

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] (18 December 2023)

SCA 04/23

Arising in CS 99/2020

AVANI SEYCHELLES BARBARONS RESORT & SPA

Appellant

(rep. by Elvis Chetty)

And

ROMEO SIMEON

Respondent

(rep. by Sundaram Rajasundaram)

Neutral Citation: *Avani Seychelles Barbarons Resort & Spa v Simeon* (SCA 04/2023) [2023]
(18 December 2023)

Before: Fernando, President, Twomey-Woods, Robinson JJA

Summary: Rule 24, Seychelles Court of Appeal Rules- main heads of argument filed out of time in breach of the rule- no application to extend the time or to condone the delay-good cause not shown to condone delay.

Heard: 5 December 2023

Delivered: 18 December 2023

ORDER

The appeal is dismissed. The whole with interests and costs.

JUDGMENT

TWOMEY-WOODS JA

(Fernando, President and Robinson JA concurring)

Background

[1] The matter before us involves an alleged breach of a service contract between Avani Seychelles Barbarons Resort & Spa (hereafter Avani) and Romeo Simeon (hereafter Mr. Simeon). Mr. Simeon averred in an amended plaint filed on 26 October 2021 that he had entered into a contract for service with Avani in January 2015 to provide transportation for the Avani hotel staff to and from work. He further averred that on 10 March 2017, Avani

terminated the contract with no notice to him despite clause 8 of the contract requiring four months' notice in writing for the same. Mr. Simeon prayed for damages for the breach of the 4-month notice period and moral damages totalling SCR952,021.50.

[2] In its defence, Avani claimed that the contract between the parties had lapsed and had ceased to exist in March 2017 but that they had agreed to continue the agreement for another three months as stipulated in the contract. It averred that there was no contract with a notice period in place when Mr. Simeon made the claim.

[3] At the hearing, Mr. Simeon testified that after completing the contract term in December 2016, it was agreed that he would continue his services for another three months, which he did. On 17 March 2017, he received a phone call from Avani's HR department terminating the contract. This was supported in writing by a letter he received the same day. After two weeks, he learned that another contractor had been appointed.

[4] Mr. Krisantha, Avani's financial controller, also testified. He stated that the contract between the parties had ended on 31 December 2016, but as per clause 3 of the agreement, it could be extended for another three months. The decision was made not to renew the contract as others had tendered for a lesser amount for the services.

[5] In his decision, the learned Chief Justice found that despite the letter of termination of the agreement by Avani, as Mr. Simeon had continued to work beyond the extended three months of service under the contract, the contract had been 'tacitly reconducted' in terms of Article 1738 and 1759 of the Civil Code. He relied on the case of *Chez Deenu Pty Ltd v Seychelles Breweries Limited* (SCA 22 of 2011) [2013] SCCA 15 (30 August 2013). He awarded all the damages claimed.

[6] Dissatisfied with this decision, Avani has appealed to this court.

The appeal before this court

[7] The appeal grounds as submitted are as follows:

(1) The learned judge erred in law and on the evidence in that he found that the appellant was in breach of the contract despite the contract having expired.

- (2) *The learned judge erred in not taking into consideration the arguments of the extension period provided by the contract, which was utilised by both parties.*
- (3) *The learned judge erred in not considering the fact that the contract did not have an automatic renewal clause.*
- (4) *The learned judge erred in failing to consider that the appellant notified the Respondent that the contract would not be extended.*

The issue on the merits of the case before this court

- [8] The grounds reproduced above all relate to a single issue that falls for our determination: Was there continuance of the contract after its expiration?
- [9] However, much as we would like to engage with this issue and decide on its merit, we are precluded from doing so given the Appellant's *laches* in terms of the procedural rules in this Court. We explain.

Breach of Seychelles Court of Appeal Rules

- [10] The Respondent has submitted that the Appellant has breached Rule 24 of the Seychelles Court of Appeal Rules by filing his submissions out of time. He prays for the dismissal of the appeal on this basis.
- [11] In response, the appellant has conceded the delay in filing its submissions and sought to give reasons from the bar which application was refused as it was unsupported by motion and an affidavit.

Determination by the court on the procedural issue

- [12] Rule 24 of the Seychelles Court of Appeal Rules 2005 as amended provides in relevant part:

(1)(a)Unless the President otherwise directs—(a)The appellant shall lodge with the Registrar five copies of the appellant's main heads of argument within one month from the date of service of the record...

...

(i)Where at the date fixed for hearing of the appeal the appellant has not lodged heads of argument in terms of this Rule, the appeal shall be deemed to be abandoned and shall accordingly be struck out unless the Court otherwise directs on good cause shown.

[13] The rule is couched in mandatory terms and has been strictly applied in recent jurisprudence.

[14] Regarding rules of procedure in general, in *Aglae v Attorney General (2011) SLR 44*, this Court ruled an appeal abandoned for the breach of procedural time limits. The Court relied on the case of *Ratnam v Cumarasamy and Another [1964] 3 All ER 933* for the proposition that:

“The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the Court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right of extension of time which would defeat the purpose of the rules which provide a timetable for the conduct of litigation.”

[15] Specifically, with regard to Rule 24, in *Auguste v Singh Construction (Commercial Case 71 of 2022) [2022] SCCA 69 (16 December 2022)*, this Court stated:

“[10]. There is now settled jurisprudence on this point – most recently in the cases of Commissioner of Police & Anor v Antonio Sullivan & Ors (SCA 26 of 2015) [2018] SCCA 2 (10 May 2018) and Laurette & Ors v Savy & Ors (SCA 13 of 2019) [2019] SCCA 36 (21 October 2019)”.

...

[12] We cannot overemphasise the importance of rules of procedure. There is an apparent necessity for courts to adopt a tough stance on time limits. Parties are entitled to certainty and clarity in court proceedings and the taxpayer to a system that is cost-effective as possible.

[13]For all these reasons, we cannot condone the breaches of the rules and deem the present appeal abandoned.”

[16] Similarly, in *Chang Sing Chung v Kim Koon and Ors* (SCA MA 38 of 2023) [2023] SCCA 48 (25 August 2023), the Court held:

[22]Rule 24 [...] obliges an appellant to file heads of argument within a specified time period- one month - from the date of service of the record... There are certainly cases such as the one we are dealing with, where what has been flouted is 24(a) ... and appeals have been dismissed. So, flouting 24(a) has consequences.

[17] The appeal in that case was also dismissed.

[18] With regard to the present case, the heads of argument have been filed nearly two months out of time. There is no application supported by an affidavit before this court to condone the delay.

[19] In the circumstances, we have no alternative but to deem the appeal abandoned.

Order


[20] I therefore order as follows:

- (1) The appeal is dismissed.*
- (2) The whole with interests and costs.*




Dr. M. Twomey-Woods, JA.

I concur


A. Fernando, President

I concur


F. Robinson, JA

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