

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 54/2012

Appeal from Magistrates Court Decision 34/2011

[2014] SCSC

MICHEAL PILLAY

Appellant

versus

1. INDIAN OCEAN TUNA LTD

Respondent

2. SEYCHELLES INTERNATIONAL BUSINESS AUTHORITY

Respondent

Heard:

Counsel: Mr. Camille for Appellant

Mr. Sabino for 1st Respondent

Mr. Hoareau for the 2nd Respondent

Delivered: 2 May 2014

JUDGMENT

Karunakaran Acting Chief Justice

[1] This is an appeal against the Ruling of the learned Magistrate Mrs. M. Ng’hwani wherein the learned Magistrate dismissed the plaint filed by the Appellant based on a *plea in limine litis* raised by the respondents, before the trial Court.

[2] The facts of the case are as follows;

The Appellant in this matter was at all material times employed as a driver by the 1st Respondent company namely IOT. He was employed during the period between the 7th October 2002 and the 11th February 2003.

During the course of his employment, on the 11th of December 2003 the Appellant was terminated from his employment with the 1st Respondent. Being aggrieved by the dismissal the Appellant appealed to the International Trade Zone Council in line with the provision of the International Trade Zone employment regulation 1997, hereinafter referred to as the Council.

Having heard the grievances, the counsel determined that the said termination was unlawful. The operative part of the said decision reads thus:-

“The ITZ Employment Council determine that as per section 132 (A) paragraph 3 of the ITZ employment Regulation 1997 that termination is not justified but as it would not be practical or convenient to re-instate the work in the post or offer the worker other suitable employment allow the termination subject in the case of sub-regulation 1 (A)2 to the payment in view of notice of one month wages or where an amount is specified in his contract of employment and where in view that no serious disciplinary offences has been proved by the employer. The worker is entitled to compensation in relation to section 31 (B)2 of the ITZ Employment Regulation 1997 which state that other than for a serious disciplinary offence under Regulation 23 (4) compensation is payable to the worker in addition to the worker’s wage and any other benefits earned.”

[3] Subsequence to the said decision of the Council, the Appellant by a plaint dated the 27th of August 2010 filed a suit against the 1st Respondent namely IOT and the 2nd Respondent Seychelles International Business Authority. Claiming damages in the total sum SR80,000.00 alleging that the 1st Respondent had committed a fault in law in unlawfully terminating the Appellant. The Respondents, in the Court below, raised a *plea in limine litis* on the following grounds:

- (i) The matter is *res judicata* as it has always been determined before the ITZ Employment Council
- (ii) The matter is also prescribed and time-barrred interms of Article 2271 of Civil Code
- (iii) The plaint discloses no cause of action against the 1st Defendant

And also the 2nd Defendant in its defence has raised the following issues ;

- (i) The joinder of the 2nd Defendant is unlawful and unprocedural, and
- (ii) The 2nd Defendant has no mandate or jurisdiction or statutory responsibility to be held accountable for the employment grievance of the Plaintiff.

[4] Having heard the counsel on the *plea limine*, learned Magistrate upheld the objection raised by the respondents and dismissed the plaint. Having being dissatisfied with the said ruling of the learned Magistrate the Appellant has now come before this Court by way of an appeal raising the following grounds ;

1. The decision of the learned Magistrate that the matter before her was *res judicata* for having previously been determined by the ITZ Council is without legal and evidential base and the decision was wrong in law.
2. Learned Magistrate erred in law in dismissing the matter on the *plea in limine litis* without having full appreciation of the evidence in this matter.

[5] For these reasons the Appellant urged this court to allow this appeal and remit the matter to the Magistrate to be heard on the merits. I gave careful consideration to the submissions made by counsel in this matter. For the sake of convenience, I would like to first deal with the points raised by Mr. Basil Hoareau on the issue of no cause of action. I quite agree with the submission of Mr. Basil Hoareau that under Rule 21 of the Magistrate Court Rules even if certain issues are not pleaded in the Memorandum of

Appeal by the appellant the Court may *suo moto* or at the instance of the Respondents entertain those issues and determine the Appeal accordingly.

- [6] I carefully perused the plaint filed by the Appellant before the learned Magistrates court, I quite agree with the submission of Mr. Basil Hoareau that there is no pleading relating to any allegation against the Seychelles International Business Authority nor any cause of action pleaded against the 2nd Respondent.
- [7] In the circumstances, I am of the view that there is no cause of action disclosed in the plaint against the 2nd Respondent. Therefore, I dismiss the cases against the 2nd Respondent.
- [8] Coming back to the issues submitted by Mr. Sabino, I quite agree with the decision of the learned Magistrate in that she has rightly ruled that this matter is bad for *res judicata*. In that, the unlawful act allegedly committed by the 1st Respondent has already been determine under the provisions of the ITZ regulation by the Council. Obviously the council has determined all the relevant issues pertaining to the alleged unlawful termination. In that case I cannot find fault with the finding of the learned Magistrate in that, this matter is bad for *res judicata*.

In the circumstances, I am quite agree with the submission of Mr. Sabino and Mr. Basil Hoareau that this appeal is not maintainable before this court.

Therefore, I dismiss the appeal. However, I make no order as to cost.

Signed, dated and delivered at Ile du Port on 2 May 2014.

D Karunakaran
Acting Chief Justice