

SUPREME COURT OF SEYCHELLES

Reportable
MA 402/2023
(Arising out of MC 72/2021)

In the matter between:

SEYCHELLES POLICE FORCE
(rep. by Frank Elizabeth)

Applicant

and

PUBLIC SERVICE APPEAL BOARD
(rep. by Brian Julie)

1st Respondent

ATTORNEY GENERAL
(rep. by Corrine Rose)

2nd Respondent

VALERIE AUGUSTE
(rep. by Daniel Cesar)

3rd Respondent

Neutral Citation: *Seychelles Police Force v Public Service Appeal Board & Ors*
(MA402/2023) (21 June 2024)

Before: Esparon J

Summary: Application for reinstatement of the case after dismissal for want of prosecution

Heard: 20th March 2024

Delivered: 21st June 2024

ORDER

Application for reinstatement of the case after dismissal for want of prosecution - Application is dismissed with cost for being incompetent and not maintainable in law.

RULING

ESPARON J

Introduction

- [1] This Ruling arises out of a Notice of Motion dated the 20 June 2023 and filed on the 30 November 2023 by the Seychelles Police Force (Anti-Narcotics Bureau) being the Applicant duly supported by an Affidavit sworn by Francis Songoire being the Deputy Commissioner of Specialised Operation in the Seychelles Police force dated the 14 June 2023, seeking an order from this Court for a hearing of extreme urgency to reinstate MC 72/2021 on the cause list for mention and make any other and further order the Court deems fit in all circumstances of the case.
- [2] The 1st Respondent being the Public Service Appeal Board had no objections to the application.
- [3] The 2nd Respondent objected to the petition and raised a point of law that the Petition in MC 72/2021 raises no cause of action against the 2nd Respondent and that it had been inadvertently named as a party in this matter of which the 2nd Respondent was struck out as a party to the case in a previous ruling.
- [4] The 3rd Respondent objects to the application for reinstatement of the case number 72/2021 which was dismissed on the 9th November 2022 for want of prosecution and has filed an Affidavit in Answer to the Application dated the 8th February 2024 sworn by the 3rd Respondent herself Valerie Auguste.

The Pleadings

- [5] The deponent in the Affidavit in Support of the Application Mr Francis Songoire who is duly authorised to swear this Affidavit on behalf of the Applicant has averred in his Affidavit that on the 9th November 2022 the Honourable Court dismissed the Applicant's case for want of prosecution as a result of non-appearance.
- [6] The said deponent further averred in his Affidavit that he was advised by his attorney, Frank Elizabeth, that on the date the case was called he could not attend court as he was on a medical leave and that the Registrar of the Supreme Court was aware of his predicament.

- [7] The deponent avers that it is just and necessary for the Court to make an order reinstating the case as the reason given for the absence of his attorney on the date the case was called is sufficient in law to justify the reinstatement of the case.
- [8] In her Affidavit in Answer to the Application, the third Respondent has objected to the Application for the reinstatement of case 072 of 2021 which was dismissed for want of prosecution since on the date that the case was called for hearing, Counsel for the Applicant was not present and neither was his pupil who otherwise had been standing in for Counsel during the course of previous proceedings. That it was not the first time that the Court had to adjourn the case for the submissions of the Petitioner and the records of proceedings of the 9th November 2022 would disclose that on the 8th September 2022, the 20th October 2022 and the 27th October 2022, the Court granted adjournments because submissions were not ready.
- [9] The deponent being the 3rd Respondent avers in her Affidavit in Answer to the Application that this fresh Application before the court is tantamount to an abuse of process. That the said Application was drafted on the 14th June 2023 and marked as for hearing of extreme urgency but it took the Applicant close to six months that is on the 30th November 2023 to file the Application before the Court.
- [10] The 3rd Respondent further avers in her Affidavit that this Application for reinstatement of a previous suit that was dismissed is further an abuse of the judicial process of the Court and shows chronic lack of diligence on the part of the Applicant which in turn caused undue stress and inconvenience to her to defend herself for a second time in the same suit.
- [11] The 3rd Respondent further avers in her Affidavit that the Applicant had further breached the time limit for filing of an application for judicial review which is 90 days. As a result, the 3rd Respondent moves that the Application for reinstatement of the case ought to be dismissed with costs.

Analysis and determination

[12] The issue which this Court has to determine in the present matter is whether or not the law makes provisions for recalling an order for dismissal of an application for reasons of non-appearance of the Applicant.

[13] This Court hereby reproduces Section 67 of the Seychelles Code of Civil Procedure which states as follows: -

“If on the day fixed in summons when the case is called the defendant appears and the plaintiff does not appear or sufficiently excuse his absence, the Plaintiff’s suit shall be dismissed.”

[14] However, this Court takes note that the law is silent as to the reinstatement of a case that has been dismissed. There are no statutory provisions that cater for reinstatement of a case which has been dismissed summarily for want of prosecution. Nevertheless case law and precedents on this issue is now more or less settled.

[15] In the case of Gill & ors v Film Ansalt SCA 28 of 2009, delivered on 5th March, 2013, the Court of Appeal stated that;

“recall of an order for dismissal can only be done if parties, on the same day, present themselves to the court with the defendants not raising an objection to the reinstatement”.

[16] The ratio decidendi of Gill (supra) is consistent with the case of Bouchereau v Guichard (1970) SLR 35. They were followed in the case of H Savy Insurance v Rolex CA2/2013, where Robinson J opined as follows:

“In the present appeal, on the 30th June, 2011, the trial magistrate dismissed civil side no. 157/2011 for want of prosecution. Mr Anthony Derjacques filed motion for reinstatement of Civil side no. 157/2011 on the 7th July, 2011. On the 22nd August, 2011, the trial magistrate reinstated the case to the cause list.

This court observes that the trial court became functus officio on the 30th June 2011. The procedure adopted by the trial magistrate, reinstating civil side no. 157/2011 to the cause list, is one unknown to our law and jurisprudence.

In light of the above, this appeal is allowed. This court sets aside the decision of the trial magistrate to reinstate civil side no. 157/2011 and substitutes thereof the following order. Civil side no. 157/2011 stands dismissed as at the date of 30th June, 2011.”

[17] It is clear through the legal provisions and the abundance of case laws that reinstatement is not a legal option available when a case has been dismissed.

[18] Counsel for the Applicant, submitted to the Court that the Supreme Court has inherent jurisdiction to reinstate a case which it has itself dismissed formally and that the power or jurisdiction comes from Article 125 of the Constitution which has been recognized by the Court of Appeal in the case of *Vijay v EEEL MA 24 of 2020* arising out of SCA 28 of 2020 in which an application was made for the court to set aside its own judgment and to rehear an appeal to which it agreed. He further submitted that as per Article 7 of the Civil Code of Seychelles Act, 2020, the Court of Appeal decision is binding on the Supreme Court under the doctrine of *stare decisis*.

[19] This Court hereby reproduces Article 125 (1) of the Constitution which provides for the categories of jurisdiction with which it invests the Supreme Court —

"(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."

[20] The Courts Act confers jurisdiction on the Supreme Court in terms of the Constitution. Section 4 of the Courts Act invests the Supreme Court with the powers and authorities and jurisdiction of the High Court in England and states as follows;

'the Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England. This provision concerns the inherent jurisdiction of the Supreme Court.'

[21] Section 5 of the Courts Act stipulates a list of specific civil jurisdiction and, in exercising such jurisdiction, the Supreme Court has and is invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England of which it provides as follows;

'The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.'

[22] The Court is invested with equitable discretionary powers under section 6 of the Court's Act which states as follows;

*'The supreme Court shall continue to be a Court of Equity and is hereby vested with powers, authority, and jurisdiction to administer justice and **to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.**'*

- [23] In the case of Vijay (supra) it was concluded that the Court of Appeal had the authority to reopen its judgment and rehear it. It was determined that this authority emanated from its inherent, implied, implicit or residual jurisdiction or inherent, implied, implicit or residual power. But that to determine whether or not the criteria for setting aside a judgment, it was fundamental that the Court of Appeal considers when should it reopen its decision.
- [24] The Court of appeal referred to Taylor v Lawrence which questioned the inherent jurisdiction of the court to reopen an appeal. It was concluded that to resort to the jurisdiction, the Court had to be satisfied that significant injustice had probably occurred and that there was no alternative effective remedy. The criteria for setting aside of the judgment had been met.
- [25] Counsel for Applicant submitted that the Supreme Court has the same jurisdiction as that of the Court of Appeal and that subsequently the Supreme Court can set aside its Judgment.
- [26] I have considered Article 7 (1) of the Civil Code of Seychelles Act, 2020 which states as follows;
- ‘A judicial decision is **binding on all courts lower** in the judicial hierarchy than the court which delivered the precedent decision.’
- [27] Based on the above, it is clear that the judicial decisions from higher courts are absolutely binding on lower courts and it should be followed.
- [28] This Court is of the view that the principle of Stare decisis, which is Latin for "to stand by things decided," is a judicial doctrine under which a Court follows the principles, rules, or standards of its prior decisions or decisions of a higher when deciding a case with arguably similar facts. Hence if the prior decision is based on similar facts and there are no distinguishing features, then the trial Court has no reason to depart from the precedents. However, in circumstances where there are distinguishing features between the precedent and the case being decided then the Court may depart from the precedent (vide: *Michel v Michel* (MA 399/2019) [2020] SCSC 516 (9 June 2020))

[29] This Court is of the view that the Vijay case was a different case of reopening of an appeal once it has been finally determined by a Judgment. There was no alternative effective remedy but to set aside its Judgment. The present case was a part-heard case which was dismissed for want of prosecution with no similar facts and notable distinguishing features between it and that of Vijay.

[30] For the above reasons, this Court disagrees with the submissions of counsel for the Applicant that this Court is obliged to obey the precedent established by the Vijay case (supra). Furthermore this Court is of the view that any recourse to the power to reinstate the case should be available where a fundamental error in procedure were not corrected and where there was no alternative effective remedy reasonably available resulting in a substantial miscarriage of injustice.

[31] In the case of Gill (supra) the Court stated the following;

Where a part-heard case has been dismissed for want of prosecution and there is no common agreement between the parties reached on the same day for it to be restored to the list of cases, it is trite law that the plaintiff may re-lodge the case, subject to the plaintiff paying the costs of the case that has been dismissed.

It cannot be said, therefore, that the Applicant in this case was without a legal remedy for the Judge to invoke the equitable jurisdiction of the Supreme Court, especially where the law is clear and the interpretation is also quite clear on the matter.

[32] This Court is of the view that despite its discretionary and equitable powers, for the above reasons, this court holds that this application is incompetent and not maintainable in law. As a result, this Court finds that there is no necessity to make any further pronouncement on the further points of law raised by counsel for the 3rd Respondent. As a result this Application is dismissed with cost.

[33] Nonetheless, due to an apparent administrative mishandling of the process, the applicant may make use of Rule 3 of the Court Fees (Supreme court) and Costs (Amendment of Schedules) Rules, 2020 [First Schedule] if so advised to seek in the prescribed form, exemption of payment of court fees should it decide to refile the suit given the

circumstances giving rise to its dismissal which shows an apparent administrative lapses of the Court Registry and the fact that the Applicant is the Seychelles Police force which is part of the Government of Seychelles although they have sought the assistance of a private Attorney in this matter .

Signed, dated and delivered at Ile du Port on 21st June 2024.

D. Esparon Judge