

IN THE SUPREME COURT OF SEYCHELLES

1. MRS. YULIA PIERRE (born Timonina)
(Rep by her husband Mr. Gaetan Patrick Pierre)

2. MR. GAETAN PATRICK PIERRE

Applicants

VERSUS

1. THE ATTORNEY GENERAL

(Rep by Mr. Anthony Fernando)

2. THE IMMIGRATION OFFICER

(Rep by Mrs. Marie-Ange Hoareau)

3. AIR SEYCHELLES

(Rep by its CEO, Mr. R. Bessessur)

Respondents

Civil Side No. 241 of 2008

Mr. F. Elizabeth for the Applicants

Mr. R. Govinden for the 1st and 2nd Respondents

Mr. K. Shah for the 3rd Respondent

RULING

I believe, I need not write a detailed ruling in this matter. The facts are simple and clear on record. Besides, the Ruling delivered by the Court on the 12th September 2008, in this suit, (hereinafter called the “impugned Ruling”) may be read as part of the Ruling hereof.

The applicants herein through this motion seek this Court for leave to appeal to the Court of Appeal against the “impugned Ruling”, whereby the Court refused an

interlocutory application made by the applicants for an interim mandatory injunction. First of all, I note that both counsel have addressed at length on matters pertaining to the merits of the said “impugned Ruling”. By this attempt to my mind, both counsel impliedly invite this Court to reopen those issues which have already been determined, in the said interlocutory application. With due respect to both counsel, it is not proper for this Court to sit on re-examining the facts, the evidence and the findings given by this Court already on the said interlocutory application. My duty here is therefore, to restrict my examination of Section 12 of the Courts Act under which the instant application is made by the Applicants.

Section 12 of the Courts Act inter alia, reads thus:-

12(1) Subject as otherwise provided ...

(2) (a) In the Civil matters no appeal shall lie as of right -

i) From any interlocutory judgment or order of the Supreme Court;

(ii) From any final judgment ...

(b) In any such cases as aforesaid the Supreme Court may in its discretion (underline mine) grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.

- (c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.

In view of the above, I have to simply interpret Section 12 and determine whether this motion, seeking leave to appeal to the Court of Appeal should be granted or not. Herein, I have to make my position clear. I am not going to consider the aspect of the submissions of both counsel which goes into the merits of the interim order already made by the Court in the interlocutory application mentioned supra. It is universal jurisprudence that right of appeal is not absolute or inherent, or automatic in any system of decision making process, but it is a statutory right granted to an aggrieved party to any judgment or decision made by a body or person in authority. There is no automatic right of appeal available to any person especially against any judgment of the Court unless law specifically provides for it. Indeed, Section 12 of the Courts Act provides for right of appeal against an interlocutory judgment or order of the Supreme Court to the Court of Appeal provided the following conditions are satisfied:-

1. As rightly quoted by the learned Deputy Attorney General, Mr. Govinden, the Court has reiterated vide Pillay versus Pillay, (1970 SLR) the Supreme Court will not grant leave to appeal to the Court of Appeal unless the order or the interim order appealed against has substantially disposed of the subject matter in the main case or all the matters in issue as to leave only ancillary matters for decision.

2.The Supreme Court has been given discretion to grant leave to appeal in deserving cases.

3.The Court should be satisfied or in its opinion the question involved in the appeal is one which ought to be the subject matter of an appeal.

Having diligently gone through Section 12 rehearsed above, I find the interim order made by this Court has not substantially disposed of the subject matter in the main case. A careful perusal of the pleading in the plaint reveals the main prayer is a monetary claim for damages. That is the substantive issue, which has not been disposed of by the said interim order made by the Court in this matter. Secondly, I note, the discretion given to this Court to grant leave in deserving cases should be used judicially not arbitrarily. Moreover, I note, such discretion should be used sparingly and cautiously. In this matter, in my humble opinion, the question involved in the intended appeal as indicated by the learned counsel for the applicant, is not one which ought to be the subject matter of an appeal. In fact, the interim injunction in my view, does not involve any question of law, which ought to be the subject matter of an appeal.

In the circumstances, I find that this motion is devoid of merits. Therefore, I decline to grant leave to appeal against the “impugned Ruling”, to the Court of Appeal. In any event, I wish to fix the earliest date available for the Court to hear the main case and dispose of the matter. The case is fixed for mention on the **12th November 2008 at 9 a.m.** for defence.

D. KARUNAKARAN

JUDGE

Dated this 29th day of October 2008