# IN THE SUPREME COURT OF SEYCHELLES

## Civil Side: CA33/2015

### Appeal from Employment Tribunal Decision138/2014

[2016] SCSC 831

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Eastern European Engineering Limited — Appellant

versus

1. Charles Gabriel
2. Keddy Fanchette
3. Kenny Labonté
4. Mike Savy
5. Neil Denousse
6. Robin Constance
7. Terry Lucas
8. Roy Pillay
9. Elvis Lawrence
10. Flavien William
11. Daniel Ferley
12. Joel Arrisol, — Respondents

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Heard: Submissions in writing filed on 12th October 2016

Counsel: Mr. Elvis Chetty for appellant

Mr. Leslie Boniface for respondents

Delivered: 28th October 2016

**JUDGMENT**

**Twomey, CJ**

[1] The Appellant is the owner of a hotel, Savoy Hotel, at Beau Vallon Mahé and the respondents are casual labourers recruited for work on the hotel premises.

[2] The Respondents on 20th August 2014 applied to the Employment Tribunal for a ruling that on the termination of their casual work with the Appellant they were paid the wrong compensation.

[3] On the 3rd December 2015 the Employment Tribunal delivered a decision in which it found the Appellant had breached the provisions of the Employment Act and ordered the Appellant pay the Respondents.

[4] Aggrieved with the said decision, the Appellant has appealed on the following grounds:

1. The tribunal erred when it failed to interpret the correct provisions of the Employment Act.

2. The tribunal erred when it did not consider the facts before it correctly and ruled against the Appellant

3. The tribunal erred when it failed to seize all the facts and pronounce a biased and unbalanced verdict (sic).

4. The tribunal erred when it placed too much weight on the evidence of the Respondents with insufficient corroboration.

5. The tribunal ought to have heard each case individually and deliver an independent verdict on each case as each matter was different.

[5] In his appeal submissions, Counsel for the Appellant has made no allusion to ground 1 and has failed to address it substantially or otherwise. I am therefore at a loss to know or understand which of the specific provisions of the Employment Act the Appellant claims have been wrongly misinterpreted. In the circumstancesI find the ground entirely without substance and I hereby dismiss it.

[6] As regards Grounds 2, 3 and 4 of the Appeal having perused the transcript of proceedings and the judgment of the Tribunal I am not of the view that the Tribunal did not properly assess the facts, the evidence or that it made a biased and unbalanced decision. It was entitled to make its collective mind up after having the observed the parties during their testimony. It is clear that it weighed the evidence of each side but chose to believe the Respondents. It was measured in its deliberations noting that it believed the testimony of the Respondents and found that the Appellant did not provide evidence to prove contrary assertions (see paragraph 26 of the Tribunal's judgment).

[7] It found in favour of the Appellant that although the Respondents had been recruited initially as casual labourers and their employment continued beyond the three month statutory period, their continuous employment came to an end once the specific project they were recruited to complete came to an end. In finding that they were not entitled to compensation payments under the Act but only entitled to payments of a month's salary in lieu of notice, payments for working public holidays and payments in lieu of annual leave it is demonstrated that the ground of bias against the Tribunal cannot be sustained. For these reasons these grounds of appeal are dismissed.

[8] With regard to ground 5 of the appeal, Counsel for the Appellant has submitted that as the case concerned different respondents each claim should have been dealt with individually and evidence heard independently to allow the individual facts heard separately and taken into account.

[9] It is not disputed that the Tribunal consolidated the claims of several casual workers against the Appellant. The issue is whether it was permitted to do so given the circumstances of this case and the applicable law.

[10] As regards the applicable legal provisions, section 10 of Schedule 6 of the Employment Act (which is made pursuant to section 73A of the Employment Act) provides that the Minister may make regulations for regulating the procedure of the Tribunal.

[11] Such regulations have never been made. However, section 7 of Schedule 6 also provides in relevant part:

"Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate"

[12] It is clear from the above provisions that the Tribunal has a wide discretion to conduct Tribunal proceedings in a manner that is most conducive to resolving the conflicts and issues before it based on the circumstances of each case.

[13] At the hearing there were before the Tribunal a total of forty-six employees. All their applications were similar and based on similar facts and circumstances, essentially that they were recruited as casual workers for the Appellant and that they were kept in employment after three months. This fact transformed their casual employment into a contract of continuous employment. The case was about the implications of such a contract of employment.

[14] The Tribunal faced with the numerous applications based on the facts as set out above, adopted a consolidation procedure. It did so by exercising its discretion. It may well have been guided by the ordinary rules of civil procedure which provides in section 106 of the Code of Civil Procedure that:

"If more than one suit has been entered by the same plaintiff against the same defendant or if more than one suit has been entered by different plaintiffs against the same defendant in respect of claims arising out of the same transaction or series of transactions or if cross suits have been entered between the same parties, and the parties sue and are sued respectively in the same capacities, the court may either of its own motion or on the application of any of the parties order such suits or any of them to be consolidated and tried as one suit, if it appear to the court that they can be conveniently tried or disposed of together, and the court may make such other order as may be necessary or expedient for

the purpose of trying such suits together, and may make such order as to costs as may be just."

[15] More importantly as has been pointed out by Counsel for the Respondents, the record of proceedings and the judgment of the Tribunal show that the parties agreed that this was the procedure best suited to the circumstances.Paragraph 2 of the judgment states:

> "By consent of the parties, the parties agreed that the individual claimsare the same in respect of each and every application, and that the individual cases are based on similar facts and circumstances. For that particular reason, the parties agreed that the applications be consolidated into one case. "

[16] It is therefore disingenuous at the appeal stage to raise the question of the propriety of the procedure adopted for the hearing of the matter.

[17] For that reason and for the other reasons articulated above these grounds of appeal have no substance and are hereby dismissed with costs.

Signed, dated and delivered at Ile du Port on 28th October 2016

M Twomey
**Chief Justice**