

## SUPREME COURT OF SEYCHELLES

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### Reportable

[2021] SCSC 50  
MC 51/2021

In the matter between:

**UNIVERSAL COMPUTERS (Pty) LIMITED**  
(rep. by Shamougasundaram Pillay )

**Petitioner**

and

**THE ATTORNEY GENERAL AT THE  
INSTANCE OF THE MINISTRY OF**

**EMPLOYMENT AND SOCIAL AFFAIRS**

**Respondent**

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**Neutral Citation:** *Universal Computers (Pty) Limited v The Attorney General at the instance of the Ministry of Employment and Social Affairs* (CS No. 51 of 2021) [2023] SCSC 50 (30 January 2023)

**Before:** Andre JA (sitting as a Judge of the Supreme Court)

**Summary:** Application for the exercise of supervisory jurisdiction under section 125 of the Constitution

**Heard:** 15 November 2022 (last sitting to fix Judgment date)

**Delivered:** 30 January 2023

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### **ORDER**

The Court makes the following orders:

The Petition is hereby dismissed and no order is made as to costs.

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### **RULING**

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**ANDRE JA**

## **Introduction**

- [1] This Ruling arises out of a petition filed on the 1<sup>st</sup> of July 2021 on behalf of the Petitioner in this matter. In this petition, the Petitioner filed an Application for the exercise of Supervisory Jurisdiction under Section 125 of the Constitution. The Petitioner seeks a writ of Certiorari to quash the decision of the Respondent and for any order or orders that the Court deems fit in the circumstances of the case.

## **Background of Case**

- [2] The Petition is supported by an Affidavit and supporting documents by which the Petitioner who is being represented by Mr Shanmougasundaram Pillay in his capacity as Director made averments that it is a company incorporated under the Companies Act and it is licensed to sell and to provide services relating to computers and information technologies. Mr Koteeswaran Shanmugam hereinafter referred to as the employee was employed by the Petitioner for two years beginning on 2 July 2014 and ending on 1 July 2016. The gainful occupation permit lasted for 2 years and the employee left the jurisdiction of Seychelles after the end of his contract on 17 September 2016.
- [3] That all salaries and benefits due to the employee at the end of his contract were paid. That the employee later returned to the jurisdiction under a new gainful occupation contract permit to work for another company. Since then, the Petitioner was notified by a competent officer that the employee had filed a grievance with the Ministry by way of a letter dated 24 February 2021.
- [4] That the Petitioner, through a letter dated 1 March 2021, queried three things from the competent officer. First, it is when the grievance is filed at the labour department. The second was to the effect of why the grievance was not filed within the prescribed time. Third and finally, the letter queried why the Petitioner was not notified before the registration of the said grievance. The Petitioner avers that this letter was never answered.

- [5] The Petitioner avers that pursuant to Section 61A Employment Amendment Act 2008, the time limit to file a grievance in the case of a non-Seychellois worker is seven days of the complainant is aware of an event act, or matter giving a right to the grievance. Therefore, it is averred that the Respondents' decision was procedurally improper as there were no reasons advanced why the grievance was registered after the prescribed time had lapsed. Moreover, it is averred that the decision of the competent officer was unreasonable, unjustified, and illegal in three ways. First, no reasonable authority acting with due appreciation of its powers and mandate would have arrived at such a decision. Second, the Competent Officer failed to judiciously exercise the discretion afforded to her under the law to register a grievance out of time. And thirdly, the decision was an abuse of powers in that the Respondent exercised its powers for an unauthorised purpose, disregarding relevant considerations and considering irrelevant considerations.
- [6] The Petitioner prays that this Honourable Court issues a writ of certiorari to quash the decision of the Respondent and any other order the Court deems fit.
- [7] The Respondent maintains the position that there are preliminary objections the Court ought to consider before dealing with the merits of the case. As such, the Respondent filed preliminary objections and a response to the Petition, together with an affidavit in support of Jules Baker, the Principal Secretary of the Ministry of Employment and Social Affairs.
- [8] To begin, the Respondent states that the petition is not maintainable against the Respondent, as the Respondent is not an adjudicating authority. In the circumstances, therefore, the Respondent is not amenable to the supervisory jurisdiction of the court under Article 125(1) of the Constitution.
- [9] It is also the contention of the Respondent that the Petition offends Rule 4 of the Supreme Court (Supervisory Jurisdiction Subordinate Court, Tribunals and Adjudicating Authorities) Rules, which provides that the petition for judicial review be made within three months from the date of the order or decision. In the affidavit in support, the Respondent avers that the employee filed a grievance on 22 May 2020. On 25 September 2020, the Competent Officer wrote to the employee stating that the grievance

cannot be registered because it was filed out of time. Being dissatisfied with the decision of the Competent Officer, the employee appealed to the Minister of Employment. The Minister on 10 December 2020, proceeded to overrule the decision of the Competent because the employee had followed up relentlessly with the Employment Department to seek the status of his grievance. The grievance was allowed to be registered by the Minister based on precedence and especially due to the gross injustice by the Petitioner against the employee to only pay part of the monies due to the latter.

- [10] The Respondent further avers that there is no good faith or arguable case for the Petitioner in this matter or a reasonable cause of action for this Petition.
- [11] Finally, the Respondent avers that this Petition is not maintainable as the decision of the Ministry of Employment and Social Affairs was reasonable, rational, and legal. Moreover, the grounds raised in the Petition are frivolous and vexatious and ought not to be the subject of Judicial Review before the Court.
- [12] With the above, the Respondent prays that this Court dismisses the Petition.

### **The Legal analysis and findings**

- [13] In my view, the present case has points of law raised in respect of the Petitioner being out of time and that there cannot be judicial review in terms of Article 125 (1) of the Constitution. As such, this Court will address these first. If a point of law is maintainable, it is trite law that a court need not deal with the merits of the case.
- [14] Under 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. The Court in *Labrosse v Chairperson of Employment Tribunal* (SCA 36/2012) [2014] SCCA 44 (12 December 2014) dealt with an appeal where the appellant challenged the decision in the lower

court to dismiss his judicial review application because it was filed out of time. In a unanimous decision, the Court dismissed the appeal and stated that procedure must be followed and Petitions filed out of time ought not to be entertained. I am therefore guided by the same.

[15] What is apparent at this juncture is to consider which decision is being challenged and whether the application thereafter complies with Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules.

[16] From the onset, I note that the Petitioner's pleadings are contradictory. In its application, the Petitioner states in a nutshell that they challenge the decision to allow the grievance by the employee to be lodged out of time. They base their claim on the reliance on section 61A of the Employment Amendment Act of 2008, which sets a time limit of 7 days. However, the Petitioner goes further to state that the decision to allow the grievance to be filed out of time is attributable to the Competent Officer, made on 15 April 2021, and therefore cannot be out of time given that the present proceedings were filed on 1 July 2021.

[17] To my understanding of the pleadings and supporting documents before me, the decision being challenged is that which permitted for a grievance of the employee to be filed out of time. This decision was taken by the Minister on 10 December 2020. It is not factual for the Petitioner to state that the Competent Officer made this decision on 15 April 2020. The Competent Officer's decision on 15 April 2021 was in respect of how to proceed in view that the parties failed to agree on a settlement.

[18] As such, the decision being challenged by the Petitioner according to the Pleadings and affidavit in support is that of the Minister made on 10 December 2020, which permitted the employee to lodge a grievance out of the statutorily provided time. Having filed the present judicial review application, it is clear that this was done out of time prescribed under Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules.

[19] Even if one is to assume that the decision being challenged is the decision of the Competent Officer of 15 April 2021, this still does not help the case of the Petitioner. This is because the decision of 15 April 2021 was made according to a conclusion of mediation and not in respect of allowing for the grievance to be filed out of time.

[20] In the premise, the point of law raised by the Respondent is upheld. The Petitioner filed its application for judicial review out of time and its application cannot be entertained as judicially guided by *Labrosse v Chairperson of Employment Tribunal* (supra).

[21] Having upheld the point of law above, I find it unnecessary to delve into the question of the applicability of Article 125 (1) of the Constitution and the merits of the case thereafter.

## **Conclusion**

It follows from the above analysis and findings that this court orders that the Petition is hereby dismissed and no order is made as to costs.

Signed, dated, and delivered at Ile du Port on the **30 day of January 2023**.

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**ANDRE AJ**

**(sitting as Judge of the Supreme Court)**