

SUPREME COURT OF SEYCHELLES

Reportable

[2026]

CS67/2021

In the matter between:

DOROTHY MELISA LAINE

(rep. by Mr. Cesar)

Plaintiff

and

AIR SEYCHELLES LIMITED

(rep. by Mr. Georges)

Defendant

Neutral Citation: *Laine v Air Seychelles* (CS67/2021) [2026] (15 June 2026)

Before: Carolus J

Heard: 5th December 2024 & 10th June 2025.

Summary: Delictual Claim – Article 1382 Civil Code of Seychelles Act – Elements necessary to establish delictual liability: Fault, Damage and Causation

Delivered: 15th June 2026

ORDER

The plaint is dismissed. Each party shall bear their own costs.

JUDGEMENT

Carolus J

Background

[1] This judgement arises from a delictual claim for damages arising from injuries sustained by the plaintiff Mrs. Dorothy Melisa Laine, as a result of a fall which occurred on the premises of the defendant, Air Seychelles Ltd. The plaintiff alleges that the accident is due to the fault and negligence of the 1st defendant, in particular, that the defendant failed to provide a safe environment for users of its premises.

- [2] The Amended Complaint dated 18th January 2022 originally cited Air Seychelles Ltd as the 1st defendant, and Sacos Group Ltd as the 2nd defendant in its capacity as the insurer of the 1st defendant, stating that it is vicariously liable to the plaintiff for the acts of the 1st defendant. Pursuant to pleas in *limine litis* raised by the defendants, the complaint was dismissed against the 2nd Defendant by a ruling delivered on 6th October 2023. The matter therefore proceeded only against the 1st defendant (hereinafter referred to as “the defendant”).

Pleadings

The Amended Complaint dated 18th January 2022

- [3] The plaintiff avers that at all material times she was a therapist, and the defendant the provider/operator of domestic and international flights.
- [4] She avers that on or about 4 February 2021, she was seriously injured after slipping on glazed tiles at the defendant’s head office. She was transported to the Seychelles Hospital, admitted for about five days, underwent surgery and continued to receive follow up treatment after being discharged. She states that she is still suffering from the effects of the accident and has permanent disfigurement and partial disability.
- [5] The plaintiff attributes the accident to the fault and negligence of the defendant which she particularises as follows:
- a) the Defendant failed to heed sufficiently or at all to the presence users to its premises on that date and time by rendering a safe environment.*
 - b) the Defendant did not ensure that the glazed tiles were not slippery especially when wet which caused the Plaintiff to be injured.*
 - c) The Defendant was negligent when failed to inspect the inadequate facility at the entrance of the building to render a safe environment and as a result the Plaintiff slipped and fell.*
- [6] The plaintiff avers that as a result of the accident she has suffered loss and damages which the defendant is bound to make good. The loss and damages are particularised as follows:

(a) Injuries as set out in the Medical Report of the Plaintiff	Sr850,000.00
(b) Loss of earnings	Sr100,000.00
(c) Moral Damages (mental trauma, anxiety distress)	Sr700,000.00
(d) Physical Distress and Disfigurement	Sr600,000.00
(e) Caring, Appliances and Other Costs	Sr200,000.00
Grand Total	Sr2,450,000.00

- [7] She therefore prays for damages in the total sum of SCR2,450,000.00, with interest at the current bank rate, with costs as well as any further relief deemed fit by the Court.

Amended Statement of Defence dated 23rd March 2022

- [8] The defendant denies the material allegations in the Amended Plaintiff. It admits the description of the parties but denies the alleged accident, injuries, admission to hospital and treatment, as well as the continuing effects of the accident including permanent disfigurement and partial disability. It avers that it has no knowledge of the same.
- [9] The defendant also denies all allegations of fault and negligence, and avers that it always takes reasonable care to ensure that every user of its facilities and premises are safe and that such care had been taken at the material time.
- [10] It denies the plaintiff's claims for loss and damages contending that the claim is excessive and exaggerated. It further denies liability for any loss allegedly suffered by the plaintiff and avers that such loss, if any, which is denied, was caused by her own acts or omissions.
- [11] The defendant prays for dismissal of the plaintiff with costs.

The Evidence

For the Plaintiff

Testimony of the Plaintiff

- [12] The Plaintiff testified that at around 9:15 on 4 February 2021, she went to the Air Seychelles head office at Pointe Larue, Mahe, to purchase an airline ticket to Praslin. She stated that it was drizzling when her husband dropped her outside the premises, and that she ran into the building.

- [13] Upon entering the building, she approached the receptionist who directed her to an automated and temperature machine, and thereafter towards an office where she could make payment. She testified that as she walked towards the office and shortly before reaching the door, she slipped and fell, injuring her right knee. She further stated that she was attended to by the staff: someone from the SCAA put a knee brace on her, she was put on a stretcher and carried to the ambulance which transported her to the Seychelles Hospital.
- [14] At the hospital she was examined, underwent an x-ray and fitted with a cast. She was then admitted and had surgery the following day. She remained in hospital for about four to five days. After she was discharged from hospital, she attended follow-up appointments, underwent physiotherapy and had to use crutches for several months. She also had three other surgeries to remove the pins which had been inserted in her knee during the first surgery. The plaintiff stated that she was unable to work for about four months after the first surgery and required assistance at home with ordinary activities such as bathing, moving around and using the toilet.
- [15] She further testified that she has not completely recovered and continues to experience pain, numbness and tightness around the knee, as a result of which she cannot kneel and is therefore unable to perform massage work as she previously did. She explained that this is also the reason why she still requires physiotherapy. She also testified that she has a visible scar, remains conscious and fearful of wet floors and considers that she has not returned to normal.
- [16] The plaintiff stated that the floor at the defendant's premises where she fell had tiles which were "*super glossy*" (which she explained as being "*shiny like it was overpolished*") and unsafe, that there was no carpet inside or any warning sign indicating that the floor was slippery. She initially stated that there "*must have been*" water on the floor, and later stated that the floor was wet. Further in examination in chief, when asked if it was the fact that the tiles were shiny and over-polished that made them unsafe, she stated "*That, but also the fact that there was water on the floor and they did not put a sign*". However, in cross-

examination, she accepted that she did not actually see water on the floor and could not confirm whether there was water there.

[17] She also accepted that it was drizzling outside, that she had no umbrella and that her slippers may have been wet when she entered the building. She stated that she had been wearing flat flip-flops with straps, which were recently bought and were not worn or made of slippery material.

[18] She further admitted that she has returned to work full time at the same workplace and is being paid a salary.

Testimony of Mr. Barry Laine

[19] Mr. Barry Laine, the plaintiff's husband, testified that he drove the plaintiff to the Air Seychelles head office and remained in the car while she went inside. A few minutes later, two women in Air Seychelles uniform signalled for him to come inside.

[20] He entered the building and found the plaintiff lying on the floor crying and holding her right knee. He requested that an ambulance be called and she was immediately transported to Mont Fleuri, Casualty Services in the Airport ambulance.

[21] He testified that the plaintiff was examined, underwent an x-ray, and admitted to hospital where she later underwent surgery. He further stated that after the plaintiff returned home, he assisted her with daily care, including bathing and using the toilet. He testified that he drove her to physiotherapy sessions at Anse Royale Hospital on 25 occasions and that he observed her recovery to be slow and painful.

Testimony of Dr. Telma Betsy

[22] Dr. Telma Betsy, an orthopaedic surgeon produced a medical report dated 10 March 2021 and signed by her, which was admitted as **Exhibit P1**. She testified, as recorded in the report, that the plaintiff was seen at the Seychelles Hospital by the orthopaedic surgeon on call on 4th February 2021, with right knee pain and inability to stand or walk after reportedly slipping on floor tiles and sustaining trauma to the right knee.

- [23] Dr. Betsy stated that an x-ray showed a displaced fracture of the right patella. The plaintiff's leg was immobilised in an above-knee cast, and she was admitted for surgery. An open reduction and internal fixation (ORIF) of the right patella was performed the following day 5th February 2021 using K-wires and cerclage. She was discharged from the hospital 4 days later on 8th February 2021.
- [24] Dr. Betsy explained that in simple terms, the plaintiff had broken her kneecap and required surgery. She stated that the injury was consistent with a fall directly onto the knee. She clarified however, that the history that the plaintiff slipped on floor tiles was obtained from the medical notes and that she did not personally see the plaintiff on the day of the accident. Her involvement was limited to ward management after surgery.
- [25] In cross-examination, she accepted that she prepared the report from the medical file and did not have personal knowledge of what occurred before the plaintiff was admitted. She stated that the plaintiff was admitted by one Orthopedic Surgeon, that surgery was conducted by the Chief Orthopedic Surgeon and that she only met the patient on the ward after surgery, during general rounds which are conducted in the morning. She stated that management of the patient after surgery was continued as a team.
- [26] Dr. Betsy also testified that a patient with such an injury may fully recover while another patient may not, and that the time for recovery varies. She stated that in the ordinary course, full recovery may take about four to six months if there are no further interventions.
- [27] She stated that hitting the knee again after the trauma will not affect or delay the healing process unless there is displacement i.e. movement of the cerclage or wire that were placed in the patella. This would require another intervention and delay the recovery period.
- [28] She stated that a patient with an injury such as the plaintiff's would have fully recovered when they can walk at a normal gait and can extend their leg fully. She explained that without a normal patella a patient cannot extend the leg fully. Further that patients are routinely referred to physiotherapy to strengthen their muscle above the patella which allows them to walk normally. She stated that a patient who has attended all her

physiotherapy appointments should have a full recovery, but that sometimes the wire placed inside the knee needs to be removed because it disturbs the skin, gets infected or can be felt beneath the joint. A patient who is able to walk properly without aid and stand for long hours would be considered to have more or less fully recovered. However they would inevitably have pain sometimes, for instance when walking long distances or standing for a long time, as unless the implant is removed there will always be a foreign body in their knee. Dr. Betsy stated that she would not know whether the plaintiff was still suffering from pain.

- [29] In re-examination, Dr. Betsy stated that her involvement in the plaintiff's care ended upon her discharge from hospital.

Testimony of Dr. Bryan Antoine

- [30] Dr. Bryan Garry Antoine, an orthopaedic surgeon with 15 years' experience, works at the Victoria Hospital. He produced an updated medical report dated 2nd December 2024 and signed by him, which was admitted as **Exhibit P2**. He testified that the update concerned the plaintiff's subsequent management, including the removal of loose K-wires (admitted on 19/05/2022) and later removal of the remaining implants (20/05/2024).
- [31] Dr. Antoine explained that implants were inserted to fix the patella fracture and aid healing. He stated that implants are not normally removed unless they cause problems such as pain, loosening, functional difficulty, infection or irritation under the skin.
- [32] According to him, the plaintiff underwent a further procedure in May 2022 because one of the K-wires became loose and was disturbing the skin. He stated that where a loose implant affects the patient, it may interfere with bending the knee, walking or ordinary function. He explained that from the first surgery to the final removal of implants, the process took approximately three years.
- [33] Dr. Antoine stated that he thinks that after her initial surgery, the plaintiff was able to do things normally, but that as soon as the pins loosened she must have had trouble doing so.

To his knowledge, since the removal of the pins in 2024, there are few entries in the plaintiff's file after that.

- [34] In cross-examination, he clarified that he did not personally perform the surgeries or implant removals, as the orthopaedic department works as a team. His personal involvement was limited to ward follow up and treatment during the plaintiff's admissions.
- [35] He also testified that full recovery is possible after such an injury but depends on factors such as the type and extent of fracture, physiotherapy, pain tolerance and the mental state of the patient.

For the Defendant

Testimony of Ms Georgette Pointe

- [36] Ms Georgette Pointe testified that she currently works as a housekeeper at the Cargo Department of the defendant company. She stated that she has worked for Air Seychelles for about 27 years out of which she worked as a receptionist at the Head Office for 14 years. She recalled the incident involving the plaintiff which occurred at the Head Office on Thursday 4th February 2021, which she stated was a rainy day during the Covid-19 period.
- [37] She testified that when the plaintiff entered the building, she took the plaintiff's details, screened her for Covid-19 and directed her to the reservation area, which was located to her right. Shortly thereafter, she heard a scream and saw the plaintiff on the floor holding her knee in pain.
- [38] Ms Pointe stated that the floor where the plaintiff had fallen was not wet or slippery at the time. She explained that whenever the floor was wet, she would call the housekeepers to mop it or place a warning sign. According to her, no wet floor sign had been placed that day because the floor was not wet. She further testified that there was a mat inside the building, but none outside.

- [39] She stated that the plaintiff had entered the building without an umbrella, and that although it had been raining outside and it was wet outside, it was not wet inside the building where the reception area is located. She also testified that the plaintiff was wearing black slippers, which she described as slippery.
- [40] Ms Pointe could not recall any similar incident occurring during the time she has worked at the reception. She reiterated that the floor had not been wet and disagreed that the tiles at the reception area were slippery or unsafe or that Air Seychelles had failed to provide a safe environment for its customers.
- [41] Under cross-examination, she admitted that the plaintiff had been walking normally when she entered the building. She also accepted that she did not see the plaintiff slip or fall, but that it was the impact of the plaintiff's fall and her screams that drew her attention. She further confirmed that several clients had entered the premises before the plaintiff that morning.
- [42] When asked if people coming in the reception area from outside could have tracked in water without her noticing with all the tasks she had to perform at the reception, she maintained that she was careful to ensure the reception floor was kept dry, particularly when it rained. She stated that there was a doormat inside the building at the entrance, and that where necessary, she would call cleaners to mop the area or use a blanket to wipe rainwater brought in by customers. She denied that the floor was slippery or unsafe.
- [43] In re-examination, Ms Pointe stated that when the plaintiff fell, one side of her slipper flew off and it was Ms Pointe who picked it up. She noticed that they were old, worn and slippery.

Submissions

- [44] Counsels for both parties filed written submissions in support of their respective cases, which are summarised below.

Plaintiff's Submissions

- [45] The plaintiff through her counsel submits that she has established her claim in delict. Her case is that while on the defendant's premises as a customer she slipped on the glazed floor while walking towards the sales office. She submits that the accident was caused by the defendant's negligence and failure to provide a safe environment for its clients to do business. She relies on the evidence that it was drizzling outside, that moisture could be brought into the building by customers, and that the defendant's own witness accepted that when it rained, towels or blankets would sometimes be used to wipe water from the floor. It was also submitted that the mat in front of the door was designed to capture mud and dirt from the shoes of people entering the building and not moisture.
- [46] The plaintiff further submits that the defendant's premises had glazed, highly polished and slippery tiles and that no adequate warning sign, rubber mat or other safety measure had been placed at the premises. She contends that the defendant owed a duty to ensure that customers could safely access the ticketing area.
- [47] As to injury and damage, the plaintiff relies on the medical evidence showing that she suffered a displaced fracture of the right patella, underwent ORIF surgery, had metal implants inserted, later underwent procedures for removal of implants and continued to experience pain, scarring and limitation in her work.
- [48] The plaintiff submits that the three elements of delict being, fault, injury and causal link, have been satisfied. She argues that but for the defendant's failure to maintain a safe floor and adequate entrance arrangements, the accident and consequent injury would not have occurred. It is also
- [49] It is noted that in the plaintiff's submissions reference was made to and reliance was placed on evidence that was not led and exhibits that were not produced at the hearing. Pictures of such exhibits were also attached to the submissions. Needless to say that they will not be taken into account by this court.

Defendant's Submissions

- [50] The defendant through counsel submits that the plaintiff has failed to prove her case on a balance of probabilities. It argues that although the plaintiff claims SCR 2,450,000.00, the heads of loss and damage pleaded have not been adequately proved.
- [51] On the issue of liability, the defendant submits that the plaintiff has failed to establish the essential elements of delict under Article 1382 of the Civil Code. It argues that the plaintiff did not prove that the floor was wet at the material time, fitted with glazed tiles, nor that the defendant failed to inspect or maintain the premises.
- [52] The defendant relies on the plaintiff's admission in cross-examination that she did not see water on the floor and could not confirm whether the floor was wet. It also relies on Ms Pointe's evidence that the floor was not wet, that safety precautions were taken when it rained, and that this was the first such incident she recalled.
- [53] The defendant further submits that there were other possible causes of the fall, including the fact that it was drizzling outside, the plaintiff had no umbrella, her shoes may have been wet, and that Ms Pointe described the slippers as old, worn and slippery.
- [54] As to damages, the defendant submits that the plaintiff produced no evidence of her income before or after the accident and no documentary proof showing actual loss of earnings. It also contends that the claims for moral damage, disfigurement, caring, appliances and other costs were either unsupported by evidence or insufficiently particularised.
- [55] The defendant therefore prays for the claim to be dismissed.

Applicable Law & Analysis

- [56] The plaintiff's claim against the defendant is founded on Article 1382 of the Civil Code of Seychelles Act, 1976 ("Civil Code 1976"). It is noted that the incident giving rise to the claim occurred on 4th February 2021, which is when the cause of action in the present case arose. At the time the Civil Code 1976 was in operation, as the subsequently enacted Civil Code of Seychelles Act, 2020 only came into operation on 1st July 2021, by virtue of the

Civil Code of Seychelles Act, 2020 (Commencement) Notice, 2021. Article 1382 of the Civil Code 1976 provides:

Article 1382

- 1. Every act whatever that causes damage to another obliges him by whose fault the harm occurred to repair it.*
- 2. Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.*
- 3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.*
- 4. A person shall only be responsible for fault to the extent that he is capable of discernment; provided that he did not knowingly deprive himself of his power of discernment*
- 5. Liability for intentional or negligent harm concerns public policy and may never excluded by agreement. However, a voluntary assumption of risk shall be implied from participation in a lawful game.*

[57] Under Article 1382, the plaintiff must establish three elements: fault, damage and causation. In *HIS Enterprise (Pty) Ltd v Barra* (SCA 14 of 2018) [2020] SCCA (18 December 2020), the Court of Appeal restated the need to establish the three elements necessary to establish delictual liability. It stated:

[26] *Article 1382 (supra) clearly brings to light three elements necessary to establish delictual liability. These are: fault, damage and causality.*

[58] The Court of Appeal, in that case, also recognised that liability may be absolved where the damage is attributable to an external cause or to the act of the victim. Referring to the case of *The Attorney General rep. Government of Seychelles v Jumaye* (1978 -1982 SCAR 348, the Court of Appeal stated that "*The Judge however noted that the liability of a defendant*

under Article 1382 can be absolved totally or partially where there is an act exterior to the actions of the defendant or by reason of the acts of the victim”.

[59] In *James Low-Kion Low Hang v Tailamai Karipagam Senthil Kumar* (CS 100 of 2017) [2022] SCSC (7 April 2022) the Court stated that:

[6] *The wording of Article 1382 clearly shows that three elements are necessary to engage liability: a fault, a damage and a causal link between the two. The burden of proof of all these elements falls on the Plaintiff on a balance of probabilities.*

and further that:

[9] *[...] Liability only arises from a fault if there is a direct causal relationship between the fault and the damage. Neither statute nor case law has given a precise definition of what constitutes a direct causal relationship. The courts have therefore broad discretion. However, one may note that causation is sometimes viewed in the light of two requirements concerning damage, namely directness and certainty.*

[60] In *Gabriel Pillay v Indian Ocean Tuna Ltd* (CS75 of 2020) [2023] SCSC 55 (30th January 2023), the Court considered a delictual claim for damages arising from an alleged injury sustained by the plaintiff during the course of his employment with the defendant. This case is instructive in that it confirms that the fact that a person has sustained an injury does not, without more, establish delictual liability. The plaintiff must still prove the fault alleged, the damage suffered, and the causal link between the two.

[61] In light of the wording of Article 1382, and the above-cited authorities the issues for this Court's determination are therefore whether the plaintiff has proved, on a balance of probabilities, that the defendant committed a *faute*, that the plaintiff suffered any damage (i.e. the plaintiff's injury), and whether the *faute* caused the damage (i.e. the causal link between the fault and the damage).

[62] It is not disputed that the plaintiff fell whilst on the defendant's premises and sustained a serious injury to her right knee. The medical evidence establishes that she suffered a displaced fracture of the right patella, underwent surgery and received subsequent follow-

up treatment. There is no doubt that the injury was real and significant. However, the central question is not merely whether the plaintiff fell or whether she was injured. The question is whether the plaintiff has proved that the fall and consequently the injury was caused by a fault attributable to the defendant.

[63] The fault of the defendant as pleaded by the plaintiff is that the defendant failed to provide a safe environment to the users of its premises, failed to ensure that the glazed tiles on the premises were not slippery especially when wet, and failed to provide adequate facilities at the entrance of the building to ensure a safe environment to users of the building. These are the acts or omissions against which the evidence has to be assessed.

[64] In examination in chief, when she was asked why she slipped, the plaintiff first stated that *"there must have been a wet floor there."* The following is the exchange leading up to that statement, which began while she was describing the effect on her of the injury caused by the fall (Proceedings of 5th December 2024, pages 8 & 9):

A. [...] *I am very aware of floors when they are wet; it is something consciously that I am aware of and –*

Q. *Why are you conscious at wet floors.*

A. *I am very scared. I am very very scared of wet floors.*

Q. *Is that after your fall?*

A. *Yes.*

Q. *So are you telling the Court that there was a wet floor in the Air Seychelles building where you fell?*

A. *It must have been because –*

[...]

Q. *Can you describe the floor at Air Seychelles when you fell?*

A. *Let me rephrase what I just said earlier. I walked, I ran in, I was fine, I walked through the left side of the lady to the machine everything was fine, I walked back to her, I was fine, I walked towards the door and just a metre before the door I slipped.*

Q. Why did you slip?

A. There must have been a wet floor there.

Emphasis added.

[65] Later when she was asked whether she was telling the Court that the floor was wet, she answered, “*Yes correctly.*” In that regard, the Proceedings of 5th December 2024, page 20 read as follows:

Q. I say how did you find the building, was it safe or unsafe?

A. It was unsafe for sure.

Q. Why do you say it was unsafe?

A. Because the tiles and if there was —obviously someone dropped water there, if there was water nobody knew about it because there was no sign at all to say slippery floor anywhere.

Q. So you are telling the Court that the floor was wet?

A. Yes correctly.

Q. And there was no sign of slippery floor?

A. No sign at all.

COURT CONTINUES

Q. And you say that there was no sign that the floor was slippery?

A. Yes no sign.

Emphasis added.

[66] Further in examination in chief (Proceedings of 5th December 2024, page 21), the following was stated:

Q. So the offices was there a lot of water when you walked in or not?

A. No there was none.

Q. So how did this water come about?

A. *It must have been towards the door because that is where I fell. I walked in it was fine, I walked to the left it was fine, I walked back to her it was fine then I walked towards the door.*

Emphasis added.

[67] When she was asked whether it was the tiles being shiny and over-polished that made them unsafe, the plaintiff again stated that there was water on the floor. The proceedings of 5th December 2024, page 20 state:

Q. *So it is the shining that makes it not safe?*

A. *That but also the fact that there was water on the floor and they did not put a sign.*
Emphasis added.

[68] However in cross-examination, when asked directly whether she saw any water on the floor, she answered, “*I did not*”, and accepted that she could not confirm whether there was water on the floor or not. The proceedings of 5th December 2024, page 20 state:

Q. *So in reference to your examination in chief you have insisted that there was water.*

A. *Yes correct.*

Q. *[...] You said if there was water and then there are other times that you insisted that there was water but did you see any water on the floor?*

A. *I did not.*

Q. *So you cannot confirm whether there was water on the floor or not?*

A. *I cannot.*

Emphasis added.

[69] In those circumstances, her evidence that the floor was wet ought to be treated as an inference drawn from the fact that she slipped and fell, rather than as evidence that she actually saw water on the floor and that the floor was actually wet.

[70] A court may draw reasonable inferences from proven facts in appropriate cases. However, an inference must be grounded in evidence. The mere fact of a fall does not, without more, prove that the floor was wet, slippery, unsafe or negligently maintained.

- [71] The plaintiff also testified that the tiles were glossy or highly polished. However, no evidence, expert or otherwise, was led to establish that the tiles were inherently unsafe or below generally acceptable slip resistance, whether in dry or ordinarily trafficked conditions, that is, the expected everyday levels of movement over a floor surface. No inspection report, photographs with technical explanation, flooring assessment or other independent evidence was produced to establish that the floor presented an unreasonable risk to customers.
- [72] The plaintiff's own evidence is also material. She stated that when she entered the building, she was able to walk to the receptionist, proceed to the temperature and sanitising machine, and then walk towards the sales/ticketing office. She did not fall during those earlier movements inside the building. Although this does not conclusively prove that the floor was safe, it weakens the inference that the floor area was inherently slippery or unsafe.
- [73] Ms Pointe's evidence was that the floor was not wet at the time. She accepted that she did not see the plaintiff slip or fall and therefore could not say precisely how the fall occurred. However, she gave evidence on the condition of the floor, namely that it was not wet, that no "wet floor" sign had been placed because the floor was not wet and that she would call cleaners to mop or use blankets whenever there was water on the floor.
- [74] The fact that it was drizzling outside and that other customers had entered the premises before the plaintiff supports the proposition that rainwater being tracked into the building was a foreseeable risk. Ms Pointe's evidence that cleaners could be called, signs placed, and blankets used when the floor was wet also shows that the defendant was aware of that risk. However, the issue is not merely whether such a risk existed in the abstract. It was incumbent on the plaintiff to prove on a balance of probabilities that the floor was wet or slippery at the place where she fell at the material time, or that some other unsafe condition existed, and that the defendant failed to take reasonable steps in relation to that condition. I am of the view that, on the evidence before the Court this has not been proved.

- [75] The plaintiff also relied on the absence of a warning sign. A warning sign is material where there is a hazard to warn against. Had the plaintiff proved that the floor was wet or slippery, the absence of a warning sign would have been significant, but as stated the plaintiff has not proved the existence of the hazard itself.
- [76] Although not determinative, the plaintiff's footwear is also relevant. The plaintiff stated that her slippers were recently purchased and not slippery. However, Ms Pointe described them as slippery, old and worn out. I do not consider it necessary to make a definitive finding that the slippers caused the fall. It is sufficient to observe that the evidence leaves open other possible explanations for the fall, including that the plaintiff's footwear may have been wet from the drizzle outside.
- [77] The existence of possible alternative explanations does not automatically defeat a claim. However, where the burden of proof rests on the plaintiff and the primary cause of the damage alleged by her was not observed by her and was denied by the defendant's witness (i.e. water on the floor), the Court cannot assume that the defendant was at fault.
- [78] Since the plaintiff has not proved that the floor was wet, slippery, unsafe or otherwise negligently maintained at the material time, I therefore find that the plaintiff has not proved, on a balance of probabilities, that the defendant failed to provide a safe environment to the users of its premises, or otherwise committed a *faute* within the meaning of Article 1382.
- [79] Having found the element of a *faute* required under Article 1382 has not been established, there is no necessity to address the issue of causation. Nevertheless, in that regard, I note that the Court in *Bouchereau v Ukpe & Anor* (88 of 2001) [2006] SCSC 9 (3rd May 2006) Perera J, cited the following from Amos and Walton in *Introduction to French Law* (2nd Edition) at page 211:

"French Law requires that there should be a causal connection between the Act for which the defendant was responsible and the damage. In actions founded under Article 1382, it is not enough to prove that the defendant committed a fault; it must appear in addition that the accident was caused by that fault".

- [80] In the present case, the medical evidence establishes that the plaintiff's fracture was consistent with a fall directly on the knee. While it proves the connection between the fall and the injury, it does not prove that the fall itself was caused by any act, omission or negligence i.e. *faute* of the defendant.
- [81] While I accept that the plaintiff suffered a serious injury and that her evidence shows that she suffered pain, inconvenience and distress, proof of injury is not by itself sufficient to establish delictual liability. Since the plaintiff has not proved that the injury was caused by any fault of the defendant, there is therefore no basis upon which damages can be awarded.
- [82] It is therefore unnecessary to determine the quantum of the several heads of damages claimed. In that regard, I would only observe, in passing, that the total sum claimed appears insufficiently particularised and excessive on the present evidential foundation.
- [83] In summary, the plaintiff has failed to prove the essential elements of her claim under Article 1382. While she has proved that she fell while on the premises of the defendant as a result of which she sustained a serious injury to her right knee, she has failed to prove, on a balance of probabilities, that the fall was caused by any fault of the defendant. In the absence of the element of fault on the part of the defendant and causation her claim cannot succeed.

Decision

- [84] The plaint is therefore dismissed. Each party shall bear their own costs.

Signed, dated and delivered at Ile du Port on 15th June 2026.



E. Carolus J