

FAYE v LEFEVRE

(2012) SLR 44

Frank Ally for the applicant
France Bonte for the first respondent
William Herminie for the second respondent

Ruling delivered on 3 February 2012 by

RENAUD J:

The application entered on 29 July 2011 by Nathalie Lefevre, hereinafter called the first applicant and another application entered on 5 August 2011 by Beau Vallon Properties Ltd hereinafter called the second applicant, sought a stay of execution of a judgment delivered on 4 July 2011 in favour of the plaintiff who is the respondent herein.

In the affidavit in support of the application, Mr F Bonte counsel for the first applicant inter alia deponed that he has been instructed to appeal against the said decision and an appeal has already been filed. He also deponed that the first applicant would be unjustly prejudiced in that irreparable damage would be done if execution is not stayed pending the appeal. Counsel for the first applicant prayed this Court to stay its decision in that case until the determination of the appeal.

A copy of the notice of appeal incorporating 11 grounds of appeal of the first applicant is attached to the application. The relief sought by the first application is (1) to quash the orders and declaration; (2) reverse the findings, more specifically that the first applicant was a conspirator in an alleged fraud; and (3) allow the appeal with costs of the appeal and in the Court below.

In the affidavit in support of the application, Mr W Herminie counsel for the second applicant inter alia deponed that he has been mandated to represent the second applicant and that the appeal has a good chance of success. He claimed that the second applicant would be unjustly prejudiced in that irreparable damage would be done if execution is not stayed pending the appeal. He also prayed this Court to stay its decision in that case until the determination of the appeal.

Counsel for the second applicant attached a copy of the notice of appeal incorporating three grounds of appeal.

Counsel for the respondent opposed the granting of a stay of execution and submitted that the first applicant has neither adduced sufficient cause to justify a stay nor shown what prejudice will be caused to her if a stay is granted and neither has the first applicant submitted that the appeal has any chance of success.

With regards to the application of the second applicant, counsel for the respondent submitted that counsel for the second applicant only stated that he has a good chance of success.

Counsel for the respondent submitted that neither application is sufficiently supported by facts to justify the Court in granting this application.

Article 230 of the Seychelles Code of Civil Procedure relates to stay of execution. It states:

An appeal shall not operate as a stay of execution or of a proceedings under the decision appealed from unless the court or the appellate court so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be invalidated except so far as the appellate court may direct.

Rule 20 of the Seychelles Court of Appeal Rules 2005 also states that – “an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from”.

It goes on to state that:

provided that the Supreme Court of the Court may on application supported by affidavits, and served on the respondent, stay execution on any judgment, order, conviction, or sentence pending appeal on such terms, including such security for the payment of any money or the due performance or non-performance of any act of the suffering of any punishment ordered by or in such judgment, order, conviction, or sentence, as the Supreme Court of the Court may deem reasonable.

The judgment appealed against was delivered on 4 July 2011 and it is not yet known as to when the appeals will be heard by the Seychelles Court of Appeal.

In the case of *International Investment Trading SRL (IIT) v Piazzolla & Ors* (2005) SLR 57, it was held that:

- (i) Whether to grant or deny a stay is entirely within the Court's discretion in the exercise of its equitable jurisdiction under section 6 of the Courts Act;
- (ii) In considering whether to grant or refuse a stay, the Court must balance the interests of the parties by minimising the risk of possible abuse by an appellant to delay the respondent from realising the fruits of their judgment; and
- (iii) Where an unsuccessful defendant seeks a stay execution pending an appeal, it is legitimate ground for granting the application that the defendant is able to satisfy the Court that without a stay they will be ruined and that they have an appeal which has some prospect of success.

The relief sought by the first applicant is that the Court quash the orders and declaration of the Judge; reverse the findings of the Judge, more specifically when he finds that the

alleged appellant was a conspirator in an alleged fraud; and allow the appeal with costs of the appeal and in the Court below. In the case of the second appellant, the relief sought is to reverse the finding and make the following orders:

- The second defendant/applicant did not act wrongfully when it registered Nathalie Lefevre as a shareholder in its register of shareholders.
- That the point *in limine litis* raised by the second defendant/appellant was valid.
- That it is not compelled to pay costs to the plaintiff/respondent.

The relief sought by the applicants, as appellants before the Seychelles Court of Appeal is for the reversal of the decision of the trial Court and for a judgment to be instead granted in their favour on the basis of their grounds of appeal as pleaded.

Obviously it is not for this Court to determine whether the appeal of the appellants will succeed before the Seychelles Court of Appeal. However, for the purpose of considering this application, this Court has to obviously peruse the grounds of appeal to consider whether it is not frivolous and vexatious and whether it has not been filed by the applicants only to delay the respondent from enjoying the fruits of his judgment. Upon careful perusal of this matter I find that these applications are not necessarily frivolous and vexatious although lacking in supporting details.

At the end of the day, in the event that the applicants' appeal finds favour with the Seychelles Court of Appeal the end result will be that the respondent will not become a shareholder of Beau Vallon Properties Limited and the position now held by the first applicant in the company shareholder register of the second applicant will remain unchanged.

Although I agree with the respondent that the first applicant will not be prejudiced in the event that a stay of execution is granted, I am of the view that it would be more of an embarrassment to the respondent if he was to become a shareholder on the basis of the judgment of the trial Court and to thereafter relinquish that position should the Seychelles Court of Appeal accede to the prayers of the applicants in their respective appeals. The right of the respondent as already determined by this Court, however, must be preserved so that he will suffer no loss in the event that the appeal is not successful.

In the exercise of its equitable jurisdiction and in exercising its discretion after balancing the interests of the parties in minimising the risk of possible abuse by the appellants to delay the respondent from realising the fruits of their judgment, this Court will grant a stay of execution in this matter on the condition that the status quo at the date the judgment was given by this Court, is maintained by the first and second applicants until the appeals are concluded.

I accordingly order a stay of execution in this matter on the condition that the status quo subsisting at the date the judgment was given by this Court is maintained by the applicants until the appeals are concluded.

Costs shall be costs in the case.