

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2022] SCSC 438

MA 165 of 2021

Arising out of MC 58 of 2021

In the matter of:

**Beau Vallon Properties**

*(rep. by Mr. S. Rouillon)*

**Applicant**

vs

**The Minister**

**Ministry of Employment and Social Affairs**

*(rep. by State Counsel Corrine Rose)*

**Respondent**

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**Neutral Citation:** *Beau Vallon Properties v The Minister, Ministry of Employment and Social Affairs (MA146 of 2021) [2022] SCSC 438*

**Before:** Andre J

**Summary:** Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules

**Heard:** 16 March 2022

**Delivered:** 30 May 2022

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**ORDER**

The application for leave for judicial review is denied.

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**RULING**

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**ANDRE J**

**Introduction**

[1] This Ruling arises out of an application dated and filed on the 19<sup>th</sup> July 2021, wherein Beau Vallon Properties (applicant/petitioner), prays for leave to seek judicial review of the decision of the Ministry of

Employment and Social Affairs (respondent) given on the 24 February 2021 and 15 April 2021.

- [2] The applicant/petitioner seeks leave to proceed with judicial review of the decision of the respondent taken by a Competent Officer. The decision in question allowed Steve Forte, the employee of the applicant/petitioner, to file a grievance with the respondent beyond the statutorily prescribed 14 days.
- [3] The respondent, by way of affidavit of Jules Baker (the Principal Secretary of the Ministry) dated 9 November 2021, objects to the application on the ground that the petition and affidavit (annexed to the application) do not disclose acceptable grounds for judicial review and for this court to grant an order of certiorari to quash the decision of the respondent. As such, the respondent submits that the application should fail.

### **Background and pleadings**

- [4] It is the contention of the applicant/petitioner that the employee had ample opportunity to lodge a grievance with the Ministry within the statutorily provided 14 days. Instead, the employee lodged a grievance several months out of time, on the basis that he was in Russia and because of COVID-19, he could not come back to Seychelles to do so in person. The applicant/petitioner further submits that the employee had an opportunity to file the grievance within 14 days given that he was already in touch with the respondent since May 2020 when he first queried about non-payment of salary. In addition to this, the applicant/petitioner argues that the employee could have used email to file his grievance rather than waiting until he physically got back to Seychelles. It is the contention of the applicant/petitioner that the employee should have given full reasons for the delay in filing his grievance, and further show that such as delay was in no way attributable to his fault. In support of these arguments, counsel for the applicant/petitioner relies on the authority of *Antoine v Minister of Employment Immigration and Civil Status and Anor* (CA 19/2018) [2019] SCSC 205 (07 March

**2019)** and *Petite Anse Development Ltd v Competent Officer & Anor (SCA 1/2013)* [2014] SCCA 46 (12 December 2014).

- [5] It is against this background that the applicant/petitioner applies to the Supreme Court, for the latter to exercise its supervisory jurisdiction as empowered by art. 125 (1) (c) of the Constitution of Seychelles. In particular, the applicant/petitioner seeks for judicial review of the decision of the respondent. Moreover, the applicant/petitioner seeks for an order certiorari to quash the decision of the respondent, confirming that the decision was filed out of time and therefore not complying with the requirements of the law.
- [6] The respondent's main submission as filed on the 16 March 2022, is that there are no acceptable grounds for granting judicial review in the petition and supporting affidavit of the 19 July 2021. In addition to this, the respondent submits that if the applicant/petitioner is challenging the decision that was made by the respondent, then the appropriate recourse is by way of appeal and not judicial review.
- [7] Notwithstanding the objection against the application, the respondent further highlights that the Competent Officer followed the procedures set out by the law while dealing with the grievance filed by the employee. To begin, the employee sought permission to file his grievance out of time, citing the reasons why he could not do so within the prescribed 14 days. From this, the Competent Officer proceeded to accept the reasons given by the employee and allowed for the grievance to be filed. Against this background, the respondent submits that their decision to allow the grievance to be lodged out of time and the reasons thereon were proper, justified, legal and reasonable in the circumstances. Moreover, it is the submission of the respondent that the decision taken by the Competent Officer was executed and arrived at in a procedurally correct manner.

### **Legal analysis and findings**

- [8] Respondent raises an objection to the effect that there are no acceptable grounds for judicial review in the petition and affidavit, and therefore the leave application fails.

[9] The pertinent questions to be determined at this stage in the light of the objection raised are as follows: -

- (i) the understanding of what judicial review is vis-à-vis an appeal;
- (ii) what the law and jurisprudence in Seychelles considers to be grounds for judicial review; and
- (iii) whether or not the applicant/petitioner raises acceptable grounds for judicial review.

[10] It is trite that both judicial review and appeal require a higher Court to review the decision of the lower Court or adjudicating authority. The distinction however, is in the nature of the review and the outcome therein. In appeal proceedings, the aggrieved party seeks a different outcome. Usually, this will require the higher Court to go through the facts and merits to bring about a different decision from that of a lower court or adjudicating authority. That is to say, the Court will go into the merits of the case.

[11] Judicial review on the other hand, assesses a decision making process on the submission by the applicant/petitioner that the process undertaken by a public authority or adjudicating authority was flawed (**see *Vidot v Minister of Employment (2000) SLR 77; and Vijay Construction v Ministry of Economic Planning and Development (2010) SLR 77***). It may be that the process (i) falls short of meeting required standards set out in the law; (ii) is irrational (or unreasonable) in the circumstances; or (iii) is procedurally improper. These are essentially the grounds for judicial review and are well established in case law. On this, see the cases of ***Chio v Tave (2011) SLR 157; Lotus Holding Company Ltd v Seychelles International Business Authority (2012) SLR 153; Cable and Wireless (Seychelles) Ltd v Department of Information Communications and Technology (CS 58/2019 and 59/2019) [2020] SCSC 254 (08 April 2020)***, among others. Each of these grounds for judicial review are explain below.

[12] Illegality is a ground of judicial review where one attacks the process' failure to meet standards set out in the law. In such an instance, and as brought about by the case of **(*Vijay Construction v Ministry of Economic Planning and Development* (supra))** there is an error of law on the face of the record.

- [13] A second ground of judicial review is irrationality or unreasonableness on part of the public or adjudicating authority. When relying on this ground, the applicant argues that the manner in which the decision was taken was unreasonable in the circumstances. The applicant argues that the public or adjudicating authority has acted irrational. A decision is considered irrational if it is “so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question could have arrived at it” per *Wednesbury* principle and cited in ***Linyon Demokratik Seselwa v Electoral Commission (2016) SLR 377; GCC Exchange (Seychelles) Limited v Seychelles Civil Aviation Authority (MC 35/2020) [2021] SCSC 691 (15 October 2021)***.
- [14] A third ground for judicial review is procedural impropriety. In ***Lotus Holding Company Ltd v Seychelles International Business Authority*** (supra), it was held that procedural impropriety includes the failure to observe the rules of natural justice or failure to act with procedural fairness.
- [15] Apart from the grounds explained above, another important contour of judicial review is the Court in such proceedings do not consider the merits of the decision, but only consider the legality, rationality or propriety of the decision in question (***Intershore Consult v Govinden (2013) SLR 469; Linyon Demokratik Seselwa v Electoral Commission*** (supra)). At the same time, the Court in judicial review proceedings do not substitute the decision of an adjudicating authority or public authority for a decision of its own (***Michel v Dhanjee (2012) SLR 258***).
- [16] Now, on a closer reading of the pleadings, the applicant/petitioner submits that they are aggrieved by the decision taken by the Ministry. However, counsel of the applicant/petitioner does not explain or point out how the decision making process of the respondent is illegal, unreasonable or procedurally improper such that it must be subjected to judicial review. In essence, the applicant/petitioner has not unequivocally stated at least one of the grounds of judicial review. On this basis, I am inclined to entertain the respondent’s objection set out in paragraph 16 of their affidavit in reply.

[17] The nature and form of a petition is clearly provided by the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 (Supreme Court Rules of 1995). There are three rules therein which I would like to draw attention to as follows: -

Rule 1 (2) reads:

*“(2) These Rules provide for the practice and procedure of the Supreme Court in respect of an application for the exercise of the supervisory jurisdiction over subordinate courts, tribunals and adjudicating authorities”*

Rule 2 further states that:

*“2. (1) An application to the Supreme Court for the purposes of Rule 1 (2), shall be made by petition accompanied by an affidavit in support of the averments set out in the petition.”* (own emphasis added)

And finally, Rule 3 reads as follows:

*“3. 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.”* (Own emphasis added)

[18] In essence, the Supreme Court Rules of 1995 set out the practice and procedure in instances where the supervisory jurisdiction of the Supreme Court is being invoked. Rule 2 cited above prescribes that the application should be made by a petition, which the applicant/petitioner in this case has done.

[19] Rule 3 further expands on the nature and content to be laid out in the petition. There are about five things required therein, including the relief sought and the grounds upon which it is sought. The relief sought and grounds upon which it is sought is where the petitioner

would, for example, state that they seek judicial review to quash the decision of a public or adjudicating authority on the grounds that the decision making process was marred by illegality, irrationality or impropriety.

[20] The petition before me only states that the **petitioner is aggrieved by the decision and is therefore seeking judicial review. The petition is mute on what grounds such a review is sought.** (Emphasis is mine).

[21] Based on the petition lacking in the grounds for judicial review, I am not satisfied that the applicant/petitioner has sufficient interest in the subject matter of the petition and that the petition is made in good faith as required by Rule 6 (1). With this, I find that the application/petition as drafted and filed cannot succeed for the purpose of leave to proceed.

**Conclusion**

[22] For the reasons stated above, I decline to grant leave for judicial review.

Signed, dated, and delivered at Ile du Port on 30 May 2022.

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**ANDRE J**

