

**IN THE SUPREME COURT OF SEYCHELLES**

1. SVEN GUNTER AWEGE

**MARIJA ZLATKOVIC**

VS.

1. CHRISTINE LAPPE

**HEIKO LAPPE  
YVES CHOPYY**

Civil Side No. 323 of 2006

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Mr Durup for the Republic  
Mr Hoareau for the Plaintiff's  
Mr Bonte for the Defendant's

**RULING**

**Burhan J**

Learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by his affidavit dated 5<sup>th</sup> August 2009 moved court that the Plaintiffs in this case provide a sum of 11,900 Euros as security for costs. The reasons set out by counsel were that,

1) There was good reason that the Plaintiffs would not be in a position to pay the Defendants the costs of the suite, in the event damages were not awarded to them.

2) The costs of the Defendants would include travel expenses to Germany for both Defendants and their minor child.

Learned counsel for the Defendants based his application on Article 16 of the Civil Code of Seychelles which reads as follows;

“When one of the parties to a civil action is a non-resident, (emphasis added) 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.”

It is therefore clear that the Defendant’s counsel was basing his application on the grounds that the Plaintiffs were non-residents. If one were to consider the pleadings in this case, paragraph 1 of the Plaint states as follows;

“At all material times the Plaintiffs were and are residents of the Seychelles ..... whilst the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are also residents of the Seychelles..... .”

When one peruses the defence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants it is clear that paragraph 1 of the Plaint has been admitted. Therefore for all purposes the 1<sup>st</sup> and 2<sup>nd</sup> Defendants at this stage have admitted that the Plaintiffs and the Defendants

themselves are residents of the Seychelles. Therefore it is improper for them to base their application under Article 16 of the Civil Code of Seychelles which is applicable only if one of the parties to the action is a non- resident. It is to be noted that learned counsel for the Plaintiff on the last occasion the case was called, moved to substitute the correct name of the Plaintiff as Gunter Fritz Awege as inadvertently the name of Sven Gunter Awege had been entered and permission was granted by court for the said amendment. However no amendment to paragraph 1 of the Plaint or paragraph 1 of the Defence was made by either of the counsel. As such court in deciding the issue whether security of costs should be ordered, should take into consideration the facts contained in the pleadings filed by the respective parties to the action. It is apparent on the face of the pleadings before court that both the Plaintiffs and the Defendants are residents of Seychelles. Hence learned counsel for the Defendant's application for security of costs under Article 16 of the Civil Code of Seychelles must fail as the reasons given in the Defendant's affidavit do not establish a "good reason" for such an order to issue. Furthermore admittedly for all purposes, the Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as averred in the pleadings are resident in Seychelles and not non resident.

Learned counsel for the Plaintiffs also drew the attention of court to section 219 of the Seychelles Code of Civil Procedure which reads as follows;

“The court may on, 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’s known to be insolvent.”

He further contended that the Defendants had failed to satisfy court that such security for costs was required under the Civil Code or that the Plaintiff was insolvent and hence his application should be rejected.

In the case of *Freer v Seychelles Tourist Services Ltd (1968) No 1.61* it was held;

“..... where the Plaintiff was not known to be insolvent, it was held that the application could not succeed under sect.224 of the Code of Civil Procedure read with art. 16 of the Civil Code.”

In this case too the Defendants have not sought to or established in any way, that the Plaintiffs are insolvent, therefore for the aforementioned reasons, the application by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for security for costs is declined.

**M.N. BURHAN**

**JUDGE**

Dated this 12<sup>th</sup> day of August, 2009.