

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 23/2014

Appeal from Employment Tribunal Decision 201/2013

[2015] SCSC 107

**PORT LAUNAY RESORT LTD KNOWN
AS CONSTANCE EPHELIA**

Appellant

versus

ALEX VOLCERE

Respondent

Heard: 26th February 2015

Counsel: Ms. Benoiton standing in for
Mr. Ally for the Appellant

Mr. Danny Lucas for respondent

Delivered: 26th February 2015

JUDGMENT

D. Karunakaran, Acting Chief Justice

[1] I believe I need not adjourn this matter for another date and I may now proceed to give an extempore Judgment in this matter since the facts are straight forward, simple and clear on record. There are no major legal issues involved that require any research.

[2] The appellant Constance Ephelia Resort (the employer) being dissatisfied with the decision of the Employment Tribunal given on the 19th May 2014 in case no. ET201 of 2013 for re-instating the application of the applicant namely the employer after it had previously been dismissed by the Tribunal, has now appealed to this court against the said decision.

[3] The appeal is made on two grounds, which are as follows:

(i) The Employment Tribunal erred in law as it reinstated the application of the respondent after it had been dismissed as the Employment Tribunal was *functus officio* and as such it had no power, jurisdiction and authority to re-instate the matter.

(ii) In the alternative, the Employment Tribunal erred in law in that the Employment Tribunal re-instated the application of the respondent without giving notice to the appellant and further that the appellant was not granted the opportunity to respond to the application to re-instate the case.

[4] I gave careful thought to the submission made by both counsel for and against this appeal. I also perused the relevant provision of law in the Seychelles Code of Civil Procedure, the Courts Act and the Employment Act.

[5] First of all, as regard the first ground of appeal I find that the Employment Tribunal was not *functus officio* to hear the application for re-instatement. If I give such narrow interpretation to law as canvassed by the appellant's counsel, then I would defeat the Section 68 and 69 of the Seychelles Code of Civil Procedure. It is evident from 68 and 69 that the courts have power, jurisdiction and authority to re-instate any matter which has been dismissed. For this reason ground 1 fails.

[6] Now, moving on to the second ground alleging that the Tribunal failed to give opportunity for the other side before it ordered re-instatement, I find this grounds

meritorious. I say so, because first of all, the Tribunal should as far as possible follow the Civil Procedural Code in respect of any procedural issues that may arise during the proceeding.

- [7] It is evident from Section 69 regarding setting aside of ex-parte orders/Judgments, notice of such motion shall be given to the other side. In my view, it is a mandatory provision that before any re-instatement application is considered by the Tribunal Court, notice should have been given to the other side, whose interest is likely to be affected by reinstatement.
- [8] Moreover, all Tribunal being administrative bodies, they have to apply the first principles of natural justice. That is, no one should be condemned or no order should be made against the interest of anyone without giving opportunity of being heard to that party. In this particular case, I am satisfied that no opportunity was given to the other side before the Tribunal decided to re-instate the case.
- [9] Also I gave careful thought to the submission of Mr. Lucas, counsel for the respondent stating that this appeal is improper because the order made by the Tribunal was an Interlocutory order which has not substantially disposed of the main case. I quite agree with this submission of counsel in this respect. However, when I read Section 6 of the Employment Act it clearly says that the Tribunal ought, to apply the principle of natural justice especially the principles of natural justice that no one should be condemned unheard.
- [10] In my view, this first principle is the rule enshrined in Section 6, whereas the exception is provided under the same section, which states that in appropriate cases the Tribunal may act otherwise. I believe we must apply the rule rather than exception. In this particular case, I apply the rule and I find that the Tribunal has obviously failed to give opportunity for the other side before it decided the application for re-instatement which is a breach of the first principles of natural justice.
- [11] In the circumstance, I allow the appeal on ground 2 pleaded in the Memorandum of Appeal. Having given careful consideration to the entire circumstance of this case, I give

the following direction to the Tribunal and remit the case to them for re-hearing. The direction is as follows :

- (ii) The Employment Tribunal is hereby directed to determine the issue of reinstatement based on the letter dated the 31st of March 2014 after giving due notice and opportunity to the appellant. And then the Tribunal may proceed to hear the main case on the merits, if reinstated. Accordingly the case is remitted to the Tribunal for re-hearing on the issue of reinstatement on and then the main case.

I make no orders as to cost.

Signed, dated and delivered at Ile du Port on 26th February 2015.

A handwritten signature in black ink, appearing to be 'D Karunakaran', written in a cursive style.

D Karunakaran
Acting Chief Justice