

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

Miscellaneous Application No. 130 Of 2011

[Arising from Civil Side No. 97 of 2011]

University of Seychelles-American Institute of Medicine Inc Ltd=====Applicant

Versus

The Government of Seychelles=====Respondent

Anthony Derjacques for the applicant

David Esparon for the respondent

RULING

Egonda-Ntende CJ

1. The applicant is the plaintiff in the head suit. It is seeking an interlocutory injunction against the respondent in the following terms:

‘(i) That the Government of Seychelles ensures and authorises the Seychelles Qualification Authority to write to Avicenna Directory to remove the following statement “status of provisional accreditation accorded by the Seychelles Qualification Authority up to 14 February 2011” from the website and inform the Avicenna Directory that such a statement is no longer applicable however, the listing of the University of Seychelles American Institute of Medicine is currently valid.
(ii) That the Government of Seychelles allows and authorise all students registered with the said

Applicant, prior to the issuance of the notice of termination dated the 4th of August 2010 to complete their education with the said applicant, forthwith.

(iii) That the Government of Seychelles shall fully register the said students of the Applicant, as medical doctors with the Seychelles Medical and Dental Council.

(iv) That the Government of Seychelles shall facilitate and not act detrimentally to the necessary screening tests, the pertinent students require to sit, such as the United States Medical Licensing Examination and the Medical Council of India Screening Test and any other screening tests administered globally in order to allow the students to practise medicine in that country.

(v) That the Government of Seychelles, shall immediately, inform and notify, the Foundation for Advancement of International Medical Education and Research (FAIMER) through its Ministry of Education that the University of Seychelles American Institute of Medicine (USAIM) shall confer the MD degree on students after successful completion of USAIM curriculum till January 2017 and all the medical graduates of USAIM shall have the eligibility for licensure in the Republic of Seychelles.

2. The grounds in support of the said application were set out in the affidavit of Dr. Fauzia S Alkahairy, the Director and President of the University of Seychelles American Institute of Medicine Incorporation Ltd, which was annexed to the notice of motion. The respondent opposed this application and filed an affidavit in reply sworn by Selby Dora, a Special Advisor to the Minister of Education and Chairman of the Seychelles Qualification Authority.

3. The statutory authority for grant of injunctions is found in section 304 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP, which states,

‘It shall be lawful for any plaintiff, after the commencement of his action and before or after judgment, to apply to court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said court upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.’

4. It is now settled that where a party seeks a temporary injunction before determination of the main suit, that party must, firstly, show that it has a prima facie case. Secondly that it stands to suffer irreparable loss should the injunction not be granted. And in case of doubt, the matter can be resolved on a balance of convenience. Lastly in some cases there ought to be among the prayers in the head suit a prayer for the issue of a permanent injunction to restrain the respondent ‘from the repetition or continuation of the wrongful act or breach of the contract or injury of like kind, arising out the same contract or relating to the same property or right’.
5. The main reason for the grant of a temporary injunction is to preserve the status quo and to protect a party from suffering irreparable harm or injury

which would not be adequately atoned for by damages. On the question of irreparable loss, the words of Lord Diplock, in American Cyanamid Co v Ethicon Ltd, 1975 (1) All E R 504, at page 510, are instructive. He states,

‘... the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff’s undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If the damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in such a financial position to pay them, there would be no reason this ground to refuse an interlocutory injunction.’

6. In the instant case the applicant in its head suit has prayed only for damages in the sum of SR 250,212,500.00 and interest at 4% per annum and costs. There is no prayer for injunctive relief or a permanent injunction. None of the orders sought in the application for a temporary injunction form part of the prayers in the head suit. It is clear that the on

the plaintiff's claim it has not sought to restrain the respondent from termination of the agreement between the parties nor extension of certification or accreditation. The interim relief sought on this application has no relationship to the final relief sought in the head suit. The applicant has therefore failed to clear the first threshold that it has an arguable case for a permanent injunction to restrain the respondent from continuing breach of the contract or withdrawing certification or accreditation of the applicant.

7. Secondly by claiming damages only as it has done in the head suit it is clear that the applicant's alleged losses can be compensated by an award of damages. Had damages been insufficient it would be possible for the plaintiff to claim a permanent injunction to restrain the respondent from repetition or continuing. There is no irreparable loss it has suffered or is alleged will be suffered on the plaint. The applicant has failed to show that it will suffer irreparable harm or injury. It has therefore failed to clear the second threshold. This application is dismissed with costs.

Signed, dated and delivered at Victoria this 7th day of November 2011

FMS Egonda-Ntende
Chief Justice