

REPUBLIC OF SEYCHELLES

**IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT
VICTORIA**

Civil Side No. 121 of 2010

Lotus Holding Company Ltd

Petitioner

Versus

Seychelles International Business Authority

Respondent

Mr. Frank Ally for the Petitioner

Mr. Wilby Lucas for the Respondent

JUDGMENT

Egonda-Ntende CJ

1. The Petitioner is an International Corporate Service Provider incorporated under the Companies Act, 1972. The Respondent is a statutory authority established under the International Business Authority Act, 1994. The respondent has the authority to issue ICSP licences under the International Corporate Services Provider Act.
2. On the 15 January 2010 by a letter of the same date the respondent revoked the ICSP licence of the petitioner on 3 grounds. This decision is challenged on three grounds of procedural impropriety, irrationality and illegality. The petitioner prays for the following reliefs: (a) A writ of

certiorari quashing the decision of the respondent given on the 15th January 2010 revoking the petitioner's ICSP licence; or (b) Review the respondent's decision given on 15th January 2010 revoking the petitioner's ICSP licence by reversing the said decision and reinstating its licence; and (c) Order the respondent to pay the petitioner damages in the sum of US\$350.00 per day from the date of the decision until the date of judgment.

3. This Petition, which was filed in this court on 13 April 2010, is brought under 2 alternate routes. Firstly under the supervisory jurisdiction of subordinate courts and tribunals by the Supreme Court. Secondly and in the alternative under statutory review provided for in Section 17 of the International Service Provider Act, 2003.
4. Initially I granted leave for the petitioner to proceed under supervisory jurisdiction of the Supreme Court but having heard submissions in the matter and reviewed authorities on the subject I am satisfied that given that the Legislature has provided for a statutory scheme for review of the decisions of the respondent the statutory scheme is to be preferred to supervisory jurisdiction that is discretionary. See R v Chief Constable of the Merseyside Police, ex parte Calveley and Others [1986] 1 All ER 257; R v Birmingham City Council, ex parte Ferrero Ltd [1993] 1 All ER 540; R v Secretary of State for the Home Department ex parte Swati [1986] 1 All ER 717 and Sinclair Gardens Investments (Kensington) Ltd v the Lands Tribunal and others, [2004] EWHC 1910 (Admin).
5. I agree with learned counsel for the petitioner, Mr. Frank Ally, that the statutory scheme for review under Section 17 of the International Service Providers Act would provide a more comprehensive opportunity to the

parties to agitate their case without the limitations inherent under judicial review under supervisory jurisdiction of the Supreme Court. Under Judicial review the Supreme Court does not look at the merits of the decision as such, outside of the 3 main grounds of procedural impropriety, irrationality and illegality. Judicial review is more concerned with the process of decision making of the subordinate court, tribunal or body rather than the merits of the decision so made.

6. I would therefore have considered the petition under the alternate route of statutory review under Section 17 of the International Service Providers Act, were it not for one matter that was drawn to my attention during the hearing, by learned counsel for the respondent, Mr. Wilby Lucas, and which may turn out to be fatal to these proceedings. This is the fact that prior to the commencement of the current proceedings, the petitioner had instituted an action in this same court, under civil side no. 107 of 107 of 2010.

7. I called up the court file civil side no. 107 of 2010 and found that the plaintiff was the present petitioner. The defendant was the present respondent. The plaint was filed on 30 March 2010 earlier than the proceedings now before me that were filed on 13 April 2010. The subject matter is the same as under the proceedings before me. The plaintiff is aggrieved by the respondent's letter of 15 January 2010 and seeks a declaration from the court that the defendant's revocation of its ICSP licence is unlawful and unjustified or in breach of the parties' agreement. The plaintiff sought further relief to include an order to reinstate the plaintiff's licence; and a claim for damages at rate of US\$ 350.00 per day totalling to US\$ 25,550.0 and continuing until the date of the judgment, together with costs of the suit.

8. It is clear that the subject matter of the civil side 107 of 2010 and the current proceedings is the same. The relief claimed is the same. The parties in both proceedings are the same. In civil side no. 107 of 2010 the plaintiff applied for and obtained an interlocutory mandatory injunction, on 23 April 2010,

‘compelling the respondent to permit the applicant to continue to manage or administer the entities that it is registered agent of under the International Corporate Service Providers Act, the International Business Companies Act, and such other relevant laws of Seychelles as it was operating prior to the revocation of its licence by the respondent.’

9. The earlier suit is set for hearing before my brother, Renaud, J., on the 27 September 2010. The respondent in this matter is being made to defend a proceeding that is seeking the same relief as in the earlier suit. The respondent is being put to cost and time over a matter that was already before this court. To my mind the current proceeding must surely qualify to be a vexatious proceeding.

10. What is a vexatious proceeding? The answer may be provided in Civil Procedure, 2010 Volume 1, at page 71,

‘..... two or more sets of proceedings in respect of the same subject matter which amount to harassment of the defendant in order to make him fight the same battle more than once with the attendant multiplication of costs, time and stress. In this context it is immaterial whether the proceedings are brought concurrently or serially.’

11. The petitioner has brought 2 sets of proceedings in respect of the same subject matter, seeking identical relief. In my view there is no legal justification for putting the respondent to such multiplication of costs and time in defending this proceeding.

12. This situation is not only of concern to a party who is forced to defend a proceeding twice. It is inimical to the proper management of public resources and the courts own time and ability to hear other parties and their proceedings in queue for the court's attention. It is wasteful of public resources and the courts own time and ability to provide a service under great demand from the public.

13. As was noted in Dow Jones and Co Inc v Jameel [2005] EWCA Civ. 75 at paragraph 54, by Lord Phillips of Worth Matravers M.R.,

‘An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirement of justice.’

14. It is possible with proceedings between the same parties over the same subject matter and where the relief sought is identical that 2 different judges of the same court hearing the different proceedings may eventually arrive at different conclusions, contradicting each other. This would be embarrassing to the courts and to the administration of justice. The possibility should not be allowed to happen.

15. This court has the inherent jurisdiction to prevent an abuse of its process in such instances as the current one. For the foregoing reasons I dismiss the present proceedings against the respondent with costs.

Dated, signed and delivered at Victoria this 30th day of July 2010

FMS Egonda-Ntende
Chief Justice