

IN THE SEYCHELLES COURT OF APPEAL

Before: Justice B. Renaud

Civil Appeal SCA MA 32/2018
(arising in SCA 37/2018)

Mary Geers Applicant

Versus

Noel De Lafontaine Respondent

Heard: 26 February 2019

Counsel: Mr. Anthony Derjacques for the Applicant

Ms. Alexandra Madeleine for the Respondent

Delivered: 28 June 2019

RULING ON APPLICATION

B. Renaud (J.A)

1. On the 31 October 2018, the Applicant filed a Notice of Motion supported by an Affidavit moving this Court for the following orders:

(a) That this Application is heard as a matter of extreme urgency.

(b) That a STAY OF EXECUTION of the said judgment, dated the 2nd of October 2018, in Civil Side MA 324 of 2017 and SCSC667 of 2018, before the Supreme Court of Seychelles is granted pending the hearing of the appeal on its merits.

2. The matter was heard at the earliest possible thus disposing of the first prayer of the Applicant. At the hearing both Counsel undertook to make written submissions. This matter is decided on the basis of the Affidavits of the parties before this Court, taking into consideration the submissions of Counsel.
3. In the Seychelles Court of Appeal Rules 2005 there is no specific procedure regarding Stay of Execution except Rule 20 which *inter alia* states that an appeal shall not operate as a stay of execution or of proceedings from the decision appealed against. This Rule also provides that this Court may on application supported by Affidavit, and served on the Respondent, grant a stay of execution pending appeal on such terms it may deem reasonable. This Court also has an inherent discretion based on the principle as to whether it is just, reasonable and convenient to make such an order.
4. The Court takes into consideration all the relevant circumstances of the parties in order to prevent any undue prejudice to either of them. The Court's discretion is exercised by striking a judicious and equitable balance based on the principle that, on the one hand, the successful party should be allowed to reap the fruits of his litigation thus not obtaining a hollow victory, and on the other hand, that should the unsuccessful party be ultimately be successful in its appeal, the latter party ought not to be deprived of the fruits of its litigation due to the result of the appeal being rendered nugatory or would suffer loss which could not be compensated in damages.
5. Granting a Stay of Execution is an exception rather than the rule. The general rule is that a stay of execution is declined unless solid grounds are shown. The onus is on the Applicant to demonstrate a proper basis for such a stay. The mere filing of an appeal does not demonstrate an appropriate case or discharge that onus.
6. Although the Court has a discretion, yet it involves the weighing of considerations such as balance of convenience and competing rights of the parties. Where there is a risk that the appeal will prove abortive if the Appellant succeeds and a stay is not granted, the Court exercises its discretion in favour of granting a stay. However, the Court does not generally speculate upon the Appellant's prospect of success, but may make a

preliminary assessment as to whether the Appellant has an arguable case, in order to exclude an appeal lodged without any real prospect of success but simply to gain time. As a condition of a Stay of Execution, the Court may also require the payment of the whole or part of the judgment sum or the provision of security wherever applicable.

7. In considering the instant Application, I reviewed the Orders made by the Supreme Court, the depositions of the parties in their respective Affidavit, the Notice and Grounds of Appeal filed by the Applicant and the reliefs sought.
8. In its final judgment the Supreme Court, after having regards to all the circumstances of the case, assessed the share of the instant Respondent (Petitioner in the Supreme Court) at 90% of the value of the matrimonial property comprised in Title S2645 and the house thereon and Mrs. Ruth Stravens' share at 10%. In monetary terms the Respondent's share is SR1,755,000.00 and that of Mrs. Ruth Stravens is SR195,000.00. With regard to the furniture and other movables, the Applicant herein (Mrs. Ruth Stravens) is to provide an inventory of the same and the parties are to have an equal share in kind or in their monetary value.
9. The Supreme Court ordered the Respondent to pay the Applicant, on behalf of and for the benefit of Mrs. Ruth Stravens, the sum of SR195,000 on or before the 31 October 2018 and simultaneously ordered Mrs. Ruth Stravens to vacate the property, Title S2645, on the payment of the said sum, but not later than 31 October 2018. If the Respondent fails to make the payment by the due date, the Applicant is to pay the Respondent the sum of SR1,755,000.00 on the same date with the Respondent transferring Title S2645 to Mrs. Ruth Stravens, and if the Respondent fails to execute the transfer, the Land Registrar is directed to effect registration of the said title in the sole name of Mrs. Ruth Stravens upon proof of her satisfaction of payment of the sum stipulated. In the event that neither party is in a position to pay the other party his/her share in the matrimonial home on or before the 31st October 2018, Title S2645 is to be sold by public auction with the proceeds of sale being divided 90% for the Respondent and 10% for the Applicant.

10. In her Affidavit-in-Support of her Application the Applicant deponed that she is acting in her capacity as guardian to Mrs. Ruth Stravens in respect of the judgment in the case which was delivered on the 12th of July by the Chief Justice, against which judgment she had appealed. The Applicant believes that she has a reasonable chance of success in her appeal as there are substantial grounds. She also believes that it is in the interests of justice that a Stay of Execution of the said judgment should be granted pending the final determination of the case by this Court.
11. The Applicant also deponed that should this Court not grant the stay, Mrs. Ruth Stravens will suffer undue hardship and will be made homeless. She added that it is reasonable that the Order be stayed, because the sum of SR195,000.00 that is payable to Mrs. Stravens by October 2018, as determined by the Court, is insufficient to purchase a portion of land let alone to construct a new home. She averred that it is reasonable and just that a Stay of Execution be granted pending the appeal. She added that Mrs. Ruth Stravens is an interdicted person and is incapable of starting anew, and, having to construct a new house as an interdicted person. She claimed that Mrs. Ruth Stravens has special status, special and increased protection under the law, and that this Court should make Orders, subject to “her best interests.” She also stated that the Respondent, is highly capable of constructing his own house for his new family.
12. In his Affidavit-in-Reply in objecting to a Stay of Execution, the Respondent deponed that he took cognizance of the contents of the Affidavit of the Applicant in support of the application for stay of execution of the judgment. Save as specifically admitted, he denied each and every statement contained in the said Affidavit. He deponed that he is legally advised and hence he believes that the Appeal does not have any reasonable chance of success in law, and the grounds of appeal are not substantial in that there was no substantial evidence of contribution made by Mrs. Ruth Stravens adduced at trial.
13. He also believes, as advised, that the appeal is frivolous and vexatious and purely intended to delay execution of the judgment to further deny him the right to access and

enjoy his property, the land comprised in land parcel S2645 and house thereon. He further believes that Mrs. Ruth Bertha Stravens will not suffer any hardship whatsoever by the refusal of the application for a Stay of Execution of the judgment as she is an interdicted person and should be living in the care of her guardian, the Applicant herein. He stated that in fact the said Mrs. Ruth Bertha Stravens had been occupying the house on land parcel S2645 on her own since her interdiction which is clearly not in her best interest in view of her alcohol dependency.

14. The Respondent further deponed that Mrs. Ruth Bertha Stravens has a parcel of land registered as Title No. H5763 situated at Glacis, Mahe registered in her sole name and on which the Applicant can build a new house for her benefit. The sum of SCR195,000/- as awarded by the Supreme Court as her entitlement is more than sufficient for her share in the matrimonial property as she made neither made any contributions towards the purchase of the land comprised in title No S2645 nor towards the construction of the house thereon. He maintained that greater hardship will be caused to him and his family should this Court be minded to grant a Stay of Execution of the judgment in that:

- a) the land and built the house thereon;
- b) since the filing of the divorce proceedings in 2009, he had been denied access to, and denied the right to enjoy, his property in that he has had to rent out accommodation for himself and his family including his wife and his children who are now 2 and 4 years old respectively;
- c) his tenancy expired in 2017 and he was provided temporary accommodation by a friend until the completion of his case in the Supreme Court in 2018;
- d) now, he has had to start the process all over again and get new accommodation for himself and his family which is causing unnecessary financial hardship to himself and his family while Ruth

Stravens an interdicted person is residing in his (Respondent's) house on her own.

15. The Respondent further deponed that he is advised by his Attorney and hence believes that it is the duty of the Applicant as guardian to ensure the protection and the best interests of Mrs. Ruth Stravens by ensuring that the said Mrs. Ruth Stravens is not left to reside on her own in view of her alcohol dependency. It is also the duty of the Applicant as the guardian to carry out all the acts that Ruth Stravens as an interdicted person cannot carry out including building a new house for her benefit. Based on the above, he averred that it is fair, just, urgent and necessary in the interest of justice that the Application is refused, and he prayed accordingly.
16. The Applicant in her capacity as Appellant filed a Notice of Appeal setting out four grounds of appeal as follows:

Ground 1

The Learned Chief Justice erred in law in awarding the Appellant only 10% beneficial interest in the said matrimonial property, title S2645 in that the said Appellant had made substantial contributions to the purchase of land, construction of the house and its maintenance.

Ground 2

The Learned Chief Justice erred in law in determining the beneficial share of the Appellant in the matrimonial home S2645 at 10% in view of the substantial evidence which prove that at a minimum the Appellant was entitled to a 50% beneficial interest in the said matrimonial home.

Ground 3

The Learned Chief Justice erred in law on her assessment of the facts and circumstances of the case and thereby, failed to judiciously exercise her wide discretion in the making

of the awards as to each parties' share of the beneficial interest, in the matrimonial property.

Ground 4

The Learned Chief Justice erred in law in failing to determine that the Appellant, should be maintained, in her property, to the same standard she enjoyed during the marriage and not made homeless.

17. The Applicant is appealing against the decision of the Supreme Court, firstly, seeking for entire dismissal of all the Orders made by the Supreme Court and for the award of costs of the case in both the Supreme Court and this Court. Secondly, the Applicant is seeking that her beneficial interest is increased substantially and that she pays the Respondent for any share allocated to him.
18. The Applicant is an interdicted person who in principle ought to be in the care of her guardian and not living alone and far away. However, she may have her own reason for living alone in her own house. Note is taken that the Applicant already has a property on which she could build her house. She has been solely occupying the former matrimonial home since the breakdown of the marriage from 2009 to date, and continuing. The house is situated on a property belonging to the Respondent and substantially caused to be built by him from his own resources.
19. If on appeal this Court finds entirely in favour of the Applicant on all grounds and granted the reliefs she is seeking, I do not believe that there is any danger that the Applicant would suffer any loss that cannot be compensated by damages and/or the return to the Applicant of the property in issue.
20. It is evident that both parties need a house or home following the divorce. The Respondent now has a new family including two children. The Applicant lives alone in the former matrimonial home, far away from her legal guardian despite her being an

interdicted person. There are no other special circumstances in favour of the Applicant that has been submitted to this Court. Likewise there is no substantial question of law to be adjudicated upon the hearing of the appeal. The appeal is based on the assessment of facts by the Court below, and the awards that followed.

21. It is my considered judgment that, having regards to all circumstances as contained in the Affidavits of the parties, the housing need of the Respondent is greater than that of the Applicant. I also find that there is justification to assume that substantial loss may otherwise result. In the event that the Applicant is successful in her appeal the end result would be that the Respondent would have to pay to her any higher sum ordered by the Court or allowed her the use of the matrimonial home upon payment to the Respondent. Hence there would be no loss to the Applicant. There is no proof of the Applicant otherwise suffering any substantial loss as a result that could not be compensated in damages.

22. For reasons stated above, I exercise my discretion in favour of the Respondent and decline to grant the Application for an order of a stay of execution, in the circumstances. I order accordingly.

B. Renaud (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 28 June 2019