

The Ministry of Rural Development, Fishery, Craft Industry and Environment of the Union of
Comoros v Chan Leng Leng and another
[2014] SGHC 35

Case Number : Suit No 716 of 2012 (Registrar's Appeals No 389, 395 and 396 of 2013)
Decision Date : 25 February 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Rajaram Muralli Raja (Straits Law Practice LLC) for the plaintiff; Chenthil Kumarasingam (Quahe Woo & Palmer LLC) for the defendants.
Parties : The Ministry of Rural Development, Fishery, Craft Industry and Environment of the Union of Comoros — Chan Leng Leng and another

Civil Procedure – Costs – Security

Civil Procedure – Striking out

Civil Procedure – Disposal of case on point of law

25 February 2014

Judgment Reserved.

Choo Han Teck J:

1 These are three appeals against decisions of an assistant registrar. Registrar's Appeal No 389 of 2013 ("RA 389") is the defendants' appeal against the assistant registrar's refusal to strike out the plaintiff's claim. Registrar's Appeal No 395 of 2013 ("RA 395") is the plaintiff's appeal against the order increasing the amount of security for costs from \$25,000 to \$40,000. Registrar's Appeal No 396 of 2013 ("RA 396") is the plaintiff's appeal against the refusal by the assistant registrar to strike out parts of the Defence.

2 The plaintiff is a department of the Government of the Union of Comoros and was the department in charge of issuing fishing permits to fish within Comoran territorial waters. The first defendant is the liquidator of the second defendant. The second defendant carried on fishing activities in Comoran waters. The plaintiff commenced legal proceedings in the Union of Comoros in 2005 after it discovered that the second defendant was fishing illegally in its waters. The plaintiff obtained judgment in the court of first instance for a sum of €3,298,000 on 15 November 2005. There is a dispute as to whether the judgment was properly obtained but the defendant's appeal to the Court of Appeal of the Union of Comoros was dismissed on 17 March 2008. The second defendant went into voluntary liquidation on about 7 September 2011.

3 On the judgment thus obtained, the plaintiff filed a proof of debt on 5 January 2012. The first defendant rejected the plaintiff's proof of debt and consequently, the plaintiff commenced proceedings in Singapore by way of Originating Summons No 328 of 2012. The defendants applied for that Originating Summons action to be converted into a writ action. Their application was allowed, transforming Originating Summons No 328 of 2012 into this present suit.

4 The defendants challenged the plaintiff's claim on the ground that the claim could not be properly proved in that the judgment obtained was either improperly obtained or had wrongly cited

the second defendant as the owner of the ships that were used for illegal fishing in Comoran waters. These are all disputes of fact.

5 The second defendant's alternative defence was that as a matter of law, our courts would not enforce the penal laws of Comoros. Mr Rajaram, counsel for the plaintiff, accepted that principle of law but he submitted that the plaintiff's claim was not a claim for such enforcement. It was a claim for recovery of a judgment debt, which was an award for compensation to the Comoros government for illegal fishing.

6 In RA 396, the plaintiff applied to strike out various parts of the Defence, a large portion of which related to the judgments obtained by the plaintiff in the court of first instance and on appeal. The assistant registrar dismissed the application. The assistant registrar also ordered that the security for costs imposed on the plaintiff be raised from \$25,000 to \$40,000. Mr Rajaram submitted that if RA 396 were allowed, there would be a reduction in the issues at trial and, consequently, the amount of security for costs need not be increased.

7 Mr Chenthil, counsel for the defendants, submitted that the application to strike out the plaintiff's claim was the most expeditious route to bring the suit to an end. He submitted that if the matter were to proceed to trial, the costs of the interlocutory process including discovery would be prohibitive to the second defendant.

8 Whatever the ultimate merits might be, the procedure for every legal process must be followed to maintain the consistency that is required to establish a clear and useful precedent. The rule of law is a meaningless cry if the law can be sidestepped for the convenience of parties. This is not a case in which the courts exceptionally allow a deviation from the rules of procedure. The defendants' claim of impecuniosity is not sufficient. First, the problems of the second defendant might be addressed by applying for a trial of a preliminary issue. In this instance, that would be a trial of the same issue raised by the second defendant, namely, that the plaintiff was seeking to enforce a penal law of a foreign country. The second defendant applied to strike out the claim instead. There are important differences between a striking out application and an application for a trial of a preliminary issue.

9 In the former, the defendant applicant has to satisfy the court that the claim was frivolous or vexatious or discloses no cause of action. The defendants here had mistakenly believed that their alternative defence in law (enforcing penal law of Comoros) entitles them to strike out the plaintiff's claim. The defence, even if on a point of law without involving facts, must still be considered by the trial judge. If the defendant wishes to move ahead for financial or other reasons, he can apply to have that defence heard as a preliminary issue. That means that a determination of that issue can be made by the trial judge without the interlocutory process (such as discovery), and will fully and finally determine the action.

10 The second defendant's alternative defence appears to be solely one of a question of law if not challenged; but Mr Rajaram denies that this was an enforcement of the penal laws of Comoros. The facts relating to the judgment in Comoros are therefore relevant, if not on the substantive merits then for the court to decide whether to dispose of the case on a point of law.

11 On the affidavits and the submissions of the parties, it seems to me that even if this were an application for a trial of a preliminary issue, the second defendant would not likely have succeeded. At every turn, the facts regarding correctness of the judgments in the Comoran courts would have to be considered by the trial judge here. It would be for the parties to decide how much evidence they require to prove or disprove that the judgments being relied upon were properly obtained; that they were obtained against ships that belong to the second defendant; that the second defendant has no

defence or grounds in Comoros to set aside those judgments; and finally, whether enforcing those judgments amounts to an enforcement of a foreign penal law. All these are matters for trial. The second defendants' appeal is therefore dismissed.

12 By the same token, there are no merits to the plaintiff's appeal against the refusal to strike out parts of the Defence. The correct procedure is for the plaintiff, at most, to file a Reply stating that the allegations of wrongful conviction or judgment against the second defendant in Comoros was irrelevant. If the plaintiff was right about the law and the validity of the judgments it is relying on, it may elect not to call evidence in rebuttal of the Defence on those issues. But it cannot strike out those averments in the Defence. The plaintiff's appeal is therefore dismissed.

13 Consequently, as Mr Rajaram obliquely conceded, if the Defence is not struck out, there is little room for me to disturb the discretion of the assistant registrar increasing the security for costs to \$40,000. On the facts, I am of the view that \$40,000 was a reasonable figure in any event. The plaintiff's appeal against the increase in security is also dismissed.

14 I will direct that the costs of the three appeals be reserved to the trial judge.

Copyright © Government of Singapore.