SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC …
CA 17/2020
(Appeal from MA 277/20 Arising in FV 179/20)

In the matter between:

MARTIN PREA **Appellant**
(rep. by Basil Hoareau)

and

FAMILY TRIBUNAL **Respondent**
(rep. by Brandon Francois)

Neutral Citation: *Prea v Family Tribunal* (CA 17/2020) [2024] SCSC …… (27 March 2024).
Before: Pillay J
Summary: Appeal from Rent Board
Heard: 27th April 2023 and By way of submissions from the Respondent
Delivered: 27th March 2024

ORDER

[1] The appeal is allowed and the conviction is quashed.

[2] Costs are ordered in favour of the Appellant.

JUDGMENT

PILLAY J

[3] On 7th October 2020 the Family Tribunal made an order finding the Appellant guilty of contempt of the Family Tribunal and imposed a sentence of 2 months' imprisonment.

[4] The Appellant appealed to this Court by way of Notice of Appeal dated 19th October 2020 with his grounds of his appeal as follows:

(1) The Family Tribunal failed to draw up and provide the Appellant with a formal charge of the offence.

(2) The Family Tribunal failed to inform the Appellant of the nature of the offence.

(3) The Family Tribunal failed to give the Appellant adequate time and facilities to prepare his defence to the offence.

(4) The Family Tribunal failed to inform or grant the Appellant the opportunity to be defended by a legal practitioner of his own choice or by a legal practitioner provided at the public expense under The Legal Aid Act; and

(5) The Family Tribunal was bias, acted contrary to the principle of natural justice and breach the right to fair hearing of the Appellant, in convicting the Appellant.

[5] Learned counsel for the Appellant submitted that from the records it is not clear if the Tribunal was saying contempt under section 78 (2) (c) of the Children Act or exercising its powers under section 78 (6), 78 (a) (6) of the Children Act. Upon clearing up a mistake in not giving counsel the complete set of proceedings he accepted that it was clear that the Appellant was dealt with for "what he said to the tribunal during the hearing."

[6] He submits that it is clear that the Tribunal mentions section 78 amounts to contempt pursuant to section 78(a) of the Children Act. He submits that the Family Tribunal does not state to the appellant to show cause why we should not convict you, but instead states show us why a sentence should not be imposed in the event of a conviction. He submits that even though it is stated in the event of a conviction, what the Tribunal is telling the appellant is to show why the maximum sentence should not be imposed on him. Learned counsel submits that the Appellant was asked to address the Tribunal not why he should be convicted but rather in respect of the sentence.

[7] Learned counsel submits that section 78(a) (7) of the Children Act does not deal with contempt but creates an offence. He argues that it does not provide that the Tribunal can deal with such offences summarily. He submits that a person must be charged with that offence.

[8] He submits further that the Appellant actually tells the Tribunal that he does not know what they are telling him. It is his submission that as a lay person, the Appellant did not know what was happening, not having been informed of the offence.

[9] Learned counsel submits that the Court has to balance the Appellant's rights to a fair hearing against the need for the Court to main its dignity and authority. He was of the opinion that the Judge before whom the contempt occurs should not be the one hearing the charge for contempt.

[10] In answer, Learned counsel for the Respondent submits that the appeal gives rise to a question of statutory interpretation in respect of powers of the Family Tribunal as contained in section 78A of the Children Act. He submits that "the key issue to be determined by the Supreme Court in appeal is whether section 78A (7)(c) gives the Tribunal summary powers to fine and/or imprison a person who disrupts, interrupts or misbehaves in the course of proceedings before the Tribunal, akin to powers of a court when dealing with contempt."

[11] It is the submission of Learned counsel that the intent of legislators was to give the Tribunal powers under section 78A, consistent with other contempt provisions in legislation to commit individuals to prison. It is his position that the Tribunal acted in accordance with the powers it has been given.

[12] Learned counsel relies on the case of ***Duraikannu Karunakaran v Tribunal and Attorney General [2019] SCA 05/2018 arising in CP09/2017*** for the proposition that a court has a power to deal with criminal contempt summarily. It is his submission that "the actions took place in the full glare of the Tribunal and, as such the facts were made out and there was no specific need to adopt any other procedure other than a summary one for these purposes".

[13] Learned counsel submits that the Appellant was clearly asked to show cause, was asked to desist and if he did not he would be found guilty of an offence under section 78A(7)(c) of the Act. It is his submission that the Appellant was made aware of the charge and was summoned to show cause seven times. Learned counsel further relied on the case of ***In the Matter of Contempt Proceedings Against Kathleen Pillay Criminal Side No. 16 of 1994 (5 July 1994)***.

[14] The proceedings of the Family Tribunal show that as soon as the Appellant walked into the courtroom he behaved in a manner that led the Family Tribunal chairperson to believe that he was threatening his mother. From there he was told that he was not showing respect to anyone and for the Tribunal. The following exchange took place (see page 3 of the proceedings)-

Chairperson: *No, Wait a moment,*

Respondent: *No, listen to me, arrest me,*

Chairperson: *No, you won't tell us to listen to you at this point. First you entered this Tribunal and showed your hands to your mother saying "pa pou koz avek ou"*

Respondent: *"Be mon pa anvi I koz ek mon"*

Chairperson: *You don't have respect for this Tribunal.*

Respondent: *"be les li ou, pran li manyer ou anvi" "I ok ou" "mon dir ou kondann mon si ou pou kondann mon"*

Chairperson: *You can be dealt with for contempt in addition to the reason you have been brought here.*

Respondent: *"Mon ok, mon pa mind, mon pa mind tousala mon"*

Chairperson: *Have some respect and keep quiet.*

Respondent: *Lock me up for 2 years if you want.*

Chairperson: *Keep quiet.*

Respondent: *"Monn pare pou ale"*

Chairperson: *The Tribunal finds that the act of the Respondent who has been brought for summons to show cause, consisting in firstly stating to the Family Tribunal "kondann mon si ou pou kondann mon" "bez" "gete ki ou pou fer ek mon" and further that the act of the Respondent in interrupting, disturbing and also misbehaving in the Tribunal while being spoken by the Tribunal, and stating that "kondann mon e fer saki zot pou fer" amounts to a contempt of court Pursuant to section 78A(7) of the Children Acts, so the Tribunal is satisfied that the Respondent has acted in contempt of the Tribunal. The way your behaving yourself in this Tribunal by saying "kondann mon si ou pou kondann mon" "Bez mon andan" "Gete ki ou pou fer"*

Respondent: *Yes*

Chairperson: *And while we were speaking to you, you interrupted the Tribunal, and said to listen to you, and further when Tribunal was speaking to you, you interrupted again saying that you have been here for 2 and a half hours, and have been waiting outside in handcuffs, to lock you up, all this you interrupting and disturbing the Tribunals proceedings amount to misbehaviour which is contrary to section 78a -7c of the Children's Act. So this Tribunal is now calling upon you to show cause of why you shouldn't be dealt with by imposing either a maximum sentence of up to 3 years according to law or a maximum fine of SCR 20, 000/- in the event of conviction.*

Respondent: *I said lock me up.*

…..

Respondent: *I am going now, your dreams will come true.*

Chairperson: *Ok so we are calling upon you to show cause why Tribunal should not convict and sentence you to a maximum of 3 years imprisonment or a fine of maximum SCR 20, 000/-*

Respondent: *Kimanyer konmsi?*

Chairperson: *On the face of it, we find that you have committed an offence.*

Respondent: *What offence have I committed since I have been brought here?*

Chairperson: *Contempt of Tribunal, when a person does not show respect, he interrupts, swears in a Tribunal all this amounts to contempt of court. We find that you have acted in contempt of Tribunal. So the procedure is that we call on you to show cause why this Tribunal should not convict you on an imprisonment term under the Children's Act Section 78A(7) or impose a fine on you up to a maximum of SCR 20, 000/-.*

The Law of Contempt of Court

[15] Halsbury's Laws of England, Contempt of Court (Volume 9 (1) Reissue) 1 defines contempt of court by classifying it into 2 categories as follows:

Contempt of Court may be classified as either:

(1) Criminal Contempt, consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced;

(2) Contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgment, orders or other process of the Court and involving a private injury.

[16] In the case of ***Ramkalawan & Ano v Nibourette & Ano (MA 178/2017) [2018] SCSC 8200 (27 June 2018*** Twomey CJ as she then was found that:

there are no statutory provisions with respect to contempt in the laws of Seychelles. Contempt procedures and remedies are received from England. Section 4 of the Courts Act (Cap 52) with regard to the jurisdiction and powers of the Supreme Court provides that

"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".

[17] Her Ladyship went on to find that:

It is settled law that this provision has imported into the laws of Seychelles the common law of England. In this respect the courts of Seychelles recognise and maintain the common law concept of contempt of court. As a court of record, it has an inherent power to punish for contempt, whether criminal or civil and as it has been said: "A court without contempt power is not a court" (Lawrence N. Gray, Criminal and Civil Contempt: Some Sense of a Hodgepodge, 72 ST. JOHN'S L. REV. 337, 342 (1998) and the power of contempt "is inherent in courts, and automatically exists by its very nature" (Ronald Goldfarb, The History of the Contempt Power, 1 WASH. U. L. Q. 1, 2 (1961).

[33] Indeed, the term contempt of court is a misnomer (see Attorney General v BBC (1981) AC 303, 362) and poorly explains the purpose of such proceedings. In Morris v Crown Office [1970]1 All ER 1079 at 1087, [1970]2 QB 114 at 129, Salmon J explained the objects of contempt proceedings thus:

> *"The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."*

[34] In Mancienne v Government of Seychelles (2004-2005) SCAR 161, the Court of Appeal citing Lord Ackner in Attorney General v Times Newspapers Ltd and another [1991]2 All ER 398 (HL) and Bowen LJ in Re Johnson (1888) 20 QBD 68 explained that the term was "inaccurate and misleading, suggesting in some contexts that it exists to protect the dignity of the judges." It also cited Bowen LJ in Johnson v Grant 1923 SC 789, 790 who stated that:

> *'The phrase "Contempt of Court" does not in the least describe the true nature of the class of offence with which we are here concerned … The offence consists in interfering with the administration of the law; in impeding and preventing the course of justice … It is not the dignity of the Court which is offended – a petty and misleading view of the issues involved – it is the fundamental supremacy of the law which is challenged.'*

[35] In general terms, civil contempts consist in disobedience to judgments and court orders; and criminal contempts consist in conduct impeding or interfering with the administration of justice or creating a risk of such impediment or interference (see The Green Book-The Civil Court Practice Contempt of Court 2018 Volume 2, Part III).

[36] In Linyon Demokratik Seselwa v Gappy & Ors (MA 266/2016 arising in MC 86/2016 and MC 87/2016) [2016] SCSC 615 (24 August 2016), Karunakaran J in making a distinction between civil and criminal contempt stated:

> *"The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised including the nature of the relief and the purpose for which the sentence is imposed.*

The purpose of civil contempt is to compel the defendant to do thing (sic) required by the order of the court for the benefit of the complainant. The primary purpose of criminal contempt are (sic) to preserve the Court's authority, and to punish for disobedience of its orders. If it is for civil contempt the punishment is remedial or compensatory and for the benefit of the complainant but if it is for criminal contempt the sentence is punitive to vindicate the authority of the Court …"

[37] It must be stated, however, that although contempts have followed this classic distinction, the two classes have converged (see in this respect Daltel Europe Ltd v Makki [2006] EWCA Civ 94). The basis for contempt orders is the strong public interest in ensuring obedience to court orders generally. As was held by the UK Court of Appeal in JSC BTA Bank v Solodchenko & Others [2011] EWCA Civ 1241, [2012] 1 WLR 350, committal for contempt is first and foremost a sentence which is in the public interest to uphold the authority of the court and to serve as a deterrent.

[18] The Court of Appeal in the case of ***Bordino and Anor v Government of Seychelles (SCA 67 of 2022) [2022] SCCA 76 (16 December 2022)*** confirmed the findings of the Supreme Court in the case of **Ramkalawan & Anor v Nibourette &** Anor holding that, *there are no statutory provisions with respect to contempt in the laws of Seychelles. Contempt procedures and remedies are received from England* [by virtue of] *Section 4 of the Court which provides that: 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". Thus, it is the English authorities which will be referred to in addressing the issue of contempt.*

[19] The Magistrates Court has no such inherent powers to punish for contempt. The Magistrates Court power to punish for contempt is found in section 37 of the Courts Act, which provides as follows:

> *Any person who willfully insults a magistrate during his sitting or attendance in court or during any inquiry or who willfully interrupts the proceedings of the court or otherwise misbehaves in court or before the magistrate, is liable to be summarily fined and committed to prison by the magistrate:*
>
> *Provided that such fine and term of imprisonment shall not exceed two hundred and fifty rupees and fifteen days respectively.*

[20] In relation to the Family Tribunal section 78A of the Children Act provides for proceedings of the Tribunal as follows:

> *(1)…*
> *….*
> *(7) A person who -*
>
> (a) *without reasonable excuse, fails to attend the Tribunal when summoned or required by the Tribunal,*
>
> (b) *without reasonable excuse, fails to produce a document when required to do so by the Tribunal,*
>
> (c) *disrupts or interrupts, or misbehaves in the course of, the proceedings of the Tribunal,*
>
> (d) *insults or otherwise threatens a member of the Tribunal in the performance of the member's functions,*
>
> (e) *fails to comply with an order of the Tribunal preventing the person from having access to a child, or restraining the person from entering or remaining in any premises or part of any premises in the interest of the child,*
>
> *is guilty of an offence and liable on conviction to imprisonment for three years and to a fine of R20,000.*

[21] The case at hand, the Appellant having been convicted of *"interrupting, disturbing and also misbehaving in the Tribunal while being spoken by the Tribunal"*, concerns a matter of criminal contempt.

[22] In the case of ***Serret v Attorney-general (SCA 9 of 2011) [2012] SCCA 13 (31 August 2012)*** the appellant appealed against her conviction by the Supreme Court for contempt of court and the sentence of 7 days' imprisonment imposed on her. Fernando JA, as he then was, examined the law in relation to criminal contempt and found that:

> *Although there is no necessity to provide the contemnor with a written charge sheet, it is incumbent upon the court to inform the contemnor in detail of the nature of the contempt committed.*

[23] His Lordship referenced the case of ***R v Moran (1985) 81 Cr App R 51*** where the Court set out certain principles to be borne in mind in contempt cases. According to ***Moran***

> *(a) The decision to imprison a person for contempt should never be taken too quickly. There should always be time for reflection as to what is the best course to take.*
>
> *(b) The judge should consider whether that time for reflection should not extend overnight.*
>
> *(c) If it is possible for the contemnor to have legal advice he should be given an opportunity of having it, but justice does not require that in every circumstance of contempt the contemnor has a right to legal advice. Situations arise in court sometimes where a judge has to act quickly and to pass such sentence as he thinks proper at once.*
>
> *(d) Giving a contemnor an opportunity to apologise is one of the most important aspects of the summary procedure.*

[24] His Lordship also considered the case of ***R v Huggins (2007) 2 Cr App R 8 (CA)*** which reiterated that the judge should consider whether that time for reflection should extend overnight.

[25] His Lordship proceeded to set guidelines that may be followed in the future in cases of this nature and stated that where a judge considers summarily punishing the alleged

contemnor, certain procedures should ordinarily be followed. His Lordship found that *"These [guidelines] are particularly important when the contemnor is at risk of committal to prison, and may in appropriate cases include*:

> *((i) the immediate arrest and detention of the offender;*
>
> *(ii) telling the offender what the contempt is, and recording the substance of the charge;*
>
> *(iii) giving a chance to apologize;*
>
> *(iv) affording the opportunity of being advised and represented by counsel and making any necessary order for legal aid for that purpose,*
>
> *(v) granting any adjournment that may be required;*
>
> *(vi) call upon the contemnor to show cause why he should not be convicted;*
>
> *(vii) give the contemnor an opportunity to reply;*
>
> *(viii) entertaining counsel's submission; and,*
>
> *(ix) if satisfied that punishment is merited, imposing it, having given adequate time for reflection."*

[26] He however cautioned against the use of the 'summary procedure' to deal with contempt of court as stated in ***Balough v St Alban's Crown Court [1975] QB 73 at 90*** that it -

> *…must never be invoked unless the ends of justice really require such drastic means: it appears to be rough justice; it is contrary to natural justice; and it can only be justified if nothing else will do.*

[27] According to Archbold "a judge must have, as ancillary to the power to deal summarily with contempt, a power to order the detention of the alleged contemnor for at least as long as it is necessary for the judge to decide what course to take and to conduct summary proceedings if appropriate". See ***R v Hill CA 28-110***

[28] It bears keeping in mind that the summary procedure may also be a breach of the right to a fair and public hearing within a reasonable time by an independent and impartial

tribunal established by law. As Hirby P put it in ***European Asian Bank v Wentworth (1986) 5 NSWLR 445, 452***;

> *When a judge deals summarily with an alleged contempt he may at once be a victim of the contempt, a witness to it, the prosecutor who decides that action is required and the judge who determines the matter in dispute and imposes punishment.*

[29] It is noted that appeals against findings of contempt have succeeded on grounds that the judge did not give the contemnor the opportunity to have legal advice or representation or to prepare his defence see ***Haslam [2003] EWCA Crim 3444, [2003] All ER (D) 195 (Nov) at [22]***.

[30] In terms of the facts of this case, indeed it is clear that the Appellant, on his entry into the Family Tribunal, was conducting himself in a manner which the Family Tribunal reasonably believed he was in contempt of court. However, was it proper and necessary for the Family Tribunal to deal with the contempt in the way it did? According to the record of the proceedings, the actions of the Appellant were not such that rose to the level that required the drastic measures taken. Furthermore, in my view, the framing of section 78A (7) of the Children Act which creates a criminal offence when a person "*disrupts or interrupts, or misbehaves in the course of, the proceedings of the Tribunal*" makes the framing of a formal charge, necessary. In any event, the proper course of action in cases similar to the present matter, where a person acts in contempt of the Court in this manner, the safest and most proper approach would be to follow the guidelines set down in the case of ***Serret*** above. Summary proceedings should only be instituted where it is urgent and imperative that the punishment be immediate. Summary proceedings are a last option, should be exercised with restraint, and only used in exceptional circumstances.

[31] As so aptly put by Hirby P in ***European Asian Bank,*** "*The combination, in the judge, of four such inimical functions is not only unusual, it is so exceptional that, though it may sometimes be required to deal peremptorily with an emergency situation, those occasions will be rare indeed*".

[32] In consideration of the above the appeal is allowed and the conviction is quashed.

[33] Costs are ordered in favour of the Appellant.

Signed, dated and delivered at Ile du Port on ……

PILLAY J