

SUPREME COURT OF SEYCHELLES

Unreportable
CC 77/2025

In the matter between:

DIANNE PILLAY

(rep. by Attorney-at-law Ms Edith Wong)

Plaintiff

and

SAM LEBON T/A LEBON CONSTRUCTION

(rep. by Attorney-at-law Mr Jean-Marc Lablache)

Defendant

Neutral Citation: *Pillay v Lebon t/a Lebon Construction* (CC 77/2025) 17th February 2026

Before: Burian J

Summary: Breach of contract

Heard: 19th January 2026

Delivered: 17th February 2026

ORDER

Judgment in favour of the Plaintiff in the total sum of Seychelles Rupees Five Hundred and Ninety-Four Thousand One Hundred and Eighty-Three and Twenty-Six cents (SR 594,183.26/-) with interest at the legal rate of 4% and costs.

JUDGMENT

N. BURIAN J

BACKGROUND FACTS:

- [1] The parties entered into a contract for the construction of a residential house. As a result of delays to the completion of works, the contract was terminated and the parties agreed to have the works valued to settle all outstanding matters. This dispute revolves the claim for overpayment, penalty interest and moral damages which the Plaintiff is now claiming from the Defendant.

PLEADINGS:

- [2] On 8 December 2022, the Plaintiff entered into a building contract with the Defendant for the construction of a residential house at Port Glaud for the contract sum of

Seychelles Rupees Two Million and seventy-Six Thousand One Hundred and Ninety-Seven and Ten cents (SR 2,076,197.10/-)

[3] Due to delays by the Defendant in commencing construction, the parties subsequently entered into an amended agreement dated 15 December 2023. This amendment set out revised deadlines for the completion of the various stages of the project. The Plaintiff avers that the amended agreement expressly provided that:

- Any delay in the commencement of the works would attract a penalty of 0.5% per week of the agreed contract sum;
- Any delay in the completion of each stage of the works would similarly attract a penalty of 0.5% per week of the contract sum; and
- Any dispute arising between the parties would initially be resolved through arbitration.

[4] On 29 October 2024, the Plaintiff notified the Defendant of her decision to terminate both the original agreement and the amended agreement, on the basis that it had become evident that the Defendant would not complete the works in accordance with the agreed schedule.

[5] Thereafter, on 30 October 2024, the parties mutually agreed to appoint a quantity surveyor to determine whether any sums were owed by either party. Mr. Alain Jean was appointed for this purpose as arbitrator, and his fees were shared equally by the parties. In his report dated 2 April 2025, the arbitrator concluded that the defendant owed the Plaintiff the sum of SR 285,060.10/-, representing monies overpaid by the Plaintiff in respect of works purportedly carried out on site.

[6] On 10 April 2025, the Plaintiff forwarded a copy of the arbitrator's report to the Defendant by email and provided a deadline for payment of the said sum. Despite receipt of this notification, the Defendant has failed and/or neglected to make any payment to the Plaintiff, in breach of the findings of the arbitrator.

[7] The Plaintiff further avers that, as a result of the Defendant's delays, he is additionally liable to pay penalties amounting to Seychelles Rupees Two Hundred and Fifty-Nine

Thousand One Hundred and Twenty-Three and Sixteen cents (SR 259,123.16/-) in accordance with the terms of the amended agreement.

[8] Accordingly, the Plaintiff claims the following sums:

- Seychelles Rupees Two Hundred and Eighty-Five Thousand and Sixty and ten cents (SR 285,060.10/-) in respect of overpayment;
- Seychelles Rupees Two Hundred and Fifty-Nine Thousand One Hundred and Twenty-Three Thousand and Sixteen cents (SR 259,123.16/-) in contractual penalties for delay; and
- Seychelles Rupees Fifty Thousand (SR 50,000.00/-) as moral damages.

The total amount claimed is Seychelles Rupees Five Hundred and Ninety-Four Thousand one Hundred and Eighty-Three and Twenty-Six cents (SR 594,183.26/-).

[9] The Plaintiff therefore prays that this Honourable Court grant judgment in her favour for the said sum, together with interest, costs, and any other order the Court may deem fit in the circumstances.

[10] The Defendant, in substance, admits paragraphs 1 to 13 of the plaint. He accepts that Mr. Alain Jean, a Quantity Surveyor, was duly appointed as arbitrator to act independently and to carry out the valuation of the works. The Defendant does not dispute the valuation contained in the arbitrator's report. However, he challenges the remaining heads of claim advanced by the Plaintiff, namely the contractual penalties for delay and the claim for moral damages. The Defendant accordingly prays that the Plaintiff's claim be dismissed with costs and that judgment be entered in his favour.

EVIDENCE:

[11] The Plaintiff confirmed that she entered into a building contract with the Defendant on 8 December 2022 for the construction of a residential development on parcel J 3181 situated at Port Glaud for the total contract sum of Seychelles Rupees Two Million and seventy-Six Thousand One Hundred and Ninety-Seven and Ten cents SR 2, 067,197.10/-. A copy of this agreement was produced and marked as **Exhibit P1**.

- [12] As per the contract the works were to commence on the 12 December 2022. She testified that the works initially commenced on time. However, due to significant delays in the progress of the project, she subsequently entered into a second agreement with the Defendant on 15 December 2023. This amended agreement was produced and marked as **Exhibit P2**.
- [13] The Plaintiff confirmed that, pursuant to clause 11 of Exhibit P2, the agreement set out specific timelines for the completion of the various phases of the project, together with the corresponding sums payable at each stage. She stated that the delays were substantial, noting that at the time the amended agreement was entered into, only site preparation works had been completed.
- [14] She further confirmed that clause 3 of Exhibit P2 contained a penalty provision, under which a penalty of 0.5% of the agreed contract sum was payable for each week of delay for commencement. In addition, clause 7 of the same agreement provided that any delay in the commencement of each stage of the works would similarly attract a penalty of 0.5% of the agreed contract sum for each week of delay until the completion of the relevant stage. The Plaintiff testified that the parties had also agreed that, in the event of any dispute arising from the contract, a qualified expert would be appointed to resolve the matter.
- [15] In October 2024, the Plaintiff instructed the Defendant to cease all works on the site, as it had become apparent that he would not be able to complete the project within the agreed timeframe. She accordingly decided to terminate the agreement. Following discussions between the parties, an email was sent to the Defendant recording what had been agreed. The Plaintiff then proceeded to identify a qualified quantity surveyor to evaluate the works completed up to that point. She proposed the appointment of Mr. Alain Jean, quantity surveyor, and confirmed that both parties agreed to his appointment and to sharing the cost of his services equally. The Plaintiff explained that the expert's mandate was to assess whether there had been any overpayment made by her to the Defendant. The quantity surveyor produced a report dated 2 April 2025, which was marked as **Exhibit P3**. In his conclusions, he determined that a sum of Seychelles Rupees Two Hundred and Eighty-Five Thousand and Sixty and ten

cents SR 285,060.10/- was refundable to the Plaintiff. The report was forwarded to the Defendant however, he took no action in response.

[16] With regard to her claim for penalties and interest, the Plaintiff confirmed that she calculated the amounts strictly in accordance with the penalty clauses contained in the contract, based on delays affecting the first and second phases of the project. She further confirmed that the Defendant had never challenged the validity of the penalty clauses and that the timelines relied upon were those originally provided by the Defendant himself.

[17] Accordingly, the Plaintiff maintains her claim for:

- Seychelles Rupees Two Hundred and Eighty-Five Thousand and Sixty and ten cents (SR 285,060.10/-) in respect of overpayment;
- Seychelles Rupees Two Hundred and Fifty-Nine Thousand One Hundred and Twenty-Three Thousand and Sixteen cents (SR 259,123.16/-) in contractual penalties for delay; and
- Seychelles Rupees Fifty Thousand (SR 50,000.00/-) as moral damages.

[18] In support of her claim for moral damages, the Plaintiff testified that she suffered considerable stress as a result of the Defendant's actions. She described feeling sad, angry, frustrated, and deeply disappointed, particularly as she had personally selected the Defendant as contractor. She explained that the house was intended to be the family home she would share with her partner and young child, and that, to date, the house remains incomplete. She further testified that she experienced significant difficulty in engaging a new contractor, as several were reluctant to take over a project involving partially completed works by a previous contractor.

[19] During cross-examination, the focus was placed on the Plaintiffs claim for moral damages. The Plaintiff confirmed that the Defendant had agreed to the appointment of the quantity surveyor as arbitrator and had duly paid his share of the expert's fees. She further confirmed that, at the time of termination of the contract and the appointment

of the expert, he had been cooperative and did not raise any objection when she informed him of her decision to terminate the contract.

[20] Notwithstanding this cooperation, the Plaintiff maintained that she remained entitled to claim moral damages in addition to the contractual penalties. She explained that the moral damages were intended to compensate her for the stress, inconvenience, and emotional hardship she suffered, including the necessity of instituting court proceedings to enforce her rights.

[21] The Plaintiff testified that the dispute caused her significant psychological distress, to the extent that she was compelled to seek professional assistance to manage stress and symptoms of depression. She further explained that she had invested a substantial sum of money into the construction project and that her financial obligations had continued, as she had taken out a loan to fund the works, notwithstanding that the house remains incomplete.

[22] Upon re-examination, the Plaintiff confirmed that once the quantity surveyor's report had been forwarded to the Defendant, he ceased all communication with her and remained unresponsive with regard to refunding the amount of overpayment due following the termination of the contract. She further confirmed that, despite being afforded the opportunity by this Honourable Court to engage in settlement discussions and to resolve the matter amicably and in good faith, the Defendant failed to make any proposals to her.

[23] In conclusion, the Plaintiff maintained that the sum of SR 50,000/- claimed as moral damages was not excessive, given the emotional distress she had endured. She stated that it was not possible to quantify the value of emotional suffering and accordingly left it to the discretion of the Court to determine the appropriate award for moral damages arising from the dispute.

[24] The Defence chose not to call any witnesses so apart from challenging the quantum in regards to moral damages the remaining claims are not being disputed

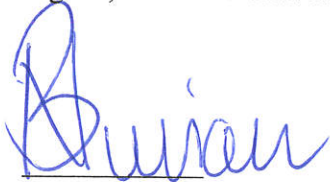
LAW AND ANALYSIS:

[25] After considering the uncontested evidence of the Plaintiff in regards to her claim for overpayment in the sum of SR 285,060.10/- and the claim for penalties in line with clauses 3 and 7 of Exhibit P2 in the sum of SR 259,123.16/- I am satisfied that the Plaintiff has established on a balance of probabilities that she is owed the sums claimed.

[26] The only issue left to be determined by the Court is the quantum of moral damages that should be awarded to the Plaintiff. As per the evidence of the Plaintiff, I am satisfied that she has suffered emotion stress and anxiety as a result of the Defendant's behaviour and failure to meet his obligations under the agreement. She is a young mother and was affected emotionally as a result of having to bring this dispute to the court. Furthermore, her house remains unfinished as a result of the Defendants failure to meet his obligations. I am of the opinion that an award in the sum of SR 50,000/- is reasonable in the circumstances of this case.

[27] I accordingly enter judgment in favour of the Plaintiff in the total sum of Seychelles Rupees Five Hundred and Ninety-Four Thousand One Hundred and Eighty-Three and Twenty-Six cents (SR 594,183.26/-) with interest at the legal rate of 4% and costs.

Signed, dated and delivered at Ile du Port on 17th February 2026



Burian J

