SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 903
CA 10/2021

JEAN JOSEPH MELLIE — **Applicant**
(rep. by Mrs. Amesbury)

and

THE MINISTRY OF EMPLOYMENT — **Respondent**
(rep. by Ms. Marie)

Neutral Citation: *Mellie vs The Ministry of Employment* (CA 10/2021) [2022] SCSC 903
Before: Dodin J
Heard: 07 October 2022
Delivered: 07 October 2022

JUDGMENT

DODIN J

[1] The Appellant Jean Joseph Mellie stands convicted before the Employment Tribunal of the following charge:

Statement of offence

Failing to produce or submit any record, document or return or furnish any information when required under this Act or by a competent officer, an offence under Section 76 (1) (a) and punishable under Section 77 (1) of Employment Act 1995.

Particulars of offences

Jean Joseph Mellie Trading As Jean Joseph Mellie Farm of Au Cap, Mahe, Seychelles, failed to submit a record, document or furnish any information when required under this Act or by a Competent Officer communicated in letters dated 4th November 2019, 18th November 2019 and 10th January 2020, by failing to submit a copy of contract of employment for Non Seychellois workers, signed pay slips for his workers for the month of January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019, August 2019, September 2019 and October 2019 and failed to submit an updated establishment list as required by the Competent Officer.

The Appellant was sentenced to a fine of SCR 4,000, in default of payment, to a term of 1 month imprisonment.

[2] The Appellant now appeals against the conviction raising the following grounds of appeal:

1. *The Minister of Employment through the Employment Tribunal (The Respondent) convicted the Appellant for a criminal case but failed to do so on the criminal standard of proof beyond reasonable doubt thus rendering the conviction unsafe and unsatisfactory.*

2. *The Respondent failed to prove beyond reasonable doubt that letters purportedly sent to the Appellant were actually sent to him through the production of a signed dispatch book proving same, relying instead on the General Provisions Act S55 (1) and (4).*

3. *The Respondent failed to satisfy itself that in the absence of proof beyond reasonable doubt that letters were actually written and received by the Appellant in the absence of testimony by authors of the letters.*

4. *The Respondent erred when it stated that the "presumption now shifts to the Appellant to prove that he did not receive service." This specific provision regards the shifting of the burden is specifically legislated in the "Misuse*

of Drugs Act" and not legislated in the present Act under which the Appellant was convicted. Therefore should not have been used to base a conviction on.

5. *The Appellant's right to a fair trial as guaranteed under the constitution was denied to him because as per the constitution it is the Respondent that bears the burden of proving an offence beyond reasonable doubt and not the Appellant who is not presumed to be innocent but is innocent until he pleads or is found guilty. Shifting the burden of proof on the Appellant violates his right to a fair trial.*

[3] The submission of learned counsel for the Appellant on each ground of appeal are summarised hereunder.

Ground 1.

[4] In the judgment delivered by the Employment Tribunal on 11th May 2021 it relied on the testimony of one Sylvestre Alvis to convict the Appellant for failure to produce or submit when required by a competent officer, that is an offence under section 76(1) (a) of the Employment Act and punishable under 77(1) of the Employment Act 1995. It is trite law that was brought by the Respondent to meet and discharge its legal burden. The only witness called by the Respondent was Mr. Alvis who admitted during cross-examination that he is not personally serve the Appellant with the documents that were sought, the standard to be maintained is Proof beyond reasonable doubt. So the question is what proof he admitted that documents were served on the Business premises of the Appellant despite knowing that the residential address of the Appellant was known to be at Cascade. The Witness also admitted that he did not have any proof that the letters were posted but he did not have the proof in his possession on the day of the hearing. This witness also admitted that we posted the letter through the post, but we have no proof of this in our position.

[5] On further cross-examination the Witness Alvis even admitted that although he visited the premises at Au Cap and met four non Seychellois Workers he did not even have their names and neither did he have any documentation to prove that they were the Appellant's workers.

I do not have their names in my possession. The witness went on to state that despite the report he had complied about the breaches of the Employment Act in regards to working hours and salary he had not received any complaints against the Appellant made by anyone. There was even an admission that there was no investigation as there was No investigation officer.

Ground 2:

[6] The evidence showed that at some point the Appellant contacted the Respondent but it was too late as the case had already been filed. In convicting the Appellant the Employment Tribunal relied on interpretation and General Provisions Act where a person may be served by or given by sending the letters by post to him at the usual and registered business address. It is submitted that the Respondent relied on this section despite the witness Alvis testifying that "we posted the letter through the post. But we have no proof of this in our position (possession)." It is submitted that in criminal cases the accused must be personally served there are no provision for substituted service or for service on the business address of the accused. It is submitted that in civil cases proof of posting is deemed to be proof of receipt but in the instant case there was no proof of posting which proof should have been on the criminal standard of proof beyond reasonable doubt therefore the Respondent erred to convict the Appellant on such evidence. Save in very specific criminal cases where the law reverses the burden of proof in a written law the Respondent cannot on its own do that and by doing so doing it acted illegally.

Ground 3:

[7] It is submitted that this ground has been addressed above and the evidence is quite clear that no other witnesses were called and it would appear that the Respondent did not take the case it brought against the Appellant to be appealed against hence the serious errors of law and evidence led.

Ground 4:

[8] It is submitted that the section of the law under which the Appellant was convicted does not reverse the burden of proof on the Appellant and neither does it raise the presumption permitting the burden to be shifted onto the Appellant to prove anything. It is trite law that in any criminal case the Accused/ Appellant has to prove nothing and his silence as per the constitution, cannot be used to infer guilt.

Ground 5:

[9] Article 19(10) (b) "Clause (2) (a) to the extent that the law imposes upon any person charged with an offence the burden of proving particular facts or declare that the proof of certain facts shall be *prima facie* proof of the offence or of any element thereof. For example under the Misuse of Drugs Act the possession of certain quantities of controlled drug shall be presumed to be for the personal use of the person unless the contrary is proved.

[10] Learned counsel hence moved the Court to allow the appeal and quash the decision (conviction and sentence) imposed on the Appellant by the Tribunal.

[11] Learned counsel for the Respondent objected to the grounds of appeal and made the following submission in respect of each ground of appeal:

Ground 1:

[12] This ground of appeal is entirely misconceived, unarguable and should therefore be dismissed. Respondent submits that it is neither here nor there whether the letters were not sent to the residential address of Mr. Jean Joseph Mellie. The case brought by the Ministry in the Employment Tribunal was one against the registered business owned by Mr. Mellie, namely Jean Joseph Mellie Farm. It was stated in the hearing that Jean Joseph Mellie Farm has its own registered address and, in these circumstances, service upon the registered business address was entirely appropriate and does not give rise to any issues on appeal. There is therefore nothing in this ground, and it amounts to no more than an attempt to re-run evidential matters on appeal, which is clearly not appropriate in the circumstances.

[13] The Respondent further submits that, although Mr. Alvis was not able to adduce certain documents during the hearing, this does not mean that the Employment Tribunal erred in law when coming to its decision. The oral testimony of a witness carries its own probative value and Mr. Alvis, being the author of the letters that were sent to the registered business of Mr. Mellie, testified that the letters were, as a matter of fact, sent by post. Moreover, Mr. Alvis gave oral evidence to the Employment Tribunal that he spoke to Mr. Mellie, who confirmed that he had received the letters. The Appellant has failed to demonstrate why the Employment Tribunal erred in preferring this evidence, which it was entitled to do.

[14] Lastly, the Respondent considers that the Appellant is wrong in his submission that there was no investigation officer in this matter. In respect of this argument, the Respondent submits that it is clear from the evidence before the Employment Tribunal that an investigation was carried out and that there was an investigation officer in this matter, namely Mr. Alvis. As can be seen from the record of the proceedings, Mr. Alvis clearly stated in cross examination that he was the competent officer carrying out the investigation and the routine inspection. Given this, it is clear that there was an investigation officer, such that the Appellant's argument on this is misconceived.

Ground 2:

[15] This ground is entirely misconceived for many of the reasons set out above. In the Respondent's submission, the Employment Tribunal was entitled to come to the finding that the letters had been sent, notwithstanding that there was no dispatch book proving the same. In the respondent's view, the Ministry did not prove its case beyond reasonable doubt and the evidence of Mr. Alvis that the Appellant acknowledged receipt of the letter is proof that this was the case. As to whether the Employment Tribunal erred in relying on Interpretation and General Provisions Act as to when service of the letter occurred, the Respondent submits that no such error was committed. The Employment Tribunal was entitled to rely on that Act in considering the question of when the letter of request was actually served upon the Appellant. No error has been shown in this ground of appeal and, as such, it should be dismissed.

Ground 3:

[16] This ground is misguided as the witness who gave testimony was the author of the letters sent to the Appellant. Mr. Alvis, on page 2 of the court proceedings dated 24th November 2020 in the last paragraph, stated "this letter was sent via Post, I recognise the letter, 4 November 2019 dated. I wrote the letter and signed it". The same position is reiterated for the letters exhibited as A5 and A6. Based on the factual error made by the Appellant this ground of appeal should be dismissed. Moreover, Mr. Alvis gave evidence as to the fact that the Appellant received the letter.

Ground 4:

[17] The Respondent submits that the Employment Tribunal did not err in its requiring the Appellant to demonstrate that the Ministry had not served the letter of request upon him. The evidence that was led by Mr. Alvis was that the letter was sent and that the Appellant acknowledged receipt (see above). To the extent that the Appellant sought to deny receipt, he had to demonstrate to the Employment Tribunal that his evidence was to be preferred. In the Respondent's view, this does not demonstrate an error on the part of the Employment Tribunal. It is submitted that based on the above points this ground should be dismissed.

Ground 5:

[18] There is no dispute as to whether the Constitution of Seychelles guarantees the right to a fair and public hearing, with a person being innocent until they either (i) are proved to be guilty, or (ii) plead guilty in a particular matter. The Respondent submits that his right was not breached in this matter. The Appellant, contrary to what has been pleaded, was given a hearing by the Employment Tribunal, in which he was able to cross-examine the witness and he was allowed to submit his evidence. The Appellant opted not to testify and to only make submission to close his case; this was a matter for him, but does not in any way point to a violation of a fundamental right. Moreover, whilst it is noted that the Appellant seeks to rely on the Misuse of Drugs Act, the Court should note that this is not the only law where an accused person has the burden of adducing evidence on specific facts in issue (evidential

burden). There are implied and express statutory exceptions whereby the accused will need to prove particular facts in issue.

[19] Learned counsel concluded that based on the law and facts of this matter and having regard to the grounds of appeal advanced by the Appellant, the Appellant was given a fair trial by the Employment Tribunal. He was allowed to attend the hearing, to cross-examine the witness and to produce his evidence. Having the evidential burden of demonstrating that he did not receive the letter of request was not a miscarriage of justice in circumstances where evidence had been adduced that he was sent, and acknowledged receipt of, that letter of receipt. The application of the Interpretation and General Provisions Act as a means to determining when service was effected by the Respondent was well within the Employment Tribunal's powers and does not demonstrate an error on the part of the Tribunal. Learned counsel moved the Court to dismiss the appeal.

[20] The relevant sections of the Employment Act under which the Appellant was convicted are section 76(1)(a) and section 77(1).

> *"76. (1) A person who--*
>
> *(a) fails to produce or submit any record, document or return or furnish any information when required under this Act or by a competent officer;*
>
> *.....*
> *is guilty of an offence."*
>
> *"77. (1) A person who is convicted of an offence under section 76, other than an offence specified in subsection (2) of this section, is liable to a fine of R. 20,000".*

[21] All the grounds of appeal are interlinked and need not be treated separately. Section 76(1)(a) of the Employment Act is clear and unambiguous. It cannot be disputed that the request by the Respondent for information required by law was not within the purview of the Respondent's mandate. Indeed that was never in contention and has not been raised in this appeal. The grounds of appeal are more or less focussed on; 1) the standard of proof

(grounds 1 to 5); 2) the burden of proof, (grounds 4 and 5); and 3) service of documents or request, (grounds 2, 3 and 4).

[22] I respect of the standard of proof, it is indeed trite law that the standard of proof in criminal matters unless otherwise restricted by statute remains proof beyond reasonable doubt. One must keep in mind that proof beyond reasonable doubt does not mean proof beyond all doubt or beyond a shadow of doubt. The law does not required a sealed, airtight and cast-iron frame encasing an accused in order to secure a conviction. It is sufficient that the case has been proved to a sufficiently high degree of certainty by the prosecuting authority and if the accused defence does not cast reasonable doubt affecting the cogency of the prosecution's evidence, conviction usually ensues.

[23] Furthermore, the prosecution authority, which has carriage of the case is not required produce before Court every single document or testimony or exhibit in order to secure a conviction. It only needs to adduce what it believes is sufficient to establish guilt beyond reasonable, which decision on the adduced evidence is made by the Court or Tribunal. The complexities of the charge or evidence would usually determine how much evidence is required and the risk of not meeting the legal threshold lies on the prosecuting authority.

[24] In this case, the witness for the Respondent. Mr Alexis, testified that documents were requested from the Appellant. The witness had personal knowledge, not only of the requests but also that the Appellant subsequently complied but after the deadline had passed and hence the offence had already been committed. The issue of whether it was served personally on the Appellant or at his business address is irrelevant so long as he had been served. The Appellant admitted that he had knowledge of the requests and that eventually he co-operated in supplying the information, albeit after the requested deadline.

[25] As rightly pointed out by the Employment Tribunal, section 55(1)(a) and (4) of the Interpretation and General Provisions Act provide:

> *"55. Service of documents and notices*

(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of an Act, may be served or given

(a) in the case of an individual (except where paragraph (b) or (c) applies), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business;

.....

(4) Where a document or notice is sent by post pursuant to subsection (1), service or notice shall be deemed to have been effected or given, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post"

The Employment Act does not require any proof of service or record or receipt as submitted by the Appellant. Lack of record or receipt is not fatal or an impediment to proof. It is also not sufficient to raise reasonable doubt in the prosecution's case without more supporting evidence by the Appellant which was not forthcoming. I therefore see no error on the part of the Tribunal to conclude beyond reasonable doubt that the Appellant was appropriately served documents in question.

[26] Linking the above to ground 5, it is obvious that the Tribunal was satisfied that the Respondent had established its case beyond reasonable doubt and it was up to the Appellant in defence to put forth sufficient evidence to the contrary, which he failed to do. The burden of proof remained on the Respondent throughout. The requirement for the Appellant to meet the exigencies of section 55 (4) of the Interpretation and General Provisions Act did not shift the burden of proof onto the Appellant.

[27] Consequently, I find no merit in any of the 5 grounds of appeal. I affirm the conviction and sentence of the Appellant. I dismiss the Appeal in its entirety.

Signed, dated and delivered at Ile du Port on 07th October 2022

Dodin J

Judge of the Supreme Court