

**Auguste & Or v Forest Builders (Pty) Ltd  
(2004) SLR 26**

Antony DERJACQUES for the Petitioners

**Ruling delivered on 7 July, 2004 by:**

**RENAUD J:** The Plaintiffs have filed a claim against the Defendant in the sum of R378,791.00 being for breach of contract. The Defendant is a proprietary company registered in Seychelles and is represented by its director Mr. Marc Agrippine.

Following the filing of the Plaint, the Plaintiffs have filed a Notice of Motion supported by affidavit, moving the Court to:

(a) Order the Director of the Defendant company namely Mr. Marc Agrippine of Le Niolle, to remain within the jurisdiction until the final disposal of the main action;

OR

(b) Order the Defendant company to deposit with the Registry of the Supreme Court the sum of R378,791.00 as security for the damages pleaded in the main action,

AND

(c) Order the Defendant company to deposit with the Registry of the Supreme Court sum of R10,000.00 as security for costs of the main action.

The Defendant is a proprietary company registered in Seychelles hence operating within the jurisdiction of this Court. It is unconceivable that a proprietary company can leave the jurisdiction. The Director is distinct from the Company. The Company is a distinct legal person on its own, and the Director is only liable to the extent of his shareholding in the Company and thus cannot be held liable in his personal capacity for the alleged fault of the Company. Furthermore, in view of Article 25(1) of our Constitution, restraining the movement of a citizen can only be ordered for specific reasons as laid down in Article 25(3) (a) to (e) of the Constitution. Article 25(3) (b) makes provision for the movement of a citizen to be restricted in the following terms: "for protecting the rights and freedoms of other persons". It is my view that the Court can restrict the movement of a citizen if the departure from Seychelles of that citizen will affect the rights of another person, but in my view, that right must have been established in no uncertain term. The mere fact that averments are made in a Plaint is not sufficient to establish that fact.

Restraining the movement of the Director of the Defendant in the circumstances is not appropriate. I therefore decline to grant order prayed for.

The law makes provision that security for costs or for that matter, security for damages may be granted by the Court in certain circumstances. Article 16 of the Civil Code of Seychelles states as follows:

When one of the parties to a civil action is a non-resident, the Court may, at the request of the other party, and for good reason, make an order requiring such a non-resident to give security for costs and for any damages which may be awarded against him.

Section 219 of the Seychelles Code of Civil Procedure states as follows:

The Court may, on the application of the Defendant, require the Plaintiff to give security for costs in all cases in which under the Civil Code such security may be required and also when the Plaintiff is known to be insolvent.

In the present circumstances the application cannot be sustained under the provision of Article 16 of the Civil Code because there is no allegation that the Director of the Defendant is a non-resident.

The provision of Section 219 of the Civil Procedure Code is not applicable in support of the present application. This provision of the law applies when the Applicant is the Defendant. The present Applicants are the Plaintiffs.

I therefore also decline to grant the Plaintiffs prayers (b) and (c) of their Motion.

**Record: Civil Side No 99 of 2004**