

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA127/2017

(arising in CP4/2016)

[2017]SCCC 6

PARTI LEPEP

Applicant

Versus

UMARJI AND SONS (PROPRIETARY) LIMITED

First Respondent

THE GOVERNMENT OF SEYCHELLES

Second Respondent

THE ATTORNEY GENERAL

Third Respondent

Heard

Counsel: Mr. France Bonte for applicant
Mr. Frank Ally for First Respondent
Mr. Thachett for Second Respondent

Delivered: 27 June 2017

ORDER ON MOTION

F. ROBINSON, J

[1] On 30 March, 2017, the Constitutional Court, in CP4/2016, gave judgment in favour of First Respondent, (then Petitioner), as follows:

- "(1) *We declare that the transfer of parcel V4908 [the Property] by the First Respondent to the Second Respondent a contravention of the First Respondent's powers and obligations under Part III of Schedule 7 of the Transitional provisions of the Constitution and the constitutional right of the Petitioner to property;*
- (2) *We rescind, cancel, annul or revoke the said transfer of Parcel V4908 [the Property] by the First Respondent to the Second Respondent and order the Land Registrar to act accordingly;*
- (3) *We declare that Parcel V4908 [the Property] be returned and/or transferred to the Petitioner for the reasons that the First Respondent had not developed Parcel V4908 [the Property] and had no plans to develop Parcel V4908 [the Property] on the coming into force of the 1993 Constitution;*
- (4) *We order the Land Registrar to rectify the land register of parcel V4908 [the Property] by registering the Property in the name of the Petitioner."*

The judgment delivered on 30 March, 2017, by the Constitutional Court, in CP4/2016, is hereinafter referred to as the "Judgment".

- [2] The court is now in the presence of an application aimed at obtaining a stay of execution of the Judgment pending the determination of an appeal lodged against that Judgment.
- [3] For the reason stated in the Judgment, the Constitutional Court treated CP4/2016 as one made by Petitioner (now First Respondent), the Government of Seychelles (now Second Respondent) and Parti Lepep (now Applicant). For the reason stated in the Judgment, the court treats this matter as one made by Applicant, First Respondent and Second Respondent. The court reminds Mr. Bonte of his duties and responsibilities under the Legal Practitioner's (Professional Conduct) Rules, 2013, which it has spelt out in the Judgment.
- [4] Section 229 of the Seychelles Code of Civil Procedure provides:

"229 An appeal shall not operate as a stay of execution of the proceedings under the decision appealed from unless the Court or the Appellate Court so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be invalidated except so far as the Appellate Court may direct."

- [5] In *MacDonald Pool v Despilly William Civil Side No. 224 of 1993*, the Supreme Court set out five grounds which may be considered in granting a stay of execution of a judgment pending appeal:

- "1 The appellant would suffer loss which could not be compensated in damages.*
- 2 Where special circumstances of the case so require.*
- 3 There is proof of substantial loss that may otherwise result.*
- 4 There was a substantial question of law to be adjudicated upon the hearing of the appeal*
- 5 Where if the stay is not granted the appeal if successful, would be rendered nugatory."*

In *Casino Des Seychelles Ltd v Compagnie Seychelles (Pty) Ltd S.C.A 2/94* the Court of Appeal of Seychelles added a further consideration that although an appeal does not operate as a stay of execution, save in exceptional circumstances, the court ought not to make any order which would have the effect of the Court of Appeal of Seychelles being faced with a *fait accompli* in respect of the appeal.

- [6] Mr. Olsen Vidot, the CEO of Parti Lepep, states in the affidavit in support of the application for a stay:

- "1. That the 2nd Respondent is against the decision given by the Constitutional Court on the 30th March, 2017.*
- 2. That we have on the 19th April 2017, filed an appeal to the Seychelles Court of Appeal against the said decision and has a very high chance of succeeding in the appeal.*

3. *That it is therefore just and necessary that the order be stayed in the above mentioned suit pending the hearing of the appeal to the Court of Appeal of Seychelles.*
4. *That the matter be heard as one of extreme urgency...".*

[7] In exercising the discretion given to it, the court will have to carry out a balancing exercise in order to decide what is just in the circumstances of the case. After hearing the submissions of counsel for the parties, mentioning that Second Respondent supports the application for a stay, the reasoning of the court is as follows. Applicant has failed to indicate the actual grounds of appeal which it wishes to raise before the Court of Appeal of Seychelles. In the court's view, it has a duty to ascertain, in the present application, that the grounds of appeal raise a substantial question of law to be adjudicated upon or any other ground as set out in the mentioned cases. When such grounds are not specified, it is not possible for the court to carry out the above exercise. The court is not prepared to assume that Applicant has arguable grounds of appeal. Further, the court adds in passing that reproducing or exhibiting grounds of appeal will not achieve this result unless the grounds of appeal contain material which can serve as a basis of the assessment of their arguability.

[8] Having regard to:

- (a) the detailed reasons spelt out in the Judgment;
- (b) the wording of the affidavit which in effect alleges that Applicant *"has a very high chance of succeeding in the appeal"* in the absence of any evidence of the grounds of appeal and sufficient explanation to show the arguability of those grounds of appeal,

the court refuses to exercise its discretion to order a stay of execution of the Judgment.

[9] For all the reasons given above, the court dismisses the application with costs.

Signed, dated and delivered at Ile du Port on 27 June 2017.



Fiona Robinson
Judge of the Supreme Court