

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA

Arising from RB 52 of 2008

Fouhan Enterprises (Pty) Ltd

Applicant

Versus

People's Bureau (Embassy) of the
Greater Socialist Peoples Libyan
Arab Jamahiriya

Respondent

France Bonte for the Applicant

Belle for the Respondent

SUPERVISORY ORDER (2)

Egonda-Ntende CJ

1. On the 15 June 2010 I made an order staying execution of a decision of the Rent Board evicting the respondents from premises that they occupied as a diplomatic mission for Libya pending the hearing of the parties in the matter. I did so in exercise of this court's supervisory jurisdiction over subordinate courts and tribunals as provided for under Article 125(1)(c) of the Constitution. I then invited the parties to address me on the issue whether execution can lie against a diplomatic mission in light of the Privileges and Immunities (Diplomatic, Consular and International Organisations) Act, chapter 181 of the laws of Seychelles and article 25 of the Vienna Convention.

2. The parties by their counsel appeared before me and addressed me on the issue as well as on other matters as they saw fit. Mr France Bonte, learned counsel for the applicant submitted that as the order of 15 June 2010 was made without an application before the court the court had no power to make the order it made as it has no powers of revision in civil matters. He further submitted that provisions for judicial review in the Constitution did not apply here as this was a civil matter and there was no application before the court. This court was *functus officio* given that there was no appeal before it.
3. Mr Bonte further submitted that he was aware that I had relied on the question of immunity to issue the order I did. Nevertheless he submitted that it was inapplicable and referred to the decision of Rahim Toulah v Nisam & anor [1958] A C 397 and Tradex v Bank of Nigeria [1977] QB 29 in support of his submission. He submitted that the statute protects only acts of state and not when a mission enters into a lease over property. This was a commercial contract and execution should issue where the parties have submitted to judgment.
4. Mr. Belle, learned counsel for the respondent, submitted that the crux of the matter is the flawed consent judgment that was purportedly entered by the Rent Board. It did not comply with Section 131 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP, and was therefore void. When the judgment was entered one of the parties was not in attendance. He supported the order for a stay of execution given that the judgment being executed was invalid.
5. It is not in dispute that there was no application before this court when it made the initial order for stay of execution. The court did so on its own motion, after notification by the Deputy Registrar that she had issued execution proceedings against a foreign mission. I made an oral order stopping the execution and followed it up with a written order the following day. I issued the order on the ground that the respondent enjoyed diplomatic immunity from the process of execution in accordance with the Privileges and Immunities (Diplomatic, Consular and International Organisations) Act,

chapter 181 of the laws of Seychelles and Article 25 of the Vienna Convention.

6. Article 125 (1) (c) states,

‘There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have

(a)

(b)

(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders, or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction; and’

7. As far as I can gather there is no requirement here that before the Supreme Court an exercise this jurisdiction there must be an application before it and that it cannot act on its own motion. It may be that for the most part applications will be made to the Supreme Court in respect of its powers under the foregoing provisions. I see no bar howsoever in appropriate cases for the court to act on its own motion. Such instances may be rare and far between but I am satisfied that this court has such powers under article 125 (1) (c) of the Constitution.

8. What is important in my view is to ensure in cases where the Supreme Court is acting on its own motion that the parties are afforded an opportunity to be heard at some point before final orders are made. This would be in conformity with the right to a fair trial. It may be as in this instance that there was a need to make immediate orders, albeit temporary pending the hearing of the parties. The parties have now been heard on the merits of the matters in issue and the court can proceed to make a final decision.

9. Accordingly I reject the submission of Mr. Bonte that this court cannot act without being moved by a party or without there being an appeal before it. This court has jurisdiction in accordance with article 125 of the Constitution to make an orders or directions to secure and or enforce its supervisory jurisdiction over subordinate courts and tribunals and may act on its own motion or be moved by a party or other person with sufficient standing.
10. Mr Bonte submitted that this court was *functus officio* and could therefore not make an order for stay of execution, temporary or otherwise. I am unable to see how this court is *functus officio* over a matter it had not handled previously. No power of the court had as yet been exercised and therefore 'spent' or 'exhausted' so as to render the court *functus officio*. I reject this argument.
11. Mr. Bonte's last submission was to the effect that immunity applied only to acts of state and not private or commercial matters such as a lease in this case. I have read the cases he referred to and I am satisfied that they are not applicable to the present case. Both cases were considering English common law which is not the law applicable on this point in Seychelles. The law applicable in Seychelles is the Privileges and Immunities (Diplomatic, Consular and International Organisations) Act, chapter 181 of the Laws of Seychelles. Section 3 of this Act applies the Vienna Convention on Diplomatic Privileges here.

12. Article 22 of the Vienna Convention applied by the Act states,

'1. The premises of the mission shall be inviolable. The agents of the receiving state may not enter them, except with the consent of the head of the mission.

2. The receiving state is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport and of the mission shall be immune from search, requisition, attachment or execution.'

13. As I noted in my order of 15 June 2010,

‘Whatever the merits of the decision of the Rent Board on the plea in *limine litis* it is abundantly clear that the law prohibits the premises of the mission to be the subject of execution proceedings in light of the foregoing provisions of the law. The order for execution against the Respondent would therefore be void and of no legal effect.’

14. It is clear in light of the law that whatever the merits may be of whether a diplomatic representative or mission is immune from being sued in the courts of the host nation, **‘the premises of the mission, their furnishings and other property thereon and the means of the transport and of the mission shall be immune from search, requisition, attachment or execution.’**

15. I find that the premises of the respondent are immune from attachment and execution. I therefore order a stay of execution of the Judgment and Decree of the Rent Board in RB 52 of 2008.

Signed, dated, and delivered at Victoria this 27 day of September 2010

FMS Egonda-Ntende
Chief Justice