

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact

[2021] SCSC 509
MC22/2023

In the matter between:

NORTH ISLAND COMPANY LIMITED
(rep. by B. Hoareau)

Petitioner

and

MINISTER OF EMPLOYMENT AND SOCIAL AFFAIRS
(unrepresented)

Respondent

Neutral Citation: *North Island Company Limited v Minister of Employment & Social Affairs*
(MC22/2023) [2023] SCSC 509 (5 July 2023).

Before: E. Carolus J

Summary: Application for leave to proceed with application for Judicial Review

Delivered: 5 July 2023

ORDER

Leave to proceed with petition for Judicial Review is granted

RULING

E. Carolus, J

- [1] North Island Company Limited has petitioned this Court for judicial review of a decision of the Minister of Employment and Social Affairs made on 9th March 2023. The petition is supported by an affidavit sworn by Vincent Meriton a Director of the petitioner, to which are exhibited a certified copies of the decision sought to be canvassed and documents material to the petition.

[2] The events giving rise to the order as averred in the petition are as follows: The petitioner, the owner and operator of a hotel establishment, made an application to the Competent Officer in the Ministry of Employment for a certificate in accordance with section 18(1)(a) of the Employment Act, 1995 (“the Act”) for the petitioner to employ a non-Seychellois in the post of General Manager of the establishment. The application was granted on 28th December 2022 by the Competent Officer who issued a certificate for employment of a non-Seychellois in the post of General Manager. The Competent Officer further issued a letter also dated 28th December 2022 imposing the following condition to the granting of the application –

- (i) the incumbent Finance Director of the hotel establishment is not to be promoted or appointed to the post of General Manager; and/or
- (ii) approval has not been granted for the incumbent Finance Director of the hotel establishment to be promoted to the post of General Manager of the hotel establishment.

On the 9th January 2023 the petitioner appealed to the Minister against the decision of the Competent Officer to impose the aforementioned condition on the ground that the Competent Officer did not have the power to dictate to an employer who to recruit or not in respect of the post for which a certificate has been issued under section 18(1)(a) of the Act. On the 9th March 2023 the Minister made the determination to uphold the decision of the Competent Officer to impose the condition in the granting of the application.

[3] The grounds for review as stated in the petition are as follows:

Illegality/Ultra Vires

8. *It is averred and contested that the decision of the Respondent is illegal and/ or Ultra vires in that the Respondent ought to have held that –*

Particulars of Illegality and/or ultra vires

- 8.1 section 18 of the Act grants the Competent Officer only the power of determine whether or not to issue a certificate to an employer to employ a non-Seychellois in a particular post;
- 8.2 section 18 did not authorise the Competent Officer to determine who was the non-Seychellois to be employed or not in the post;
- 8.3 the Respondent ought to have held that the condition imposed by the Competent Officer was illegal;
- 8.4 the Respondent ought to have quashed the condition imposed by the Competent Officer; and/or
- 8.5 on the basis of all the above, the Respondent ought not to have upheld the condition imposed by the Competent Officer.

9. **Irrationally (sic) / Unreasonableness**

- 9.1 Further or in the alternative to paragraph 8 of the Petition, the Petitioner avers and contends that the finding and decision of the Respondent – as set out in paragraph 7 of the Petition – is irrational and/or so unreasonable and that no reasonable tribunal or authority would have come to such a finding and decision, in that -

Particulars of Irrationally and Unreasonableness

- (i) There was no evidence or facts laid before the Respondent upon which the Respondent could have come to the finding and decision; and /or
- (ii) Further or in the alternative to paragraph (i) above, the Respondent took irrelevant matters into consideration and/ or failed to take in consideration relevant matters, in coming to the findings and decisions.

[4] In terms of the petition, the petitioner prays the Court to:

- (i) grant leave to the Petitioner to proceed with the Petition in accordance with Rules 5 and 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals ad Adjudicating Authorities) Rules;
- (ii) after hearing the petition, issue a writ of certiorari quashing the decision of the Respondent; and/or
- (iii) order the Respondent to pay costs to the Petitioner.

- [5] At this stage, the Court has to decide whether or not to grant leave to the petitioner to proceed with the petition. Rule 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995 (“the Rules”) provides that in order for the Court to grant leave to proceed, it must be satisfied that the petitioner has sufficient interest in the subject matter of the petition and that the petition is made in good faith.
- [6] Given that the petitioner is directly affected by the decision of the respondent, it is my view that it has sufficient interest in the subject matter of the petition.
- [7] Having determined that the petitioner has sufficient interest, it remains for this Court to determine whether the petition is made in good faith. In order to show good faith, the petitioner has to show that it has an arguable case on the basis of the material available to the Court that is, the petition, affidavits and other documents submitted. See *Karunakaran v Constitutional Appointment Authority* [2017] SCCA 9. Having gone through the materials submitted in support of the petition, I find that the issues raised by the petitioner disclose an arguable case. I therefore find that the requirement of good faith is fulfilled.
- [8] I note that the petition also complies with rules 2, 3 and 4 of the Rules.
- [9] Accordingly I grant leave to the petitioner to proceed with its petition for Judicial Review and I make the following Orders:
- (i) I direct the Registrar to serve a copy of the petition, supporting affidavit and connected documents and exhibits on the respondent.
 - (ii) The Ministry of Employment and Social Affairs is directed to forward the record in respect of the decision of the respondent canvassed in the petition, to the Registry of the Supreme Court not later than 14 days after the date of this Order.
 - (iii) I direct the Registrar upon receipt of the record referred to at subparagraph [9](ii) above, from the Ministry of Employment and Social Affairs, to allow the parties to peruse it and obtain copies thereof.

- (iv) The respondent is to file any objections to the petition in the Registry of the Supreme Court on or before the next mention date and serve a copy thereof on the petitioner.

[10] A copy of this Ruling is to be served on the respondent.

Signed, dated and delivered at Ile du Port on 5th July 2023


E. Carolus