

IN THE SEYCHELLES COURT OF APPEAL

JOHN DESAUBIN

APPELLANT

versus

**1. THE MINISTER OF EMPLOYMENT
AND SOCIAL AFFAIRS
2. COMPETENT OFFICER**

RESPONDENTS

Civil Appeal No: 52 of 1998

[Before: Silungwe, Pillay & De Silva, JJJ.A]

Mr. A. Derjacques for the Appellant
Mr. R. Govinden for the Respondents



JUDGMENT OF THE COURT

(Delivered by Pillay J.A)

The appellant, the owner of a business consisting of a bar and restaurant, known as Le Marinier, which has since closed down, had sought a judicial review of the decisions of the two respondents to the effect that the appellant was the employer of eleven workers working for the business of the appellant.

The trial court found that the appellant was in control of the business and was in fact the employer of the workers.

The appellant is now appealing against the decision of the trial Court on the substantial ground that it is Wednesbury unreasonable (1948) 1 K.B. 223.

We agree with learned Counsel for the appellant that the appeal must succeed for the following reasons:

- (i) It is clear from the management contract concluded in November 1994 by the appellant and Mr. Sims that the latter would be "personally liable for all debts incurred by the business" owned by the appellant during the period of the management of the business by Mr. Sims, i.e. from November 1994 to May 1995. At the end of the management period, Mr. Sims agreed to deliver and relinquish the business "free from all and any debt". In other words, the debts incurred by the business in respect of, for instance, the employment of those eleven workers accrued to Mr. Sims, as acknowledged by the latter in **Civil Side No. 175 of 1995**.
- (ii) There is the un rebutted evidence of the appellant that, apart from a monthly fee of SR15,000 which he received from Mr. Sims, the latter retained all the profits accruing from the business which he ran. There is no evidence to show that, contrary to the terms of the management contract, Mr. Sims was acting on behalf of the appellant in managing the business, as the trial Court erroneously found.
- (iii) The fact that the Social Security Fund records reveal that the eleven workers were employed by the business for the period of November 1994 to May 1995 and were signed for by Mr. Sims goes a long way to show that the latter considered himself to be, and was in effect, the employer of those workers and is in line with the management contract he entered into with the appellant. If Mr. Sims had signed on behalf of the appellant, as submitted by learned Counsel for the respondents, we consider that there would have been express mention of this but there was significantly none.

- (iv) No doubt in June 1991 the business of the appellant was registered with the Social Security Fund by the appellant and one Mr. Rosalie, but the position completely changed after the management contract was signed in November 1994 by Mr. Sims and the appellant. Thereafter, Mr. Sims became the employer of those workers and was liable in respect of their social security entitlements. It is significant that in March 1995 it was again Mr. Sims who signed an arrears instalment agreement form in respect of the eleven workers with the Social Security Fund on behalf of the business which he managed.

- (v) The second respondent in his petition in **Civil Side No. 77 of 1995** acknowledged that at all material times the eleven workers were employed by Mr. Sims.

For all the reasons given, we quash the decisions of both respondents and of the trial Court to the effect that the appellant is the employer of the eleven workers. Both respondents are to pay the costs of this appeal.



A. M. SILUNGWE
JUSTICE OF APPEAL



A. G. PILLAY
JUSTICE OF APPEAL



G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 11th. day of August 1999.