

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) ,B. Renaud (J.A), F. Robinson (J.A)]

Civil Appeal SCA MA 07/2018, SCA MA 12/2018 & SCA MA 19/2018

(arising in SCA 29/2017)

(SCA 29/2017 arising from CS 06/2012

Emilie Adonis

Antoine Adonis

Applicants

Versus

Daniel Port-Louis

Respondent

Heard: 23 August 2018

Counsel: Mr. Joel Camille for the Applicants

Mr. Frank Elizabeth for the Respondent

Delivered: 31 August 2018

RULING

B. Renaud (J.A)

1. The Intended Appellants entered their Notice of Appeal, within time, on 4th August, 2017, setting out six grounds of appeal against a judgment given on 31st July, 2017 by the Learned Judge Nunkoo.
2. By letter dated 30th August, 2017 the Assistant Registrar advised Learned Counsel for the Intended Appellants that security for costs for the said appeal had been fixed at SR10,000.00.
3. Learned Counsel, responded by letter dated 4th August, 2017 (should be 4th September,

2017) advising that his clients stated that they are unable to meet the security for costs as they are paupers.

4. On 15th September, 2017, the Assistant Registrar further advised Learned Counsel by e-mail that in the circumstances the Intended Appellants ought to supply proofs by Affidavits that they cannot afford to pay security for costs.
5. On 18th December, 2017, having not received any response, the Assistant Registrar advised the Learned Counsel for the Intended Appellants that as the security for costs had not been paid, their appeal is deemed withdrawn in terms of Rule 27(3) of the Seychelles Court of Appeal Rules 2005 (hereinafter “the Rules”).
6. On 27th February, 2018 the Applicants herein entered a Notice of Motion moving this Court for an order that they are exempted from paying security for costs and that their appeal be heard.
7. The Motion was supported by Affidavits of the Applicants who substantially *inter alia* deponed that, that they are both pensioners in receipt of Retirement Benefit of SR5050.00 each per month and that they are unable to pay security for costs for their appeal to be processed. They each attached a letter dated 22nd January, 2018, from the Agency for Social Protection confirming that both of them are indeed in receipt of Retirement Benefit. Basing on that reason, they applied to be exempted from the payment of the security for costs and pray for their appeal to be processed.
8. The Notice of Motion was heard by the President of this Court on 27th March, 2018, who allowed the Motion subject to there being no objection from the opposing party.
9. On 21st May, 2018, by a Notice of Motion, supported by Affidavit, Learned Counsel for the Respondent objected to the application.
10. On 26th June, 2018, President of this Court heard the arguments of Learned Counsel. On

17th July, 2018, using his discretion under Rule 25(2), the President of this Court ruled that the matter ought to be heard by a full Bench.

11. This Court will determine whether leave ought to be granted to the Applicants to pursue their appeal, taking into consideration the grounds of objection of the Respondent and all the circumstances of this matter.

12. By his Affidavit, the Respondent *inter alia* and in substance stating that –

- that the Applicants failed to disclose that, between the two of them, they own two properties, one at La Misere, Mahe, where they currently reside, and one at Mont Buxton, Mahe, which they currently rent to Mr. Simon Gill to house his Indian construction workers
- that contrary to what was stated in their Affidavits, the Applicants had the means all along to pay the security for costs but were merely trying to hoodwink and mislead the Court in order to deliberately avoid paying the said security for costs
- that on the 27th March 2018 at 11 am, the President of this Court had a sitting to hear the motion of the Applicants
- that at the said sitting, the Attorney for the Applicants, submitted that the Applicants, now have the means to pay the security for costs out of time and for their Notice of Appeal to be reinstated
- that the Court granted the Application in principle subject to the Respondent being accorded a right to be heard on the Application
- that the Respondent moves that the Application be dismissed as the Applicants were somewhat dishonest and tried to mislead the Court in their original Motion for exemption to pay the security for costs, as they did not divulge to the Court that they are owners of properties worth millions of rupees and are thus not eligible for such an exemption

- that this clearly shows that the Applicants all along had the means to pay but instead decided intentionally to mislead the Court and as such the Court should not condone their behaviour and the decision made by the Court originally that the appeal is deemed withdrawn should stand
 - that otherwise, the Court would create a dangerous and bad precedent which is likely to be abused by future litigants and the Court should not allow the Applicants to benefit from their own dishonesty
 - that it is just and necessary for the Court to maintain its decision that the appeal is deemed withdrawn and dismiss this Motion accordingly in order to maintain order, decorum and prestige of the highest Court in the land
 - that all statements contained in the Affidavit are true and correct to the best of his information, knowledge and belief.
13. In support of the position taken by the Respondent, Learned Counsel cited the Ruling of A.F.T. Fernando J.A refusing to grant leave to pursue an appeal out of time in the case of ***Wilfrid Richmond v Gilbert Lesperance SCA MA 9/13***, and the Ruling of B. Renaud J.A refusing to grant leave to pursue the appeal in the case of ***Lise Church v Bernadette Boniface SCA MA 11/2017*** for having failed to pay the deposit for costs within the prescribed time.
14. In the case of ***Richmond***, judgment was delivered on 11th November, 2010 and the Application for ‘Leave to Appeal out of Time’ was filed before the Supreme Court on 3rd July, 2013, a period of 2 years 8 years after the judgment was delivered instead of 30 days as laid down in the Rules.
15. In the case of ***Church***, judgment was delivered on 27th July, 2016 and the Notice of Appeal was filed on 8th September, 2016 but the security for costs was not deposited within a reasonable time. Had the application for leave been granted the appeal would have been heard over two years after the judgment of the Supreme Court.

16. In both of the cases cited, the length of the period delay defeated the motion to obtain this Court consideration to condone the delay and extend time in terms of Rule 26 and the proviso Rule 27.
17. The circumstances surrounding the instant matter are distinguishable from the two cases referred to above. In the instant the Notice of Appeal was filed within time and the necessary fees were duly paid. It was only the deposit for security for costs which was not paid. The Applicants throughout, however, were actively corresponding with the Registry of this Court in soliciting a waiver of the requirement to pay the deposit.
18. If indeed the Appellants occupied their own dwelling house at La Misere and rented out another house at Mont Buxton is not proof that they had SR10,000.00 cash available at the material time to make the deposit. The Appellants through Counsel informed Court that they were not earning any rent from the house at Mont Buxton and the matter is before the Rent Tribunal. The Appellants are indeed person of age as proven by their respective National Identity Card and they are both drawing Social Security Retirement Benefits as proven by a letter from the Authority concerned. The fact that the Appellants later informed Court that they have been able to eventually raise the SR10,000.00 does not prove that they had the means to do so all along and were simply refusing to pay.
19. In our considered judgment, the Respondent's deposition that the Appellants, all along had the means to pay to pay the deposit, is merely a statement of opinion and are not facts supported by evidence. Likewise, the averment of the Respondent that the Appellant mislead the Court, is only an opinion statement and does not have any factual basis.
20. This Court being the highest Court in the land acts judiciously and considers each case on its own merit in order to uphold and maintain order, decorum and its prestige in fairly and justly adjudicating all matters in the interest of justice.
21. In the final analysis, we find that the objections raised by the Respondents are not cogent enough to warrant any variation of the provisional Order made by the President of this

Court in terms of Rules 26 and 27 of the Rules. The said provisional Order is hereby confirmed and the Applicants, as they indicated to the Court, shall make the deposit of SR10,000.00 within 14 days hereof and upon doing so their appeal shall be proceeded with.

B. Renaud (J.A)

I concur:.

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F. MacGregor (PCA)

Signed, dated and delivered at Palais de Justice, Ile du Port on 31 August 2018