

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 624
CA 45/2018
(Appeal from CS111/2018)

**SEYCHELLES PETROLEUM
COMPANY LIMITED**
(rep. by *Samantha Aglae*)

Appellant

versus

DARYL BELLE

1st Respondent

CHRISTIANNE BELLE
(rep. by *Kelly Louise*)

2nd Respondent

Neutral Citation: *Seychelles Petroleum Company Limited v Belle & Anor* (CA 45/2018) [2019] SCSC 624 (24 July 2019).

Before: Dodin J

Summary: Bonding Agreement - Plea in limine litis – whether employment-related matter reserved exclusively for Employment Tribunal or whether triable by Magistrate’s Court

Heard: 26 June 2019

Delivered: 24 July 2019

ORDER

On appeal from CS111/2018 Magistrates’ Court, Seychelles.

The appeal is dismissed with costs to the Respondents.

JUDGMENT

DODIN J

[1] The 1st Respondent, was an employee of the Appellant and whilst in employment they entered into a bonding agreement whereby the Appellant agreed to fund the studies of the 1st Respondent in Colombo, Sri Lanka in the sum of SCR 120,858.82 cents. In the same agreement the 1st Respondent agreed to continue in the employment of the Appellant for a

period of 5 years after the completion of his studies. The 2nd Respondent was the guarantor of the 1st Respondent. Upon completion of his studies, the 1st Respondent did not return to work or the Appellant and neither the Respondents have refunded the Appellant the sum spent on the studies of the 1st Respondent.

[2] The Appellant sued the Respondents for breach of contract in the Magistrate's Court claiming damages. The Respondents in their defence raised a plea in limine litis maintaining that the Magistrate's Court does not have jurisdiction to entertain employment-related matters as such fall exclusively under the Employment Tribunal.

[3] In her ruling delivered on 19 November, 2019, the Learned Acting Senior Magistrate ruled in favour of the Respondents on the plea in limine litis and dismissed the plaint.

[4] The Appellant being dissatisfied with the determination of the Learned Acting Senior Magistrate appealed to this Court raising only one ground of appeal:

i. The [Learned Acting Senior] Magistrate erred in dismissing the Plaint on the plea in limine litis and that the bonding agreement falls within the jurisdiction of the Employment Tribunal. The [Learned Acting Senior] Magistrate erred in interpreting the provision of the Employment Act.

[5] In their submissions both learned counsel referred to the pertinent legal provisions of the Employment Act in respect to jurisdiction in employment matters, namely section 73A and Schedule 6 rule 3 of the Employment Act.

[6] Learned counsel for the Appellant submitted that the claim before the Magistrate's Court was a claim for money owed by the Respondents to the Appellant and not for non-fulfilment of contract of employment and therefore the remedy being sought was not an employment related remedy but a civil remedy. Learned counsel also submitted that the employment contract of the 1st Respondent and the bonding agreement were two separate agreements hence in respect of the bonding agreement the Appellant is not barred from seeking recourse under the Civil Code. Learned Counsel further submitted that the [Learned Acting Senior] Magistrate did not examine the bonding agreement which would have clarified the nature of the claim before the Court. Learned counsel further submitted

that since the bonding agreement was not a mediated matter before the employment mediation procedure, it could not have been a matter before the Tribunal.

[7] Learned counsel for the Respondents submitted that it is clear that the bonding agreement was for “In-Service Students on Overseas Training” and consequently a person who was not in employment of the Appellant would not have been able to benefit from the training. Secondly the Appellant sponsored the 1st Respondent with anticipation that the 1st Respondent would return to continue in the employment of the Appellant. Therefore the Employment agreement and the bonding agreement are intrinsically linked making it an employment related matter exclusively within the jurisdiction of the Employment Tribunal. Learned counsel referred the Court to the judgments of the Supreme Court and the Court of Appeal in *Seychelles Petroleum Company v Robert Morel & anor CC 33/2013* (Supreme Court) and *SCA 11/2015* (Court of Appeal) in support of her submission.

[8] The relevant legal provisions pertinent to the issue of jurisdiction are Section 73A and Schedule 6 rule 3 of the Employment Act which provide:

Section 73A(1) There is hereby established a Tribunal which shall be known as the Employment Tribunal.

(2) Schedule 6 has effect with respect to the Employment Tribunal, its composition, jurisdiction, powers and otherwise

Schedule 6 Rule 3. (1) The Tribunal shall have exclusive jurisdiction to hear and determine employment and labour related matters.

(2) Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine matters relating to employment and labour that have not been successful at mediation if a party to the dispute instigates such matter.

(3) The Tribunal shall not hear and determine any claim relating to damages for personal injuries.

(4) For the purposes of this Act, a reference to the Magistrates' Court in any written law in connection with matters under subsection (1) and (2) shall be deemed to be a reference to the Tribunal.”

- [9] Rule 3(1) is very specific in granting the Employment Tribunal exclusive jurisdiction to hear and determine employment related issues. Rule 3(2) provides also that the Employment Tribunal shall hear and determine matters relating to employment and labour that have not been successful at mediation if a party to the dispute instigates such matter. Mediation was not instigated in this case. Rule 3(2) is qualified by the phrase “*if a party to the dispute instigates such matter.*” It does not restrict the jurisdiction of the Employment Tribunal to hear only matters that has been subject to the mediation process and it does not oblige parties to go through the mediation process. It gives the parties a choice to go for mediation and in the event of failure not to be prescribed from having the Tribunal hear their case. Rule 3(2) is without prejudice to rule 3(1), hence it only compliments but does not overrule rule 3(1). The contention of the Appellant that the Employment Tribunal could not have heard this case because it was not a mediated matter is therefore erroneous.
- [10] The second issue is whether it was a prerequisite for the [Learned Acting Senior] Magistrate to examine the provisions of the bonding agreement before determining whether it was an employment related matter. It is obvious from the Plaint filed by the Appellant, then Plaintiff, before the Magistrate’s Court what the essential terms of the bonding agreement were. Paragraph 3 of the Plaint states:

“3. The Plaintiff aver that as per the bonding agreement the Plaintiff was to fund the studies of the 1st Defendant in the sum of SCR120.858.82 and the 1st Defendant agreed as per the bonding agreement to work for the Plaintiff on any of its vessels or as otherwise assigned by the Plaintiff, for the period of 5 years and 1st Defendant agreed that should the 1st Defendant not be able to keep to the terms of the bonding agreement that the 1st Defendant will refund the sum paid by the Plaintiff as per the bonding agreement.”

It is obvious that the Appellant, then Plaintiff did not see the necessity to set out more details of the agreement because it was essentially an agreement tying the 1st Respondent into continuous employment with the Appellant for a period of at least 5 years after the training paid for by the Appellant. There was therefore no necessity for the [Learned Acting

Senior] Magistrate to examine the bonding agreement in order for her to come to the decision she did. This argument therefore has no merit.

[11] It is common knowledge that an Employment Bonding Agreement is basically an agreement which the employer and the employee enter into which provides that in consideration of the training given to the employee and the money spent by the employer in funding such training, the employee must remain in the employment of the employer for a certain period. If the employee breaches the provisions of the Agreement, the employee will be liable to repay the employer in full or in part the money spent for the employee's training. There may also be a Guarantor who would guarantee to take responsibility to ensure that the employee abides by to the terms of the Bonding Agreement otherwise if there is default by the employee the Guarantor will be jointly liable to pay the amount liable to the employer.

[12] It is obvious that the bonding agreement in this case was an employment dependent agreement and that is what was pleaded before the Magistrate's Court. In fact I agree with learned counsel for the Respondents that such bonding agreement was for in-service students to go on overseas training Hence a person who was not in employment of the Appellant would not have qualified to benefit from the training and that the Appellant sponsored the 1st Respondent with anticipation that the 1st Respondent would return to continue in the employment of the Appellant showing that the employment agreement and the bonding agreement are intrinsically linked. I would even say was an extension of the terms of employment of the 1st Respondent.

[13] I therefore come to the same conclusion as the Seychelles Court of Appeal in the case of Seychelles Petroleum Company v Robert Morel & anor SCA 11/2015 and I cite the words of Hon. Renaud JA,:

"...the breach of the bonding agreement can only be established if there has been a breach of the contract of employment. This is evidently a matter that falls within the ambit of the Rule 3(1) of Schedule 6 of Employment Act 1995 as amended and it is the Employment Tribunal which has exclusive jurisdiction to adjudicate on such matters, in the first instance.


The enforcement of the term of the Agreement by claiming back the expenses incurred' as money claim arising out of a potential breach of contract, where the 2nd Respondent can rightly be joined as a party can only be pursued once the breach of contract of employment is first established."


[14] I therefore find that the bonding agreement forms part of the contract of employment of the 1st Respondent and as such it is an employment related matter which falls within the exclusive jurisdiction of the Employment Tribunal as per the provision of Schedule 6 Rule 3(1).

[15] This appeal therefore fails and is dismissed accordingly.

[16] I award costs to the Respondents.

Signed, dated and delivered at Ile du Port on 24 July 2019.


Dodin J.

The seal of the Seychelles Supreme Court is circular with a double border. The outer border contains the text "SEYCHELLES SUPREME COURT" at the top and "SEAL OF THE SEYCHELLES SUPREME COURT" at the bottom, separated by a small star on the left. The inner circle features a central emblem, likely the national coat of arms of the Seychelles, which includes a palm tree and a bird.