

IN THE COURT OF APPEAL OF SEYCHELLES

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**Reportable**

[2023] SCCA 3 (24 February 2023)  
SCA 42/2020  
(Arising in XP 27/2008)

**In the matter of Ailee Development Corporation** (in liquidation)

**And**

**EODC Operations Limited**  
(rep. by Mr. Frank Elizabeth)

**Appellant**

versus

**Gerald Lincoln**  
(rep. by Mr. Olivier Chang-Leng)

**Respondent**

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**Neutral Citation:** *EODC Operations Limited v Lincoln* (SCA 42/2020) [2023] SCCA 3  
(Arising in XP 27/2008) (24 February 2023)

**Before:** Robinson, Tibatemwa-Ekirikubinza, Andre, JJA

**Summary:** **Ruling on a Preliminary point of law – Interlocutory orders in Liquidation proceedings- An appeal against an interlocutory order is not automatic- There is need for a party to first seek the leave of Court to lodge the appeal.**

**Heard:** 6 December 2022

**Delivered:** 24 February 2023.

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**ORDER**

The appeal is incompetently filed before this Court. It is therefore struck out with costs to the Respondent.

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## RULING

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**DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.**

### **The Facts**

1. The Appellant (EODC) is a creditor of Ailee Development Corporation Limited in liquidation.
2. The Respondent, Gerald Lincoln is the Liquidator whose appointment was confirmed by court in 2008 vide Supreme Court Civil Side case 27/2008.
3. In 2012, the liquidator made an application for his release which was opposed by EODC. Twomey, CJ (as she was then) handled this application and held that based on the recommendations of the Official Receiver, the liquidator should not be released.
4. Dissatisfied with the decision of Twomey, CJ, the Appellant appealed to this Court on ten grounds. During pre-hearing, the Respondent's counsel intimated to court about a preliminary objection he intended to raise. The Court directed that the objection be raised during the hearing of the matter. Counsel complied with the directive of Court.
5. This Ruling will therefore deal with the merits of the preliminary objection and not the merits of the appeal.

### **Preliminary Objection raised by the Respondent**

6. The Respondent's counsel raised the following objection:
  - (i) *That the Appellant failed to seek the leave of the Supreme Court as stipulated under Section 12 of the Courts Act on the premise that the Order appealed against was interlocutory in nature. Therefore, the appeal before Court is defective, bad in law and ought to be summarily dismissed.*

### **Respondent's submissions on the Preliminary Objection**

7. Counsel submitted that since there is no definition in the Courts Act of what an interlocutory judgment or order is, recourse must be made to case law. Counsel referred to the definition of an interlocutory order provided for in the dissenting judgment of Robinson JA in the case of **Vijay Construction Limited v Eastern European Engineering Limited [2020] SCCA 22**. In that case, the Judge referred to the following authorities defining interlocutory orders or judgments:

(i) *Salaman v Warner* [1891] Q.B 734 wherein it was held that:

*"I think the true definition is this; I ~~conceive~~ think that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely, I think that an order "interlocutory" where it cannot be affirmed that in either event the action will be determined".*

(ii) *Financial Intelligence Unit v Mares Corp* [2011] SCCA 33 wherein Twomey, JA held that:

*"the term interlocutory order has been used in this jurisdiction mainly in relation to injunctions ... In any case, such matters are clearly interim in nature as they take place in the course of a suit. "*

8. Robinson, JA then went on to analyze the reasoning of Twomey JA in the *Financial Intelligence Unit case (supra)* and stated at paragraph 29 of her judgment that:

*"As I understand it, Financial Intelligence Unit laid down the test that an interlocutory order or judgment, for the purpose of section 12 of the Courts Act, is an order or a judgment which does not dispose of the whole action between the parties - the question in controversy between the parties - but disposes of any matter subordinate or ancillary to the action."*

9. Furthermore, counsel referred to Fernando JA's decision in *Vijay Construction Limited v Eastern European Engineering Limited* [2020] SCCA 22 and contended that there is no doubt that a party does not have an automatic right to appeal an interlocutory order or judgment and requires leave of the Supreme Court first before doing so. If the Supreme Court declines to grant the leave, a party then proceeds to seek special leave of the Court of Appeal. That failure to seek leave renders the appeal defective.

10. It was the Respondent's submission that the above cases demonstrate that the

Order appealed against is an interlocutory one. That the said Order was made pursuant to a motion filed by the Appellant on 13th May, 2020 during the liquidation process and it did not dispose of the case entirely. That indeed, to this day, the matter remains to be finally and fully decided by the Supreme Court and is presently being heard by his Lordship, Govinden, CJ.

11. The Respondent's counsel further submitted that, the Court, at the hearing of this appeal, expressed its difficulty in ascertaining whether or not the Order was interlocutory as it could not confirm what stage of proceedings the case in the Supreme Court had reached. The Respondent submitted that it is not the present stage of proceedings which is relevant, but the time when the Order was made. The Order was delivered on the 18<sup>th</sup> September, 2020 and the Notice of Appeal was filed on the 20<sup>th</sup> October, 2020. That therefore, one must look to whether or not the Order was a final order in the case at the time of its delivery on 18 September 2020. Counsel contended that it was clear that the Order was not final as it did not finalize the liquidation process. That instead, the order arose out of a *motion* filed in the liquidation proceedings.
12. To buttress his arguments, counsel referred to two documents on record; first, is the '*impugned*' Order. That this order dealt with ancillary matters and was not final one.
13. The second document counsel referred to are the proceedings at page 9 of the case brief dated 8 September, 2022, where Twomey, CJ informed counsel in the matter that the only pending issue regarding the liquidation was that of taxation. Counsel contended that this was not disputed or objected to by counsel for the Appellant. Therefore, it was clear that there were pending issues to be resolved in the case which proved that the disputed Order was not final.

#### **Appellant's submissions in reply to the Preliminary objection**

14. The Appellant submitted that the point of law raised by the Respondent requires proof of the Supreme Court proceedings and it cannot be adjudicated upon independent of the said proceedings.
15. The Appellant further submitted that the onus was always on the Respondent to attach the Supreme Court proceedings to his skeleton heads of arguments to support his preliminary objection but he did not.
16. The Appellant also submitted that since the Respondent failed or neglected to attach the Supreme Court proceedings to his skeleton heads of arguments, his application must fail.

17. The Appellant contended that it is not necessary for the Court to consider the Respondent's preliminary objection at this stage as the same is flawed and intended to protract and delay the decision of this Honorable Court on the Appellant's appeal. Furthermore, that the Appellant's appeal is based entirely on Section 219 (1) (a) of the Companies Act and its interpretation by the Supreme Court.
18. Following the above submissions, the Appellant's counsel prayed that this Honourable Court dismisses the preliminary objection with costs and gives judgment in respect of the main appeal.

### **Court's consideration**

19. The issue before Court is: *whether the decision and order appealed against is interlocutory in nature.*
20. **Section 12 (2) of the Courts Act** sets a mandatory requirement of obtaining leave to appeal from the Supreme court in Interlocutory matters as follows:

#### **Appeals in civil matters**

**(1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in its original or appellate jurisdiction.**

**(2) (a) In civil matters no appeal shall lie as of right— (i) from any interlocutory judgment or order of the Supreme Court; or**

**(ii) from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.**

**(b) In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal. (c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal. (Emphasis of Court).**

21. Case law also provides definition as to what an interlocutory order or matter is. Perera, J in

**Delcy vs. Camile 2005 (SLR) 87**, adopted the definition provided by Alverstone, CJ in *Bozson v Altrincham [1903] 1 KB 547*, wherein he stated as follows:

*If a judgment or order finally determines the rights of the parties, it ought to be treated as final: if, on the other hand, further proceedings are necessary in order to determine those rights, it ought to be treated as Interlocutory.*

22. I adopt the said definition given by Alverstone, CJ as to what constitutes a final order on the one hand and an interlocutory order on the other hand. An interlocutory order is one which does not lead to final determination of the matter between the parties.
23. In the present case, the ‘*impugned order*’ arose out of a voluntary winding up petition of the Company-Ailee Development Corporation. It is on record that on 4 February 2008, the Government of Seychelles which held 8.4037 % shares in the Appellant Company sought a winding up order from court under section 205(f) of the Companies Ordinance 1972. This was on the premise that the Company’s ability to operate as a hotel had ceased following the refusal by the Seychelles Licensing Authority to renew its license. It was averred in the winding up petition that the reason for non-renewal of the license was because the hotel was in a poor shape.
24. In June 2011, following an application for directions by the Liquidator, Egonda-Ntende CJ made an order authorizing the Liquidator to distribute the funds he had received so far to the secured creditors.
25. In due course, a dispute ensued as to who should receive payment of money due to EODC since it had changed a lawyer from Mr. Bernard Georges to Mr. Frank Elizabeth. On 5 March 2012, Renaud J ordered that the Liquidator pay the sum of SR 125 818 169 and USD 1 000 000 to EODC’s new Lawyer-Mr. Frank Elizabeth.
26. On 12 November 2012, the Liquidator applied to the Court, through a Notice of Motion, for an order confirming the final distribution of all the assets of Ailee as well as its dissolution. He also sought an order to release him from the duties of a Liquidator. This application was handled by Twomey CJ.
27. EODC opposed the application to release the Liquidator. EODC also subsequently filed an application before Twomey CJ (vide Miscellaneous Application No.72 of 2020) for orders that:
  - (i) the liquidation of Ailee Development Corporation be declared legally flawed and unlawful because the Liquidator failed to pay the mandatory security bond before

- commencing his duties;
  - (ii) that the appointment of the Liquidator be cancelled, annulled and all actions of the Liquidator done pursuant to his appointment be declared null and void.
  - (iii) The Liquidator pays the creditor the sum of SR 44,000,000 together with interest and costs
  - (iv) Any order that the court deems fit.
28. On 18 September 2020, Twomey, CJ delivered her decision in which she dismissed both the Liquidator and EODC's applications. The learned Chief Justice declined to grant the Liquidator's prayer of being released from his duties. In respect of EODC's application, the Judge held that failure by the Liquidator to pay the security was not a fatal irregularity because he had already remedied his non-compliance by paying the security albeit at a late stage. Regarding EODC's prayer for the Liquidator to pay it the sum of SR 44,000,000, Twomey, CJ held that the issue was pending before a Commission of Inquiry and therefore declined to make any finding which would pre-empt the Commission's findings.
29. It is the above decision/order which is the subject matter at hand.
30. I note that in a winding up petition, the final order given by court is a winding up order. In the instant case, the 'impugned' order was delivered on 18 September 2020. By that time, court had not issued a winding up order which would constitute a final determination of the rights of the parties in the insolvency dispute.
31. It is evident that the order appealed from did not provide finality to the issues between the parties. When the 'impugned' order was delivered, the liquidation proceedings had not yet ended. The order therefore is an interlocutory one.
32. Indeed, I am in agreement with the Respondent's arguments that the Court must look to whether or not the Order was a final order at the time of its delivery on 18th September 2020. It is my considered view that even without the Respondent attaching the proceedings of the Supreme Court, it is evident from the 'impugned Ruling' that the decision appealed against is interlocutory.
33. Thus, in line with **Section 12 (2) (a) of the Courts Act (supra)**, the Appellant ought to have sought leave of the Supreme Court first before lodging the appeal in this Court.
34. Accordingly, the Respondent's objection is upheld.

## **Conclusion**

35. Arising from the above analysis, I hold that the appeal is incompetently filed before this Court and it is hereby struck out with costs to the Respondent.

Signed, dated and delivered at Ile du Port on 24 February 2023.

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**Dr. Lillian Tibatemwa-Ekirikubinza, JA.**

**I concur** .....  
**Andre, JA.**



**Neutral Citation:** *EODC Operations Ltd v Lincoln* (SCA 42/2020) [2023] SCCA 3 (Arising in XP 27/2008) (24 February 2023)  
**Before:** Robinson, Tibatemwa-Ekirikubinza, Andre, JJA  
**Summary:** Courts — Court of Appeal of Seychelles — Practice and Procedures — Rule 23 of the Seychelles Courts of Appeal Rules, 2005, as amended — Preparation of record of appeal. Preliminary objection stands dismissed with costs  
**Delivered:** 24 February 2023

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### **ORDER**

The preliminary objection stands dismissed with costs in favour of the Appellant. Given the order made by the majority Ruling allowing the appeal on the preliminary objection, I did not consider the merits of the appeal.

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### **DISSENTING RULING ON PRELIMINARY OBJECTION**

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#### **Robinson JA**

36. I had the opportunity to read in draft the majority judgment of my learned sisters, Dr Tibatemwa-Ekirikubinza and Andre JJA.
37. The majority judgment accepted the contention that Counsel for the Respondent raised in his skeleton heads of argument that the ruling delivered by Twomey CJ in case reference MA72/2020 arising in CS27/2008 delivered on the 18 September 2020, hereinafter referred to as the "*Ruling*", is not appealable as of right as it emanated from an interlocutory order. Hence, the Appellant should have sought leave under section 12 of the Courts Act according to the majority judgment. In deciding that the Ruling is not appealable as of right, the majority judgment reasoned as follows —

*"On 18 September 2020, Twomey, CJ delivered her decision in which she dismissed both the Liquidator and EODC's applications. The learned Chief Justice declined to grant the Liquidator's prayer of being released from his*

*duties. In respect of EODC's application, the Judge held that failure by the Liquidator to pay the security was not a fatal irregularity because he had already remedied his non-compliance by paying the security albeit at a late stage. Regarding EODC's prayer for the Liquidator to pay it the sum of SR 44,000,000, Twomey, CJ held that the issue was pending before a Commission of Inquiry and therefore declined to make any finding which would pre-empt the Commission's findings.*

*It is the above decision/order which is the subject matter at hand.*

*I note that in a winding up petition, the final order given by Court is a winding up order. In the instant case, the 'impugned' order was delivered on 18 September 2020. By that time, Court had not issued a winding up order which would constitute a final determination of the rights of the parties in the insolvency dispute.*

*It is evident that the order appealed from did not provide finality to the issues between the parties. When the 'impugned' order was delivered, the liquidation proceedings had not yet ended. The order therefore is an interlocutory one." [Emphasis is not mine]*

38. Hence, the majority judgment held *inter alia* that the appeal is incompetently filed before the Court of Appeal and dismissed the appeal.
39. I hold the view that the preliminary objection, reproduced verbatim at paragraph [6] hereof, could not be determined *ex facie* the record of appeal and the written and oral submissions of Counsel at the hearing of the appeal. I have informed Dr Tibatemwa-Ekirikubinza and Andre JJA of my views.
40. I give the reasons for this holding.
41. Counsel for the Respondent, in his skeleton heads of argument, claimed that the appeal should be treated as interlocutory. In furtherance of his submissions, he contended that — "[t]he Order has been made pursuant to a motion filed by the Appellant on the 13 May, 2020 (hereinafter the "Motion") in the course of the liquidation and it did not dispose of the case entirely. Indeed, to this day, the matter remains to be finally and fully decided by

*the Supreme Court and is presently being heard by his Lordship, Govinden CJ." (at paragraph 8 of the "SKELETON HEADS OF ARGUMENT ON BEHALF OF THE RESPONDENT).*

42. Counsel for the Appellant urged the Court of Appeal to treat the appeal as an appeal as of right. Counsel for the Appellant, in his written submissions on the preliminary objection, contended that it would be improper for the Court of Appeal to determine the preliminary objection based on the record of appeal. In this respect, he contended that Counsel for the Respondent should have attached the Supreme Court proceedings in support of the preliminary objection to his skeleton heads of argument. In light of the aforesaid contention, Counsel for the Appellant asked the Court of Appeal *inter alia* to dismiss the preliminary objection.
43. At the hearing of the appeal on the 6 December 2022 at 2 pm, in the course of submissions on the preliminary objection, we informed Counsel for the Respondent that the record of appeal did not contain the proceedings of the Supreme Court, which he was seeking to rely on in support of his objection. Counsel for the Respondent accepted that it was improper for the Respondent to seek to rely on proceedings that were not part of the record of appeal. He suggested that the Court of Appeal look up the proceedings before the Supreme Court to apprise itself of the status of the case. He stated that case reference CS27/2008, which in his view, concerned liquidation proceedings, is complex, with various miscellaneous applications. I reproduce the following interactions between the Court of Appeal and Counsel, which shed light on the difficulty faced by the Court of Appeal with respect to the preliminary objection raised by the Respondent —

*"Mr. Chang-Leng: My Lady, if I may, I would like to address the preliminary objections, to start with, first.*

*Court (Robinson JA): Yes.*

*Mr. Chang-Leng: Before going to –*

*Court (Andre JA): In your Skeleton Heads?*

*Mr. Chang-Leng: Yes. The first 10 paragraphs of my Skeleton Arguments. If I may bring you to it, your Ladyships, there is a point that Justice Andre raised is the fact that the case is currently live before the Supreme Court, which I believe is a pertinent matter, which cannot be forgotten by the Court of Appeal and the reason why I say this, is that, my Ladies will notice from the CS number, that this is a case that has been, or this is a liquidation that has been ongoing for 14 years. This is a very long liquidation, it is quite complex and there were numerous Motions and Applications that have been made. The reason why I raised this, my Lady, is to emphasise that the Brief, this, and this Motion that was filed in the Supreme Court, is a snapshot of the entire case in itself. That this is the preliminary objection, which is that the order which is being appealed, the order of the Chief Justice Twomey at the time, was interlocutory in nature and because it was interlocutory in nature, the Appellant has no automatic right to appeal. It has to seek leave of the Supreme Court before filing an appeal.*

*Court (Robinson JA): Mr. Chang-Leng, I have to admit that I have no idea about those proceedings that you are talking about before the Supreme Court, relating to this case. You have mentioned proceedings, but I have to admit that I have no idea about what is going on before the Supreme Court that concerns this case.*

***Mr. Chang-Leng: Obviously, your Ladyship, the Court of Appeal is not deemed to know necessarily at what exactly is occurring, but the important part is to say that a the liquidation, it is ongoing. It is not completed, it has not been finalised. That is a fact that my learned friend will of course admit to, because it is evident in nature.***

*Court (Robinson JA): So, the liquidation that is ongoing has nothing to do with this case. Is that what you are saying?*

*Mr. Chang-Leng: I am not saying it has nothing to do with it, my Lady. This is a Motion arising out of the liquidation, it is a Motion which is filed by the Appellant and the Motion was dismissed by the Chief Justice at the time, and the reason why it was interlocutory in nature, I have set it out in my Skeleton Heads of Argument, but in essence, the order of the Chief Justice to this particular Motion, did not dispose of the case in its entirety and because it did not dispose of the case, then it is self explanatory that it is interlocutory in nature. In fact in my Skeleton Heads of Argument I have referred to a Vijay v EEEL case, which her Ladyship Robinson was part of the Panel. It was a majority decision. However, your Ladyship had a dissenting Judgment, wherein her Ladyship considered in depth the differences between interlocutory and final orders, and whilst the decision of the Court of Appeal was split, I will submit that the principles were in essence agreed between the majority and the dissenting Judge, which is that, I have set it out in paragraph 5 of my Skeleton Heads of Argument, which says, an interlocutory order is an order or judgment which does not dispose of the whole action between the parties but disposes of any matter subordinate or ancillary to*

*that action. And, it is very clear, on the very basis that the liquidation is ongoing, that this Motion did not dispose of the case in its entirety.*

*[...].*

***Court (Robinson JA): You are suggesting that leave should have been sought under Section 12.***

***Mr. Chang-Leng: Yes, it had to have been sought.***

***Court (Robinson JA): But do we have the proceedings to appreciate what is going on in the Supreme Court, for us –***

***Mr. Chang-Leng: But my Lady, but leave was not sought. Leave was not sought, that is my position. That, I cannot give evidence of the proceedings in the case, but obviously the Court will have access to the entire Supreme Court file and would be able to take, note this as a fact, that the case is ongoing, proceedings are there in the Court file.***

***Court (Andre JA): For my own interest, what is the current status of the proceedings?***

***Mr. Chang-Leng: The current status, my Lady, is that an order was made by the Chief Justice, a separate order.***

***Court (Andre JA): Not the –***

***Mr. Chang-Leng: Not in this Motion, in another Motion that was filed afterwards and that is the current Chief Justice that had that Motion, and that has not been dealt with, because there is another appeal. As I said, this is a complex matter, my Lady, but there are various Motions that were made. This Motion that the Judge has filed, was filed in 2020, it was dealt with by the Chief Justice, and again, not to further confuse the Court, because I understand there is confusion, because this is a quite a complex case, but the current Motion that we are dealing with here, stems from a separate Motion, or a separate order of the Chief Justice, which is found in the Brief, from B26 onwards, which is an order of the Chief Justice Twomey, dated 16 October 2019.***

***Now, I will forgive my learned friend, it is a very old case, perhaps he has forgotten certain stated facts, but it is incorrect that he has stated that he requested for the Commission of Inquiry to be empanelled. That is simply wrong.***

***Court (Robinson JA): Mr. Chang-Leng, before you proceed to this point, I am still in the dark, I am still trying to understand the proceedings.***

***Mr. Chang-Leng: Yes, my Lady?***

*Court (Robinson JA): In the Supreme Court, in relation to the legal point that you have just made, that you should have sought leave to appeal.*

*Mr. Chang-Leng: Yes, my Lady, in terms of what is happening right now in the Supreme Court.*

*Court (Robinson JA): I mean, you have stated that the order, I mean, is an interlocutory order. The order is an interlocutory one.*

*Mr. Chang-Leng: Yes, my Lady, is an interlocutory, yes.*

*Court (Robinson JA): And, as much as I understand the issue that you have raised, I am trying to situate the proceedings, to understand the proceedings, because, I have to admit I do not know what is going on, I have no idea, it is a first time I hear that, of this.*

*Mr. Chang-Leng: It is, this is what is summarised, obviously, and again, it is a short session.*

*Court (Robinson JA): But we should have information about it.*

***Court (Andre JA): Yes, it should be substantiated, that is the thing. How do we decide on the plea, on the point, upon the objection?***

***Mr. Chang-Leng: But my Lady, the issue that I have, obviously, is that I cannot lead evidence on that matter and actually when an appeal is filed, I presume that the entire Supreme Court file is handed over to the Court of Appeal.***  
[Verbatim, emphasis is mine]

44. I turn to the majority judgment, which states that the Supreme Court had not issued a winding up order which would constitute a final determination of the rights of the parties in the insolvency dispute. I am unable to endorse such a statement. I also observed that Counsel for the Appellant had attached a ruling delivered by Govinden CJ on the 6 October 2021, which would have shed some light on the issues raised by the parties; that ruling was not made part of the record of appeal.
45. I turn to Rule 23 of the Seychelles Court of Appeal Rules 2005, as amended, which concerns the preparation of the record of appeal. It stipulates, so far as relevant for present purposes —

*"23(1) The preparation of the record of appeal shall be undertaken by the Registrar of the Supreme Court as soon as possible after the notice of appeal has been lodged and upon payment of the prescribed charges. Such record shall be subject to the supervision of the Supreme Court.*

*(2) The parties may submit any disputed question arising in connection with the record to the decision of the Supreme Court and that Court shall give such directions thereon as the justice of the case may require.*

*(3) [...].*

*(j) The record, in the first or in a separate volume, shall contain a correct and complete index of the evidence, documents and exhibits in the case, the nature of the documents and exhibits being briefly stated therein.*

*(k) The documents omitted to be copied shall be enumerated in a list to be placed after the index.*

*(l) Where part or parts only of any lengthy document are directly relevant to the subject matter of the appeal, it shall be permissible to omit to copy such parts of the document as are neither directly relevant to the subject matter of the appeal nor necessary for the proper understanding of the part or parts that are so relevant.*

*(m) If the Registrar of the Supreme Court or any party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the document shall be included and the record shall, with a view to the subsequent adjustment of the costs of and incidental to the inclusion of such document, indicate in the index of papers or otherwise such fact including the party by whom the inclusion of the document was objected to.*

*(n) On the completion of the preparation of the record of appeal, the Registrar of the Supreme Court shall certify the correctness of each copy thereof. He shall then cause to be served, upon payment of the prescribed charges by the appellant, a copy of the certified record on each party who has been served with the notice of appeal and has filed notice of address for service: Provided that if more respondents than one are represented by one advocate it shall be sufficient to serve one copy on him.*

*(o) The Registrar of the Supreme Court shall transmit four certified copies of the record to the Registrar."*

46. The preliminary objection was raised after the completion of the preparation of the record of appeal. The record of appeal shall contain a correct and complete index of the evidence, documents and exhibits in the case, the nature of the documents and exhibits being briefly stated therein (*at rule 23(3)(j) of the Seychelles Court of Appeal Rules 2005, as amended*). Rule 23(3)(n) of the Seychelles Court of Appeal Rules 2005, as amended, requires the Registrar, on the completion of the preparation of the record of appeal, to certify the correctness of each copy thereof.
47. Based on Rule 23 of the Seychelles Court of Appeal Rules 2005, as amended, I hold the view that it was incumbent on the Respondent by Counsel to submit the issue raised by him in his skeleton heads of argument to the Registrar, who would have prepared a record of appeal with the inclusion of any evidence, documents and exhibits on the issue raised. Hence, I find it improper for Counsel for the Appellant to submit that Counsel for the Respondent should have attached the proceedings to his skeleton heads of argument. It is also incorrect for Counsel for the Respondent to submit that the Court of Appeal look up the case file to apprise itself of the proceedings before the Supreme Court.
48. For the reasons stated above, I dismiss the preliminary objection with costs in favour of the Appellant. I did not consider the merits of the appeal given the orders made by the majority judgment *inter alia* dismissing the appeal on the preliminary objection.

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F. Robinson JA

Signed, dated and delivered at Ile du Port on 24 February 2023