IN THE SEYCHELLES COURT OF APPEAL

ROSE MAY RACHEL **APPELLANT**

versus

MINISTRY OF EMPLOYMENT & SOCIAL AFFAIRS **RESPONDENT**

Civil Appeal No: 20 of 2000

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

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Mr. F. Elizabeth for the Appellant
Ms. C. Hoareau for the Respondent

JUDGMENT OF THE COURT

(Delivered by Ayoola, P.)

This appeal arose from a ruling delivered by Karunakaran J on 27th September 2000 in proceedings for Judicial Review of the decision of the Minister of Employment and Social Affairs ("the respondent").

After the matter had been adjourned for judgment to be delivered on 27th September 2000, the learned judge, instead of delivering the judgment, gave a ruling in which he pointed out that the petition had been brought outside the three months prescribed by Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995 ("the Rules"), and also that there was non-compliance with Rule 2(1) in that the petition had not been accompanied by an affidavit. He concluded his ruling thus:-

> *"After taking all the relevant circumstances into account and in the interest of justice, I hereby adjourn this petition sine die so that the applicant will be able to take such steps*

as may be necessary to ensure that the Rules are complied with and to prosecute the petition with due diligence."

It is clear that the decision he arrived at at the end of the day was not one determining the proceedings by reason of the grave defects he had found in the institution of the proceedings, but one adjourning the matter to afford the petitioner an opportunity of putting matters right.

Rule 15 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995 provided that:

"Where the parties fail to comply with the requirements set out in the preceding Rules, the Court may on the application of any of the parties, or ex mero motu make suitable order."

There is no doubt that there was failure to comply with the requirements of the Rules as pointed out by the learned judge. Learned counsel for the petitioner conceded before us that much. The learned judge took the point ex mero motu and there was no doubt also that he has jurisdiction to do so. The only order he made was one adjourning the proceedings.

In this appeal, although it was stated in the notice of appeal that the appeal was against the entire decision, it is clear from the memorandum of appeal that the appeal was not from the order adjourning the proceedings. The only ground of appeal is that:-

"The learned trial judge was wrong to order the Appellant to file an application for leave to file

her Petition out of time when this issue was not raised by the pleadings and was not before the Court in the case proper. In the circumstances the issue was ultra petita."

There was nowhere in the ruling that the Supreme Court ordered the appellant to file an application. Since the only ground of appeal is unrelated to the ruling, the appeal is clearly incompetent and must be dismissed. An appeal must be from a decision complained of and grounds of appeal must relate to that decision and the reasons for that decision. A ground of appeal which is unrelated to a decision or to the reason for the decision is incompetent.

It is difficult to see why learned counsel for the appellant did not see that there was hardly any useful purpose served by the appeal. If he agreed, as he now does, that the learned judge was right in his opinion that the proceedings were not brought within the prescribed time and were defective, he should easily and speedily have taken steps to put the matter right. If he did not agree that there were defects or that there was need to put anything right in the proceedings, he should have got the matter listed for proceedings to continue.

It is argued to observe that the learned judge upon deciding to raise the question of non-compliance with the requirements set out in the Rules ex mero motu should have invited counsel for the parties to address him on the point. We do appreciate that the learned judge was no doubt motivated by the urge to do substantial justice in the matter. We have no doubt that had he wished to visit the non-compliance he had pointed out with a consequence immediately detrimental to the appellant's case he would have given her an opportunity to be heard before an order is made. However, no such order was made.

It is desirable that this matter, unnecessarily delayed by the appellant's appeal, should now be dealt with by the Supreme Court with

dispatch. If within a reasonable time the appellant does not make any move to rectify the defects in the proceedings as pointed out by the learned judge, the judge should fix a date for continuation of the proceedings and give her an opportunity of addressing him before he makes such order as he may think suitable in terms of Rule 15.

The appeal is utterly without merit. It is accordingly dismissed. We make no order as to costs.

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

Dated at Victoria, Mahe this 12th day of *April* 2001.