

SUPREME COURT OF SEYCHELLES

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Reportable  
CA 16/2024

In the matter between:

**MITCHELL MAIMEE representing  
EXUPER AND MICHELLA SHOP  
Of  
Anse Boileau, Mahe, Seychelles**  
*(Represented by Mr Daniel Cesar)*

**Appellant**

**And**

**NADIA EMILE**  
**Also of**  
**Anse Boileau, Mahe, Seychelles**  
*(Represented by Mr Serge Jean-Luc Rouillon)*

**Respondent**

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**Neutral Citation:** *Mitchell Maimée Vs Nadia Emille* (CA 16/2024) (19 May 2025)

**Before:** Adeline J

**Summary:** Appeal to the Supreme Court against the judgment of the Employment Tribunal.

**Heard:** By submissions of counsels

**Delivered:** 29<sup>th</sup> May 2025

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**FINAL ORDER**

The decision of the Employment Tribunal is upheld, and accordingly, the appeal is dismissed.

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**JUDGMENT ON APPEAL**

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**Adeline, J**

## FACTUAL AND PROCEDURAL BACKGROUND

- [1] By Notice of Appeal filed in court on the 21<sup>st</sup> June 2024, one Mitchel Maimee (“the Appellant”) who was the Respondent before the Employment Tribunal in the case of *Nadia Emile vs Exuper and Michella Shop filed as ET 173/2022*, commenced appeal proceedings before this court to appeal against the decision of the Employment Tribunal in a judgment delivered on the 4<sup>th</sup> June 2024.
- [2] On the 16<sup>th</sup> July 2024, the Appellant filed its Memorandum of Appeal stating the grounds of appeal to be the following;
- (a) The learned chairperson of the Employment Tribunal erred in entering judgment in favour of the Respondent and awarding a sum of SR 66,583.84 in her favour and in the absence of any credible evidence led before the Tribunal by the Respondent.*
  - (b) The learned Chairperson of the Employment Tribunal erred in entering judgment against the Applicant on the basis that the termination of the Respondent was not justified despite the uncontroverted evidence of the Appellant that he was forced by the officer of the Ministry of Employment to write a letter of termination to the Respondent.*
  - (c) The learned chairperson of the Employment tribunal erred in awarding the Respondent a total sum of SR 66,583.84 for unpaid salary, compensation, notice accrued annual leave, balance of payment for adjustment of salary all with costs, in the absence of any evidence of unlawful termination of employment of the Respondent.*
- [3] As reliefs, the Appellant seeks 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.”*
- [4] The Respondent in this appeal, did respond to the grounds of appeal in the Memorandum of Appeal as follows;

*“a. The Respondent avers that there was ample evidence before the Tribunal for it to make a final assessment which included sworn oral testimony of the witnesses, a thorough break down form the payslips and a detailed written submissions by the Respondent’s representative after a hearing.*

*b. The Respondent avers, that there was no corroborative evidence adduced to show that the Appellant was forced to write the letter of termination after a hearing where the Appellant called no supporting witnesses of fact.*

*c. The Respondent avers, that having found the termination unfair on the facts presented, and after an analysis of the law it was justified in reaching the final decision and award in this case.*

- [5] As relief, the Respondent sought to have the decision of the Employment Tribunal maintained and the appeal dismissed.

## **SUBMISSIONS OF COUNSEL REPRESENTING THE PARTIES**

### **COUNSEL FOR THE APPELLANT**

- [6] In its submissions supporting the appeal, learned counsel for the Appellant seeks to canvas the Appellant’s three grounds of appeal together as one. It submits, that in its application before the Employment Tribunal, the Respondent had raised three distinct claims, notably;
- (a) Adjustment of wages from October 2019 to June 2022.
  - (b) Two months salary as a compensatory award, and
  - (c) Payment of all employment benefits until lawful date of termination.
- [7] It is contended by learned counsel, that in its judgment dated 4<sup>th</sup> June 2022, the Employment Tribunal awarded the Respondent (the Applicant then) financial benefits which did not form part of the claims, and therefore, the Tribunal acted ultra petita. It is also contended by learned counsel, that the tribunal has awarded the Respondent compensation for length of service although she had not completed five years of service.

- [8] It is the contention of learned counsel, that the Tribunal awarded the Respondent one month notice which it never claimed and accrued leave which she had already taken or has been paid and which was not part of the Respondent's claims anyway.
- [9] On the law, it is submitted by learned counsel, that the Appellant did comply with the provisions of Section 53 (2) of the Employment Act, 1995 before issuing the letter of suspension for the cash shortage incident discovered, and that the Respondent was instructed to write a statement which it did not do, and failed to return to work after the 14 days suspension lapsed. Learned counsel submits, that by failing to return to work after the 14 days lapsed, the Respondent, (the Applicant then) committed a gross disciplinary offence under Section 57 and 58 of the Employment Act, 1995 as well as breaching terms 12.1 and 12.2 of its contract of employment dated 4<sup>th</sup> October 2021 between it and the Appellant.
- [10] It is the submission of learned counsel for the Appellant, that the letter of termination of the Respondent's contract of employment was written and issued by the Appellant following advice received from the Employment Department, and therefore, the Appellant simply acted on such advice which was taken to be correct.

#### COUNSEL FOR THE RESPONDENT

- [11] In its submissions opposing the appeal and in answer to the grounds of appeal, learned counsel for the Respondent, *inter alia*, observes, that the Appellant fails to give detailed reasons as to why the financial awards given by the Employment Tribunal to the Respondent should be overturned. Learned counsel submits, that compliance with procedural requirements of the law was required and ought to have been satisfied prior to terminating the Respondent's (the Applicant then) contract of employment.
- [12] In essence, it is the submission of learned counsel for the Respondent, that the disciplinary measure of terminating the Respondent's contract of employment without fully complying with the statutory provisions of Section 53 of the Employment Act, renders the termination of the Respondent's contract of employment unlawful, and unfair as well as in breach of the rules of natural justice. In support of this proposition, learned counsel relies on the case

of *Island Conservative Society vs Sheila Bastienne SCA 10/2023*, and states, that the Court of Appeal in this case did emphasise on what compliance with Section 53 of the Employment Act entails for adherence with fairness and the rules of natural justice.

- [13] Learned counsel submits, that ample evidence were laid before the Employment Tribunal by the Respondent of the Appellant's failure to follow the correct procedure prior to terminating the Respondent's contract of employment, as well as evidence for the tribunal to be able to make a proper assessment of the Respondent's financial dues as a consequence of the unlawful termination of its contract of employment by the Appellant.
- [14] Learned counsel cites the case of *Dalpez v ISPC (Seychelles) Ltd (SCA 59/2019) [2022] SCCA 18 (29 April 2022) (Arising in CA 41/2018)*, an appeal from case ET 98/2017, initiated before the Employment Tribunal, in which case, as per learned counsel's submissions, Andre JA, did address the issue where a warning letter is issued to an employee by the employer without the employer following the correct procedure established by law, and the fact that in that case, it could not be ascertained that the correct procedures were followed in the absence of proper records of the "*disciplinary hearing, finding and outcome*".
- [15] It is also the submission of learned counsel, that the Appellant (the Respondent then) did not tender before the Employment Tribunal any evidence to corroborate its contention, that, 1. it conducted a disciplinary hearing, and 2. it was compelled to write and issue the letter of termination terminating the Respondent's contract of employment, particularly, following the advice received from the Employment Department.
- [16] As regards to the suggestion made by counsel for the Appellant that the terminal dues awarded to the Respondent by the Employment Tribunal were erroneous, it is the submission of learned counsel, that the Appellant "*provides no figures or reasons why these figures are wrong and what the true figures should be*". Learned counsel cites the case of *Vel vs Knowles SCA 41/1998*, and makes the point that "*the court cannot formulate a case for a party after listening to the evidence or grant a relief not sought for in the pleadings*". In learned counsel's view, based on the case of *Monthy vs Esparon (2012) SLR 104* to grant a relief not sought for would be act *ultra petita*.

- [17] Commenting on the findings and the decision of the Employment Tribunal, it is submitted by learned counsel, that the Employment Tribunal correctly found, on account of the evidence, that the termination of the employment contract of the Respondent was unlawful, in that, the letter of suspension was not sufficient to justify the termination.
- [18] In learned counsel's view, the finding and decisions of the Employment Tribunal were supported by the relevant case law authorities, such as the, *European Hotel Resort v Nourrice SCA 23/2013 (17 April 2015)*. Learned counsel also submits, that the Tribunal's reliance on the case of *Four Seasons Resort Seychelles vs Chang-Time (SCA 60/2019) [2022]* regarding payments due to the Respondent on a finding that the termination of its contract of employment was unlawful was correct, emphasising, that on the facts and circumstances of the case as led in evidence, those payments are due regardless of the claim and are based on the the law including compensation for length of service irrespective of the number of years worked.

#### **HOLDINGS AND IMPLICATIONS**

- [19] For a just determination of this appeal in the light of the records, submissions by counsels and the impugned judgment, my focus is primarily on two fundamental issues that need to be addressed. Firstly, whether the Employment Tribunal was correct in its findings and conclusion, that the termination of the Respondent's contract of employment by the Appellant was unjustified. That is to say, whether it was lawful or unlawful as the parties put it. Secondly, whether the financial award made by the Employment Tribunal was what is due to the Respondent based on the Employment Tribunal findings that the termination of the Respondent's contract of employment by the Appellant was "*not justified*".
- [20] As I pause and consider the two issues, I remind myself of the grounds of appeal which I summarise as follows;
1. The award of the sum of SCR 66,583.84 was in the absence of credible evidence.
  2. There was uncontroverted evidence led by the Appellant before the Employment Tribunal that he was forced by an officer of the Ministry of Employment to write and issue the letter of termination, and

3. The Employment Tribunal made an error in awarding the Respondent the sum of SCR 66,583.84 in the absence of any evidence of unlawful termination of the Respondent's contract of employment.

- [21] A summary of the facts and circumstances that led to the termination of the Respondent's contract of employment, is that, the Respondent was issued with a letter of suspension from work dated 2<sup>nd</sup> June 2022, exhibited as A3 on the 6<sup>th</sup> June 2022 about an alleged incident of not collecting payment following a sale of cement transaction. In the said letter, the Respondent was notified that it was being suspended from work for 14 days pending the final outcome of the case, and was asked to write a statement to present its defence by the 6<sup>th</sup> June 2022, the very same day the Respondent received the letter.
- [22] The finding of the Employment Tribunal which in my considered opinion is correct, was that no investigation was conducted by the Appellant as required under Section 53 of the Employment Act, 1995 containing provisions regarding "*disciplinary proceedings*". The Appellant did not hold any investigation, nor communicate with the Respondent as it waited for the final outcome as it was advised in order to know its fate.
- [23] The Appellant was issued with a letter of termination dated 4<sup>th</sup> August 2022, A4, by which letter she was informed that her contract of employment had been terminated from the 20<sup>th</sup> June 2022. That is to say, with retrospective effect. The following reasons for the termination was given;
- (1) The incident for which she was suspended for 14 days, and
  - (2) It did not turn up for work after the 14 days suspension lapsed, and therefore, it automatically terminated its contract of employment. In other words, the Appellant alleged "*self termination*", and on that basis, the Appellant claimed that the Respondent was liable to pay it one month salary in lieu of notice.
- [24] It is abundantly clear, on account of the facts and the whole circumstances of this case as led in evidence as correctly found by the Employment Tribunal, that the reasons given for

terminating the Respondent's contract of employment are different from those given for its suspension from work. Furthermore, the Respondent was never told what disciplinary offence or offences it committed for the termination of its contract of employment. The allegation of self termination against the Respondent does not have any merit because at all times she was waiting to be notified of the *final outcome*.

- [25] Having read the Judgment of the Employment Tribunal, it is quite clear, that besides its findings that the Appellant did not follow the proper procedures as prescribed under section 53 of the Employment Act 1995 before issuing the Respondent with the letter of suspension and the letter of termination subsequently, it is equally clear, that the Appellant never informed the Respondent of the disciplinary offence it committed prompting the termination of its contract of employment.
- [26] I have also read the letter of suspension dated 2<sup>nd</sup> June 2022, A3, issued to the Respondent by the Appellant. The letter makes no mention of the alleged disciplinary offence allegedly committed by the Respondent that warranted its suspension. The evidence from the record of the proceedings seems to suggest, that the Respondent was suspended for theft which the Appellant failed to prove.
- [27] Be it as it may, the failure of the Appellant to comply with the statutory provisions of section 53 of the Employment Act, 1995 means, that if at all the Respondent committed a disciplinary offence, the failure to comply with the prescribed procedure is fatal since the onus was on the Appellant to prove the disciplinary offence committed by the Respondent warranting its suspension from work and the eventual termination of its contract of employment. This legal position is supported by the terms of section 53(1) of the Employment Act, 1995 which mandatorily prevent any employer from taking any disciplinary measure against a worker for an alleged disciplinary offence without a prior investigation. This legal position is also supported by case law, notably, the case of Seychelles Port Authority Vs Houareau (CA 26/2021) [2023] SCSC (29<sup>th</sup> May 2023) and Savoy Development PTY Limited Vs Sharifa Salum SCA 10 of 2021.
- [28] The essence of Section 53 of the Employment Act, 1995 which has been interpreted several times through case law, is to ensure that an employer who wishes to terminate the contract

of employment of a worker follows the principle of natural justice by conducting a fair investigation before taking the draconian measure of terminating the worker's contract of employment. This entails, for example, providing the worker with written notice of the alleged disciplinary offence, be it a minor or a serious offence. In the case of Seychelles Port Authority (Supra) the court cited the case of Batwatala Vs Madhvan Group, labour dispute reference 146 of 2019 (2021 UG IC7), in which case the industrial court of Uganda relied on the case of Ebiju James Vs Umeme LTD HCCS 0133/2012 and paid particular attention to the guidelines elaborated for constituting a fair hearing.

- [29] Interestingly, in the case of Batwala (Supra) the court had concluded, that the employer having not complied with the guiding procedures, the termination of the contract of employment was unlawful and unfair. Similar point was made in Savoy Development Limited (Supra) in the context of Section 53 of the Employment Act 1995 when Twomey, JA stated, that *"for tribunal hearings demanded the observance of at least the rules of natural justice"*.
- [30] Therefore, having found that the Employment Tribunal committed no error in finding that the termination of the Respondent's contract of Employment by the Appellant was unjustified, this appeal has to fail on ground 1 and 2 of the grounds of appeal.
- [31] To determine the merit of ground 3 of the ground of appeal, I am guided by the Court of Appeal Judgment in Four Seasons Resort Seychelles vs Chang-Time SCA 60/2019 [2022] correctly relied upon by the Employment Tribunal to determine the Respondent's financial legal entitlement for the unjustified termination of its contract of employment. In Four Seasons (Supra), Dr. L Tibatemwa – Ekirikubinza, JA, *inter alia* ordered, that, *salaries and other benefits are payable by the employer to the employee until the date of the determination made by the Employment Tribunal to wit salary and other benefits for 30 months and 10 days from the date of dismissal (15<sup>th</sup> July 2015) to the date of the Employment Tribunal's determination of the matters (21<sup>st</sup> May 2018).*

Although arguably, one may find merit in the proposition made by counsel for the Appellant that eventhough the Respondent in principle, may statutorily entitle to the benefits which had been awarded to it by the Employment Tribunal as a consequence of

the unlawful and unjustified termination of its employment contract, it ought to have made a claim given the doctrine of *ultra petita*, the law as it stands seems to disregard the doctrine. As a consequence thereof, this appeal cannot succeed on that ground too.

[32] In the light of the foregoing, the appeal has no merit and is accordingly dismissed with cost awarded in favour of the Respondent.

Signed, dated and delivered at Ile du Port 19<sup>th</sup> May 2025.

