
SUPREME COURT OF SEYCHELLES

Reportable
CA 15/2024

In the matter between:

PHILLIP HERMINIE
(Rep. by S. Rajasundaram)

Appellant

VERSUS

MOYRA ALEXIS
(Rep. by FTC)

Respondent

Neutral Citation: *Phillip Herminie V/S Moyra Alexis*

Before: D Esparon J

Summary: Appeal from the decision of the fair trading Tribunal

Heard: Written submissions and further oral submissions on 3rd June 2025

Delivered: 17th July 2025

ORDER

D. Esparon J

Appeal from the decision of the Fair Trading Tribunal- Appeal dismissed with cost- grounds 2 being too vague and in general terms. That rule 11 and rule 14 of the Appeal rules should be read together and in so doing, that the word 'shall' in rule 11 and 14 of the Appeal rules should be interpreted as imperative or mandatory. There is mandatory obligation on the Appellant to file his memorandum of Appeal stating his ground of Appeal which the Appellant would confirm his ground(s) of Appeal to the Court and he has to do so within the time limit prescribed by law that is 14 days from the date of the service of the copy of the record subject to leave of the Court on good cause shown for an extension of time. In view that Appellant has not filed his memorandum of Appeal at all containing his grounds of Appeal confirming his ground(s) of Appeal, his Appeal is deemed to be withdrawn or abandoned and as such is fatal to the appeal.

JUDGEMENT

Introduction

- [1] This is an Appeal from the decision of the Fair Trading Tribunal in CS No 20/2022. The grounds of Appeal are as follow;
- a. The Tribunal erred when it stated that the Appellant (then Respondent), shall refund the complainant the sum of 193, 168.43 thereby failed to consider the QS valuation and report as commissioned by the Fair Trading Commission dated the 30th September 2020.
 - b. The Tribunal erred in awarding the Judgment in favor of the Respondent based on the evidence which came out at the trial.

Both grounds of appeal were consolidated by the Appellant and dealt with together by the Appellant.

Submissions of counsels

- [2] Counsel for the Appellant relied on the QS report produced by the witness led by the Fair Trading commission namely exhibit FTP 11 of which the said QS found that the Appellant was liable in the sum of SR 68,688.46 of which neither party contested the said report. According to counsel, that the Tribunal took into account works done which were not included in either the contract nor document in any form. Counsel for the Appellant relied on the case of Franky Hoareau V/S Mary Azemia and the case of Quilindo V/S Jupiter SCA 67/2018 which relied on the case of Michaud V Cuinfrini SCA 26/2005 and submitted that the Tribunal cannot go against and beyond the QS Report, uncontested by the Respondent, produced before it.
- [3] As a result of the above, counsel for the Appellant submitted that this shows that the Tribunal did conduct the case for the Respondent in terms of justifying the additional sums for the increase of the sum over and above the QS report as per what was at paragraph 20 of the decision of the Tribunal. According to counsel, the said additional sum cannot be awarded by the Tribunal as they have not been quantified nor claimed and relied on the case of Sarah Carolus VS Nial Scully.
- [4] Counsel for the Appellant further submitted that the Tribunal further increased the value of the QS report with no explanation and as such the Tribunal failed to disclose the rational

for the sum of SR 193,168.46 as against the sum of SR 68,688 as quantified by the QS. Counsel further relied on the case of Ixora Construction and Civil Engineering VS Gemina Sophola which held that Appellate Courts will not lightly interfere with the quantum of damages awarded by the trial Court. It will intervene only for good and valid reasons such as error in the estimate, wrong principle of law applied, excessively large or low or- we have to add manifestly unjustified or unsupported by common sense. As such counsel submitted that the Honorable Court should intervene as the Tribunal had acted erroneously in awarding a sum above the QS report.

- [5] Furthermore, counsel submitted that the sum of SR 25,000 is also manifestly harsh and excessive considering of the amount payable by the Appellant.
- [6] On the other hand, Counsel for the Respondent submitted as to ground 'A' that Tribunal did not fail to consider the QS valuation report since at paragraph 20 , the Tribunal while considering the oral evidence of the Respondent was of the opinion that when the Respondent filed her complaint for the Applicant to give her the materials and refund to complete her house to the time when the case was actually heard in the Tribunal, her house had completed and that the return of the material is not necessary and equitable. The Tribunal added at paragraph 20 of the judgment while referring to the Respondent that naturally, she would have incurred additional cost to engage the services of someone else to complete the project and she claims that she wants to be refunded for the cost including labour cost, transportation cost and utilities.
- [7] According to counsel the Tribunal could not closed its eyes to the financial burdens incurred by the Respondent due to the Appellant's failure to maintain the statutory requirements and hence in addition of what she claimed, the tribunal considered her oral testimony in regards to the status of her house now and the undocumented works that had been deducted since it was of opinion that the QS should not have deducted the amount of the undocumented works.
- [8] Counsel for the Respondent relied on section 53(1) of the Fair Trading Commission Act which provides that at the conclusion of a hearing, the Tribunal shall take such decision and make such orders as it may consider appropriate and where necessary, a time within

which the order is complied with. According to counsel for the Respondent the Qs valuation took into account the works done that were not included in either contract nor documented in any form which he valued at SCR 124,480 and as such there is no proof that the Respondent did all this work.

[9] Counsel submitted that the Tribunal had used its discretion under section 53(1) of the Fair Trading Commission Act 2022 to add the sum of the undocumented works which valued at SCR 68,688 giving a total amount owed to the Respondent as SCR 193,168.46.

[10] As regards to ground 2, counsel submitted that this ground is too vague and in general terms as there is no disclosure as to how the Tribunal erred in awarding judgment in favor of the Respondent and relied on rule 12 of the Appeal rules and as such it is impossible for the Respondent to submit on this ground and furthermore the Appellant has not filed its memorandum of Appeal which in addition being vague and in general terms. Counsel relied on the case of Rehoboth builders VS Bernard Perrou, Evelyn Perrou SCCA 12 of 2024. Where Judge Adeline held that the Appeal of Rehoboth, fall foul of rule 11 of the Appeal Rules. Counsel also relied on the case of Chetty v/s Ester SCCA 44 2020 and the case of Petrescu V Illescu (SCA 22/2021) whereby the Court of Appeal struck out the notice of Appeal, having determined that the two grounds of Appeal reproduced hereunder were vague.

Analysis and determination

[11] This Court shall first deal with the points of law raised by the Respondent as mentioned in paragraphs 10 of this Judgment namely that the memorandum of Appeal has not been filed and that Ground 2 of Appeal is too vague and in general terms. As to ground 2 of Appeal namely that the Tribunal erred in awarding the judgment in favor of the Respondent based on the evidence which came out at the trial, rule 12 of the Appeal rules made under the Courts Act provides as follows;

‘The memorandum shall contain a concise statement in numbered paragraphs of the point or points on which the Judgment is allege to be erroneous, without any argument or narrative, and a concise prayer for relief claimed.

[12] In the case of Mountain View Investment Pty Ltd V Jenny Pomeroy SCA 04 of 2022 Robinson JA relying on the case of Cedric Petit V Marguitta Bonte SCA No. 11/2003 (20 May 2005), Chetty V Esther SCA 44/2020 (13 May 2021) and Petrescu V Illesxu (SCA 22/2021) Stated the following at the following paragraphs;

'37) In the case of Petrescu v Illescu (SCA 22/2021) (26 April 2023), the Court of Appeal held that several grounds of appeal were vague and dismissed them accordingly. The Court of Appeal quoted with approval the observation made by the Court of Appeal in England in Page 11 of 15 *Ferguson v Whitbread & Co plc* 1996 SLT 659, where the following was said by Lord President Hope at page 659L concerning certain grounds of appeal —

"[10] [...] the preparation of the grounds of appeal, which require to be lodged as a step in the process, should never be regarded as a mere formality. The purpose of the rule, which is a simple example of case management, is to give notice to the parties and the court of the points to be argued. Specification of the grounds enables the parties to direct their argument, and their preparation for it, to the points which are truly at issue. "

46)I turn to the case of Chetty, in which the Court of Appeal, relying on Cedric Petit, stated the following in support of its decision to strike out the notice of appeal —

" [13] As mentioned above, it is reasonably plain that the notice of appeal is not sufficient notice of the grounds of appeal. Thus, it is unquestionable that I am duty-bound to refuse to entertain the notice of appeal under rule 18 (3) and (7) of the Seychelles Court of Appeal Rules.

[14] Fundamentally, if I were to condone such vague grounds of appeal, I would be allowing the Appellant to introduce issues that have not been raised in the insufficient notice of appeal or covered in the vague grounds of appeal outside the time limit for raising new issues, without leave of the Court of Appeal and the proper procedures having been followed under the Seychelles Court of Appeal Rules. Also, heads of argument should neither raise issues not envisaged in a ground of appeal nor raise a new ground of appeal.

[15] This is also the view held by the Court of Appeal in *Cedric Petit v Marguitta Bonte* SCA Civil Appeal No. 11 of 2003 (delivered on the 20 May 2005). In *Cedric Petit*, *supra*, the Court of Appeal considered the old rule 54 of the Seychelles Court of Appeal Rules, 2000, as amended, which dealt with a notice of appeal. Rule 54(3) and (6) of the Seychelles Court of Appeal Rules, 2000, as amended, stipulated —

"54 [...].

(3) Every notice of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of the appeal, specifying the points of law or fact which are alleged to have been wrongly decided together with particulars of such errors, such grounds to be numbered consecutively and to state the exact nature of the relief sought and the precise form of the order which the appellant proposes to the Court to make [...].

(6) No ground of appeal which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence and any ground of appeal or part thereof which is not Page 14 of 15 permitted under this rule may be struck out by the Court of its own motion or on the application by the respondent

... "

47) In this case, the first and second grounds of Appeal formulated by counsel for the Appellant are objectionable in a similar way to those ground(s) of Appeal presented in *Chetty* and *Cedric Petit*. They appeared to set out the findings to which the Appellant is objecting, but they do not set forth precisely the basis on which the Appellant is objecting.

48) For the reasons stated above, I accept the contentions of counsel for the Respondent that the first and second grounds of Appeal are vague or in general terms and, hence are not grounds of Appeal'.

[13] Odgers' principles of pleading and practice twenty-second edition states the following at page 340;

'The grounds of Appeal are intended to be shortly and simply stated, but not set out in detail or at great length. The broad issues to be raised should be stated and not the detailed reasons in support of them. But it is not enough for the Appellant merely to say for example, that he complains of "misdirection"; the notice must say in what manner the judge misdirected himself or the Jury (vide: *Murfet V Smith* (1887) 2 P.D 116, *Taylor V John Summers & sons Ltd* [1957] 1 WLR 1182'.

[14] Stuart Sime (A practical approach to civil procedure- Twenty Fifth edition states as follow;

'The grounds of Appeal must identify as concisely as possible why the decision was wrong or unjust (*Peroti V Collyer* [2004] 4 All ER 53 and *Municipio de Marina V BHP Group PLC* (2022) 1 WLR 919 set out the proper approach. The overall approach is to identify the grounds for Appeal, not to argue them. Each ground must be numbered, and stated as an Appeal on a point of law, or against a finding of fact, or serious irregularity. Specific incidents, directions, or findings made by the Court below must be identified which are alleged to be wrong or unjust through serious procedural or other irregularity. Passages from the judgment containing the errors being appealed must be identified.

[15] This Court shall follow the above case laws and I accordingly find that ground 2 of the grounds of Appeal of the Appellant namely that 'the Tribunal erred in awarding the judgment in favor of the Respondent based on the evidence which came out at the trial' is too vague and in general terms since it does not set forth the basis to which the Appellant is objecting

[16] It follows therefore that the Appellant cannot be allowed to rely on ground 2 other than these set down in the Notice of Appeal without leave of this Court. As a result, I am duty bound to strike out the 2nd ground of Appeal namely ground B.

[17] As to the 2nd point of law namely that the memorandum of Appeal has not filed by the Appellant, hence the Appeal is deemed to have been withdrawn or abandoned, this court hereby reproduces rule 11 of the Appeal Rules made under the Courts Act and it reads as follow;

'If the Appellant wishes to proceed with the Appeal he shall, within 14 days from the date of service of the copy of the record referred to in the preceding rule, deliver to the clerk of the Court a memorandum of Appeal.

[18] Rule 14 of the same rules states the following;

'If the Appellant has not complied with rules 11, 12 and 13 within the time prescribed, the Appeal shall be deemed to be withdrawn.

[19] It is important to note that the law prescribes a 2 stage process in the filing of an appeal relating to Appeals from the Magistrate Court to the Supreme Court. These are 2 distinct stages in the process. It appears that both in Rule 11 and Rule 14 of the Appeal Rules, the word 'Shall' is used. Rule 11 of the Appeal rules provides that the Appellant shall file his memorandum of Appeal within 14 days from the service of the record and that rule 14 provides that the Appeal shall be deemed to be withdrawn if the Appellant has not complied with rule 11.

[20] The issue to determine by this Court is as to whether the word 'shall' used in the context of rule 11 and rule 14 is mandatory or directory in order to determine whether failure to comply with rule 11 is fatal to the Appeal. Guidance is sought from deciding cases from Commonwealth jurisdictions namely Indian Case law. In the case of *Mohan Singh V International Airport Authority* (1997) 9 SCC 132, the Court stated the following;

'The word 'shall', though prima facie gives impression of being mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the Court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having a mandatory character, the mischief that would ensue by such construction; whether the public convenience would be sub served or public inconvenience that may ensue if it is held mandatory and all other relevant circumstances as required to be

taken into consideration in construing whether the provision would be mandatory or directory?.

[21] In the case of *Sumita Devi V Ahbesh Kumar Simba*, AIR 2005 Pat 136, where the time limit in filing written statements was in issue. After the amendment of the Code of Civil Procedure, 1908, in 1999 and 2002, parties were ordinarily required to present their written statement within 30 days from the service of summons. However, where the defendant failed to file the statement within the prescribed period, the Court could for reasons to be recorded in writing allow for an extension, provided that the extension shall not be later than 90 days from the date of service. In this case, the trial Judge rejected the written statement because it was presented after the period of 90 days had expired. The question was whether the trial Court possessed any discretion in the matter. On revision, the High Court opined that the use of the word 'shall' was to be construed as placing a mandatory obligation, except in cases where it would lead to absurdity, or if such a construction was at variance with the intent of the legislature or was bound to cause failure of justice. The Court noted that sections 148 and 151 of the CPC allowed a certain amount of discretion to the Court to avoid miscarriage of justice. Hence, it ruled that the trial court need not refuse an extension only because the period of 90 days has expired.

[22] As a result of the above case laws, this Court has to consider as to whether in the present case this is a case where placing a mandatory obligation on the Appellant to file his memorandum of Appeal would lead to absurdity or if such a construction was at variance with the intent of the legislature or was bound to cause a failure of Justice or a miscarriage of justice. In the case of **Jean V/S Inter- Island Boat limited, Civil Appeal 44 of 2012**, Egonde-Ntende CJ relied on the decision in the case of **Aglae v Attorney General SCA 35 of 2010** which cited in approval the words of the Privy Council in the case of **Ratnam V/S Curmarasamy (1964) All E.R 933** of which the Court held the following;

'The rules of Court must prima facie be obeyed, and in order to justify a Court in extending the time during which some step in procedure requires to be taken, there must be some material on which the Court can exercise its discretion. If the law requires otherwise a

party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation'.

- [23] As a result of the above case law namely the case of Jean (Supra) if we are to read Rule 11 in isolation to rule 14 of the Appeal rules, one is tempted to infer that the intent of the legislature was that the Appellant should respect the time limits at different stages namely of filing an Appeal at the stage of filing the notice of Appeal and filing the memorandum of Appeal. However, in view of rule 14 of the Appeal Rules, I'm of the view that Rule 11 should be read together with rule 14 of the Appeal Rules. The rationale for this is that rule 14 imperatively gives the consequences of failure to comply with rule 11 of which it provides that 'If the Appellant has not complied with rules 11, 12 and 13 within the time prescribed, the Appeal shall be deemed to be withdrawn.
- [24] The above shows that the intention of the legislature was that the consequences of the failure to file a memorandum of Appeal, the Appeal would be deemed to be withdrawn or abandoned. Hence the memorandum of Appeal not only ensures that the case is in shape within the time limit prescribed by law by the legislature for the conduct of litigation but also as a confirmation of the grounds of Appeal whereby the case would be now ready to be heard whereby any amendment to the grounds of Appeal should be done with leave of the court. Hence, I find that placing a mandatory obligation on the Appellant to file his memorandum of Appeal with its ground of Appeal would not lead to any absurdity and that such a construction would not be at variance with the intent of the legislature.
- [25] In considering as to whether in the present case such a construction would lead to a failure of Justice or a miscarriage of justice, I shall refer to the proceedings of the 4th September 2024 at 3pm at page 2 where the following appears;

Mr Rajasundaram: I want to check if the memorandum of Appeal has been filed. He used to appear in person before, he recently instructed me to Appear.

Court: There is notice of Appeal that has been filed.

Mr. Rajasundaram: correct, since I'm not sure if the memorandum has been filed.

Court: No it has not been filed, however there is a- it has not been filed, however it shows the grounds of Appeal, but however you still have to file memorandum of Appeal.

Mr Rajasundaram: Correct I will do.

Court: These two steps are very important because the Appeal can be fatal if there is a lapse in delays of filing these.

Mr Rajasundaram: Yes

- [26] The above proceedings show that Counsel for the Appellant was aware of the importance of filing his memorandum of Appeal and the Court did warn the said counsel of the consequences of failure to file his Memorandum of Appeal of which the court did put him on his guards. Hence I find that in the present matter there is no failure of Justice or miscarriage of justice even though in the present matter counsel raised it as a point of law in her submissions of which I find that there was no impropriety in doing so as I am of the view that since counsel was put of his guard by the Court there is no ambush.
- [27] As such, since I find that rule 11 and rule 14 of the Appeal rules should be read together and in so doing, that the word 'shall' in rule 11 and 14 of the Appeal rules should be interpreted as imperative or mandatory, I find that there is mandatory obligation on the Appellant to file his memorandum of Appeal stating his ground of Appeal which the Appellant would then confirm his ground(s) of Appeal to the Court and he has to do so within the time limit prescribed by law that is 14 days from the date of the service of the copy of the record subject to leave of the Court on good cause shown for an extension of time, the more so that in the present case there has been no failure of justice or miscarriage of justice as shown above.
- [28] In view that the Appellant has not filed his memorandum of Appeal at all containing his grounds of Appeal confirming his ground(s) of Appeal, I find that his Appeal is deemed to be withdrawn or abandoned and as such is fatal to the appeal. As a result, I do not find any necessity to make any further pronouncement on the merits of any ground of Appeal further than I have dealt with at paragraph 15 and 16 of this ruling as to ground 2 and hence I accordingly dismiss this Appeal with cost.

Signed, dated and delivered at Ile du Port on the 17th July 2025.

A handwritten signature in blue ink, appearing to read 'D. Esparon J.', enclosed within a blue oval. The signature is stylized and cursive.

D Esparon J