

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 138
MC09/2021

GENERATION TRANSPORTATION & LOGISTICS **Petitioner**

(PROPRIETARY) LIMITED
(rep. by Pesi Pardiwalla)

and

MINISTER OF FINANCE, ECONOMIC PLANNING **Respondent**

AND TRADE
(rep. by)

Neutral Citation: *Generation Transportation & Logistics (Proprietary) Limited v Minister for Finance, Economic Planning and Trade* (MA 09/2020) [2021] SCSC 138
..... (15th April 2021).
Before: Vidot J
Summary: Judicial Review; Application for Leave
Heard:
Delivered: 12th April 2021

ORDER

Application granted

RULING

VIDOT J

- [1] The Petitioner has filed an application in terms with Article 125(c) of the Constitution asking the Court to judicially review a decision made by the Respondent. The application for judicial review is in regards to eighteen (18) Toyota Glanza motor vehicles imported

into the country by the Petitioner, seven (7) of which were not released by the Respondent on grounds on insufficient satisfactory evidence to confirm that some payment for the vehicles had been made prior to a moratorium announced by the Respondent on the 07th April 2020. The Petitioner alleges that payment for the vehicles were made by bank transfers on the 19th March 2020, 31st March 2020 and 06th April 2020. The moratorium which was announced by the Respondent on 07th April 2020, purported to impose a ban on importation of vehicles including certain exceptions, such as where the importer has made a payment to its supplier before the 07th April 2021.

- [2] The Petitioner challenges the making of that moratorium as no law, order or notice was brought into force to give effect to that moratorium. The Petitioner therefore avers that the Respondent had no legal authority to impose the moratorium and in any case it could not operate to affect the determination of the Petitioner's application for permit to import the vehicles, which is alleged had been ordered prior to the moratorium.
- [3] The application for leave is made pursuant to Rules 5 and 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunal and Adjudicating Authorities) Rules ("the Rules"). Rule 6(1) provides that *"The Supreme Court shall not grant the petitioner leave to proceed unless the Court is satisfied that the petitioner has sufficient interest in the subject matter of the petition is made in good faith."*
- [4] Therefore, an application for judicial review undergoes a process comprising 2 stages; the leave stage and the merits stage. These are governed by the Rules. The rules applicable to the leave stage are couched in Rules 2 to 6. An application for leave is made ex-parte to a Judge who may determine whether or not to grant leave. At the stage the primary consideration of the Court is to satisfy itself that prima facie reasons exist in order to grant leave. Normally the Judge should grant it forthwith if it is arguable. If not, it is rejected and if it falls in between, an inter partes hearing is held. In fact the leave stage is the stage whereby the court weeds out any unarguable case. It makes no allowance for applications from busy bodies. It assesses whether the Applicant is in good faith and has locus standi, i.e sufficient interest in the matter. The concept of arguability also serves as a filter against useless and frivolous application. Leave is not granted unless the Applicant demonstrates

an arguable point. In **R v Secretary of State for Home Department, ex-parte Cheblak** [1991] 1 WLR 980 Lord Donaldson stated as follows;

"the requirement that leave is obtained before substantive application can be made for relief by way of judicial review is designed to operate as a filter to exclude cases that are unarguable. Accordingly an application for leave is normally dealt with on the basis of summary submissions. If an arguable point emerges, leave is granted and extended argument ensues upon the hearing of substantive application"

[5] I find that in this case the Petitioner has satisfied the Court that it has locus standi and the case is being prosecuted in good faith. The Petitioner has an arguable case. The Petitioner is directly affected by the non-release of the seven vehicles which the Respondent submits were imported in contravention of the moratorium. The Petitioner on its part counters that the moratorium does not have the force of law and the Respondent had no power to make the decision he did. This indeed is an arguable point. I do not find that this application is brought in bad faith.

[6] Therefore, I hereby accede the application. Leave to proceed is granted.

[7] I order that a copy of this Ruling and the Application are served on the Respondent.

Signed, dated and delivered at Ile du Port on 13th April 2021


Vidot J