COURT OF APPEAL OF SEYCHELLES

Reportable
[2023] (18 December 2023)
SCA CL 02/2023
(Arising in CP 01/2022) and
SCA MA CL 43/2023)

Savoy Development Limtied Appellant
(rep. by Mr. Serge Rouillon)

and

Sharifa Salum Respondent
(rep. by Mr. Ryan Laporte)

Neutral Citation: *Savoy Development Limited v Salum* (SCA CL 02/2023) [2023] (Arising in CP 01/2022) and (SCA MA CL 43/2023) (18 December 2023)
Before: Robinson, Gunesh-Balaghee, De Silva, JJA
Heard: 5 December 2023
Summary: **Appeal outside delay - appeal against judgment of Court of Appeal before the Constitutional Court – abuse of process**
Delivered: 18 December 2023

ORDER

The appeal is dismissed with costs and we refuse to set aside the Order of the Employment Tribunal dated 21 January 2022.

JUDGMENT

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

1. The appellant seeks to appeal against a Ruling of the Constitutional Court dated 13 June 2023 setting aside the constitutional petition which it had filed praying for a judgment declaring, inter alia, that Article 19(7) of the Constitution (which provides for the right to a fair hearing within a reasonable time) and Article 27(1) (which secures the right to equal protection of the

law without discrimination) have been contravened vis à vis it by the Employment Tribunal in cases Et 183.18 and 185.18s, by the Supreme Court in its judgment in case CA 11/ 2020 and by the Court of Appeal in its judgment in case SCA 10/2021.

2. In its plea, the respondent raised a preliminary objection to the hearing of the petition on the following grounds-

   (a) the petition has been filed out of time and does not comply with Rule 4(1) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules ("the Rules") since the decision of the Employment Tribunal is dated 1 September 2020;

   (b) it is "*prolix, unstructured, opinionated, unfocused*" and therefore does not comply with the requirement under rule 5(1) of the Rules. Further, the accompanying affidavit of facts is forensically useless and in any event defective;

   (c) the petition constitutes an abuse of process because –

      (i) the petitioner has adequate means of redress available to it;

      (ii) it is being used to scandalise the entire judiciary; and

      (iii) it is a disguised attempt to rehear an unsuccessful appeal; and

   (d) the petition contains no cause of action, does not reveal any violation of a constitutional right on a prima facie basis and is thus frivolous and vexatious.

3. The Constitutional Court upheld the preliminary objection raised on the ground of delay and also found that the petition constitutes an abuse of process, is a disguised attempt to rehear unsuccessful appeals and is frivolous and vexatious.

4. At the outset, we note that the Attorney General who the second respondent in the case before the Constitutional Court was not joined as a party in this appeal. We do not propose to make any comments regarding this glaring mistake made by the appellant; this issue should have been rasied by the respondent but she did not do so and the appeal proceeded without the Attorney General being a party before this Court. The appellant is appealing against the decision of the Constitutional Court on 6 grounds of appeal which need not be reproduced at

this stage. It is seeking an order setting aside the Order of the Employment Tribunal in case ET 185 of 2018 dated 21 January 2022.

Background facts

5. It is relevant to set out in chronological order the background facts leading to the constitutional petition which is the subject matter of the present appeal.

6. The petitioner is a company incorporated in the Seychelles and carries on the business of hotelier. The respondent was employed by the appellant as Front Office Manager at Savoy Resort and Spa at Beau Vallon, Mahe. Following disciplinary proceedings, the appellant terminated the respondent's employment on 28 August 2018. The respondent filed two applications, Et 183.18 and 185.18, which were consolidated before the Employment Tribunal whereby she sought her reinstatement without loss of earnings, 6 months' salary as compensation, compensation in lieu of one month's notice and withdrawal of the letter of warning given to her. The Tribunal in a ruling, ET 183.18 and 185.18 (hereinafter referred to as "the first ruling") dated 1 September 2020, found in favour of the respondent and granted all the prayers sought by her.

7. The appellant appealed to the Supreme Court against the ruling on 5 grounds. The grounds of appeal before the Supreme Court, in a gist, alleged that the Tribunal erred in law and on the facts in arriving at its judgment and that the **Tribunal demonstrated bias** in its procedural approach in favour of the respondent. It is noteworthy that none of the grounds of appeal before the Supreme Court alleged any breach of the appellant's constitutional rights before the Tribunal.

8. On 16 April 2021, the Supreme Court dismissed the appeal against the Tribunal's first ruling in its entirety and reaffirmed the Tribunal's first ruling. It further ordered that interest at the legal rate be paid to the respondent on the sum ordered to be paid to her as from the date of the Tribunal's first ruling on 1 September 2020 up to the date of payment to the respondent (CA 11/2020).

9. The appellant appealed against the judgment of the Supreme Court to the Court of Appeal on 6 grounds. It is not relevant to reproduce the said grounds. Suffice it to say that, once more, none the grounds alleged any breach of the appellant's constitutional right, be it before the Tribunal or the Supreme Court. It is noteworthy that, during the hearing before the Court of Appeal, **Counsel for the appellant dropped the ground of appeal pertaining to the question of bias** which reads as follows-

> "*The learned judge erred in law and on evidence by not finding the Employment Tribunal erred when demonstrating bias in its considerations of the facts and on the findings in favour of the Respondent.*"

10. On 17 December 2021, the Court of Appeal maintained the judgment of the Supreme Court on all the grounds except grounds 3 and 4 concerning the quantum of compensation payable by the appellant. The Court of Appeal found that the salaries which the respondent had derived while working for another employer after her dismissal should be deducted from the amount of the compensation payable to her by the appellant. It therefore remitted the matter back to the Tribunal solely for the purpose of computing the benefits payable to the respondent by deducting the salaries that she had earned at Fisherman's Cove Hotel (where the respondent had in the meantime taken employment) from the salaries that she would have earned at Savoy Hotel between the date of her unjustified dismissal on 21 August 2018 up to 1 September 2020 (SCA 10/2021).

11. The Employment Tribunal computed the compensation payable by the appellant and delivered its Ruling on 21 January 2022 (hereinafter referred to as "the second ruling") but allegedly received by the appellant on 11 March 2022. On 18 March 2022, the appellant appealed against the second ruling of the Tribunal to the Supreme Court.

12. In the meantime, on 21 January 2022, the appellant lodged the petition seeking constitutional redress before the Constitutional Court. In its petition it alleged that its constitutional rights under sections 27(1) and 19(7) of the Seychelles Charter of Fundamental Human Rights and Freedoms "*[had] been breached and [had] not been addressed before the Employment Tribunal and the Courts, since the* ***Tribunal, the Supreme Court and the Court of Appeal***

judgments … failed to address the issue of the right to equal protection of the law without discrimination …and the Employment Tribunal hearing took up to two years before the Tribunal decision was made..".

13. The respondent raised preliminary objections in law to the hearing of the petition. On 13 June 2023, the Constitutional Court delivered its judgement whereby it upheld the following preliminary objections, namely that the petition had been lodged outside delay, constitutes an abuse of process, is a disguised attempt to rehear unsuccessful appeals and is frivolous and vexatious and it accordingly set aside the petition.

14. It is this judgement which is the subject matter of the appeal presently before this Court.

15. Having set out the background facts, I shall now turn to the grounds of appeal. I have duly considered all the submissions made on behalf of the parties as well as the documents filed on record.

Grounds 1 and 5

"1. The Constitutional Court judge erred in law and fact in failing to recognise the constitutional issues and 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 Ruling of the Constitutional Court is unreasonable or cannot be supported by the evidence which shows a clear breach of the rules by the tribunal in giving the parties a completed and signed ruling only in March 2022*."*

16. The first observation which I must make is that the above grounds are clearly not a model of drafting; they are unclear, imprecise and fail to convey to the other parties what specific case they have to meet and this Court is also left to guess what is the exact ground on which the appellant is challenging the judgment of the Constitutional Court. I have, however, gathered that the appellant is alleging that the Constitutional Court was wrong in its decision because

the date on the second ruling of the Employment Tribunal which was indicated as being 21 January 2022 was erroneous and should in fact have read 11 March 2022, as this is the date on which the second ruling was allegedly issued to the parties.

17. As stated above the constitutional petition was lodged on 21 January 2022. According to the appellant itself, it was not aware of the second ruling of the Employment Tribunal when the petition was lodged. Now, pursuant to Rule 3(1) of the **Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules** ("the Rules"), an application to the Constitutional Court must be made by petition accompanied by an **affidavit of the facts in support thereof**. In the present case, the affidavit in support of the application is dated 21 January 2022 and, as per the appellant's own averments, it could evidently not have contained facts regarding the date of the second ruling (11 March 2022).

18. More importantly, it can be gleaned from the petition that the constitutional challenge was directed against three judgments: the ruling of the Employment Tribunal dated 1 September 2020, the judgment of the Supreme Court on appeal therefrom dated 16 April 2021 and the judgment of the Court of Appeal on appeal therefrom dated 17 December 2021, which were referred to by the appellant in its petition as "**the Judgments**". One can read the following at paragraphs 4, 6 and15 of the petition:

> "*4. By virtue of termination on 28th August 2018 and* ***ruling of the Employment Tribunal Proceedings in case ET 183.18 and 185.18 dated 1st September 2020; confirmed by the Supreme Court in case CA 11/2020 dated 16th April 2020 and finally confirmed in the Court of Appeal Judgment in SCA 10/2021 on 17th December 2021, (hereinafter where the context allows, collectively referred to as "the judgments")*** *the 1st Respondent ceased working with the Petitioner…*
>
> *…*
>
> *6. The Petitioner feels aggrieved that* ***its constitutional rights to equal protection of the law without discrimination under Article 27(1) and a fair hearing within a reasonable period under Article 19(7) have been breached and have***

not been addressed before the Employment Tribunal and the Courts since the Tribunal, the Supreme Court and the Court of Appeal judgments (hereinafter referred to collectively where the context allows as "the Judgments") *failed to address the issue of the right to equal protection of the law without discrimination particularly the ground that there was a proven admitted offence which constituted an economic crime and the Employment Tribunal hearing took up to two years before the Tribunal decision was made mainly due to matters beyond the control of the Petitioner and as a result the Petitioner has been severely prejudiced in the final judgment .*

...

15. The petitioner avers that ***the Judgements are discriminatory*** *against the rights of the Petitioner…*

16. The Petitioner avers that ***there has been serious discrimination in all the Judgments*** *where the emphasis was on using excuses presented by the 1st Respondent to exonerate her…"*

19. It is amply clear from the above paragraphs and when one reads the petition as a whole that the constitutional challenge of the appellant only concerned **the Judgments** i.e., the ruling of the Employment Tribunal dated 1 September 2020, the judgment of the Supreme Court on appeal therefrom dated 16 April 2021 and the judgment of the Court of Appeal on appeal therefrom dated 17 December 2021 and not the ensuing proceedings. The Constitutional Court was thus not in the least concerned with what happened following the Court of Appeal judgment dated 17 December 2021 which remitted the matter back to the Employment Tribunal which then gave the second ruling. Further, it is clear from a perusal of the petition and the affidavit in support thereof before the Constitutional Court that the issue regarding the date of the second ruling was not raised before the Constitutional Court.

20. In the circumstances, I fail to see how, the Constitutional Court's judgment can be said to be wrong because it failed to consider the alleged breach of the rules by the Tribunal in giving the parties a completed and signed ruling only in March 2022 or any constitutional issues or

prejudice allegedly suffered as a result thereof by the appellant since the copy of the ruling allegedly given to the appellant in March 2022 is the second ruling which was not in issue before the Constitutional Court.

21. For all the reasons given above, I reject grounds 1 and 5.

Grounds 2 and 3

> ***"2. The Constitutional court has erred in failing to recognize that it has the power to re-look at constitutional infringements in exceptional cases by any court and grant a remedy available under the constitution and in this case the rights of the employer were never considered on the facts.***
>
> ***3. That overall the Constitutional Court has failed to recognize the bias shown by the courts and Tribunals* (sic) *that have dealt with this case in the face of clear breaches of the rights of the Applicant and a clear offence admitted and proved on the record and have not exercise* (sic) *their discretion fairly in dismissing the Appellants case."***

22. At the outset, I need to point out that it is apparent from the above grounds of appeal that the appellant has clearly overlooked the fact that the Constitutional Court has not considered the merits of the appellant's petition but that the petition was set aside on preliminary objections in law.

23. In the circumstances, the question of the Constitutional Court recognising that it has the power to "*re-look at constitutional infringements in exceptional cases by any court*" clearly did not arise as the Constitutional Court agreed with the respondents' contention that the petition had been lodged outside delay, constitutes an abuse of process, is a disguised attempt to rehear unsuccessful appeals and thus frivolous and vexatious.

24. I must point out that the petition was drafted in a convoluted, unclear and imprecise manner and the appellant failed to establish ex facie the petition and the supporting affidavit that there

was a breach of any of the constitutional rights which it alleged had been breached. Be that as it may, it can be gleaned from the petition that the appellant had three grievances: the first grievance was that that its constitutional right to equal protection of the law without discrimination had not been addressed before the Employment Tribunal and the Courts. It was the appellant's contention that the decisions of the Employment Tribunal, Supreme Court and Court of Appeal "failed to address the issue of equal protection of the law on the ground that there was an admitted offence which constituted an economic crime". The emphasis in the judgements was on the excuses presented by the respondent to exonerate her for her "admitted acts of insider breach of trust". The second grievance was that **the Judgments** are discriminatory because they recognised the 1st September 2020, the date of the ruling in ET 183.18 and 185.18, as being the date of lawful termination of the respondent's employment with the appellant and disregarded that there had been a request for reinstatement which was later refused by the respondent. The third grievance was that the **Employment Tribunal** delivered its ruling after a delay of 2 years and in breach of the appellant's right to a fair hearing within a reasonable time.

25. I must, before proceeding any further, open a parenthesis here with regard to facts forming the basis of the appellant's first grievance. The appellant alleges that there was an admitted offence which constitutes an economic crime and yet the Tribunal and the Courts did not consider same. I have very carefully read the court record and have been unable to come across any finding that there was an admitted offence, let alone an admitted offence which constitutes an economic crime.

Time bar

26. The first ground on which the Constitutional Court relied to set aside the petition is that the petition had been lodged outside delay. Article 46(1) of the Constitution provides as follows –

> "*A person who claims that a provision of this Charter has been or is likely to be contravened in relation to the person by any law, act or omission may, **subject to this article**, apply to the Constitutional Court for redress."*

27. The word "Charter" in Article 46(1) is defined as meaning Part I of Chapter III of the Constitution which sets out a catalogue of fundamental human rights and freedoms. It is significant that while Article 46(1) provides an avenue for redress before the Constitutional Court to any person who claims a breach of the fundamental human rights and freedoms protected under Part I, the said section also makes it clear that the application for redress is subject to article 46 itself.

28. Article 46(10) confers power on the Chief Justice to make Rules for governing the procedure regarding applications for constitutional redress and, in line with section 46(10), the Chief Justice has made the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules ("the Rules").

It is relevant to refer to Rules 2(1), 3(1) and 4 which are reproduced below-

Rule 2(1) provides as follows –

> "*(1)These rules provide for the practice and procedure of the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution."*

Rules 3(1) and 4 provide –

> "*3. (1)An application to the Constitutional Court in respect of matters relating the application, contravention, enforcement or interpretation of the Constitution shall be made by petition accompanied by an affidavit of the facts in support thereof*."
>
> "4*(1) Where the petition under rule 3 alleges a contravention or a likely contravention of a provision of the Constitution, the petition shall be filed in the Registry of the Supreme Court─*
>
> *(a)in a case of an alleged contravention,* ***within 3 months of the contravention****;*
>
> *(b)…*
>
> *(c)…*

(2)…

(3)Notwithstanding subrules (1) and (2), ***a petition under rule 3 may, with the leave of the Constitutional Court, be filed out of time****.*

*(4)****The Constitutional Court may, for sufficient reason, extend the time for filing a petition under rule 3****.*" [emphasis added]

29. It is clear from a reading of Rules 3(1) and 4(1) that a petition for seeking constitutional redress can only be brought within a delay of 3 months from the date of the alleged contravention. However, a party may be granted an extension of time where he seeks leave of the Constitutional Court and establishes that there are sufficient reasons for granting leave. Since the application seeking constitutional redress before the Constitutional Court was lodged on 21 February 2022 and the appellant had failed to seek leave of the Constitutional Court to extend the time for filing the petition, the appellant could only have sought redress in respect of acts or omissions which had arisen within the period of 3 months before 21 February 2022, i.e., within the timespan starting 22 November 2021 up to 21 February 2022.

30. In the case at hand, as explained above, the appellant's case was premised on an alleged breach of its constitutional rights by the Employment Tribunal in case Et 183.18 and 185.18, the Supreme Court in CA 11/2020 and the Court of Appeal in SCA 10/2021. Case Et 183.18 and 185.18 concerns two applications which had been lodged before the Employment Tribunal by the respondent. The cases were consolidated and dealt with together and a single ruling was delivered on 1 September 2020. It stands to reason that the proceedings in Et 183.18 and 185.18 must have taken place before 1 September 2020 since the Employment Tribunal's ruling was dated 1 September 2020. In the circumstances, it is obvious that the application was time barred in so far as the any alleged breaches of the appellant's constitutional rights in connection with the first case before the Employment Tribunal are concerned.

31. The above would be equally applicable in so far as the alleged breaches of the appellant's constitutional rights before the Supreme Court are concerned since the judgment of the Supreme Court was delivered on 16 April 2021. Hence the Constitutional Court was perfectly

entitled to conclude that the petition was time barred as regards the Supreme Court proceedings. However, the Constitutional Court could not have set aside the petition on the ground of delay in so far as any alleged breaches of the appellant's constitutional rights before the Court of Appeal, since the judgment of the Court of Appeal itself was delivered on 17 December 2021 i.e., within the timespan of 3 months before 21 February 2022.

Abuse of process

32. Since the petition was time barred in so far as the alleged breaches of the appellant's constitutional rights before the Employment Tribunal and the Supreme Court are concerned, the only matter which remained to be determined by the Constitutional Court was whether there had been a breach of the constitutional rights of the appellant before the Court of Appeal.

33. However, this begs the question as to whether the Constitutional Court can sit on appeal against a judgment of the Court of Appeal.

34. It is significant that the facts giving rise to the appellant's grievances referred to above were raised before the Employment Tribunal which considered same but found in favour of the respondent. Those issues where again raised when the case was heard on appeal before the Supreme Court which maintained the decision of the Employment Tribunal. They were further canvassed before the Court of Appeal which reaffirmed the decision of the Tribunal by maintaining the judgment of the Supreme Court.

35. A perusal of the petition shows that the appellant is again raising the same issues before the Constitutional Court by simply giving a constitutional gloss to the facts which were minutely considered by the Employment Tribunal, the Supreme Court and the Court of Appeal, without more.

36. If indeed the appellant's right to equal protection before the law without discrimination and the right to a fair hearing within a reasonable period had been breached before the Employment Tribunal, it was open to the appellant to raise those issues on appeal before the Supreme Court and if, as alleged by the appellant, its right to equal protection before the law without

discrimination had been breached by the Supreme Court, one would have expected the appellant to have canvassed those issue before the Court of Appeal. Moreover, the prayer sought by the appellant in the present proccedings is very telling; it is not asking the Court to declare that there was any breach of its constitutional rights but to set aside the second ruling of the Employment Tribunal.

37. The Constitutional Court found that the petition is a disguised attempt to rehear unsuccessful appeals before the Supreme Court and the Court of Appeal and that the appellant has, through the proceedings before the Constitutional Court, simply tried to relitigate issues which had been canvassed before the Supreme Court and the Court of Appeal but determined in favour of the respondent. It therefore concluded that the appellant is making an abuse of the process of the court, the petition is a disguised attempt to rehear unsuccessful appeals and is frivolous and vexatious.

38. It is amply clear from the averments in the petition that they are simply a rehash of the grounds already canvassed before the Supreme Court and the Court of Appeal and that the appellant is far from raising issues concerning breaches of constitutional rights before the Constitutional Court.

39. As explained by Lord Bingham in **Hinds v Attorney General and Another (2002) 4 LRC 287(PC)** referring to Lord Diplock in ***Chokolingo v Attorney General of Trinidad and Tobago*** **(1981) 1 All ER 244 -**

> *"It would be undesirable to stifle or inhibit the grant of constitutional relief in cases where a claim to such relief is established and such relief is unavailable or not readily available through the ordinary avenue of appeal. As it is a living, so must the constitution be an effective instrument. But Lord Diplock's salutary warning remains pertinent: a claim for constitutional relief does not ordinarily offer an alternative means of challenging a conviction or a judicial decision, not an additional means where such a challenge has been made and rejected…"*

40. In **Hunter v Chief Constable of West Midlands Police (1982) AC 529 HL**), it was stated that a *"claim may be an abuse of process where it is vexatious, scurrilous or ill-founded. An*

example is where a person seeks to re-litigate a question which has already been adjudicated by a Court of Competent jurisdiction even though the matter is not strictly speaking res judicata".

41. I find it relevant to refer to the following dictum of Lord Diplock in **Hunter** (*supra) at p 541 – 543* which is clearly applicable to the facts of the present case*:*

> "*The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the Court by which it was made*"

42. It is also of interest to note that in **Hurnam v Kailashing Bholah and Soobashing Bholah [2010] UKPC 12** the Judicial Committee of the Privy Council approved the approach to abuse of process adopted in **Hunter** and cited with approval what was said by Lord Halsbury in **Reichel v Magrath (1889) 14 App Cas 665, 668:**

> "*… .. I think it would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again. …*"

43. The issue raised by the present appeal is not a novel one. The Court of Appeal has in a series of cases clearly laid down that a litigant cannot seek to set aside the Court of Appeal's decision in the Constitutional Court. In this regard it is apposite to refer to the following extract from the judgment of **Eastern European Engineering Limited v Vijay Construction (Proprietary) Limited [2022] SCCA 56** with which I am in full agreement-

> "*To allow such an action to proceed in the Constitutional Court could well constitute a collateral attack on the decision of this Court …. Indeed, the Court of Appeal has held repeatedly that it is not open to a litigant in the Constitutional Court to seek to have set aside as unconstitutional a decision of the Court of Appeal: Simeon v R Cr App 26/2002, D'Offray v Louise SCA 34/2007, Mellie v*

Government of Seychelles & Anor (SCA 3 of 2019) [2019] SCCA 40 (16 December 2019). This reflects decisions of the Privy Council in Chokolingo v Attorney-General [1981] 1 WLR 106 and Hinds v Attorney General & Ors (Barbados) [2002] 1 AC 854. Similarly, we also do not consider it appropriate or proper to have the Constitutional Court determine the constitutionality of the action of the apex Court of Appeal especially in circumstances where the decision of the Constitutional Court could then be appealed to the Court of Appeal."

44. Applying the principles enunciated in the above cases to the facts of the present case, I fully agree with the Constitutional Court that the petition should also be dismissed on the grounds that it constitutes an abuse of process, it is a disguised attempt to rehear unsuccessful appeals and is frivolous and vexatious.

45. Taking into consideration all the above, grounds 2 and 3 are rejected.

Grounds 4 and 6

"***4. That the ruling of the Constitutional Court is on the whole wrong, unfair, and is not correct where the order appealed against was made:***

- ***a. without checking the information slipped into the file by an unknown source therefore defeating the order of the court of appeal to make the proper final calculation of the benefits due to the Respondent; informally and without scrutiny, verification or opportunity for the Applicant to examine, which was not part of the proceeding on record in ET 185 of 2018; and***
- ***b. there is also the clear evidence of the gross conflict of interest of the Chairperson where she has represented the Respondent in several matters relating to this case and she did not reveal her conflict of interest before going on to rule on the 21st January 2022.***

5. ***The Constitutional Court erred in failing to take cognizance 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 and therefore this constituted a breach of a fair hearing for the Appellant.****"*

46. Under the above grounds, the appellant is referring to the evidence which was relied upon by the Employment Tribunal when it gave the second ruling on 21 January 2022 (which the appellant alleged it received on 21 March 2022). The appellant is also relying on the alleged situation of conflict of interest of the Chairperson of the Tribunal who formed part of a panel of three members who heard the case after its referral to the Employment Tribunal and which delivered the second ruling dated 21 January 2022.

47. I have already explained when considering grounds 1 and 5 that the petition before the Constitutional Court solely concerned matters that arose during the hearing of the Employment Tribunal leading to the first ruling and the ensuing appeals before the Supreme Court and the Court of Appeal. The Constitutional Court was in no way concerned with the second ruling.

48. In the circumstances, the Constitutional Court, which was not in presence of the evidence which was before the Employment Tribunal when it gave its second ruling and which had been seized to determine whether there was a breach of the constitutional rights of the appellant during the first hearing before the Employment Tribunal, the Supreme Court when it heard the ensuing appeal and the Court of Appeal when it heard the appeal from the Supreme Court, cannot be said to have erred when it did not consider the above questions when giving its ruling.

49. Grounds 4 and 6 are devoid of any merit and are accordingly rejected.

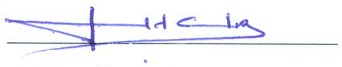
50. All the grounds of appeal having failed the appeal is dismissed with costs. We refuse to set aside the second ruling of the Employment Tribunal dated 21 January 2022.

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.