

# **IN THE SUPREME COURT OF SEYCHELLES**

**ESSAY QUATRE**

**PLAINTIFF**

**VERSUS**

**LEON ERNESTINE**

**DEFENDANT**

**Civil Side No 304 of 2002**

Mr. F. Bonte for the Plaintiff

Mr. K.B. Shah for the Defendant

## **JUDGMENT**

**Perera CJ**

This is a delictual action in which the Plaintiff seeks damages from the defendant, his landlord for allegedly locking the flat he had leased and interfering with his right of occupation. He avers that as a result of this “*lock out*” he has been rendered homeless. In addition to claiming reinstatement, he claims actual and moral damages as averred in the plaint.

The Defendant denies that the Plaintiff paid Rs.1000 as a deposit as averred in the plaint. He further avers that he installed a lock in the presence of a Police Officer, as he observed that the flat had been broken into. He also avers that the Plaintiff was asked to collect the keys but that he refused to do so. The Defendant further avers that the Plaintiff had not paid rent since July 2002, and that he had persistently been in arrears of rent. Admittedly,

the flat was locked by the Defendant on 18<sup>th</sup> June 2002. Hence the Plaintiff has not been in occupation since then.

The Plaintiff testified on oath as regards the averments in the plaint. He denied that he was even asked by the Defendant to collect the keys. He claimed that his personal belongings are still in the flat. However, on being cross examined, he stated that he did not recall being called by the Police. When he came to know that his flat was locked, he informed the Police and also his lawyer Mr Bonte. He was not told that his flat was left open and that the Defendant had locked it as a precaution. However he did not want to collect the keys from the Police. He asked the Defendant to permit him to re-enter the flat, but was refused. If it was a precautionary measure, the Defendant could have given him the key. Instead he has filed a Rent Board case.

The Defendant, who is living abroad failed to appear in Court on several dates fixed for hearing. Consequently, Mr Shah, his Counsel was constrained to close the case for the Defendant without adducing any evidence. He however submitted that the Plaintiff could have mitigated the loss by either making an attempt to get the keys or seeking an order of Court to gain occupation of the flat.

On the basis of the available evidence, the Defendant has failed to establish the circumstances in which he locked the flat occupied by the Plaintiff on the basis of a lease. If he was unable to attend Court, the evidence of the Policemen who was allegedly present when he installed the lock could have been adduced. Hence in

such circumstances, the Court has to accept averment of the Plaintiff that the Defendant committed a faute in law. If the Plaintiff was in arrears of rent, he ought to have invoked the jurisdiction of the Rent Board without taking the law into his own hands. He filed a case before the Rent Board for eviction, after he had summarily evicted the Plaintiff by locking him out.

Consequently, the defendant is liable in damages. The claim for loss of accommodation has not been substantiated, by any evidence of the Plaintiff having to rent alternative premises. Hence no award is made under that head. As regards the claims for stress, inconvenience and moral damages, I award a sum of Rs5000 cumulatively. There is no evidence that the Plaintiff's clothes and other personal belongings are "lost", as averred. The Defendant should permit the Plaintiff to remove them from the flat. In the absence of evidence as to what the clothes and personal belongings are, and also their present condition, the Court cannot award any sum as damages. So also, no order for re-instatement can be made in the absence of evidence of the validity of the lease. The Plaintiff may make an application to the Rent Board in that respect, if so advised.

Judgment entered accordingly. Parties will bear their own costs.

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A.R. PERERA

**CHIEF JUSTICE**

Dated this 13<sup>th</sup> day of October 2008