

IN THE SUPREME COURT OF SEYCHELLES

EME MANAGEMENT SERVICES LTD
Plaintiff

VERSUS

ISLAND DEVELOPMENT COMPANY LTD
Defendant

Civil Side No. 90 of 2009

Mr. B. Hoareau for the plaintiff
Mr. Chang Sam for the Defendant

RULING

On the 17th of April 2009 this court made order prohibiting Platte Island Resort and Villas Ltd paying the Applicant (Defendant company) the sum of USD 1,000,000. The Applicant filed papers and moved court to have the said order vacated. On the 20th of July 2009 the application to have the said order vacated was dismissed. This is a notice by motion dated 23rd of July 2009 seeking leave to appeal against the said order of 20th July 2009.

Section 12 (2) (a) (i) of the Courts Act Cap 52 reads as follows;

In civil matters no appeal shall lie as of right;

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

Section 12 (2) (b) states;

In any such cases as aforesaid the Supreme Court may in its discretion, 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.

In the case of ***Jean Claude Vidot v Allen Jude Medine SCA NO 19 of 2008*** it was held that the principle in deciding this issue, is that leave to appeal against an interlocutory order must be granted when the decision disposes of the matter in issue substantially. The same principle was followed in the case of ***Marzocchi and anor v Government of Seychelles and anor 1996 SLR.***

It is clear that the vacation of an order of prohibition or provisional seizure does not in any way substantially, dispose the matter in issue in the Plaint between the parties, namely EME Management Services Ltd and Island Development Company Ltd. This is further supported by the fact that the affidavit filed by the Applicant (Defendant) in support of the motion does not contain any averment to the effect that the intended appeal will fully or substantially dispose of the Plaint. Therefore this court is not satisfied that the question involved in the appeal is one which ought to be the subject matter of an appeal. Furthermore this court is not satisfied that this is a matter of national importance as mentioned in paragraph 8 of the affidavit to be treated as an exceptional or special application and thus to permit the application under these circumstances would only delay the case further.

It is to be noted that the Applicant too sought and obtained a prohibition order prohibiting Port Launay Resort Ltd from paying a sum of Rs 1,905,563.57 to the Respondent (Plaintiff) EME Management Ltd in respect of their counterclaim. Furthermore the Applicant has turned down the offer by the Respondent EME Management Ltd that in the alternative a bank guarantee be given. The Applicant company, seeks to complain of "financial strangulation" in paragraph 7 of their affidavit, which in itself casts doubts as to the ability of the Applicant to pay the Respondent if he were to succeed. This court is satisfied that the grounds stated in the said order of the court dated 20th July 2009, suffice to dismiss the said application to set aside the prohibition order issued by court.

For the aforementioned reasons the motion for leave to appeal against the said order dated 20th July 2009 is dismissed.

M. BURHAN

JUDGE

Dated this 18th day of September 2009