, unless a preliminary inquiry is to be held.

In consequence, we direct the Attorney-General, to whom a copy of this judgment is forwarded, to carry out an inquiry into the death of the late Victor Quilindo.