

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 607

CA 07/2020

(Appeal from Employment Tribunal in
ET 03/2020)

EBESOM M AGHOA YIM

(rep. by Brian Julie)

Appellant

and

GLORY SECURITY

(rep. by Nichol Gabriel)

Respondent

Neutral Citation: *Yim v Glory Security* (CA 07/2020) [2021] SCSC 607 (17 September 2021).

Before: Dodin J.

Summary: Salary in lieu of notice - Employment Act – Appeal out of time – plea in limine litis.

Heard: Written Submissions – 14 July 2021

Delivered: 17 September 2021

ORDER

Appellant did not apply for leave to file appeal out of time. Plea in limine lits succeeds. Appeal dismissed.

JUDGMENT

DODIN J.

[1] This is an appeal against part of the decision of the Employment Tribunal, basically, whether the Employment Tribunal should have awarded the Appellant one month salary in lieu of notice in addition to other awards granted in favour of the Appellant.

[2] The Employment Tribunal in its judgment concluded that the Appellant had not provided the Tribunal with the date when he received his letter of termination in December, 2019

and no record of overtime, the Tribunal could not grant the claim for one month salary in lieu of notice or for overtime claimed.

[3] The Appellant raised two grounds of appeal reproduced hereunder:

“1. The Employment Tribunal however took cognizance of the absence of the Respondent throughout the proceedings, failed to note that the notice of termination as produced by the Appellant remains uncontroverted by the Respondent, thus the benefit of doubt should have been in favour of the Appellant while the Respondent failed to challenge.

2. The Employment Tribunal failed, ignored and omitted to consider the claims of unpaid salaries for two months namely November and December 2019, payable to the Appellant and it is an error on the part of the Tribunal.

3. Relief sought from the Supreme Court of Seychelles

a) That the Judgment/ Ruling in the Employment Tribunal Board of Seychelles (ET 03/2020) dated 12th March is set aside and dismissed in that this Hon’ble Court be pleased to reverse the order of the Employment Tribunal, further order that the Respondent to pay one month salary in lieu of notice”.

[4] In his final submission, learned counsel for the Appellant made written submission as follows:

UNDISPUTED FACTS

The Appellant was employed by the Respondent as Security Officer on a fixed term contract from 24th April 2019. By an undated letter, the Appellant was informed of the termination of his contract of employment effective 4th January 2020 without notice. The Appellant initiated legal action against the Respondent claiming all terminal benefits including unpaid salary and

annual leave. Despite various notices the Respondent failed to put up appearance when the matter was scheduled for hearing. In the absence of a valid reason for the Respondent's absence, the Employment Tribunal proceeded to hear the ex-parte.

2. ABSENCE OF THE RESPONDENT

It is the Appellant's considered opinion that relevant "authorities" stipulate that the Court has the power and authority to proceed with a hearing when the defendant has deliberately absconded before the commencement of the proceedings. The authorities also show that although the Defendant has a right to be present at his trial and to put forward his defence, he may waive that right. Where that right is waived by the Defendant the Judge must then exercise his discretion as to whether the trial should proceed in his absence and to award all reasonable damages and benefits being claimed by the Appellant.

3. APPELLANT'S CASE

In the matter before the Employment Tribunal, the Appellant (then Applicant) made the following claims:

- i) One month's salary in lieu of notice*
- ii) 10 days annual leave*
- iii) Unpaid salary from 1st December to 3rd January 2020*
- iv) 11 days public holiday*
- v) Adjustment of salary as per minimum wage from May 2019 to December 2019*
- vi) Overtime*
- vii) SCR 2800 being unauthorised deductions from WIFI from 24th April 2019 to date.*

In the absence of a valid defence, the Employment Tribunal has to award all benefits being claimed by the Applicant. At paragraph 18 of the judgment, the Employment Tribunal states “the Applicant states that he was not paid his month’s notice...therefore we are at a difficulty to award him his relief” The Tribunal was wrong not to award this claim which represents one month’s salary.

4. CONCLUSION

The Appellant therefore prays the Honourable Court to award all dues claimed in paras 2 of grounds of appeal by the Appellant which interest and costs.

[5] The grounds of appeal and the submission are somewhat unclear as although the notice raises only the ground of payment of one month salary in lieu of notice, the memorandum of appeal seems to be challenging the whole decision. This is not further clarified in the Appellant’s submission.

[6] Learned counsel for the Respondent did not challenge the appeal on the merits. The Respondent objected to the appeal raising a plea *in limine litis* that the appeal was filed out of time without application for leave and without leave having been granted by the Court to file the appeal out of time.

[7] Learned counsel for the Respondent also filed the following written submission:

The Notice of Appeal has been filed out of time and is prescribed under the law and as such, it ought to be dismissed by the Court. The Employment Tribunal entered judgment in the case on the 12th March 2020 whereby the Appellant was denied the one month notice that he had been seeking from his employer, the Respondent.

The Appellant filed his Notice of Appeal on the 12th June 2020 which is clearly beyond the prescribed limit of fourteen days for filing of appeals from the Employment Tribunal to the Supreme Court. There has been no application to seek leave of the Court to file the appeal out of time.

An appeal from the decision of the Tribunal could have been filed within 14 days of it being delivered (viz section 4 of Schedule 6 of the Employment Act 1995 and section 6(2) of the Appeal Rules (1961) made pursuant to the Courts Act). Similarly, Rule 4 of the Supreme Court (Supervisory jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 provides that a petition for judicial review shall be made promptly and in any event within 3 months from the date of the order or decision unless the Supreme Court considers there is good reason for extending the period.

The same rules are applicable for appeals from the Magistrates Court to the Supreme Court and there is a delay of 14 days granted to lodge the Notice of Appeal. Any Appellant wishing to lodge an appeal beyond that fourteen-day period must file an application with supporting Affidavit to file such out of time.

On the 8th May 2020, an Act came into effect whereby the prescription period for all cases was suspended in view of the COVID pandemic. The commencement date began on the 20th March 2020 and it expired on the 25th May 2020. Essentially, the Appellant was granted more than sufficient time to file a Notice of Appeal, which he failed to do so. Technically, the Appellant had until the 26th March 2020 to file his appeal. This period was however suspended on the 20th March 2020 as stated above. By then the prescriptive period had started to run but for only eight days. It was made to start running again on the 25th May 2020. The appeal was filed on the 12th June 2020. He should have filed it on the 3rd June 2020 latest. He is out of time by 9 days.

There are several authorities on record where the Court have outlined reasons on why delays to lodge Appeals shall not be condoned. In the case of Commissioner of Police vs Antonio Sullivan case number SCA 26 of 2015, the Chief Justice stated clearly that good cause to be shown to grant or deny an extension of time would include:

- a. The length of the delay;*
- b. The reasons of the delay;*
- c. The chances of the Appeal succeeding if the Application is granted and;*
- d. The degree of prejudice to the Respondent.*

In the case of Ratnam vs Cumarasamy and another (1964) 3 AII ER 933 the Appellant was out of time to file its Appeal by four days only. Its application for time to be extended was denied. “The rules of court must, prima facie, be obeyed, and, in order to justify a Court in extending the time during which some step in procedure requires.”

In the case of Wilfred Richmond v/s Gilbert Lesperance case number CA 11 of 2017, the Court of Appeal rejected the Application lodged to Appeal out of time which was done after a period of 2.6 years. The Court of Appeal stated that there must be a finality to the initial decision and for this purpose there must be strict compliance with the procedural requirements setting out the time period for filing of Appeals unless the non-compliance is shown not be caused by the acts and omission of the Applicants and his Counsel.

In the case of Lise Church v/s Bernadette Boniface SCA 11 of 2017, the Court of Appeal reiterated the observations made by the court in the case of Wilfred Richmond v/s Gilbert Lesperance case number CA 11 of 2017.

In the case of Emilie Adonis and Antoine Adonis v/s Daniel Port-Louis SCA 29 of 2017, Justice Robinson dismissed the Application to pay Security for Cost out of

time in a dissenting judgment stating the reasons given in the case of Commission of Police v/s Antonio Sullivan case number SCA 26 of 2015.

It is humbly submitted therefore that the Appellant does not have sufficient valid reasons to appeal out of time.

[8] As submitted by learned counsel for the Respondent, the Employment Tribunal delivered judgment in the case ET/3/2020 on the 12th March 2020. Notice of Appeal was filed together with the grounds of appeal on the 12th June 2020, 3 months after judgment. As per paragraph 4 of Schedule 6 the Employment Act, an appeal against the decision of the Employment Tribunal shall be made following the same procedures as appeals from the Magistrates' Court.

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.

Under the Courts Act, Civil Appeal from Magistrates' Court, Rules 6

6. (1) Every appeal shall be commenced by a notice of appeal.

(2) The notice of appeal shall be delivered to the clerk of the court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorises the appeal.

Of Course the Supreme Court has inherent discretion to allow appeals out of time or to extend time for filing of appeal, but this has to be done upon application of the Appellant and upon the Court being satisfied that justice requires the extension of time or the filing and hearing of the appeal out of time.

[9] The Appellant never filed for leave and there is no order allowing this matter to be filed out of time. This being the case, the plea in limine succeeds. This appeal is therefore dismissed.

[10] I make no order for cost.

Signed, dated and delivered at Ile du Port on 17 September 2021.

Dodin J