

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 12 (26 April 2023)

SCA MA 01/2023

(Appeal from SCA 52/2020)

In the matter between

Theolene Auguste
(rep. by Guy Ferley)

Applicant

and

Singh Construction
(rep. by Karen Domingue)

Respondent

Neutral Citation: *Auguste v Singh Construction* (SCA MA 01/2023) [2023] SCCA 12
(Arising in SCA 52/2020) (26 April 2023)

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

Heard: 18 April 2023

Summary: Finality of judgments is in the interests of justice — Court is *functus officio*
— Court has no jurisdiction to entertain the application

Delivered: 26 April 2023

ORDER

The application is dismissed with no order as to costs

RULING

Twomey-Woods JA

(*Tibatemwa-Ekirikubinza concurring*)

[1] The matter before this Court emanates from a decision of the Supreme Court relating to a suit filed by Theolene Auguste against Singh Construction regarding a breach of contract. In her pleadings, Mrs. Auguste's claimed that the entity, Singh Construction, was a partnership. The court *a quo* ruled that in order to sue a partnership, a plaintiff had to show

that there was, in fact, a partnership and that having failed to do so, the plaint could not be maintained. The plaint was consequently struck out.

- [2] Mrs. Auguste appealed the judgment. In a decision delivered on 16 December 2022, this Court dismissed the appeal on the basis of a procedural irregularity. It decided, namely, that the skeleton heads of argument had been filed outside the time limit for the same, despite the court having issued two warnings and without Mrs. Auguste applying to the Court for the condonation of the delay.
- [3] Mrs. Auguste has now filed the present application, claiming that the majority judgment of this court “*erred in making the aforesaid order in light*” of the fact that the Practice Direction that had been breached did not prevail. She has added that her right to a fair hearing had been breached. She has further submitted that in the case of *Salameh v North Island Company Ltd. (SCA 5/2022) [2022] (Arising in CA 23/2021 SCSC 349/2021) (16 December 2022)*, in which the appellant had also not filed his skeleton heads of appeal within time, the court proceeded to hear the appeal, nonetheless She has asked this Court *in the circumstances to set aside its judgment.*
- [4] At the hearing of the appeal, Mrs. Auguste relied on her application and her written submissions. Singh Construction denied Mrs. Auguste’s claims in an Affidavit in Answer sworn by Natasha Singh.
- [5] She avers that the rules of procedure had not been complied with by the Applicant and that no application had been made to either extend or condone the time delay during which the skeleton heads of argument should have been filed. She further averred that the case of *Salameh* was heard on its own merits and should not be applied to the present case.
- [6] We have considered the application and the written submissions. Before we consider the application proper, we pause to point out that the case of *Salameh*, relied on by the applicant, contained several procedural irregularities, including the delay in filing skeleton heads of argument. It was, however, dismissed on another more glaring procedural defect.
- [7] The issue in the present application remains whether or not this Court has jurisdiction to entertain an appeal or a review of of an appeal. The written submissions do not offer any

reliable submissions on the issue. Essentially, the Applicants contended that the majority judgment was wrong on the issue of *procedural delay*. We hold that this Court has no jurisdiction to entertain this application.

[8] As we have held in previous cases, namely, in *De Souza Jahnel & Anor v Putz* (SCA MA 74 of 2022) [2022] SCCA 73 (16 December 2022), the outcome of the appeal in the present matter is final, and this Court is *functus officio*. We add that this application is an abuse of the process of this Court and falls within the definition of frivolous and vexatious.

[9] We, therefore, dismiss this appeal but make no order as to costs.

M. Twomey-Woods (JA)

I concur:

L. Tibatemwa-Ekirikubinza (JA)

Signed, dated and delivered at Ile du Port on 26 April 2023.

ROBINSON JA

[10] I agree with the conclusion reached by Twomey-Woods JA that the appeal should be dismissed with no order as to costs.

F. Robinson, JA

Signed, dated and delivered at Ile du Port on 26 April 2023.