

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC ...
MA266/2023
Arising in MC47/2023

JIMMY ADELAIDE
(rep. by Joshua Revera)

PETITIONER

and

PUBLIC SERVICE APPEAL BOARD

RESPONDENT

(unrep)

Neutral Citation: *Jimmy Adelaide v Public Service Appeal Board* (MC28/2022) [2023] SCSC
(03 March 2023).

Before: Vidot J
Summary: Judicial Review; application for leave to proceed. Need for clear and precise
pleadings

Heard: 13 September 2023

Delivered: 06 October 2023

ORDER

Application allowed.

Copy of Order to be served on Respondent

JUDGMENT

VIDOT J

The Application

- [1] The Petitioner filed an application in terms with Rule 2(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunal and Adjudicating Authority) Rules (“the Rules”) praying to the Supreme Court to exercise its supervisory jurisdiction and judicially review a decision taken by the Respondent on 10th April 2023. A copy of the impugned letter is attached to the application.
- [2] Together with this application the Petitioner also filed an application for leave to proceed in terms with Rule 6(1) of the Rules and article 125(1)(c) of the Constitution. The granting of leave is a pre-requisite to hearing the application for judicial review. An application for leave is normally listed ex-parte. This is pursuant to Rule 7 of the Rules. However, Rule 7(1) provides for *“the Respondent or each of the Respondents may take notice of it at any time and object to the grant of leave or if leave to proceed, or if leave to proceed has been granted object to the application at any time before the time fixed by Rule 12 for filing objections and the Supreme Court may make such order on the objection as it may deem fit.”* Therefore, following from this, the Court may consider any objections after leave has been granted.
- [3] The leave stage is necessary for the Court to filter out any application that is frivolous and vexatious and to satisfy itself that prima facie reasons exist to grant leave. Normally, it is granted forthwith if the case is arguable. If it is not, it is rejected and if it falls in between, an inter partes hearing is held. In fact, the leave stage, is that stage at which the Court weeds out any unarguable case. It makes no allowances for busy bodies. It must be decided whether the Petitioner is directly affected by the decision of the Respondent. That would satisfy the qualification of sufficient interest in the matter. It assesses whether the Petition is filed in good faith and if the Petitioner has locus standi; see **Cable & Wireless v The of Finance and Communications [1998-1999] SCAR 92** and **Duraikannu Karunakaran v CAA SCA 33 of 2016**. If these are satisfied the Court grants leave to proceed.

- [4] In **R v Secretary of State for Home Department, ex-parte Cheblack** [1991] 1WLR 980 Lord Donaldson MR stated thus;

“the requirement that leave is obtained before substantive application can be made for relief by way of judicial review is designed to operate as a filter to exclude case that are unarguable. Accordingly, an application for leave is normally dealt with on the basis of summary submissions. If an arguable point emerges, leave is granted and extended argument ensues upon the hearing of the application.”

- [4] On the question of sufficient interest before leave can be granted, Rule 6(1) provides that the Court “.... Shall not grant the petitioner leave to proceed unless the court is satisfied that the petitioner has sufficient interest in the subject matter of the petition and the petition is in good faith.” Basically, the court has to make a preliminary assessment ex-facie of the documents, the Petitioner seeks to rely on.

- [5] Rule 2(2) of the Rules states that “[T]he 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.”

The impugned letter of 10th April 2023 is not an original and neither is it certified. Based on that this Court should dismiss this application. This Court did in fact disallow such an application in **Ex-Parte Tornado Trading & Enterprises EST. XP150/2018** because no originals or certified copies were attached to the petition. However, the Court of Appeal allowed the appeal on that point. This Court in the Tornado case applied procedural rules that had to be observed strictly and in particular when the Court considers the Court of Appeal was equally strict in applying rules of procedures in other cases. In fact in **Viral Dhanjee v James Alix Michel SCCC CP03/2004** wherein the Court Of Appeal stated that “applicants might be hurt when petitions and applications are dismissed due to legal technicality. But in the long run, rule of law would be hurt, if we allow some procedural irregularities to continue....” In **Ratnam v Kumarasamy** [1964] 3 ALL ER 933, it was held that “rules of court must prima facie, be obeyed, and in order to justify a court extending the time which some step in procedure require to be taken, there must be some material on which the court can exercise its discretion.”

- [6] Following the position adopted by the Court of Appeal in the Tornado case, I am obliged to follow that case, despite that Court's pronouncement in the **Viral Dhanjee** case.
- [7] I have had the opportunity to look at the Petition for Judicial Review that is attached to the present application. I note that the Petition is inadequate in that it does not expressly plead that the order of Public Service Appeal Board is illegal or ultra vires, that there was a breach of natural justice or judicial impropriety or that the decision taken was rash and unreasonable. Impliedly, the Petition alleges these but it should be clearly pleaded. It should not be left to the Court to sift through the Petition and attached affidavit to identify the same. That is not the role of the judge. Unfortunately, many counsels have abdicated their duty to the judge and this Court send a clear warning to counsels that it is no longer prepared to rummage through counsel's pleadings to make out necessary particulars or averments for them. Pleadings need to be clear and precise.
- [8] Nonetheless, despite these short comings in the drafting the Petition, this Court is willing in this case to accept the same since as said already the pleadings refers to the grounds on which the leave to proceed may be considered.
- [9] In terms of the Petition, the petitioner prays the Court to;
- (i) grant leave to the Petitioner to proceed with the petition in terms with Rules 5 and 6 of the Rules,
 - (ii) after hearing the petition, issue a writ of mandamus, quashing the order of the Respondent dated 10th April 2023; and
 - (iii) that Court makes any further order as deem fit.
- [10] Having considered the application, I find that the Petitioner is directly affected by the decision of the Respondent. The Orders concern the termination of employment or redundancy of the Petitioner who was within the employment of the Seychelles Police Force. I therefore, find that the Petitioner has sufficient interest in the matter and hereby accede to the application for leave to proceed.
- [11] The application is allowed.

[12] A copy of this Ruling together with the Application and Petition should be served on the Respondent forthwith.

Signed, dated and delivered at Ile Du Port on 06th October 2023

A handwritten signature in blue ink, appearing to be 'Vidot J', written over a horizontal line.

Vidot J