

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES
HOLDEN AT VICTORIA

CIVIL SIDE NO. 20 OF 2008

Terrence Esparon

Plaintiff

versus

Felix Mike Savy
Fatima Monthly

Defendant no. 1
Defendant no. 2

S. Rajasunduram for the Plaintiff

JUDGMENT

Egonda-Ntende, CJ

1. The plaintiff has come to this court seeking damages for loss of reputation, pain, suffering and anxiety against the defendants on the ground that the defendants committed what amounted to a 'faute' against the plaintiff. The plaintiff is a bus driver with SPTC. It is contended for the plaintiff that the defendant no.1 entered the bus that the plaintiff was driving on 7 November 2007 along with his two children. The defendant no.1 refused to pay the fare for one child when it was demanded by the plaintiff. Instead, the defendant, after asserting that the Constitution of Seychelles did not provide that children would pay for tickets, refused to pay and insulted the plaintiff all along his travel, until he alighted from the bus at Pascal Village.
2. The following day, on 8 November 2007, Defendant no.2 entered the bus with 2 children. She paid her fare and that of one child. The plaintiff had learn't that she was the common law partner of the defendant no.1. He appraised her of what had happened the previous day. Defendant no.2, in response, insulted and swore at the plaintiff, and while alighting from the bus threw a few coins on the face of the plaintiff, telling him to 'drink juices' with those coins. This happened in

the presence of the SPTC inspector and other passengers.

3. Again on the 26 November 2007 the defendant no.1 entered the bus with his two children and refused to pay their fare. He insulted the plaintiff in the bus. The plaintiff contends that the defendants thus committed 'faute' against the plaintiff and are therefore jointly and severally liable to pay damages to the plaintiff. The plaintiff claims SR 25,000 for loss of reputation and SR 50,000 for pain, suffering, and anxiety and costs of this suit.
4. The defendants filed a written statement of defence denying liability and opposing this action. They set up a plea in limine, contending that the plaint did not disclose a cause of action. On the merits, defendant no.1 admitted that on the 7 November he boarded the bus but denies that he refused to pay or that he insulted the plaintiff. He contends that he only explained that the children could easily sit on him on one seat of the bus.
5. Defendant no.2 admits boarding the bus the following day and asserts that she was confronted by the plaintiff about the incident of the previous day to which she was not a party. She denies insulting the plaintiff but admits that she threw the coins to him. The defendants put the plaintiff to strict proof of his claim and prayed that this suit be dismissed with costs.
6. The trial of this matter proceeded ex parte as the defendants did not appear on the appointed date for trial. The plaintiff testified in support of his case. He stated that on 7 November 2007 he was on duty driving an SPTC bus when the defendant no.1 boarded the bus with 2 children. He issued 2 tickets to him, of 3 and 2 Rupees, for the defendant no.1 and one child. The other child could sit on his lap, on the same seat with him, and need not pay, according to the SPTC instructions. The defendant no.1 refused to pay the ticket, of SR 2.00 for the child, claiming that this was not permitted by the Constitution of Seychelles. Defendant no.1 insulted the plaintiff and then alighted the bus at his Pascal village.
7. On the following day defendant no.2 boarded the bus with 2 children at the same stage as on the previous day when her husband had boarded. She paid for 2 tickets. On realising that she was the common law partner of defendant no.1, the plaintiff approached her and explained what had happened the previous day, notifying her that her common law partner, owed her SR 2.00 for

the second child. She insulted him, accusing him of being greedy for money. And when she was alighting from the bus, threw some coins at him. This occurred in the presence of an Inspector.

8. The plaintiff testified that his feelings were hurt because the defendant no.1 swore at him. The bus at the time was full of people. SPTC does not allow the employees to get even with passengers and that is why he has brought this suit. He stated that he has an exemplary record at his place of work with many achievements and certificates awarded to him for excellent performance which were exhibited.
9. The plaintiff further testified that he was claiming from the defendants SR 25,000.00 for loss of reputation. He was claiming an additional SR 50,000.00 for anxiety and pain he suffered while performing his work as he was stressed by the problems related above.
10. In his final address to this court, Mr. Rajasunduram submitted that the defendants had committed a 'faute' under Article 1382 (2) of the Civil Code of Seychelles. He submitted that the defendants had by their aggressive nature and abusive language insulted the plaintiff for which the plaintiff, a public servant, suffered damages for which he must be compensated.
11. Long after his final address to me, Mr. Rajasunduram sent 2 decisions of this court, I believe, for my consideration in this case. The first one is *Desaubin v United Concrete Products (Seychelles) Ltd* [1977] SLR 164. The second one is *Bertie Moustache v State Assurance Corporation* [1983 SLR 104. Those 2 cases discuss Article 1382 and 1383 of the Civil Code of Seychelles. Their facts are not relevant to the case before me. One is in relation to a nuisance and the other to cancellation of an insurance policy in contravention of the relevant law. I am afraid that they do not provide any assistance to the plaintiff's case in this matter.
12. The plaintiff has claimed SR 25,000.00 for the loss of reputation. I am under the impression that reputation is protected by the law of defamation. And clearly this is not an action grounded in defamation. It is grounded on the commission of 'a faute' under Article 1382 which would mean that the defendants by their wrongful conduct, or fault, have caused the plaintiff to suffer damage. The 'faute' or fault committed by the defendant no.1, if the evidence of the plaintiff is

believed, is really non payment of SR 2.00 which the plaintiff was charged as he had issued a ticket for it, and the defendant no.1 did not pay that ticket.

13. The loss would be SR 2.00 and any consequential loss that the plaintiff may have been able to prove that had arisen out of the defendant no.1's wrongful conduct. But that is not what is claimed in this suit against the defendant no.1. What is claimed are damages for loss of reputation and anxiety, pain and suffering. The plaintiff has not adduced any evidence before this court to show, in an objective manner, that he suffered any anxiety, pain or suffering. What he has shown is that his feelings were hurt, especially as an exemplary public servant, but nothing beyond that.

14. Article 1382 of the Civil Code states in part.

'1. Every Act whatever of man that causes damage to another obliges him whose fault it occurs to repair it.
2. Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.'

15. It is clear from the foregoing that in order for a plaintiff to succeed he must prove not only the wrongful act, but that he suffered damage directly arising from that wrongful act committed against him by the defendant or defendants.

16. With regard to wrongful conduct the plaintiff alleges against the defendant no.1 that he insulted the plaintiff, using un-parliamentary language when the plaintiff asked him to pay the ticket for one of the children that had boarded the bus with defendant no.1. The plaintiff does not reveal what insults or the nature of such insults that defendant no.1 hurled at him in public.

17. Insulting a person in private or public may amount to a wrongful act especially if it causes the feelings of that person to be hurt to such an extent that it is perceived as a loss of dignity and self esteem. In order to succeed the plaintiff must show that his feelings, the subjective feelings, have been violated, thus damaging his dignity as a person. It will not suffice to show that the wrongful act complained of would have impaired the dignity of a reasonable person. What must be proved is that that plaintiff suffered the impairment of dignity. This of course would still be

subject to the *de minimis non curat lex* principle before a plaintiff would be able to succeed.

18. The case against defendant no.1 on this score collapses at the first stage of inquiry. The court has been told that the defendant no.1 insulted the plaintiff. Neither in the plaint nor in testimony of the plaintiff are the alleged insults stated so as to give this court an opportunity to objectively determine if there were insults or not. The wrongful act is thus not established. It is unnecessary therefore to consider if the plaintiff's subjective feelings, self esteem and dignity were assailed.

19. The case against defendant no.2 is stated in paragraph 8 of the plaint. It states,

'The plaintiff has politely reminded her the provision that out of two children, it was only free for one child while the ticket fare had to be paid for the 2nd child. The 2nd defendant insulted and swore at the Plaintiff in bad words and at the time of alighting from the bus threw few coins on the face of the plaintiff and got down the bus with a statement saying 'to drink juices' with that coins. This happened in the presence of SPTC inspector and in the presence of other passengers.'

20. The plaintiff testified in support of this case in the following words,

'A: On the 8th November on the same bus stop at St Louis Fatima came into my bus with the two children as well. She asked me for two tickets, one R3 and one R2. I approached her amicably and I tried to explain the incident which happened on the 7th where her concubine refused to pay. She told me that her concubine's affair does not concern her. I told her that he concubine owes me R2 and that is when she started to insult me.

Q: What was exactly she insulting at you?

A: You drivers are greedy about money. We are very greedy and lots of words as well and I continue to drive my bus and I didn't take notice of her. She alighted at Pascal Village.

Q: For how long was she travelling in your bus?

A: 5 minutes.

Q: What happened when she was getting down from the bus?

A: At the same moment there was an Inspector and he asked me what was happening with the lady and I was trying to explain to the Inspector. Maybe she has heard what I was saying to the Inspector what happened on the 7th. When reaching Pascal village that is when she took R2 and threw it at me.

Q: She has thrown the coins onto you.

A: Yes.

Q: What happened to the coins that were thrown on you?

A: The coins fell down.

Q: In terms of number of passengers was the bus full or empty?

A: The trip is almost the same with the amount of persons. It is nearly full all the time.'

21. The case of the plaintiff on his testimony is somewhat different from that on his plaint. On the testimony there is no evidence of swearing against the plaintiff by defendant no.2. Neither is there evidence to prove that she told him to 'drink juices' with R2 which she threw at him, nor the specific meaning of 'drink juices' that makes it insulting or derogatory. What is available on evidence is that the defendant no.1 paid her rightful dues for herself and one child as was the acceptable practice. It was the plaintiff that sought to engage her, over a matter to which she objected, as she had not been involved in the incident of the previous day. Had the plaintiff not engaged the defendant no.2 there would, presumably, have been no incident at all.

22. Anyhow the defendant no.2 called the plaintiff greedy, which is, no doubt, in common parlance, an insult. What really annoyed the plaintiff was the throwing of the R2 coins at him. This is clear from the plaintiff's testimony set out below.

'Q: Can you tell about your feelings when the previous day the 1st Defendant was swearing at you for no fault of yours and for the second day the 2nd defendant was swearing at you for no fault of yours?

A: When she threw the R2 I really felt bad.

Q: What was your feeling?

A: I wanted to get even. Since I am a public servant SPTC does not allow us to react with clients.'

23. In determining whether the defendant no.2's conduct amounted to wrongful conduct that diminished the self esteem and dignity of the plaintiff it may be useful to take into account the surrounding circumstances. It is the plaintiff that pressed an issue that the defendant no.2 rightly objected not to be concerned with. Nevertheless the plaintiff appears to have pressed his point. The defendant no.2 may have over reacted and actually insulted the plaintiff but in the circumstances of this case I would find that if there was at all a technical violation it is extinguished by the principle of *de minimis non curat lex*. I would dismiss the plaintiff's claim against defendant no.2 as well.

24. On the other hand I do note that though I have explored the possibility of a wrongful act for loss of dignity and self esteem it appears to me that on the pleadings this was not the case that was

put forth by the plaintiff. The case on the pleadings is, *inter alia*, for loss of reputation, which is grounded in a different cause of action. On that ground alone it would not be available to the plaintiff, as it would be beyond his claim on the pleadings. See Equator Hotel v Minister of Employment and Social Affairs, Court of Appeal Civil Appeal No. 8 of 1997.

25. This is an appealable case. In event that I am wrong I will consider what damages the plaintiff would be entitled to. In his testimony the plaintiff stated, with regard to the damage he had suffered, as under.

'Q: Finally, what do you claim from the defendant from this honourable court?

A: R25,000.00 for my reputation. R50,000.00 for anxiety and pain. While I was performing my work I was stressed regarding these problems.'

26. Assuming that the plaintiff could in this action succeed on a claim for loss of reputation, which, in my view, he should not, as such action should be grounded in defamation, the plaintiff has still not adduced any evidence to show how his reputation had suffered. He called no one to show that they no longer held the plaintiff in high esteem or as of good reputation by reason of the impugned actions of the defendants. There was no indication that he was affected at his place of work, home, or in the public eye. Nor is there any evidence that he suffered any loss whatsoever, other than the loss of SR2.00, for the ticket he had issued, which is not what he claims.
27. The only testimony available in consideration of the claim for damages for pain, suffering and anxiety is firstly that he felt bad when the defendant no.2 threw SR2.00 at him. Secondly that he was stressed while performing his work. There is no indication as to what the stress did to him and for how long it lasted. There is no indication whatsoever that the stress he suffered caused him 'anxiety and pain'. In short there is simply no proof before me of the damage claimed by the plaintiff which the defendant no.2 is alleged to have inflicted. Neither is there proof or link that such damage as alleged is the result of the impugned acts of the defendant no. 2.
28. All in all I am satisfied that the plaintiff has failed to make out a case in law against the defendants. This suit is dismissed. I will make no order as to costs as the matter proceeded *ex parte*.

Signed, dated and delivered at Victoria this 5th day of February 2010

FMS Egonda-Ntende

Chief Justice