

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) ,M. Twomey (J.A), B. Renaud (J.A)]

Civil Appeal SCA 11/2015

(Appeal from Supreme Court Decision Commercial Cause No. 33/2013)

Seychelles Petroleum Company Limited
(Herein rep. by Mr. Conrad Benoiton
Chief Executive Officer)

Appellant

Versu
s

Robert Morel
Juliette Hoareau

Respondents

Heard: 03 August 2017
Counsel: Mr. John Renaud for the Appellant
Mr. Elvis Chetty for the Respondent
Delivered: 11 August 2017

JUDGMENT

B. Renaud (J.A)

BACKGROUND

- [1] The Appellant entered a civil suit CS 333/2013 against the Respondents before the Supreme Court on 2nd December, 2013 for breach of Bonding Agreements (hereinafter “Agreements”) and is claiming SR446,817.72 as damages.
- [2] The Respondents, on 14th May, 2014, by their joint statement of defence, denied the claim of the Appellant and raised a point in *limine litis*. In essence the point in *limine litis* is that as the claims concerned an “*employment related matter*” it fell within the exclusive jurisdiction of the Employment Tribunal and that therefore the Supreme Court had no jurisdiction.

[3] After hearing the arguments of Counsel, on 1st July, 2015 the learned Judge upheld the plea *in limine litis* and dismissed the Plaintiff with costs to the Respondent. This effectively disposed of the suit entirely.

[4] The Appellant being dissatisfied with the decision of the Supreme Court has now appealed to this Court.

GROUND OF APPEAL

[5] The Appellant advanced the following grounds of appeal:

(i) The Judgment against the Appellant/original Plaintiff has no basis in law, in that the Plaintiff's case (now Appellant) was based on breach of a bonding agreement between the Appellant and Robert MOREL (First Respondent) and Juliette MOREL (Second Appellant) who was not an employee of the Plaintiff and was only the guarantor and could not therefore be subject to the Employment Act, 1995.

(ii) The First Respondent was found in breach of bonding agreement and the learned Judge erred in law in basing her judgment against the Appellant on the Employment Act, 1995 (sic).

[6] It is the Appellant's case that it is the owner of a company whose operations involve the supply of fuel to the domestic market, bunkering of vessels, aviation refuelling activities and the management of its shipping arm.

[7] The 1st Respondent was an employee of the Appellant. In April 2010, the Appellant sponsored the 1st Respondent to attend a training course in Australia. It was agreed that the Appellant would incur all associated costs including air fares, tuition fees and accommodation which in all amounted to SR354,898.98.

[8] In pursuance of that arrangement, on 28th April, 2010 the 1st Respondent signed a "Bonding Agreement" with the Appellant and the 2nd Respondent signed as "Guarantor. Article 2 of the Bonding Agreement is to the effect that – *"the 1st Respondent on*

completion of his training, had to return to Seychelles and to work for the Appellant for a period not exceeding four and a half years (the bond period).”

- [9] In February 2012, the Appellant again agreed to sponsor the 1st Respondent for further training in Australia and the Appellant incurred all the associated costs in the sum of SR91,918.74. On 13th February, 2012 the 1st Respondent signed another Bonding Agreement with the Appellant and the 2nd Respondent again stood as guarantor to that second Agreement. Under Article 2 of that Bonding Agreement the 1st Respondent on completion of his training, had to return to Seychelles and to work for the Appellant *“for a period not exceeding one and a half years (the bond period)”*.
- [10] On 3rd October 2012, the 1st Respondent wrote to the Appellant through his lawyer claiming that as the Appellant had compelled him to work for companies all over the world the contract had been repudiated and he would not continue to honour its terms and conditions.
- [11] Prior to the 1st Appellant taking up employment with the Appellant he was aware that the latter owned five tankers that operated and traded in international waters and therefore knew that the scope of his study would require him to work on those tankers. In fact the 1st Respondent has worked under three different contracts on three of these five tankers – as a 3rd Officer in March, 2011 for 6 months; as a 3rd Officer from 15th 2012 to 2nd July, 2012, and, as a 2nd Officer from 14th October, 2012 to 4th March, 2013.
- [12] It was the case for the Appellant that the 1st Respondent had breached his Bonding Agreements and was therefore liable to the Appellant in the sum of SR446,817.72. As the 2nd Respondent had signed as Guarantor to these agreements binding herself jointly and severally with the 1st Respondent to the payment of that sum, she was also liable to the Appellant.
- [13] The 1st Respondent denied that he was an employee of the Appellant at all material times. He averred that during the time he worked on those three Tankers he was not employed by the Appellant. He contended that the contract was not repudiated as the repudiation was not in accordance with the law and as such there was no breach of the contract. He added that it was the Appellant that had breached the contract as it was under an

obligation to employ him in the field of his training and which the Appellant failed to do. He entered a counter-claim against the Appellant for breach of contract as the Appellant was under an obligation to employ him in the field of his training which the Appellant failed to do.

[14] The issue to be determined on this appeal is whether the Agreements that were entered into by the Appellant on the one side and the two Respondents on the other side were *employment related matters*.

[15] **Section 73A(1)** of the Employment Act 1995 in relevant part provides –

“There is hereby established a Tribunal which shall be known as the Employment Tribunal”.

[16] **Section 73 A(2)** provides –

“Schedule 6 has effect with respect to the Employment Tribunal, its composition, jurisdiction, powers and otherwise”.

[17] **Rule 3(1)** of Schedule 6 to the Act provides –

“The Tribunal shall have exclusive jurisdiction to hear and determine employment and labour related matters.”

[18] Firstly, we have to establish whether the 1st Respondent was an employee of the Appellant prior to and/or at the time of entering into the Agreements.

[19] We note that the caption of the two Agreements states that it is for ***In-Service Students on Overseas Training***. In other words, it is an agreement entered into by the Appellant with the 1st Respondent who was already in its employment.

[20] It follows therefore that the 1st Respondent must have had an employment contract with the Appellant, be it verbal or written otherwise at the time of entering into the Agreements. In fact the Appellant pleaded that the 1st Respondent was its employee when he was sponsored for overseas training. There were two such Agreements in respect of two overseas training programmes, one in April 2010 and the other one in February 2012.

[21] A term of those Agreements was that the 1st Respondent bound himself, on completion of

his training, to return to Seychelles and to work for the Appellant for the period of time set out in those Agreements failing which it would amount to a breach of the Agreements and the 1st Respondent would have to pay back to the Appellant the amount set out in the Agreement.

[22] The 2nd Respondent stood as Guarantor in both Agreements guaranteeing that the 1st Respondent adheres to the terms of the Agreements and in case of breach, she, as the Guarantor will be jointly liable to pay the bonded amounts to the Appellant.

[23] The 1st Respondent left the employment of the Appellant alleging that the Appellant breached the Agreements by not employing him after his training, but had instead put him in the employment of another employer to work on tankers plying their trade all over the world. He submitted that he had not in any way breached the terms of any contract of employment with the Appellant and the question of his owing any money to the Appellant under Agreements therefore did not arise.

[24] The Appellant on the other hand contends that, following his training, the 1st Respondent was indeed given employment on its tankers which was managed by a Company on its behalf. The Appellant is of the view that 1st Respondent breached his Agreements because he unilaterally terminated that employment prematurely.

[25] We are of the view that the issue of whether the 1st Respondent breached his Agreements with the Appellant, must firstly be resolved by determining whether the Appellant honoured his side of the Agreements by employing the 1st Respondent following his training or whether the 1st Respondent breached his employment contract with the Appellant and failed to honour his side of the Agreements. Unless and until this issue is resolved one way or the other, the question as to whether the Agreements have been breached or not and by which party, cannot be determined.

[26] We are of the further view that the 1st Appellant was sponsored for overseas training as part of his conditions of employment. It is substantially connected as being in furtherance of the contract of employment. The Appellant was giving the 1st Respondent such training so that the latter would improve his knowledge and skills to render more and better services to the Appellant in its business activities, in particular the operation of

is fuel tankers.

- [27] Before determining whether there has been a breach of the Agreements it must first be decided whether there was an employment agreement between the Appellant and the 1st Respondent and if so, which of the two parties breached that contract of employment.
- [28] In the instant case, the breach of the Bonding Agreements can only be established if there has been a breach of the contract of employment. This is evidently a matter that falls clearly within the ambit of the Rule 3(1) of Schedule 6 of Employment Act 1995 as amended and it is the Employment Tribunal which has exclusive jurisdiction to adjudicate on such matters, in the first instance.
- [29] The enforcement of the term of the Agreements by claiming back the expenses incurred, as a money claim arising out of a potential breach of the contract, where the 2nd Respondent can rightly be joined as a party, can only be pursued once the breach of the contract of employment is first established.
- [30] We therefore agree with the trial judge that in the present case the Bonding Agreements are employment related and arose out of the employment of the 1st Respondent with the Appellant. The 1st Respondent was an employee of the Appellant when he entered into the Bonding Agreements and the terms of the agreement were that the 1st Respondent would work for the Appellant for a number of years in return for the expenses incurred by the Appellant in sponsoring his training.

B. Renaud (J.A)

I concur:. F. MacGregor (PCA)

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

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 August 2017