

**IN THE SEYCHELLES COURT OF APPEAL**

**MAUREEN MATHIOT**

**APPELLANT**

**VERSUS**

**CABLE & WIRELESS (SEYCHELLES) LIMITED**

**RESPONDENT**

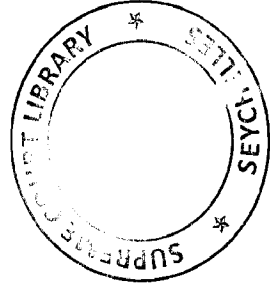
Civil Appeal No: 27 of 2001

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

.....  
Mr. F. Elizabeth for the Appellant  
Mr. C. Lablache for the Respondent

**JUDGMENT OF THE COURT**

*(Delivered by Ayoola, P.)*



This appeal arose from the dismissal of the appellant's action against the respondent for damages consequent on the determination of her employment with the respondent by reason of redundancy.

The appellant was at all material times employed by the respondent as a telephone operator. On 11<sup>th</sup> August 1998 the respondent terminated her employment with the approval and consent of the Ministry of Employment and Social Affairs and with the consent of the appellant herself. By a plaint dated 26<sup>th</sup> January 1999 the appellant commenced proceedings against the respondent, a company engaged in the business of telecommunication, claiming damages for faute. The grounds of her claim, diffused as they were, were that:-

- (i) Her consent and approval to the termination of her employment had been obtained by an inducement of SR200,000 offered by the respondent; and the respondent had failed to pay the said sum.
- (ii) Her termination was contrary to the company's policy since she had not reached the age of 50 years.
- (iii) "That the Plaintiff and the Ministry of Employment were deliberately and maliciously misled and not made aware of that fact by the Defendant" (Emphasis ours) and the appellant became aware of "*the said internal policy*" after she had consented to the redundancy.

It was in his written address at the trial that the allegation was made by counsel on behalf of the appellant that by the failure to inform the "*Competent Officer*" and the appellant (then plaintiff): that the appellant could not be given early retirement; that the appellant would not receive in excess of SR200,000 in compensation; that the appellant's post was not redundant; and, that she would only receive US\$14,306 at the age of 50 years and not immediately, the respondent acted maliciously and dishonestly.

It was common ground at the trial that at all material times the appellant was a telephone operator on the PABX system of the respondent. In June 1998 the respondent initiated negotiation procedure pursuant to section 51(1)(c) of the Employment Act 1995 to terminate the appellant's contract of employment on grounds of redundancy adducing as reason that due to the structural re-organisation within the Business Development Division of the company and introduction of new telephony system whereby there was a direct dialling facility, the existing functions of the PABX Operator would become redundant. As noted by the trial judge, the respondent also stated that there was no other position within the company to be offered to the appellant. At the negotiation before the Competent Officer, the appellant and her counsel who then appeared for her (not Mr.

Elizabeth) agreed to the termination on ground of redundancy. The appellant made a reservation that as her position had become redundant as a result of structural re-organisation, in the event that she had knowledge that the company recruited someone else to perform her duties, she would consider filing a civil case against the company.

The evidence is abundant, and the trial judge so found, that on the facts clearly made known to her, the appellant consented to the termination of her employment on the ground of redundancy. The judge dismissed the claim because he was not satisfied on the evidence that any fresh facts have emerged to show that her consent was fraudulently induced or based on misrepresentation.

We have ourselves considered the evidence and we cannot see on what basis the trial judge could have come to a different conclusion. On the evidence accepted by the trial judge this was a clear case of redundancy resulting from the appellant's inability to master a new telephony system after the one she had been used to had been phased out. Although after her employment was terminated there was an advertisement to fill 4 posts of telephone operator, on the evidence, those posts were for operators of the system she could not master in the first place. There was no evidence that the appellant was offered an inducement to consent to redundancy. If she had been so induced what could have been more sensible than for her to have claimed the sum of such inducement? No reasonable tribunal would regard Mr. Ally's statement before the Competent Officer that the appellant "*will come out with over SR200,000*" as an inducement. If the appellant had so regarded it, her erroneous interpretation of the statement was of her own making for which the respondent could not be held responsible.

Upon any reasonable consideration of the facts and the judgment of the Supreme Court, this appeal is utterly without substance and verges on the frivolous. In the result, the appeal is dismissed with costs to the respondent.



**E. O. AYoola**

**PRESIDENT**



**A. M. SILUNGWE**

**JUSTICE OF APPEAL**



**G. P. S. DE SILVA**

**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 19<sup>th</sup> day of **April** 2002.