

IN THE SEYCHELLES COURT OF APPEAL

SCA: 15 of 2005

JANE OTAR

Appellant

V.S

BERTH OTAR

Respondent

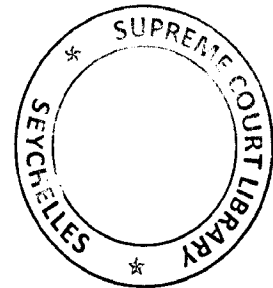
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Before: Dr. SJ Bwana, Ag P; JM Hodoul, JA and B. Renaud, JA

Counsel: Mr. Wilby Lucas for Rajasundaram for Appellant
Ms. K. Domingue for Respondent

Date of Hearing: 9 May 2006

Date of Ruling: 9 May 2006

RULING



BWANA, AG P

- 1. Following the notice duly issued by the President of this Court, dated 16 March 2006, announcing the Roll for the May 2006 session, this Appeal was fixed for hearing this morning, the 9th of May 2006. When it was called for hearing, Mr. Wilby Lucas, stood in for Counsel for the Appellant, Mr. Rajasundaram. The Court was then informed that Mr. Rajasundaram had left the country for treatment overseas. A copy of a purported letter to that effect was shown to Court, informing the Registrar

of the Supreme Court of the same. No such letter or a copy thereof had been availed to this Court.

2. Further, Counsel for the Appellant had not filed "Skeleton Heads of Arguments" as required under the provisions of Rule 24 (2) (i) and (j) of the Rules of this Court. Counsel for the Respondent had not filed such Heads of Arguments either. When asked, Mr. W. Lucas informed the Court that he had been asked just to enter appearance on behalf of his colleague, Mr. Rajasundaram, and ask for adjournment of the case to next session.
3. With kind respects to Mr. Lucas, that is not the way matters should be conducted before this Court. We do understand the situation within which he found himself. We further do appreciate his sincerity to appear and try to defend the appeal before us. We do however want to make absolutely clear two things. **First**, is that once Counsel agrees to hold his colleague's brief, then that Counsel should take full responsibility of the case cum appeal. He should come to Court fully instructed and prepared to take all necessary steps and measures as may be directed by the Court. Likewise, he should come to Court ready for all the necessary procedural

steps that may ensue. He should not come like an amicus curiae. To do so, in our opinion, is not good enough for the case he is supposed to defend.

4. **Second**, we want to re emphasize the need to comply with Rules of Court. It is trite that Rules of Court must be respected and adhered to least the whole process leads to absurdity. In so emphasizing, we have in mind the clear and unambiguous words of Rule 24 (2) (i) of the Seychelles Court of Appeal Rules, which came into effect on 7 June 2005. That provisions states:

"24 (2) (i)- where at the date fixed for hearing of the appeal, the appellant has not lodged heads of argument in terms of this Rule, the appeal shall be deemed to be abandoned and shall accordingly be struck out unless the Court otherwise directs on good cause shown.

(j)- where at the date fixed for hearing of the appeal the respondent has not lodged heads of argument in terms of this Rule, the respondent shall not be entitled to be heard unless the Court otherwise directs on good cause shown ..." (emphasis added).

Neither Mr. W. Lucas nor Ms. Domingue did show good cause for non compliance with the requirements of the Rule (supra).

5. As a consequence of non compliance with the requirements of the Rule, this appeal is deemed to be abandoned. It is accordingly struck out.



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Dr. S. J. BWANA
AG. PRESIDENT

1. I concur:



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J. M. HODOUL
JUSTICE OF APPEAL

2. I concur:



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B. RENAUD
JUSTICE OF APPEAL