

## IN THE SEYCHELLES COURT OF APPEAL

[Coram: S. Domah (J.A) , M. Twomey (J.A) , A.Fernando (J.A) ]

### Civil Appeal SCA 22/2014

(Appeal from Supreme Court Decision CS 30/2012)

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Ixora Construction & Civil Engineering  
Ltd

Appellant

Versus

Gemina Sophola

Respondent

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Heard: 14 December 2015

Counsel: Mr. Basil Hoareau for Appellant

Mr. Nichol Gabriel for Respondent

Delivered: 17 December 2015

### JUDGMENT

#### S. Domah (J.A)

- [1] This is a civil appeal against the decision of the learned judge of the Supreme Court who in a dispute regarding the construction of a residence which the appellant had undertaken for the respondent found for the respondent against the appellant and awarded her damages in the sum of SR927,517.88 cents together with interest at the legal rate of 4% as from the date of the plaint, with costs. Aggrieved by the decision, the construction company has appealed.
- [2] There are 8 grounds, which are as follows:

1. The Learned trial Judge erred in law and on the evidence in failing to rely on the admission of the Respondent during her testimony that the road and/or external wall were not part and parcel of the terms of the original contract.
2. The Learned trial Judge erred in law and on the evidence in failing to conclude that the evidence established that there was an agreement for extra work between the Appellant and the Respondent and consequently that the Appellant was entitled to the damages claimed in the counterclaim.
3. The Learned trial Judge erred in law and on the evidence in failing to hold that the Appellant legally suspended the work.
4. The Learned trial Judge erred on the evidence in relying on the testimony and report of Quantity Surveyor Nigel Roucou instead of relying on that of Quantity Surveyor Neil Mederick.
5. The Learned trial Judge erred in law and on the evidence in disregarding the evidence of the extra work, on the basis of Article 1341 of the Civil Code, in view that there was no objection on the part of the Respondent to the admissibility of such evidence.
6. The Learned trial Judge erred in law and on the evidence in holding that paragraph 3 of Article 1184 was applicable to the facts of the suit.
7. The Learned trial Judge erred in law and on the evidence in holding that the Respondent had treated the contract as having been discharged.
8. The Learned trial Judge erred in law and on the evidence in awarding moral damages to the Respondent for the loss of rental and moral damages and consequently awarded the damages on the wrong principle of law.

[3] The facts of the case are as follows. The respondent is an entrepreneur and she decided to start the business of running guest house from scratch. For its construction, she took a loan from the bank and contracted with the appellant, a construction company, run by Mr Simon Gill, for the construction of a building comprising four units of self-catering apartments at Sailfish Estate, Anse La Mouche, Mahe. The sum agreed upon was Rs1,691,221.88 cents and the completion date was twenty five weeks from the date of the agreement. The funds were to be disbursed periodically 25% upon signature, 20% upon

