

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC34/2017

[2017] SCSC

JACQUES DANNY PHILOE

Petitioner

versus

MICHELINE ZIALOR

Respondent

Heard: 6 October 2017

Counsel: Miss Wong standing in for Mr Chang Sam for Appellant

Mrs Samantha Aglae for respondent

Delivered: 6 October 2017

JUDGMENT

R. Govinden, J

[1] This is an appeal filed by the Appellant against the decision of the Family Tribunal given on the 3rd day of April 2017.

[2] The substance of the Family Tribunal Order appealed against is as follows:-

- (i) Having assessed this matter this Tribunal finds it just and reasonable to order the Respondent to pay Sr2100 for the maintenance of the three minors.
- (ii) Review on the 5th of June 2017 at 2.30 p.m.
- [3] Prior to the order of the 3rd of April 2016 the Appellant was contributing SR1300 per month for the upkeep of the three children.
- [4] In order to make the order which is subject to this appeal the Family Tribunal directed the Social Services to investigate the means of the Appellant and to provide a report to the Tribunal. Thereafter, the Family Tribunal acted on the said report of the Social Services which is dated the 30th of March 2017, written by a Mrs J. Bonnelame.
- [5] As to the Appellant's financial means the Social Services report concludes as follows:-
"The Respondent provided a pay slip to indicated that he earns SR18,269 inclusive of different allowances per month. His basic salary is SR9769 per month.

He has brought proof of his expenses which are as follows:-

- Maintenance for Nyma SR600
- Maintenance for Shanna, Rihana and Hedey SR1300
- Rent at SACOS Flat SR6000
- Bank Loan SR4317
- Day Care SR1500
- Life Insurance SR5500

Conclusion

The Social Services have been directed to report on the Respondent's financial means. He has produced a salary advice for February 2017 which indicates that he earns SR9769 plus allowances amounting to SR18269 monthly. He has also brought forward his expenses as seen above."

[6] The grounds of Appeal of the Appellant as found on his memorandum of appeal dated the 4th of July 2017 includes 3 grounds of appeal. These are:-

(i) The Tribunal erred in fact when interpreting the Social Services Report compiled by J. Bonnelame (the “Report”), a social worker employed by the Social Services committee, wherein Mrs Bonnelame stated that the Appellant’s expenses amounted to SR19,217 even though the Appellant’s salary was proven to be SR18,269 monthly (gross inclusive of allowance), meaning that the Appellant’s expenditure exceeded his monthly income and as such he does not have the financial means to pay the increased order of SR2100.

(ii) The Tribunal erred in interpreting the expenses of the Appellant on the bank statement provided by the Appellant for the month of August, 2016 (“the statement”) it states that a sum of SR5,500 is debited from the Appellant’s account by standing order in favour of monthly rent/12564 SACOS Life Insurance. The Appellant contend that he informed the Tribunal that the sum above is stated is a monthly rent that he pays for the apartment at SACOS at Anse Etoile, which is automatically debited from his account every month in favour of SACOS Life Assurance, the lesser from whom he rents that flat. The Report incorrectly labelled this amount as personal life insurance being paid by the Appellant and consequently the tribunal mistakenly came to the conclusion that the Appellant had the means to pay an increased maintenance order if he was spending such an amount on life insurance. However, the reality is that the Appellant struggles to make “ends meet” every month and cannot afford to make any increased payment to the Respondent in excess of what he is currently paying.”

(iii) The Tribunal erred in awarding the Respondent as order in the sum of RS2100 in the absence of any evidence that the Appellant could afford to pay the amount.

[7] All grounds of appeal in this case are grounds based on facts. Taken together they are to the effect that the Tribunal erred by allowing itself to be misled by the factually incorrect finding of the Social Services Report. The total expenses of the Appellant being calculated to be more than his total earning, based on facts tendered by the Appellant and

the Report wrongly finding a debt of SR5,500 to pay SACOS flat by the Appellant to be a saving that goes toward the paying of a life insurance .

[8] Mr Chang Leng submitted on behalf of the Appellant in support of his grounds of appeal and moved that this Court accordingly dismissed the Family Tribunal Order.

[9] Counsel for the Respondent submitted in writing as follows:-

(i) In regards to the first ground of appeal; the Respondent submits “the Appellant is stating that there is an error in interpreting his expense amounting to SR19,217, yet the Appellant is stating that his expenses exceed his monthly income of SR18,269, as such he cannot increase his payment of maintenance to SR2100.

(ii) In respect of the second ground of appeal; “the Respondent submits that the Appellant had failed to clarify with the Tribunal as to the sum of SR6000 stated on the Social Services Report as rent for SACOS. This Court will have to take it that the sum is an expense being incurred by the Appellant, whether for rent or otherwise. It was Appellant who provided the sum of SR6000 as an expense to the Social Services.”

(iii) In respect of third ground she admits that. “It is submitted by the Respondent that the Appellant did not make any full and frank disclosure of his expenses. The Appellant submitted expenses according to the Respondent above and beyond his salary as an attempt to justify why he cannot pay the amount as directed by the Tribunal.”

[10] As a result the Respondent submits that the Family Tribunal decision be confirmed and the appeal be dismissed.

[11] The three grounds of Appeal raised in this case in my view goes to the jurisdiction or the Family Tribunal and how its exercise its powers in relation to its finding in maintenance cases.

[12] In this case the Family Tribunal relied on the conclusion and finding of facts of the Social Services Report written by a Social Services officer. There are many factual mistakes in

the Report as highlighted by the Appellant. The factual mistakes could and should have been rooted and avoided through the observance of the law of evidence and the proper procedure on admissibility of documentation before the Tribunal, in an adversarial judicial process. The failure to consider matters regarding admissibility of evidence and consideration of weight to be given to the evidence before the tribunal was fatal.

The Family Tribunal powers stands from Section 78(1) of the Children Act, that Section provides “The tribunal shall have jurisdiction and functions conferred on it by the Act or any written law and without prejudice to the foregoing the tribunal shall:-

(a) hear and determine matters relating to the care, custody, access or maintenance of a child under this Act and a written law specified in Schedule 3.

[13] Hence, it is the tribunal that hears and determine matters relating to maintenance. This hearing relates both to matters of law and facts. That power is vested upon the tribunal exclusively and to no other persons or authority, except on appeal to the Supreme Court or the Court of appeal. That power cannot be delegated. The tribunal has to hear and receive evidence in matters of maintenance and decide or whether maintenance is payable or to be increased or to be reduced. This power cannot be given to the Social Services Division or one of its officers in such a blatant way as it was done in this case. The tribunal being a judicial body is further better place to adjudicate on the admissibility and weight to be given to testimonies and other means of proof tendered in support of a parties in a maintenance cases. All the alleged defects and discrepancies in this case could have been avoided and rooted out if the Appellant had been able to testify before the tribunal as to his means and expenses and stand the test of cross examination or a questions from the tribunal. This error is compounded by the procedure adapts, which should have been legal instead of administrative.

[14] The director of Social Services powers are given under the law, it is in the Children’s Act itself. The Director has powers, for example, to apply to the tribunal for removing of children in need of compulsory measures of care under Section 79 of the Act. However, its powers starts and stop under the Act itself. Neither the director nor any of its officers

of the Social Services Division has power to make a finding of fact which lies within the competence of the Family Tribunal.

[15] Moreover, Article 19(7) of our Constitution obliges an authority, such as the Family Tribunal, that has been set up by law to determine the existence of civil rights and obligation, to observe the right to fair hearing of all litigants. Obviously, a right to fair hearing means hearing of the parties to the proceedings and not to abdicate that power to any other third parties or persons unless the law provide for it.

[16] I consider, therefore, that the tribunal acted illegally and contrary to the Children's Act in relying on the Social Services Report in this case and making the conclusion of the report of the Social Services that of its own, without hearing the Appellant. I therefore dismiss the decision of the Family Tribunal rendered on the 3rd of April 2017 in case No.534/12 and remit this case before the Family Tribunal for the Tribunal to make its own finding of facts as to the means of the Appellant to pay the revised and enhanced maintenance allowance.

[17] I make no order as to cost.

Signed, dated and delivered at Ile du Port on 6 October 2017

R. Govinden
Judge of the Supreme Court