IN THE SEYCHELLES COURT OF APPEAL

GENEVIEVE LIONNET APPELLANT

versus

CENTRAL BANK OF SEYCHELLES RESPONDENT

Civil Appeal No: 33 of 1998

[Before: Ayoola, P., Pillay & De Silva, JJ.A]

.....

Mrs. N. Tirant-Gherardi for the Appellant
Mr. R. Kanakaratne for the Respondent

JUDGMENT OF THE COURT
(Delivered by De Silva, J.A)

The appellant (plaintiff) was an employee under the respondent (defendant). The contract of employment was for the period 1st May 1995 to 30th April 1997. Without prior notice, the respondent terminated the contract of employment on 1st April 1996. These facts are not in dispute between the parties.

On a reading of paragraphs 9, 10, 11 and 12 of the plaint it would appear that the appellant has sought to ground her action on the basis of delictual liability. The question whether such an action is maintainable in law on the basis of the averments in the plaint does not arise for consideration on this appeal for we are concerned only with the preliminary issue of law.

At the hearing before the Supreme Court, the Learned Counsel for the respondent raised a preliminary issue of law, namely, that the Supreme Court has no jurisdiction to hear and determine the action for the reason that the appellant has failed to initiate the "grievance

procedure" prescribed under the Employment Act 1995 (Section 64 of the Act).

At the hearing before us, we were not referred to any section of the Employment Act 1995 which expressly ousts the jurisdiction of the Supreme Court to entertain an action of the nature we are concerned with on this appeal. The Learned Judge in the course of his order upholding the preliminary point of law raised by Learned counsel for the respondent stated –

> "Although the 1995 Act has no clause to oust the jurisdiction of the Court, in my view the new section 4(3) is meant to achieve a similar objective in respect of the exercise of original jurisdiction ..."

Section 4(3) of the Employment Act 1995 reads thus –

> "Where provision is made under this Act for the hearing and determination of any matter in relation to a contract of employment to which the Act applies, any remedy or relief granted under the Act in respect of that matter shall, subject to the jurisdiction of the Supreme Court, be binding on the parties to the hearing or determination."

In our view, Section 4(3) cannot possibly be construed as ousting the jurisdiction of the Supreme Court. It is a well settled rule in the interpretation of statutes that the presumption is against the ouster of the jurisdiction of a Court:-

> "There is a strong presumption that the legislature does not intend access to the Courts to be denied."

(Constitutional and Administrative Law, Wade and Bradley, 11th Edition, page 721).

Again, Maxwell on The Interpretation of Statutes, 12th edition at page 153 emphasises the well recognised rule that a statute should not be construed as taking away the jurisdiction of the Courts in the absence of clear and unambiguous language. Therefore, in our view, the Learned Judge was in grave error in construing section 4(3) as ousting the jurisdiction of the Supreme Court.

The other error committed by the Learned Judge in upholding the preliminary point of law is the strong reliance he placed on the case of **Antoine Rosette v Union Lighterage Company**, Appeal No. CA16 of 1994 decided on 18th May 1995. That was a case where the worker having "lodged a grievance with the Ministry of Employment and Social Affairs" and having been awarded "statutory benefits for unjustified termination of employment", commenced an action claiming damages. Thus it is manifest that, on the facts, the present case before us is significantly different. Admittedly the appellant did not resort to the "grievance procedure" prior to instituting the present action in the Supreme Court. This aspect of the case was emphasised by Ayoola J.A (as he then was) when he expressed himself in the following terms:-

> "I do not think that the Act envisaged a situation in which the worker and employer would go through the grievance procedure to finality only for the worker to commence and drag the employer through fresh proceedings based on the same cause of action in another forum". (Emphasis added).

We are therefore of the view that the case which was the basis upon which the Learned Judge of the Supreme Court gave his ruling has no relevance at all to the matters in issue in the present appeal.

In any event, in paragraph 8 of the amended statement of defence the respondent has clearly pleaded that "the Employment Act of 1995 does not apply to the issues in relation to this case." The contention of the respondent that the failure of the appellant to initiate the "grievance procedure" prescribed under the Employment Act is a bar to the institution of proceedings in Court is in the teeth of the specific position taken in the amended statement of defence. A party to a case cannot be permitted "to blow hot and cold."

We accordingly allow the appeal with costs, set aside the ruling of the Supreme Court dated 23rd July 1998 upholding the preliminary point of law, and remit the case to the Supreme Court for adjudication on the merits.

E.O. AYOOLA	A. G. PILLAY	G. P. S. DE SILVA
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 20th day of April 1999.