

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 35 (19 August 2022)

SCA 75/2019

(Arising in MC 94/2019)

GOVERNMENT OF SEYCHELLES

AT THE INSTANCE OF MINISTRY OF HOME AFFAIRS Appellant

(rep. by Mrs. Luthina Monthy)

and

1. THE PUBLIC SERVICE APPEAL BOARD

(rep. by its Chairperson Bryan Julie)

2. JIHAD JOUBERT

Respondents

(unrepresented)

Neutral Citation: *Government of Seychelles at the instance of Ministry of Home Affairs v The Public Service Appeal Board & Anor* (SCA 75/2019) [2022] SCCA 35 (19 August 2022) (Arising in MC 94/2019)

Before: Twomey-Woods, Robinson, Tibatemwa-Ekirikubinza, JJA

Summary: leave to appeal - representative capacity of Government of Seychelles for agencies - section 29 of Seychelles Code of Civil Procedure - Article 76(4) of the Constitution

Heard: 2 August 2022

Delivered: 19 August 2022

ORDER

The appeal is allowed. The Appellant is granted leave to proceed with the hearing of the Petition for the exercise of the supervisory jurisdiction of the court of the decision of the PSAB made on 20 July 2019 after the amendment of the caption to read The Attorney General At the Instance of the Ministry of Home Affairs.

JUDGMENT

DR. M. TWOMEY-WOODS JA

(Robinson and Tibatemwa-Ekirkubinza JJA concurring)

Background

- [1] In October 2019, the Government of Seychelles, at the instance of the Ministry of Home Affairs (the Government), applied for leave to proceed on an application for the exercise of the supervisory jurisdiction of the Supreme Court pursuant to Article 125(1) (c) of the Constitution over a decision made by the Public Service Appeal Board (the PSAB) in respect of Mr Jihad Joubert on 20 July 2019.
- [2] The decision sought to be reviewed concerned the employer of Mr. Joubert, namely the Seychelles Fire and Rescue Services Agency (the Agency). The present matter on appeal does not concern the decision made by the PSAB proper but rather the representative capacity of the Government for the Agency for which the application for leave and the petition were made.
- [3] The court refused leave for the Government to proceed with the petition holding that the application for leave to proceed should either have been brought by the Agency or the Attorney General in a representative capacity but not by the Government of Seychelles.

The appeal

- [4] The Government has appealed the decision of the court *a quo* on the following ground:

“The Supreme Court was wrong in refusing the Appellant leave to proceed with the petition for the exercise of the supervisory jurisdiction of the Supreme Court over a decision made by the [PSAB] in respect of a decision of the [Agency] on the grounds that the [Agency] appears to be an entity distinct from the Government, in that the [Agency] is not a separate entity from the Government but is a department or division of the Government and as such a public authority under Article 146(7) of the Constitution that the PSAB has jurisdiction over.”

Submissions

[5] At the hearing of the present appeal Mrs. Monthy, Counsel for the Government, submitted that insofar as the Seychelles Fire and Rescue Services Agency is an agency of government, it falls to be considered as a department or division of the Government for the purpose of Article 146(7) of the Constitution. It is the Ministry of Home Affairs which has the responsibility for the Agency. Accordingly, there was no error in the application and petition being brought in the Government's name at the Ministry's instance.

[6] She has directed this Court's attention to the Seychelles Fire and Rescue Services Agency Act 2010 (the Act) which provides in relevant part:

“Section 3 There is established a Seychelles Fire and Rescue Services Agency under the general authority of the Minister of Home Affairs, and the Agency shall be a disciplinary force of Seychelles.”

[7] She has also cited provisions of the Act regarding the Minister's powers for appointing the Agency's officers and providing for their conditions of work, as well as the power to give directions to the Chief Fire Officer. She submits that given the amplitude of these provisions; it is clear that the Agency is not a body corporate or an entity of its own but rather one under the aegis of the Ministry. She contends that in these circumstances, it was erroneous for the court to rule that the action was wrongly brought in the name of the Government.

[8] Both the PSAB and Mr. Joubert have conceded this point and have not taken a stance on the other issue raised on appeal, namely that the Government of Seychelles should sue in the name of the Attorney General.

Discussion

[9] The issue, in this case, concerns the caption of the case and the representative capacity of the Government for the Agency.

[10] The Respondents rightly conceded, and we agree with Mrs. Monthy that the Government can represent the Agency given the provisions of the Act.

[11] However, section 29 of the Seychelles Code of Civil Procedure (hereinafter the SCCP) provides in relevant part:

“(1) All claims by the Government of Seychelles against any private person shall be brought in the name of the Attorney General and (subject as hereinafter provided) shall be carried on in the same manner in every respect as suits between private parties.”

[12] In this context, Article 125 of the Constitution provides in relevant part that:

“(1) There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have –

...

(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to 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 for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction...”

[13] It is moot whether the SCCP applies to judicial review. In *Government of Seychelles v Public Service Appeal Board & Anor* (MC 87 of 2018) [2019] SCSC 654 (30 July 2019), Chief Justice Twomey (as she then was) held that:

“With respect to section 29 of the SCCP there is no equivalent rule contained in the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995(hereinafter The Rules). However, in the absence of specific rules, the general rules of the SCCP bind the Supreme Court.”

[14] In *The Government of Seychelles v Public Service Appeal Board and Anor* (MC 66 of 2018) [2021] SCSC 410 (09 July 2021), Dodin J was of the opposite view, namely that;

“Since section 29 of the Seychelles Code of Civil Procedure does not apply to judicial review, the Respondents’ contentions that the Government of Seychelles cannot sue in its own capacity and has no legal standing are misconceived.”

[15] Be that as it may, we believe that section 29 unequivocally entreats parties who sue or are sued by the Government to do so in the name of the Attorney General. The learned trial judge was not wrong in this finding. However, failure to use the proper caption when it is the Government of Seychelles who is acting for the Agency should not be fatal to the application for leave and the petition given the fudge regarding section 29 of the SCCP.

[16] We believe that since Article 76 (4) of the Constitution provides that the Attorney General is the principal legal adviser to the Government of the Republic of Seychelles, it is best in suits involving the latter that it be sued in the name of the Attorney General. The caption, therefore, ought to be amended to reflect this reality.

[17] Hence a direction on this issue would have sufficed rather than an order for dismissal. However, we recommend that the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995 be amended to indicate clearly how the Government of Seychelles should sue or be sued.

Decision and Order

[18] For these reasons, the appeal is allowed, and leave to proceed with the hearing of the petition for the exercise of the supervisory jurisdiction of the court of the decision of the PSAB made on 20 July 2019 is allowed after the caption has been amended to read the Attorney General at the instance of the Ministry of Home Affairs. The matter is remitted to the Supreme Court for the hearing of the petition on the merits.

Dr. M. Twomey-Woods, JA.

I concur

F. Robinson, JA

I concur

Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated and delivered at Ile du Port on 19 August 2022.