

SUPREMECOURT OF SEYCHELLES

Reportable
[2022] SCSC 34
MC 100/2020

In the matter between:

Heliconia Grove Pty Ltd
(rep. by Mr. F. Elizabeth)

Applicant

and

Financial Assistance for Job Retention Committee
(rep. by Mr. S. Knights)

Respondent

Neutral Citation: *Heliconia Grove Pty Ltd v Financial Assistance for Job Retention Committee*
(MC 100/2020) [2022] SCSC 34 (20 January 2022)

Before: ANDRE J

Summary: Ruling – Petition for leave to apply for judicial review

Heard: 13 October 2021

Delivered: 20 January 2022

ORDER

The Petition for leave to apply for judicial review is dismissed, for having been filed out of time.

RULING

ANDRE J

Introduction

[1] This Ruling arises out of a petition for leave to apply for judicial review, filed on 18 November 2020 by Heliconia Grove Pty Ltd (“petitioner”). The Petitioner is a company registered in Seychelles, and carrying on business in the hospitality and tourism industry and is represented by Mr. Bernard Pool, an accountant by profession and a director of the Petitioner.

[1] The Respondent is the Financial Assistance for Job Retention Committee (FA4JR) a Committee established by the Ex-President of the Republic Danny Faure on or about 20 March 2020 to support private businesses, NGO's and self-employed persons to maintain their workforce during the economic recession caused by the Covid-19 pandemic. The scheme was administered by the Ministry of Finance, Trade, Investment and Economic Planning and a committee was established to process applications submitted for the financial scheme. The Committee was represented by its chairman, Mr. Patrick Payet, also the Secretary of State for Finance.

[2] According to the Petitioner, the committee's mandate was to:

a. review applications submitted by private businesses, non-governmental organisations which receive their funding directly through some tourism establishments with proper payrolls and, sole traders who are registered with the Seychelles Revenue Commission; and

b. provide help to non-governmental organisations and businesses to pay the salaries of their employees for the months of April, May and June 2020 in an effort to help retain jobs in the private sector.

Background of the Case

[3] On 18 November 2020, the Petitioner filed petition MC 100/2020 for leave to apply for judicial review, after having applied for financial assistance from the Respondent on 8 April 2020 and their financial application was refused.

[4] The Respondent's Counsel filed two objections to the Petition on 15 July 2021 namely that:

a. the petition offends rule 2 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules in that the petition is not accompanied by an affidavit; and

b. the petition offends rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules in that it was filed out of time;

[5] Rule 2 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (1995), provides for the practice and procedure of the Supreme Court in respect of applications.

[6] Rule 2(1) provides that an application to the Supreme Court shall be made by petition, accompanied by an affidavit in support of the averments set out in the petition.

[7] Rule 2(2) provides that the Petitioner shall annex to the petition, a certified copy of the order or decision sought to be canvassed and originals of documents material to the petition or certified copies thereof in the form of exhibits.

[8] Rule 3 provides that the petition under Rule 2 shall contain a statement of -

- (a) the name, address and description of the petitioner;*
- (b) the relief sought and the grounds upon which it is sought;*
- (c) the name and address of the petitioner's attorney at law, (if any);*
- (d) The name, address and description of the respondent or each of the respondents;*
- (e) a claim for damages, if any, and a prayer for costs."*

[9] The Petitioner initially filed application MC 100/2020 on 18 November 2020 as stated above. The application was titled "Notice of application for apply for judicial review". The name, address and description of the Petitioner was cited as Heliconia Grove Pty Ltd, a company registered in Seychelles bearing registration number 848768-2.

[10] The Petitioner outlined the factual background in a section titled 'the grounds on which the relief is sought', and in paragraphs 13 to 16 stated that:

- a. the respondent failed, refused or neglected to provide it with financial assistance under the FA4JR scheme;*
- b. the respondent's decisions mentioned in the petition (paragraphs 6, 8,9,10, 11 and 12) were manifestly and grossly unreasonable, unfair and unjust;*
- c. the respondent's decisions are without merit and justification;*
- d. the respondent's decisions are contrary to the rule of natural justice and liable to be quashed by the court by issuance of a writ of certiorari.*

[11] The Petitioner however fails to explain in what manner the decision by the FA4JR committee was unreasonable, unfair, and unjust, as well as on what basis it was without merit and justification and why the decision was contrary to the rules of natural justice.

[12] On 29 April 2021 the Petitioner filed an application for leave to amend the petition to include the Respondent's Chairman's name, Patrick Payet, as the representative of the Respondent in the proceedings in MA 92/21. The application for leave to amend the petition was filed together with an affidavit. Also attached was an amended notice of application for judicial review indicating that the FA4JR was represented by its Chairman Mr. Patrick Payet, but without an accompanying affidavit. The application for leave to amend the petition was granted on 19 May 2021 by Chief Justice R. Govinden.

[13] In objecting to the petition, the Respondent raised the argument that the petition filed was not accompanied by an affidavit in the petition for judicial review filed on 28 April 2021. In his submissions, Counsel for the Respondent states that:

a. the petition is not accompanied by an affidavit in contravention of Rule 2(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities Rules. Without the affidavit, Heliconia Grove Pty Ltd cannot prove its averments in the petition and the petition will need to be struck out. Further, FA4JR cannot respond to a petition that is not accompanied by an affidavit. Heliconia Grove was given an opportunity to correct its mistake and they failed to correct the error. Accordingly, the petition should be struck out.

[14] The Respondent seems to be referring to amendment application MA 92/21 filed on 29 April 2021, which sought to amend the name of the Respondent's representative. The application for leave to amend the petition was accompanied by an affidavit attested to by Bernard Pool. Also attached is an amended notice of application for judicial review, indicating that its chairman Patrick Payet would be representing the FA4JR. The 29 April 2021 amended notice was not accompanied by an affidavit, but in the main application MC 100/2020, the affidavit was included to the Notice of Application for judicial review filed on 18 November 2020. It is not clear whether the Respondent's Counsel is aware of the existence of the main application filed in 2020.

[15] While there is a slight issue with the format of the affidavit filed on 18 November 2020, in that it stipulates the names of the parties at the top of the document, where the affidavit continues below, this is a minor issue and it is not in my opinion a sufficient cause to strike out the application.

[16] The Respondent also raises the objection that the petition was filed out of time, he states that;

- a. *The petition was filed almost 10 months after Heliconia Grove Pty Ltd received the final decision of the FA4JR Appeals Committee. The FA4JR scheme ended a month before the petition was filed and Heliconia Grove Pty Ltd has not sought leave to file the petition out of time, and has also not given the Supreme Court any good reason for extending the period within which the petition shall be filed.*
- b. *The Respondent contends that the Petitioner needed to apply for leave to file its petition out of time and show very good reasons for filing the petition 10 months after receiving the final decision of the FA4JR Appeals Committee and for these reasons the petition should be struck out.*

[17] The sequence of events and correspondence between the petitioner and the FA4JR is outlined below:

- a. *Email to the Ministry of Finance dated 8 April 2020 – initial application to the FA4JR for financial assistance*
- b. *Email to the Ministry of Finance dated 22 April 2020– a reminder of email sent on 8 April 2020*
- c. *Letter from the Ministry of Finance dated 21 May 2020– informing petitioner that he was not eligible for assistance and that the committee had decided that the company had sufficient funds to cover wages for the month of April without jeopardising its existence*
- d. *Email to the Ministry of Finance dated 3 June 2020– Petitioners letter of Appeal to the FA4JR Appeals Committee*
- e. *Email from the Ministry of Finance dated 15 June 2020– correspondence informing the Petitioner that his appeal application had not been approved*
- f. *Email from the Ministry of Finance dated 2 July 2020– Letter from FA4JR informing the Petitioner that after a review and analysis by the Appeals Committee, they maintained that there were sufficient funds in his bank account to pay salaries for more than six months*
- g. *Email from the Ministry of Finance dated 6 July 2020– letter from FA4JR informing the Petitioner that his company was not eligible for*

assistance for the months of May and June 2020 since the Committee had determined that Company had sufficient funds to cover wages for those months without jeopardizing its existence

- h. *Email to the Ministry of Finance dated 9 July 2020* – Petitioners appeal for the months of May and June 2020
- i. *Email from the Ministry of Finance dated 10 August 2020* – a letter from the FA4JR to the Petitioner stating that after a review and analysis by the Appeals Committee, it was determined that the decision of the Committee would be maintained.

Legal analysis and findings

[18] In accordance with Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, a petition shall be made promptly and in any event within 3 months from the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made.

[19] From the timeline above, it is clear that the Respondent’s decision was issued on 10 August 2020 and the Petitioner *filed* its application on 18 November 2020. (Emphasis is mine).

[20] In his submissions the Petitioner’s counsel refers to the case of *Cointy v Beau Vallon Properties* (SCA 18/2013 [2015] SCCA 19) which provides guidance on how to calculate time for filing. He quotes what Macgregor PCA stated in this judgment i.e.:

“We must agree with the Judge that a proper interpretation of the law would be that time starts to run from the day mediation was concluded and not when the certificate of mediation was served on the appellant...”

[21] He draws the conclusion that in calculating the number of days the Petitioner had to submit its petition excluding public holidays as well as Sundays. Therefore, arguing that the Petitioner filed its notice of application to apply for judicial review together with its petition and affidavit eighty-four (84) days following the date stated on the Respondents decision.

[22] I disagree with the Petitioner’s counsel for the reasons outlined below.

- [23] Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules makes it clear that a petition shall be made promptly and within 3 months from the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made.
- [24] In the Interpretation and General Provisions Act, 1976, "month" means a calendar month. According to the Collins Dictionary a calendar month is the period from a particular date in one month to the same date in the next month.
- [25] The Petitioner received the final correspondence rejecting his claim from the Respondent, FA4JR on 10 August 2020. The petition for leave to apply to judicial review should have been filed within 3 months from 10 August 2020, and specifically on 10 November 2020. The Petitioner filed their application on 18 November 2020, 8 days after it should have been filed, meaning that the petition for leave to apply for judicial review was filed out of time.
- [26] Therefore, the Respondent's Counsel is correct in saying that the petition was filed out of time, but the calculation of the time to 84 days is incorrect, as is evident from the above. The Respondent seems to have missed the petition initially filed on 18 November 2020, since he only refers to the amended one filed on 29 April 2021.
- [27] This Court has given a number of rulings on the timely filing of judicial review applications and in *Labrosse v Chairperson of Employment Tribunal* (SCA 36/2012) [2014] SCCA 44 (12 December 2014), Twomey JA, as she was then, stated that:
- "Procedural rules must be followed for both appeals and judicial review applications.
... 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."*
- [28] The Petitioner did not apply to extend the time period within which the petition was made and on this basis this application ought to be dismissed.

[29] In reviewing compliance with the other requirements as set out in Rule 3 of the of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (1995) below, we have established that the Petitioner complies with most of these apart from item (b).

*“(a) the name, address and description of the petitioner;
(b) the relief sought and the grounds upon which it is sought;
(c) the name and address of the petitioner’s attorney at law, (if any);
(d) the name, address and description of the respondent or each of the respondents;
(e) a claim for damages, if any, and a prayer for costs.”*

[30] There is no doubt that the FA4JR was performing quasi-judicial functions as a committee established to assess and distribute 1.2 billion that was guaranteed by the Government to fund businesses in order to avert redundancies caused by the Covid-19 pandemic.

[31] Judicial review is a means by which the courts necessarily ensure that administrative bodies act within their powers as laid down by law rather than according to a whim or a fancy. The law of judicial review in Seychelles has adopted several grounds for judicial review namely: illegality, irrationality, and procedural impropriety, and the Wednesbury principle – reasonableness in decision making. The Petitioner fails to explain ex-facie the pleadings as to how the FA4JR’s decision was manifestly and grossly unreasonable, unfair and unjust, contrary to the rules of natural justice, as well as without merit and justification.

[32] He fails to provide sufficient grounds to support his claims, and neither does he provide any documentation on the criteria adopted by the committee, to extrapolate the manner in which the committee had acted in an unreasonable manner in the decision making. Such documentation would have been relevant in assessing whether the Petitioner indeed has a case fit for further consideration judicial review.

[33] Further, I note the case of *In Island Development Company v Marine Accident Investigation Board (MA90/2019, arising in MC19/2019) [2020] SCSC 37* Vidot J stated that;

“...An application for judicial review undergoes a process comprising 2 stages: the leave stage and the merits stage. ...

Therefore, it is a requirement that the court filters the application to satisfy itself that prima facie reasons exist in order to grant leave.”

[34] As is clear from the above, in addition to filing the petition out of time, the Petitioner did not provide sufficient grounds to support his application for leave to apply for judicial review.

Conclusion

[35] Following the above analysis and findings, it is clear that the petitioner filed the petition for leave to apply for judicial review 8 days out of time, and did not apply for an extension of the time period as clearly provided for by cited law and case law on the issue, and thus on that basis alone the application for leave is dismissed accordingly.

[36] No order is made as to cost.

Signed, dated and delivered at Ile du Port Victoria on the 20 January 2022.

ANDRE J