

IN THE SEYCHELLES COURT OF APPEAL

BRIAN ERNESTA

APPELLANT

vs.

GEORGETTE LAVAL

RESPONDENT

SCA No: 34 of 2009

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Before: MacGregor PJA, Fernando and Twomey JJA

Counsel for Appellant: Mr. W. Lucas

Counsel for Respondent: Mr. A. Derjacques

Date of Hearing: 26th August 2011

Date of Judgment: 2nd September 2011

RULING

MacGregor F, President CA

[1] In this appeal we gave a brief oral ruling on 26th August 2011. We now proceed to write and explain our decision.

[2] This matter was brought about due to Counsel and Appellant being absent from the Roll Call when the case was called on 22nd August 2011 at 9.00 a.m.

[3] Counsel for the Respondent then moved for dismissal for want of prosecution as per the Rules and a deemed withdrawal of the appeal as no heads of arguments had been served on him.

[4] When the case was again called on 26th August, both Counsel and Appellant appeared but no cause, explanation or apology was given by Counsel for their absence on the previous occasion and for the failure to file the heads of argument.

[5] Counsel for the Appellant then attempted to move for an adjournment without showing any reason or cause, written or otherwise.

[6] The Court also considered an attempt by Counsel for the Appellant to have his heads of arguments handed to the judges in the corridor to the Court Room literally seconds before entering the Court for dealing with this case as out of time, insulting and an abuse of the process of Court and proceedings.

[7] The Court then took into account the material incidents in this case namely that the cause of action arose about seven years ago, that the trial was held six years ago, that the Supreme Court took four years to complete the case, that the Respondent had waited long enough for his complaint to be dealt with.

[8] No good cause has been shown why this Appeal should not be deemed abandoned. In any case in such circumstances, pursuant to Rule 3(1) notwithstanding the two month time delay for the filing heads of argument as provided for in Rule 24 (1) (a), we are of the view that the circumstances of this case merits a departure from the rules in the interests of justice. In *SACOS v Derjacques SCA12 of 2008*, the Court of Appeal held that in the normal course of things the Appellant is afforded two months to file heads of arguments but

“the two months respite would be inapplicable where a case has already obtained a court fixture for one reason or another. In such a case an appellant has to work within the time available before the case is due to be heard. The whole purpose of the morning session on the first day of opening of the Court of Appeal session on each term is to ensure that court fixtures are not taken for granted and parties are ready with their cases, their arguments, the texts and the authorities they rely on...When heads of arguments are not submitted in a timely manner, the court is denied an opportunity to do proper justice to the appeal...”

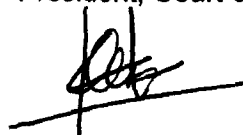
[9] In this particular case, justice dictates that the Appellant who gains by further delaying the court process should not be entertained further.

[9] For all the above reasons, we are not willing to exercise our discretion to proceed with the hearing of this appeal under rule 24 (2) (k). We set aside the appeal with costs.



F. MacGregor

President, Court of Appeal



A. T. Fernando

Justice of Appeal



M. Twomey

Judge of Appeal

Delivered this 2nd September 2011, Victoria, Seychelles