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In Chambers

THE SUPREME COURT OF MAURITIUS

**In the matter of:-**

**De Chazal du Mee & Cie**

**Applicant**

v.

1. Olivier Bancoult
2. M.I. France-Charlot
3. Chagos Refugee Group

**Respondents**

**JUDGMENT**

The three respondents together with two other persons who are not domiciled in Mauritius have as plaintiffs brought an action before the United States District Court for the District of Columbia (the foreign court) against the applicant and eleven other persons as defendants, including the Government of the United States of America. It is not disputed that the plaintiffs before the foreign court are either persons originating from the Chagos Archipelago or associations representing those persons and that the action before the foreign court has been entered on behalf of all those persons. It is equally not disputed that the plaintiffs in the foreign court are seeking relief essentially for the wrongful acts done by the defendants, including the applicant, generally relating to the respondents' removal from the Chagos Archipelago, their alleged subjection to torture, genocide, racial discrimination and cruel, inhuman and degrading treatment and, in the case of the applicant, more especially, its implementation of the other defendants' policy of deliberately excluding the respondents from employment opportunities on Diego Garcia which is the largest island of the Chagos Archipelago.

*b30*  
The present application is for an injunction prohibiting the respondents from continuing with the action lodged before the foreign court.



It is the contention of the applicant that the respondents have in their claim before the foreign court lumped different causes of action against different persons for the sole purpose of their own convenience and have artificially created a jurisdiction against the applicant. The applicant has further averred that the natural forum is Mauritius the more so as all parties to the present application are either Mauritian citizens or entities domiciled in Mauritius and the services which it provided in connection with the recruitment of workers for Diego Garcia were carried out solely and exclusively in Mauritius. Moreover, the respondents have no personal interest inasmuch as they have purported to enter an action before the foreign Court on behalf of unnamed persons originating from the Chagos Archipelago. Finally, the applicant has claimed that the respondents' action before the foreign court is unconscionable, oppressive, vexatious and is tantamount to forum shopping and that great prejudice is being caused to it by that action.

The case for the respondents is that they are suing before the foreign court not only the applicant, but also the Government of the United States of America and a number of senior United States officials for having taken the decision, amongst others, to discriminate against them and their fellow native citizens from the Chagos Archipelago in the recruitment of workers for Diego Garcia. Except for the applicant, all the other defendants before the foreign court are domiciled in the United States. The applicant itself has an office and a representative in Washington D.C. It is in the performance of a contract for recruitment for an American-based entity that the causes of action against the applicant have arisen. The discriminatory hiring practices are supported by an affidavit from a former employee of the applicant. Consequently, the respondents have contended that the foreign court is the most appropriate forum and that their action is neither unconscionable nor vexatious and that in any event the applicant's inconvenience does not exceed theirs.

It is settled law that in matters of conflict of laws, the courts in Mauritius will be guided by the French rules of private international law: **Austin v. Bailey [1962 MR 113]**.



In France the principle enshrined in its domestic law that, where there are several defendants, the plaintiff can choose to go before the court where any one of the defendants resides has been extended to French private international law. However, it appears that the French courts require that "..... *comme en matière interne, et même à plus forte raison, le défendeur qui fixe la compétence doit être un défendeur réel et sérieux, non une personne n'ayant qu'un lien secondaire avec le litige et contre laquelle le demandeur agirait afin d'établir une compétence française, à l'encontre du ou des codéfendeurs; encore moins ne saurait-il s'agir d'un défendeur fictif ou complaisant*" - vide Bernard Audit's Droit International Privé, p. 310.

It is equally settled law that the power of the Judge in Chambers to grant injunctions is a form of equitable remedy which we have imported from English procedural law. In Dicey & Morris - The Conflict of Laws - (12<sup>th</sup> Ed. p. 408) the principles in relation to an anti-suit injunction are thus stated:

"English Courts have long exercised a jurisdiction to restrain a party from instituting or prosecuting proceedings in a foreign Court. As long ago as 1834 it was said that this jurisdiction is grounded "not upon any pretension to exercise of judicial ..... rights abroad" but upon the fact that the party to whom the order is directed is subject to the *in personam* jurisdiction of the English Court. But although the injunction operates only *in personam* against the party to the foreign litigation, the remedy is an indirect interference with the process of the foreign Court and jurisdiction must be exercised with caution. .... The underlying principle is that jurisdiction is exercised "where it is appropriate to avoid injustice", or, as it was once put, where the foreign proceedings are "contrary to equity and good conscience" ....."

In the case of **Société Nationale Industrielle Aérospatiale v. Lee Kui Jak** (1987) AC 871 the Privy Council held that where a remedy was available both in England and in the foreign court, the English court would in general only restrain the plaintiff from pursuing proceedings in the foreign court if the pursuit would be vexatious or oppressive. The English court must be the natural forum for the action, and it must take account of the injustice to the



defendant if the plaintiff is allowed to pursue the foreign proceedings, and also the injustice to the plaintiffs if he is not allowed to do so.

The principles governing such anti-suit injunctions have recently been considered in the case of **Leucudon Ltd & Ors v. La Serenissima & Ors [2001 MR 161]** where the learned Judge, after considering a number of decisions by English courts relating to anti-suit injunctions or stay of proceedings, refused, in the exercise of his discretion, to grant the injunction because of the indolence of the applicants who had furthermore submitted themselves to the jurisdiction of the foreign court.

It is appropriate that I state that it was not the case before me that Mauritius and the United States of America are parties to a treaty or convention of the same type as the Brussels Convention or the Lugano Convention to which both the United Kingdom and France are parties.

It results from the above that, in order to obtain an *in personam* injunction against the respondents, the applicant needs to establish that -

- (a) Mauritius is the natural forum for the respondents' action against the applicant;
- (b) the pursuit in the foreign court would be vexatious and oppressive in the widest sense; and
- (c) the injustice to the applicant if the respondents are allowed to pursue the proceedings in the foreign court far outweighs any potential injustice to the respondents if they are not allowed to do so.

After considering the facts of the present case and bearing in mind the principles governing such applications, I am unable to exercise my discretion in favour of the applicant, and this for the following reasons.



First, the applicant is only one of twelve defendants before the foreign court in a suit which *ex facie* shows that the causes of action against all the defendants are connected. All the other eleven defendants are domiciled in the country of the foreign court, that is the United States of America. The applicant is alleged to have implemented an unlawful decision of the other defendants and in so doing to have participated in the illegal acts of the other defendants.

Second, it is a fundamental principle that where there are several defendants, a plaintiff may choose to initiate proceedings before the court where any one of them is domiciled. It is to be noted that one of the defendants is the Government of the United States of America and can only be sued before a US court.

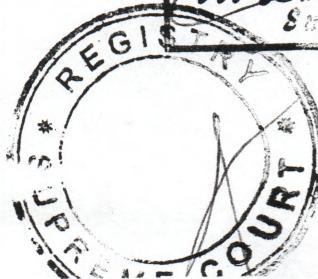
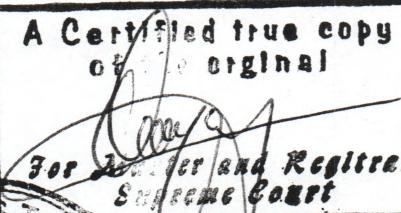
Third, the respondents are not the only plaintiffs in the suit pending before the foreign court. There are two other plaintiffs who are domiciled in the Seychelles. Irrespective of any order which may be issued against the respondents, the applicant will still have to enter an appearance before the foreign court.

Fourth, the respondents' action before the foreign court is not a frivolous one, the more so as it is supported by the affidavit evidence of a former employee of the applicant.

Fifth, the pursuit of split causes of action before different jurisdictions may lead to conflicting and irreconcilable judgments.

Finally, on the whole I find that more injustice would be caused to the respondents if the order was granted than to the applicant if the order was refused.

For the reasons given above, the application is refused, with costs, and I certify as to counsel.



07 August 2002

(sd) M P R Matadeen