

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

MA 164/16

Arising from CP01/2016

[2016] SCCC 13

Wavel John Charles Ramkalawan Applicant

versus

The Electoral Commission First Respondent

James Alix Michel Second Respondent

Attorney General Third Respondent

Heard: 14th June 2016

Counsel: Bernard Georges for petitioner

Samantha Aglaé for first respondent

Basil Hoareau for second respondent

Attorney General for third respondent

Delivered: 14th June 2016

ORDER

- [1] The Applicant was a party to an election petition in which a decision was delivered on 31st May 2016. The Respondents were also parties to the said petition.
- [2] In the said decision, the Court found that the Applicant had engaged in an illegal practice and stated that pursuant to section 47(1) (a) of the Elections Act it had to make a report in writing to the First Respondent of the said illegal practice.
- [3] The Applicant has applied to this Court for a stay of execution of the writing of this report.
- [4] He has supported his application with an affidavit in which he swears, inter alia, that the making of the report will result in disqualifying him from being registered as a voter for five years and from voting at an election.
- [5] He further avers that the disqualification will have the result of preventing him from standing as a candidate in the forthcoming National Assembly Elections to be held before the end August 2016.
- [6] He also avers that he has filed a notice and memorandum of appeal against the said decision, namely on the ground that the Court failed to consider the matters which would except the illegal practice under section 45 of the Elections Act.
- [7] The 2nd and 3rd Respondents have argued that the application is premature given that the Court has not yet made or sent a report in terms of section 47(1) (a) of the Elections Act. However we are of the opinion that the finding of illegality was contained in the judgement of the Court dated 31st May 2016 (CC01/2016). The report is yet to be made and therefore this application is timeously made.
- [8] The Court notes that there are no provisions in the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules with regard to stays of execution. Rule 2 provides for the practice and procedure of the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution. An election petition is therefore not covered by these specific rules.

- [9] The Court also notes that Rule 3(2) of the Presidential Election and National Assembly Election (Election Petition) Rules 1998 provides that in the circumstances where a matter is not provided for in the rules, the Seychelles Code of Civil Procedure shall apply to the “practice, and procedure to be observed in connection with the presentation and hearing of an election petition as they apply to civil proceedings before the Supreme Court.” An application for a stay of execution after the hearing of the petition also falls outside these provisions
- [10] It would seem that a matter outside the presentation and hearing of an election petition before the Constitutional Court is not provided for statutorily.
- [11] Notwithstanding, an election petition being a civil action, this Court finds that Section 230 of the Seychelles Code of Civil Procedure applies in these circumstances. It provides however that an appeal shall not operate as a stay of execution unless the Court so orders and subject to such terms as it may impose.
- [12] This is an unusual application for a stay of execution as the Applicant is seeking to prevent the Court from proceeding in terms of its requirement under the provisions of the Elections Act. However section 230 of the Seychelles code of Civil Procedure does provide for both stays of execution and of proceedings under a decision.
- [13] The provision however is not instructive as to when such an order should be granted. The authorities in this jurisdiction have confirmed that it is entirely in the discretion of the Court to grant a stay (*Pool v William* (1996) SLR 206, *Chang-Tave v Chang-Tave* (203) SLR 74, *Avalon v Berlouis* (2003) SLR 59, *International Investment Trading v Piazzola* (2005) SLR 57 and *Faye v Lefevre* (2012) SLR 44).
- [14] The considerations for granting a stay of execution include the weighing of the interests of the parties to establish whether the appeal has some chance of success, the balance of convenience, hardship and irreparable damage that may be suffered by the appellant and the concern that unless a stay was ordered the appeal would be rendered nugatory (See *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685, *Choppy (Pty) Ltd v NJS Construction (Pty) Ltd* (2011) SLR 215).

[15] The balance of convenience in the present case weighs in favour of the Applicant since no prejudice will be visited on the Respondents as the decision concerns the actions of the Court only.

[16] The Court accepts the Applicant's pleadings in relation to the effect this will have on his political career and considers that refusing a stay of execution of its report to the 1st Respondent will render the appeal nugatory and the Applicant would suffer real prejudice that would not be otherwise compensated.

[17] Therefore, out of an abundance of caution this Court grants a stay of execution in respect of the making of a report to the Electoral Commission as regards the illegal practice by the Applicant. It is so ordered.

Signed, dated and delivered at Ile du Port on 14th June 2016

M. TWOMEY

Chief Justice

D. AKIIKI-KIIZA

Judge