

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA2/2015

[2016] SCSC1071

ERLINE BRISTOL

Appellant

versus

**CHAIRMAN OF THE EMPLOYMENT TRIBUNAL
JAV CONSTRUCTION PTY LTD**

Respondent

Heard: 12 October 2016

Counsel: Mr. Gabriel for appellant

Ms. Ste Ange for 1st respondent

Mr. Rajasundaram for the 2nd respondent

Delivered: 18 November 2016

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal from the decision of the Seychelles Employment Tribunal dated the 20th January 2015, whereby it dismissed the Appellant's application seeking compensation for the length of Service as follows:

- 1) November 2009 to June 2010.
- 2) Annual Leave & 8 months worked.
- 3) Salary from June 2010 until Judgment/ Ruling of the Tribunal.

4) Cash in lieu of Notice.

- [2] The brief background is that the Appellant had brought 2 cases against both Jav Construction Pty Ltd and Dhanjee Hardware Pty Ltd whereby she claimed compensation for unpaid work done for the two companies.
However, she later withdrew the case against Dhanjee Hardware Pty Ltd but maintained the one against Jav Construction Pty Ltd, hence the above claims for compensation.
- [3] It is not disputed that the Appellant had worked for JAV Construction Pty Ltd since 1988 till October 2009. There has been downsizing in the Respondent Company and according to them, the appellant resigned her post as a secretary and was paid her terminal benefits as per exhibit "R1". That She remained unemployed for 2 months till she was offered a post of Sales Assistant from January 2010 until June 2010 in Dhanjee Hardware Pty Ltd but that the appellant eventually turned the contract down, and said that it fell short of her expectations.
- [4] Further according to the Respondent the period between January 2010 to June 2010, the Appellant had worked with Dhanjee Hardware but not with JAV Construction (the 2nd Respondent).
- [5] On her part, the Appellant maintained that there was no difference between the two companies as they were run and owned by the same people.
- [6] She maintains that for her she has never worked for Dhanjee Hardware Pty Ltd, but had continued to work for 2nd Respondent, but in a different capacity, as a secretary in the Jav Construction and as a Sales Assistant in the same company which she later turned down as it did not meet her expectations. That she has never left working for Jav Constructions since 1988. Hence the above claims against the Respondent.
- [7] At the hearing, of the appeal, Mr. Nicole Gabriel represented the Appellant and Ms. Ste Ange represented the 1st Respondent. Mr. Rajasundaram appeared for the 2nd defendant.

In his memorandum of Appeal, the Appellant raised the following grounds:-

1. *That Erline Bristol, the Appellant, appeals to the Supreme Court against the whole decisions on the following grounds:-*
 - a. *That the decision of the Employment Tribunal (ET) is wrong in law and in fact and against the evidence adduced in favor of the Appellant.*
 - b. *That the learned Chair Person erred in law and in fact by ignoring the key provision of the Employment Act and making a biased ruling in favor of the Respondent.*
 - c. *That in all circumstances the Ruling of the Employment Tribunal is wrong in law and in principle.*

[8] Before I proceed with the merits of the appeal, I wonder why the 1st Respondent was made a party to the appeal in light of the clear provision of *Schedule 6 of the Employment Act Cap 69 Laws of Seychelles Section 6 (1) (6)* of that schedule reads as follows:

" A member of a Tribunal or any other person under the direction of the Tribunal has immunity in respect of anything which is done or purported to be done in good faith in pursuance of this Act"

To me, this provision offers total immunity from prosecution or for a civil action against a member of the Tribunal, which includes the Chairman. In case there is a misinterpretation of the law or misdirection on both facts and the law, by the Employment Tribunal, the remedy should be to appeal against such decision, but not include him/her as a party to the appeal.

[9] In the premises and in absence of any *mala fides* on her part, it is my considered view that the 1st Respondent was wrongly joined as a party in light of the provision *Schedule 6 (1) (6) of the Employment Act*. Hence the appeal against him/her is dismissed.

[10] As to the 1st ground of appeal regarding the nonconformity with the *Provisions of schedule 1*, in that no notification of the termination was sent to the union and to the Chief Executive by the 2nd Defendant, there appear to be 2 options recognized by the Act, regarding termination of Employment.

The first option is for the employee to offer her/his resignation in writing in accordance with *Section 60 of the Act*.

The second option is to give notice of intended termination of Employment under *Schedule 1 of the same Act* by the employer.

[11] In the instant case, the 2nd Respondent maintained that the appellant expressly and orally offered her resignation from Jav Construction, but unfortunately the letter of resignation mysteriously disappeared from their records, which records the Appellant was also dealing with.

On the other hand, the Appellant maintains that she has never resigned from Jav Construction Pty Ltd. The Employment Tribunal saw both the appellant and Mrs. Dhanjee testify. This Court does not have that opportunity.

[12] The employment Tribunal reviewed the evidence before it. It believed Mrs. Dhanjee because she looked to be a truthful and credible witness. They consequently disbelieved the appellant. The Employment Tribunal found that actually, the appellant had resigned her job in the 2nd Respondent's company in October 2009. The Employment Tribunal was strengthened by the fact that the Appellant had signed for and received her terminal benefits as per exhibit R1. In the premises, the Employment Tribunal found that there was nothing still owing to the Appellant from the 2nd Respondent.

There was also evidence in the Lower Tribunal's record that the terminal benefits due to Appellant for the short period she had worked for Dhanjee, she had instituted a separate action but was withdrawn on the day it had been fixed for hearing by the Appellant.

By opening a second and separate action in regard to Dhanjee Hardware Pty Ltd, clearly shows that, though both Jav Construction and Dhanjee Hardware were owned and run by the same people, they were two defendant legal entities different from each other and

from their owners. This would be in accordance with the famous principle in **Solomon VS Solomon Case in Company Law.**

[13] After considering everything and carefully reviewing the evidence before Employment Tribunal and the law applicable, I tend to agree with the Employment Tribunal findings.

[14] In the premises therefore, I find no merit in this appeal and uphold the findings and orders of the Employment Tribunal.

The appeal is dismissed. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 18 November 2016

Akiiki-Kiiza J
Judge of the Supreme Court