

IN THE SEYCHELLES COURT OF APPEAL

AIR SEYCHELLES

APPELLANT

VERSUS

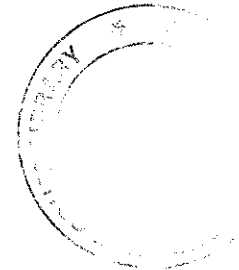
COLLIN WILLIAMSON

RESPONDENT

Civil Appeal No. 37 of 1996

(Before: A. SILUNGWE, E. O AYOOLA, L. VENCHARD JJJ.A.)

Mr. S. Rouillon for the Appellant  
Mr. R. Valabhji for the Respondent



JUDGMENT OF THE COURT

This is an appeal against the judgment of the Supreme Court (Bwana, J.) ordering the Appellant and the Respondent to submit themselves within thirty days of the date of judgment to an arbitration to be conducted by an Arbitration of their choice, failing which the court shall appoint the Arbitrator. The trial judge also awarded SR28,000 to the Respondent as damages with interests and costs of the suit from the date of its filing.

The Respondent averred in his plaint that:-

- (a) he had on several occasions requested the Appellant to agree to arbitration for the resolution of disputes between himself and the Appellant in accordance with the arbitration clause in his contract of employment with the Appellant;
- (b) he had been employed on various contracts, the last one was to expire in May 1995;

- © on 24<sup>th</sup> June he was verbally informed by the Appellant that he was being transferred to another post in the Company on the same terms and conditions as those of his then existing contract of employment, subject however to changes in the payment of allowances and the extension of his tenure of office until the age of 65;
- (d) he accepted the offer.
- (e) on 1<sup>st</sup> September 1994, the Appellant verbally requested him to quit his office to make room for his replacement and on 16<sup>th</sup> September he was informed that he was on notice to leave the Company and that he was to proceed on three months' leave.
- (f) his contract of employment provided for the settlement of disputes by arbitration.
- (g) he has suffered unnecessary prejudice and inconvenience and he claimed the sum of SR32,000 for the failure by the Appellant to agree to arbitration as provided for in his contract of employment.

The Supreme Court was not called upon to adjudicate on the various averments of the Respondent. The only issues which were raised were.

- (i) whether or not the Appellant should be ordered to subject to arbitration in terms of the contract of employment; and
- (ii) whether damages should be awarded for the prejudice and inconvenience already caused by the failure to agree to the arbitration.

The trial Judge found that there existed a dispute which, in terms of the contract of employment, had to be settled by arbitration and made the order as requested by the Respondent. The trial judge also awarded to the Respondent the sum of Rs. 28,000 as damages.

Mr. Valabhji for the Appellant submitted that there was no dispute between the parties in as much as stated in the Statement of Defence filed on behalf of the Appellant that "Plaintiff (Appellant) duly accepted in writing the three months notice of termination of his employment, claimed his termination pay, notice pay, leave pay and other benefits which Plaintiff (Appellant) duly acceded to after Plaintiff (Appellant) and Defendant jointly computed the amounts due to Plaintiff (Appellant)."

He accordingly submitted that there was no dispute between the parties and reference to arbitration did not arise.

The Supreme Court was not invited to decide on whether or not the facts as averred in the plaint or in the defence are correct. The issue before the Court was whether there was a provision in the agreement for the reference to arbitration of any dispute between the parties.

The objection raised by Mr. Valabhji to the effect that there was no dispute is itself an arbitrable matter and the Appellant, even if it were right, should have allowed the Arbitrator to rule on the issue that there was no longer any subsisting dispute between the parties.

It was clear that the original contract contained an arbitration clause which on the strength of the averment of the Respondent, was applicable to the amended verbal contract of employment in substitution of the original

contract. It follows that the latter verbal contract also contained the arbitration clause.

In the circumstances, the Respondent had a right to have the issue that there no longer existed any dispute be equally determined by arbitration in accordance with the arbitration clause as set out in the contract of employment. It is not for the Appellant unilaterally to determine the non-existence of any dispute but for the arbitration in terms of the contractual relationship between the parties.

We accordingly uphold the order made by the trial Judge. The arbitration should be held within thirty days of this judgment and should the parties not agree in the choice of an arbitrator, the latter would be appointed by the trial Judge. It will be for the parties to agree on the procedure to be followed. If they are unable to reach agreement the English procedure should be followed as provided for under Section 3A of the Courts Act.

The award of damages is set aside as it is premature. The issue raised in respect of the damages should be considered in the arbitration proceedings.



**L. VENCHARD**  
**PRESIDENT**



**A. M. SILUNGWE**  
**JUSTICE OF APPEAL**



**E O. AYoola**  
**JUSTICE OF APPEAL**

Dated this .....<sup>3<sup>rd</sup></sup>..... day of April, 1997.