

COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] (18 December 2023)

SCA 19/2023

(Arising in SCA MA 44/2023)

Savoy Development Limited
(rep. by Mr. Serge Rouillon)

Appellant

and

Sharifa Salum
(rep. by Mr. Ryan Laporte)

Respondent

Neutral Citation: *Savoy Development Limited v Salum* (SCA 19/2023) [2023] (Arising in SCA MA 44/2023) (18 December 2023)

Before: Robinson, Gunesh-Balaghee, De Silva, JJA

Heard: 5 December 2023

Summary: **Appeal outside delay – grounds of appeal challenge merits of decision when case was determined on preliminary objections in law**

Delivered: 18 December 2023

ORDER

The appeal is set aside and the rulings in MA 292/2022 and CA 6/2022 as well as the order of the Employment Tribunal in case ET 183.18 and 185.18 dated 21 January 2022 are maintained.

JUDGMENT

GUNESH-BALAGHEE JA (Robinson, De Silva JJA concurring)

1. It is essential to refer to the background facts to understand what this case is about. Following an appeal to the Court of Appeal (whose facts need not be referred to for the present purposes), in its judgment dated 17 December 2021 (SCA 10/21), the said Court remitted a case to the Employment Tribunal for it to compute the benefits payable to the respondent by the appellant. The Employment Tribunal recomputed the benefits and gave

its ruling (ET 183/2018 and 185/2018) on 21 January 2022 (which the appellant alleges was received by it on 11 March 2022). The appellant appealed against the ruling of the Employment Tribunal to the Supreme Court. **On 7 December 2022**, the Supreme Court gave its ruling whereby it dismissed the appeal on preliminary points in law, notably on the ground that the appeal had been lodged outside delay (**CA 6/2022**).

2. There seems to be some confusion which arose in this case from the fact that the appellant made an application in MA 292/2022 to the Supreme Court for leave to appeal “*the ruling in MA 188/2022 dated 7 December 2022*”, when in fact it intended to appeal the ruling in CA 6/2022. The Supreme Court set aside the application for leave (MA 292/2022): in its ruling, the learned Judge of the Supreme Court noted that the affidavit in support of the application bore the heading “*Affidavit in support of application for leave to appeal ruling in MA 188 of 2022 of 7th December 2022 and ET 185/2018 of 21st January 2022 (received by the parties on 11th March 2022) arising out of CA6 of 2022.*” She further stated that MA 188/2022 was in fact an application for an “*order to grant leave to the appellant to appeal the ruling of the Supreme Court in MA 57/22 dated 16th August 2022 refusing to grant a stay of execution of the Court of Appeal judgment in SCA 10/21 dated 17 December 2021.*”
3. After noting that it was clear that the appellant was confused as regards the decision against which it intended to appeal, the learned Judge sustained the first objection raised by the respondent which was that the appellant sought to appeal a ruling in MA 188/2022 but the ruling was not exhibited in the application.
4. She also noted that the affidavit in support of the application was defective as the authority pursuant to which the deponent had sworn the affidavit had not been attached to the application.
5. On 16 June 2023, the appellant lodged the present appeal (SCA 19/2023) before the Court of Appeal whereby it is challenging the ruling of the Supreme Court given in MA 292/2022 on 13 June 2023.

6. On the 4 December 2023, the appellant lodged an application seeking leave to allow it to amend the notice of appeal in case SCA 19/2023 *“to better reflect the claims and requests of the Applicant/Appellant before this Honourable Court and this for the reasons set out in [an] attached affidavit.”*
7. In the affidavit, it is averred that the appellant has appealed *“the fresh decision of the ET which was confirmed in the Supreme Court in CA 6 of 2022 dated 7th December 2022 to this Honourable Court in SCA 19 of 2023 which is being appealed against in this upcoming Appeal session together with the refusal of leave ruling in MA 292 of 2022”*. The appellant has further attempted to clarify its position by averring that the correct matter to be canvassed before this Court are –
 - (a) *“for the court to focus on the appeal against the rulings in MA 292 of 2022 and CA 6 of 2022 being the key issue for determination rather than the Miscellaneous application numbers which the trial Judge has concentrated on rather than the main object of the case which was to see if the SCA 10/2021 had been carried out;*
 - (b) *An Order setting aside the order of the Employment Tribunal in case ET 185 of 2018 dated 21st January 2022”*
8. I must state that I found it difficult as to understand what is the case which is being appealed before this Court as Mr Rouillon found it to convey what was his case through the above averments. However, since the motion for leave to amend the notice of appeal was not objected to, we accordingly granted the motion.
9. Be that as it may, it can be gleaned from the Amended Notice of Appeal which was attached to the application, that the relief which is being sought from this Court in the present case (SCA 19/2023) is not only for an order setting aside the ruling in MA 292/2022 dated 13 June 2023 arising out of CA 6/2022 dated 7 December 2022 and the Order of the Tribunal in case ET 183.18 and 185.18 dated 21 January 2022 **but also for an order setting aside the ruling in CA 6/2022.**

10. It is also clear from Skeleton Heads filed on behalf of the appellant that it is appealing against both the ruling in MA 292/2022 and the ruling in CA 6/2022.

11. I have duly considered the submissions made by Counsel for both parties.

12. Now, as stated above, the appeal in the present case (SCA 19/2023) was lodged on 16 June 2023 and the ruling of the Supreme Court in CA 6/2022 was delivered on 7 December 2022. Pursuant to Rule 18(1) of the Seychelles Court of Appeal Rules which is reproduced below, the appeal should have been lodged within 30 days after the date of the decision appealed against:

“Every appeal shall be brought by notice in writing (hereinafter called “the notice of appeal”) which shall be lodged with the Registrar of the Supreme Court within thirty days after the date of the decision appealed against.”

The appellant is therefore clearly outside delay. I further note that it could have availed itself of Rule 26 of the Seychelles Court of Appeal Rules to seek an extension of time to appeal outside delay but it has failed to do so. In the circumstances, I set aside the appeal against the ruling in CA 6/2022 as it is well outside delay.

13. In so far as the ruling of the Supreme Court in MA 292/2022, is concerned, as rightly pointed out by the learned Judge, it was an application for an order for leave to appeal the ruling given by the Supreme Court in MA 188/2022.

14. The grounds of appeal filed in present case are set out below-

“1. The learned Judge erred in law and in fact in failing to recognise the prejudice caused to the parties by the erroneous date on the ruling of the Employment Tribunal dated 21st January 2022 when it should have been 11th March 2022 when the order was issued to the parties.

2. The learned judge erred in fact and in law in citing rules and authorities relating to the timing of abuse, but has failed to properly exercise discretion. In this particular instance on the basis that the applicant would have been able to

properly make out its grounds of appeal at a later date after filing its grounds of appeal at a later date after filing its notice of appeal.

3. *The learned judge erred in fact and in law in not taking note that the failure of the tribunal to make the ruling available to the bodies in good time was a serious breach of the rules of natural justice for appeal deadline purposes since the Applicant had no idea what day would be appealing against.*
4. *The ruling of the Learned Judge is on the whole wrong, unfair and it is not correct to say that this matter was not one which merited the use of the inherent powers of the Supreme Court to exercise its discretion in favour of the Applicant where the order appealed against was made;*
 - a. *without checking how the employment contract for Fisherman's Cove Hotel was slipped into the file by an unknown source therefore defeating the order SCA 10/2021 to make the proper final calculation of the benefits due to the Respondent; without scrutiny verification or opportunity for the Applicant to examine which was not part of the proceedings on record in the case ET 185 of 2018; and*
 - b. *there is also the clear evidence of the gross conflict of interest of the Chairperson who had represented the Respondents in several matters relating to this case and she did not reveal a conflict of interest before ruling on the 21st January 2022.*
5. *The Learned Judge erred in failing to take cognisance that the order of the Court of appeal in SCA 10/2021 had not been correctly carried out by assuming a document clandestinely inserted into the Tribunal file was a genuine contract of employment."*

15. Clearly, the appellant cannot rely on the same grounds to challenge the ruling in CA 6/2022 (which set aside the appeal against the ruling of the Employment Tribunal) and the ruling in MA 292/2022 (where the Supreme Court refused to grant leave to the appellant (then applicant) to appeal against the ruling in MA 188/2022). Further, the ruling in MA 292/2022 was determined solely on preliminary objections in law while the above grounds

not only seek to impugn the merits of the decision but above all they seek to challenge the merits of the ruling in case CA 6/2022.

16. In the circumstances, this Court is unable, on the basis of the above grounds, to consider the appeal against the ruling in MA 292/2022. Nonetheless, I have carefully read the ruling in MA 292/2022 and it is amply clear that the learned Judge was perfectly right in setting aside the application for leave to appeal sought by the appellant for the reason set out at paragraph 4 above. In the circumstances, I accordingly dismiss the appeal and maintain the ruling in MA 292 of 2022.

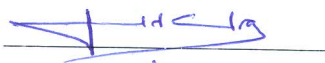
17. For all the reasons given above, I dismiss the appeal with costs.


K. Gunesh-Balaghee JA

I concur:-


F. Robinson JA

I concur:-


J. De Silva JA

Signed, dated and delivered at Ile du Port on 18 December 2023.