

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC 692  
CA 13/2020  
(arising in ET 76/2019)

In the matter between

**SELBY YOUNG-KON**  
*(rep. by Mr. Guy Ferley)*

**APPELLANT**

and

**MONIRUL ISLAM**  
*(rep. by Mr. Kieran Shah)*

**RESPONDENT**

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**Neutral Citation:** *Selby Young-Kon vs. Monirul Islam (CA13/2020) [2021] SCSC 692*  
**Before:** G. Dodin  
**Summary:** Appeal against judgment of Employment Tribunal – whether finding of Tribunal ultra petita – whether there is requirement to comply with section 60(2) of Employment Act to invoke schedule 6 of the Act – Appellate Court’s treatment of appeal on facts.  
**Heard:** By written submissions  
**Delivered:** 20 October 2021

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**ORDER**

Since the provision of food was a term of the Respondent’s contract, the Tribunal had to make a determination and award when it became a live issue before it despite not having been formally pleaded. The Employment Tribunal did not err in that respect. The plea in limine therefore fails.

Section 60 and schedule 6 of the Act are not interdependent. Invoking schedule 6 of the Act without first meeting the provisions of section 60(2) is not necessary nor fatal to the process where there is no agreement on whether there was termination of employment.

The Appellant has not shown that the findings of the Tribunal on facts were so unreasonable and blatantly irreconcilable with the adduced facts that no reasonable Tribunal could have come to the same conclusion. This Court thus finds no reason to interfere and re-evaluate the facts laid before the Tribunal which had the further advantage of assessing the demeanour of the witnesses. All the grounds of appeal on facts are dismissed as not having met the threshold requirement for interference by this Court in the exercise of its appellate jurisdiction.

The appeal is dismissed in its entirety.

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**JUDGMENT**

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## DODIN J

[1] The Appellant being dissatisfied with the decision given by the Employment Tribunal on the 8<sup>th</sup> September 2020 has appealed to the Supreme Court of Seychelles against the said decision on the raising the following grounds:

- i. *The Learned members of the Tribunal erred in law in their pronouncement that notice in writing is not required for termination of employment by an employee:*
- ii. *The learned members erred in fact and in law in accepting and relying solely on the testimony of the Respondent with regards to the alleged abuses inflicted upon him.*
- iii. *The learned members erred in law is stating that the Respondent was justified in stooping work after it was discovered that there was a clear violation of his contract of employment and the emergence of serious allegation of abuse were brought to the attention of the Ministry of Employment.*
- iv. *The learned member erred in law in not relying on the documentary evidence that is the payslip which clearly stated that the Respondent was earning SR 8500 which at all times was in excess of the minimum wage.*
- v. *The learned members erred in law and in fact in finding that the Respondent has worked 12 hours overtime per month.*
- vi. *The learned members erred in law and in fact to in the absence of evidence conclude that the Respondent had worked on public holidays.*
- vii. *The learned members erred in law in fact in its finding that the Respondent is entitled to compensation for length of service and other benefits because they failed to appreciate that the Respondent has self-terminated his contract of employment.*

## **Submission of the Appellant**

[2] The Appellant made the following submissions in support of the grounds of appeal.

1. The Learned members of the Tribunal erred in law in their pronouncement that notice in writing is not required for termination of employment by an employee:
  - (i) Section 60 (10 (2) permits an employee to terminate his employment for reasons stated in the said section. But is its mandatory for the worker to inform his employer in writing and giving reasons for the termination. This was not done by the Respondent. The conclusion of the learned members of the Tribunal that “This would also apply to foreign workers many of whom do not speak or let alone write English and therefore to impose the requirement for notice in writing in its strict sense would only cause prejudice and an unfair advantage to the employer” is a manifestly erroneous interpretation of the law. The word shall denotes that the written notice is mandatory.
  - (ii) The Respondent was assisted by ARID personnel in making the allegation against the Appellant. They could have advised him to give the required notice to the Appellant. The Respondent had all the means to peruse his claim available. The Appellant never sought to have an unfair advantage over the Respondent. He had a contract with the Respondent to pay him a salary which he was performing since 2013.
  - (iii) Base on matters stated above this ground of appeal must succeed.
2. The learned members erred in fact and in law in accepting and relying solely on the testimony of the Respondent with regards to the alleged abuses inflicted upon him.
  - (i) The Respondent according to his testimony in 2013 he was so badly assaulted by the Respondent that he lost his hearing in the left ear. He did not show any evidence of the said injury not even medical report. Such an injury would have necessitated medical intervention if had occurred.

- (ii) He testified that he went back to his country and soon after his return to Seychelles he was assaulted again. It is to be noted that despite his claims of such horrific attacks he returned to Seychelles to work for the same employer, this is indicative that he was not telling the truth.
  - (iii) The matters mentioned in sub-paragraphs (i) and (ii) above shows that the Respondent was not a credible witness had he suffered so much abuses from the Appellant its more probably than not that he would have reported the incident to the authorities since 2013 and he would not have returned to the employment of the Appellant. The Respondent was not a credible witness, his evidence is at best exaggerated. It was held in Macraddie v Macraddie (2013) UKSC 58 (2013) 1WLR 2477 “It was a settled principle stated and restated in domestic and within common law jurisprudence that an appellate court should not interfered with the trial judge’s conclusion on primary facts unless satisfied that he was plainly wrong”. Based on matters aforesaid the Appellant submits that the learned members of the tribunal was wrong in their assessment of the evidence. And this ground of appeal must succeed.
3. The learned members erred in law in stating that the Respondent was justified in stopping work after it was discovered that there was a clear violation of his contract of employment and the emergence of serious allegation of abuse were brought to the attention of the Ministry of Employment.
- (i) The serious abuse referred to were mere allegation unsupported by any evidence. The Appellant repeats his submissions in grounds 3 and 4 and states that this ground of appeal must also succeed.
4. The learned member erred in law in not relying on the documentary evidence that is the payslip which clearly stated that the Respondent was earning SR 8500 which at all times was in excess of the minimum wage.
5. The learned members erred in law and in fact in finding that the Respondent has worked 12 hours overtime per month.

- (i) The evidence does not reveal that the Respondent worked 12 hours overtime per week.
- (ii) The Honourable Tribunal did not take into account that in any event the Respondent was paid SR 1000 per month as overtime. This is confirmed by the evidence adduced by the Respondent. Therefore from July 2016 to April 2019 he was paid a sum of SR 32,000. If the Honourable Court accepts that the Respondent indeed worked 12 hours of overtime per month assessed in the sum of SR 13,586.40 then this must be offset against the SR 32,000 which leaves an overpaid balance of SR 18,413.60.

6. The learned members erred in law and in fact to in the absence of evidence conclude that the Respondent had worked on public holidays.

7. The learned members erred in law and in fact in its finding that the Respondent is entitled to compensation for length of service and other benefits because they failed to appreciate that the Respondent has self-terminated his contract of employment.

- (i) The Appellant repeats his submission in paragraph 1 and 2.

[3] Learned counsel further submitted that it is trite law that a plea in limine litis may be raised at any time even on appeal. The Appellant now raise the following plea:

- (i) The award with respect to the food allowance must be set aside. This was not mediated at the mediation, with reference to the mediation certificate exhibit. Therefore it is *ultra petita*.

### **Submission by Respondent**

[4] Learned counsel made the following submission in reply:

- i. *Introduction*

The appeal arises from an Employment dispute, whereby the Respondent in this matter brought an action against his Employer for failing to respect the terms of his contract of employment and claiming his dues for overtime, annual leave and adjustment of salary. The Employment Tribunal awarded in the Respondents favour to which the Appellant seeks to appeal against the whole of the decisions on the grounds below.

The following submissions are made on behalf of the Respondent in response to the grounds raised by the Appellant.

ii. *The Law and Jurisdiction of the Employment Tribunal:*

The Employment Act under Schedule 6 (S 73A) Section 6 (7) stated that “*notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate*”. This power is additionally applicable in the Tribunal’s decision making powers as under the Act Schedule 6 (S73A) S7 it stipulates “*At the conclusion of the proceedings the Tribunal shall in addition to any other remedies provided under this Act, award compensation or costs or make any other order as it thinks fit.*”

Such provisions affords the Employment Tribunal an element of flexibility in regulating its proceedings and manner in which decisions are taken provided it “generally observes the rules of natural justice” (Rule 6 (b) of Schedule 6 to the Act).

The above provisions have been interpreted at length in case law whereby in the Supreme Court in *Ghaini v Cote D’or Lodge SC 2016* the Employment Tribunal was described to be “*not comparable to a court in the sense that it provides an informal setting where parties may represent themselves and put their case forward. Its rules of procedure should therefore be more relaxed than that of the formal setting of the court...*”

*Procedures should be adhered to as far as possible but viewed through the prism of an informal forum”*

This interpretation was further upheld by the Court of Appeal in *Dennis Verkhovobov v Beau Vallon Properties Ltd (SCA38/2017) [2020] SCCA 9 (21 August 2020)*, it was further elaborated on the fact that the Act’s phrase of “natural justice” is undefined but is derived from the rule of “*audi alteram partem*” relating to the right to be heard.

In the case of *MA & Sun Trading v Yadav Sudama (CA 19/2020) [2021] SCSC 417* the Learned Chief Justice further held that the Court must bear in mind the special nature of the procedural rules highlighted in the case of *Ghani*.

iii. *Grounds of appeal*

1. *The Learned Members of the Tribunal erred in law in their pronouncement that notice in writing is not required for termination of employment by employee.*

The Respondent submits that the Tribunal was correct in its assessment and interpretation of section 60 (2) of the Employment Act.

Under Schedule 6 Section 7, the Tribunal may give awards and their rationales as they think fit, provided it follows the rules of natural justice. Here the Tribunal at Paragraph 13 gave express reasoning as to why it interpreted Section 60(2) in such manner, namely:

*“I cannot accept that the notification in writing should be a strict application to all cases of termination under 60(2). The section of legislation was created as to protect workers whose rights were being violated or conditions of contract not respected... to impose the requirement in its strict sense would only cause prejudice and an unfair advantage to the employer.”*

The Tribunal rightly distinguished that Section 60(2) a and b to be sections not requiring notice, compared to section 60(2) c as it is only the latter that contains the caveat of informing in writing.

The Tribunal further held that in any event notification of the grievance in writing by the Ministry of Employment is sufficient Notice under the Act.

2. *The Learned Members of the Tribunal erred in fact and in law in accepting and relying solely on the testimony of the Respondent with regards to alleged abuses inflicted upon him.*

The issue is one of credibility. The Tribunal in their Ruling (Paragraph 12) states that “*The Appellant appeared truthful when he testified as to his conditions of work and abuse inflicted by his employer*”. The Tribunal further took into account that the Respondent Company was given opportunity to defend the allegations and yet produced no record to counter the claims, nor did the Director of the company testify to deny the allegations of abuse.

The Respondent submits the Tribunal did not omit the evidence of the Appellant as evidenced in paragraph 12 of the Ruling, rather found the Applicants testimony to be credible.

The Appellant at Paragraph 2 iii of his submission cites the case of *Macraddie v Macraddie (2013) UKSC 58 (2013)* stating an appellate court should not interfere with a trial judge’s conclusion on primary fact unless satisfied that it is plainly wrong. In the case of *MA & Sun Trading* the Learned Chief Justice imparted the importance that the Tribunal is in a better position to assess the demeanour and evidence of both parties at the time they gave evidence.

Paragraph 2 i to iii of submissions of the Appellant stipulates that the evidence of the Respondent cannot be deemed truthful as he did not show



evidence concerning the abuse faced. In sworn evidence the Respondent stated (Page 4 and 9 of the transcription of hearing dated 7<sup>th</sup> July 2020):

*“I went to employment, to the Police and Hospital. I made a statement to the CID. I wrote in my language stamped 11/04/20”*

This was substantiated by the Police statement namely Exhibit A3 which was adduced to indicate the fact that such statement was made.

Further the witness for the Appellant admits there had been a complaint filed at Page 5 and 9 of the transcription of hearing dated 7<sup>th</sup> July 2020:

*“The Police did come that evening as the Applicant had filed a complaint”*

The case at hand shows no evidence on appeal that the instant case is so improbable that no reasonable Tribunal would believe it (Akbar v R (SCA (Criminal Appeal) 5/1998)), and therefore would amount to no reason for the appellate court to interfere in the findings of the tribunal as was held in MA Sun Trading (paragraph 11)

3. *The Learned Members of the Tribunal erred in law stating that the Respondent was justified in stopping work after it was discovered that there was a clear violation of his contract and the emergence of serious allegation of abuse were brought to the attention of the Ministry of Employment*

The Respondent submits that the discovery of the violations of his contract was justifiable to terminate his contract without notice. The Respondent reiterates the arguments made in relation to Ground 1 of these submissions.

Further the Respondent avers that it was not solely the allegations of abuse that amounted to the violation of the contract. The Tribunal at Paragraph 14 of the Ruling stated:

*“The Tribunal accepts that the Applicant was justified in stopping work... Clear violation of his contract and emergence of serious allegations of abuse”*

The Respondent submits that the use of the word “and” in this matter distinguishes the various violations separate from the abuse. The Respondent submits the arguments iterated for Ground 2 of the appeal in that the allegations of abuse was substantiated enough for the Tribunal to make a finding on it. In respect to the other violations, the Tribunal found that he contract had been violated due to the failure to pay the statutory minimum wage (findings at paragraph 16 of Ruling), the admission of non-payment of overtime (paragraph 9 and 17 of the Ruling) and the admission of non –payment of public holidays (Paragraph 9 and 18 of the Ruling).

*4. The Learned Members of the Tribunal erred in not relying on documentary evidence that is the payslip which clearly stated that the Respondent was earning SR 8500*

The Respondent submits that the Tribunal did not fail to rely on the Documentary evidence of the payslip.

In paragraph 16 of the Ruling it is specifically agreed that the Payslip did in fact reflect the sum of R 8,500/-. It was based on the Appellants own testimony that the Tribunal found the full salary was not being paid as the R 8,500/- was calculated inclusive of food allowance and R1000/- overtime which are non-taxable payments meant to be separate from the base salary. At page 5 and 9 of the transcription of hearing dated 7<sup>th</sup> July 2020 the witness for the Appellant states:

*“the gross included food and overtime ... 30 minutes overtime fixed and paid as part of his salary”*

In Part 1(2) the Interpretation of the Employment Act establishes that 'wages' means "*the remuneration of earnings ... but does not include overtime work or other incidental purposes*". Section 42(1) additionally states that food allowance may be deducted from the workers wages where in excess of the national minimum wage. This was acknowledged by the Tribunal in paragraph 16 of the Ruling as to the fact that the amount of R8,500/- could not include the food allowance and overtime payments which would therefore place his salary paid at R 6,000/- which is below the statutory minimum wage.

Therefore, the Learned Tribunal did not omit relying on the documentary evidence, rather correctly assessed all evidence before it is finding that the Respondent was paid below minimum wage.

5. *The Learned Members of the Tribunal erred in law and in fact in finding that the Respondent had worked 12 hours overtime per month*

The Respondent submits the points as iterated in the paragraphs above concerning the Tribunals powers in deciding matters being more flexible so as long as it follows the principle of natural justice. The Employment Tribunal may conduct proceedings in whatever manner it considers most appropriate which extends to the assessment and adherence of relevant weight to the testimonials of parties.

The Appellant seeks to rely on the oral testimony that the Respondent was paid SCR1000/- as overtime. Section 36(2) of the Employment Act states where an employer fails to keep record of the payment and receipt of payment of wages to a worker [as per Section 36 (1) when a dispute arises concerning such payment and such receipts cannot be produced, a presumption that the payment has not been made arises against the employer.

The following extract of the Appellants testimony is admission that the Employer conceded that the Respondent worked over time and further that no record was kept:

*“I had no record” “Sometimes the Director would ask him to clean accommodation”*

Similarly in the case of *MA & Sun Trading*, where the tribunals finding based on overtime decided by the tribunal on Appellant and Respondents testimony was argued, it was held that the original tribunal has a better advantage in assessing the evidence before it, and without evidence to show that it was so improbable (*Akbar v R*), there was no need to overturn the decision.

The Respondent submits that the Tribunal did not erred in coming to the conclusion that overtime was owed.

6. *The Learned Members of the Tribunal erred in fact to the evidence to conclude that the Respondent had worked public holidays*

The Respondent submits that this ground cannot be upheld as the Tribunal did not solely rely on evidence of the Appellant in coming to the conclusion that the Public Holidays were worked. Admission of the Appellant’s witness in testimony, and written submissions were made acceding that the Applicant worked Public Holidays.

The Tribunal in its Ruling at paragraph 18 took into account admission made in the Submissions of the Respondent concerning public holidays whereby the final paragraph of submissions dated 27 July 2020 *“The Respondent is not disputing public holidays and annual leave”*

The Respondent reiterates the arguments as raised for Ground 5 in that where a dispute arises in respect of payment, if the receipts and records are

not kept and produced, a presumption that such sums have not been paid arises against the employer.

The Respondent submits that the Tribunal was correct in awarding dues owed for Public Holidays.

7. *The Learned Members of the Tribunal erred in law and in fact that the Respondent is entitled to compensation for length of service and other benefits because they failed to appreciate the Respondent self-termination his employment with the Appellant*

The Respondent submits the arguments raised under Ground 1 and 3 to the effect that there was no self-termination by the Respondent, rather that he was within full rights under Section 60(2) a and b.

The Respondent submits that the Tribunal was correct in its assessment concerning termination, and thereby the compensation and dues owed to him.

8. *Plea in Limine Litis raised that the Award for food allowance is Ultra Petita*

The Appellant seeks to raise a plea in limine litis in respect to the order made as to the food allowance as it was not claimed at Mediation.

In *Gaston Morin v John Pool & Anor (Civil Appeal SCA 08/2017) SCCA 11* the Court of Appeal held that where orders were made according to pleadings and evidence canvassed during the case, it cannot be complained that the order is ultra petita. At Page 2 and 3 of 9 of the transcription of hearing dated 7<sup>th</sup> July 2020 the Respondent states:

*“After I stopped work the Respondent did not give me my food allowance of R 1,500/- pm”*

*“I am asking ... food allowance R1,500/- pm from April 2019 until the end of this case”*

At Page 6 of 9 of the transcription the witness for the Appellant stated:

*“I am not aware when food allowance stopped”*

The matter of non-payment of food allowance was a live judicial issue before the Tribunal and a decision made on an ‘*unequivocal specific demand*’ (*MA & Sun Trading*) cannot be held as an error of the Tribunal.

Further Part II A Special Provisions Relating to Non-Seychellois Workers, under Rule 7 an employer of a non-Seychellois worker shall continue to provide such worker with food and shelter whilst the grievance is being dealt with by the competent officer and Tribunal. It is a right as of law and not needed to be claimed.

The Respondent humbly submits that the plea in limine litis be dismissed in that it is without merit.

- [5] Learned counsel submitted in conclusion that the findings of the Tribunal concerning termination of employment were justified. Learned counsel further concluded that due consideration was given to the evidence of both parties in arriving at its decision concerning all the matters of the case. Learned counsel concluded that the grounds of appeal and plea in limine litis are with no merit and should be dismissed.

### **Analysis by the Court**

#### *The law*

- [6] Section 60(1)(d), 60(2)(a) and (b) of the Employment Act state:

60. (1) A worker may terminate the contract of employment of the worker-
- (d) *in the case of a non-Seychellois worker, not being a casual worker or a worker on probation, with the period of notice specified in the contract, or where a period of notice is not specified, with one month’s notice.*

- (2) *A worker, other than a casual worker, may terminate the contract of employment of the worker without giving prior notice-*
  - (a) *where the employer is in breach of the contract with the worker and such breach justifies termination;*
  - (b) *where the employer acts in contravention of the Act and such contravention justifies termination;*

*but the worker shall inform the employer forthwith in writing of the termination and of the reason therefore and shall obtain from the employer the certificate of employment referred to in section 69.*

[7] The relevant provisions of Schedule 6 (S 73a): Employment Act (Employment Tribunal) provide:

*Schedule 6. 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.*

*4. Any person against whom judgment has been given by the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.*

*6. (6) The Tribunal shall before making any decision-*

- (a) afford the parties the opportunity to be heard;*
- (b) generally observe the rules of natural justice.*

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

7. *At the conclusion of the proceedings the Tribunal shall in addition to any other remedies provided under this Act, award compensation or costs or make any other order as it thinks fit.*

[8] Both learned counsel have rehearsed the relevant case laws applicable to the submissions and arguments raised by both parties. These are *Macraddie v Macraddie (2013) UKSC 58 (2013)*; *Akbar v R (SCA (Criminal Appeal) 5/1998)*; *Dennis Verkhorubov v Beau Vallon Properties Ltd (SCA38/2017) [2020] SCCA 9 (21 August 2020)*; *MA & Sun Trading v Yadav Sudama (CA 19/2020) [2021] SCSC 417*; and *Gaston Morin v John Pool & Anor (Civil Appeal SCA 08/2017) SCCA 11*.

[9] This appeal is based on law and facts. However only the two distinct issues of law are raised by the Appellant. These are the plea in limine litis in that awarding the Respondent food allowance being ultra petita; and whether the Respondent's failure to abide by section 60(2) was fatal to the procedures before the Employment Board in that respect. The remainder of the grounds although the Appellant state that they are based on fact and law only refer to factual findings by the Tribunal.

*Finding on Plea in limine litis.*

[10] The plea in limine litis was indeed raised at the eleventh hour but not as a ground of appeal. The doctrine of *non ultra petita*, meaning "*not beyond the request*" in Latin, means that a court may not decide more than it has been asked to or the court may not award more to the winning party than the winning party requested. Had there not been the enactment of paragraph (7) of Schedule 6 which states that "*At the conclusion of the proceedings the Tribunal shall in addition to any other remedies provided under this Act, award compensation or costs or make any other order as it thinks fit*", that ground of appeal could have succeeded without further consideration.



[11] It is however obvious that the legislature opted to give the Employment Tribunal powers additional to the existing common and civil law to award compensation or cost and make any further orders the Tribunal thinks fit. The award therefore is not ultra petita as the Tribunal is allowed to award additional compensation and make the necessary order it thinks fit. This does not mean that the Tribunal is not at all bound by the doctrine of ultra petita, but rather that on the determination of award and compensation, it is not bound entirely by the doctrine but has the discretion to determine whether all dues falling to be determined are determined whether the same has been pleaded or not. To that extent, Schedule 6 paragraph 7 limits the application of the doctrine of ultra petita as long as the issue under determination is the award of terminal dues.

[12] Furthermore, since the provision of food was a term of the Respondent's contract, the Tribunal had more reason to make a determination and award when it became a live issue before it despite not having been formally pleaded. The Employment Tribunal therefore did not err in that respect. The plea in limine therefore fails.

*Finding on application of section 60(2)*

[13] On the issue of section 60(2) learned counsel submitted that the interpretation of the word "shall" must be given its imperative value and not a discretionary value. The Tribunal gave the provision discretionary value and based on other factual evidence concluded that giving it an imperative value would have given an unfair advantage to the Appellant employer.

[14] Bryan Garner, the legal writing scholar and editor of *Black's Law Dictionary* wrote that *"In most legal instruments, shall violates the presumption of consistency ... which is why shall is among the most heavily litigated words in the English language."* According to *Black's Law Dictionary*, the term "shall" is defined as follows: *"As used in statutes, contracts, or the like, this word is generally imperative or mandatory. ... It has a peremptory meaning, and it is generally imperative or mandatory"*.(16 Jul 2015). However as the law settles, it does becomes obvious that the obligatory nature of shall may fail the requirement of fairness that the laws of a democratic society may require.

[15] Up to this stage the Appellant seems to have the upper hand and a good argument. I do not agree with the argument of the Respondent that the requirement only applies to section 60(2)(c) and not section 60(2)(a) and (b). The question to ask however is whether failure by the worker to issue the letter of termination to the employer or the failure by the employer to issue the worker with a certificate is fatal to the grievance procedure and application to the Tribunal.

[16] Paragraph 6(3)(1) and (2) provides the following in terms of initiating a matter before the Employment Tribunal and the jurisdiction:

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.*

The above provision is not dependent on the prior satisfaction by the worker or employer of section 60. If the provisions of section 60 had been successfully resolved by the litigants or the Competent Officer, then the Tribunal would have had no reason to make a determination on whether the termination was justified. The parties would have already exchanged letter and certificate and the only outstanding issue would have likely been the determination of award. It is therefore logical that when at the very core is whether there has been termination of employment at all, that matter falls to be determined by the Tribunal without first having the requirements of section 60 satisfied.

[17] It makes sense therefore for the Tribunal to conclude that out of the whole process of conducting the grievance procedure and hearing with full knowledge and participation of the Appellant employer was notice enough to satisfy any requirement of notice if it was so needed. Furthermore since the issuing of the letter by the Respondent worker and the issuing of a certificate of employment by the Appellant employer were reciprocal and both carried the word “shall” which neither party abided to torpedo this ground of

appeal. It can only lead to the conclusion that section 60 and schedule 6 of the Act are not interdependent. Hence invoking schedule 6 of the Act without first meeting the provision of section 60(2) is not necessary nor fatal to the process where there is no agreement on whether there was termination of employment.

*Finding on factual grounds of appeal*

[18] The remainder of the grounds of appeal are factual. All have been well rehearsed above by learned counsel for the Appellant and the Respondent and can be dealt with together. This very Court examined the issue of appeal on facts in the case of Citizens Engagement Platform Seychelles v Bonnelame (Civil Appeal 28/2019 2020 (28 December 2020)). The Court made reference to decided cases reproduced hereunder.

[19] The England and Wales Court of Appeal in Clydesdale Bank v Duffy [2014] EWCA Civ 1260 stated:

*“The Court of Appeal is not here to retry the case. Our job is to review the decision of the trial judge. If he has made an error of law, it is our duty to say so, but reversing a trial judge's findings of fact is a different matter.... persuading an appeal court to reverse a trial judge's findings of fact is a heavy one. Appellate courts have been repeatedly warned by recent cases at the highest level not to interfere with findings of fact by trial judges unless compelled to do so. This applies not only to findings of primary fact but also to the evaluation of those facts and to inferences to be drawn from them”.*

[20] The Supreme Court of Canada in Housen v Nikolaisen [2002] 2 SCR 235 further stated:

*“The trial judge has sat through the entire case and his ultimate judgment reflects this total familiarity with the evidence. The insight gained by the trial judge who has lived with the case for several days, weeks or even months may be far deeper than that of the Court of Appeal whose view of the case is much more limited and narrow, often being shaped and distorted by the various orders or rulings being challenged.”*

[21] In the case of McGraddie v McGraddie [2013] UKSC 58 [2013] 1 WLR 2477 Lord Reed quoted Lord Thankerton from the case of Thomas v Thomas 1947 SC (HL) 45; [1947] AC 484:

*"(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."*

[22] I have studied the records of proceedings of the Employment Tribunal and the judgment detailing the factual reasoning of the Employment Tribunal. I find no sustainable ground to support the contentions that the Tribunal misdirected itself on the facts. I also find no situation where the Tribunal decision on the facts were not sufficiently analysed and supported by evidence adduced before it. Without showing that the decisions of the Tribunal on facts were so unreasonable and blatantly irreconcilable with the adduced facts that no reasonable Tribunal could have come to the same conclusion, this Court find no reason to interfere and re-evaluate the facts laid before the Tribunal which had the further advantage of assessing the demeanour of the witnesses. All the grounds of appeal on facts are therefore dismissed as not having met the threshold requirement for interference by this Court in the exercise of its appellate jurisdiction.

[23] This appeal is therefore dismissed in its entirety.

[24] I award costs to the Respondent.

Signed, dated and delivered at Ile du Port on 20 October 2021.

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**G Dodin**

**Judge**