

**Bergue v Fregate Island Ltd  
(2001) SLR 261**

Anthony JULIETTE for the Plaintiff  
Serge ROUILLON for the Defendant

**Ruling delivered on 27 September 2001 by:**

**JUDDOO J:** The issue which arises in law, is whether the Plaintiff can claim for moral damages for "unlawful termination" of his employment from his former employer.

The Plaintiff was employed as an Executive Sous-Chef by the Defendant. On 13 February 1999, the Plaintiff's employment with the Defendant was terminated on the grounds of unsatisfactory performance. The Plaintiff lodged a grievance procedure under the Employment Act 1995 and on 3 March 1999 the Competent Officer ruled that "Serious disciplinary offences of repeatedly failing to obey reasonable orders given by the Defendant has not been proved" and ordered the Defendant to pay to the Plaintiff R18,866.05 as legal benefits under the Act.

The Defendant filed an appeal against the decision of the Competent Officer whereby on 14 June 1999 the determination of the Competent Officer was maintained and the said sum of R18,866.05 was paid to the Plaintiff. The Plaintiff now claims for moral damages in the sum of R100,000 with interest and costs.

In the present circumstances, the Plaintiff having lodged a 'grievance procedure' with the Ministry of Employment and Social Affairs and having been awarded statutory benefits for unjustified termination of employment, the case falls squarely within the decision of the Court of Appeal in *Antoine Rosette v Union Lighterage Company* Appeal No 16 of 1994 decided on 18 May 1995, wherein Ayoola JA (as he then was) held:

I do not think that the Act envisaged a situation in which the worker and employer would go through the grievance procedure to finality only for the worker to commence and drag the employer through fresh proceedings based on the same cause of action in another forum.

It is to note that the instant action is to be distinguished from the latter case of *Genevieve Lionnet v Central Bank of Seychelles* Civil Appeal No 33 of 1998 (judgment delivered on 20 April 1999) wherein it was found that "admittedly, the appellant (employee) did not resort to the 'grievance procedure' prior to instituting the present action in the Supreme Court."

Additionally, in *Edwina Ernesta v Air Seychelles* Civil Side No 160 of 1999, the employee after having initiated the 'grievance procedure' under the Employment Act initiated action before the Supreme Court to obtain 'moral damages' amongst other claims. The Learned Chief Justice, V Allee, held that the claim for moral damages

could not be entertained by the Supreme Court since such would amount to:

commence and drag the employer through fresh proceedings based on the same cause of action in another forum ... If the legislature had intended that additional compensation by way of moral damages is to be awarded having regard to the manner and circumstances of the termination of employment, it would have so provided...

For reasons above, the plea in limine litis is upheld and the plaint is dismissed. No order as to costs.

**Record: Civil Side No 328 of 1999**