

**IN THE SEYCHELLES COURT OF APPEAL**

**Christopher Gill**

**Appellant**

**V**

**Registrar of Political Parties**

**Respondent**

**SCA 19 of 2011**

**[Before: Fernando, Twomey and Msoffe JJA]**

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**A. Amesbury for the Appellant**

**The Attorney General for the Respondent**

*Date of hearing: 27th November 2012*

*Date of judgment: 7th December 2012*

**Ruling**

**Twomey, JA**

1. This matter came before this court by way of appeal from a decision of learned Justice Karunakaran given in the Supreme Court on the 30<sup>th</sup> March 2011. The notice of appeal together with the grounds of appeal was filed on 13<sup>th</sup> May 2011. On 23<sup>rd</sup> May 2011 the Appellant was informed by the Clerk of the Court of Appeal that security for the costs of the appeal had been fixed at Seychelles Rupees 9,000. The security for costs was duly paid on the 7<sup>th</sup> of June 2011.

2. On the 10<sup>th</sup> of October 2012 the cause list for the November session of the Court of Appeal was published and duly served on Counsel for the Appellant. On the 8<sup>th</sup> November 2012 Counsel for the Appellant wrote to the President of the Court of Appeal stating:

“I act for Mr. Gill the Appellant in the above case. My instructions are to withdraw the appeal as political events since the case was first heard has rendered the present appeal redundant.”

3. On the 12<sup>th</sup> November 2012 the Registrar of the Court of Appeal informed Counsel for the Appellant that she would have to comply with rule 22(2) of the Seychelles Court of Appeal Rules 2005. Rule 22 (2) states:

“If all the parties to the appeal consent to the withdrawal of the appeal without an order of the Court, the appellant may file with the Registrar the document or documents signifying such consent and signed by the parties or by their advocates, and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar who shall thereupon inform the Registrar of the Supreme Court accordingly. In such event any sum lodged in the Registry of the Supreme Court as security of the costs of the appeal shall be paid out to the appellant.”

4. At roll call on Monday 26<sup>th</sup> November 2012 both Counsel appeared. Counsel for the Appellant indicated that the documentation in compliance with rule 22(2) had been filed the same day and that she would be moving to have the appeal withdrawn. The learned Attorney General stated that he had no objection to the withdrawal of the appeal but since he had prepared and filed skeleton heads of argument in respect of the appeal since the 23<sup>rd</sup> November 2012 he would be asking for costs. The matter was adjourned to the 26<sup>th</sup> November 2012 at 2.00 pm for hearing on withdrawal of the appeal and costs.

5. At the hearing, the learned Attorney General appeared in person for the Respondent but neither the Respondent nor his Counsel was present. The learned Attorney General moved for costs both on the basis that the Appellant was absent and also because that late withdrawal of the appeal had resulted in a time and expense of preparing and filing skeleton heads of argument. This motion was granted in open court, the Court reserving the right to render the same in writing.

6. Five minutes after the Court had risen, the Appellant's Counsel informed the Court through the Registrar that she had been delayed at the Supreme Court and wanted to tender her apologies. The learned Attorney General was informed and the Court returned to sit and hear the apology. This was duly tendered and accepted. Counsel for the Appellant also moved to have the costs set aside on the basis that she had been unduly detained by a matter in the Supreme Court. This was opposed by the learned Attorney General.

7. We reiterate that the Seychelles Court of Appeal is the Court of superior jurisdiction in Seychelles and matters before it take precedence over matters

before other courts. In any case the Court being functus officio cannot vacate the order for costs already granted and hence dismisses the application by counsel for the Appellant. The security for costs of the appeal is hence also forfeited pursuant to rules 22(2) and 22(4) of the Seychelles Court of appeal rules 2005.

8. To summarise: The application for costs by the learned Attorney General on behalf of the Respondent is hereby granted; the motion by Counsel for the Respondent to set aside the order for costs is denied; security for costs of the appeal is forfeited.

M. Twomey

A. Fernando

J. Msoffe

Victoria, Mahé, Seychelles this 7th day of December 2012.