

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

**Miscellaneous Application No. 131 of 2011**

[Arising from Civil Side No. 61 of 2011]

Rhodes Trustees Ltd=====Applicant

Versus

Mrs Dena Kay Gamble=====Respondent No.1

Mrs Phyllis Mary Gamble=====Respondent No.2

Graig Daniel Bester=====Respondent No.3

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*Divino Sabino for the Applicants*

*Anthony Derjacques for the Respondent*

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**RULING**

**Egonda-Ntende CJ**

1. The applicant in this application is the defendant in the head suit. It is seeking for an order for security for costs to be made against the respondents pursuant to section 219 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP. The application is supported by an affidavit sworn by a one Alessandro Pagano, a director of the applicant. The affidavit is rather short and the relevant parts thereof can be set out *in extensio*.

‘3. That the respondents to this motion /plaintiffs  
in the principal action are all domiciled outside of

the jurisdiction of the Republic of Seychelles.

4. That I truly believe that the Applicant has a strong and legitimate defence to the claim.

5. That I am concerned that since the Respondents have no assets in Seychelles and are no resident in Seychelles, it will be difficult to enforce a cost order against them should the plaint be dismissed in the end.

6. I therefore pray that the court order the Respondents to pay into court security for costs at an amount reasonable in the circumstances and set a reasonable deadline for the said amount to be paid in, failing which, proceedings should be stayed.'

2. From the bar Mr Sabino, learned counsel for the applicant, stated that he estimates the costs in the Supreme Court to be between R7,000.00 to R10,000.00. He prayed that the court grants this application.

3. The respondents through their counsel opposed this application though they did not file any papers in response to the same. Mr Derjacques, learned counsel for the respondents, submitted that though the respondents are non-resident in Seychelles the subject matter of this action is a trust registered in Seychelles of which the respondents are beneficiaries. It would be unfair in light of the claim and defence to this claim to order the respondents to furnish security for costs.

4. Section 16 of the Civil Code of Seychelles states,

'When one of the parties to a civil action is a non-resident, 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.'

5. Section 219 of the SCCP, under which this application is made, states,

‘The court may, 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 is known to be insolvent.’

6. The main ground I suppose on this application is that the respondents are none residents in Seychelles and have no property here to which the applicant may resort in case it succeeds on its defence. This is ordinarily good enough reason for an order to furnish security for costs. However it must be emphasised the remedy is still within the discretion of the court, and care must be taken that it is not used as a bar to stifle a good or worthy claim against a defendant.

7. In the instant case no mention is made of an appropriate figure for costs in the affidavit in support of this application and a sum or sums have only been stated from the bar by the attorney for the applicant. In my view this is not good enough. Firstly it turns counsel into a witness which he cannot be in a matter in which he is counsel. Secondly this ought to be proved in the ordinary way, even if at this stage it is only an estimate of party to party costs. The court must be able to see how the figure claimed has been arrived at. As this had not been done in this case I dismiss this application with costs.

Signed, dated and delivered at Victoria this 7<sup>th</sup> day of November 2011

FMS Egonda-Ntende  
**Chief Justice**