

**Omaghomi Belive v Government of Seychelles & Or
(2003) SLR 140**

Antony DERJACQUES for the Applicant

Ruling on leave to proceed delivered on 12 June 2003 by:

PERERA J: This is an application for leave to proceed with an application for a writ of certiorari seeking to quash the decision dated 6 June 2003 made by the Director of Immigration, directing that the petitioner shall leave Seychelles by the 12 June 2003.

The petitioner a Nigerian National arrived in Seychelles on 17 November 2002. On 10 January 2003, he married one Barbara Fatima Labrosse, a Seychelles national at the Civil Status Office. On 5 March 2003, he was informed by the Immigration Officer that his visitors permit had expired since 28 February 2003 and that he should regularise his status before 7 March 2003. On 10 March 2003 he handed over his passport to the Immigration Officer for the purpose of obtaining a further extension of the visitor's permit, and he was requested to collect it on or after 17 March 2003. It is however submitted that the passport is still with the Director of Immigration.

The said Barbara Fatima Labrosse made an application for a dependant's permit for the petitioner. By letter dated 8 May 2003, the Director-General of Immigration informed her that the application had not been approved, and that she should make special arrangements for the petitioner to leave Seychelles by Thursday 15 May 2003. However, the petitioner did not leave the country, but instead, filed an appeal with the Minister on 23 May 2003 through his lawyer Mr F Elizabeth. It was averred in that Appeal he was eligible to become a citizen of Seychelles pursuant to Article 12 of the Constitution, by virtue of his marriage to a Seychellois. It was also averred, alternatively, that he was entitled to a dependant's permit and hence should not be considered a "prohibited immigrant". On the same day, 23rd May 2003, the petitioner sought an extension of his visitor's permit pending the decision of the appeal to the Minister.

By letter dated 6 June 2003, the Director-General of Immigration informed Mr Elizabeth that the appeal had not been successful; and that the petitioner should leave Seychelles by 12 June 2003. It is obvious that "the appeal" referred to therein was the appeal lodged with the Minister by the Petitioner. Hence since such Appeal failed, the application to extend the visitor's permit did not arise for consideration. The instant application for a writ of certiorari to quash that decision was filed in 10 June 2003. A stay order is also sought until this application is disposed of.

Rule 5 of the Supreme Court (Supervisory Jurisdiction over subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995 provided that before an application invoking the Supervisory Jurisdiction is considered, the petitioner must obtain leave to proceed, which under Rule 6 thereof would be granted if the Court is satisfied that the

petitioner has “sufficient interest” in the subject matter of the petition and that the petition is being made in “good faith”. Without furthermore, the Court is satisfied that the petitioner has sufficient interest in the subject matter of the case.

The concept of “good faith” is not to be considered in contra-distinction with the concept of “bad faith”. It involves the notion of “uberrima fides” to the extent that the petitioner when filing the petition should have had an “arguable case”, That is an objective consideration which has to be assessed by Court in deciding whether leave to proceed should be granted or refused. In the case of *R v Secretary of State for the Home Office, ex parte Dooga* (1990) COD 109, Lord Donaldson of Lynton MR suggested that there were three categories of “leave” cases:

- (a) Those in which there are prima facie reasons for granting judicial review
- (b) Cases that are wholly unarguable and so leave should be refused.
- (c) An intermediary category where it was not clear, it might be appropriate to adjourn the application and hold a hearing between the parties.

The facts of the present case are free from ambiguity. The basic question is whether the petitioner is entitled to a dependant’s permit under Section 14(1) of the Immigration Decree, by virtue his marriage to a Seychellois national, or the permit under Section 16. Section 14(1) provides that the dependant’s permit if the dependent spouse is not (a) a prohibited immigrant, (b) the holder of a residence permit or a gainful occupation permit. In (d) of the Immigration decree, the following persons not being dependants are “prohibited immigrants”.

These are whether the dependant is the holder of the Immigration Decree, or the extension of his visitor’s permit, or (b) the dependant is a prohibited immigrant, or (b) the dependant is the holder of a residence permit or a gainful occupation permit of Section 19(1) of the Immigration Decree, or (c) the dependant is a dependant of a citizen of Seychelles.

- (d) Any person in Seychelles in respect of whom a dependant’s permit has been revoked, or had expired.

It is under this category that the petitioner falls.

In the present case, the visitor’s permit issued to the petitioner expired on 28 February 2003. Hence when he married the Seychellois national on 10 January 2003, he was not a prohibited immigrant. However after 28 February 2003 he became a prohibited immigrant by operation of law, although grace periods were given to him subsequently to leave the country.

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A similar matter arose in the case of *Gorana Banker v Government of Seychelles* (CS No. 58 of 1996) a young Yugoslav woman entered Seychelles on a visitor’s permit. It was extended twice upon a Seychellois man furnishing a security bond. The third extension was however refused, and the woman was given grace period to leave the country. During that period, she got married to the Seychellois man. An application for a dependant’s permit was then made, but refused.

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In an application for a writ of certiorari filed to quash the decision of the Director of Immigration, the Court held inter alia that the petitioner had no legal status to remain in the country. The Court of Appeal (appeal no 46 of 1999) held that on the date of the marriage, the petitioner was a prohibited immigrant pursuant to Section 19(1) (d) of the Immigration Decree, and hence was not entitled to a dependant's permit. It was further held that the Director of Immigration had no discretion in making decisions regarding the extension of visitor's permits or the granting of dependant's permits, and hence "the question of the quality of his decision in terms of whether it was unreasonable or irrational would not arise" to be considered in an application for judicial review.

Hence, the element of "good faith" in the sense of an "*arguable case*" being lacking in this case, the case falls into the second category of Lord Donaldson's tests laid down in *Ex parte Doorga* (supra), that it is a wholly unarguable case and so leave should be refused.

Record: Civil Side No 141 of 2003