

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA18/2016

Appeal from Employment Tribunal Decision 47/2014

[2016] SCSC 901

Paolo Ghiani

Appellant

versus

Cote d'Or Lodge (Vacanze Seychelles Limited)

Respondent

Heard: By written submissions of the Respondent dated 4th October 2016

Counsel: Mr. Nichol Gabriel for appellant

Ms. Tamara Christen for respondent

Delivered: 18th November 2016

JUDGMENT

Twomey, CJ

- [1] The Appellant filed a case in the Employment Tribunal for compensation for the termination of his contract of employment which was set down for hearing on 2nd February 2016.
- [2] On that date neither the Appellant nor his Counsel were present and the suit was dismissed by the Tribunal for want of prosecution.

- [3] On the 25 April 2016, the Appellant filed a notice of motion before the Tribunal supported by Affidavit in which he deponed that both he and his counsel had mistakenly recorded the date at the last sitting of the Tribunal for 2nd and not 12th February and consequently had not turned up on the 2nd February.
- [4] Based on these averments he asked that the case be reinstated.
- [5] In response the Respondent, through its representative, deponed that the case should not be reinstated based on the provisions of sections 133 and 167 of the Seychelles Code of Civil Procedure. He further relied on the authority of *Gill v Film Anstalt* (2003) Vol 1 SLR 137.
- [6] The Tribunal upheld the submission of the Respondent and ruled that the case could not be reinstated.
- [7] From this decision the Appellant has appealed on three grounds namely:
1. The learned chairman erred in dismissing the Application of the Appellant under the wrong legal basis (sic).
 2. The learned chairman failed to consider the fact that the Appellant's application before the Employment Tribunal was dismissed due to a confusion in dates.
 3. In all the circumstances the dismissal of the Appellant's case was wrong in principle and in law.
- [8] Before I explore the grounds of appeal proper I have to resolve the objection raised by Ms. Christen for the Respondent in respect of whether the present appeal is from a final decision of the Tribunal or an interlocutory judgment. If it is the latter, leave of the court would have to be sought based on the provisions of Rule 4 of Schedule 6 to the Employment Tribunal and section 43 of the Courts Act which provide that leave of the court must be sought for appeals from interlocutory judgements.
- [9] Ms. Christen's submission is ingenuous but not persuasive. The test that should be engaged by an appellate court to determine the finality of a judgment is whether the

decision in question constitutes an end to the judicial labour in the cause, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties.

[10] When the present matter was dismissed no part of it survived in any way. It was the most final decision the Tribunal possible in the matter. It was the end of the matter. There is therefore no question of the dismissal of the suit in the present matter being an interlocutory decision. The issue of leave therefore does not arise. The appeal filed was therefore proper.

[11] The bone of contention in this appeal is whether the Tribunal was correct in their decision when they dismissed the case. Sections 133 and 67 of the Seychelles Code of Civil Procedure provide in relevant part:

133. If on the day to which the hearing of the suit has been adjourned by the court ... the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the manners directed in that behalf by sections 64, 65 and 67 or may make such order as it thinks fit...

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

[12] In their decision dismissing the suit, the Tribunal relied heavily on the authority of *Gill* (supra). In *Gill* the case had been called forty-one times since it was lodged and ten times after being part heard and neither the respondent (the plaintiff in the case below) nor his counsel were present. The court properly dismissed the plaint but soon after the dismissal entertained a motion for the reinstatement of the suit and granted it. The Court of Appeal properly found that the indulgence of the court was not only manifestly excessive and unwarranted but was also awry from the law. In *Gill* there was a clear abuse of process by the appellant.

[13] Moreover, the reinstatement of a case after a court had risen was not permitted under any provision of procedural law in Seychelles. However, the reinstatement of the suit was

permissible subject to the statute of limitation. The clock would have been suspended by the first suit and would start ticking again on its dismissal. That point is also made in *Gill*. Under those provisions the present matter before the Employment Tribunal could have been filed afresh.

- [14] But all the provisions above are applicable to suits in the courts of Seychelles. Insofar as the Employment Tribunal is concerned the provisions of Civil Procedure Code or Courts Act are not binding on the Employment Tribunal. Rules 6-7 of Schedule 6 to the Employment Act state in relevant part:

(6) The Tribunal shall before making any decision--

(a) afford the parties the opportunity to be heard;

(b) generally observe the rules of natural justice.

(7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.

- [15] The Tribunal was therefore duty bound to observe the rules of natural justice. It may well have come to the same conclusion and dismissed the suit on the grounds that the excuse was not valid but it is clear that its decision was grounded on the fact that it felt bound by the provisions of the Code of Civil Procedure and the authority of *Gill*.

- [16] It therefore erred in its decision. For these reasons, the appeal succeeds and is remitted to the Tribunal for hearing.

- [17] Finally, I wish to remind parties that the Tribunal is not comparable to a court in the sense that it provides an informal setting where parties may represent themselves and put their case forward. Its rules of procedure should therefore be more relaxed than that of the formal setting of the court. I am not in this respect advocating a free for all situation where anything goes. Procedures should be adhered to as far as possible but viewed through the prism of an informal forum the rules of natural justice would dictate reasoned and genuine excuses for absences should be considered by the Tribunal.

Signed, dated and delivered at Ile du Port on 18th November 2016.



M Twomey
Chief Justice



Dr. Mathilda Twomey
Chief Justice
Supreme Court of Seychelles