

SUPREME COURT FO SEYCHELLES

Reportable
2022 SCSC ...
MC27/2021

In the matter between:

GREGOIRE’S COMPANY (PROPRIETARY) LIMITED
(rep. by Olivier Chang Leng)

Petitioner

and

THE ATTORNEY GENERAL
(rep. by Lansinglu Rongmei)

Respondent

Neutral Citation: *Gregoire’s Company Ltd v Attorney General* MC27/2021 [2022] SCSC
10 November 2022

Before: J. Dodin

Heard: Written Submissions

Delivered: 10 November 2022

RULING

DODIN J

[1] This is a Petition for the exercise of supervisory jurisdiction pursuant to rule 2 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules.

[2] The brief facts giving leading to the filing of this Petition are that one Brigitte Payet filed an application out of time claiming unfair dismissal, ill-treatment and unpaid salary by the Petitioner before the Ministry of Employment, Immigration and Civil Status. The said Miss Payet gave the reason for filing her grievance outside the prescribed 14 days period as having been in poor health. The Competent Officer accepted her reasons and allowed

the grievance to be filed out of time. The Petitioner objected to the decision of the Competent Officer and appealed the same raising several issues which tend to show that the reasons given by Miss Payet were false since during the period she is alleged to have been of ill-health she was seen at a party, she appeared before Court and the Registration Division in other matters. On appeal, the decision to allow the grievance to proceed out of time was maintained.

[3] The Petitioner then filed for judicial review of that decision raising the following grounds:

1. *The Decision was procedurally improper in that:*
 - a. *It did not state the reasons why the failure to register the grievance out of time was not the fault of the Complainant;*
 - b. *It did not disclose the evidence used by the Complainant to justify her application to register the grievance out of time thus denying the Petitioner an opportunity to have all the facts and evidence for the Appeal.*
2. *The Decision was unreasonable in that it failed to give comprehensive and clear reasoning for the outcome reached, simply stating arbitrarily that the ‘circumstances surrounding the delay are not all due to the fault of [the Complainant]’ without delving into what those circumstances are.*
3. *The Decision was irrational in that the Petitioner attached clear evidence to the Appeal of the Complainant’s disingenuity about her personal circumstances and health which affected her ability to file the grievance within time, but this was not considered or addressed whatsoever by the Respondent in the Decision or at all.*

[4] The Petitioner moves the Court for the following remedies:

- a. *to grant the Petitioner leave to proceed with this Petition;*

- b. *to direct the Respondent to disclose to the Petitioner all records and documents related and incidental to the Decision;*
- c. *to issue a writ of certiorari quashing the Decision;*
- d. *to make any order it deems fit and appropriate in all the circumstances of this case; and*
- e. *costs.*

[5] The Respondent objected to the petition for judicial review raising the following grounds of objection:

1. ***Non-joinder of party:*** *That the petition is bad for non-joinder of necessary and directly affected party. Ms. Brigitte Payet (the Complainant), General Manager of La Digue Island Lodge and an Executive Director of Gregoire’s Company (Pty) Ltd. who has lodged a grievance against the Company/Petitioner herein of unfair dismissal, ill treatment and unpaid salary at the Employment Department, Ministry of Employment, Immigration and Civil Status on the 8th September 2020 is not arrayed as a party to this petition. Secondly, the directly affected party is the Complainant Ms. Payet who will be directed affected or have a bearing by the outcome of this proceeding. The instant petition therefore must be dismissed for non-joinder of necessary and directly affected parties at the very outset.*
2. ***Bad faith:*** *The non-joinder of the Complainant by the Petitioner in a Judicial Review Petition that will have a direct effect on her and her grievance against the Company is Bad faith warranting rejection of leave to proceed with the Judicial Review.*
3. ***Breach of Rule 6(1):*** *By this deliberate action of not joining the Complainant as party to this petition, the Petitioner has failed to satisfy the Court that there is no bad faith in instituting the instant petition or in*

other words that the petition was made in good faith as per **Rule 6(1)** of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules.

4. **Breach of Rule 2(2):** That Rule 2(2) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules mandates a certified copy of the decision/order that is sought to be canvassed, be annexed to the Petition. There is no certified copy of the impugned decision being canvassed annexed to this instant petition. On this breach of Rule 2(2) itself the petition must be dismissed.

5. **Reasonableness in decision making and no procedural impropriety:** Both parties were given equal opportunity to be heard, adduced relevant evidence before the Employment Advisory Board and on being satisfied passed its Ruling/Annexure R/5 and advised the Minister accordingly. Thereafter, the Minister on careful consideration of the appeal, relevant evidence adduced and on the advice of the Employment Advisory Board upheld the Decision of the Competent Authority to condone delay and registered the Grievance. Reason is given in arriving at the impugned Decision that the circumstances surrounding the delay are not all due to the fault of Ms. Payet. Therefore, the impugned decision of the Minister is not unreasonable, unjustified, irrational, arbitrary or illegal nor was the Petitioner denied its right to natural justice or any prejudice caused. The Respondent also acted within its mandate and committed no procedural impropriety.

6. **Good Faith and Arguable case (Rule 6):** An application for Leave for Judicial Review under Rule 6(1) Supreme Court (Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules must fulfil two steps test, firstly, the Applicant must show that it has sufficient interest in the matter and secondly, that the

application is made in “good faith” by satisfying the Court that the issues raised in the application are arguable.

The impugned Decision of the Minister upholding the Decision of the Competent Officer was not challenged by the petitioner at the first instance but participated in the Proceeding in MED/W/D/2020/166 before the Competent Officer. The mediation to bring about a settlement failed and the Competent Officer issued certificate in accordance with Section 61 (1D) of the Employment Act, 2008 as evidence that both parties have undergone the mediation process.

That upon issuance of such certificate by the Competent Officer an aggrieved party in accordance with Section 61(1E) of the Employment Act, to a grievance shall bring the matter before the Tribunal within 30 days if no agreement has been reached at mediation. However, the petitioner chose not to abide by the provision under Section 61(1E) of the Employment Act and instead of bringing the matter before the Tribunal in accordance with Section 61(1E) of the Employment Act, 2008, filed this instant Judicial Review against the Decision of the Minister at the belated stage.

- 7. Consideration for Grant for Leave:** *In terms of Rule 6(1) Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, leave shall be granted only if the applicant satisfies the Court that it has not only sufficient interest in the subject matter but also that the application is filed in “Good Faith”.*

In term of Rule 15 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, the Hon’ble Court may on the application of any parties dismiss the

application where the party fails to comply with the requirements set out in the proceeding Rules.

[6] Learned counsel for both parties made lengthy submissions in support of their respective case.

[7] Article 125 of the constitution of the Republic of Seychelles provides:

125. (1) There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have -

(a) original jurisdiction in matters relating to the application, contravention, enforcement or interpretation of this Constitution;

(b) original jurisdiction in civil and criminal matters;

(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction; and

(d) such other original, appellate and other jurisdiction as may be conferred on it by or under an Act.

[8] Rule 2 (2) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules states that:

“(2) 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.”

At this stage the Court is concerned with whether the Petition discloses an arguable case, has sufficient interest in the matter to be determined, the Petition is made in good faith and generally in accordance to the rules of the Supreme Court.

[9] I shall start with the breach of rule 2(2) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules and non-joinder of the complainant as a party. This Court considered both these same issues in the case of GCC Exchange (Sey) Ltd v Seychelles Civil Aviation Authority (MC 35/2020) judgment delivered on 15th October 2021 in which the Court also made reference to the case of Tornado Trading v PUC & Anor (Civil Appeal SCA 35/2018) [2018] SCCA 45. The Court accepted the argument of the Petitioner which submitted in GCC Exchange that;

“While Rule 2 (2) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules does provide for certified copies of the decision and other material documents to be annexed to the Petition, ... the breach of the rule is not fatal and that, in this case, it is excusable insofar as there is no dispute between the parties as to the nature and content of the decision sought to be reviewed.”

As there is no contention as to what decision is being contested and why, the production of a certified copy of it would only be for formality's sake. It would be a sad day when an unnecessary formality becomes an obstruction and leads to the denial of justice.

[10] Secondly, the complainant in the employment case has in fact applied to intervene and is now a party to the proceedings as intervener. A decision therefore on whether the non-joinder of the complainant is now academic. As per Lord Bridge's dictum in Lloyd v McMahon [1987] AC 625,

"the rules of natural justice are not engraved on tablets of stone".

Having rejected these 2 objections as not fatal to this Petition, the argument that these 2 infringements are evidence of bad faith on the part of the Petitioner is substantially weakened. Since these were the grounds upon which the averments of bad faith emanated from it would be simply fair for this Court be appraised of the merits of the Petition for a considered decision on bad faith to be given. Hence the Respondent is not precluded from raising this issue again should the case go to hearing on the merit and substance of the Petition. The same applies to ground 5 of the objection, namely the consideration of the

reasonableness in the decision making and whether there was procedural impropriety proved by the Petitioner. These are not matters to be determined at leave stage.

[11] The final issue left to be determined in this case is whether the Petitioner has an arguable case. This relates to whether the Petitioner has sufficient interest in the matter at hand and whether the Petitioner has come for judicial review in good faith. Good faith has already been addressed above. The Petitioner is the Respondent in the Employment case filed by the intervener. A decision on the matter would certainly affect the Petitioner, whether positively or negatively as the complainant, employer. . It cannot be said therefore that the Petitioner has insufficient interest in the matter.

[12] Consequently, I find that there is sufficient grounds for leave to be granted for judicial review. The objections are dismissed with the stipulation that the Respondent shall not be precluded from revisiting matters pertinent to the merits and substance of the Petition.

Signed, dated and delivered at Ile du Port on 10th November 2022

Dodin J