

# SUPREME COURT OF SEYCHELLES

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**Reportable**  
CA 20/2024

In the matter between:

**DANIEL MONTHY**

*(Represented by Ms. Shantana Barbe)*

**Appellant**

and

**THE ATTORNEY GENERAL**

*(Representing the Government of Seychelles)*

*(Represented by Mr. Alvin Marie)*

**Respondent**

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**Neutral Citation:** *Daniel Monthy and The Attorney General* (CA 20/2024) [2025] (01 August 2025)

**Before:** Adeline J

**Summary:** Appeal against

**Heard:** By submissions.

**Delivered:** 01 August 2025

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## FINAL ORDER

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I allow the appeal, and accordingly set aside the ruling of her worship. I remit the plaint back to the Magistrate's Court for a hearing of the plaint on its merit before another Magistrate who shall be allocated with the case, given that it is the finding of this court that the plaint discloses a cause of action.

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## JUDGMENT ON APPEAL

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**Adeline J**

## FACTUAL AND PROCEDURAL BACKGROUND

- [1] By notice of appeal, dated 19<sup>th</sup> July 2024, filed in court on the 23<sup>rd</sup> July 2024, one Daniel Monthly (“the Appellant”) who was granted an extension of time to file notice of appeal out of time pursuant to Rule 1 reads with Rule 5 of the Appeal Rules (SI 11 of 1961) made under the Courts Act, Cap 52, commenced appeal proceedings in the Supreme Court against the decision of her worship, the learned Magistrate, in a ruling delivered on the 17<sup>th</sup> April 2023, in Daniel Monthly vs The Attorney General, (representing the Government of Seychelles) filed as CS 93/2022.
- [2] The background to his appeal indicates, that the Appellant, the Plaintiff in the Court aquo, had commenced a suit proceedings by way of a plaint by which it purported to claim from the Respondent, who was then the Defendant in the Court aquo, loss and damage totalling SCR 69,640.00, plus interest and cost.
- [3] In answer, the Respondent who was the Defendant in the court aquo, filed a statement of defence purported to contest the plaint. In its statement of defence, the Respondent (the Defendant then) raised a preliminary issue (which her worship treated as a plea in limine litis) as well as responding to the plaint on its merit. Her worship delivered its ruling on the plea in limine litis on the 17<sup>th</sup> April 2023, which is now the subject of this appeal.
- [4] The plea in limine litis raised was as follows;
- “For the reasons set out below, the Plaintiff plaint does not disclose a reasonable cause of action against either the Seychelles Defence Forces (“the SDF”) or the Seychelles Police Force (“SPF”) and should therefore be struck out under Section 92 of the Seychelles Code of Civil Procedure.”*
- [5] In its Memorandum of Appeal, the Appellant states the grounds of Appeal to be the following;
- “1. The learned Magistrate erred in concluding that the plaint dated 19<sup>th</sup> July 2022 filed by the Appellant herein failed to disclose a reasonable cause of action and the learned Magistrate erred in subsequently striking out the plaint.*

*"2. The learned Magistrate erred in finding that the plaint dated 19<sup>th</sup> July 2022 did not contain a plain and concise statement of facts and circumstances of the case. The plaint met all the requirements that are necessary under the law.*

*"3. The learned Magistrate erred in concluding that the plaint dated 19<sup>th</sup> July 2022, fails to disclose and plead sufficient for the following orders;*

*"(i) Set aside and reverse the ruling on the Magistrate Court that was given in case CS93/2022.*

*(ii) Remit the case to the Magistrate Court and order that the Appellant is given a fair opportunity for his case to be heard on the merits before the Magistrate's Court.*

*(iii) Order any other relief that the Honourable Court deems fit."*

#### **LEGAL ISSUE PRESENTED**

[6] Whether the learned Magistrate erred in concluding that;

- 1. The plaint failed to disclose a reasonable cause of action.*
- 2. The plaint did not contain a plain and concise statement*
- 3. The the plaint failed to disclose material facts.*
- 4. The learned Magistrate erred in finding that no actual faute had been averred in the pleadings when in fact the faute was averred and the particulars of law was well detailed.*
- 5. The learned Magistrate erred in dismissing the case without the merits of the case having been heard given that the reason for dismissal were also based on contested evidence.*
- 6. That is all circumstances, the learned Magistrate placed too much weight on contested evidence that have not yet been produced and weight at a hearing stage in order for her to dismiss the plaint dated 19<sup>th</sup> July 2022.*

[7] As reliefs, the Appellant seeks for the following;

*“7. The Appellant prays the Honourable Court to;*

- (i) Set aside and reverse the ruling of the Magistrate Court that was given in the case ES 83/2022.*
- (ii) Remit the case to the Magistrate Court and order that the Appellant is given a fair opportunity for his case to be heard on merits before the Magistrate Court.*
- (iii) Order any other relief that the Honourable Court deem fit.*

#### **ARGUMENTS OF THE PARTIES BY WAY OF SUBMISSIONS.**

[8] In his submissions, the Appellant submits, that the cause of this action is under Article 1382 of the Civil Code of Seychelles Act, 2020 and that the plaint dated 19<sup>th</sup> July 2022 filed as CS 93/2022, contains three elements necessary to create a cause of action in delict, notably, fault, damage and causal link. The Applicant submits, that the act or omission, to let him access his vessel caused a harm as a direct result of the faute. He avers, that the faute is evident on the face of the pleadings in the plaint. The damage suffered is the fish rotting, and therefore he could not sell his 847 kg of fish worth SCR 44,640.00.

[9] As regards to the causal link, the Appellant avers, that if only he had been granted permission to access the vessel and maintained his catch in good condition, or at least permission to remove his catch, he would have been able to sell them. The Appellant cites the case of *Esparon vs Philo* [2023] and *ZA vs Smit* [2015] (without full citation) in support of his proposition. The Appellant submits, that the plaint contains sufficient material facts, and a plain and concise statement of facts as required by procedural law under Section 71 of the Seychelles Code of Civil Procedure, which provides for the particulars that have to be in a plaint.

[10] It is the submission of Counsel for the Appellant, that the plaint contains particulars which gives an insight into the case. The Appellant prays for the ruling of the learned Magistrate to be set set aside, and for the plaint to be remitted to the Magistrate court for hearing on

its merits. The Appellant abandoned grounds 5 and 6 of his Memorandum of Appeal, and as such, made no submissions to canvass the two grounds.

- [11] Inter alia, in his submissions on ground 1, learned Counsel for the Respondent, stated, that the plaint did not contain the elements necessary to establish a clear cause of action. Learned Counsel contends, that in determining whether a plaint or pleading discloses a cause of action or not, it is obliged to look only at the pleadings not evidence as said in *Bessin vs Attorney General* [1950]. Learned counsel for the Respondent avers, that the words cause of action is defined in cases such as *Elizabeth vs President of the Court of Appeal & Anor* [2010] and *Joubert vs Philoe & Ors* [2016]. Learned Counsel also submits, citing *Auto Garage vs Motokov* [1971], that all the elements in that case must be pleaded to constitute a valid cause of action. (full citation of the case not given).
- [12] It is the submissions of learned Counsel, that the Appellant did not aver in his plaint, that the interception, detention and search of the vessel was illegal or unlawful. Learned counsel for the Respondent submits, that from the moment the vessel was intercepted by the Seychelles Coast Guard and escorted to the fishing port where it was detained, the Appellant no longer enjoyed a right of access to the vessel because it was under lawful custody. Learned Counsel also submits, that in order for there to be a cause of action, the Appellant (Plaintiff then) should have shown, that he enjoyed a right and the right had been violated by the Defendant (now Appellant), he no longer enjoyed a right to access the vessel once the vessel had been intercepted and detained.
- [13] It is submitted by Counsel for the Respondent, that if the court was to decide that the Appellant did enjoy a right to access the vessel at the time of interception and detention of the vessel, the Appellant still failed to properly articulate his cause of action in his pleadings thus making the learned Magistrate correct to strike out the plaint. Learned Counsel for the Respondent averred, that the Appellant failed to specify what were the exact actions and omissions of the Seychelles Coast Guard and the Seychelles Police Force which amounted to *faute in law*. It is the submission of learned Counsel, that the Appellant failed to properly articulate, in the plaint, the exact basis of his claim and thus has no cause of action.

- [14] As regards to grounds 2 and 3, learned Counsel for the Respondent submits, that he disagrees with the assertion made by the Appellant that the averments contained in the plaint establishes a cause of action and the material facts, as Counsel is of the view that the plaint fails to properly articulate and specify the material facts necessary for establishing any cause of action against either the Seychelles Coast Guard or the Seychelles Police Force. It is the submission of learned Counsel, that the Appellant failed to specify in his pleadings, whether the Seychelles Coast Guard or the Seychelles Police Force acted unlawfully or illegally when searching and detaining the vessel.
- [15] To support its proposition, learned Counsel cites the case of *Philip Rath vs Robin Richmond* [2017] (full citation not given) in which case, Robinson J, (as she then was) set out the meaning of a reasonable cause of action. It is also submitted by learned Counsel for the Respondent, that a plaint which lacks material facts is bad in law. Learned Counsel further avers, that a plaint that does not contain a clear and concise statement of material facts to establish a cause of action is bad in law and this is fatal. Learned Counsel cites the case of *Auto Garage vs Motokov*, and concludes, that the Appellant's plaint fails to set out the material facts which give rise to a reasonable cause of action. On account of his submissions, learned Counsel for the Respondent prays this court to dismiss the appeal and uphold the ruling of the learned Magistrate.

#### **COUNT'S REASONING AND ANALYSIS**

- [16] This appeal arises from a dismissed of the Appellant's plaint on the ground that it does not disclose a reasonable cause of action. The Appellant, one Daniel Monthy, alleges that the actions of the Seychelles Coast Guard and the Seychelles Police Force led to the rotting of his fish catch, resulting in financial loss and moral damages. The Respondent contends, that no wrongful act amounting to a faute in law was committed, and therefore, the plaint fails to establish that the Appellant had a Valid claim.
- [17] Section 92 of the Seychelles Code of Civil Procedure ("SCCP") becomes relevant for the purpose of determining this appeal. It empowers the court to strike out pleadings that do not disclose a reasonable cause of action or defence. In making such a decision as to whether to strike out the pleadings, the court has to only look at the pleadings without

considering extraneous evidence. Dismissal of the plaint is appropriate only in clear and obvious cases. For ease of reference, Section 92 of the SCCP is couched in the following terms;

*“ 92. Striking out pleadings.*

*The court may order any pleading be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in the case of action or defence being shown by the pleadings to be frivolous or vexatious, the court may order that the action be stayed or dismissed or may give Judgment on such terms as may be just.”*

- [18] Unsurprisingly and interestingly, there is no definition of a *cause of action* under Article 92 of the SCCP. Because of that, I have had to resort to comparative case law which I find to be of persuasive value. In that regard, the case of *Auto Garage vs Motokov* [1971] EA 514 in which the Court of Appeal for East Africa, after a review of few English case law, at page 519, *Spy VP*, came up with the following definition;

*“I would summarise the position as I see it by saying that if a plaint, shows that the Plaintiff enjoyed a right that has been violated, and that the Defendant is liable, then, in my opinion, a cause of action has been disclosed.”*

- [19] In *Joubert vs Philoe & ors* (CS 75/2014) [2016] SCSC 243 (05 April 2016), the Court held that *“a motion for striking out pleadings which disclose no reasonable cause of action under Section 92 of the Seychelles Code of Civil Procedure is to be decided solely on the pleadings”*. The Court went further stating, that it has to be further decided that *“where the non-existence of reasonable cause of action is not beyond doubt ex-facie the pleadings, the pleadings ought not to be struck out.*

- [20] The substantive law which appears to be relevant for determining this application, is Article 1382 of the Civil Code of Seychelles Act, 2020. Under Article 1382, *“every act of man causing harm to another obliges the person at fault to repair it. For the purpose of Article 1382, faute is defined as an error of conduct that would not have been committed by a prudent person in the circumstances, and it may result from an act or omission.* Article 1383 extend liability to harm caused by negligence or imprudence.

- [21] Under Article 1384, individuals are held responsible for harm caused by persons for whom they are responsible or by things in their custody. Therefore, putting all these provisions together, for a Plaintiff to establish a delictual claim, the Plaintiff must demonstrate *faute* which is an act or omission that constitutes an error of conduct by the Defendant, the damage which is the harm suffered by the Plaintiff, and the causal link which is a direct connection between the Defendant's *faute*, and the Plaintiff's damage. In the case of *Esparon vs Philo* (SCA 17 of 2021) [2023] SCCA 15 (26 April 2023) Andre JA, cited with approval the case of *Emmanuel vs Joubert* [1996] SCCA 49. In which case Ayoola, JA stated;

*The three elements which therefore make a claim arise in respect of a delictual act or fault, injury or damage and the causal link. The claim arises at the earliest time when these three co-exist and it is from that time that it is open to the aggrieved person to bring an action to force the claim that has thus arisen....a claim in respect of an act or omission arises when facts on which liability can be founded exists."*

- [22] In the instant case, the trial Magistrate struck out the plaint on the ground that it did not disclose a reasonable cause of action, specifically, because of the failure to identify a fault committed by the Seychelles Coast Guard or the Seychelles Police Force. The Respondent avers that the Appellant failed to properly articulate the cause of action in his pleadings. It is therefore, my considered view, that even if the language of the plaint is vague or not concise, that alone, does not mean it fails to disclose a cause of action. The case of *Tropicolour Limited vs The Government of Seychelles & Anor* supports that view. Hence, what needs to be shown to prove a reasonable cause of action is the three elements spelt out in *Esparon* (Supra). That is to say, the *fault, injury or damage*, and the *causal link*.

- [23] Therefore, in the final analysis, it is my considered view, that the pleadings disclose a potential cause of action in delict, in that, it alleges the following;

1. Fault: Had the Appellant been granted access to his vessel as he alleges, he could have preserved his catch. Although the Respondent refutes this claim, the determination of the true account of the circumstances is not to be conducted on the face of the pleadings, but rather, at the hearing. What is

relevant is that the plaint discloses some degree fault, which in the instant case, the plaint does.

2. Damage: The Plaintiff claims, that due to the inability to access the vessel, his catch has been rotten resulting in a loss of 847 kilograms of fish which he claims is valued at SCR 44,640.00, along with moral damages which he assessed as SCR 25,00.00. The determination of whether or not the catch actually rotten is not a matter to be considered on the face of the pleadings, but rather, on the evidence after the hearing.
3. Causal Link: Does the plaint reveal whether it was the Respondent's fault that the catch got rotten leading to pecuniary and moral damages? In my considered opinion, the answer is "yes", because the plaint alleges that without the Seychelles Coast Guards and the Seychelles Police Force actions, the fish catch would not have rotten. Whether or not this was a fact, such a determination is not to be made on the face of the pleadings, but rather, on the evidence after hearing.

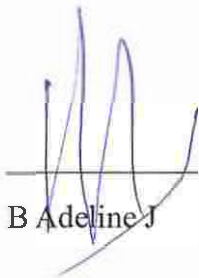
[24] In essence, while it appears to me, that the Respondent (previously the Defendant) raised some valid points, these points are to be considered and addressed after the hearing of the evidence not at the pleading stage.

## **HOLDING AND IMPLICATIONS**

[25] One of the reliefs sought for by the Appellant is for the case to be remitted back to the Magistrate's Court to be heard on its merit. It is not uncommon for a party to a case, on appeal, to pray for this relief. In the case of *Estate of the late Andre Delhomme and others vs The Attorney General*, (SCA 15 of 2020) [2023] SCCA 16 (26 April 2023), the Court of Appeal substituted the order of the Supreme Court allowing the plea in limine litis for one dismissing the plea and remitting the matter back to the Supreme Court for hearing on the merits. In that case, as opposed to the instant one, the basis of the decision was that "the learned Judge was wrong to take judicial notice of the twenty-year extinctive prescription which had not been pleaded to dismiss the Appellant's action in limine litis."

[26] For those reasons, therefore, I hold that dismissal of the plaint under Article 92 of the SCCP has been made prematurely. As such, the learned Magistrate did not afford the Plaintiff, now the Appellant, an opportunity to present evidence supporting his allegations. As a consequence therefore, I allow the appeal, and accordingly set aside the ruling of her worship. I remit the plaint back to the Magistrate's Court for a hearing of the plaint on its merit before another Magistrate who shall be allocated with the case, given that it is the finding of this court that the plaint discloses a cause of action.

Signed, dated and delivered at Ile du Port on 01<sup>st</sup> August 2025.



B Adeline J