

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

Civil Side No 172 of 2010

Mavineland Celestine=====Plaintiff

Versus

Dickson Bastienne=====Defendant No.1

Sabrina Soomery=====Defendant No.2

Anthony Derjacques for the Plaintiff

Joe Camille for the Defendants

JUDGMENT

Egonda-Ntende CJ

1. The plaintiff brings this action seeking damages for personal injuries from the defendants on account of an assault upon her person that was allegedly committed by the defendants on the 19th April 2009 at Village Trezor, English River, Mahe. The plaintiff contends that on the aforesaid date the defendants assaulted her with fists, kicks, a bottle and an axe. The said assault was unlawful and constituted a ‘faute’ in law rendering the defendants liable to the plaintiff in damages.
2. The plaintiff further contends that she suffered severe physical and psychological injury resulting in loss and damage. She claims she suffered injury to the scalp, right knee, right loin, right shoulder, chest

and psychological injury for which she claims R250,000.00 from the defendants as compensation with interest and costs.

3. The defendants deny the plaintiff's claim. They contend in their defence that it was the plaintiff on the day in question who entered their house at Villaz Trezor, as a trespasser and fought with the plaintiff no.2. They prayed that this suit be dismissed with costs.
4. The plaintiff testified in person and called 3 other witnesses. The defendants testified in person and called 3 other witnesses. The story that emerges is that on the day in question early in the morning the plaintiff was taking rubbish to the rubbish bins. She was passing by the defendants' apartment. She was accompanied by a man. She was intercepted by the defendant. According to the plaintiff's version of events she was grabbed by the neck and the defendant no.1 attempted to choke her. Defendant no.1 called his partner, defendant no.2, to join the fray and they beat the plaintiff, driving her into the kitchen area of their house. According to the plaintiff's version she was hit by the defendant no.1 with an iron bar while defendant no.2 with a bottle, causing her to suffer severe injuries and to bleed.
5. On the other hand the defendants' version was that defendant no.1 heard the plaintiff talking loudly and went down to meet her. When she reached by their apartment, he grabbed her hand and asked her why she had beaten their son. They contend that the plaintiff then insulted the defendant no.2 who was on the veranda and attacked her. The plaintiff pushed defendant no.2 into their house, threw her down and pulled her hair. Neighbours came to the rescue and pulled the plaintiff off the defendant no.2. Thereafter the defendant no.2 in a fit of anger picked up

an empty guinness bottle and hit the plaintiff on the head, causing her to bleed. The defendants and their witnesses deny that an iron bar or an axe was ever used by any one during the fray.

6. In assessing what version to believe I shall take into account the pleadings of the parties. Mr Joe Camille, learned counsel for the defendants submitted that the defendants were acting in self defence of their person and property. This was not the position on the written statement of the defence, at least not so clearly. On the pleadings it was contended that the plaintiff was a trespasser on the defendants' home. On the evidence from both sides it is clear that the plaintiff was in fact confronted by the defendant who initiated the assault on her person, regardless of what version one believes.
7. From the evidence of the both defendants it is clear that since they had learnt that the plaintiff awhile back allegedly pushed their son on the steps in one of the apartment blocks of their village, the defendants had been looking for her. And when the opportunity arose when they heard her return one early morning and was taking rubbish to the dump place they rushed down to confront her. Clearly the plaintiff was then not a trespasser, given that it is the defendant no.1 who had initiated violent contact without any immediate provocation on the part of the plaintiff.
8. The defendant no.2 has admitted, what she had denied on the pleadings, that she hit the plaintiff with an empty guinness bottle causing the plaintiff to bleed. The defendant no.1, admitted in testimony, what was denied on the pleadings, that he grabbed the plaintiff, and thus diverting her from her way to the dump. Defendant no.1 initiated the violent contact.

9. I am persuaded taking into account all the evidence adduced in this case that the indeed the defendants unlawfully assaulted the plaintiff and thus committed a 'faute' against her for which they are liable in damages in terms of article 1382 of the Civil Code of Seychelles, hereinafter referred to as CCS.

10. There is evidence to show that the plaintiff suffered lacerations on the scalp and right knee. She also had pain in the right loin, right shoulder, right arm, left hip and chest wall. She had to be provided with crutches as she found it difficult to walk unaided. She had to attend physiotherapy treatment. She suffered multiple injuries. She had to endure pain. Her life must have been inconvenienced for a period until recovery from her injuries. All this damage and suffering is attributable to the assault upon her by the defendants.

11. Mr Anthony Derjacques, learned counsel for the plaintiff, referred me to two decisions of the Supreme Court with regard to quantum of damages. These are Charles Ventigado v Government of Seychelles Civil Side No. 407 of 1998 and Dereck Dodo Meriton v Ste Anne Resort Ltd Civil Side No 131 of 2008. I have read both decisions. Both relate to injuries that are so dissimilar to the injuries that they are not helpful with regard to quantum of damages, except by way of contrast.

12. In my view it is best to consider under one award for the multiple injuries that the plaintiff suffered rather than consider each item of physical injury singly, given that there was virtually complete recovery. I note that the total claim of the plaintiff is R250,000.00. In my view this is on the excessive side. Damages are compensatory and not punitive. Doing the

best I can in the circumstances of this case I award the plaintiff R50,000.00 for all physical injuries suffered, to bear interest at the legal rate as from the date of filing this suit until payment in full. I also award the plaintiff costs of this action.

13. I have not made any award for psychological injury as, in my view, this was not proved. Neither can it simply be presumed to flow from the physical injury.

Signed, dated and delivered this 3rd day of June 2011

FMS Egonda-Ntende
Chief Justice