

SUPREME COURT OF SEYCHELLES

Reportable

CA 26/2024

In the matter between:

OCEAN YACHT CHARTER
(Represented by Mr Daniel Belle)

Appellant

vs

LISSA BOUCHEREAU
(Represented by Ms Edith Wong)

Respondent

Neutral Citation: *Ocean Yacht Charter vs Lissa Bouchereau* (CA 26/2024) (17 March 2026)

Before: Adeline J

Summary: Appeal against the decision of the Employment Tribunal in judgment.

Heard: By written submissions

Delivered: 17 March 2026

FINAL ORDER

This court determines, that this appeal on grounds a and b of the Grounds of Appeal is unsustainable, and as a consequence thereof it is accordingly dismissed. A determination on ground c is reserved to another date after the parties have been heard on such ground by way of submissions.

JUDGMENT ON APPEAL

Adeline, J

FACTUAL AND PROCEDURAL BACKGROUND

- [1] By Notice of Appeal dated 30th October 2024, filed into court on the 21st October 2024, Ocean Yacht Charter, (“the Appellant”) commenced legal appeal proceedings in the Supreme Court against one Lissa Bouchereau, (“the Respondent”), appealing against the decision of the Employment Tribunal in a judgment delivered in case ET/17/2022 on the 17th October 2024.
- [2] Legal appeal proceedings have commenced pursuant to Rule 6 (1) read with Rule 6 (2) – (5) of the Appeal Rules (Statutory Instrument 11 of 1961, dated 27th February 1961) (“the Rules”). In compliance with Rule 11 read with Rule 12 of the Rules, the Appellant has since filed its Memorandum of Appeal. The history of the case leading to this appeal is borne out of the record of the proceedings pertaining to the case before the Employment Tribunal.
- [3] A synopsis of the history of the case now before this Appellate court shows, that the Respondent to this Appeal who was then the Applicant before the Employment Tribunal, had registered a grievance at the Industrial Relation Section of the Employment Department in the Ministry of Employment and Social Affairs pursuant to Section 2 Part II of the Employment Act, 1995 as amended (“the Act”) to invoke the grievance procedure under Section 61 (i) (a) and (ii) of the Act. In accordance with Section 61 (1A) of the Act, the competent Officer in the Industrial Relations Section in the Department of Employment sought to bring about a negotiable settlement of the dispute between the parties in these proceedings by way of mediation which unfortunately, was unsuccessful.
- [4] The failure to achieve a negotiable settlement by way of mediation pursuant to Section 61 (1D) of the Act as amended, the Applicant then, now the Appellant, was issued with a certificate showing that mediation has failed to achieve a settlement of the dispute between the parties. Pursuant to Section 62 (1E) of the Act, as amended, the Respondent filed a case against the Appellant before the Employment tribunal for unjustified termination of her contract of employment claiming the following;

“Unjustified termination”

[5] In a judgment delivered on the 17th October 2024, the Employment Tribunal reached the following conclusion;

“The Tribunal finds that the Respondent failed to follow the correct procedures as outlined in the Employment Act. The Respondent did not provide sufficient evidence to support the allegations of misconduct, and the termination process was carried out without due regard to the Applicant’s rights under Section 53 of the Employment Act. Furthermore, the Respondent failed to produce credible evidence regarding the claims of insubordination and absenteeism”.

[6] As a consequence of the Employment Tribunal’s findings, it determined, that the termination of the Applicant’s contract of Employment by the Respondent was “*unjustified*”, and accordingly, it made the following orders in paragraph 26 of the judgment against the Respondent.

“26.

- *Pay the Applicant her full salary for January 2022, the balance of SCR 12,940.14*
- *Pay the Applicant her full basic salary (SCR 25,000 per month) for months she was unemployed following her termination, amounting to SCR 100,000*
- *Pay the Applicant one month’s salary in lieu of notice in the sum of SCR 25,000.*
- *Compensate the Applicant for the salary difference (SCR 5,000 per month) from May 2022 until the date of this judgment, 17th October 2024. This period covers 29 months, amounting to SCR 145,000.*
- *Compensate the Applicant for her length of service in the amount of SCR 28,035.33*
- *The Applicant is required to return the company laptop upon receipt of all her dues”.*

THE MEMORANDUM OF APPEAL

[7] In its Memorandum of Appeal, the Appellant states the Grounds of Appeal to be the following;

“GROUNDS OF APPEAL

- a) The learned vice-chairperson of the Employment Tribunal erred in entering judgment for the Applicant on the wrong assertion that the memo of the owner, Mr Loic Bonnet was not authentic, in the absence of the voire dire, which is the normal procedure to be adopted when signatures are contested in court hearings.*
- b) The learned vice-chairperson erred in disallowing the evidence of the Respondent who contested the authenticity of the so-called employment reference letter from Mr Pierre Piveteau (Exhibit A2). The learned vice chairperson ought to have proceeded with a voire dire in that matter, a procedure which she failed to undertake.*
- c) The learned chairperson of the Employment Tribunal erred in entering judgment in favour of the Respondent and awarding the exorbitant sum of SCR 298,035.00 in her favour in the absence of credible evidence led before the Tribunal”.*

[8] As reliefs, the Appellant prays for the following;

- (a) A judgment reversing and overruling the decision of the Employment Tribunal.*
- (b) To give judgment in favour of the Appellant as per the grounds of appeal pleaded above.*

ARGUMENTS ON BEHALF OF THE PARTIES BY WAY OF WRITTEN SUBMISSIONS

[9] In his written submissions to argue the case for the Appellant in order to obtain the reliefs sought for in this appeal, learned counsel for the Appellant sought to put in his own perspective the gist of the Appellant’s appeal. On the facts and circumstances of the case leading to this appeal, learned counsel began, by stating that the Respondent was employed by the Appellant as an Administration Manager on a contract of employment dated 31st August 2021. Under the terms of the said contract, the Respondent was to be paid a monthly

salary of SCR 25,000.00 plus an allowance of SCR 2000.00. The Respondent was to serve a probationary period of 3 months. The notice period to terminate the contract of employment was 7 days, and after the probationary period 1 month.

- [10] After the 3 months probationary period expired, the Respondent had his probationary period extended for a further 3 months because the Appellant was not happy with her work performance. To address the concerns which the Appellant claimed the Respondent had over punctuality, the Respondent was told that effective from the 10th January 2022, she must make herself available in the office at 8 am sharp and leave at 5 pm. Whenever she was to be absent from office, she needed to inform her supervisor. On the 11th January 2022, the Respondent refused to obey an instruction given to him and behaved disrespectfully over the telephone towards his supervisor by using blackmail tactics and threatening to get his GOP cancelled to have him deported.
- [11] Learned counsel for the Appellant submitted, that, the Respondent's contract of employment was terminated by the Appellant for gross misconduct and blackmail. He stated, that the Respondent unlawfully retained in her possession a laptop belonging to the Appellant which laptop contained information belonging to the Appellant.
- [12] In seeking to canvas the Appellant's 1st ground of appeal, learned counsel for the Appellant refers the court to paragraph 17 of the judgment of the Employment Tribunal, commenting that, "the learned vice chairperson made a conclusion in respect of exhibit R2, which is a memo addressed by the company's owner Mr Loic Bonnet to the country manager Mr De Senneville dated 15th December 2021". Learned counsel submitted, that "in the said memo, Mr Bonnet had raised legitimate concerns about the Mahe office of Ocean Yacht Charter".
- [13] It is the submission of learned counsel, that the said memo was admitted in evidence, (as per page 47 of the proceedings), although, the Respondent's counsel had raised an objection to its admissibility for the reason that Mr De Senneville was not the author of the memo. It is also submitted that, although there was no issue about the memo's authenticity, the tribunal made a strange finding *that the signature of Mr Bonnet did not align with his signatures on other uncontested documents*. Learned counsel took issue with what he said

the “Tribunal stated that there was no supporting documentation from the Mauritius office to corroborate the claim of missing receipts”.

[14] Within this background, learned counsel for the Appellant submitted that, once the authenticity of a document is in question, the court or Tribunal has to conduct a *voire dire* which is a trial within a trial, and until this is done, the impugned document remains an item and is marked as an item. Learned counsel cited the case of *Michaud vs Ciunfrini SCA 26/2005, 24 August 2007*. Learned counsel also cited the following cases and the principles that he said emerged from them, notably;

1. *Adrienne v Adrienne* [1986] SLR 156

“Where a party denies the signature on a document under private signature, it is for the party who wishes to avail themselves of it to prove the genuineness of the signature”.

2. *Michaud v Ciunfrini SCA 26/2005, 24 August, 2007*

“If a handwriting expert is not available, the Judge may make a determination on the comparison of genuine handwriting compare with the disputed handwriting. However, the Judge must bear in mind that justice would be better served by the assistant of an expert”.

Learned counsel also cited the case of *Alcindor vs Morel SLR 491 (2013)* in which case the Supreme Court gave a ruling on *voire dire*. Quoting an extract from the ruling, learned counsel submitted, that *“a tribunal or court cannot make any finding in the absence of a voire dire procedure as directed above. In the circumstances, the judgment of the Employment Tribunal is flawed and defective and must be quashed”.*

[15] In essence, it is the submission of learned counsel for the Appellant, that it was an error for the Employment Tribunal to make a finding that the memo issued by Mr Loic Bonnet to the country manager Mr De Senneville dated 15th December 2021, was not authentic without conducting a *voire dire*. Learned counsel relies on the case law authorities cited above to support his proposition.

- [16] As regards to the Appellant's 2nd ground of appeal, learned counsel remarked, that the Appellant (previously the Respondent), had through Mr De Senneville raised an objection in respect of the authenticity of exhibit A2, a letter purportedly signed by one Piveteau attesting to the excellent personal character of the Respondent. It was submitted by learned counsel, that the letter was intended to be an employment reference for the Respondent which the Appellant claimed was a forgery. Learned counsel takes issue with paragraph 21 of the Tribunal's judgment, quoting from the judgment of the Tribunal, the fact that the Tribunal found that the Appellant "*did not provide any evidence to substantiate the forgery claim and no testimony from Mr Piveteau was submitted to the Tribunal*". Once again, it was the submission of learned counsel, that with regard to the 2nd ground of appeal, it was an error for the Tribunal not to conduct a *voire dire* in the light of the objection raised as to the authenticity of the document, exhibit A2, a letter purportedly signed by Mr Piveteau.
- [17] In respect of the 3rd ground of appeal, learned counsel submitted, that the financial award made by the Employment Tribunal against the Appellant is "*excessive and not justified by the evidence and in law*". Learned counsel submitted that, the Respondent had only asked for payment of one month's notice and for four months that she had been out of work, and that by the Employment Tribunal granting "*such a high award*", this court must quash the award.
- [18] In her answering submissions on the different grounds of appeal, learned counsel for the Respondent began by making specific mention of Rule 12 and Rule 17 of the Appeal Rules. Learned counsel submitted, that an appeal must on top of having clear grounds on which the judgment is alleged to be erroneous, the reliefs claim must be "*concise*". Learned counsel also submitted that, this is necessary to ensure that an appellate court understands what action the Appellant wants the court to take in relation to the appeal. In learned counsel's view, if the relief is not clear enough then the court can make no award.
- [19] In her submissions over the fact that the Employment Tribunal had admitted the memo without conducting a *voire dire* when the authenticity of the memo was put into question, learned counsel stated that, since the Employment Tribunal did not state that it did not

consider it, the argument of learned counsel for the Appellant is unsustainable. Learned counsel quoted paragraph 17 of the judgment of the Employment Tribunal as follows;

“Upon viewing the memo, the tribunal notes concerns regarding its authenticity. The memo appeared questionable due to the discrepancies in Mr Bonnet’s signature which did not align with his signatures on other uncontested documents. Furthermore, no supporting documentation from the Mauritius Office was submitted to corroborate the claims of missing receipts. Given these issues, the tribunal assigns limited evidential weight to the memo and concludes that it does not substantiate the allegations made against the Applicant”. (the underlined emphasis was put by learned counsel for the Respondent)

[20] Giving her own interpretation to the Employment Tribunal’s approach, learned counsel for the Respondent submitted that, it was not a question of the Employment Tribunal disallowing it or not considering the matter at all. In learned counsel’s view, that was evidentiary matter, the Employment Tribunal having assigned “*limited evidential weight*”, as it proceeded to add, that the document was a self-serving, one without any other information to substantiate the claims. In essence, for those reasons, it is the view of learned counsel for the Respondent that, the “Employment Tribunal did not need to undergo a *voire dire* for the document”.

[21] As regards to ground (b), learned counsel for the Respondent refers to page 2 of learned counsel for the Appellant’s submissions, contending that, the Appellant is transversing the judgment of the Employment Tribunal on the basis that the correct procedure to admit the letter addressed to the Respondent, A2, should have been through a *voire dire*. Learned counsel for the Respondent submitted that, the Appellant is estopped from raising such an argument now because there was no objection regarding the authenticity of the signature on the document at the time it was produced in evidence and admitted as A2. Learned counsel refers the court to page 15 of the proceedings, the exchanges having been the following;

EW: Can this document be produced please

ET – Mr Belle: Any objection, Mr Belle

Mr Belle: No objection

[22] In essence, it is the submission of learned counsel for the Respondent, that now that we are in the appeal proceedings, it is too late to raise the point that the document ought not to have been admitted. Learned counsel added, that it is trite law that, once a document is admitted in evidence, it is up to the court to decide what weight to give or assign to the evidence.

[23] Responding to learned counsel for the Appellant's submissions in respect of ground (c), learned counsel for the Respondent commented that, the point made by learned counsel for the Appellant that the Employment Tribunal ought not to have awarded the Respondent the sum they did under the different headings because she did not pray for it as incorrect. Learned counsel for the Respondent added, that the Appellant relied on page 28 of the record of the proceedings which shows, that the Respondent had only claim one month's salary. Expressing her disagreement, learned counsel for the Respondent too refers the court to the record of the proceedings before the Employment Tribunal at page 28, the Respondent having also stated the following;

"Since I have to take another employment, I am asking for my 1 month's notice, to match my salary until the 22nd of December, the extra 9k from May 2022-December 2022. I was unemployed for four month salary".

[24] It is the submission of learned counsel for the Respondent, that based on the extract of the record of the proceedings quoted above, clearly, the Respondent claimed more than just one month's salary, and that in the circumstances, this explains why the Employment Tribunal ordered that the Respondent be paid her full salary for January being when she was terminated illegally, the full salary for the four months she was unemployed, her one month's notice that she is due under Section 59 (d) of the Employment Act as well as the difference in salary.

[25] In answer to the reliefs claimed by the Appellant, it is submitted by learned counsel for the Respondent that, relief 3 (b) falls foul of Rule 12 of the Appeal Rules because it is not concise as the argument presented is circular. Learned counsel took issue with the fact that,

the Appellant had stated at 3 (b) that, it is praying that the court grants judgment in favour of the Appellant as per the grounds of appeal pleaded. It is the submission of learned counsel for the Respondent, that grounds of appeal are merely grounds meant to be the reasons why a party believes the lower court to have made an error. It is therefore submitted by learned counsel for the Respondent that, the court cannot grant the relief claimed at paragraph 3 b of the grounds of appeal because there is simply no relief claimed.

[26] Learned counsel maintains that, the only relief that the court has to consider is ground 3 (a) which is for the court to reverse and overrule the decision of the Employment tribunal. In learned counsel's view, such a relief is not maintainable based on the grounds advanced by the Appellant in paragraphs 7 to 12 of these submissions.

[27] In essence, it is the submission of learned counsel for the Respondent, that this appeal be dismissed for the reason that the Employment Tribunal did not err as suggested by the grounds of appeal because that there was no need for a *voire dire* in respect of the Appellant's document given that the tribunal did not dismiss the document but only assigned limited weight to it. Learned counsel also submitted, that because the Appellant did not object to the Respondent's exhibit, it cannot now claim that the Tribunal ought to have conducted a *voire dire* to decide whether to admit the document or not.

COURT'S DISCUSSIONS, ANALYSIS AND REASONING.

[28] This appeal arises from a judgment of the Employment Tribunal dated 17th October 2024, which judgment, the Appellant who before the Employment Tribunal was the Respondent, feels aggrieved by the findings and conclusion of the Employment Tribunal that, the termination of the Respondent's (the Applicant then) contract of employment was unjustified, and the financial awards made in favour of the Respondent. The concluding paragraph of the judgment of the Employment Tribunal dated 17th October 2024 reads;

“CONCLUSION

25. The Tribunal finds that the Respondent failed to follow the correct procedure as outlined in the Employment Act. The Respondent did not provide sufficient evidence to support the allegations of misconduct, and the termination process was carried out without

due regard to the Applicant's right under Section 53 of the Employment Act. Furthermore, the Respondent failed to produce credible evidence regarding the claims of insubordination".

- [29] Interestingly, the Appellant's first two grounds of appeal focus entirely on what it sees as procedural lapses by the Employment Tribunal for not having conducted a *voire dire* when in its view it should have to ascertain whether the memo of Loic Bonnet was authentic or not amid the objection raised by learned counsel for the Appellant (the Respondent then), and a letter admitted as exhibit A2 purportedly signed by one Piveteau amid an objection to its admissibility in evidence for being a forgery.
- [30] As regards to those two grounds of appeal (ground (a) and (b)) the Respondent's argument is that in respect of the authenticity of the memo, exhibited as R2, the fact that the Employment Tribunal did not state that it did not consider it but instead gave limited weight to it, a *voire dire* was unnecessary.
- [31] As regards to ground (b) regarding the admissibility of the letter addressed to the Respondent, the Respondent's position is that no error was committed by the Employment Tribunal because there was no objection raised concerning the authenticity of the signature on the document, and therefore, the Appellant is estopped from raising this point now as a ground of appeal. Upon verification of the record of the proceedings on the day of the hearing, it is the finding of this court, that the Respondent is correct in saying that, there was no objection for the said letter to be admitted in evidence.

HOLDING AND IMPLICATIONS

- [32] I have revisited the relevant paragraphs of the judgment of the Employment Tribunal in the light of those two grounds of appeal as well as the record of the proceedings before the Employment Tribunal. I have been unable to identify the errors allegedly committed by the Employment Tribunal that would make those two grounds of appeal sustainable and the appeal succeed. Even if I were to find otherwise, the finding of the Employment tribunal at paragraph 25 entitled *conclusion* as the basis for its determination that the termination of the Respondent's contract of Employment by the Appellant was unjustified, is one that

on account of the facts and circumstances of the case laid before the Employment Tribunal I do subscribe to. In essence, therefore, Grounds of Appeal (a) and (b) is unsustainable and is accordingly dismissed.

[33] As regards to ground (c) that the awards made in favour of the Respondent (previously the Applicant) in the total sum of SCR 298,05.00 is too excessive and exorbitant, it is noted from the claim/application form, that the Respondent employment was from the 1st September, 2021 to 11 January 2022. That's 4 months 11 days work. To determine whether the financial awards made by the Employment Tribunal is correct or not based on the law as it presently stands, I invite counsel representing the parties to address the court on ground (c) of the grounds of appeal, particularly on the law as to the Respondent's financial entitlement. Therefore, judgment on ground (c) in this appeal is reserved to another date.

Signed, dated and delivered at Ile du Port 17th March 2026.

