

IN THE SEYCHELLES COURT OF APPEAL

SEYCHELLES INTERNATIONAL BUSINESS AUTHORITY APPELLANT

V

1. AGNES JOUANNEAU

2. STELLA PORT LOUIS

RESPONDENTS

SCA 40 and 41 of 2011

LOTUS HOLDING COMPANY LIMITED

APPELLANT

V

SEYCHELLES INTERNATIONAL BUSINESS AUTHORITY

RESPONDENT

SCA 21 of 2010

SEYCHELLES INTERNATIONAL BUSINESS AUTHORITY APPELLANT

V

LOTUS HOLDING COMPANY LIMITED

RESPONDENT

SCA21 of 2012

Before: MacGregor PCA, Domah and Twomey JJA

Counsel: Basil Hoareau for the Appellant and Respondent, Seychelles International
Business Authority
Frank Ally for the Respondents, Agnes Jouanneau, Stella Port Louis and the
Appellant and Respondent Lotus Holding Company Limited.

Date of hearing: 8th August 2014

Date of judgment: 14th August 2014

JUDGMENT

TWOMEY, MATHILDA JA

The facts

[1]. The parties are all involved in a dispute relating to the licence of an International Corporate Service Provider (ICSP). The ICSP at the centre of this dispute, Lotus Holding Company Limited (Lotus) was informed by a letter from the Seychelles International Business Authority (SIBA,) dated 15th January 2010 that the “fit and proper status” of two of its employees, Agnes Jouanneau and Stella Port Louis had been removed and the ICSP licence revoked pursuant to the provisions of the International Corporate Service Providers Act 2003.(ICSP Act). The appellant filed six actions in relation to this event, the first two of which relate to the revocation of the “fit and proper person status” of two of the employees of Lotus (SC 90 and 91/2010 now appeals SCA 40 and 41/ 2011). The other four suits before the Supreme Court were the following: one, an application for an interlocutory order to restore the Applicant's ICSP licence until the final disposal of the principal suit (SC 107/2010 now appeal), two, a petition for judicial review of the decision of SIBA revoking the appellant's licence(CS121/2010, now appeal SCA 21 of 2010), three a plaint for the judicial review of the decision revoking SIBA's licence, together with a claim for the payment of US\$ 25,900 as compensation(SC 244/2010, now consolidated and also filed as SCA 21/2012) and, and four, an application for leave to proceed with judicial review under the Supreme Court Rules and the ICSP Act 2003 (SC 223/2010, not subject to any appeal). The last of these applications was not appealed and with consent of counsel the five other matters on appeal have now been consolidated for our consideration.

[2]. We shall first deal with the appeals concerning the judicial review of the decision of the Respondent, SIBA, as regards the removal of the “fit and proper status” of two of the directors of Lotus Holding Company Limited (SCA 40 and 41 of 2011). The hearing of the application for judicial review consisted of the production of affidavit evidence of both parties together with attachment of correspondence between them. The learned Judge Bernadin Renaud exercising his discretion under Rule 12 (1)of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authority) Rules in his ruling of 29th July 2011 found that the Appellant's decision to remove the “fit and proper status” of the Respondents was procedurally improper, unreasonable and illegal.

[3]. The “fit and proper person status” is a condition in the ICSP Act imposed on all the directors and members of the managerial staff of a licensee during the operation of its licence and is defined in section 3 of the Schedule to the Act. This status refers inter alia to the person's “probity, competence, experience and soundness of judgment,” together with the person's educational and professional qualifications or evidence that the person has committed an offence. In his decision, the learned judge Renaud found that the removal of that status from the two employees was procedurally improper based inter alia on the following facts: the Respondents had been unprepared to answer complaints at a hastily convened meeting, they had not been given the full opportunity to be heard and defend the complaints made against them, irrelevant matters and incorrect facts had been taken into account, there was a failure on the part of the appellants to conduct a proper inspection of Lotus Holding's control systems and procedures or that no proper investigation had ever been made or formal complaint issued to the Respondents prior to the events.

[4]. He also found SIBA's decision unreasonable as its decision was based on unspecified newspaper articles which incorrectly and without proof linked the 1st Respondent to a company, SP Trading, involved in an alleged arms scandal and that the 1st Respondent was a director of several companies in New Zealand with no cogent evidence that these directorships were illegal or that they had rendered her unfit or unable to discharge her duties as a member of staff of Lotus Holding or that she had contravened the ICSP Act in any way.

[5]. The learned judge found the decision illegal since the respondents had not contravened any provision of the ICSP Act or the Code of Practice of Licensees under the ICSP Act and that it was not illegal to hold numerous directorships in companies both in and outside Seychelles. Further, he found that SIBA's decision had no legal basis.

Grounds of Appeal of CS 40 and 41 2011- the removal of "fit and proper person status

[6]. The learned judge issued a writ of certiorari against the Appellant, SIBA, quashing its decision to remove the fit and proper status of the Respondents. It is from this decision that the Appellant has now appealed to this Court on four main grounds which we have paraphrased as follows:

1. The learned trial judge did not properly address his mind to the principles and standards required in a Judicial Review matter, in that he failed to properly apply the principle of '*Wednesbury unreasonableness*'.

2. The learned trial judge did not properly address his mind to the principle of illegality in the administrative decision making

3. The learned trial judge did not fully appreciate and apply the principle of procedural impropriety.

4. The learned trial Judge erred in law in failing to remit the matter before the Appellant for the Appellant to take a fresh decision upon having quashed the Appellant's initial decision.

[7]. Before we embark on the consideration of the grounds of appeal, we wish to address the issue of the judicial review process in relation to SIBA's decisions which was raised by the appellant, SIBA. The power for judicial review by the Supreme Court of administrative bodies is contained in various constitutional and legal provisions. Article 125(1)(c) of the Constitution provides that the Supreme Court shall have

"supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction."

The Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authority) Rules 1995 made pursuant to the constitutional provisions further provides:

“ On a petition under Rule 2 the Supreme Court may for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction, issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate.”

[8]. Further, the Supreme Court of Seychelles by virtue of sections 4 and 5 of the Courts Act, Cap 42, Laws of Seychelles have the same inherent powers as the High Court of England to review decisions of administrative bodies. Additionally, section 17(1) of the ICSP Act 2003 provides:

(1) An application may be made for the review of any decision of the Authority —

(a) to refuse to grant or renew a licence under this Act;

(b) to suspend a licence under section 14;

(c) to revoke a licence under section 15;

(2) An application shall be made within 3 months after the service by the Authority of the notice of decision of the Authority.

(3) An Appeal may be preferred to the Court of Appeal against the decision of the Court on any application.

[9]. Ordinarily, where the legislature has provided for a statutory scheme for review of the decisions of an Authority, that statutory scheme should be preferred to the supervisory jurisdiction of the Supreme Court which is in any case discretionary. (see *R (Sivasubramaniam) v Wandsworth County Court* [2003] 1 WLR 475. *R(G) v Immigration Tribunal* [2005] 1 WLR 1445). This is consistent with the principle that Courts so far as consistent with the rule of law must have regard to legislative policy. We bear in mind that the judicial review process established in England after the independence of Seychelles in 1976 has no application. Hence the administrative review procedure and remedies as contained in the new Rule 54.19 (Civil Procedure Rules) UK (White Book) and section 31 of Senior Courts Act 1981 cannot apply in Seychelles. It may well be time for our own legislature to enact legislation to regulate judicial review bearing in mind the development of such principles in the common law. Our courts however are not precluded from looking at precedents that have application in terms of the pre-reform writs and rules of civil procedure. Also, decisions given by the courts of England after 1976 continue to have strong precedential value as long as they do not concern English statutory amendments to the procedural rules after that date. Clearly, this would result in the delegation of the legislative power of Seychelles which cannot be possible.

[10]. It would appear, however, from a reading of the provisions of the ICSP Act above that judicial review under the Act is available only in respect of decisions made by the Authority in

relation to licencees. This is despite the fact that the withdrawal of a “fit and proper person” status of the directors or employees of the licencee invariably results in the revocation of the licence.

[11]. However, the statutory limitation cannot operate to oust the constitutional, legal and inherent power of judicial review vested in the Supreme Court(viz. *Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147*). In the present case the Respondents made their application under the supervisory jurisdiction of the Supreme Court which not only was their right but was also entirely legitimate in the circumstances, given the silence of the provisions of the ICSP Act 2003. In the circumstances the Supreme Court has the power to make any order in relation to the decision of SIBA and is not limited by those specified in the Constitution or within the powers of the High Court of England.

Ground 1-“Wednesbury” reasonableness

[12]. The Appellant submits that the learned trial judge failed to appreciate the principles required to find an administrative decision *unreasonable, illegal and procedurally improper*. Those three terms were used for the first time in the *GCHQ* case (*Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374*). Lord Diplock, in summarising the law of judicial review, enumerated the three principles of illegality, irrationality and procedural impropriety which three principles have become the benchmark of judicial review. He defined illegality as the decision maker having to:

“understand correctly the law that regulates his decision-making power and [giving] effect to it.”

He termed a decision as irrational if it is:

“so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it.”

In this context he refers to the *Wednesbury* unreasonableness test(after the decision in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1947 2 All ER 680*), where it was first applied. The term procedural impropriety is used not only where there is a lack of natural justice or procedural fairness but also where the procedures prescribed by statute have not been followed.

[13]. We are of the view that the learned trial judge was fully alive to both the principles and standards in the review process. Nothing in his judgement in any case indicates otherwise. He meticulously and correctly analysed the law in this respect. The English cases he cited, inter alia: *R v Electricity Commissioners; Ex parte London Electricity Joint Committee. Company (1920) Ltd [1924] 1 KB 171*, *Ridge v Baldwin [1964] AC 40* and the Seychellois case of *Vidot v MESA CS 217/98* are relevant and appropriate in the circumstances of the case. We therefore find no merit in this ground of appeal.

[14]. Without delving into the merits of the decision taken by SIBA, the question we have to ask ourselves is whether the considerations and reasons as contained in its letter dated

15th January 2010 are sufficient to warrant the making of its decision and whether the right considerations were taken into account when revoking the “fit and proper person status” of the Respondents. Mr. Hoareau for the Appellant has submitted that SIBA acted reasonably and gave careful consideration to the status of the Respondents as borne out in their correspondence and minutes of meetings before making their decisions.

[15]. The power to ascertain and revoke the fit and proper person” status of the applicant company is contained in sections 3(4) of the ICSP Act together with the criteria for such status as set out in paragraph 3 Schedule 3 (Code of Practice of Licensees) of the Act. Section 3(4) of the Act provides:

“The Authority shall, before granting a licence, ascertain that –the applicant is a fit and proper person; each director and manager of the applicant is a fit and proper person...”

Section 3 of the Code of Practice provides:

“All directors and members of the managerial staff of a licensee shall be and remain fit and proper persons as determined by the Authority.”

In determining whether a person is a fit and proper person of the purpose of this Act, regards shall be had to-the person’s probity, competence, experience and soundness of judgment for fulfilling the responsibilities of the relevant position;
the diligence with which the person is fulfilling or likely to fulfil those responsibilities;
whether the interests of clients of the licensees are likely to be threatened by the person’s holding of that position;
the person’s educational and professional qualification and membership of professional or other relevant bodies;
the person’s knowledge and understanding of the legal and professional obligation to be assumed or undertaken;
the person’s procedures for vetting of clients;
and any evidence that the person has-
(i) committed any offence involving dishonesty or violence;
(ii) contravened any law designed to protect members of the public arising from dishonesty, incompetence, malpractice, or conduct of discharged or undischarged bankrupts or otherwise insolvent persons.

[16]. What seems to have precipitated the decision of the Appellant to revoke the status of the Respondents were the contents of international newspaper articles. This is admitted by the Appellant in a letter it wrote to the Chief Executive officer of Lotus on the 15th of January 2010 viz

“The Authority is very much concerned by the contents of some articles, which appear to relate to a company named SP Trading which the articles state is registered in New Zealand and which is currently suspected of being involved in an

investigation relating to an arms seizure. Furthermore these articles are associating Ms. Port Louis, an administrative office of Lotus Holding company Limited, with this company and as a result of this alleged association, the whole issue is being linked to Seychelles...

[17]. The letter goes on to state the reasons for the revocation of the status of the Respondents, namely that the staff of Lotus provided nominee directorships to entities, that the 2nd Respondent seemed to be a director for about 1500 companies in multiple jurisdictions, that both Respondents signed documents as directors without knowing what they were signing, that they gave power of attorneys without knowing and that

“they do not do anything, that is, they do not liaise with clients even for those for which they are acting as directors....”

This according to the appellant raised serious concerns in terms of the systems and controls in place within Lotus and breached section 13(1)(b) of the ICSP Act 2003 which provides that an “individual should not hold a greater number of directorships than he can competently undertake.” SIBA also stated that these practices were unacceptable and detrimental to Seychelles generally.

[18]. In *Wednesbury* (supra) the House of Lords developed the test of reasonableness. A decision was deemed unreasonable if it was

“so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

In *R (Daly) v. Secretary of State for the Home Department* (2001) 2 AC 532, the House of Lords went further than the “reasonableness” test and applied the test of proportionality to administrative decisions. The principle of proportionality is one which seeks to achieve the correct balance between the restriction imposed by a corrective measure and the severity of the nature of the prohibited act. Hence, while *Wednesbury reasonableness* traditionally enabled the court to intervene only in the most inequitable decisions, proportionality now permits it to consider the merits of a decision and to assess the balance between the interests and objectives involved. The decision made must be proved to have been necessary to meet a legitimate aim. There is however increasingly an overlapping of the reasonableness and proportionality tests in their content and structure. In *Trajter v Morgan* (2012) SLR Vol II 329, we affirmed these principles and endorsed them as part of Seychellois jurisprudence. In the context of this case, the removal of the Respondents “fit and proper person status” has robbed them of their employment and livelihood and we find it essential to perform a deeper inquiry into the reasons offered by the decision maker for so doing. This may well be viewed as a *proportionality test* as opposed to a *Wednesbury test* but we are of the view that it is warranted in the circumstances.

[19]. In our view, if the Respondents were “fit and proper” persons at the grant of the licence, the same tests used to determine that initial status must continue to be applied during the duration of the licence. To substitute a different test or to exact a higher test during the duration of the licence would not only be unfair and irrational but would also

contradict SIBA's earlier decision to allow them to hold "fit and proper person status." The tests applied at the initial assessment were those of honesty, sufficient qualification, competence and soundness of judgment. Both Respondents passed the test - the panel finding that both Respondents were "okay to work in the office of LOTUS." The only qualification was that neither "had adequate experience in the field of financial/corporate services nor adequate professional qualifications in order to be one of the "4-eyes" of the company. A recommendation was made that training be given to the Respondents and that other suitably qualified professionals act as the 4-eyes of the company. The expression 4-eyes has not been explained to this court but we assume it is a reference to the business term signifying that at least two people must witness or approve certain business activities.

[20]. There is no allegation that either Respondent became dishonest, or lacked qualification, competence or soundness of judgment. There was an allegation that the 1st Respondent was connected to a rogue company – but that was contained in a newspaper article and is not equivalent to evidence in a court of law. There is also an allegation that the 1st Respondent holds directorships in hundreds of companies. While this might be regarded as unethical and an unsatisfactory state of affairs in some quarters, we do not doubt that other directors of offshore companies in Seychelles and elsewhere for that matter hold multiple directorships as well. Multiple nominee directorships is the modus operandi of the offshore business and it is neither illegal in Seychellois law nor the laws of EU or other countries. In fact, this is what offshore service providers generally do. It is a little late in the day or even naïve for SIBA to be the blushing bride after marrying itself to the offshore industry and providing the tools for such business practices by ICSPs.

[21]. It must however, act within the law in order to decide whether the "fit and proper person status" of the respondents should be revoked. In this context, it has to demonstrate that the holding of these multiple directorships are detrimental to the competent performance of the appellants' duties. This, SIBA has not done. There is in fact no allegation of wrongdoing of any kind on the part of the 1st Respondent apart from an unproven allegation that she was ignorant of the number of directorships she held or the general power of attorney she had granted. These were mere allegations and do not suffice to meet the *proportionality* test or even the *Wednesbury reasonability* test.

Ground 2 - the principle of illegality

[22]. Similarly, we agree with the trial judge that there was no legal basis for the Appellant's decision. We find that on the evidence before us, SIBA failed to understand correctly the law that regulates its decision-making power and to give effect to it. There were errors of fact, of law and irrelevant considerations taken into account. Allegations in newspapers are neither fact nor proof of wrongdoing and cannot be the basis for a decision as grave as the one in the present case or for any decision for that matter. The decision of SIBA contravened and exceeded the terms of the law as laid out in section 3, schedule 3 of the 2003 Act. They were only authorised to ensure that the directors "remain[ed] fit and proper person[s]" in terms of the provisions of the Act set out above at paragraph 13. None of the legal provisions were used or applied legally by the Appellant. In the circumstances, we have no difficulty concluding that SIBA acted *ultra vires* in this case.

Ground 3 - procedural impropriety

[23] Mr. Hoareau for the Appellant has submitted that the learned trial judge failed to appreciate and bear in mind that the Appellant had observed the procedural rules under the 2003 Act and had acted with procedural fairness. The Act does not provide any procedural rules for making a decision in relation to the “fit and proper person status” and we are unable to measure the procedure adopted by SIBA in this case against statutory procedural requirements. However, procedural propriety includes the duty to act fairly and the principle of *audi alteram partem* which would comprise in our opinion the following steps: notice to the offending party, an oral hearing with representation if the party so wishes and a decision with reasons were clearly not adhered to.

[24]. We agree with the trial judge that no sufficient notice was given to the Respondents to either prepare themselves or respond to complaints of the Authority nor were they given time to get proper representation. The 1st Respondent was invited without written notice to a meeting on 14th January 2010. The 2nd Respondent only received a letter of complaint on 12th January 2010 and was summoned to a meeting on 14th January 2010. The decision by the Appellant revoking the status of both Respondents was taken the day after, the 15th of January 2010. By no stretch of the imagination can one find that the rules of natural justice were followed by this truncated and rushed procedure.

Ground 4 - Remitting the matter to SIBA for a fresh decision

[25]. The new Rule 54.19 of the Civil Procedure Rules of the UK states that where the court makes a quashing order in respect of the decision to which the claim relates it may (i) remit the matter to the decision-maker; and (ii) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court; or (b) in so far as any enactment permits, substitute its own decision for the decision to which the claim relates. (See also *Huang v The Secretary of State for the Home Department 2007 2 AC 167 and Nasseri [2009] UKHL 23*). As we have pointed out above, these rules are not applicable in Seychelles. We are permitted by virtue of section 17 of the Courts Act, Cap 52 in such circumstances to refer to English rules of procedure but only those that applied before our independence in 1976. The rules of procedure in relation to the writ of certiorari in 1976 did not permit the substitution of the Court’s decision for that of the decision maker in judicial review. As we have also stated, the ICSP 2003 Act does not apply to limit the bounds of the court’s powers for supervisory jurisdiction as its provisions only apply to decisions relating to licencees. We are therefore forced to resort to the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authority) Rules 1995 which permits the Supreme Court to issue any order. In the circumstances we find that the order made by learned judge Renaud was entirely conformable with the law. The appeal by SIBA in CS 40 and 41 are therefore dismissed in their entirety.

The matter of duplicitous proceedings in appeals SCA21/2010 and SCA 21/2012

[26]. We now turn to the appeals relating to the revocation of the licence of Lotus Holding Company Limited (Lotus). In this respect Lotus filed three suits before the Supreme Court—the first suit (107/2010) was an application for an interlocutory order to restore the Applicant’s ICSP until the final disposal of the principal suit, the second was a petition for judicial review together with a claim for compensation (suit 121/2010, now SCA 21/2010)

and the third was a plaint for judicial review together with a claim for compensation (suit 244/2010, now SCA 21/2012).The application for the interlocutory order (suit 107/2010) was granted and was not appealed and is therefore not an issue before us.

[27]. The second and third suits are clearly duplicitous and seem to have arisen through the fact that Lotus was unable to decide whether to bring the matter of the revocation of its licence before the court by way of petition or plaint. Its indecision was compounded by the fact that there are different remedies available under the different provisions for judicial review in Seychelles. Whilst the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authority) Rules 1995 provide power to grant any remedy including the award of damages, the ICSP Act 2003 is silent on the matter.

[28]. The learned Chief Justice in his decision relating to suit 121/2010 (now appeal number 21/2010) on the petition for judicial review stated

“The petitioner [now the appellant] has brought 2 sets of proceedings in respect of the same subject matter, seeking identical relief. In my view there is no legal justification of putting the respondent to such multiplication of costs and time in defending this proceeding.

This situation is not only of concern to a party who is forced to defend a proceeding twice. It is inimical of the proper management of public resources and courts own time and ability to hear other parties and their proceedings in queue for the court’s attention. It is wasteful of public resources and the courts own time and ability to provide a service under great demand for the public.”

The learned Chief Justice had intimated that he would have been prepared to consider the judicial review under section 17 of the ICSP Act 2003 were it not for the fact that the proceedings were duplicitous. The fact that the main difference between the two suits was one of form only- one being a petition and the other a plaint- was not raised. While it is correct to dismiss a suit for duplicity, this salient fact was not brought to the learned Chief Justice’s attention. The learned Chief Justice’s finding on duplicity is not one that we can fault. We do not feel it merits any more of our attention and without further ado we dismiss the appeal.

Grounds of appeal in respect of appeal 21/2012 by SIBA

[29]. We turn finally to the appeal by SIBA concerning the plaint for judicial review for the revocation of Lotus’s licence and claim for damages in suit 244/2010 before the Supreme Court, now appealed in suit 21/2012. In his decision the learned trial judge found that SIBA’s decision was wrong, illegal, unjustified, unreasonable, unfair and ultra vires its functions and powers and awarded Lotus, the “nominal” sum of US \$5,000 compensation together with interest at the legal rate and costs.

[30]. SIBA, the appellant in this case has put up two main grounds of appeal which we have paraphrased:

1. *The learned trial judge erred in law in failing to hold that the proceeding before the Supreme Court had been wrongly commenced by way of plaint, instead of petition or a notice of motion.*
2. *The learned trial judge erred in law and on the evidence in holding that the appellant's decision in revoking the respondent's licence was unfair, unlawful, unjustified and contrary to the proper discharge of its function.*

Ground 1- Commencement or judicial review proceeding by plaint

[31]. There is no doubt that the duplicity and multiplicity of actions in this case is partly to do with counsel's decision to rush to court and attempt to cover every wicket. We do accept however that the law and procedure on the matter do not speak with one voice and therefore have a part to play. Rule 2(1) of Supreme Court Rules 1995 specifies that judicial review applications have to be made by petition. Section 17 (1) of the ICSP Act 2003 states that the review of a decision by SIBA concerning a licence is made by application (our underlining). The Seychelles Code of Civil Procedure is also not very enlightening on this issue. In its section 2 it defines "suit" or "action" as "a civil proceeding commenced by plaint" and a "cause" as "any action, suit or original proceedings between a plaintiff and a defendant." There is no definition of "application." In England the procedure for judicial review is by notice of application supported by affidavit. Traditionally, in Seychelles, judicial review applications are made by petition, probably because of the Supreme Court Rules. The judicial review sought in this case is not under the constitutional supervisory jurisdiction of the court but rather under a statutory scheme which does not clarify the procedure to be adopted. Section 23 of the Seychelles Code of Civil Procedure indicates that "every suit shall be instituted by filing a plaint." The issue arising is whether this case was wrong suited which would be fatal to the proceedings (see *Choppy v. Choppy* (1956) SLR 162). A similar issue arose in the case of *Quilindo v Moncherry* (unreported) SCA 29/2009 in which we referred to the Mauritian case of *Toumany and anor v Veerasamy* [2012] UKPC 13 in which Lord Brown stated:

"The Board has sought in the past to encourage the courts of Mauritius to be less technical and more flexible in their approach to jurisdictional issues and objections...Let the Board now state as emphatically as it can its clear conclusion on this appeal. In cases like these, where mistakes appear in documentation as to which particular jurisdiction of the Supreme Court has been involved, those mistakes should be identified and corrected without penalty unless they have genuinely created a problem) as soon as practicable and the court should proceed without delay to deal with the substantive issues raised before it on the merits.". [21 -24]

[32]. No prejudice whatsoever was suffered by the Appellants by the proceedings being initiated by petition instead of plaint. In fact the issue was not raised until at the close of the Respondent's case in which counsel admitted that no express procedure was provided for in the statutory scheme. The matter was not specifically addressed by the court as it felt it would be sitting on appeal on its own decision. In our opinion the learned trial judge missed

the point; whilst he could not address the issue of duplicity again, there had been no decision made on the issue of the form of proceedings to be brought in cases of judicial review. We are of the view that given the lack of clarity in the procedural law we cannot fault counsel for the form of proceedings he brought. We do however hazard to say that given the analogy of judicial review under the Constitution it would have been preferable to bring the matter by way of petition instead of a plaint. It might also have been expeditious and desirable to bring a single petition for all the matters subject to judicial review both under the statutory scheme which would have addressed the decision concerning the licence and also under the supervisory jurisdiction of the Supreme Court which would have addressed the decision regarding the "fit and proper person" status of the employees of Lotus. The claim for damages should have formed part of the same proceedings as the courts' jurisdiction to grant the same is not ousted (see rule 18(1) of the Supreme Court Rules 1995). However, for the reasons we have outlined we find no merit in this ground of appeal.

Ground 2- Wednesbury reasonableness again

[33]. Counsel has again raised the spectre of *Wednesbury reasonableness*, but this time in respect of the revocation of the licence. He has submitted that it was wrongly applied given the evidence adduced and the pertinent legal principles applicable. The following are the facts giving rise to this appeal:

1. The original revocation of Lotus' licence was premised on the revocation of the "fit and proper person" status of two of its employees. This is evident in the letter it sent to the company on 15th January 2010 in which it stated:

"Additionally in view of the seriousness of the matter which has led to the removal of the fit and proper status of Ms. Port-Louis and Ms. Jouanneau, which therefore leaves the office of Lotus Holding Company Limited without any fit and proper person ... the Authority as a result of its obligations under the laws, has decide to revoke the International Corporate Service Providers Licence of Lotus..."

2. The court ordered that the licence be maintained until the final disposition of the case.

3. The licence to ICSPs are granted annually and at the end of Lotus' licence towards the end of May 2010, it having been restored by the court, a fresh application was made by Lotus with the submission of two new employees for SIBAS's assessment in terms of "fit and proper person" status.

4. By letter of 28th May 2010 the CEO of SIBA, one Steve Fanny wrote to the Director of Lotus, one Mark Reckins refusing the application for the new licence on the grounds that no fees had been forwarded in respect of the new licence, that the concerns regarding the "fit and proper person" status of Ms. Port-Louis and Ms. Jouanneau had not been addressed, that staff appraisals had not been conducted by the company, that the professional indemnity cover of the company was inadequate given the volume and the nature of its business, that an employee who was not a

director had signed the accounts filed with the company registrar and that no other candidate would be considered to undergo “fit and proper person assessment.”

[34]. The learned trial judge opined that SIBA’s decision was “unfair, unlawful and unjustified and contrary to the proper discharge of its functions”. He based his finding on the evidence before him namely:

1. The decision was taken by the appellant without an inspection or review of the Respondent’s control system as they are wont to by law.
2. The fit and proper person status assessment of the new director and employee of the company was not performed.
3. Payment of the annual fee is usually done by automatic deduction of the sum from the respondent’s account and not by cheque or cash accompanying the application form.
4. Lotus was not given an opportunity to be heard on matters such as its failure to have the audited account signed by directors of the company.
5. The evidence of the CEO clearly indicated that the decision was made not on the grounds alleged in the letter but purely because of the fact that the “fit and proper person” status of Ms. PortLouis and Ms Jouanneau, this notwithstanding the fact that its decision had been overruled by the court.

[35]. We have to emphasize that the learned trial judge had the opportunity to observe the witnesses’ demeanour in court and is better placed than this court to come to findings of fact. We must also add that the documentary evidence lends credence to these findings. We will not rehearse the principles to be applied to administrative decisions as we have already outlined them above. It is however clear to us that neither reasonableness nor proportionality were principles applied to in SIBA’s decision. We would also like to reiterate a statement of this court made in the case of *Hoareau v Hoareau* (unreported) SCA 38/1996 at page 5 of their judgment which while was in reference to a judge of an inferior court is equally applicable to administrative bodies when found to be at fault in their decision making:

“A judge must not give the impression that he is upset by the reversal of his judgment by a higher court or that he needs to re-establish a view that he had been held to hold in error.”

It is patently obvious from the actions of SIBA that it was not happy with the decision of the Supreme Court which had power to reverse its decision and did. Whilst SIBA could have come to a decision not to renew the licence of Lotus on a fresh assessment of its application, it could only have done so bearing in mind the principle of fairness and having guarded itself against procedural and substantive impropriety. The evidence is to the contrary- for example, it failed to assess the fit and proper person of the new officers proposed by the company. This appeal is therefore dismissed.

[36]. All the appeals in this consolidated matter are therefore dismissed with costs in the event.

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F.MACGREGOR

PRESIDENT

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S.DOMAH

JUSTICE OF APPEAL

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M. TWOMEY

JUSTICE OF APPEAL

Dated this 14th August 2014, Ile du Port, Mahé, Seychelles.