

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram:** S. Domah (J.A), A. Fernando (J.A) , M. Twomey (J.A)

**Civil Appeal SCA 36/2012**

**(Appeal from Supreme Court Decision CS 146/2010)**

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Sonny Labrosse

Appellant

Versus

Chairperson of the Employment  
Tribunal Seychelles

Respondent

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Heard: 05 December 2014

Counsel: Mr. Joel Camille for Appellant  
Mr. Benjamin Vipin for Respondent

Delivered: 12 December 2014

**JUDGMENT**

M. Twomey (JA)

- [1] Judicial review allows the courts to provide remedies to people adversely affected by unlawful government action. The appellant alleges that such illegal action was perpetrated by the Employment Tribunal in its decision of 1st April 2010. The facts of this case are as follows: The appellant was employed as a general helper with the company Al Yachting Neptune Warrior, Seychelles. His employment was terminated on 1<sup>st</sup> September 2009 on the ground of insubordination. He filed for grievance proceedings before the Employment Tribunal after an unsuccessful mediation process by the competent officer pursuant to section 61 (1D) of the Employment Act 1995. The Tribunal found that the termination was not justified but that his reinstatement would be impractical or inconvenient and ordered that the appellant be paid his legal benefits.
- [2] No appeal was lodged against the said decision but the appellant having been granted leave to proceed filed a petition for judicial review presumably under the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating

Authority) Rules 1995 six months later. He argued before the Supreme Court, that since the Tribunals' decision not to reinstate him was based erroneously on section 62(2) (a) of the Employment Act which provides for frustration of contracts, the decision was flawed, legally unfounded and should be quashed.

- [3] In its decision of 28<sup>th</sup> November 2012 the Supreme Court found that since the Employment Act as amended by Act 21 of 2008 provided that appeals to the Supreme Court could be made in respect of decisions of the Tribunal and this avenue had neither been exhausted nor availed the appellant was precluded from making an application for judicial review.
- [4] The appellant has appealed this decision on the following grounds:
1. The learned trial judge erred in law in concluding that the appellant having failed to lodge an appeal against the decision of the Respondent was prescribed from making an application of judicial review of the same decision.
  2. The learned trial judge erred in law to have dismissed the application outrightly (sic) without having explored the merits of the application on the face of the evidence on records before him.
- [5] At the hearing of the appeal, learned Counsel for the Appellant withdrew his first ground of appeal. He proceeded to begin his argument on the second ground when the court pointed out to him that he was dealing with the merits of a decision in a judicial review case. An appeal and an application for judicial review do not concern the same things. It is trite law that an appeal is concerned with the merits of a decision whereas a judicial review is concerned with the decision making process. (see **Chief Constable of the North Wales Police v Evans [1982] 1 W.L.R. 1155, Khawaja v Secretary of State for Home Department [1983] 1 All ER 765**).
- [6] The appellant at this stage with little to go on seemed to revert to his abandoned ground 1. With great forbearance we explored this avenue with Learned Counsel. Notwithstanding the fact that the Employment Act provides for appeals from decisions of the Employment Tribunal, the Constitution of Seychelles (article 125(1) (c) and the Courts Act (sections 4 and 5) endows the Supreme Court with supervisory jurisdiction over inter alia tribunals and adjudicating authorities.
- [7] However, procedural rules must be followed for both appeals and judicial review applications. An appeal from the decision of the Tribunal could have been filed within 14 days of it being delivered (viz section 4 of Schedule 6 of the Employment Act 1995 and section 6 (2) of The Appeal Rules (1961) made pursuant to the Courts Act ). Similarly, Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 provides that a petition for judicial review shall be made promptly and in any event within 3 months from the date of the order or decision unless the Supreme Court considers there is good reason for extending the period.

[8] This matter was not argued by parties or raised by the judge hearing the matter in the Supreme Court. We, however, are sticklers for procedure and do raise it, so singularly unimpressed are we by the tardiness of the Appellant's application. His lethargy does not reveal an appellant hell-bent on justice; his was an unconscionable delay that cannot result in an equitable remedy.

[9] For this reason we dismiss this appeal in its entirety.

M. Twomey (JA)

**I concur:.** ..... S. Domah (JA)

**I concur:.** ..... A. Fernando (JA)

Signed, dated and delivered at Palais de Justice, Ile du Port on 12 December 2014