IN THE SEYCHELLES COURT OF APPEAL

PIERRE MOREL 1ST APPELLANT

JEAN MOREL 2ND APPELLANT

V/S

DAWN DEW FARM (PTY) LTD RESPONDENT

CIVIL APPEAL NO.SCA 08 OF 2012

Counsel for Appellants: Mr. Basil Hoareau

Counsel for Respondent: Mr. Pesi Pardiwalla

JUDGMENT

Before: ***F. MacGregor, P, A. F. T. Fernando, JA and J. H. Msoffe, JA***

Date heard: 07th August 2014

Judgment delivered on: 14th August 2014

F. MacGregor, President

1. The Appellants are former employees of the Respondent Company whose employment was terminated in August 2010.They appealed through the grievance procedure under the Employment Act to the Employment Tribunal that their termination was unjustified.

2. The Tribunal on 13th December 2011 found the termination was justified. The Respondents ventured to appeal against that decision, but as they were out of time per the Appeal Rules, they applied to the Supreme Court for leave to appeal out of time. They argued that they could not appeal in the prescribed delay of 14 days because they were not given a copy of that Judgment in that time.

3. The laws governing this matter are set out in section 6(4) of Schedule 6 of the Employment Act which provides:

> *"A decision of the Tribunal is enforceable as if it were a decision of the Magistrates' Court."*

4. The Appeal Rules under the Court's Act state:

> *"(1) Every appeal shall be commenced by a notice of appeal.*
> *(2) The notice of appeal shall be delivered to the clerk of the court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorizes the appeal."*

5. The Supreme Court held against the Appellants, deciding that per the Rules not having a copy of Judgment was not a reason not to file a Notice of Appeal and therefore refused them leave to appeal. They have now appealed to the Court of Appeal against that Ruling on the following grounds:-

1. "The learned trial judge erred in law in holding that the Appellants should have filed their Notice of Appeal despite not having been granted a copy of the judgment of the Employment Tribunal, delivered on the 13th of November 2011".

2. "The learned trial judge erred in law in failing to hold that the Appellants have a constitutional right to be given a copy of the judgment of the Employment Tribunal, delivered on the 13th of November 2011 prior to filing a Notice of Appeal".

6. Both grounds centre on the fact of the Appellants not having a copy of Judgment before they could file Notice of Appeal.

On ground 1, the Appellants made the following submission:

> *"It is submitted that the approach of the learned trial judge is wrong as, one cannot file a notice of appeal unless one seriously intends to pursue the appeal. In other words one should not file an appeal, simply to protect oneself, in terms of the time limit (for filing the appeal) and then upon receipt of the judgment, decide whether or not to pursue the appeal. The above approach would be an abuse of the court process and it is an approach the court ought not to condone. "*

We find this has no merit as we do not accept that the filing of a notice of appeal within time but later not pursuing it is an abuse of process.

There is a right of appeal and there is right to withdraw an appeal, as implied in Rule 11 of the Appeal Rules which reads:

> *"If the appellant wishes to proceed with the appeal …"*

7. On ground 2, the Appellants argued that under article 19(7)of the Constitution they were denied the right to fair hearing because they were not provided with a copy of the Judgment in time. We cannot agree. Nowhere therein is such a right

inferred. The word "proceedings" in article 19(7) essentially envisages the process of litigation and not the records or a copy of Judgment. Hence this ground fails.

8. The Respondent's Counsel cited a list of authorities supporting finality of decisions and the strict application of the Rules referred to below ─

1. *Harrison & Ireland v Issop Mamode Sulliman* (1870) MR 134
2. *Hossen v Hadee* (1918) MR 110
3 *d'Emmerez De Charmoy v Teemooljee* (1929) MR 71
4. *Seecharan v R* (1934) MR 4
5. *Collet v AG* (1954) SLR 269
6. *Mungroo v The Queen* (1969) MR 82
7. *Meme v De Commarmond* (1977) SLR 197
8. *Keerodhur v JR Overseas Investment Ltd* (1993) MR 346

The Appellant Counsel did not seek to distinguish these authorities from the present case and we feel they have application to this matter.

9. Before we conclude, we would like to observe that this case revealed a difference in the Appeal Rules before the Supreme Court level and those to the Court of Appeal. They are different in terms of the latitude of time permitted for filing proceedings and the separation in the time permitted between the filing of the notice of appeal and the memorandum of appeal. There may be a need to review this disparity.

10. We also wish to point out that the Appellants concentrated their submissions entirely on the issue of not getting a copy of the Judgment in time which incidentally was only 22 days out of time. They could have availed of Rule 5 of the said Appeal Rules which provides:

> *"Any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient."*

11. It is possible that the Court might not have thought it "sufficient reason" not to file a notice of appeal because one did not get a copy of the judgment. It might be sufficient reason for not filing the grounds of appeal but not the notice. In any case we may be restricted in terms of second guessing the Supreme Court when they have the discretion of making a decision on what may be termed reasonable. (See *Verlaque v Government of Seychelles* SCA 8/2000: The Court of Appeal will not interfere with the discretion of a court unless there was an error of law, the discretion was made without proper appreciation of the facts, the decision was so unreasonable that it was erroneous, or it was made unjudicially.)

12. The Appellants could have also argued under the general principles in consideration of the exercise of the court's discretion. These considerations would include the fact that the delay was not ordinate, that leave to appeal would not prejudice the Respondent, that the chances of the appeal succeeding were great, etc (See *Jean-Louis v Rosette* SCA 15/2010, *Farm AG v Barclays Bank SC* 36/2000 and *Bodco v Herminie* (2001) SLR 254 on what is good cause to grant

leave to appeal out of time). This, they did not do and the court is bound to rule only on the arguments they raised.

13. Accordingly this appeal is dismissed with costs.

F. MacGregor	A. F. T. Fernando	J. H. Msoffe
President	Justice of Appeal	Justice of Appeal

Dated this 14th day of August 2014, at Palais de Justice, Ile Du Port