

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC 08 of 2013

2013 SCSC

IGOR LIKHACHEV
First Applicant

MISSION LIMITED
Second Applicant

Versus

LEYKO TRADING INC
Respondent

Heard: 9 October 2013
Counsel: Pesi Pardiwalla for the Applicants
Joel Camille for the Respondent
Delivered: 26 November 2013

RULING

Egonda-Ntende CJ

[1] This ruling is in respect of a preliminary objection in *limine litis* to the action against the defendants on the following grounds:

‘ (1) The plaintiff claims to be seeking under the Provisions of the Foreign Judgment (Reciprocal Enforcement) Act cap 85 see answers to particulars dated 1st June 2013). In these circumstances, the action brought by plaintiff, but founded legally under section 4(1) of the Foreign Judgments (Reciprocal Enforcement) Act cap 85, is flawed procedurally, in that it contravenes section 4(1) of the above mentioned Act, in so far as it should have been brought by Petition.

(2) Subject to (1) above, the Plaintiff is also procedurally flawed for the

reason that the Plaintiff seeks the registration of a judgment given against five defendants, as against three defendants only. The prayer to register a judgment as is (if at all possible in view of point one above of plea in limine litis and against all the parties, who should be made defendants in the action.

(3) Further to the above, the action is frivolous and vexatious and an abuse of the process of the court, in so far as the case is formulated and brought under the Foreign Judgments (Reciprocal Enforcement) Act Cap 85, has no chance whatsoever of succeeding, in that: the President has not extended the application of part 1 of the Foreign Judgment (Reciprocal Enforcement) Act Cap 85 (by order published in the Gazette) to the United States District for the District of Delaware, and consequently that judgment cannot be registered in the Supreme Court of Seychelles.”

- [2] At the hearing of this plea Mr Camille, learned counsel for the respondent, conceded at that this suit would stand no chance of success under the Foreign Judgments (Reciprocal Enforcement) Act, Cap 85. He changed tack and submitted that this suit is maintainable under section 227 of the Seychelles Code of Civil Procedure. He cited the case of Privatbanken Aktieselskab v Bantele 1978 SLR 226 which clearly explains the law on this point. Mr Pardiwalla, learned counsel for the applicants, responded that he is aware there are other avenues of enforcing foreign judgments such as now suggested by Mr Camille but had been specific in his request for further and better particulars and had raised this objection after being pointed to the Foreign Judgments (Reciprocal Enforcement) Act, Cap 85.
- [3] Now that it is fairly clear that it is possible to maintain this action under section 227 of the Seychelles Code of Civil Procedure I am satisfied that it can be maintained.
- [4] That leaves one point for consideration and that is whether the suit can be maintained against only three defendants rather than the five defendants. If only three defendants reside in Seychelles I see no reason why the other defendants that reside elsewhere over whom the Seychelles courts do not have jurisdiction need be made defendants to this action.
- [5] As Mr Camille was at fault to point Mr Pardiwalla to the wrong law I will order the respondent to bear the costs of this application. The application is otherwise dismissed.

Signed, dated and delivered at Ile Du Port this 26th day November 2013

FMS Egonda-Ntende
Chief Justice