

IN THE COURT OF APPEAL OF SEYCHELLES

---

Reportable

[2024] (3 May 2024)

SCA MA 03/2024 (Arising in SCA  
02/2022) & SCA 02/2022

(Arising in CA 11/2018)

In the Matter Between

Beau-Vallon Properties Ltd  
(rep. by Mr. Serge Rouillon)

Appellant

And

Rahul Bhasin  
(rep. by Mrs. Alexia Amesbury)

Respondent

And

In the Ex-parte Matter

Beau-Vallon Properties Ltd  
(rep. by Mr. Serge Rouillon)

Applicant

---

**Neutral Citation:** *Ex-parte Beau-Vallon Properties Ltd v Bhasin (SCA MA 03/2024) [2024]*  
(Arising in SCA 02/2022) & (SCA 02/2022) [2024] (Arising in CA11/2018)  
(3 May 2024)

**Before:** Robinson, Tibatemwa-Ekirikubinza, De Silva, JJA

**Summary:** Court of Appeal of Seychelles Rules 2023 — rules 12 (b), 9 (4) and 18 (1)  
& (10) — application to adjourn — no exceptional circumstances — notice  
of appeal is deemed not to have been filed within the prescribed time

**Heard:** 17 April 2024

**Delivered:** 3 May 2024

---

**ORDER**

1. The application SCAMA03/2024 stands dismissed.
  2. Consequently, based on rule 18 (10) of the Court of Appeal of Seychelles Rules 2023, the appeal case SCA02/2024 is deemed not to have been filed within the prescribed time.
- 

**JUDGMENT**

---



**Robinson JA** (Dr. L. Tibatemwa-Ekirikubinza and J. De Silva, JJA concurring)

1. Beau Vallon Properties Ltd, the Appellant in the appeal case bearing reference SCA02/2022, is a limited liability company registered and incorporated in Seychelles (hereinafter referred to as the "Company"). Rahul Bhasin, the Respondent in the appeal case, is a foreigner and former employee of the Company.
2. On 28 March 2023, the Company filed an *ex-parte* application by way of notice of motion, seeking the following orders from this Court reproduced verbatim hereunder —
  - "a) *an order for this matter to be heard ex parte as a matter of urgency;*
  - b) *for an order for the Respondent to the Appeal, Mr. Rahul Bhasin, to be served with the relevant appeal documents out of the jurisdiction; and*
  - c) *for an order that the scheduled Court of Appeal case SCA 2 of 2022 arising out of Employment Tribunal case ET61/17; Supreme Court Case CA11/2018, be adjourned and rescheduled pending the hearing and disposal of the Applicant to serve the Respondent to the main appeal Mr Rahul Bhasin out of the jurisdiction. And this for the reasons set out in the attached Affidavit."*
3. The only material before the Court of Appeal was the affidavit of Mr. Aleksandr Khlebnikov.
4. It is necessary to briefly summarise the proceedings that transpired before this application was filed. The decision made regarding the adjournment application will determine the fate of the appeal case.

[A summary of the proceedings before the filing of this application](#)

5. Mr. Bhasin lodged a grievance at the registry of the Employment Tribunal (comprised of a chairperson and two members) on 13 April 2017, claiming the following —

*"(1) Compensation for overtime*

*(2) Compensation for annual leave at the end of the contract*

*(3) Compensation for pending air ticket for year ending 2015-2016*

*(4) Compensation for public holidays*

*(5) Compensation for living expenses till case gets sorted out"*

6. The Employment Tribunal delivered a judgment on 14 March 2018, giving judgment in favour of Mr. Bhasin.

7. The Employment Tribunal made the following orders in his favour as follows —

*"[44] Given, that, because of the problems encountered with the HR system, the respondent [the Company] were unable to provide credible and reliable records in evidence to show the contrary in terms of the number of hours the applicant [Mr. Bhasin] worked overtime, when, as an employer, they were bound to keep proper and credible records, this tribunal determines as follows,*

*1. That the respondent pays the applicant a total of 1975.24 hours of overtime, of which 118.09 hours were overtime carried out on public holidays, and 1857.15 hours carried out on normal working days, less 10% as a margin of error.*

*2. As agreed by the respondent, Beau Vallon Properties Limited, I also order;*

*(i) Payment of annual leave in lieu 34.5 days*

- (ii) *Payment in lieu of public holidays in the sum of Euro 124.47, and*
  - (iii) *Payment in lieu of 19 days as unpaid salary*
- 3. *Payment of airfares for the applicant and his family to repatriate them to their home land country. The applicant cannot be entitled to payment for his so called "unused or refund tickets, because under 7.2 (b) of his contract of employment, he and his family is only entitled to economy class air passage from India to Seychelles and Seychelles to India to take up, and completion of employment.*
- 4. *Refund of SR 5000 per month from May 2017, upon the production of receipts, showing rent paid. This is because the respondent's obligation towards the applicant for housing was no longer under their contractual agreement, but rather, under the provisions of Part 11 A (7) of the Employment Act 1995 from the date the applicant registered his grievance until the grievance is determined which is today 14<sup>th</sup> March 2018.*
- 5. *This Tribunal declines to make an order for payment of immigration fees because it was the applicant's choice to remain in this country until his case is determined when his presence in this country after he had given evidence on his own behalf, was unnecessary to conclude the case.*
- 6. *This Tribunal also declines to order payment for the additional monthly expense allegedly incurred by the applicant. Under his contract of employment at clause 7.2 (c) it is only the applicant who was entitled to meals which were limited to when he was on duty. After he terminated his contract of employment, and registered his grievance, the applicant's entitlement to food became a statutory entitlement under Part II A (7) of the Employment Act 1995, which applies to him only, and*
- 7. *This Tribunal declines to order payment of school fees because the claim has no legal basis. The option to keep the wife and children in this country after the contract of employment was terminated was not the only option available to the applicant. The wife and children could have been repatriated into their homeland country, and*

*the decision to keep them in this country should be at his own costs."*

8. The Employment Tribunal made the orders repeated at paragraph [7] hereof based on the following findings —
  - "1. *The applicant, Rahul Bhasin, did work overtime and that same was expressly authorised by the then General Manager, Mr. Denis Verkhorubov, his immediate supervisor then, and by implication, he worked overtime to meet the needs of the Mahek Restaurant's significant increase in its daily opening hours and weekly opening days between November 2009 up to April 2017.*
  2. *The respondent, Beau Vallon Properties Limited, through their General Manager then, Mr. Verkhorubov, knew or ought to have known, that with the introduction of the restaurant's new opening hours, and the increase of its opening days a week to 7 days, with the same number of Human Resources, the applicant had to work in excess of his contracted number of hours daily, weekly and monthly, and that the extra hours worked were overtime...*
  3. *The records from the HR clock in and out system produced were fraught with "errors" which the parties called "abnormalities", and therefore, were incorrect, misleading and unreliable to produce credible figures about the applicant's overtime...*
  4. *In the absence of credible and reliable records of the applicant's overtime which should have been kept by the respondent, the applicant produced his own computation partly based on the HR clock in and out system, reconciled with the records in a log book kept in the kitchen at the Mahek Restaurant."*
9. The Company lodged a notice of appeal on 21 March 2018 against the decision of the Employment Tribunal with the Supreme Court. Subsequently, it filed a memorandum of appeal on 7 June 2018.
10. The record of appeal showed that the learned appeal Judge gave both Counsel time to file their written submissions. However, on 29 October 2018, the learned appeal Judge did not receive the submissions from the Company. Consequently, the learned appeal Judge dismissed the appeal on 14 November

2018. The learned appeal Judge concluded that "[8] [...] [she] [does] *not believe it is for the Court to peruse the file and decide in the absence of arguments of counsel supporting his Memorandum of Appeal.*"

11. The Company appealed the decision dated 29 October 2018 to the Court of Appeal, which delivered a judgment on 13 August 2021. The Court of Appeal noted that the written submissions of the Company were received by the Supreme Court Registry fifteen minutes after the judgment was delivered. The Court of Appeal considered whether the learned appeal Judge should have made a decision based only on the grounds presented in the memorandum of appeal and the proceedings of the Employment Tribunal, despite the Company's Counsel of record not providing written submissions or oral arguments to support them.
12. The Court of Appeal stated at paragraph [11] of the judgment delivered on 13 August 2021 that: "[it] [was] *singularly unimpressed by either Counsel's efforts to guide this Court on the very narrow issue to be decided*" in the appeal. Nonetheless, the Court of Appeal decided to return the matter to the Supreme Court to make an order as to the merits and/or costs as required after considering the appeal. It is unnecessary to reiterate the reasoning of the Court of Appeal as it is not pertinent to the issues I have to decide in the application.
13. The same learned appeal Judge of the Supreme Court who delivered the judgment dated 2 March 2022, from which this appeal lies, heard the appeal. The learned appeal Judge dismissed the appeal because the Employment Tribunal's conclusion was not contrary to the evidence on record. She upheld the Tribunal's findings.
14. Hence, the Company filed a notice of appeal on 4 March 2022, challenging the decision of the learned appeal Judge.
15. The Company has appealed on the following grounds reproduced verbatim hereunder —

- "1. *The learned judge erred in fact and law when she failed to consider that the respondent was on expatriate fixed term yearly contracts yet the case was dealt with as if he was on a single contract of continuous employment.*
2. *The learned judge erred in fact and law when she failed to consider that the overtime claimed was performed and self-serving on the word of the respondent with no proof of any agreement as to the overtime or the calculation thereof presented to the Tribunal by the Respondent.*
3. *The learned judge erred in fact and law when she failed to consider that the length of overtime claimed of over three thousand hours covering several one-year contract terms.*
4. *The learned judge erred in fact and law when she failed to consider that his overtime claim accumulating over the many years, are an abuse of process.*
5. *The learned judge erred in fact and law when she failed to consider the misleading and exaggerated nature of the evidence of the Respondent which he forced to retract at times;*
6. *The learned judge erred in fact and law when she failed to consider the Judgment ET/61/17 failed to take into consideration the lack of documentary proof of the Respondent to back up his case and ignored the points raised by the Appellant in reaching its decision.*
7. *The learned judge erred in fact and law when she found that the claim for housing food and shelter were justified.*
8. *The learned judge erred in fact and law when she found that the tribunal judgment was fair and balanced and placed too much weight on the evidence of the respondent.*
9. *The learned judge erred in fact and law when she decided the case was lawfully brought against the correct party.*
10. *The learned judge erred in fact and law when she failed to consider that the documentation before the tribunal provided by the Appellant was not properly considered by the Tribunal.*



16. The Company has prayed for the following reliefs from the Court of Appeal —

- "a) *an order setting aside the Judgment of the Supreme court in case CA112018 and ET/61/17 of the Employment Tribunal; or*
- b) *such order as may be just in the circumstances; and*
- c) *the whole with costs."*

The present proceedings

17. In his affidavit evidence, Mr. Aleksandr Khlebnikov set out the basis for the adjournment application as follows —

- (i) there are substantial questions of law to be adjudicated upon by the Court of Appeal in respect of the appeal, and there is a high likelihood of success, especially concerning the constitutional law issue of discrimination against employers' rights by the courts and tribunals (at paragraph 7 of the affidavit);
- (ii) *"that the judgment has been prematurely executed before the disposal of the appeal, the Applicant/Appellant will suffer substantial irreparable loss and damage which could not be compensated in damages and would also render the appeal nugatory"* (at paragraph [8] of the affidavit);
- (iii) the Company has paid the Supreme Court the full amount required to cover the cost of the judgment if it is upheld. The Registrar has already released the money, and the judgment has been executed. However, the

Company wishes to exercise its constitutional right and continue with the case (at paragraph [10] of the affidavit);

(iv) an application for a stay of execution of the judgment has been refused (at paragraph [11] of the affidavit);

(v) Alexia Amesbury, an Attorney-at-law, consistently represented Mr. Bhasin until March 2024, and the record of appeal was duly served on her. Alexia Amesbury has removed herself from the case (at paragraph [12] of the affidavit).

18. Mr. Aleksandr Khlebnikov, in his affidavit evidence, is asking the Court of Appeal to adjourn and reschedule the appeal to another date pending the locating and serving of Mr Bhasin out of the jurisdiction at his last known address: "C-264, Vivek Vihar, Delhi, India."

19. The Court of Appeal of Seychelles Rules 2023 became operative on 13 January 2024 (hereinafter referred to as the "Rules 2023"). Rules 9 (4), 12 and sub-rules 18 (1) and (10) of the Rules 2023 apply to this case. Under rule 18 (1) of the Rules 2023, an appeal shall be brought by notice in writing by the appellant which shall be lodged with the Registrar of the Supreme Court within thirty days of the decision appealed against.

20. Rule 12 of the Rules 2023 deals with the adjournment of proceedings; in this case, rule 12 (b) applies. Under rule 12 (b), there is a discretion to adjourn an appeal fixed for hearing at a Court session upon an application of any parties to the appeal case, but **only in exceptional circumstances**. [Emphasis supplied]

21. Rule 9 (4) of the Rules 2023 stipulates —

*"(4) Where any person out of the jurisdiction is a necessary or proper party to a proceeding, the Court may, on application being made, allow service out of the jurisdiction of any document required to be served upon such party or that notice of such document be served in lieu*

thereof. **In the case of a notice of appeal referred to in Rule 18, such application for service out of jurisdiction shall be made at the time of lodging the notice of appeal or no sooner it is discovered that a person is out of the jurisdiction.** [Emphasis supplied]

22. Rule 18 of the Rules 2023 deals with notice of appeal. Rule 18 (10) stipulates —

*"(10) A notice of appeal shall be substantially in the form B in the First Schedule in criminal appeals and in the form C in civil appeals. In the event of failure to comply with sub-rules (1) (2) and (3) **and the failure to state the address of the respondent in the notice of appeal or make an application under sub-rule 4 of rule 9 where it is deemed necessary, the appeal shall be deemed not to have been filed within the prescribed time** —*

*Provided that, notwithstanding that the provisions contained in sub-rules (2) or (3) or (7) of this rule have not been strictly complied with, the Court may, in the interest of justice and for good and sufficient cause shown, entertain an appeal if satisfied that the intending appellant has exhibited a clear intention to appeal to the Court against the decision of the Court below."*  
[Emphasis supplied]

23. Rule 18 (10) of the Rules provides that the failure to make an application under rule 9 (4) of the Rules where it is deemed necessary, the appeal shall be deemed not to have been filed within the prescribed time.

#### ***Whether or not exceptional circumstances exist***

24. The central question for determination is whether or not exceptional circumstances exist for the Court to exercise its discretion to adjourn the appeal case. We remind ourselves that adjourning an appeal case which has been fixed for hearing at a Court of Appeal session (and in this case, fixed for about three months) is a matter of last resort.

25. We consider the reasons advanced by Mr. Aleksandr Khlebnikov at paragraphs [7], [8], [10], [11] and [12] of his affidavit (and repeated at paragraph [17] hereof), in support of the adjournment application. Concerning the explanation provided at paragraph [7] of the affidavit (and repeated at paragraph [17] (i))

hereof), it is noted that, after reviewing the grounds of appeal and the evidence presented in the affidavit, it is unclear what substantial legal questions of law the Court of Appeal would be addressing in relation to the appeal. If there were a genuine constitutional law question, the Company would have raised it in its notice of appeal filed on 4 March 2022. As for the averment made by Mr. Aleksandr Khlebnikov stated at paragraph [8] of the affidavit (and repeated at paragraph [17(ii)] hereof), it is noted that the Company failed to provide evidence to substantiate this averment. Additionally, the refusal of the application for a stay of execution of the judgment in the appeal case CA11/2018) is irrelevant to the adjournment application.

26. We now consider the point made by Mr. Aleksandr Khlebnikov and Counsel for the Company that Alexia Amesbury represented Mr. Bhasin until March 2024 before removing herself from the case. At the hearing of the appeal on 17 April 2024, Counsel for the Appellant submitted without more that Alexia Amesbury had consistently represented Mr. Bhasin until March 2024. Before we examine this point, we set out some relevant particulars to assist our consideration.
27. On 19 December 2023, Counsel for the Company sent an email to the Assistant Registrar inquiring about the appeal case SCA02/2022. In reply, the Assistant Registrar sent an email dated 26 January 2024 stating that: *"due to an oversight, the case was accidentally marked as closed/concluded alongside five miscellaneous applications which arose in the above appeal case, out of which you withdrew one and four were dealt with/completed."* Counsel for the Company was informed via the same email that the appeal case would be listed for hearing in the April 2024 session.
28. On 27 February 2024, a case management hearing was held for the appeal case. Alexia Amesbury represented Mr. Bhasin. During the proceedings, she informed the Court that she *"will attend simply because, based on this Brief, there are at least four orders that the Court made, that [she] should be paid cost. So, [she] will be coming to claim [her] cost when he withdraws the*

*appeal.*" During the proceedings, in response to the questions of the Court, Counsel for the Company stated: "Your Ladyship, I do not really know whether we can go very far with this appeal to consider service of process overseas. Can I just take a very short period to get final instructions from client, and we may be withdrawing the matter." [Emphasis supplied]. The Court fixed the mention of the appeal case on 5 March 2024 to ascertain the Company's position. On 5 March 2024, Alexia Amesbury informed the Court that she had no instruction in Mr. Bhasin's appeal case and was not his Counsel.

29. After carefully considering the facts and circumstances of this case, we have concluded that the argument presented by the Company's Counsel that Alexia Amesbury is the Counsel for Mr. Bhasin does not assist the Appellant's case.
30. In the present case, it is our considered opinion that, without intending to be in any way prescriptive, exceptional circumstances are unlikely to arise where the Company has not done all that it could with respect to the necessary steps related to the appeal process.
31. It is worth noting that Counsel for the Company had informed the Court on 27 February 2024 and 5 March 2024 that the Company was unaware of Mr. Bhasin's whereabouts. We find that Mr. Aleksandr Khlebnikov offered no explanation in his affidavit evidence —
  - (i) concerning when it was discovered that Mr. Bhasin was out of the jurisdiction;
  - (ii) concerning what measures were taken to obtain Mr. Bhasin's address; and
  - (iii) concerning when the Company had obtained Mr. Bhasin's address.

32. Further, we are concerned that the application to serve Mr. Bhasin out of the jurisdiction was filed on 28 March 2024, more than two years after the notice of appeal was filed on 4 March 2022. We also observe that the Company filed the adjournment application two months after having been notified by the Assistant Registrar that the appeal case would be heard during the April 2024 Court of Appeal session. All that Aleksandr Khlebnikov could state in his affidavit was that the Company was unaware of Mr. Bhasin's whereabouts.
33. We are also concerned about the Company's stance with respect to this case. The Company was unsure whether it would proceed with the appeal, file skeleton heads of argument, or serve Mr. Bhasin out of the jurisdiction, as revealed by the proceedings of 24 February 2024 and 3 March 2024. We repeat the following extracts from the proceedings dated 24 February 2024 and 4 March 2024 to emphasise the point we are making —

an extract of the proceedings of 24 February 2024 —

**"Court: Mr. Rouillon, what is the position with this appeal?"**

**"Mr. Rouillon: Your Ladyship, I do not really know whether we can go very far with this appeal, to consider service of process overseas. Can I just take a very short period to get final instructions from client, and we may be withdrawing the matter."** [Emphasis supplied]

and an extract of the proceedings of 3 March 2024 —

**"Court: Yes, but if you have been instructed to proceed, then you have to decide along with the Appellant what is the best way to proceed. I cannot tell you, Mr. Rouillon."**

**"Mr. Rouillon: Of course, I understand that. But, for the moment we do not know the whereabouts of the Respondent. So, we will have to file a Motion for a substituted service and I do not know whether we have enough time, or when this session comes up, to file Skeleton. So, I do not really know what – the case was**

*called by the Court, basically, to find out in the case management, the situation.*

*So, we have to get ourselves in order, if the case is to be heard. So, I do not know what kind of order you can make today, if any.* [Emphasis supplied]

34. It is noted that the record of appeal was served on Alexia Amesbury, and that she appeared before the Court on 27 February 2024 and 5 March 2024. Counsel for the Company stated without more that Alexia Amesbury is the Counsel of record for Mr. Bhasin. If the Company held this view, it should have complied with the Rules 2023 and submitted its skeleton heads of argument accordingly. The Company did not file skeleton heads of argument in this appeal case. Based on the adjournment application, the Company has not shown any good cause.
35. Based on the facts and circumstances of this case, we conclude that there are no exceptional circumstances that would justify the Court in exercising its discretion to grant an adjournment of the appeal case SCA02/2024, which was scheduled to be heard during the April 2024 session of the Court of Appeal under rule 12 (b) of the Rules 2023.
36. Based on our finding set out at paragraph [35] hereof, we refuse the Company's prayer in this adjournment application to serve Mr. Bhasin out of the jurisdiction.
37. We also find that the Company did not comply with rule 24 (1) (a) of the Rules 2023, which stipulates that: *"unless the President directs, the appellant shall lodge with the Registrar five copies of the appellant's main heads of argument within one month from the date of service of the record[...]"*.

#### Orders

38. The application SCAMA03/2024 stands dismissed.

39. Consequently, based on rule 18 (10) of the Court of Appeal of Seychelles Rules 2023, the appeal case SCA02/2024 is deemed not to have been filed within the prescribed time.

---

F. Robinson JA

I concur:

---

Dr. L. Tibatemwa-Ekirikubinza JA

I concur:

---

J. De Silva JA

Signed, dated and delivered at Ile du Port on 3 May 2024.