

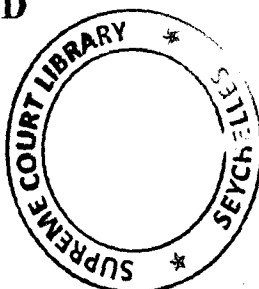
IN THE SEYCHELLES COURT OF APPEAL

**In the Matter of an Intended Appeal
Estate of late Jean-Claude Vidot**

Appellant

AND

Allen Jude Medine



Respondent

SCA No.19 of 2008

[Before: MacGregor, P, Hodoul & Domah, JJA]

**Mr. C. Lablache for Appellant
Mr. C. Lucas for Respondent**

Application for Special Leave to Appeal against Interlocutory Ruling

[1] By Notice of Motion dated 31st October 2008, Conrad Lablache, Esq., advocate for the applicant, applied for an order of this Court granting Special Leave to Appeal against the Interlocutory Ruling dated 16th October 2008, given by Karunalaran, J. in the above mentioned suit.

[2] The Notice of Motion is supported by an affidavit of Melchior Vidot, one of the heirs of Jean-Claude Vidot, appointed co-executor of the succession of the same said Jean-Claude Vidot.

[3] In his affidavit, Melchior Vidot avers on oath the following facts:

"4. The plaint in the above matter seeks a declaration that Allen Jude MEDINE, the respondent in the present application, is a child of Jean-Claude Vidot, who passed away on 26th October 2004.

5. The *plaint* was filed on 15 October 2007 and summons was served on the Applicant on 29th October 2007 i.e., more than 24 months after the death of Jean-Claude Vidot.



6. It is noteworthy that an earlier case in the form of an *ex parte* application dated 30 November 2004 (...) was filed in the Supreme Court by the same respondent

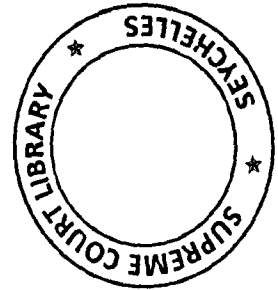
7. The Applicant in its Statement of defence to the *Plaint* in the above suit raised a plea in *limine litis* to the effect that the Respondent's action was prescribed under the Article 340, paragraph 3 (b) of the Civil Code
.....

8. The Applicant's plea of prescription was heard as a preliminary matter. By a ruling of 16th October 2008 Judge D Karunakaran found, *inter alia*, that the earlier *ex parte* proceedings had interrupted prescription

9. The Applicant applied for leave to appeal to the Court of appeal against the *Interlocutory Ruling* but the application was denied by order of Judge Karunakaran dated 17th October 2008.

10. I am advised and verily believe that the Learned Judge erred its application of the provisions of the Civil Code relating to prescription. ...
....

11. I am, therefore, advised and verily believe that the intended appeal discloses important issues relating to our law of prescription upon which



further arguments and a decision of the Court of Appeal would be in the public advantage and interest."

[4] The application was heard by the full Court on Monday 1st December 2008 and the parties duly represented by their respective learned advocates.

[5] The applicant moved according to his Motion and affidavit; the respondent did not file any affidavit in reply, nor did he challenge any averment of fact in the applicant's affidavit. He would accept any decision of the Court.

[6] The Court reserved its decision for Friday 12th December 2008. It believes that it gave to the parties the impression that the application would be refused. However, after giving further consideration to all the documents on record, particularly the ruling of Karunakaran, J. and the grounds of the Intended Appeal, the Court came to the unanimous conclusion that this was a fit case to grant leave.

[7] All relevant points of law and all issues of fact have been considered by the learned trial Judge. The main issue now to be resolved on appeal, is whether the respondent's action *en recherche de paternité* is prescribed or not?

[8] The principle is that leave to appeal against an interlocutory order should be granted when the decision disposes of the matter in issue substantially. This principle is reiterated, *inter alia*, in **Marzocchi and anor v Government of Seychelles and anor** (SLR, 1996).

[9] Moreover, the Court has given special consideration to the following:

- (i) it has a duty to ensure that justice is done with celerity;
- (ii) it has a duty to opt for a procedure which would cause the least delay;
- (iii) we concur with the averment in paragraph 13 of the affidavit that "... *the intended appeal will fully dispose of the Respondent's Complaint.*";
- (iv) granting the application would ensure the final disposal of the entire case during the next session of the Court.

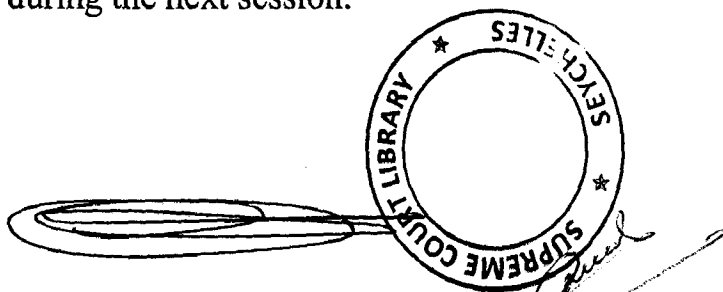
[10] By reason of the aforesaid, this Court hereby overrules the decision of the learned trial Judge (Karurukaran D) to dismiss the application and hereby grants to the applicant, Special Leave to Appeal against the interlocutory ruling of the learned trial Judge.

[11] This Court further orders that the Registrar ensures that the appeal be cause listed for hearing during the next session.

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J.M. HODOUL
Justice of Appeal

.....
F. MACGREGOR
President

.....
S.B. DOMAH
Justice of Appeal



Delivered at Victoria on this 12th day of ~~August~~ December 2008