

**Morel v Registrar of the Supreme Court
(2005) SLR 16**

Pesi PARDIWALLA for the Petitioner
Ronny GOVINDEN for the Respondent

Ruling on application for leave to appeal to the Seychelles Court of appeal delivered on 10 June 2005:

RENAUD J: The Applicant (who was the Petitioner) is moving this Court for leave to appeal to the Seychelles Court of Appeal against a Ruling given by this Court on 3rd July 2003 refusing leave to the Applicant to proceed. The Application is made under Rule 8 of the Supreme Court (Supervisory Jurisdiction of Subordinate Courts, Tribunal and Adjudicatory Authorities) Rules 1995, hereinafter referred to as the Rules.

In summary, the facts of this case are that the Petitioner filed a petition against the action of the Registrar of the Supreme Court contesting the latter's exercise of his discretion under Section 68(4) of the Criminal Procedure Code. The Petitioner sought leave of this Court as per Rule 5 of the Rules to proceed with the hearing of a Judicial Review on its merits. At that hearing, this Court dismissed the case on the ground that the charge sought to be filed by the private prosecutor was frivolous and vexatious as the SMB had been granted exemption by the Minister of Finance from the provisions of the Trades Tax Act regarding Price Control Regulations. It is against that Ruling that the Petitioner is now seeking leave of this Court to appeal to the Seychelles Court of Appeal as per Rule 8 of the Rules.

Learned Counsel for the Applicant appended an Affidavit in support of his Application, deposing, inter alia, that the grounds of the intended appeal disclose issues of public interest and that he verily believes that the grounds of the intended appeal are valid grounds and would have a reasonable chance of success. In the circumstances, he moved that it is necessary, in the interest of justice that, leave be granted to the Applicant to appeal against the Ruling.

In his reply, Learned Counsel for the Respondent objected to the Application on the basis that the grounds, set out by the Applicant in its Intended Notice of Appeal, do not disclose an arguable case.

Learned Counsel for the Applicant submits that the intended appeal raises issues of public interest at two levels. Firstly, it is concerned with the enforcement of price control, which according to him, is indisputably a matter of public interest. Learned Counsel argues that the ultimate object of the intended appeal is to obtain an order of the Supreme Court compelling the Respondent to issue summons on the SMB to answer to the price control charges against it. Secondly, the individual grounds of appeal disclose fundamental issues of law, the resolution of which on appeal, in one sense or the other, would greatly serve the public interest. These, he states, are patent in grounds 1 to 4 of

the Notice of Appeal.

As regards the chance of success, Learned Counsel for the Applicant submits that the judge's decision refusing leave to the then Petitioner to proceed with his Petition is grounded on the finding that SMB was exempted of price control by a "Certificate of Exemption" and, therefore, the Petition was "wholly unarguable". Learned Counsel submits further that this finding is unsafe for the following reasons:

- (i) It is not clear from the decision of the Registrar how the purported Certificate of Exemption became available to him.
- (ii) It is not known whether the purported Certificate is an authentic document, especially as the Respondent, himself, in his letter of 5 September 2002 expresses a certain measure of doubt with regards to the purport of the document: "It will appear
- (iii) The purported Certificate is not in the form of a Statutory Instrument and, therefore, cannot attract judicial notice. Such a document would have to be adduced in course of the trial, in accordance with the applicable rules of admissibility applicable to the production of documentary evidence.
- (iv) In view of the doubtful probative value and purport of the document, it was improper for the Respondent to use it to exculpate the Accused and discontinue proceedings against it.

Learned Counsel for the Respondent on the other hand, submits that it is in the public interest that laws and regulations are abided by. In this present case, he argues, exemption made by the Minister of Finance was done by a statutory instrument which is a law, and that law is in the public interest.

As regard the intended grounds of appeal and its chance of success, Learned Counsel for the Respondent submits that this is not so. He concedes, however, that it may be true that the Registrar, before he took the decision not to admit the complaint, had issued summons to compel the attendance of the Respondent in the Supreme Court under Section 69 of the Criminal Procedure Code, but this does not affect his judicial discretion to thereafter refuse to admit the complaint. Counsel submits that this is so as the law that regulates the exercise of statutory powers and discretion allows powers to be exercised from time to time in order to correct any error. He further submits that the Petition did not have any arguable case, or, the case is frivolous and vexatious.

As regards the chance of success, Learned Counsel for the Respondent submits that it was proper for the Learned Judge to have taken Judicial Notice of the purported Certificate of Exemption. He supports this submission by the authority to be found in *Phipson on Evidence* (1990 ed) at 38, paragraph 2-17, where the learned author states that Official Seals and Signatures can be the subject of judicial notice — this includes "Judicial Notice of such documents as the certificate of the Secretary of State for India,

authentically the signature of an Indian Official". Accordingly, Learned Counsel further submits that the objection taken against the admissibility and weight given by the Learned Judge to the Certificate of the Minister of Finance is entirely frivolous and vexatious. Learned Counsel for the Applicant replied to the Respondent's submissions with particular regard to the Certificate of Exemption (Document) which purports to exempt the SMB from Section 7 of the Trades Tax Act. He argues that such Document must be in the form of a Statutory Instrument. He further argues that the Document on which the Respondent appeared to have relied upon in order to discontinue the proceeding against SMB, and on which the Supreme Court also relied to refuse the Application for leave to proceed, lacks the attributes of a statutory instruments (S.I.) in the light of the provisions of Sections 63 and 66 of the Interpretation and General Provisions Act (IGPA) which set out the requirements of form, that a S.I. must satisfy before coming into operation. Learned Counsel adds that in particular it is provided that an S.I. must be published in the Gazette and can only come into operation on the date of publication or such other date as it may provide. He further argues that there is no indication on the Document that satisfies the publication requirements. Moreover, he adds, the Document does not satisfy the Citation requirement set out in Section 66(1)(a) and (b) of the IGPA.

The further argument of Learned Counsel for the Applicant is that there is not the least indication on the face of the Document that it is or was at all meant to be a S.I., and as such, judicial notice thereof could not be taken in view of the clear provision of Section 63(1) of IGPA. Hence, he argues that the Document cannot be used as authority for exemption as contemplated by the Trades Tax Act.

Learned Counsel for the Applicant concludes that the authorities regarding judicial notice cited by learned counsel for the Respondent has no relevance and cannot be relied upon to give any probative value to the Document, therefore, his submissions on the probative value of that Document discloses a very arguable case, which alone, according to him, ought to be the subject matter of an appeal.

Rule 8 of Supreme Court (Supervisory Jurisdiction of Subordinate Courts, Tribunal and Adjudicatory Authorities) Rules 1995, is worded as follows:

Where the Supreme Court refuses to grant leave to proceed, the Petitioner may appeal to the Court of Appeal within 14 days of the Order of the refusal with leave of the Supreme Court first had and received.

I believe that the objects of obtaining leave at this stage is primarily to prevent cases which do not disclose any reasonable cause of action, or which are scandalous; frivolous; vexatious or an abuse of process, from landing before the Court of Appeal. Therefore, in considering an Application for Leave to Appeal to the Seychelles Court of Appeal against the Ruling of this Court refusing such leave in the first instances, the Applicant ought to show that:

- (i) the intended appeal raises issues of public interest, and

- (ii) there is arguable ground of appeal, and such ground has a reasonable chance of success.

The issues raised by learned counsel in their respective submissions are not matters to be resolved by this Court if indeed there is any adjudication that is called for. The submissions are there only to highlight and possibly impress on this Court that the Applicant has a very arguable appeal with a reasonable chance of success, on the one hand, and on the other hand, as argued by the Respondent, that that is not the case.

Both counsel are in agreement that the subject matter in issue, that is, the application or non-application of Price Control Regulations, is a matter of public interest. I hold a similar view that the subject matter in issue meets the first criteria required to satisfy this Court that leave may be granted for the case to proceed to the Seychelles Court of Appeal.

Does the matter in issue meet the second criterion, that is, whether there is arguable ground of appeal with a reasonable chance of success?

I have meticulously analysed the submissions made by learned counsel. It is evident to me that the whole matter boils down to the issue as to whether the purported Certificate of Exemption satisfies all the necessary attributes, legal or otherwise, to be deemed a document that would properly attract the judicial notice of the Court. In the light of the submissions of both parties, and having given careful consideration to the various points raised by both sides, I conclude and hold the view that this issue has certain merit and is indeed not frivolous or vexatious, and as such it ought to be adjudicated upon by the appropriate forum. Hence it meets the second criterion.

In the circumstances, I find that it is necessary and in the interest of justice that leave be granted to the Applicant to appeal to the Seychelles Court of Appeal against the ruling made by this Court on 3 July.

Record: Civil Side No 339 of 2002