SUPREME COURT OF SEYCHELLES

Reportable
[2024] .....
CS 04/2020

In the matter between:

FIFCO (Offshore Services Ltd **Plaintiff**

(herein represented by Mr. Paul Chow,

Electing his legal domicile in the

Chambers of Mr. Frank Elizabeth of

Suite 212B Premier Building, Albert Street,

Victoria, Mahe, Seychelles)
(rep. by Frank Elizabeth)

and

FINANCIAL SERVICES AUTHORITY

(herein represented by Dr.

Steve Fanny of Bois de Rose, Mahe,

Seychelles) **Defendant**
(rep. by Basil Hoareau)

Neutral Citation:	*Fifco Offshore Services Ltd v Financial Services Authority* (CS 4/2020) [2024] ..... (6 March 2024).
Before:	Pillay J
Summary:	When facts amount to several causes of action – plaint for faute or special procedure for judicial review to be used?
Heard:	17th September 2021 and 2nd May 2023
Delivered:	6th March 2024

ORDER

[1] I allow the plea in limine. Consequently, the Plaint is dismissed.

[2] Each side shall bear their own costs.

JUDGMENT

PILLAY J:

[1] The Plaintiff seeks judgment in the sum of $1, 358, 195.00 together with interests and costs.

[2] The admitted facts are that the Plaintiff was at all material times a Corporate Service Provider providing services to International business companies and the Defendant is and was at all material times the regulator of the financial services industry. The Defendant wrote to the Plaintiff by letter dated 28th July 2015 informing the Plaintiff of the Defendant's intention to revoke the Plaintiff's international corporate services licence. On the 6th August 2025 the Plaintiff wrote to the Defendant replying its letter of 25th July 2015, disputing the reasons given by the Defendant to the Plaintiff to justify the revocation of the said licence. On the 18th August 2015 the Plaintiff received a letter from the Defendant informing the Plaintiff that it was revoking its licence. On 2nd September 2015 the Defendant wrote to the Plaintiff giving the Plaintiff three days' notice of its intention to issue a public notice on the issue that the Plaintiff's licence had been revoked. The Defendant published the notice on 8th September 2015. The Plaintiff wrote to the Defendant in an undated letter making an offer of an out of court settlement which the Defendant rejected outright on 24th May 2018.

[3] The Defendant disputes that it failed, refused or neglected to accord the Plaintiff its right to be heard before the said licence was revoked and forfeited by the Defendant thereby violating the Plaintiff's fundamental right to be heard before the said decision was taken. The Defendant disputes that the Plaintiff wrote to the Defendant by way of letter dated 4th September 2015 warning the Defendant against issuing the public notice and of the grave consequences such notice would possibly have on both the Plaintiff and the Defendant. The Defendant further denies that the Plaintiff drew the Defendant's attention to the appeal

procedure provided by law and the fact that the Plaintiff had not exhausted the appeal procedure yet. The Defendant denies that the Plaintiff informed the Defendant that the issuance of the public notice would be premature in the circumstances. The Defendant further denies that its action or omission was unlawful and amounts to a fault in law for which it is liable to make good to the Plaintiff. It denies the loss and damage claimed by the Plaintiff.

[4] The Defendant avers that the notice of intention to revoke the Plaintiff's international corporate services licence was written and issued by the Defendant to the Plaintiff in accordance with the Financial Services Authority Act 2013 more specifically section 27 and 29 of the Act, in view that –

(a) The Plaintiff had contravened the Anti-Money Laundering Act, in force at the relevant time;

(b) The Plaintiff had carried on business, as an international corporate services licensee, in a manner detrimental to the public interest; and

(c) It was necessary, to revoke the international corporate services licence of the Plaintiff to protect the good repute of Seychelles as an international financial centre.

[5] The Defendant further avers that the notice of intention to revoke was issued subsequent to a meeting held on 2 June 2015, between the representatives of the Defendant and Mr. Paul Chow, a director of the Plaintiff and the notice of intention to revoke set out the facts and reasons upon which the said notice was based.

[6] The Defendant avers that;

(i) The notice of intention to revoke was issued to the Plaintiff so as to grant the Plaintiff the opportunity to show good reason as to why the licence should not be revoked;

(ii) The notice of intention to revoke expressly mentioned that the licence was revoked by the Defendant, unless the Plaintiff showed good reason why the licence should not be revoked;

(iii) The exercise of its right to be heard and in accordance with the principle of natural justice the Plaintiff, through a letter dated 10th August 2015 and

signed by one of its Directors Mr. Paul Chow wrote and replied to the Defendant in response to the notice of intention to revoke and in the letter of reply the Plaintiff set out the reasons as to why, according to the Plaintiff, the licence should not be revoked;

(iv) The Plaintiff right to be heard and the principle of natural justice was respected, at all times, by the Defendant in revoking the licence.

[7] The Defendant avers that:

(i) After considering all the relevant matters, including the facts and reasons set out in the notice of intention to revoke and the matters set out in the letter of reply, the Defendant took the decision to revoke the licence, as the Defendant was of the opinion that the Plaintiff had not shown good cause to the satisfaction of the Defendant as to why the licence should not be revoked;

(ii) The licence was revoked by the Defendant on the ground that –

a. The Plaintiff had contravened the Anti-Money Laundering Act in force at the relevant time;

b. The Plaintiff had carried on business, as an international corporate services licensee, in a manner detrimental to the public interest; and

c. It was necessary, to revoke the international corporate services licence of the Plaintiff to protect the good repute of Seychelles as an international financial centre.

[8] The Defendant further avers that it had the right and legal basis to issue a public statement in accordance with the Act. The Defendant avers that the fact that the Plaintiff had a right to appeal against the decision of the Defendant to revoke the licence, did not legally prevent the Defendant from issuing a public statement and the Plaintiff never appealed against the decision of the Defendant to revoke the licence.

[9] The Defendant raised two pleas in limine:

(i) The Plaint is bad in law in that the institution of proceedings against the Defendant should have been by way of petition for judicial review in accordance with Article 125 (c) of the Constitution.

(ii) *The Plaint is an abuse of process in that the institution of proceedings against the Defendant should have been by way of petition for judicial review in accordance with Article 125 (c)of the Constitution.*

[10] The matter was heard and both counsels filed submissions within which Learned counsel for the Plaintiff raised two points of law; the first being that the Court should give a decision on the basis of section 134 of the Seychelles Code of Civil Procedure and secondly that the Defendant has failed to adduce any legal arguments in respect of the two points of law raised in the Defence. Before proceeding to consider the evidence I propose to address the pleas in limine litis as should this Court find in favour of the Defendant on the plea, that will be the end of the matter.

[11] Let me start with the points raised by Learned counsel for the Plaintiff; that the Court should not entertain the plea of the Defendant on the basis of ***Lesperance*** and that the Court should grant the prayers of the Plaintiff on the basis of section 134 of the Seychelles Code of Civil Procedure ("the Code").

[12] Learned counsel for the Plaintiff submits that "since the Defendant has not submitted on his points of law the Court should consider the same to have been abandoned." He relied on the case of ***Lesperance v Ernestine & Ors SCA No. 16/2021 (26 April 2023)*** in support of his argument.

[13] Learned counsel for the Defendant submits that the arguments raised by the Plaintiff is fallacious. He submits that in the case of ***Lesperance***, the circumstances were quite different to the current matter. In ***Lesperance***, as rightly stated by Learned counsel for the Defendant, counsels for the parties had agreed to hear the plea in limine prior to hearing the case on the merits however neither side provided the Court with submissions though they were given opportunities to do so.

[14] In any event the rule of section 90 of the Code is that:

> *Any party shall be entitled to raise by his pleadings any point of law; and any point so raised* ***shall be disposed of at the trial****, provided that by consent of the parties, or by order of the court, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. (emphasis my own)*

[15] In the instant case counsels agreed to adopt the default position, pursuant to section 90 above, whereby the plea in limine is disposed of at the trial whereas in ***Lesperance*** the counsels agreed to dispose of the plea in limine before the trial. In ***Lesperance*** neither counsels filed any submissions on the plea nor were they heard on the plea in limine whereas in the current matter both counsels have filed submissions addressing the plea in limine. Consequently, the argument put forth by Learned counsel for the Plaintiff cannot stand.

[16] The other point raised by Learned counsel for the Plaintiff is that since the Defendant did not call any witnesses to testify on its behalf, the Plaintiff's plaint remains uncontroverted and undefended. He submits that even though section 134 of the Code gives the Court the discretionary power to proceed to decide the case forthwith despite the Defendant not producing evidence or calling witnesses, the Court may proceed to decide if the Plaintiff has discharged the burden of proof to the required standard which is on a balance of probabilities.

[17] Learned counsel for the Defendant submits that section 134 "merely grants the power to the court, to determine a suit where a party, who has been granted time, fails to produce any evidence or cause his witness to attend court." It is his submission that the "purpose of this section is to grant the court power to prevent its process from being abused." Learned counsel further submits that section 134 of the Code is not applicable in this case as it does not permit the Court to determine a suit ex-parte but on the basis of the evidence adduced on it.

[18] In terms of section 134 of the Code, it provides that:

> *If any party to a suit to whom time has been granted fails to produce his evidence or to cause the attendance of his witness or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith.*

[19] I have to agree with Learned counsel for the Defendant that section134 of the Code does not grant the Court the power to hear the matter ex-parte. Rather it gives the Court the

discretion to proceed to come to a decision on the basis of the evidence on the record up to that stage. It cannot be said, as argued by Learned counsel for the Plaintiff, that the Plaintiff's evidence remains uncontroverted and undefended as a result of the Defendant not calling any witnesses to testify. The Plaintiff's evidence was subjected to cross-examination and was tested. If the Defendant had not cross-examined the Plaintiff one could have argued that the evidence remains uncontroverted more so if the Defendant, then proceeds not to adduce evidence or call witnesses. But in the matter at hand the Plaintiff's evidence was challenged in cross-examination.

[20] With that said it is my humble view that section 134 of the Code has no application to the matter at hand nor can it be said that the Plaintiff's evidence is uncontroverted. So I find. On that basis therefore, the points of law raised by Learned counsel for the Plaintiff is dismissed.

[21] Before I take leave of these two issues raised by Learned counsel for the Plaintiff, I note that the submissions for the Defendant is dated 18th September 2023 whereas those of the Plaintiff is dated 24th May 2023. It is understandable with that timeline why it is that the Plaintiff made the arguments he did with regards to the Defendant failing to address the points of law.

[22] We now move on to the pleas in limine raised by Learned counsel for the Defendant in his Defence.

[23] The Defendant submits that the excerpts of Mr Chow's testimony illustrate the stance taken by the Plaintiff in respect of its case:

a) *Examination-in-chief*

"Q: Mr. Chow, in your plaint before the Court, you have claimed that the action of the defendant amongst to a fault on law because they were not following the law when they cancelled your licence. Do you understand the question?

A: In my book, there are two issues.

Q: *Explain to the court what are the issues?*

A: *We are not objecting to the cancelling of the licence; the issue is that the law, as it stands, says that they make publication the cancellation even before we fulfilled out time for appeal. So the prejudice of our business before we have the chance to appeal and to have an answer to the appeal, we had 90 days to appeal but they publicized the cancellation of the licence, 30 days. So my claim is, the prejudice against the company by so doing."*

b) *Cross-examination*

"Q: Just to confirm, you are saying from what you said in your examination in chief that the issue is that the plaintiff has here, is not with the revocation of the licence, correct?

A: *Correct.*

Q: *The issue, the plaintiff is saying that the defendant should not have published notice of revocation of its licence to the public prior to the elapse of the 90 days within the plaintiff has the right to appeal against the decision of the defendant.*

A: *Correct.*

Q: *This is the issue?*

A: *Yes, this is the issue."*

[24] The Learned counsel for the Defendant submits that, on the above "this Court has to determine the suit only in respect of the issuance by the Defendant, on 8 September 2015, of the notice to the public that the licence of the Plaintiff had been revoked."

[25] Learned counsel submits that in accordance with section 28 (1) of the Financial Services Authority Act, 2013, the Defendant having revoked the licence of the Plaintiff had the right and authority to issue the public notice.

[26] He relies on Article 125 (1) (c) of the Constitution as well as Rule 18 of the Supreme Court (Supervisory Jurisdiction over Subordinate Court Tribunals and Adjudicating Authorities)

Rules. He argues that the Supreme Court has powers to award damages to a petitioner in a judicial review petition pursuant to Rule 18. He argues that the Plaintiff is, in accordance with the Plaint, challenging the Defendant's decision and exercise of its statutory powers to issue a public notice in accordance with section 28 (1) of the Act that the licence of the Plaintiff had been revoked.

[27] Learned counsel submits that "the word "includes" indicates that the definition of "adjudicating authority" in article 125 (7) of the Constitution is not restrictive". He submits that the term "adjudicating authority" includes statutory bodies exercising statutory powers, whereby the statutory bodies have to provide reasons for taking any decision or the exercise of such statutory powers."

[28] He submits that "it is apparent from section 28 (3) of the Act that the Defendant is obliged to give reasons to the licensee as to why it is issuing the public statement." He further submits that "the source of the powers of the Defendant to issue a public statement comes from the statute, i.e the Act." He submits that "in exercising its powers under section 28 (1) of the Act, the Defendant is exercising a statutory power as opposed to an administrative function."

[29] Learned counsel for the Defendant relies on the case of ***Oreilly v Mackman [1993] 2 AC 237*** in which the argument that the declaration sought by a writ that disciplinary proceedings had been conducted in a manner that breached natural justice should be struck out as an abuse of process of the court because it was a public law matter.

[30] He further relies on the case of ***Cocks v Thanet District Council [1983] 2 AC 286*** wherein it was held that the Plaintiff should not be allowed to challenge the alleged breach by way of action but should proceed instead by way of application for judicial review.

[31] He submits that "our law of judicial review affords the same safeguards and protection to our public authorities and bodies as those in England", namely against mere busybodies by way of Rule 6 (1) of the Rules and Rule 4 imposing a time limit within which petitions must be made. He further submits that "the same approach should be followed by the

Supreme Court, especially since the Supreme Court has the duty to prevent its process from being abused."

[32] Learned counsel submits that "by filing a suit instead of a petition for judicial review, the Plaintiff has bypassed the leave requirement, i.e the necessity to satisfy the court that it had sufficient interest and an arguable case." He submits that the Plaint ought to be dismissed on the two points of law raised by the Defendant.

[33] In response to the plea in limine Learned counsel for the Plaintiff submits that "the fact that the Plaintiff had several causes of action at its disposal and available to him and the fact that it chose to file its suit under the Seychelles Code of Civil Procedure instead of Article 125 (c) of the Constitution cannot be fatal to its application or that the filing of the Plaint amounts to an abuse of process."

[34] Learned counsel submits that "an action for judicial review under Article 125 (c) of the Constitution was not available to it since the statutory 90 day appeal period for appeal had lapsed and the Plaintiff had not filed an appeal against the decision of the defendant to revoke its licence within the prescribed time limit." He submits that the Court should reject the points of law raised by the Defendant outright as they are devoid of merits.

[35] Learned counsel submits that "the fact that it decided to exercise its concurrent right under article 1382 of the Civil Code to file a plaint against the defendant instead of a petition for judicial review under article 125 (c) of the Constitution or its corresponding right of appeal under section 17 of the ISCP Act, the Court cannot hold this against the Plaintiff as the prescription period under the Civil Code is five years as oppose to three months under ISCP Act."

[36] Learned counsel for the Defendant submits that Learned counsel for the Plaintiff did concede in his submissions that the Plaintiff did have an option to proceed with the matter by way of judicial review. From the above, Learned counsel does concede that the Plaintiff had several causes of action at its disposal which included an action for judicial review. However, based on the records, my understanding of the reasons for not pursuing the matter by way of judicial review had to do with an issue with time limits.

[37] That said, should the matter have been instituted by way of a Petition for Judicial Review?

[38] In order to address this issue, it is imperative that we first look at which class of persons are subject to judicial review.

[39] Article 125 (1) of the Constitution provides that:

> *There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have—*
>
> *(a)...*
> *(b)...*
> *(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; ...*

[40] Article 125 (7) of the Constitution provides that:

> *For the purposes of clause (1)(c) "adjudicating authority" includes a body or authority established by law which performs a judicial or quasi-judicial function.*

[41] The Defendant is a statutory body set up under the purview of the Financial Services Authority Act 2013. It is not disputed that the Defendant is the regulator of the financial services industry. However, is it "an adjudicating authority" within the meaning of Article 125 (7) of the Constitution?

[42] In the case of ***Government of Seychelles v Public Service Appeal Board & Anor (MC 87/2018) [2019] SCSC 654 (30 July 2019)*** the Court found that:

> *[8] Article 125 (7) of the Constitution designates an "adjudicating authority" as including a body or authority established by law, which performs a judicial or quasi-judicial function. In this regard, Article 145 of the Constitution in providing for the functions and powers of PSAB make it clear that it is both an investigative and adjudicating body hearing and ruling on complaints from public employees. Overall, it performs a quasi-judicial*

*function and in this respect, judicial review is available with reference to all bodies which have the authority to affect the rights of citizens and which have the duty to act judicially (**Joanneau v SIBA (2011) SLR 262**). Hence, no public body is above the law in that regard.*

The Court added that:

> *[9] It must be noted that even in cases where the source of a body's powers cannot be identified, the Court has found that its decisions could be reviewed due to the importance and impact of the functions it undertook **(Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, 409**.*

[43] In the case of ***Faure v Prea & Ano (CP 08/2019) [2019] SCCC 11 (29 November 2019)*** the Constitutional Court found that:

> *[74] the provision of the Constitution or the law does not require reasons to be given before or after an annulment. The existence of the duty to give reasons for the decision may have provided sufficient grounds to the Petitioner to argue that no reasons had been provided or that the reasons show that the National Assembly acted improperly or took into consideration irrelevant considerations or failed to take relevant matters into consideration or acted otherwise unreasonably or unfairly. That again would have created quasi-judicial environment and hence attract judicial review."*

[44] In the case of ***Timonina v Government of Seychelles [2008 -2009] SCAR 21*** Court of Appeal found at paragraph 14 that:

> *The role of the judiciary in judicial review applications is to ensure that what is done by the executive is proper and in accordance with given laws and procedures. Where a law gives power to the executive, it is a fundamental principle that such power be exercised by the executive judiciously and within the limit provided, the key concepts being fairness. In other words, where a law requires the executive to give reasons for its decision (as in the instant case), the required reason should be adequately given. Failing to do so, a citizen or whoever is affected by that failure has the right to come to court seeking the necessary redress.*

[45] The Defendant issued the notice in question stemming from its enforcement powers under section 28 (1) and (3) of the Financial Services Authority Act 2013, which reads as follows:

(1) Where the Authority is entitled to take enforcement action against a licensee or former licensee, the Authority may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken, against the licensee or former licensee.

(2) The Authority may, where it considers it in the public interest to do so, issue a public statement in such manner as it considers fit with respect to—

(a) any person who, in the opinion of the Authority, is carrying on, intends to carry on or is likely to carry on, unauthorised financial services business including any action that the Authority intends to take or has taken against that person;

(b) any person who, not being a licensee, is holding himself out as a licensee;

(c) any matter relating to financial services business where the Authority considers that the statement is desirable for—

(i) the protection of the public, whether within or outside Seychelles, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in or from within Seychelles;

(ii) the protection and enhancement of the reputation of Seychelles as a financial services centre; and

(iii) the reduction of crime and other unlawful activities relating to financial services business.

(3)Subject to subsection (4), where a public statement is to be issued under this section in relation to a licensee or former licensee, the Authority shall give that person three days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(4)...

[46] The Defendant being under a duty to set out reasons for the enforcement action pursuant to section 28 (1) and (3) above, the Defendant was under an obligation to act judicially. Hence, the Defendant is an "adjudicating body" within the meaning of Article 125 (7) of

the Constitution. As a result, its decision would be reviewable by the Supreme Court pursuant to Article 125 (1) of the Constitution.

[47] In the Tanzanian case of ***Msafiri R. More and Ors v Morogoro District Council & Ors CS 6/2023 delivered 14th July 2023***, the Court relied on the case of **Elieza Zacharia Mtemi and 12 others v The Attorney General and 3 others, Civil Appeal no 177 of 2018 (unreported)** wherein the Court dismissed the appeal and found that an administrative issue has to be challenged by way of a judicial review -

> *"... for mainly two reasons that are intertwined. First, for the suit being unmaintainable because it sought to question administrative actions of government bodies through an ordinary court by suit. Secondly, within the same suit it sought to enforce constitutional rights of the appellants to protect public property by way of an ordinary suit."*

In ***Msafiri R. More*** the court was of the opinion that "*administrative action of the persons charged with the performance of public acts or duties is challenged by way of judicial review and not normal suit against the Government.*" in reliance on the position of the Court of Appeal in Elieza Zacharia that: *"it is, undoubtedly, settled that where the law provides for a special forum, ordinary Court should not be entertained in such matters."*

[48] Our very own local case in the ***Ministry of Land Use and Housing v Stravens (SCA 24 of 2014) [2017] SCCA 13 (20 April 2017)*** the Court of Appeal followed the decision in ***Oreilly*** referenced by Learned counsel for the Defendant:

> *18. The administrative review process is provided for both by statute and by Article 125 (1) (c) of the Constitution. There is in Seychelles no general administrative appeal tribunal to review executive decisions, instead legislation on an ad hoc basis makes provision for appeals from decisions of specific administrative bodies to the court.*
>
> *19. Where there is no specific legislation providing for such review or the procedural Rules for administrative review are silent, sections 4 and 5 of the Courts Act apply as the fall-back position. They provide that the Supreme Court of Seychelles shall have the same inherent powers as the High Court of England to review decisions of administrative bodies. It is to*

the rules and jurisprudence governing administrative review that we must turn to, not the rules for civil procedure governing civil suits.

20. *In England, the modern procedure of application for judicial review is contained in Order 53 of the Rules of English Supreme Court Act 1981 (and preceded by the Supreme Court Act of 1977) as amended. These rules are not applicable to Seychelles as we gained our independence in 1976. Up to 1983, two procedural routes for judicial review were available in England, one by way of civil proceedings under Order 15 in the High Court, the other by way of judicial review under Order 53 in the Divisional Court. In* ***O'Reilly v Mackman [1983] 2 A.C. 237****, Lord Diplock concluded that an application for judicial review was the most appropriate way to obtain a remedy when challenging a decision of a statutory authority.*

[49] With the Defendant being a statutory authority and an "adjudicating authority" within Article 125 (7) of the Constitution, there being a special process having been provided for review of its decisions, that process needs to be followed.

[50] On the basis of the above I allow the plea in limine. That being so there is no necessity to consider the merits. Consequently, the Plaint is dismissed.

[51] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on ..... 6th March 2024

Justice M.M.G. Pillay SUPREME COURT SEYCHELLES Supreme Court Judge

Pillay J