

COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 4

MA 32/2021 (Arising in SCA22/2021)

In the matter between

Stefan Renato Petrescu
(rep. by Mr Serge Rouillon)

Applicant

and

Stefan Adrian Iliescu
(rep. by Mr Frank Elizabeth)

Respondent

Neutral Citation: Petrescu v Iliescu (MA32/2021) [2022] SCCA 4 31 January 2022

Before: Robinson, JA

Summary: Application to amend Notice of Appeal. Leave to amend not sought. Counsel swears affidavit for Applicant. Application dismissed. No order as to costs.

Delivered: 31 January 2022

ORDER

The application is dismissed. No order as to 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. Mr Rouillon, Counsel for the Applicant, lodged a notice of motion supported by an affidavit sworn to by him to amend the Notice of Appeal. Counsel averred without more that he is authorised and has been instructed by the Applicant to swear to the affidavit on behalf of the Applicant.
3. Counsel for the Respondent objected to the application on several grounds, including that the affidavit is sworn to by Counsel and the Applicant had not sought leave to amend under The Rules. Counsel for the Respondent conceded. I accept the objections.
4. Concerning the issue relating to the propriety of the affidavit sworn to by Counsel, the Court of Appeal stated in *Morin v Pool 2012 SLR 109* — “[t]his practice of an attorney acting for a party accepting to swear an affidavit is clearly contrary to the law of this land and ought to stop”. I am also of the view that Counsel, while representing the Applicant before this Court, or any other court, as the case may be, cannot at the same time act as his witness. I cannot receive the affidavit.
5. For the reasons stated above, the application stands dismissed.

Signed, dated and delivered at Ile du Port on 31 January 2022

F. Robinson
Justice of Appeal