

**Giovanni Rose (ex parte)
(2006) SLR 133**

Basil HOAREAU for the Applicant

Ruling delivered on 24 July 2006 by:

GASWAGA J: An application has been filed by Giovanni Rose moving the Court to make the following orders:

- (a) an ex parte order, restraining one Rita Esparon of Cascade, Mahe, from leaving the jurisdiction of Seychelles until further order of the Court and for a copy of the said order to be sent to the Director of Immigration;
- (b) for a returnable date to be set, so that the matter may be heard inter partes between the Applicant and the said Rita Esparon and thereafter for the restraining order to remain in force until the final determination of the principal case to be filed by the Applicant.

Mr Basil Hoareau submitted that the application was being brought under S. 6 of the Courts Act Cap 52 which gives the Courts equitable powers and not under S. 304 of the Seychelles Code of Civil Procedure Cap 213 that deals with interlocutory injunctions to restrain a Defendant from the repetition or continuance of the wrongful act or breach of contract. That in this case the wrongful act has not yet occurred and further that the said S.6 confers similar powers to the Court like those under Order 29 of the Supreme Court Practice Rules of England. In particular, the exception under Order 29 Rule (3) was cited since there was no plaint filed because the Applicant considered this case to be a matter of urgency. He relied on the authority of *Government of Seychelles v Shivkrishnasingh Ramrushaya* (supra). Order 29 Rule 3 reads as follows:

- (3) The Plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

The affidavit filed establishes a serious question to be tried and therefore the Applicant has a good arguable claim to the right he seeks to protect. On 2 May 2006 the Respondent sold a rock drilling machine to the Applicant for a sum of R35,000 which sum was paid in full. But in breach of the said contract the Respondent has not delivered the rock drilling machine and is reported to be soon leaving the country for good. That if the order is granted the Applicant intends to file a plaint against her within one week. However, the grant or refusal of an injunction is a matter for the exercise of

the Courts discretion on the balance of convenience. See *American Cyanamid v Ethicon Ltd* [1975] AC 396. Moreover, it is contended that if the Respondent leaves the jurisdiction of the Court before settling the case the Applicant is likely to suffer the great hardship or irreparable damage, with no recourse, since she owns no property in Seychelles.

My reading and understanding of Order 29 Rule 3 is that the provision is only applicable where the case is one of urgency while the equitable jurisdiction provided for by S. 6 (supra) is only invoked in all those cases where no sufficient legal remedy is provided by the laws of Seychelles.

Section 6 provides:

The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.

For this application to succeed two questions must be resolved:

- (a) whether this matter can rightly be considered as one of urgency,
- (b) whether there is no sufficient legal remedy provided by the laws of Seychelles apart from equitable powers of the Court.

Decided cases will offer better guidance while determining the first question. In the case of *France Bonte v Innovative Publications (Pty) Ltd* C.S. No. 200 of 1993, the “Seychelles Independent” newspaper published the text of a telephone conversation between the Plaintiff in his professional capacity as a lawyer, and a client. The newspaper, in the same issue informed its readers that other parts of that conversation would be published in the next issue, which was due to be circulated within three days when the application was filed.

In the case of *Attorney General v Deltel* (1954) SLR 277, (supra), the Attorney-General sought an injunction on the Defendant Mr Alexandre Deltel, who was elected as a member of the Legislative Council for the South Mahe District, from sitting and voting at the session of the legislative Council to be held the next day, on the ground that he was disqualified to hold such Office by virtue of Section 11(5) (a) of the Seychelles (Legislative Council) Order in Council, 1948. The application was filed on 16 December 1954, and the Legislative Council sitting was to be held on 17 December 1954.

Further, in the case of *Government of Seychelles v Shivkrishnasingh Ramrushaya* (supra) (successfully argued by Mr B. Hoareau for the Applicant) the Respondent, a Mauritian national, was due to leave Seychelles on 16 August 2003 at 8.55 a.m. by flight no. HM. 055 for Mauritius and Australia on leave. It had been deponed that he neither

had an air ticket from Mauritius back to Seychelles nor assets in the Seychelles. Yet, the Respondent had agreed to be bonded by the Applicant for service for five years, consequent to a sponsorship to complete a University degree in Australia. He was now leaving Seychelles for good without refunding a sum of R196.721 as agreed and that is why the Applicant successfully sought an interim injunction on 14 August 2003 to prevent him from leaving the jurisdiction until sufficient security was provided or until the matter was finally determined.

Those authorities should however be distinguished from the case at hand. In all these cases interim injunctions were granted on the basis of various reasons but common to all of them the equitable jurisdiction of the Court was invoked on a consideration of the impracticability of serving notice on the Respondents (in time before the Act or Event complained of occurs) to be able to hold an inter partes hearing, and returnable at a future date set for the said Defendants to appear in Court and show cause against the order. This is an ex parte application. Unlike in the present case the Applicants in the *Bonte*, *Deltel* and *Ramrushaya* cases had initiated the proceedings by way of a plaint. I wish to stress that ex parte injunctions should be for cases of real urgency where there has been a true impossibility of giving notice of motion. It is clear from the three cases cited that time was of the essence. In the *Bonte* case the next publication was due in three days while in the *Deltel* case the next sitting and voting at the Legislative Council was to be held the next day. And in the *Ramrushaya* case the Respondent was leaving the jurisdiction of the Court in two days' time, one of them being a public holiday.

Paragraph 5 of the Applicants affidavit of 6 July 2006 is pertinent:

I have been reliably informed two days ago and verily believe that the said Rita Esparon is anytime soon about to leave the jurisdiction of Seychelles for good to settle in a foreign country, at any time soon.

From the foregoing, it cannot be said that this is a matter to be treated as one of urgency when no certainty is there with regard to the Respondents plans or time of leaving the jurisdiction of the Court. In no way can it be compared to the above cited authorities. This conclusion brings me to the second question which, like the first one, should be answered in the negative. Yes, equity helps the vigilant but, again, a reading of the *Bonte*, *Deltel* and *Ramrushaya* cases vividly shows that the Applicant has a sufficient legal remedy provided by the laws of Seychelles and cannot therefore be heard or let alone allowed to invoke the equitable jurisdiction of the Court meant for those cases that are deserving. The reasoning that the Respondent will quit the jurisdiction if a plaint is filed and served on her is not tenable. Unless a plausible explanation is put across this Court is reluctant to interfere with the enjoyment of the Applicant's Fundamental Right of Freedom of Movement in these circumstances. See Art. 25 of the Constitution 1993. Being unable to grant this application and therefore orders I am left with one option of dismissing the application.

Record: Civil Side No 199 of 2006