

SUPREME COURT OF SEYCHELLES

Reportable

CS84/2022

In the matter between:

NICHOL FANCHETTE
(rep. by Basil Hoareau)

Plaintiff

and

THE ATTORNEY GENERAL
(rep. by Nissa Thompson)

Defendant

Neutral Citation: *Nichol Fanchette v The Attorney General* (CS 84/2022) (2 May 2025).

Before: Burhan J

Summary: Faute in law; alleged unilateral reduction in salary.

Heard: 28 May 2024 and 9 October 2024

Delivered: 2 May 2025

ORDER

No faute arises, as there was no reduction of salary, but rather a new offer of employment. The plaint is therefore dismissed.

Considering the circumstances peculiar to this case, I make order that each party bear their own costs.

JUDGMENT

BURHAN J

[1] The Plaintiff filed a plaint against the Defendant seeking the following reliefs:

- a) *Order the Defendant to pay damages to the Plaintiff in the sum of SR611,442.77, and damages representing the loss of SR10,855 per month for the period of July 2022 until the date of the judgment, with interest at the legal rate of 4%;*

- b) *Order the Defendant to pay the Plaintiff a monthly salary in the sum of SR41,873 from the date of judgment;*
- c) *Order the Defendant to pay costs to the Plaintiff; and*
- d) *Make any other order for the benefit of the Plaintiff as may be just and necessary in the circumstances of the case.*

Background Facts

- [2] The Plaintiff, Nichol Fanchette, is a member of the National Drug Enforcement Agency (“NDEA”) and the Defendant is the Attorney General representing the Government of Seychelles. The Plaintiff filed a plaint against the Defendant, on 3 August 2022. The Defendant filed their Defence on 7 December 2022, raising a *plea in limine litis*. This Court dismissed the *plea in limine litis* on 15 September 2023.
- [3] It is not disputed that the Plaintiff was a member of the NDEA from 1 August 2008 until November 2017 when the NDEA ceased to exist on 1 November 2017, following the repeal of the National Drug Enforcement Agency Act. He was the Deputy Chief Executive Officer of the NDEA from 1 February 2017 until the repeal of the NDEA Act, and was earning a gross monthly salary of SR40,953 and a monthly clothing allowance of SR920.
- [4] The Plaintiff further avers in his plaint that by letter, dated 6 October 2017, written by the Chief Executive Officer of the NDEA, Mr. Krishnan Labonte, and addressed to all members of the NDEA, it was stated and an undertaking was given that all personnel working with the NDEA were to be integrated in the Seychelles Police Force, on the same salaries and allowances that they were earning whilst being employed by the NDEA (hereinafter the letter). The Plaintiff avers that at the time that Mr Labonte wrote the letter, he had been nominated by the President, and the National Assembly had approved his nomination, to be the Commissioner of Police. The Plaintiff further avers that Mr Labonte wrote the letter as the agent and proxy of the Government of Seychelles or alternatively in writing the letter he acted with the apparent authority of the Government of Seychelles. The Defendant in their Defence stated that these averments are not within the knowledge of the Defendant and the Plaintiff was put to strict proof thereof.

- [5] The Plaintiff further avers that on 1 November 2017, the Plaintiff was integrated into the Seychelles Police Force, as a Special Constable, on a monthly salary of SR40,953 and monthly clothing allowance of SR920, being the same salary and allowance that the Plaintiff was earning at the time the NDEA ceased to exist. This is admitted by the Defendant. The Plaintiff further avers that he continued to earn the said salary and allowance until the month of June 2019. The Defendant admits this averment to the extent that the Plaintiff was earning a monthly salary SR40,953 and monthly clothing allowance of SR920.
- [6] The Plaintiff avers that by letter dated 1 July 2019 - written by Miss Guyto Boniface for and on behalf of the Commissioner of Police - the Plaintiff was informed that his monthly remuneration was to be varied as follows -
- the Plaintiff's monthly salary was to be SR22,958; and
 - the Plaintiff was to be paid a monthly, clothing allowance, commuted allowance and inducement allowance respectively in the sum of SR920, SR2500 and SR5000.
 - The Plaintiff avers that the Government of Seychelles unilaterally and illegally reduced his monthly remuneration from SR41,873 to SR31, 018, as from the month of July 2019.
- [7] The Plaintiff avers that the unilateral and illegal reduction of the Plaintiff's monthly remuneration by the Government of Seychelles is a faute in law. In the alternative to paragraph 12 of the plaint, the Plaintiff avers that Mr Krishnan Labonte, acting in his capacity as the Commissioner of Police and consequently in his capacity as a servant and employee of the Government of Seychelles, unilaterally and illegally reduced the monthly remuneration of the Plaintiff from SR41,873 to SR31,018 (hereinafter the "new salary"), as from the month of July 2019. Further to paragraph 13 and in the alternative to paragraph 12 of the plaint, it is averred that the act of the Mr Krishnan Labonte, as set out in paragraphs 13 above, amounts to a faute in law and renders the Government of Seychelles vicariously liable for the damage caused to the Plaintiff by the fault of Mr Krishnan Labonte.
- [8] The Defendant in the Defence denies these averments and states that in the letter referred to by the Plaintiff, he was offered the post of Principal Officer with a new remuneration

package. The Defendant further states that the variation was not illegal or otherwise unlawful, as alleged. It is further stated that at no point, did the Plaintiff indicate that he contested the reclassification of his post and/or variation of the terms and conditions of his employment. The Defendant referred to a letter dated 1 July 2019, where the Plaintiff was informed that, owing to a restructuring of the Anti-Narcotics Bureau (“ANB”) the Plaintiff was being offered a new post of Principal Officer. The letter stated materially that “[your assumption of duty and signature of this letter will be considered as evidence that you accept the conditions of employment in the Anti-Narcotics Bureau (Public Service) under the Department of Police that is Seychelles Police Force”, before concluding that “[in any case that you are not in agreement of such offer, we will have no other alternative than to terminate your appointment by paying you all relevant dues entitlements (sic.)”. The Defendant avers that the Plaintiff continued in his employment with the Defendant (therefore assuming duty in the reclassified post) and proceeded to sign the letter on 16 October 2019, thus demonstrating that he accepted and agreed to the proposed reclassification of his post and the variation of his terms and conditions of employment.

- [9] The Plaintiff further avers in the plaint that he was paid two gratuities and a 13th month salary, on the basis of the new salary. The Defendant stated in the Defence that it is not within their knowledge.
- [10] In conclusion, the Plaintiff states that the faute in law as averred in paragraph 12 or in paragraphs 13 and 14 has caused damages to the Plaintiff. The Particulars of Damages are as follows:

Particulars of Damages

(i) loss in respect of the monthly salary – at SR10,855 per month - from July 2019 to June 2022	SR 390,780.00 (continuing after June 2022 at the rate of SR10,855 per month
(ii) loss in respect of the gratuity for the period of November 2017 to October 2019	SR 8,013.00
(iii) loss in respect of the gratuity for the period of November 2019 to October 2021	SR 51,794.77

(iv) <i>loss in respect of the 13th month salary for the year 2019</i>	<i>SR 10,855.00</i>
(v) <i>Moral Damages</i>	<i>SR 150,000</i>
<i>Total</i>	<i>SR 611,442.77</i>

[11] Further, the Plaintiff avers on the basis of the averments contained in paragraphs 4 and 10 of the Complaint that the Government of Seychelles was estopped from reducing his monthly remuneration. The Plaintiff avers that, in the premises the Government of Seychelles is liable to pay the Plaintiff the sum of SR611,442.77, in addition to damages in the sum of SR10,855 per month from July 2022 until the date of judgment.

[12] The Defendant in Defence states that paragraphs 16, 17 and 18 are denied and “*The Plaintiff is not liable in delict or at all, and paragraph 10 is repeated.*”

Submissions

[13] The Defendant filed its written submissions on 9 October 2024. The Plaintiff’s counsel despite numerous opportunities given by the Court never filed written submissions.

The Defendant’s Submissions

[14] It was submitted that the Defendant’s case is that the Plaintiff voluntarily accepted the new terms of employment for the new post, despite his claim of duress due to the need to maintain his employment. It is argued that his signature on the letter dated 1 July 2019 written by Mrs. Guyto offering the new position, along with his resumption of duty, meant that the Plaintiff continued working for the Seychelles Police in the ANB in the new Principal Officer position. By reasons of the aforesaid, the Defendant totally denies liability, vicarious or otherwise.

[15] With regard to the credibility and reliability of the Plaintiff’s testimony, the Defendant submitted that the Plaintiff maintained that there was no meeting or negotiation about the new terms, whereas witness for the Defendant, Ms Boniface testified that such meeting took place. It is submitted that the Plaintiff’s testimony is that the first time he came to know of the reduction was when he received P4 - in the absence of any shred of supporting

evidence. It was submitted that his testimony is not credible and is clearly contrary to what was stated in P4 which he received from his employer supported by Ms. Boniface evidence that there was a meeting on 25 June 2019, before the letter was issued on 1 July 2019.

- [16] The Defendant referred to Article 1384 of the Civil Code of Seychelles:

Article 1384 (3) Employers are liable for harm caused by their employees acting within the scope of their employment. A deliberate act of a servant or employee contrary to the express instructions of the master or employer and which is not incidental to the service or employment of the servant or employee shall not render the master or employer liable.

- [17] It was submitted that based on the evidence adduced, the Plaintiff's acceptance of the new contract and his continuation of employment under the new terms were voluntary. Although, the Plaintiff claims duress on the grounds that he needed to maintain employment, it is clear that he willingly chose to accept the new position which came with the new salary package for the obvious reason that he needed a job - this is no different for any other individual with financial responsibilities who requires employment and duress has not been established.
- [18] Further, the Defendant submitted that the crux of the matter is that the Plaintiff was informed of the restructuring and given a choice, which he voluntarily accepted. This exemplifies the essence of the freedom to enter into a contract, where parties have the autonomy to agree upon terms that suit their circumstances.
- [19] The Defendant maintained that the initial letter from Mr Labonte [P3] is unrelated to the question of whether the Plaintiff's employment contract was unilaterally varied – a claim the Defendant demies, asserting that the Plaintiff himself acknowledged that it was a new employment contract. At the time of writing P3, Mr. Labonte could not have anticipated the ANB restructuring, which led to the reclassification of posts within the Seychelles Police Force. The Plaintiff's acceptance of the new terms was based on the specific circumstances and restructuring at that time, which Mr Labonte could not have foreseen or prevented a restructuring approved by the Department of Public Administration. The Defendant further submitted that the commitment in Mr Labonte's letter was honored by the Seychelles Police until June 2019; since the restructuring was communicated on 1 July

2019. The Defendant argues that based on the above, the Defendant cannot be held liable for any alleged harm or damages claimed by the Plaintiff.

- [20] Regarding compensation/quantum, the Defendant submitted that should the Court find that liability, any award should be limited to the period up to the termination of the Plaintiff's employment with the Seychelles Police on December 31, 2022, effective January 1, 2023. Further, the Defendant submitted that, as this is a tort claim, damages should be compensatory and not punitive; and must be assessed in such a manner that the Plaintiff suffers no loss and at the same time makes no profit.
- [21] The Defendant concluded that for the reasons set out above, the plaint is without merit and should therefore be dismissed.

Analysis and determination

- [22] The Plaintiff pleaded faute in law based on the following claims: (i) the Government of Seychelles unilaterally and illegally reduced his monthly remuneration as from July 2019 and that amounts to faute in law; (ii) in the alternative, Mr Krishnan Labonte, acting in his capacity as the Commissioner of Police, as a servant and employee of the Government, unilaterally and illegally reduced the monthly remuneration; and further and in the alternative Mr Labonte's act amounts to faute in law and renders the Government of Seychelles vicariously liable for the damages caused by faute of Mr Labonte.
- [23] The relevant provisions of the Civil Code on delict are as follows:

"1382. (1) Every human act that causes harm (dommage) to another requires the person by whose fault the harm occurred to repair it.

(2) (a) Fault is an error of conduct that would not have been committed by a prudent person in the circumstances.

(b) Fault may be the result of an act or an omission.

(c) 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.

(3) (a) A person is responsible for fault, original or contributory, only to the extent of that person's capacity of discernment.

(b) This paragraph does not apply to a person who knowingly deprives him or herself of the power of discernment.

(4) (a) An agreement to exclude liability for intentional or negligent harm is null.

(b) Voluntary assumption of risk is implied from participation in a lawful game.

1383. A person is liable for harm caused not only by his or her actions but also by his or her negligence or imprudence.

1384.(1) A person is liable for harm caused not only by his or her own act but also for the harm caused by the act of persons for whom he or she is responsible or by things in his or her care.

...

(3) (a) Employers are liable for harm caused by their employees acting within the scope of their employment.

(b) A deliberate act of an employee contrary to the express instructions of the employer and which is not incidental to the service or employment of the employee does not render the employer liable.

... ”

[24] This Court will first proceed to consider whether the Government has unilaterally and illegally reduced the Plaintiff's remuneration, and if so, whether this constitutes fault in law as pleaded.

[25] It is not disputed that the NDEA ceased to exist and the Plaintiff's position of the Deputy Chief Officer of the NDEA was consequently abolished. Rather than being made redundant, the Plaintiff was informed that NDEA will be integrated with the Department of Police. The letter from Mr Kishnan Labonte (Exhibit P2) informed NDEA personnel that their salaries and allowances would not be affected by the integration. The Plaintiff was subsequently appointed as a Special Constable within the Police Force as of 1 November 2017 (Exhibit P3). It is further undisputed that the Plaintiff continued to receive the same salary and allowances as he did in his former position within the then NDEA until July 2019.

[26] The Plaintiff received a letter dated 1 July 2019 from Ms Gyuto Boniface, Senior Human Resources and Budget Management Officer, Anti-Narcotic Unit, for Commissioner of Police. The letter informed the Plaintiff that his post of Deputy Chief Officer of the NDEA

had been abolished; and that following the restructuring of the Anti-Narcotics Bureau (ANB), which was approved by the Department of Public Administration (DPA), the highest post within the ANB was that of Principal Officer, classified under salary band S8-S10. The letter further stated that, following the Job Evaluation Process conducted by the DPA, the ANB was pleased to offer the Plaintiff the position of Principal Officer the highest post in the ANB, at salary band of SB10 Step 15. The Letter also stated: “5. *Your appointment takes effect retrospective of 01st November 2017 as approved on 01st July 2019*”. Paragraphs 10 and 11 provides the following:

“10. Your assumption of duty and signature if this letter will be considered as evidence that you accept the conditions of employment in the Anti-Narcotics Bureau (Public Service) under the Department of Police that is Seychelles Police Force.

11. In any case that you are not in agreement of such offer, we will have no other alternative than to terminate your appointment by paying you all relevant dues entitlements.”

- [27] The letter is signed by Ms Boniface and subsequently by the Plaintiff, who signed it on 16 October 2019 – approximately three and a half months after it had been issued.
- [28] The Plaintiff claimed that, despite having signed the letter only in October 2019, his salary had already been reduced as of July 2019. He testified that for the months of July, August and September, he was paid the newly offered lower salary, even though he had not yet signed the letter. However, the Plaintiff has only produced his pay-slip for April 2019, which reflects his salary prior to the reduction. He has not produced pay-slips demonstrating that the salary reduction was applied from July 2019, as opposed to from October 2019.
- [29] The Plaintiff explained during his testimony that he was initially reluctant to sign the letter, as it involved a significant reduction in salary. However, he testified that the alternative presented to him was termination of employment. The Plaintiff testified that he had financial obligations and planned his expenditures based on the salary he was receiving at the NDEA, and was therefore unwilling to accept the lower pay. Nevertheless, faced with the prospect of termination, unemployment, and loss of income, he signed the letter – while reserving his right to initiate legal proceedings. The Plaintiff produced Exhibit P5, a letter

he addressed to the Police Department, Anti-Narcotics Bureau, attention: Ms Boniface, dated 16 October 2019. In his letter the Plaintiff stated the following:

I write to inform you that I will be signing the new contract of employment, in respect of new post as Principal Officer, in view I have no choice as my appointment would be terminated as indicated in paragraph 10 of the letter dated 1st July 2019.

However I reserve all my rights to initiate any legal proceedings to challenge the abolition of my post as Deputy Chief Officer and to claim any damages.

- [30] Ms Boniface, a witness for the Defence, explained in her testimony the background leading to the salary revision. She testified that two members of the NDEA, who were assistants to the Chief Officer of the NDEA, were receiving a lower salary whilst in the NDEA than the Plaintiff who held the position of Deputy Chief Officer of the NDEA. Upon the integration into the Police Force, the Chief Officer of the NDEA was appointed as the Commissioner of Police, and the two members who were his assistants subsequently were appointed as assistants of the Commissioner of Police – one of whom was later appointed as Deputy Commissioner Assistant. The Plaintiff, on the other hand, was appointed as a Special Constable. Ms Boniface testified that these former NDEA members continued to receive the same salaries as they did at NDEA, resulting in a situation where the Plaintiff, though now a Special Constable, was effectively earning a higher salary than the Deputy Commissioner Assistant. A panel from the DPA was formed to review the salaries. Job analysis questionnaires were distributed to all the officers to note all the duties they were performing. Ms Boniface further testified that, following this process, the DPA issued a letter stating that the position of the Deputy Chief Officer had been abolished, effective from the date the ANB came into force. According to Ms Boniface, a meeting was held on the 25 June to discuss the changes with the Plaintiff, particularly discussion was done in respect of salary being lower. It appears that the letter P4 dated 1 July 2019 refers to this meeting with the Plaintiff which was not denied by the Plaintiff in his reply P5 dated 16 October 2019 even though the Plaintiff in his testimony states that no meeting took place.
- [31] Unfortunate as the circumstances may be, the Plaintiff was given a choice: to either accept new position with a lower salary or face redundancy, following the abolishment of the post he previously held with the NDEA. In his own letter, the Plaintiff stated that he would sign the new contract of employment, albeit in view that he had “no choice,” as his appointment

would otherwise be terminated. He further reserved the right to initiate legal proceedings to challenge the abolition of his post as Deputy Chief Officer (P5).

- [32] This Court observes that the Plaintiff is not challenging the abolition of his NDEA post in the current proceedings, instead he is alleging unilateral and illegal reduction in salary. It therefore appears to Court that the Plaintiff is claiming that his salary under an existing contract of employment was unilaterally and illegally reduced by the employer. It is the view of this Court, in light of the evidence before it, that this is not what has occurred. The letter of 1 July 2019 effectively informs the Plaintiff that his post had been abolished, he is offered a new position with new conditions of employment, and informed that if he does not accept the new position, the employer has no alternative but to terminate his employment.
- [33] This Court considers that the letter of 1 July 2019 constituted an offer of a new position to the Plaintiff with a lower salary and is not a variation of the terms of his existing employment or a reduction of the salary attached to the previous post. Although this Court notes that it appears peculiar to offer new contract with appointment taking effect retrospectively by almost year and a half, Ms Boniface testified that this was a mere formality following the DPA's decision. This is supported by the fact that the Plaintiff was not asked to pay back or repay any of the higher salary he received during the period 1 November 2017 till 1 July 2019.
- [34] In the absence of written submissions from the Plaintiff on these issues, and upon consideration of the evidence adduced by both parties as set out in [31] to [33] herein and the Defendant's submissions, this Court finds that the reduction in salary cannot be said to have been a unilateral decision taken by the Defendant. Consequently, I find that the Plaintiff's salary was not unilaterally reduced. For such a reduction to occur, the Plaintiff's salary would have had to be reduced under his existing conditions of employment and solely at the instance of the employer, without consultation or agreement with the employee. I find that, rather than varying the existing terms of employment, the employer offered a new position with new terms, and the Plaintiff was given an option either to accept the new position or to have his current employment terminated.

- [35] In regard to the Plaintiff's contention that he signed the agreement under duress, there is no specific mention of the word duress in his reply P5 and having come to a finding that the letter of 1 July 2019 offered a new position with new terms and the Plaintiff was given an opportunity of accepting or rejecting this offer, in the absence of counter submissions on this issue from the Plaintiff, the Court agrees with the Defendant's submissions that the acceptance was voluntary and the Plaintiff willingly chose to accept the newly offered position with revised salary for the understandable reason that he required continued employment; and this is no different for any other individual with financial responsibilities who requires employment. This is also supported by the Plaintiff's evidence as he too in his evidence refers to the financial responsibilities he had at the time he accepted the new contract.
- [36] Upon consideration of the evidence, this Court observes that both options presented to the Plaintiff were indeed less favorable in comparison to the terms of his former position. However, the mere fact that the alternatives may have been limited or unfavorable does not, in itself, amount to duress. Organizational restructuring, whether within governmental departments or private entities, may frequently result in redundancies. Indeed, according to the testimony of Ms Boniface, in an effort to avoid such an outcome for the NDEA personnel, they were instead integrated into the police force. I am therefore satisfied that, despite the less favorable salary conditions attached to the new position, the Plaintiff was nevertheless afforded a choice. He chose to accept the newly offered position, which carried a lower salary, rather than face redundancy following the abolition of his former post. Further the Plaintiff signed the letter almost three months after its issuance, which shows that he had time to consider his options. It is also to be observed that the Plaintiff subsequently remained in that position until the termination of his employment, effective 1 January 2023 (Exhibit P6), a period slightly exceeding three years.
- [37] With regard to the alleged illegality in the reduction of salary, this Court observes that the allegation was not substantiated by evidence, nor was it argued during submissions (as none were filed). This Court further notes that the Government abolished the NDEA and restructured its departments within the Police Force. The decision offering him his new post and new salary came after a Job Evaluation Process conducted by a Panel of the

Department of Public Administration who evaluated his job analysis questionnaire and his experience and decided that the Plaintiff could be absorbed into the ANB which is an institution under the Department of Police as Principal Officer which was the highest post in the ANB at the salary band SB10 Step 15 (P4). This is the highest salary they could have offered him at that time within the ANB. There is no evidence that this decision was immediately challenged or reviewed by the Plaintiff and no evidence of any illegality has been adduced. Accordingly, this Court finds that the alleged illegality was not proven by the Plaintiff.

- [38] Furthermore, as the salary decision was made by the DPA, this Court finds that no faute can be attributed to Mr Krishnan Labonte, and consequently, no vicarious liability can be imposed on the Government for his actions in this circumstance. I agree with the Defendant's submissions that the letter from Mr Labonte is unrelated to the issue of whether the Plaintiff's employment contract was unilaterally varied.
- [39] Firstly, as established earlier, this Court finds that the Plaintiff's contract was not unilaterally varied. Instead, a new contract was offered following the abolition of his former position. Secondly, Mr Labonte's letter was issued after the abolition of the NDEA, and the Plaintiff continued to receive the same salary for nearly two years thereafter. This letter cannot be construed as a promise or guarantee that the salary would remain unchanged indefinitely. Such an interpretation is not viable, as Mr Labonte does not have the authority to set public servants' salaries.
- [40] This Court finds no basis for the Plaintiff's estoppel claim, which alleges that the Government is estopped from reducing his salary. As previously noted, the finding is that the Government did not reduce the Plaintiff's salary. Instead, the Government abolished his previous position. During the two years of restructuring process, the Plaintiff continued to receive the same salary as within NDEA, but in a different role, that of Special Constable. Upon further review of salaries, the Government determined it could no longer offer the Plaintiff this position at the same salary. As a result, the Plaintiff was presented with two options: accept the new position offer with a lower salary or face termination from his current post.

[41] Therefore, based on the above findings, this Court determines that the salary was not reduced unilaterally, illegally or otherwise. Instead, the Plaintiff was offered new position with different terms, including a lower salary. The Plaintiff subsequently accepted this offer by signing the letter dated 1 July 2019 and continuing in his employment under the new terms for more than three years. His acceptance is effective from the date he has signed the letter, 16 October 2019. Consequently, no fault arises, as there was no reduction of salary, but rather a new offer of employment. The plaint is therefore dismissed.

[42] Considering the circumstances peculiar to this case, I make order that each party bear their own costs.

Signed, dated and delivered at Ile du Port on 2 May 2025



M Burhan J

