

## COURT OF APPEAL OF SEYCHELLES

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### **Reportable**

[2023] (18 De December 2023)

SCA 25/2022

(Arising in CS 1/2015)

In the matter between

**Heady Sinon**

(rep. by Mr. Joshua Revera)

**Appellant**

And

**Public Utilities Corporation**

(rep. by Miss Michelle Marguerite)

**First Respondent**

**Seychelles Land Transport Agency**

(rep. by Miss Ria Alcindor)

**Second Respondent**

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**Neutral Citation:** *Sinon v Public Utilities Corporation and Anor* (SCA 25/2022) [2023]  
(Arising in CS 1/2015) (18 December 2023)

**Before:** Fernando President, Twomey-Woods, Robinson JJA

**Summary:** Pleadings — Amendment — Effect of amendment

**Heard:** 5 December 2023

**Delivered:** 18 December 2023

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### **ORDER**

1. As I have concluded that the ruling dated 10 November 2020 and judgment dated 21 October 2022 are not valid, I make an order declaring the said ruling and judgment null.
2. Consequently, I quash the ruling dated 10 November 2020 and judgment dated 21 October 2022.
3. I remit the matter to the trial Court to be dealt with in the light of my opinion under rule 31 (5) of The Seychelles Court of Appeal Rules, 2005, as amended, which stipulates —

"31(5) In its judgment, the Court may confirm, reverse or vary the decision of the trial court with or without an order as to costs, or may order a re-trial or may remit the matter with the opinion of the Court thereon to the trial court, or may make such

other order in the matter as to it may seem just, and may by such order exercise any power which the trial court might have exercised : [...]."

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## JUDGMENT

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**Robinson JA (Fernando President, Dr. Twomey-Woods, JA concurring)**

### **The background**

1. In this action of delict, the Appellant, the Plaintiff then, is appealing from a judgment of a learned Judge of the Supreme Court who dismissed his action on the ground that it was defective as there was no averment of vicarious liability, whereas the evidence of the Appellant claimed that he sustained damage due to the act of the Respondents' workers.
2. The learned Judge did not consider the action of delict on the merits.
3. The Public Utilities Corporation, the First Respondent (the First Defendant then), is hereinafter referred to as the "PUC", and the Seychelles Land Transport Agency, the Second Respondent (the Second Defendant then), is hereinafter referred to as the "SLTA", for ease of reference.
4. I have considered the record of appeal and the argument submitted on behalf of the Appellant and Respondents with care. I did not rehearse the grounds of appeal set forth in the notice of appeal, in view of the issue to be determined in the appeal, as stated at paragraph [7] hereof.

### **Submissions of the parties**

5. Counsel for the Appellant pointed out in his skeleton heads of argument, *inter alia*, that the Court should find that the judgment cannot stand since it relies on the amended plaint filed on the 31 July 2019 before the delivery of the judgment on the 21 October 2022. He submitted that the Appellant, through Counsel, had filed an amended plaint on the 19 May

2020, with the leave of the trial Court, in which the Appellant asserted the averment of vicarious liability. In other words, Counsel for the Appellant submitted that the amended complaint falls within the ambit of article 1384 (3) of the Civil Code of Seychelles, which the learned Judge did not consider.

6. I have considered the argument submitted on behalf of the Respondents. The Respondents could have provided more helpful material for me to rely on with respect to the point raised by the Appellant.

### **The issue**

7. In the light of the contention of the Appellant, the issue to be determined in the appeal is as follows —
  - whether or not the ruling (dated 10 November 2020) and judgment delivered on the 21 October 2022 are valid given the effect in law of the amendment of the complaint filed on the 19 May 2020.

### **Discussion**

8. Before discussing the point of contention in the appeal, I state the relevant averments of the pleadings solely to make the discussion easier to follow as I am aware of the legal implications of amending pleadings in relation to the present case.
9. The relevant allegations in the amended complaint, filed on the 31 July 2019, were as follows. In April 2014, while the Appellant was standing at the side of the road, it gave way, causing him to fall into the river below.
10. The amended complaint averred that the road in the vicinity of the "LWMA offices" at English River was in a weakened state as a direct result of the PUC's tunnelling work under the road to carry out repair works on a water pipe (at paragraph [5] of the complaint). The Appellant claimed that the PUC and SLTA did not put up any notification about the weakened state of the road or ongoing building works in the area to inform the public that additional caution and attention were necessary in the vicinity (at paragraph [6] of the amended complaint).

11. The Appellant claimed that in April 2014, the PUC failed to place safety demarcations or warnings to indicate that there were works in progress requiring extra precautions for passersby (at paragraph [7] of the amended complaint).
12. The amended complaint claimed that the Appellant had suffered loss and damage as a direct result of the aforementioned, at paragraph [8] of the amended complaint. The Appellant has injured his thoracic spine T12, which has suffered a compression fracture (also at paragraph [8] of the amended complaint). This injury could cause paralysis and be life-changing. The particulars of the injuries suffered by the Appellant are as follows —
  - "a) Patient was admitted on 17 March 2014 to Victoria Hospital and Discharged on 28 March 2014 (total 11 days hospitalisation)
  - b) Midline lower lip laceration, full thickness, 5cm (Facial)
  - c) Dentoalveolar fracture with the fragment completely discharged from the bone and gum, including lower central incisors and lower left canine, abundant intraoral bleeding. (Facial)
  - d) Intense lower lip edema (Facial)
  - e) Bony prominence detected in the dentoalveolar fracture and an exploration of the area was done
  - f) Patient underwent an alveoplasty for ponnyspicula(*sic*)
  - g) Laceration to right knee requiring sutures". (also at paragraph [8] of the amended complaint)."
13. The said amended complaint sought damages in the total sum of one million four hundred and sixty-one thousand and one hundred rupees (SCR1,461,100/-) from the date of the injuries the Appellant has suffered and continuing.
14. Concerning the amended complaint filed on the 19 May 2020, it is enough to state that it introduced, *inter alia*, the following averments at paragraph [6] as follows. The Appellant averred that, "the accident was caused by the fault and negligence of the Defendants and its employees, which amounts to a "faute" in law and which has caused him injury, loss, distress and moral damage for which the Defendants are liable" (verbatim). The particulars of negligence are as follows —

"The defendants their Servants/Agents were negligent.

- a) They failed to ensure the area surrounding the repair works was secure for the normal daily traffic using the bridge, which included the Plaintiff.
- b) They failed to warn, or provide adequate warning to the danger due to works being carried out.
- c) They failed to provide additional support to the bridge to ensure the safety of those using it during repair.
- d) The Defendant their employees were negligent and/or reckless in all the circumstances of the case."

15. The said amended plaintiff sought damages in the total sum of one million five hundred thousand rupees (SCR1,500,000/-) with interest and cost from the date of the injuries the Appellant has suffered and continuing.
16. It appears that the amended plaintiff filed on the 31 July 2019 alleged direct responsibility against the Respondents under article 1382 of the Civil Code of Seychelles. Whereas the amended plaintiff filed on the 19 May 2020 alleged vicarious liability under article 1384 (3) of the same Civil Code. The learned Judge found that the PUC was being sued for its personal act, whereas the Appellant's testimony was to the effect that he sustained damage because of the act of the PUC's workers. In light of the issue to be determined, it would not be appropriate to pass judgment on either cause of action or the Judge's finding in this appeal.
17. I have considered the issue to be determined also with reference to the proceedings before the trial Court. I observe that the learned Judge made an order giving leave to the Appellant to file a "correct" amended plaintiff to be served on the parties (the proceedings dated 11 March 2020 at 2:45 p.m refers). This order was made based on the oral application of Mrs. Alexia Amesbury, who was the Appellant's Counsel of record in the trial Court on the same date.
18. Upon reading the proceedings, I noted that the proposed amendments were not properly and exactly framed in her oral submissions. Mrs. Amesbury informed the trial Court that the second page of the amended plaintiff on file needed to be corrected and requested that the learned Judge substitute that second page with the correct one. It is also unclear on the

proceedings whether or not the learned Judge gave leave to the Appellant to amend his pleadings generally. In other words, was the Appellant by Counsel allowed to introduce the amendments in his pleadings?

19. Additionally, it is observed that neither the PUC nor the SLTA responded to the amended plaint or submitted an amended defence, as the case may have been. There is also no explanation provided in the proceedings, ruling (dated the 10 November 2020) or judgment as to why the learned Judge did not consider the amended plaint filed on the 19 May 2020. The learned Judge must have made a mistake, as there seems to be no other explanation.
20. I have mentioned above that the issue to be determined is important because of the effect in law of the amendment of pleadings. I now provide an explanation. The rule is that in pleadings, once they are amended, what stood before the amendment is no longer material before the Court and no longer defines the issues to be tried: per Hodson, L.J., in *Warner v Sampson*, [1959] 1 Q. B. at p. 321 —

"Moreover, the defence was amended before the reply claiming forfeiture, on which the plaintiff now relies, came into existence. I do not think that this amendment can be ignored. Once pleadings are amended, what stood before amendment is no longer material before the court and no longer defines the issues to be tried. Here the defendant has obtained leave to amend, and there has been no appeal against that order; and, whatever may have taken place at the hearing of the application to amend, the court must, I conceive, regard the pleadings as they stand, the purpose of amendment being to determine the real question in controversy between the parties: [...]."
21. I state in passing that an amendment made takes effect not from the date when the amendment is made, but from the date of the original document which it amends; and this rule applies to every successive amendment of whatever nature and at whatever stage the amendment is made; see *Sneade v Wotherton* [1904] 1 KB 295, 297.
22. For the reasons stated above, I conclude that the ruling dated 10 November 2020 and judgment dated 21 October 2022 are not valid as they are based on the amended plaint filed on the 31 July 2019, which no longer defines the issues to be tried between the parties.

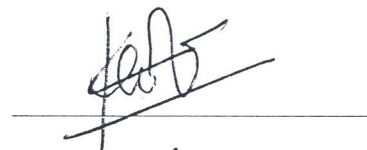
23. As I have concluded that the ruling dated 10 November 2020 and judgment dated 21 October 2022 are not valid, I make an order declaring the said ruling and judgment null.
24. Consequently, I quash the ruling dated 10 November 2020 and judgment dated 21 October 2022.
25. I remit the matter to the trial Court to be dealt with in the light of my opinion under rule 31 (5) of The Seychelles Court of Appeal Rules, 2005, as amended, which stipulates —

"31(5) In its judgment, the Court may confirm, reverse or vary the decision of the trial court with or without an order as to costs, or may order a re-trial or may remit the matter with the opinion of the Court thereon to the trial court, or may make such other order in the matter as to it may seem just, and may by such order exercise any power which the trial court might have exercised : [...]."



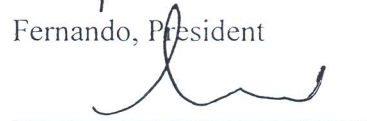
F. Robinson, JA

I concur



Fernando, President

I concur



Doctor Twomey-Woods, JA

Signed, dated and delivered at Ile du Port on 18 December 2023