SUPREME COURT OF SEYCHELLES

Reportable
CA 01/2024

In the matter between:

PREM BUILDERS (PTY) LTD — **Appellant**
(Represented by its director, Bhimiji Babasia)
(Represented by Mr Joshua Revera)

and

BHARAT SHINGARAKHIYA — **Respondent**
(Represented by Mrs Aishah Molle)

Neutral Citation: *Prem Builders (Pty) Ltd vs Bharat Shingarakhiiya* (CA 01/2024) (22 January 2026)
Before: Adeline J
Summary: Appeal against the judgment of the Employment Tribunal
Heard: Submissions of counsels
Delivered: 22 January 2026

JUDGMENT ON APPEAL

Adeline, J

FACTUAL AND PROCEDURAL BACKGROUND

[1] This is an appeal, filed in court by the Appellant Prem Builders (Pty) Ltd, against the decision of the Employment Tribunal in a ruling delivered on the 24th November 2023 in the case of Bharat Shingarakhiya vs Prem Builders (Pty) Ltd filed as ET 91/2022, which awarded the Respondent (the Applicant before the Employment Tribunal) 15 months' salaries at a rate of 37,000 INR which was equivalent to SCR 90,713.33, and annual leave at 27.25 days.

[2] The Appellant states the grounds of appeal to be the following;

"1. The Employment Tribunal erred in law and in fact in giving judgment in favour of the then Applicant now the Respondent herein.

2. The Employment tribunal erred in law and on the facts when considering that the Appellant failed his obligation as an employer by failing to pay the Respondent his salary for a total of 15 months, and

3. The Employment Tribunal erred in deciding the judgment by way of three members of the tribunal when in fact, only two members of the tribunal heard evidence of the parties showing serious procedural irregularity".

[3] In terms of reliefs, the Appellant seeks from this court the following orders;

> *"a. To set aside and reverse the decision of the trial judge and rule against the Respondent, and*
>
> *b. Such order, as may be just and necessary in the circumstances".*

ARGUMENTS OF COUNSELS FOR THE PARTIES BY WAY OF SUBMISSIONS

For the Appellant

[4] The Appellant, Prem Builders (Pty) Ltd, represented by its Director Premji Bhimiji Dabasia submitted, that the Employment Tribunal's ruling in *Bharat Shingarakhiya v Prem Builders (Pty) Ltd ET 91/2022* containes critical legal and factual errors warranting reversal.

[5] It was submitted that the Tribunal erred in law and fact in its interpretation of deductions permissible under section 33 of the Employment Act (as amended). The Appellant testified that he retained funds to offset expenses undertaken on behalf of the Respondent and produced documentation as exhibits, including family airfare in the sum of SCR 59,980, phone bills amounting to SCR 52,492.28 which were mostly in relation to international calls to India, and other work-related costs such as PCR tests incurred on the Respondent's behalf, bringing the total sum to SCR 123,472.28. It was argued that these sums were not properly offset against the awarded salary and leave.

[6] The Appellant further submitted that while the Tribunal found that deductions must be authorised in writing, it failed to account for implied authorization and the mutual understanding between the parties, as evidenced by the Respondent's acceptance of these benefits without objection during employment. The Tribunal was said to have dismissed these deductions outright without considering the Appellant's evidence that the Respondent had agreed to repay these sums from his salary, thereby creating an imbalance in its reasoning.

[7] It was also submitted that the Respondent left Seychelles on 03 February 2021 with the understanding that he would return to work for the Appellant but instead obtained a second Gainful Occupation Permit and returned to Seychelles to work for another company, thereby breaching his obligations to the Appellant. The Tribunal allegedly failed to adequately consider this evidence or to offset these amounts against the payout awarded to the Respondent.

[8] With respect to salary, the Appellant challenged the award of 15 months' salary at INR 37,000 per month, converted to SCR 90,713.33. The Appellant contended that the Respondent himself testified that his monthly salary was INR 25,000 and later alleged a salary increment without substantiating that such increment was in fact granted. It was argued that the Tribunal failed to account for non-work periods in 2020, the Respondent's failure to return to work after his trip to India, and incorrectly awarded 27.25 days of leave without sufficient evidence. The Tribunal was said to have relied solely on the Respondent's evidence without cross-referencing attendance records, employment terms, or the fact that the Appellant had been travelling outside the Republic for extended periods.

[9] The Appellant further submitted that the Tribunal declined to award public holidays due to lack of evidence but failed to apply the same standard of scrutiny to the annual leave claim, leading to inconsistent reasoning.

[10] Finally, the Appellant raised a procedural irregularity concerning the composition of the Tribunal. It was submitted that although the Employment Tribunal must consist of the Chairperson and two members, the final judgment was signed and issued by three members including a member who did not participate in the hearing proper. This was said to

contravene the principles of procedural fairness, violate the *audi alteram partem* rule, and undermine the legitimacy of the judgment, creating an appearance of impropriety and rendering the decision invalid.

[11] The Appellant accordingly prayed that the Tribunal's ruling be reversed and that the Court make its ruling in favour of the Appellant.

For the Respondent

[12] The Respondent submitted that he worked for the Appellant as a Carpenter/Mason under a GOP and claimed unpaid salaries, public holiday pay, and annual leave.

[13] The Respondent maintained that he had not been paid salaries for 15 months in the sum of INR 164,000, whereas the Appellant claimed that only INR 134,000 was owed. In its ruling dated 24 November 2023, the Employment Tribunal noted uncertainty as to how the parties reached their respective figures but found from the evidence and the Respondent's testimony that 15 months' salary was outstanding at a rate of INR 37,000 per month, amounting to INR 164,000, which converted to SCR 90,713.33.

[14] It was further submitted that the Tribunal found no justifiable reason for any deductions from the Respondent's salary and that the Appellant failed to meet the requirements of section 33(1) (a)-(e) of the Employment Act 1995 (as amended). The Tribunal accordingly found that the Appellant was not entitled to make any deductions from the Respondent's salary. It was submitted that there were no errors in law or fact in respect of the Tribunal's conclusion on outstanding salary.

[15] Regarding annual leave, the Respondent submitted that the matter was dealt with by the Tribunal in paragraphs 5 and 8 of the ruling dated 24 November 2023. The Tribunal relied on Exhibit 2 produced by the Respondent showing his dates of entry and exit from the jurisdiction, enabling it to ascertain the outstanding balance due. On this basis, the Tribunal awarded the Respondent SCR 5,417.94 for accumulated annual leave of 27.25 days. It was submitted that there were no errors in the computation or entitlement to annual leave.

[16] The Respondent concluded that it was in the interest of justice for the Court to dismiss the appeal and make orders for costs and any other order the Court deemed fit.

LEGAL ISSUES PRESENTED FOR DETERMINATION

[17] Having considered the record of proceedings, the ruling of the Employment Tribunal dated 24 November 2023, and the submissions advanced on behalf of the Appellant and the Respondent, the following issues arise for determination:

1. Whether the Employment Tribunal erred in law and fact in its interpretation and application of section 33 of the Employment Act (as amended) by disallowing the deductions claimed by the Appellant.

2. Whether the Tribunal erred in law and fact in its assessment and award of outstanding salary, including by accepting an unsubstantiated monthly salary figure, failing to account for periods of non-work, and relying solely on the Respondent's evidence.

3. Whether the Tribunal erred in law and fact in its computation and award of annual leave, and in applying inconsistent standards of scrutiny to the evidence presented.

4. Whether the endorsement and issuance of the Tribunal's judgment by a member who did not participate in the hearing constituted a procedural irregularity, in breach of principles of natural justice and procedural fairness, rendering the decision invalid.

COURT'S ANALYSIS AND REASONING

Erred in law and fact

[18] Section 33 of the Employment Act sets out an exhaustive statutory framework governing permissible deductions from an employee's wages. The section requires that deductions must fall within prescribed categories and, where applicable, must be authorised in writing.

[19] Section 33 of the Employment Act states that:

"(1) An employer may make deductions from the wages of a worker in respect of—

(a) any amount which the employer is required or empowered to deduct from the wages under any written law or court order;

(b) the recovery of the cost of any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the willful default of the worker;

(c) any amount paid to the worker in error as wages in excess of the amount of wages due to the worker;

(d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of a worker, who, by virtue of the occupation of the worker, is entrusted with the receipt, custody and payment of money;

(e) such other amount as the worker may in writing authorize.

(2) Without prejudice to any right of recovery of any debt due, the total amount of all deductions which, under subsection (1) (b), (c) and (d) may be made by an employer from the wages payable to a worker at any one time shall not exceed one quarter of the wages unless the worker authorises a higher amount in writing.

(3) Notwithstanding subsection (2) where any sum of money is due from a worker to the employer of the worker at the time the worker ceases to be employed by the employer, the employer may deduct that sum from any sum due from the employer to the worker as wages or any other benefit under the Act."

[20] The Appellant submitted that the Tribunal failed to recognize implied authorization and a mutual understanding between the parties, arising from the Respondent's acceptance of benefits such as airfare, phone expenses, and PCR tests. However, the Tribunal found that no written authorization existed and that the statutory requirements of section 33(1) (a)-(e) had not been satisfied.

[21] This Court finds no error in the Tribunal's approach. Section 33 is explicit and mandatory in nature. The concept of implied authorization cannot override a clear statutory

requirement designed to protect employees from unilateral or informal deductions. The Tribunal was entitled to apply the law strictly and to reject deductions not authorised in accordance with the Act.

[22] Accordingly, the Tribunal did not err in law in disallowing the claimed deductions.

Appellant's Failure to pay 15 months' salary

[23] The Tribunal awarded the Respondent fifteen months' salary at a rate of INR 37,000 per month, converted to SCR 90,713.33. The Appellant challenged this award on the basis that the Respondent had earlier testified to a monthly salary of INR 25,000 and had not produced proof of any agreed salary increase.

[24] The record shows that the Tribunal considered this inconsistency. After reviewing the evidence from both parties, it accepted that the Respondent was owed INR 164,000 in outstanding salary for the relevant period. The Tribunal's conclusion was based on its assessment of the evidence placed before it, as per exhibit A1.

[25] On appeal, findings of fact are not usually changed unless they are clearly wrong, not supported by the evidence, or reached through an error of law. The Appellant's submissions primarily seek to challenge the weight the Tribunal gave to the evidence rather than showing that the Tribunal acted on an incorrect legal basis.

[26] In these circumstances, the material does not disclose a clear basis for the appellate's court interference with the Tribunal's award of outstanding salary.

[27] The Tribunal awarded SCR 5,417.94 for accumulated annual leave of 27.25 days, relying on Exhibit 2 produced by the Respondent, which recorded his dates of entry and exit from the jurisdiction.

[28] The Appellant argued that the Tribunal applied inconsistent standards of scrutiny, having declined to award public holiday pay for lack of evidence while accepting the Respondent's evidence on annual leave.

[29] This is not correct and the Tribunal identified documentary evidence capable of supporting the annual leave computation and explained the basis upon which it arrived at the figure awarded. The fact that public holiday pay was declined for insufficient evidence does not render the acceptance of other evidence inconsistent or irrational.

[30] There is no demonstrated error in the Tribunal's computation or reasoning in relation to annual leave.

Procedural irregularity of Sitting Members of the Tribunal

[31] The most serious ground of appeal concerns the allegation that the final judgment of the Employment Tribunal was signed and issued by a member who did not participate in the hearing.

[32] Section 73A of the Employment Act establishes the Employment Tribunal and provides that its composition, powers, and procedure are governed by Schedule 6 to the Act. Schedule 6 prescribes the manner in which the Tribunal must be constituted and how its decisions are to be made. Under paragraph 6(1) of Schedule 6, the Tribunal is ordinarily required to sit with the Chairperson or a Vice-Chairperson and two members, being representatives of employers' organizations and trade unions. A reduced panel of the Chairperson or Vice-Chairperson sitting with only one member is permitted only where the parties expressly agree.

[33] Paragraph 6(3) of Schedule 6 provides that each member of the Tribunal has an equal vote and that decisions are reached by a majority vote. This framework necessarily assumes that only members who sat on the panel and heard the matter may participate in the decision-making process. Paragraph 6(6) further requires the Tribunal, before making any decision, to afford the parties an opportunity to be heard and to observe the rules of natural justice.

[34] Procedural fairness therefore requires that those who determine a matter must have heard the evidence or otherwise properly participated in the proceedings. This requirement reflects the principle of *audi alteram partem* and is reinforced by the statutory structure governing the Tribunal. The discretionary power in paragraph 6(7) to regulate proceedings in an appropriate manner does not override these mandatory requirements.

[35] From a review of the record of proceedings, it appears that one of the members of the Tribunal was not present during the hearing of the case. Despite this, the final judgment bears the endorsement of that member. The record does not disclose any agreement by the parties to a reduced panel, nor does it provide any explanation or clarification from the Tribunal addressing this apparent inconsistency.

[36] If this position is established, the involvement of a member who did not participate in the hearing in the issuance of the judgment would be inconsistent with section 73A read together with Schedule 6 of the Employment Act. Such participation would amount to a procedural irregularity capable of affecting the validity of the Tribunal's decision, irrespective of the merits of the substantive findings.

[37] The Court of Appeal of Seychelles has recognised that it has an inherent power to set aside a judgment on account of a "serious procedural irregularity." In Vijay Construction (Pty) Ltd v Eastern European Engineering Limited And Vijay Construction (Pty) Ltd v Eastern European Engineering MA 24 of 2020 the Court confirmed that procedural errors of sufficient gravity can undermine a decision and justify appellate intervention.

[38] In the case of Attorney-General v Marzorcchi Civ App 8/1996, the Court of Appeal held that it would only intervene to rehear an appeal where there has been a serious procedural irregularity such that the previous decision is really not a decision at all. The Court stated:

"*We are here not concerned with the question of rectifying a clerical or incidental mistake, but are faced with what appears to be an irregularity which taints the validity of the proceedings and renders them a nullity. In such a situation, the doctrine of functus officio has no application and is therefore, of no consequence. Further, where a procedural irregularity of the nature complained of in this case has occurred a judgment or an order given in these proceedings, must surely be treated as a nullity. In the circumstances, the Court must exercise its inherent jurisdiction to set aside the said judgment or order.*"

HOLDINGS AND IMPLICATIONS

[39] In conclusion, the Tribunal did not err in its interpretation or application of section 33 of the Employment Act, nor in its assessment of the evidence relating to outstanding salary

and annual leave. Those findings fall within the Tribunal's proper fact-finding role and do not disclose a clear misdirection in law.

[40] The appeal nevertheless raises a serious procedural issue concerning the composition of the Tribunal at the time the judgment was issued. The apparent endorsement of the decision by a member who did not participate in the hearing is inconsistent with section 73A read with Schedule 6 of the Employment Act and the principles of natural justice. If established, this procedural irregularity is sufficient to undermine the validity of the Tribunal's decision and provides a proper basis for appellate intervention.

[41] Futhermore, the fact that a member who did not hear the evidence endorsed the decision, put into question how the provision of paragraph 6 (3) of Schedule 6 which provides that each member of the tribunal has an equal vote and that decisions are reached by majority vote worked out.

[42] In the final analysis, therefore, the Ruling of the Employment Tribunal in Bharat Shingarakhiya vs Prem Builders (PTY) Ltd filed as ET 91/2022 delivered on the 24th November 2023 is a nullity and is accordingly set aside.

[43] The matter is remitted back to the Employment Tribunal for a re-hearing afresh by a newly composed Tribunal.

Signed, dated and delivered at Ile du Port 22nd January 2026.

Adeline J.

Brassel J Adeline SUPREME COURT SEYCHELLES Supreme Court Judge