

IN THE SEYCHELLES COURT OF APPEAL

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

Civil Appeal SCA 23/2013

(Appeal from Supreme Court Decision 18/2012)

European Hotel Resort **Appellant**
Seychelles Kempinski Resort

Versus

Neddy Nourrice **Respondent**

Heard: 10 April 2015

Counsel: Mr. A. Derjacques standing in for Mr. B. Julie for the Appellant
Mr. M. Vidot for the Respondent

Delivered: 17 April 2015

JUDGMENT

A. Fernando (J.A)

1. This was an appeal against a judgment of the Supreme Court whereby the Appellant was ordered to pay the Respondent, the amounts due under the following terminal benefits, over and above what had already been awarded by the Employment Tribunal, namely:
 - i. Annual leave from 3rd November 2011 to 28th may 2012,
 - ii. Compensation from the 3rd November 2011 to 28th May 2012, and
 - iii. Salary from 3rd November 2011 to 28th May 2012.

2. The judgment of the Supreme Court was rendered on an appeal by the Respondent from a decision of the Employment Tribunal dated 28th May 2012.
3. The Respondent had been a former employee of the Appellant and had been in the employment of the Respondent when her employment was terminated by the Appellant on the 3rd of November 2011. Being aggrieved by the said termination, the Appellant had lodged a grievance with the Ministry of Employment pursuant to the Employment Act 1995. Mediation between the parties having failed the Respondent proceeded to register a case with the Employment Tribunal.
4. The Employment Tribunal by its judgment dated 28th May 2012, declared that the said termination was not justified and the Respondent was entitled to:
 - i. One month's salary in lieu of notice,
 - ii. Annual leave up to 3rd November 2011,
 - iii. Compensation for length of service up to 3rd November 2011.

The Tribunal had not made an award in respect of salary up to date of termination although claimed by the Respondent.

5. It had been the contention of the Respondent before the Supreme Court that the calculation by the Employment Tribunal of her benefits was in contravention of section 46(1) and 61(2) (a) (iii) of the Employment Act and the awards should have been calculated up to the date of 'lawful termination' and that been the date of the judgment by the Tribunal, namely the 28th May 2012 and not the 3rd of November 2011, namely, the date that the Appellant had her employment terminated.
6. The Supreme Court in its judgment had pronounced that that "the date of the judgment by the Tribunal is the actual date of lawful termination" and that the Respondent was entitled

to her salary and other terminal benefits up to that date, namely 28th May 2012. On an examination of the relevant provisions of the Employment Act and the decision in the case of Sams Catering (Prop) Limited VS The Minister of Employment, Civil Side No.312 of 2006 relied on by the Supreme Court in its judgment, we are in agreement with the decision of the Supreme Court. In our view where the Tribunal determines that the termination was justified, lawful termination would take place at the time of actual termination by the employer, but where it is determined that the termination was not justified but cannot recommend reinstatement, the termination takes place on the date of the determination of the Employment Tribunal.

7. Although we have gone into the merits of this appeal to bring finality to it, this appeal could have been dismissed on another ground at the very outset. The judgment of the Supreme Court which is the subject matter of the appeal had been rendered ex parte as a result of the defaulted appearance of the Appellants' Counsel Mrs. Amesbury despite an adjournment been granted earlier on the 13th of May 2013. The Appellant had not taken any steps to have the ex parte judgment set aside within the time stipulated in section 69 of the Seychelles Code of Civil Procedure. One cannot file an appeal before the Court of Appeal in such circumstances.
8. In her submissions to Court on the 6th of May 2013 Counsel for the Appellant Mrs. A. Amesbury, had stated "It is better for me to go and talk to my client just to tell them, look you cannot win this one, here is what is left to be paid" and "We can make judgment next time when I come with the cheque." Mrs. Amesbury had failed to appear for the Appellant thereafter and that is why the case was heard ex parte.
9. On the 31st of March 2015 Counsel for the Appellant Mr. B. Julie, had written to the Registrar of the Court of Appeal: "...I hereby inform that the appeal is withdrawn." The Appellant had also failed to comply with the mandatory provisions of rule 24(1) of the

Seychelles Court of Appeal Rules 2005 which requires that “The appellant shall lodge with the Registrar five copies of the appellant’s main heads of argument within two months from the date of service of the record. Two copies of such main heads of argument shall be served on each respondent”. Rule 24(2)(i) states: “Where at the date fixed for hearing of the appeal the appellant has not lodged heads of argument in terms of this Rule, the appeal shall be deemed to be abandoned and shall accordingly be struck out unless the Court otherwise directs on good cause shown.” There was no application to the Court moving for an extension of time to file the heads of argument by the Appellant. The Respondent however had filed her heads of argument on the 9th of March 2015.

10. On the 9th of April 2015, one day before the date fixed for the hearing of the appeal, the very Counsel who wrote to the Registrar withdrawing the appeal on the 31st of March 2015, to our dismay, filed a motion before the Court stating: “That the Appellant intends to continue negotiating with the Respondent on the additional benefits awarded by Judge Karunakaran in the Supreme Court judgment SC 18 of 2012” and praying “That is just and necessary for the Honourable Court to adjourn the case to allow negotiation to continue and order the case to be cause-listed for hearing at the next session of the Court of Appeal if negotiation fails”.
11. We cannot understand what negotiations were available in respect of a judgment rendered by the Supreme Court. This in our view is shameful conduct on the part of the Respondent and a deliberate attempt to harass their former employee and a clear abuse of the court process. We condemn Counsel who condones such unethical conduct. What was worse was that Mr. B. Julie failed to appear before us on the 10th of April, when this case was taken up for hearing and instead had requested Mr. A. Derjacques to stand in for him. Not having put him properly into the picture, Mr. Derjacques, standing in for Mr. B. Julie, could give an answer to none of our questions. Such ignoble behaviour on the part of Mr. Julie shall not be tolerated by this Court and Counsel should not become the pawns of their clients anymore than pawns of their own colleagues.

12. We therefore have no hesitation in dismissing the appeal and ordering the Appellant to comply forthwith with the judgment of the Supreme Court dated 20th May 2013. We further order costs of this appeal against the Appellant and all costs incurred by this Court in connection with this appeal.

A. Fernando (J.A)

I concur:. S. Domah (J.A)

I concur:. M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 17 April 2015