**IN THE COURT OF APPEAL OF SEYCHELLES**

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**Reportable**
[2022] SCCA 68 (16 December 2022)
SCA 5/2022
(Appeal arising from CA 23/2021
SCSC 349/2021)

**Ayyoub Salameh** **Appellant**

*(rep. by Mr. Clifford Andre)*

and

**North Island Company Limited** **Respondent**
*(rep. by Mr. Guy Ferley and Mr. Basil Hoareau)*
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**Neutral Citation:** *Salameh v North Island Company Limited* (SCA 5/2022) [2022] (Arising in CA 23/2021 SCSC 349/2021) (16 December 2022)
**Before:** Twomey-Woods, Robinson and Tibatemwa-Ekirikubinza, JJA
**Summary:** **Grounds of appeal contravened Rule 18 (7) of the Court of Appeal Rules and provisions of Practice Direction No.1 of 2017.**
7 December 2022
**Delivered:** 16 December 2022

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**ORDERS**

(1) The notice of appeal is struck out.
(2) The appeal is dismissed in its entirety.
(3) The orders of the Supreme Court are upheld.
(4) With costs to the Respondent .

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**JUDGMENT**

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**DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.**

**The Facts**

1. This is an Appeal from the decision of the Supreme Court. Before the matter was lodged by in the Supreme Court, it was heard by the Employment Tribunal which ruled that the termination of the employment contract of Ayyoub Salameh (Appellant before this Court) by North Island Company Limited (Respondent) was unjustified.

2. The Tribunal ordered the company to pay the Applicant various sums of money.

   Aggrieved with the decision of the Tribunal, the Respondent - North Island Company Limited – filed an appeal in the Supreme Court, against the Tribunal's decision. For relief, the Respondent prayed that the decision of the Employment Tribunal be set aside and in the alternative, the matter be remitted to the Tribunal for a fresh hearing.

3. The Supreme Court Ruled in favour of the company and ordered that the matter be remitted to the Employment Tribunal for a re-hearing. Furthermore, the Supreme Court dismissed a Cross-Appeal which had been filed by the Appellant.

4. It is against the decisions of the Supreme Court that Ayyoub Salameh appealed to this Court. I have reproduced the grounds verbatim:

   1. **The Learned Judge erred in law and fact to have concluded in paragraph 21 of his judgment by stating that:** *"The Court also finds after perusing the records of the said imputed date of hearing namely the 20th July 2021, that there is no express agreement between the parties to the dispute present on record of the proceedings as to the tribunal sitting with only two members. As to the issue of the submissions of Counsel for the Respondent of which he cited Indian Authorities as to consent may be found by the conduct of the parties, since he submitted that no Counsel for the Respondent did not object to the Tribunal sitting with only 2 members and hence the Respondent is deemed to have consented by his conduct, this Court is of the view that since the word consent in Schedule 6 of section 73(A), paragraph 6 is not used in the said provision but rather the word agreement is used which has a broader meaning and which connotes the meeting of minds. Hence this Court finds that there is no express agreement or any agreement on the record of proceedings between the parties to the dispute as to*

*the tribunal sitting with only 2 members. ....* **So implying that there was no agreement when the conduct of the then Respondent/ Appellant indicated otherwise is not in accordance with law and facts as it will leave room for a party to flout the rules and if they fail to do certain things or object to matters during the hearing or any application for adjournment of the case or a hearing date, they will then state that their conduct did not mean as such.**

2. **The Learned Judge erred in law and fact to have concluded in paragraph 22 of his judgment in stating that the Employment Tribunal was not legally constituted at the time and whatever proceedings that took place during the sitting was null and void to all intent and purposes. In that regard the judge failed to consider Interpretation and General Provisions Act CAP 103, section 36, which states as follows:**

*"Where any act or thing is required to be done under an Act by more than two persons, a majority of them may do it."*

**It is therefore clear that the Learned Judge erred in law in considering that the words in the act could not be performed by 2 members when it was not a hearing but was just a request for an adjournment, which in fact has been customarily done in the Family tribunal, Employment tribunal, Rent Board and other tribunal when it comes to one member not present.**

3. **The Learned Judge erred in law and fact to have concluded in paragraph 23 of his judgment stating that:**

*"This Court also finds that although the Tribunal had decided on an application for an adjournment, the matter was fixed for hearing for the day of which it sat with only 2 members instead of 3 and hence in any event the said Tribunal could not have been able to hear the matter since it was improperly constituted at the time. This Court is also of the view that since it could not hear the matter on the day since in any event it was improperly constituted, the said Employment*

*Tribunal did not exercise its discretion judiciously in not granting an adjournment on an application by the Respondent seeking an adjournment of the matter."*

**The fact is that the Supreme Court acted ultra petita in considering an issue which was not even appealed against. The Court was wrong at this stage as it did not even take into consideration that if the witness was indeed present whether agreement would have been sought as per the said Schedule 6. The Judge definitely erred in law and in fact regarding this as he said that the tribunal did not exercise its discretion judiciously in not granting an adjournment on an application. To this regard, the court cannot say this as the discretion remained with the tribunal and the Supreme Court cannot interfere in such.**

4. **The Learned Judge erred in law and fact to have concluded in paragraph 24 of his judgment stating that:**

*"This Court further holds that as a result that the said Tribunal decided not to grant an adjournment when it could not hear the matter at the time being improperly constituted and as such did not hear the evidence of Mr. Manz, a material witness for the Respondent who could not give his evidence for the Respondent."*

***It is clear that at this stage the Judge erred as there is no evidence that the Tribunal would have taken the evidence of Mr. Manz without seeking agreement, which the Appellant states was by conduct, would not have been sought formally so that it could be on record. The fact that Mr. Manz was seeking for an adjournment more than once indicated that there was delaying tactics in this case, which the court failed to consider even if such was stated in the submission and argued orally in court. The Judge failed to consider such at***

***all in his judgment which he should as the matter was argued and was in the written submission as well.***

5. **The Learned Judge erred in law and fact to have concluded in paragraph 24 of his judgment stating that:**

*"the Respondent was denied the right to fair hearing in contravention of Article 18(7) of the Constitution."*

**Section 73 of the Seychelles Code of Civil Procedure states that, on the day fixed in the summons for the defendant to appear and answer to the claim, the parties shall be in attendance at the Court House in person or by their respective attorneys or agents.**

**Section 65 of the Civil Code also provides for the Procedure if defendant does not appear that, "***if on the day so fixed in the summons when the case is called on the plaintiff appears but the defendant does not appear or sufficiently excuse his absence, the court, after due proof of the service of the summons, may proceed to the hearing of the suit and may give judgment in the absence of the defendant, or may adjourn the hearing of the suit ex parte."*

**It is clear that the said hearing of Mr. Manz was scheduled so many times which the Judge fails to consider the submission of the Counsel for the Applicant/Respondent/Appellant. The Judge is wrong to say that Article 18(7) has been violated when in fact it is the right of the Applicant/Respondent/Appellant that was being violated by persistent delays by Mr. Manz.**

**It is contended that Article 18 of the Constitution does not deal with right to fair hearing, but it is Article 19 that does stand the Judge heavily erred. However, in Article 19(7) the judge erred/ failed to consider that the said Article is clear as it states:**

*"Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time."*

**The Judge failed to address his mind to the term within a reasonable time which the tribunal took consideration of having given a number of opportunities to the Respondent/Appellant/ Respondent with regards to Mr. Manz to give evidence via video link as he was declared a PI at the said time. From that, we can see that it is not the Respondent/Appellant's right to fair hearing that was breached, but rather that of the Applicant/Respondent/Appellant's right that was breached by the violation of the constitution Article 19(7) as there were so many delays and the case was not being heard within a reasonable time even after having been given Mr. Manz more than once opportunity for him to give his evidence and that the motion was not properly supported by any documentary proof that he was indeed traveling and could not give evidence. This has not been the case to date and therefore the court should and cannot find that there was no fair hearing when there is full fair hearing for the Respondent/Appellant/Respondent.**

6. **The Learned Judge erred in law and fact to have concluded in paragraph 24 of his judgment stating that:**

*"The Court further holds that as a result that the said Tribunal decided not to grant an adjournment when it could not hear the matter at the time being improperly constituted and as such did not hear the evidence of Mr. Manz, a material witness for the Respondent who could not give his evidence for the*

*Respondent, the Respondent was denied the right to fair hearing in contravention of Article 18(7) of the Constitution."*

**It is clear at this stage that the Learned Judge did not and or failed to address his mind to the proceedings and the ruling of the Chairperson of the Tribunal when she clearly stated:**

*"I agree with Counsel for the Applicant that the Respondent's Counsel has made many averments from the bar, all of which could have been supported but which have not. It is agreed by all parties that the case would proceed virtually since 09/03/2021. On the 13/04/2021, the case was scheduled for virtual evidence of Mr. Manz (Manz) and since that date been adjourned on numerous occasions. At no relevant time has the Respondent objected to the evidence of their witness being taken virtually and in fact on the last date the case was adjourn for hearing via Skype because Mr. Menz (Manz) was traveling. Now today we find Counsel for the Respondent making an identical motion to the tribunal. Justice delayed is justice denied and this tribunal will not excuse tactics to delay the completion of this case. The Tribunal's diary is full up until October 2021 and we have on more than one occasion made special arrangements in order to complete this hearing-sitting on non-tribunal sittings, virtual hearing arrangements and coming in during my annual leave. I have considered the motion and we have decided that the Respondent was given ample opportunity to present its case, we will not grant any further adjournments in this case …"*

**There can never be a violation of a right to fair hearing in this case as the Respondent was given adequate time to present its case and it failed to do so. The Judge erred in that regard completely.**

7. **The Learned Judge erred in law and fact to have concluded in paragraph 25 of his judgment to allow ground 1 of the Appeal of the Respondent/Appellant/Respondent, in that the judge failed and erred in**

**considering the submissions of the Applicant/Respondent/Appellant in all its circumstances.**

8. **The Learned Judge erred in law and fact to have concluded in paragraph 27, 28 & 29 of his judgment when he stated that** *"However this Court is of the view that the Cross-Appellant has 14 days to file its Notice of Cross Appeal from the date of the Notice of Appeal of the Appellant being filed in the Registry of the Supreme Court."*

**This cannot be correct and the Cross Appellant would not know of the date that the Notice of Appeal was filed and it can only start counting when it is served. The Judge was definitely wrong in coming to such conclusion. The Court of Appeal Rules, Rule 19 clearly states that:** ***where there is no provision the court cannot make a provision or infer a provision, but rather should look at any existing laws in relation to such which is the Court of Appeal rules*** **2005, which states at Rule 19 in relation to Cross-appeal.**

***"(1) Every respondent who wishes to cross-appeal shall deliver a notice of his/her cross-appeal within fourteen days after receiving the appellant's notice of appeal.***
***(2) The notice of cross-appeal shall comply with the provisions of sub-rules (2), (3), (6), (7), (8), (9) and (10) herein and shall be substantially in the form D in the First Schedule hereto."***

**It is clear that the Cross Appeal from the Supreme Court to the Court of Appeal should be done 14 days after the service of the Appeal and not from the date the Appeal was filed or dated as in this case the Appeal is dated 8th September but it was filed on the 9th September as per the court stamp. Service was not effected on the 8th September 2021 by on the 16th September 2021, therefore making the 14 days from service to be 6th October 2021. The Cross Appeal was indeed filed on the 5th October 2021,**

**which is well within the 14 days prescribed by law. Therefore, the Learned Judge was indeed wrong in law and in fact to have conclude that the Cross-Appeal was filed out of time and did not consider it at all.**

9. **The Learned Judge erred in law and fact to have concluded that the fact that the adjournment hearing was done with only 2 members without any consent on records/proceedings. The Judge failed/ ignored to address his mind to the fact that in this case there were many instances that the said tribunal sat with 2 members and there was no agreement on record. This is because the Interpretation act provides for such and the Respondent/Appellant/Respondent never filed a case but rather accepted such. How comes that only at this stage that this matter is being contested. In fact, the dates of such was for the adjournments of the case so that the said Mr. Manz (Menz) could give evidence virtually. These dates are as follows: 27th April 2021, 4th May 2021, 11th May 2021 and on the 20th July 2021. This is proof that the Respondent/Appellant/Respondent had been given ample opportunity and that there was no violation of his right to a fair hearing as claimed by the judge who we contend was totally wrong in coming to such a conclusion.**

**Relief Sought by the Appellant from the Court of Appeal:**

(i) An order reversing the decision of the Learned Trial Judge and upholding the judgment of the Employment Tribunal.
(ii) An order allowing the Cross-Appeal.
(iii) Costs of the appeal.

**Preliminary Objection by the Respondent.**

5. Counsel for the Respondent raised a preliminary objection on the ground that all the grounds of appeal as drafted by the Appellant are contrary to Rule 18 (7) of the Court of Appeal Rules (2005) in that they are vague. He cited authorities in which this Court dismissed

grounds which fell afoul of the rule.[1] He argued that grounds 1 to 6, 8 and 9 are long-winded and evidently vague. The grounds are a mixture of quotations from the judgment of the Supreme Court and arguments. This has made it difficult to deduce the basis of each of these grounds. In regard to ground 7, Counsel argued that although it was not long-winded, the ground was vague and it fails to identify the findings being challenged.

6. Counsel prayed that on the basis of the contravention of Rule 18 (7), the Appeal should be dismissed.

7. In reply to the objection, Counsel for the Appellant conceded that the grounds were long-winded. He nevertheless argued that the grounds stated why the decision taken by the Trial Court were wrong and point to the error in law and fact. This, to him, meant that they were in compliance with the rules.

**Court's Consideration**

8. In order to resolve the preliminary point of law, I must set out the various provisions which are critical in the drafting of a ground of Appeal. These are Rule 18 of the Seychelles Court of Appeal Rules 2005 and Amended Practice Direction N0.1 of 2017.

9. Rule 18 (3) obliges a party to set forth the findings of fact and conclusions of law to which the Appellant is objecting and to also state the particular respect in which the variation of the judgment or order is sought. It is this principle that the Respondent attempted to take refuge under.

   But that is not all, there is Rule 18 (7) which the Respondent cited in support of his arguments that the appeal be dismissed. It is that no ground of appeal which is vague shall be entertained.

10. I am aware that Rule 54 of the Court of Appeal Rules (2000) specifically prohibited a Notice of Appeal containing grounds which are argumentative and narrative. It obliged the

[1] Chetty vs Esther [2021] SCCA 1; Elmasry and Anor vs Hua Sun [2021] SCCA 66

drafter to be concise.[2] I opine that the said provision was invaluable and "forced" the drafter to capture the essence of their dissatisfaction with the findings of fact that were contesting.

11. Following the amendment of the Rules in 2005, that provision was dropped and the current Rule 18 (7) only prohibits grounds which are vague. However, Practice Direction No.1 of 2017 recaptured what had been lost by virtue of the 2000 Rules. The Practice Direction provides as follows:

> (5) The identified grounds shall be in plain English and be clear, simple, concise and readily intelligible to the respondent as well as to the Court so as to enable them to properly respond to the challenge of a court decision already handed down.
>
> (6) The grounds of appeal shall not be unduly lengthy, verbose, prolix or argumentative.

12. It must also be noted that the heads of argument filed by the Appellant were also problematic and contravened Rule 24 (2) (b) and (c)[3] as reproduced below:

> 24 (2) (b): The heads of argument shall be clear, succinct and shall not contain unnecessary elaboration.
>
> 24 (2) (c): The heads of argument shall not contain lengthy quotations from the record or authorities.

13. A look at the grounds shows clearly that the grounds of appeal were poorly drafted and contravened several provisions cited above. It was a painstaking exercise to discern what the Appellant was contesting in respect of the lower court's decision. The grounds are verbose and repetitive. In almost each and every ground, Counsel extensively reproduced extracts

[2] 54 (3) Every notice of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of the appeal, specifying the points of law or fact which are alleged to have been wrongly decided together with particulars of such errors, such grounds to be numbered consecutively and to state the exact nature of relief sought and the precise form of the order which the appellant proposes to the Court to make … (My emphasis)

[3] Seychelles Court of Appeal Rules, 2005.

from the Trial Judge's judgment. The Notice of Appeal also contained arguments which should have been presented in the written submissions/skeleton heads of argument.

14. Since the Appellant clearly failed to comply with the relevant provisions, I am duty-bound to strike out the Notice of Appeal.

15. The orders of the Supreme Court are upheld. With costs to the Respondent.

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Dr. Lillian Tibatemwa-Ekirikubinza, JA

I concur

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Dr. M. Twomey-Woods, JA

I concur

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F. Robinson, JA

Signed, dated and delivered at Ile du Port on 16 December 2022