

IN THE SUPREME COURT OF SEYCHELLES

ANGELA MARIE CLAIRE MOUSTACHE

PLAINTIFF

VERSUS

NILCEY MOREL

DEFENDANTCivil Side No 152 of 2009

Miss L. Pool for the Plaintiff

JUDGMENT**B. Renaud J**

This suit was initiated by a Plaint entered on 15th June, 2009 where the Plaintiff is claiming a total of SR65,000.00 from the Defendant alleging breach of a construction contract by the latter.

In his Statement of Defence entered on 16th November, 2009 the Defendant denied the claim of the Plaintiff. He contended that the contract sum was SR300,000.00 and not SR350,000.00 and that he received only SR40,000.00 and not SR55,000.00 as alleged.

At all material times the Plaintiff was and is the owner of a parcel of land registered as Title No. V.3638 (Title Deed **Exhibit P1**) situated at Les Mamelles, Mahe. On 2nd June, 2008 the Plaintiff entered into an agreement (**Exhibit P2**) with the Defendant to build a dwelling house on that parcel of land for the sum of SR350,000.00 and not SR300,00.00 as alleged by the Defendant.

Exhibit P3 shows that the Plaintiff got an installment of SR55,000.00 as Housing Loan on 4th September, 2008 from Nouvobanq. On 9th September, 2008 the Plaintiff made a down payment of SR55,000.00 and not SR40,000.00 to the Defendant to begin construction of the

foundation. **Exhibit P4** is a receipt made by the Defendant acknowledging receipt of that sum of SR55,000.00.

The Defendant started work the next day and in the course of the week caused to be dug trenches for the foundation.

I find that the Defendant breached the agreement when he failed to turn up thereafter to continue with the construction work which he eventually abandoned the work altogether.

I am satisfied that despite repeated requests and phone calls to the Defendant, the latter refused to return to the construction site to complete the foundation work.

It is true that the Defendant did some initial work after demolishing the previous house. He must have incurred expenses to do that. As he claimed, it could have been that he purchased some materials which he kept at a neighbour's house and which were eventually stolen. However, at the end of the day he did not fulfilled his agreement towards the Plaintiff and as such he is liable to the Plaintiff. The Plaintiff is claiming the return of the SR55,000.00 that she paid to the Defendant. In the circumstances it is my judgment that the whole of the said sum ought to be returned to her by the Defendant. Whatever work the Defendant had performed and thereafter abandoned is of no benefit to the Plaintiff now. The Plaintiff would have to get a new Contractor, obviously at a higher price for the same assignment in view of the increase in cost of building two years later.

The Plaintiff had moved out of her house to allow the Defendant to demolish it in order to have space to build the new house. The Plaintiff had to live in a very tight and inconvenient condition in the hope that she will enjoy her house once completed. Unfortunately, almost 2 years thereafter she is still without a proper house because of the breach of the agreement by the Defendant. The Defendant should have reasonably foreseen that the Plaintiff put up

to such inconvenience to allow him to construct the house as agreed within 3 months. The Plaintiff must have suffered and is still suffering morally for such omission by the Defendant. As a result I find that the Plaintiff suffered moral damage which I assess at SR10,000.00. In the final analysis I find that the Defendant is now liable to the Plaintiff as follows:

a) Refund of amount disbursed	SR55,000.00
b) Moral damage for distress and inconvenience	<u>SR10,000.00</u>
Total	SR65,000.00

The Defendant has now to make good the sum of SR65,000.00 to the Plaintiff.

I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the sum of **SR65,000.00** with interest and cost.

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B. RENAUD

JUDGE

Dated this 15th day of October 2010