

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2021] SCSC 364

CA 20/2020

In the matter between

**SILHOUETTE CRUISE LIMITED**

*(rep. by Mr. Joel Camille)*

**APPELLANT**

and

**ANDREW VERLAQUE**

*(rep. by Mr. Pesi Pardiwalla)*

**RESPONDENT**

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**Neutral Citation:** *Republic v Andrew Verlaque (CA 20/2020) [2021] SCSC 364*

**Before:** Vidot J

**Heard:** 24 June 2021

**Delivered:** 24 June 2021

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**ORDER**

Appeal dismissed

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**JUDGMENT**

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**Vidot J**

[1] The Appellant appeals against a Judgment of the Employment Tribunal delivered on 22<sup>nd</sup> October 2020. The Notice of Appeal was filed on file on the 11<sup>th</sup> November 2020. As the record of proceedings had to be prepared and served on parties, the Memorandum was only filed on the 23<sup>rd</sup> March 2021. The Respondent was in employment with the Appellant and his employment was terminated on 07<sup>th</sup> October 2019. The Appellant alleges that the termination was through mutual agreement but that is disputed by the Respondent.

[2] The Employment Tribunal in the Judgment of the 22<sup>nd</sup> October 2020 had ruled that the termination of the Respondent was not lawful. In fact, in referring to the **Domingue v Fish Tail**, had ruled that there is no provision in the Employment Act that provides for

self-termination of employment for failure to perform work. Apparently, the Respondent had refused to sign the so called letter of self-termination. The reason for termination of the Respondent's employment was on allegations that he was drunk on duty. Since the termination was held to be unlawful, the Employment Tribunal made the following awards;

- i. 21 days wage for October 2019 amounting to SR16,645.27;
- ii. Salary from November 2019 to January 2020 amounting to SR60,549.96, less tax.
- iii. Thirteenth month salary amounting SR23,000.00; and
- iv. Compensation calculated in line with Section 47(2) (b) from 23<sup>rd</sup> January 2019 to 23<sup>rd</sup> January 2020 at SR17,692.31.

This makes a total of SR117,887.54.

[3] It was agreed that Counsels would make submissions in writing with each Counsel being given specific dates for the filing of submissions. Counsel for the Respondent filed his submission on the 15<sup>th</sup> June 2021. However, up to the date of writing this Judgment, submission by Counsel for the Appellant has not been filed. This judgment was written, on 23<sup>rd</sup> June 2021.

[4] However, I have had the opportunity to read the grounds of appeal as per the Memorandum of Appeal. The have considered these grounds and the judgment of the Employment Tribunal. I have fully considered the submissions made by Counsel for the Respondent and I believe that this Court can make a determination of the appeal based on the documents available to Court.

[5] However, first I need to consider a procedural irregularity in this appeal. The matter was not raised by Counsel for the Respondent but I feel that it is important that I address it so that the Court is not embarrassed in the future by failure to tackle the issue. That concerns prescription. The Notice of Appeal was filed out of time. As I have stated above it was filed on 11<sup>th</sup> November 2020. The judgment of the Employment Tribunal

was delivered on 23<sup>rd</sup> October 2020. Therefore, the appeal was filed outside the prescriptive 14 days period.

[6] It was held in **Viral Dhanjee v James Alix Michel SCCC CP03/2014**, that “*applicants might be hurt when petitions or applications are dismissed due to legal technicality. But in the long run, rule of law would be hurt, if we allow some procedural irregularities to continue....*” In **Ratnam v Kumarasamy [1964] 3 ALL ER 933** it was held that “*rules of court must prima facie, be obeyed, and in order to justify a court extending the time which some step in procedure require to be taken, there must be some material on which the court can exercise its discretion*”. In this case such material was not made available to Court.

[7] This Court holds that it is important that procedural rules are adhered to. In this case, the Appellant did not even file a motion for leave to appeal out of time. Had there been such a motion, the Court would have given consideration to the reasons for failure to file the appeal within time. As it is the Court has no material on which extending the time for filing of Appeal out of time could be based. Therefore, I find that this appeal is not maintainable in law and I proceed to dismiss it.

[8] Nonetheless despite dismissing the appeal for procedural irregularity I shall briefly consider the Appeal itself. After a thorough considerations of proceedings of the hearing and the judgment of the Employment Tribunal, I also find that the grounds of appeal are not maintainable in law and I endorse the judgment of the Employment Tribunal.

[9] The Employment Tribunal was correct in finding that there are no provisions in the Employment Act that deals with self-termination for failure to perform work. The Employment Tribunal refers to Part II Section 2 paragraph (b) of the Employment Act that allows the employer to terminate for failure to report to work for a whole day on three or more days. This is a serious disciplinary offence and the Employer is granted the power to terminate the employee. This is not self-termination, S53 (4) of the Employment Act provides that “*whereas disciplinary offence is established, the employer shall decide on the disciplinary measure to be taken, and where such measure of termination is without notice, shall inform the worker of the same in writing with a copy*

*to the Union*". That implies that there is a duty on the employer to inform the employee of the termination in writing where termination is without notice. Furthermore, it should be remembered that Respondent did not accept this letter of termination. It is abundantly clear from the language of the letter that the intention was to terminate the Respondent despite being under the guise of a mutual agreement.

[10] This Court further notes that there was no one who testified to the Respondent being drunk or having consumed alcohol on duty on that particular day. The Respondent admits that he was unwell but there is no indicators that he was under the influence of alcohol. There not being an iota of such evidence, the Employment Tribunal was left with no option but to rule that the termination was unlawful.

[11] The Employment Tribunal made an award of compensation in line with Section 47 (2) (b) of the Act. Again, there was no evidence adduced that justifies the termination of the Respondent. The Respondent was employed on a fixed term contract. The computation of the Respondent's salary and the issue lawful date of termination was decided pursuant to S47 (2) (B) (11) and the case of **Bonnellame National Assembly of Seychelles CA06/2016**. The Respondent's case falls within the scope of that Section and the Respondent is owed compensation at the rate calculated and granted by the Employment Tribunal.

[12] The appeal is dismissed and the judgment of the Employment Tribunal upheld and I make no order as to cost.

Signed, dated and delivered at Ile du Port on 24 June 2021.

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M. Vidot

JUDGE OF THE SUPREME COURT