

## SUPREME COURT OF SEYCHELLES

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### **Reportable**

[2022] SCSC ...  
CA 21/2021

In the matter between:

**JUNIA ALBERT & ORS**  
(*rep. by Mr. Guy Ferley*)

**Appellant**

and

**HILL VIEW RESORTS (SEYCHELLES) LTD**  
(*rep. Mr. Olivier Chang-Leng*)

**Respondent**

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**Neutral Citation:** *Albert vs Hill View Resorts (Seychelles) Ltd* (CA 21/2021) [2022] SCSC  
(21<sup>st</sup> July 2022)

**Before:** Esparon J

**Summary:** Preliminary objection

**Heard:** 5<sup>th</sup> April 2022

**Delivered:** 21<sup>st</sup> July 2022

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### **ORDER**

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The Respondent raised a preliminary objection to the fact that the Appeal has been lodge out of time. The preliminary objection is dismissed.

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### **RULING**

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**ESPARON J**

#### **INTRODUCTION**

[1] This is an Appeal against the Judgment of the Employment tribunal in case ET No 07 of 2020 delivered on the 10<sup>th</sup> August 2021. The Respondent filed a preliminary objection in the matter namely that the Respondent objects to the hearing of Appeal on the basis that it has been filed out of time and hence the Appellant are accordingly prescribed.

## **SUBMISSIONS OF COUNSEL**

- [2] On the issue of the preliminary objection, Counsel for the Respondent relied on Section 4 of Schedule 6 of the Employment act, Section 6 of the Appeal rules (S.I 11 of 1961) made under the Courts Act to the fact that the Respondent has 14 days from the decision of the Employment Tribunal to file a notice of Appeal in the Supreme Court.
- [3] Counsel for the Respondent further submitted that neither the Court of Appeal rules nor the Employment Act defines days in order to assist us in the computation of the time. Hence we have to take the computation of time as the normal calendar days instead of Court days. Learned Counsel for the Respondent submitted that because of this, we have to turn to the Interpretation and General Provisions Act for guidance.
- [4] Therefore Counsel for the Respondent relied on section 57 of the Interpretation and General Provisions Act and submitted that the effect of the said provision whereby one has to exclude the day that the event has happened and also we do not count the last day of filing the Appeal. He further submitted that public holidays and holidays under the bank institutions act are considered as excluded day under the said provision and as such if the last day for filing an Appeal falls on an excluded day, that day does not count and hence the final day would be the following day.
- [5] He further submitted that the provisions of the Interpretation and General provisions Act, should be read with the public holidays Act which defines what is a public holiday of which it is defined as a close holidays in all Courts of law, government offices and banks and shall be legal holidays for all persons throughout Seychelles of which Sundays are also considered as public holidays.
- [6] Counsel for the Respondent submitted that since the decision of the employments Tribunal was delivered on the 10<sup>th</sup> of August, 2021 and the Notice of Appeal was filed on the 31<sup>st</sup> of August 2021 of which the Notice of Appeal was filed 21 days after the decision was delivered. He further submitted that if we count the 4 excluded days being 3 Sundays and a public holiday the Notice of Appeal would have been lodged 17 days after the

decision of the Employment Tribunal was delivered and hence the Appellant is out of time.

[7] Counsel for the Appellant made similar submissions before the Court as regards to the law relating to the computation of time for filing the Notice of Appeal. However in addition Counsel for the Appellant relied on an amendment to the law namely the Civil Code of Seychelles Act Consequential amendment which provides that Saturdays shall also be considered as an excluded day. To this effect Counsel for the Respondent also conceded to the fact that as a result of the amendment Saturdays shall now be considered as an excluded day.

[8] Counsel for the Appellant further submitted that the Appellant was well within the prescribed limit of 14 days for filing the Appeal.

[9] **THE LAW**

Schedule 6, paragraph 4 of the Employment Act provides that ' Any person against who 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 Magistrate's Court.

S I 11 of 1961 as regards to the Appeal rules made under the Courts Act namely rule 27(1) which provides that 'where an Act allows an Appeal to the Supreme Court from an Order or decision of any commissioner or Tribunal or officer, the procedure of such Appeal shall be in accordance with such an Act and Regulation thereunder and subject thereto and in respect for the matter for which has not been provided for, in accordance with these rules.

Rule 6(2) of the Appeal rules made under the Courts Act provides that the Notice of Appeal shall be delivered to the Clerk of the Court within 14 days from the date of the decision Appealed against.

Rule 5 of the same Rules provides that any party desiring an extension of time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient.

[10] The above sections of the Law has the effect that an Appeal from the Employment Tribunal follows the same procedure as an Appeal in civil cases from the magistrate court to the Supreme Court and hence the Appellant has 14 days to file his Appeal in the Registry of the Supreme Court from the decision of the Employment Tribunal in default of which an Application must be filed to the Supreme Court asking for leave and as such the Court may grant such leave on any ground which Court considers sufficient.

[11] Since day is not defined in the Employment Act then we have to the turn to Interpretation and General Provisions Act in order to assist this Court in the Computation of time in filing an Appeal.

[12] Section 57 of the Interpretation and General Provisions Act provides the following;

- (a) a period reckoned by days from the happening of an event or the doing of any act or thing is exclusive of the day on which the event happens or the thing ;
- (b) where a period is expressed to begin or end at , on or with a specified day or to continue to or until a specified day, the period shall include that day;
- (c) where a period is expressed to begin after or to be from a specified day the period shall not include that day;
- (d) where the last day of a period is an excluded day, the period includes the next following day ( not being an excluded day; and

(e) where an act or proceeding may be or is required to be done or taken on a certain day and that day is an excluded day, the act may be done or the proceeding taken on the next following day (not being an excluded day)

[13] This Court takes notice that there was an amendment made to the Interpretation and General Provisions Act by (act 24 of 2021) in the Civil Code of Seychelles (Consequence of Enactment) Act, 2021. Section 4 of the said Act now defines excluded day as a Saturday, a public holiday, or a bank holiday declared under section 64 of the Financial Institution Act.

[14] The effect of the above provisions and amendment thereon is that Saturday, Sunday and public holidays are excluded days for the purpose of computation of time for the filing an appeal so is the day of the decision of the Court or Tribunal and the last day for the filing of an Appeal should not be counted for the purpose of computation of time in filing an Appeal to the Supreme Court from the Employment Tribunal.

#### **DETERMINATION**

[15] This Court notes that that the decision of the Employment Tribunal was delivered on the 10<sup>th</sup> of August 2021 and the Notice of Appeal has been filed on the 31<sup>st</sup> August 2021 which is 21 days after the decision of the Employment Tribunal. This Court has made the calculation and found that there are 7 excluded days including Saturdays, Sundays and public holiday during that period of which I am of the view that the Appellants have filed their Appeal 14 days from the said decision of the Employment Tribunal. Hence this Court finds that the Appellants were well within the prescribed time limit when they lodged their Notice of Appeal.

[16] As a result of the above paragraph 15 of this Ruling, the preliminary objection raised by the Respondent is hereby dismissed.

Signed, dated and delivered at Ile du Port on 21<sup>st</sup> July 2022.

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Esparon J