

INDEPENDENT COMMISSION AGAINST CORRUPTION v BISASUR G.

2019 SCJ 249

SCR No. 1261

IN THE SUPREME COURT OF MAURITIUS
(Court of Civil Appeal)

In the matter of:

The Independent Commission Against Corruption

Appellant

v/s

Gerard Bisasur

Respondent

In the presence of:

The Honourable Attorney General

Co-Respondent

Interlocutory Judgment

This is an appeal against a judgment of the Supreme Court dismissing a plaint with summons (“plaint”) entered by the respondent, then plaintiff, against the appellant.

The respondent, an attorney-at-law, has averred in the plaint that, by way of letter dated 16 May 2002, he was offered appointment as Deputy Commissioner of the appellant as from 01 June 2002 for a fixed duration of 10 years. His appointment was made under section 18 of the Prevention of Corruption Act 2002 (POCA 2002). As a result of amendments brought by the Prevention of Corruption (Amendment) Act 2005 which came into force on 01 October 2005 the post of Deputy Commissioner was abolished. The respondent claimed damages from the appellant for the prejudice which he allegedly suffered as a result of the unilateral decision of the appellant to bring his contract of employment to a premature, arbitrary, unjustified and unlawful end.

The appellant has averred in its plea that it was not the employer of the respondent inasmuch as it never appointed the respondent as Deputy Commissioner, it never set out the terms and conditions of his appointment and it never caused the revocation or termination of the respondent's appointment. It merely disbursed the respondent's salary and compensation from the budget allocated to it by the State of Mauritius.

The learned Judge rejected the appellant's contention that it was not the respondent's employer but went on to dismiss the plaint after concluding that the respondent had failed to establish that the appellant had unlawfully brought to a premature, arbitrary and unjustified end his contract of employment.

There are now two appeals before us which have been lodged against the judgment of the trial Judge. G. Bisasur, the respondent in the present appeal, lodged a first appeal (SCR No. 1260) and Independent Commission Against Corruption (ICAC) lodged a second appeal which is the subject matter of the present case.

There is a preliminary question which has arisen as to whether the appellant, ICAC, which has obtained the judgment in its favour, is entitled to appeal against the said judgment.

Section 3 of the Court of Civil Appeal Act ("The Act") provides the following-

"3. When appeal lies

- (1) *Subject to this Act and to any rules of Court made under it, any party aggrieved by any judgment or order of a Judge sitting alone in the exercise in Court of his original civil jurisdiction may appeal from such judgment or order to the Court of Civil Appeal.*
(underlining is ours)
- (2) *No appeal shall lie, except by leave of the Judge-*
 - (a) *from an order as to costs only;*
 - (b) *from an order made by consent of the parties; or*

(c) *from an interlocutory judgment or order.*"

Learned Counsel for the appellant has submitted that the purpose of the present appeal is not to reverse the judgment of the learned trial Judge but rather to reverse one of her findings which is to the effect that there was a contract of employment between the appellant and the respondent, which finding the appellant does not agree with. At the end of the day, however, learned Counsel for the appellant readily conceded that the Court of Civil Appeal is only being called upon to give an academic pronouncement on that particular finding only and there is no appeal to reverse or set aside the judgment.

The question, therefore, is whether the appellant is, in the circumstances of the present case, "*aggrieved by the judgment*" such that he is entitled to pursue an appeal pursuant to section 3 of the Act.

In **Attorney General of Gambia v N’Jie [1961] A.C.617**, Lord Denning defined a person aggrieved as "*including a person who has a genuine grievance because an order had been made which prejudicially affects his interest.*"

Section 16 of the UK Supreme Court Act 1981 which is substantially similar to section 3 of our Court of Civil Appeal Act, provides that –

"Subject as otherwise provided by this or any other Act the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court"

In that connection, the following extract from **Volume 1 of the White Book (2008)** at page 1386 stipulates that:

"Appeals are against orders, not reasoned judgments..... Accordingly appeal lies against the order made by the lower court, not against the reasons which that court gave for its decision or the findings which it made along the way."

Furthermore, the following observation made by Lord Esher in **Onslow v Inland Revenue Comrs (25 QBD)** at page 466, clearly explained that there can be no appeal by a party who is ultimately successful as result of the final judgment or order:

“ but it is only dealing with the formal order and not dealing with the reasons for the decision, which may, in many cases (especially where, as in the present case, alternative defences are put forward), lead to a successful defendant finding himself or herself in a position of having won a case and having had matters decided against him or her about which some feelings of dissatisfaction may remain. Nevertheless, it does not follow that because the judge, in arriving at his conclusion, has determined those matters in that way, there is an appealable issue,”

In **Lake v Lake [1955] 2 All ER 538**, a wife respondent, who had been found guilty of adultery, but who had succeeded in defending her husband's divorce petition on the ground of condonation, sought to appeal against the finding of adultery. Evershed MR, with whom Hodson and Parker LJJ agreed, held that *“the wife's right to challenge went only to the form of the order not to the reasons for it..... The right of appeal did not extend to a finding or statement in the reasons given by the court for the conclusion that it had reached. Thus, if the decision of the court on the issue it has to try.... is one which a party does not wish to challenge in the result, it is not open to that party to challenge a finding of fact simply because it is not one he or she does not like”*.

However, it has been decided that there are exceptional circumstances where a Court of Appeal may hear an appeal from a successful party. In **Morina v Secretary of State for Work and Pensions [2007] EWCA Civ 749**, the Secretary of State had won on the merits before the Commissioner, but he had lost on jurisdictional points and the Court of Appeal nevertheless decided on the issue by making an exception to the general principle and it held that there were good reasons for deciding jurisdictional points arising on an appeal by the Secretary of State, even though he was the overall victor below.

In the present case, the appellant is, in the ground of appeal as couched, challenging a particular finding of the learned trial Judge that there was a contract of employment between the appellant and the respondent. The appellant, however, is satisfied with the outcome of the judgment which dismissed the respondent's claim. The circumstances of the present case are easily distinguishable from those of **Morina** (supra). The ground of appeal

in **Morina** (supra) concerned the fundamental issue of the jurisdiction of the trial court as opposed to a mere factual finding in the present case.

In its Notice of Appeal, the appellant contends that it feels “*aggrieved by and dissatisfied with part of a judgment delivered by Her Ladyship....*” (underlining is ours). Learned Counsel for the appellant submitted that ICAC is only dissatisfied with part of the judgment namely one of the findings of the learned trial Judge and not with the outcome of the judgment or any order contained in the judgment. It is therefore not in dispute that ICAC, as appellant, is not aggrieved with the outcome of the judgment of the learned Judge. The appellant is therefore quite clearly not “an *aggrieved*” party within the meaning of section 3 of the Act. It is not in any manner whatsoever challenging the final judgment which dismissed the respondent’s plaint. The appellant is merely seeking to contest the reasoning in respect of a particular finding with which it is dissatisfied. The right of appeal conferred under section 3 of the Act does not extend to a party who has obtained a judgment in its favour. Such a party is not entitled to contest any particular finding or reasoning where the final outcome in the judgment is wholly in its favour.

We need here to open a parenthesis to point out that there is an express mechanism which has been provided under the Act for consideration by the Court of Appeal of any point in law which may be raised by a party in the course of the trial. Without prejudice to the right of appeal conferred by section 3 of the Act, the trial Judge may, pursuant to section 4 of the Act, refer for consideration by the Court of Civil Appeal a point of law which has been raised by any party in the course of the hearing of the case.

In view of what we have stated above, we consider that in the present case, the appellant is not entitled to proceed with this appeal which is accordingly set aside.

A. Caunhye
Senior Puisne Judge

G. Jugessur- Manna
Judge

19 September 2019

Judgment delivered by Hon. G. Jugessur- Manna, Judge

**For the Appellant : Mr S. Sohawon, Attorney-at-Law
: Mr M. Roopchand & Mr M. Jeeha, of Counsel**

**For the Respondent : Ms Z. Salajee, Senior Attorney
: Mr G. Glover, Senior Counsel**

**For the Co-Respondent : Ms V. Nirsimloo, Chief State Attorney
Mr M. Beeharry, Principal State Counsel together with
Ms N. Pem, State Counsel**