

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 06/2017

Appeal from Employment Tribunal Decision ET15/2016

[2018] SCSC 428

LODGE CAFÉ (PTY) LIMITED

Appellant

versus

ANDRIA CAMILLE

Respondent

Heard: 6 February 2018

Counsel: B Julie for appellant

C Andre for respondent

Delivered: 29 March 2018

JUDGMENT

Dodin J

[1] The Appellant is appealing against the ex-parte judgment of the Employment Tribunal delivered on the 6th March 2017 putting forth the following grounds of appeal:

- i. *The Employment Tribunal erred when it decided to hear the matter ex-parte in the absence of both Counsel.*
- ii. *The Employment Tribunal erred when it dismissed the motion*

dated 9th February 2017 without giving reasons.

- iii. The Employment Tribunal failed to stipulate the reasons (referred to at Para 2 above) in the judgment as stipulated in the ruling of 6th March 2017.*
- iv. The Employment Tribunal erred when it proceeded to hear the case in the absence of a third member of the Tribunal.*
- v. The Employment Tribunal erred when it proceeded with the hearing despite receiving advance notice from counsel for the Applicant of his inability to attend due to another engagement before the Magistrate Court on 6th February 2017.*

Relief sought from the Supreme Court:

- a. Allow the appeal*
- b. Remit the matter back to the Employment Tribunal for an inter parte hearing.*

[2] Learned counsel for the appellant submitted that the case was set for inter-parte hearing on Monday 6th February 2017. The Respondent's Attorney informed the Tribunal through an email to the Secretary of the Employment Tribunal that due to an error in the Magistrate Court, another case was set for hearing on the same day in the Magistrate's Court. The Employment Tribunal erred when it proceeded to hear the matter ex-parte in the absence of both Counsel. Despite being informed by the Secretary of the Tribunal that he did receive the letter from Counsel on 6th February 2017, the Tribunal decided not to set aside the ex-parte hearing.

[3] Learned counsel further submitted that the Employment Tribunal erred when it dismissed the motion dated 9th February 2017 without giving reasons. The Employment Tribunal failed to give reasons in the judgment as stipulated in the Ruling of 6th March 2017. There was no notice of motion from the Respondent to hear the matter ex-parte.

[4] Learned counsel submitted that the Employment Tribunal erred when it proceeded to hear the case in the absence of a third member of the Tribunal. The Tribunal has no authority to hear any matter in the absence of a third member without the consent of both parties as per Section 6 (1) of Schedule 6 of the Employment Act. The decision to proceed ex-parte was taken in the present of only 2 members. The Employment Tribunal failed to request

the approval of the parties Furthermore, a third member of the Tribunal signed the judgment although he was not present at the ex-parte hearing.

- [5] Learned counsel submitted that as a result the Appellant has been denied his right to a fair hearing as he has ample evidence to prove that the termination of the Respondent's contract of employment was justified and the opportunity to adduce evidence to support its decision. Learned counsel for the Appellant moved the Court to allow the Appeal and remit the matter before the Employment Tribunal for an inter-parte hearing.
- [6] Learned counsel for the Respondent submitted that the tribunal was correct in granting the matter as prayed for by the Respondent as she was present and gave the evidence requested from the tribunal. Learned counsel further submitted that the tribunal was correct in dismissing the notice of motion as the applicant wrongly placed and such was not corrected by the attorney for the Respondent.
- [7] Learned counsel submitted that the Tribunal did inform in court the reasons for dismissing the motion. Learned counsel further submitted that the appellant must prove how the ex-parte hearing affected the case of the appellant and how this is illegal. The tribunal was correct to listen to the case as no documents was served on counsel for Andrea Camille prior to the hearing. Learned counsel moved the Court to dismiss this appeal with costs.
- [8] This appeal is not on the merits of the case but rather on whether hearing of the case should have proceeded as it did. The record shows that on the day of the hearing, the Applicant was present whilst the Respondent was absent. Learned counsel for the Appellant has submitted that the reason for his absence was due to listing errors at the Magistrate's Court. Conceding that this was a valid reason for the absence of counsel, learned counsel for the Appellant has not established that he was the only representative of the Appellant. The discretion to proceed with the hearing lied with the Employment Tribunal which it exercised by proceeding ex-parte. Grounds 1 and 5 of appeal therefore cannot be sustained and are dismissed accordingly. Considering that the Employment Tribunal properly exercised its discretion to hear the case ex-parte, grounds 2 and 3 of

appeal are rendered redundant as there is no requirement for the Tribunal to give reasons for dismissing the motion to set aside the ex-parte hearing.

[9] The only remaining ground of appeal with merit is ground 4. As submitted by learned counsel for the appellant, paragraph 6(1) of the 6th Schedule of the Employment Act states:

6. (1) In any proceeding of the Tribunal, there shall always be a representative from the employers' organisation and the trade union sitting as a member provided where parties to a dispute agree the Chairperson or the Vice-Chairperson may sit with only one member.

[10] The record shows that the hearing was held by the chairperson sitting with just one other member. There was also no agreement for the hearing to proceed thus as the proviso of that paragraph requires. In view that the presence of the members are crucial to give a fair balance between employer and employee, adhering to this procedure is crucial for the decision of the Tribunal to be fair and just and be seen to be thus. I take note of the provision of paragraph 6(7) of the 6th Schedule which states:

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

It is my considered view that this provision cannot overrule paragraph 6(1). Therefore the hearing of the case by the Chairperson and only one member was fatal to the whole proceeding. Consequently I allow the appeal on that ground only.

[11] I therefore quash the judgment of the Employment Tribunal and I remit the case to the Employment Tribunal for fresh hearing in accordance with paragraph 6(1) of the 6th Schedule of the Employment Act.

[12] Each party shall bear its own cost.

[12]

Signed, dated and delivered at Ile du Port on 29 March 2018

G Dodin
Judge of the Supreme Court