

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 69/2015**

**(Arising in CA 05/2015)**

**[2015] SCSC 193**

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**AMUSEMENT CENTRE (PTY) LTD**

**(REP. BY DR. RAMADOSS)**

Applicant Versus

**DORIS VICTOR & ORS**

Respondent

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Heard: 19<sup>th</sup> day of June 2015

Counsel: Mr. W. Herminie for applicant

Mr. S. Rajasundaram for respondent

Delivered: 25<sup>th</sup> day of June 2015

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**RULING ON MOTION**

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Govinden J

[1] This is an application for stay of execution of the Employment Tribunal’s decision in Case Number ET/53/14 delivered on the 9<sup>th</sup> day of January 2015 (hereinafter referred to as the “Tribunal’s decision”), pending the final disposal of the appeal before the Supreme Court in CA. No. 05 of 2015 which appeal is pendente lite (hereinafter referred to as “the Appeal”).

- [2] In a gist, the Tribunal’s decision ordered the Applicant to pay the individual Respondents 26 days salary for each year of service on account of their length of service and that the Secretariat shall compute the individual financial entitlement as per the Order of the Tribunal, and shall notify the Applicant accordingly.
- [3] The application is resisted by the Respondents on a number of grounds and hence this Ruling.
- [4] It is not in dispute that the Applicant being aggrieved by the Tribunal’s decision has lodged an appeal against it to the Supreme Court of Seychelles. The appeal has already been fixed for hearing on the 19<sup>th</sup> day of November 2015.
- [5] In essence, the Applicant by virtue of the affidavit of Dr. V. Ramadoss attached to the application in support contends at its paragraphs 2 and 3 respectively that the Applicant, *“is aggrieved with the decision of the Honourable Tribunal given on the 9<sup>th</sup> January 2015 and has appealed against the said decision”* and that *“the appeal has a very good chance of success”*.
- [6] Learned Counsel Mr. W. Herminie by way of oral submissions in support of the application further submitted in a gist firstly, that 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. Secondly, that in considering whether to grant or refuse the stay, the Court must balance the interest of the party by minimizing the risk of possible abuse by the Appellant. Thirdly, that it is legitimate ground for granting the application that the defendant is able to satisfy the Court that without the stay they would be ruined and the appeal has some prospect of success. Fourthly, that if there is a substantial question of law to be adjudicated on the appeal and fifthly, if the appeal would otherwise be rendered nugatory. Authorities enunciating and in support of the submitted principles were cited in the form of **Chung-Faye v/s Lefevre 2012 (SLR 44)**, **MacDonald Pool v/s Despilly William 1993 (SLR 206)**, **Collin Chang-Tave v/s Raymond Chang-Tave 2002 (SLR 74 and Avalon (Pty) Ltd and Ors v/s Mr. Ogilvy Berlouis 2001 (SLR 59)**.

- [7] Mr. Herminie further submitted that in his view the Applicant has a good chance of success on appeal since there is a substantial point of law to be mooted and it is only fair that the application is granted.
- [8] On the other hand, the Respondents vehemently opposed to the granting of the stay in this matter. According to the Respondents by way of the averments in the affidavit in reply of namely, Doris Victor (representing herself and other Respondents), that *“the Employment Tribunal, after a long ordeal of the Appellant’s protraction of the proceedings with a purpose to delay justice, ordered the Appellant to pay their employment benefits. That all the 48 Respondents are entitled to, according to the Order of the Employment Tribunal, receive the employment benefits by the Appellant who has never mentioned anything in its supporting affidavit as to how it has got strong chances of succeeding in its appeal..... A vague and simple statement of “very good chances of success” is not at all sufficient for this Honourable Court to consider granting the stay of execution.”*
- [9] It is further averred by the above-said deponent in support of the Respondents’ objection to the application that, *“the Appellant’s prima facie, the grounds of appeal may be looked into by the Honourable Court for ascertaining whether this Appellant has good chance of succeeding in its appeal. That out of four grounds of appeal, the last two grounds are absolutely unsustainable. The first ground was never pleaded as a defence before the Tribunal but raising as a ground afresh before this Honourable Court. The only ground left out is therefore the issue of purported “wrong calculation” and this ground has clearly been dealt with by the Tribunal and the Appellant does not hold any merit in its Appeal.”*
- [10] It was further submitted through oral submission by Learned Counsel Mr. S. Rajasundaram on behalf of the Respondents in support of the objections above stated in a gist, firstly, that as admitted by both parties, the Employment Tribunal had ruled in favour of all the Respondents and that the quantum is to be ascertained and that the Employment Tribunal is on the verge of completing the computation of the quantum as ordered. That in the affidavit an approximate sum is averred and the Respondent would move since the Applicant’s attorney indicated that there is money available, that a deposit

be paid in the Registry of the Supreme Court in an approximate amount quoted pending the appeal should the Court grant the stay with a condition. Secondly, that in line with the Authority of **Avalon (Pty) Ltd and Ors v/s Mr. Ogilvy Berlouis 2001 (SLR 59)**, in that granting an Order of stay of execution of the Lower Court, is absolutely an equitable relief but this relief has to be ascertained, has to be determined on the facts of each and every case. Thirdly, that on the issues of balance of convenience and of inconvenience which is also to be determined by this Court in the instant application and that fourthly, that the application for the stay of execution has to be determined with the limited access to the grounds of appeal not to the merits of the appeal itself. It was finally submitted that the application for the stay of execution ought not to be granted but should the decision of the Court be otherwise a conditional order in the form of a deposit as suggested was to be considered by the Court to safeguard the interest of the Respondents in line with the principle of balance of convenience.

[11] I carefully perused the entire record of the proceedings in the file including the grounds of appeal as well as the affidavits filed by the parties as above-referred.

[12] I further, diligently went through the Authorities cited (supra) on the subject matter in issue. I also gave careful thought to the oral submissions made by both Learned Counsels for and against this stay application.

[13] First of all, I note the provisions of Section 230 of the Seychelles Code of Civil Procedure (Cap 213), which reads thus:

***“An appeal shall not operate as a stay of execution or of a proceeding 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 the appellate court may direct.”***

[14] From the cited section of the relevant law, although one may logically presume the Courts in Seychelles to have the power to stay execution of Judgments, there is no specific statutory provision in our laws, which expressly empowers the Courts to grant a stay as a legal remedy to protect the interest of an appellant/judgement debtor pending

appeal unlike in the United Kingdom where the position is different since there are specific statutory provisions under different statutes, which expressly empowers the Court to grant a legal remedy of this nature (**vide: the case of Avalon (Pty) Ltd and Ors v/s Mr. Ogilvy Berlouis Civil Side No. 150 of 2001 with reference to examples of statutes in United Kingdom**).

- [15] This Court therefore, cannot grant a stay of execution as a legal remedy pending appeal as no such power has been conferred on it, by any statute. However, the lack of such a statutory power in my view cannot prevent the Court from exercising its equitable powers conferred by Section 6 of the Courts Act, in order to grant a stay of execution as an equitable remedy. This can be done only, if justice so requires in a particular case, when no efficient legal remedy is provided by any statute for the judgment-debtor/appellant to obtain his protection of a stay pending appeal. Section 6 of the Courts Act reads thus:

***“The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.”***

- [16] It is trite, that the Court will not without a good reason delay a successful plaintiff in realizing the fruits of his Judgment obtained from the trial court. At the same time as a Court of Equity it cannot also deny an unsuccessful defendant the fruits of his judgment from the Court of appeal in the event of his success (if any), in the appeal. In the circumstances, it is the duty of the Court to take into account all relevant facts and circumstances peculiar to each case on hand and weigh the conflicting interest of both parties so as to determine what justice requires in that particular case whether to grant or refuse a stay.

- [17] In that light, I therefore hold that the principles governing the stay of execution and the exercise of the Court’s power to grant a stay in this respect cannot be restricted to or pigeonholed within the sole grounds as canvassed by the Learned Counsels for the Applicant and Respondent quoting the Authorities cited (supra). In the circumstances, the question to be asked as to the granting of a stay is to be determined not on the basis

whether the case satisfies any or one of the grounds or of the chances of success in the appeal but primarily on the basis whether granting of such a stay is necessary for the ends of justice in the given set of facts and circumstances. I thus prefer to ask myself the very question as to what does justice require, whether to grant or refuse a stay in the given case on hand? Hence in my considered view, the principle that ought to be applied in matters of this nature may be formulated as follows:

*“The stay of execution is a discretionary remedy as it falls within the equitable jurisdiction of this Court in terms of Section 6 of the Courts Act. It is a prerogative power that may be exercised by this Court though sparingly, as no other legal remedy is available to an appellant/judgment debtor in order to prevent an irreversible irreparable injury, which is substantial and could not be adequately remedied as atoned for by damages, if the judgment is reversed by the appellate court once it has been executed.”*

[18] Now, in matters of such a nature, firstly, the Court should be satisfied ex-facie the pleadings that the appellant has valid or substantial grounds of appeal. It should not venture to examine the merits and speculate on the chances of success on appeal. Additionally, the Court for granting or refusing a stay application, should also equally consider the balance of convenience, hardship and loss the parties may suffer. Where the Appellant/Judgment debtor claims that he has valid or substantial grounds of appeal, the burden is of course on him to show that the injury he will suffer due to inconvenience, loss and hardship by a refusal of the stay application. Thus after taking into consideration all the relevant facts and circumstances of the case, the Court ought to determine what justice and equity requires in each case and then should grant or refuse the stay application accordingly.

[19] On the basis of the above stated principle, I approach the case at hand.

[20] Firstly, having duly and diligently perused the pleadings, I find that the Appellant has no valid or substantial grounds of appeal. Secondly, I weigh the conflicting interest of both parties by taking into account all relevant facts and circumstances of the case. I equally

and additionally consider the balance of convenience, hardship and loss the parties may suffer in granting or refusing the stay. In so doing I find that the alleged injury the applicant may suffer due to inconvenience, loss and hardship by refusal of stay is less than that which the Respondents will suffer by the grant of the stay.

[21] I wish to point out at this stage of the Ruling that whatever be the arguments advanced by the Learned Counsels for and against the stay, the fact remains that granting the stay in this particular case would deny the Respondents the fruits of the judgment before the Employment Tribunal and not only delay it.

[22] Hence, having given careful thought to all the relevant facts and circumstances of this case and in the light of the principles formulated above, I find that a stay of execution is not necessary for the ends of justice in this matter.

[23] For the reasons given above, I decline to order a stay of execution of the Tribunal's decision pending the outcome of the appeal.

[24] Having said all, for the reasons stated hereinbefore, I decline to grant the application for stay as sought by the Applicant in this matter. The application is therefore dismissed with costs.

Signed, dated and delivered at Ile du Port on 25<sup>th</sup> day of June 2015.

Govinden J  
Judge of the Supreme Court