

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact

[2021] SCSC 510
MC21/2023

In the matter between:

NORTH ISLAND COMPANY LIMITED

(rep. by B. Hoareau)

Petitioner

and

THE PRINCIPAL SECRETARY OF EMPLOYMENT **Respondent**

(unrepresented)

Neutral Citation: *North Island Company Limited v The Principal Secretary of Employment*
(MC21/2023) [2023] SCSC 510 (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 Principal Secretary of the Ministry of Employment (“the PS”) made on 16th February 2023. The petition is supported by an affidavit sworn by Vincent Meriton a Director of the petitioner, to which is exhibited –

- (i) a certificate dated 26th January 2023 issued by the Ministry of Employment and Social Affairs, approving the employment by the Petitioner of non-Seychellois in two posts (chairman and proprietor) subject to certain specified conditions; and
- (ii) a letter dated 16th February 2023 addressed to the petitioner from the PS revoking the approval granted by the aforementioned certificate and rescinding the said certificate.

[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 non-Seychellois in the post of Chairman and Proprietor of the establishment. The application was granted on 26th January 2023 and a certificate to employ a non-Seychellois in the respective posts of Chairman and Proprietor issued by the Competent Officer. On 16th February 2023 the Respondent unilaterally took the decision, and proceeded unilaterally, to cancel and revoke the certificate.

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

Illegality/Ultra Vires

6. *It is averred and contested that the decision of the Respondent is illegal and/ or ultra vires in that the Respondent did not have the power and authority to cancel the certificate, under the law.*

Breach of Rule of National (sic) Justice/ Procedural Impropriety

8. *Further or in the alternative to paragraph 7, the Petitioner avers and contends that the Respondent contravened the rule of natural justice and acted with procedural impropriety, in relation to the Petitioner in that –*

- (i) *Prior to cancelling and revoking the certificate the Respondent did not grant the Petitioner the opportunity to show cause as to why the certificate should not be cancelled and revoked; and/ or*

- (ii) *The Respondent in cancelling and revoking the certificate did not provide a clear and valid reason for the decision of the Respondent to cancel and revoke the certificate.*

Irrationally (sic)/ Unreasonableness

9.1 *Further or in the alternative to paragraph 7 and 8 of the Petition, the Petitioner avers and contends that the finding and decision of the Respondent – as set out in paragraph 5 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 ad 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 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 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, 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