

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES

Civil Side No. 97 of 2007

Frank David
Petitioner

Versus

Minister of Social Affairs and Employment

Respondent

Wilby Lucas for the Petitioner

Alexandra Madeleine for the Respondent

RULING

FMS Egonda-Ntende CJ

1. This is an application for judicial review in which the petitioner, David Frank, is seeking a writ of certiorari to quash the decision of the Minister in an appeal determined by the Minister. This application is objected to by the respondent by way of a plea in limine litis on several grounds. This ruling is in respect of those objections.
2. The respondent had initially raised 4 objections in its list of objections but at the hearing the respondent abandoned the last 2 and took up only the first 2. The first ground was that the petition did not disclose a cause of action. Secondly that the petition was time barred.
3. I shall start with the last ground to the effect that this petition is out of time. Ms Alexandria Madeleine, learned counsel for the

respondent submitted that this petition infringed rule 4 of the Supreme Court (Supervisory Jurisdiction over subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 hereinafter referred to as the Rules. She stated that the decision of the Minister was made on 18 December 2006. The Petitioner had until 18 March 2007 to file its petition. The first application for leave, though dated 17 March 2007 was filed on 23 March 2007, 4 days out of time. The application for leave was not accompanied by the petition.

4. Mr. Wilby Lucas, learned counsel for the Petitioner conceded that the application was filed out of time but submitted that this court had jurisdiction to extend the time for filing under the same rule 4 of the rules. He submitted that since the petitioner has succeeded on the issue of leave to file this petition this petition should not be defeated on the ground of being out of time. He prayed that this court exercises its discretion to allow the matter to proceed.

5. I shall bring rule 4 into view. It states,

‘A petition under rule 2 shall be made promptly and in any event within 3 months from the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made.’

6. It is not in dispute that the commencement of these proceedings was on the 23 March 2007 with the filing of the Notice of Application for leave to apply for Judicial Review under Rule 3. That notice of application was not accompanied by the Petition as it ought to have been. The Petition was not filed until 21 November 2008, more than 18 months after the time within which the petition ought to have

been filed. That petition is dated 30 October 2008. In effect the delay in this case is egregious.

7. Rule 4 of the Rules grants this court the authority, where good reason is available, for extending the period of time within which the petition should be filed. The petitioner must request the court for this extension. Secondly there must be good reason provided for the failure to file within the time allowed for filing petitions of this nature. In this case the petitioner has made no such application. Nor has the petitioner provided any reason, let alone a good reason, why this court should extend the period in which he ought to have filed the petition.
8. A respondent is allowed to file objections to a petition under rule 12(1) of the Rules within 6 weeks of the service of the notice of the Petition. This may well be the first opportunity that a respondent may get to raise objections though it is possible to be seized with an earlier opportunity to do so under rule 7 of the Rules by objecting to the application for leave to commence proceedings, if perchance, the respondent has had notice of the application for leave to file for judicial review. It cannot be right therefore as was contended by Mr. Lucas that once leave is granted the petition should not be defeated for being out of time.
9. At the time the application for leave is made it is made ex parte. At that stage the party who is most likely to raise such an objection is not present in the proceedings. That respondent cannot be denied its right to raise an objection within the rules at the stage envisaged by the rules. The respondent has done so in this case. In fact on a review of the papers filed in this matter and its history, the respondent has consistently raised in its papers the objection that this petition is filed out of time.

10. In the result I uphold the plea in limine litis and find that this petition was filed out of time. No specific application was made under rule 4 for this period to be extended prior to the hearing before me. Neither has such an application been made before me. Nor has any reason been assigned for this breach of the Rules. This petition is dismissed with costs for being out of time. Given this result it is unnecessary to consider the other objection.

Signed, dated and delivered at Victoria this 4th day of December 2009

FMS Egonda-Ntende

Chief Justice