

COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA ...

MA 13/2020 (Arising in SCA21/20)

In the matter between

GIANNI BORDINO

(rep. by Mr Frank Elizabeth)

Applicant

and

GOVERNMENT OF SEYCHELLES

(rep. by Miss Nissa Thompson)

Respondent

Neutral Citation: Gianni Bordino v Government of Seychelles (MA13/2020) [2020] SCCA
25 February 2021

Before: Robinson, JA

Summary: A fresh application for a stay of execution of a Supreme Court's judgment under section 230 of the Seychelles Code of Civil Procedure and rule 20 (1) of The Seychelles Court of Appeal Rules read together with rule 16 of the said Rules. An application to the discretion of a single Justice of Appeal. Irregularities in the form of the affidavit. Besides, the Applicant did not prove his application. The application is dismissed with costs.

Delivered: 25 February 2021

ORDER

The application for a stay of execution is dismissed with costs

RULING

ROBINSON JA

1. A single Justice of Appeal designated by the President of the Court of Appeal, may exercise any power vested in the Court of Appeal, save for an application for special

leave to appeal to it, under rule 5 of The Seychelles Court of Appeal Rules, 2005, as amended, (hereinafter referred to as "*The Rules*").

2. This application is asking for a stay of execution of a judgment of the learned Chief Justice under section 230 of the Seychelles Code of Civil Procedure (hereinafter referred to as the "*Code*"), and rule 20 (1) of The Rules, read together with rule 16 of The Rules. Rule 20 (1) of The Rules is to the effect that an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the Court of Appeal so orders. This is an application to my discretion under The Rules. The Respondent strongly resisted the application through Counsel.
3. The Applicant had initially made an application for a stay of execution of the learned Chief Justice's judgment, before the Supreme Court, under section 230 of the Code, which application was dismissed.
4. The Respondent made an application to amend the affidavit in reply sworn to by Superintendent Hein Prinsloo after the hearing of submissions. The Respondent wanted to correct some irregularities in the form of the affidavit in reply after the Applicant had attacked Superintendent Prinsloo's affidavit. The Applicant strongly resisted the application to amend through Counsel. I am not concerned with whether or not the application to amend is regular. Suffice it to state that the Respondent's Counsel withdrew the application to amend, on the 16 February 2021, after I made it clear on that date that the Applicant's originating application was not without its challenges.
5. I have considered the originating application, the affidavit in reply, and both parties' written and oral submissions with care.
6. Firstly, I consider the form of the affidavit. The affidavit was deposed to by Gianni Bordino. The affidavit does not state the occupation of Gianni Bordino. If Gianni Bordino is of no "*occupation*", the words "*of no occupation*" should have been added after his address. It is worthy of note that the affidavit does not even give the address of

Gianni Bordino: see, for example, *Hyde v Hyde*, 59 L. T. 523¹ and *Re Levy*, 37 W. R. 396², in which affidavits giving no address were rejected.

7. The affidavit is irregular for other reasons. I give some of the reasons why the affidavit is irregular.
8. I have considered the proper rules of conduct for the exercise of judicial discretion, which have been laid down by various cases³ with respect to section 230 of the Code and rule 20 (1) of The Rules, referred to by both Counsel —
 - (i) where the special circumstances of the case so require;
 - (ii) where there is proof of substantial loss that may otherwise result;
 - (iii) where there is a substantial question of law to be adjudicated upon at the hearing of the appeal;
 - (iv) where, if a stay is not granted, the appeal would be rendered nugatory if successful.
9. The Applicant's affidavit briefly avers that he has a good chance of success in his appeal; that if I were not to grant a stay of execution of the judgment, the appeal would be rendered nugatory if successful; and that there are substantial questions of law to be adjudicated upon at the hearing of the appeal. For her part, the Respondent's Counsel submitted that the affidavit does not meet the requirements expounded in the cases.
10. In *Islands Development Company Limited v EME Management Services Limited SCA 31/09* (delivered on 11 December 2009), Fernando JA, as he was then, stated the following: "[m]aking broad statements in an Affidavit without substantiating them, in a case which has to be decided purely on the basis of the averments contained in affidavits, does not espouse the cause of the party relying on such affidavit". **Islands Development**

¹ The Supreme Court Practice 1970 Part 1 Orders 1-112 Affidavits O. 41/1/5

² Ibid.

³ See, for example, *MacDonald Pool v Despilly William CS No. 244 of 1993* (11 October 1996), *Falcon Enterprise v Essack & Ors (2001) SLR 137*, *Lablache de Charmoy v Lablache de Charmoy Civil Appeal SCA MA08/2019 [2019] SCCA 35* (17 September 2019), *Elmasry and Anor v Hua Sun (SCA 28/2019) [2020] SCCA 2* (23 June 2020).

Company Limited, *supra*, clarifies that an applicant has to prove the applicant's application.

11. One of the principles expounded by the cases is that, although an applicant may have a good chance of success in the applicant's appeal, for that reason alone, no stay will be granted unless that applicant satisfies the court that, if the subject matter were dealt with, the appeal, if successful, would be rendered nugatory. As correctly submitted by the Respondent's Counsel, there is no affidavit or tangible fact upon which I could conclude that, if I were not to grant a stay of execution of the judgment, the appeal would be rendered nugatory if successful. It follows, therefore, that the question of whether or not the Applicant has a good chance of success in his appeal does not arise for consideration.
12. Also, the substantial questions of law to be adjudicated upon by the Court of Appeal are unclear. I opine that it is not enough for the Applicant's affidavit to reproduce grounds of appeal. The affidavit should develop the substantial questions of law to be adjudicated upon by the Court of Appeal. Hence, I conclude that the Applicant has not proved his application.
13. For the reasons stated above, I dismiss the application with costs.

Signed, dated and delivered at Ile du Port on 25 February 2021

Robinson Justice of Appeal