

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA 5
SCA MA 06/2021
(Arising from SCA 29/2020)

H. SAVY INSURANCE COMPANY LIMITED
(rep. by Ms. Alexandra Benoiton)

Applicant

and

MARLENE ERNESTA

1st Respondent

GERMAIN ERNESTA
(rep. by Ms. Kelly Louise)

2nd Respondent

Neutral Citation: *H. Savy Insurance Company Limited v Ernesta & Or* (SCA MA 06/2021)
[2021] SCCA 5 23rd March 2021

Before: **Fernando P**

Heard: 23rd March 2021

Delivered: 23rd March 2021

REASONS FOR RULING DELIVERED ON 23RD MARCH 2021

FERNANDO P

1. This was an application filed on the 18th of March 2021, for leave for an extension of time to provide security for costs. I dismissed the application after hearing both parties and hereby give the reasons for the dismissal.
2. According to **rule 27(1) of the Court of Appeal Rules, 2005** the appellant shall provide good and sufficient security for the payment of all such costs of the appeal as may become payable within 14 days after filing the notice of appeal.

3. It has been the accepted practice of this Court that the time period of 14 days begins to run not from the date of the filing of the notice of appeal, but from the date the appellant receives the notice of the Registrar of the costs to be paid.
4. **Rule 27(3) of the Court of Appeal Rules** states if the security is not furnished within the prescribed time, the notice of appeal shall be deemed to have been withdrawn and the appellant shall pay the respondent the costs of the abortive appeal.
5. In this case the notice dated 27th of August 2020 pertaining to the security for costs which was fixed at SR 5,000/- was received at the office of the attorney for the appellant on the 2nd of September 2020. Thus, the time period for the payment of costs was on or before 22nd of September 2020. Since no payment had been effected, the Assistant Registrar of the Court had informed the attorney for the appellant by letter dated 27th November 2020 that security had not been paid up to that date and drawn the attention of the attorney to rule 27(3) of the Court of Appeal Rules referred to at paragraph 4 above. This letter had been received at the attorney's office on the 4th of December 2020.
6. The application for leave for an extension of time to provide security for costs had been filed as stated at paragraph 1 above, on the 18th of March 2021, about 6 months after it became due.
7. According to **rule 26 of the Court of Appeal Rules** "*The times fixed within the Rules may, on good cause shown be extended by the President or a Judge designated by the President or may be extended by the Court.*" (emphasis added by me) It is clear that an extension of time is granted at the discretion of the Court and only where good cause is shown.
8. The reasons adduced by Mr. L Woodcock, General Manager of H Savy Insurance Company Limited on behalf of the appellant, for an extension of time, according to

the affidavit filed in support of the application are to be found at paragraphs 7 and 8 of his affidavit, namely:

- i. “That due to administrative procedures payment of the funds were not credited to my Attorney’s client’s account on time.
 - ii. That my Attorney has made multiple attempts to pay the security for costs since the funds were transferred into her account but has been unsuccessful in light of the lapse of time.” (verbatim)
9. The Rules of the Court of Appeal cannot be circumvented due to the administrative procedures of the applicant company. Further the deponent does not even specify what these administrative procedures are. Further the deponent cannot depone as to the “multiple attempts to pay the security for costs by its attorney”, since according to **section 170 of the Seychelles Code of Civil Procedure** “*Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds thereof, may be admitted.*” It is also clear from the averment of the deponent that the multiple attempts to pay the security for costs by its attorney had been after the time period for the payment of security had lapsed, and therefore why such attempts had been unsuccessful.
10. I am of the view that ‘good cause’ has not been shown for the exercise of my discretion to grant an extension of time to furnish security and therefore dismiss the application.

Signed, dated and delivered at Ile du Port on 23rd March 2021

Fernando, President