

IN THE SUPREME COURT OF SEYCHELLES

MARIE ANDRE BONIFACE

APPELLANT

VERSUS

ROBUDY BONIFACE

RESPONDENT

Civil Appeal No 11 of

2004

Mr. W. Lucas Counsel for the Appellant

Ms. K. Domingue Counsel for the Respondent

JUDGMENT

B.Renaud

This is an appeal filed by the Appellant against the decision of the Family Tribunal given on the 25th of October 2004.

The substance of the interim Order of the Family Tribunal appealed against, may be briefly set out as follows –

“The Respondent was ordered not to approach the house of the Applicant without a family Tribunal Order and she had to deposit the keys to the house at the Family Tribunal Enforcement Officer’s Office by 4 p.m. the next day. The Orders are to remain in force for 24 months. It was further ordered that the Respondent may collect her personal belongings from the matrimonial house with the assistance of the police.”

There are three grounds of appeal as set out in the Memorandum of Appeal as follows:

1. *The Family Tribunal failed to listen to the case properly before making their Order. No evidence was adduced by the*

Respondent to prove his case.

2. *The decision of the Tribunal was based upon the behaviour of the Appellant before the Tribunal, she behaved in such a way before the Tribunal that she was detained for contempt, and not upon evidence.*

3. *The Tribunal did not take into account the balance of hardship in making their Order and did not take into account the serious prejudice their Order would cause the Appellant. To prevent the Appellant from having access to her house for the next two years is exaggerated. She has no other place to go and can only reside temporarily at other people's homes, thus preventing her from taking her minor children with her and depriving the latter of their mother's presence, love and attention.*

The matter between the parties started by an Application for a Protection Order by virtue of the Family Violence (*Protection of Victims*) Act 2000 by the Applicant Mr. Robudy Boniface, who being a victim of family violence sought the protection of the Family Tribunal. The Family Tribunal referred the parties to the Probation Services for counseling, investigation and report. In the interim, the Tribunal ordered the Respondent not to use any threats or any form of violence against the Applicant and she was also informed that failure to abide by that order would amount to a breach of a Family Tribunal order and may entailed an imprisonment sentence.

The matter finally came up for hearing before the Family Tribunal on 25th October, 2004 when both parties were present. The record of proceedings revealed, to say the least, the unruly, argumentative, disruptive, uncooperative, contemptuous and disrespectful behaviour of the Respondent before the Tribunal. The Tribunal appropriately ordered the detention of the Respondent, for contempt, at the Police Station until the afternoon and also to allow her to cool down. In the meantime the Family Tribunal made the orders set out above. In the afternoon the Respondent appeared again before the Family Tribunal when she was informed of the orders made by the Family Tribunal. The Respondent once again went into a fury and displayed the same demeanour as she did that morning.

For the purpose of determining this Appeal, I have considered grounds 1 and 2 together as they are related and the contentious issue raised is that – the Family Tribunal did not hear the evidence of the Respondent before making issuing its orders.

I have meticulously and carefully considered the written submissions made by Counsel of the Appellant and also reviewed the recorded oral arguments of both Counsels. I have considered with particular care all the proceedings of the Family Tribunal and in particular that of the 25th October, 2004.

It is evident and I find that indeed the Family Tribunal did not fully hear the evidence of the Respondent before issuing its orders, albeit because of the behaviour of the Respondent at the hearing.

It is my finding, however, that the Family Tribunal did not err in law when issuing an interim order as it did. Section 3(7) of the Family Violence (*Protection of Victims*) Act 2000 in substance provides that, where on an application for a protection order, the Family Tribunal is satisfied that there is a serious risk of harm being caused to the family member, and if the Family Tribunal finds it appropriate to do so, before summoning and hearing the Respondent, it may issue an interim protection order and such order shall remain in force until the determination of the application, unless the Tribunal determines otherwise. This, in my view, empowered the Tribunal to make an interim order even without hearing the Respondent, as it rightly did in this matter.

In the circumstances, I remit this matter to the Family Tribunal and order the Family Tribunal to hear the evidence of the Respondent as soon as possible. The matter is accordingly remitted to the Family Tribunal for that purpose. If at the hearing the Respondent behaves again as she did, the Family Tribunal would be at liberty to adjourn the hearing and maintain its interim orders.

In view of the order I have made, I believe that there is no necessity to consider Ground 3 of the Memorandum of Appeal as the issues raised therein could be canvassed before the Tribunal when the matter comes up for hearing.

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B.RENAUD

JUDGE

Dated this 10th day of January 2005

