

MORIN v MINISTRY OF SOCIAL AFFAIRS

(2011) SLR 201

W Herminie for the petitioner
F Laporte for the respondent
K Shah for the applicant

Ruling delivered on 10 June 2011 by

GASWAGA J: This is an application for an order to allow Air Seychelles to intervene in this case on the ground that it has a direct interest in the matter.

The facts giving rise to the matter at hand are that the petitioner, Flory Morin was employed by Air Seychelles as cabin crew until January 2004 when, as alleged in the petition, Air Seychelles terminated her services in breach of the contract of employment. A complaint was lodged by the petitioner against Air Seychelles before the competent officer who, pursuant to section 61(2)(a)(ii) of the Employment Act 1995 and in a letter dated 13 April 2004, declared that –

the termination of the applicant's contract of employment was not justified and she should be reinstated in her post with immediate effect without any loss of earnings from the date of termination to the date of actual engagement.

Air Seychelles did not attend the hearing.

By a letter dated 21 June 2004, the Ministry advised that the said decision of the competent officer was not valid and had to be set aside, and further that a date will in future be fixed for rehearing the case.

Aggrieved by that decision, the petitioner filed this matter for judicial review of the Ministry's decision averring in paragraph 6 that:

- (a) She was not served with notice that the Ministry intended to invalidate the decision of the competent officer and the reason for so doing.
- (b) That the decision of 21 June 2004 to invalidate the decision of the competent officer conveyed on 13 April 2004 without an appeal to the Minister has no basis under the Employment Act 1995.
- (c) A rehearing at this stage is illegal and in breach of natural justice and will serve to prejudice the petitioner and deprive her of her legitimate right to be lawfully reinstated in her post.

Wherefore the petitioner prayed for the writ of certiorari to quash the decision of the Ministry of 21 June 2004 and a writ of mandamus compelling the Ministry to perform its duty by ordering Air Seychelles to enforce the decision of the competent officer given on 13 April 2004.

In line with sections 117, 118 and 119 of the Code of Civil Procedure, Air Seychelles filed a motion to intervene in the proceedings, and served a copy thereof on the

concerned parties.

In the affidavit accompanying the said motion it was deposed as follows:

- (1) Air Seychelles, as the respondent's (or meant to be petitioner's) employer has a direct interest in this petition brought by a former employee and has, therefore, sought to be joined as an intervenor.
- (2) The petitioner seeks to challenge a decision of the Ministry of Social Affairs and Employment dated 11 August 2004 setting aside the decision of the competent officer dated 13 April 2004 in which the competent officer had ordered Air Seychelles to reinstate the petitioner in her employment with no loss of earnings.
- (3) The respondent Ministry was competent to set aside the said decision as the entire procedure had been marred with irregularities, namely,
 - (a) The petitioner's termination of employment occurred on 12 January 2004, and any grievance procedure had to be filed within 14 days thereof pursuant to section 61 and Part 2 of Schedule 1 of the Employment Act 1995. Ex facie the petitioner, paragraph 4 of the petitioner's affidavit states that "in February 2004, the petitioner lodged a complaint against Air Seychelles for breach of contract....." The request could not therefore be entertained because it was out of time, unless special circumstances justifying the delay were presented to the Ministry and the intervenor given the opportunity to be heard on that point. Air Seychelles had been denied that right to be heard on whether or not the grievance could be entertained out of time.
 - (b) Once a grievance is registered, the Ministry should, within 7 days, invite the worker and employee for consultation. The letter inviting a meeting for mediation was dated March, 2004 for a mediation to be held in April, 2004.
 - (c) Section 61(1A) of the Employment Act as amended in 1999, states that "the competent officer shall first endeavor to bring about a settlement of the grievance by mediation and thereafter. (b) if a settlement is not effected after a lapse of 14 days, the competent officer shall proceed to make the determination....". The competent officer was therefore in error to proceed ex parte on the same date to find in favour of the petitioner. The competent officer was duty bound to adjourn to another date with notice to the employer. Furthermore, there is no evidence that the competent officer heard the petitioner. There is no concept of default judgment being applicable in this case.
- (1) A party has a duty to put forward all evidence and not to mislead the adjudicating officer in considering whether or not to order reinstatement, the competent officer was duty bound to consider if it was practical or convenient to reinstate the worker. The petitioner by letter dated 13 January 2004 had submitted her resignation effective 1 January 2004. There is now shown to me, produced and marked KBS1 a copy of this letter. In the light of this letter, no adjudicating officer acting reasonably would have ordered reinstatement as a claim for reinstatement could not be bona fide.

Counsel for the respondent does not object to the application.

However, counsel for the petitioner vehemently objects to the application and raises the following pleas *in limine litis* –

- (a) That Air Seychelles was not the adjudicating authority and accordingly has no standing in this case for judicial review (see Rule 7 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995.
- (b) Alternatively, if Air Seychelles has standing, its application to intervene is time barred.
- (c) There is no procedure to intervene in a matter under judicial review under the Supreme Court Rules 1995.

The issue at the heart of this application to be dealt with first is: whether one can intervene in judicial review proceedings instituted pursuant to article 125(1)(c) of the Constitution.

The Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 (SI 40 of 1995) make no provision for intervention although they allow for more than one respondent to be cited in a matter, rules 3(d) and 9(2). It has been further submitted by Mr Shah that where the said Rules are silent on a matter the Seychelles Code of Civil Procedure shall apply and, in addition, that the Supreme Court of Seychelles, like the High Court of England, should enjoy the unlimited jurisdiction and all the inherent powers it has and find that under section 117 Air Seychelles has a bon fide claim and *locus standi* to intervene in these proceedings.

Section 117 reads thus:

Every person interested in the *event of a pending suit* shall be entitled to be made a party thereto in order to maintain his rights, provided that his application to intervene is made before all parties to the suit have closed their cases. (emphasis mine)

Section 2 thereof defines a “suit” or “action” as: “a civil proceeding commenced by plaintiff”.

It is now clear that the proceedings herein which Air Seychelles wants to intervene were commenced by petition and not by plaintiff, and as such cannot be referred to as “a pending suit” envisaged by section 117 of the Seychelles Code of Civil Procedure. Although Air Seychelles is an interested person in these proceedings as the former employer of the petitioner and its presence before the court may be necessary, in my view, the law as it stands now does not allow its intervention.

Unless for academic reasons, I see no reason to discuss the other objections raised by the petitioner. This objection alone goes to the root of the matter and disposes of the whole application. Accordingly, the application to intervene is hereby dismissed.