

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 163/2015
(arising in CC 19/2015)

[2015] SCSC 527

APOLLO BUSINESS SOLUTIONS (PTY) LIMITED
Applicant

versus

MARIA KUZMINOVA
First Respondentand

ABC INTERNATIONAL SERVICES (SEYCHELLES) LIMITED

Second Respondent

Heard: 26 October 2015
Counsel: Mr. Divino Sabino for applicant
Mr. Frank Ally for respondent
Delivered: 6 November 2015

ORDER ON MOTION

Robinson J

[1] Background

[2] Plaintiff, Maria Kuzminova, filed a plaint CC19/2015 against ABC International Services (Seychelles) Limited (First Defendant) and Apollo Business Solutions (Pty) Limited (Second Defendant).

[3] First and Second Defendants have pleaded to the claims of Plaintiff.

[4] This application concerns Second Defendant only.

[5] Second Defendant on 19 June, 2015, applied for an order that, "*1st Respondent (the plaintiff in the main suit) furnishes security for costs in the amount of SR 183,000.00 or such other amount as the court may consider reasonable in the circumstances and that in the meantime all further proceedings be stayed*".

[6] The application is supported by an affidavit sworn by Natalia Mishicheva, the Office Manager of Applicant, on 19 June, 2015.

[7] On 30 September, 2015, this Court adjourned the hearing of this application *ex parte*. On the day of the hearing this Court allowed Mr. Ally, learned counsel for Respondent, to address this Court on the law. This Court noted that Mr. Ally addressed it substantially on the facts. This Court will not permit Mr. Ally to enter the litigation arena as witness for Respondent.

[8] Case for applicant

[9] Natalia Mishicheva stated the following in its affidavit in support of the application—

"6. The 1st Respondent is domiciled and resident out of the jurisdiction.

7. I am advised and verily believe that the Applicant has a strong and legitimate defence to the claim in the main suit.

8. I am of the belief that the Respondent has no assets in Seychelles.

9. It will therefore be difficult, if not impossible to enforce any order for costs against the Respondent.

10. I expect that the Applicant will be required to bring in at least 2 witnesses from Russia to give evidence at the hearing of the main suit and will thus incur the costs of 2 return business class air fares (estimated at about SR60,000 each) and accommodation for at least 4 days (about SR 6,000 per day) for these witnesses. I am advised that court costs is likely to be about SR15,000.
11. The total costs to be incurred by the Applicant in defending the main suit is estimated at about SR183,000.00.
12. I therefore pray that the court orders the Respondent to deposit into court Security for Costs in the amount of RS 183,000 or such other amounts as the court may consider reasonable in the circumstances and that in the meantime all further proceedings be stayed."

[10] The law

[11] I start by stating the law on which this application rests. Section 16 of the Civil Code of Seychelles Act provides —

"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 a non resident to give security for costs and for any damages that may be awarded against him".

[12] Submission and discussion

[13] This Court has considered the application and the affidavit filed in support thereof in light of submissions of counsel.

[14] Applicant has averred that Respondent has no assets in Seychelles and it will be difficult if not impossible to enforce any order for costs against Respondent. This Court considers the effectiveness of enforcement where a claimant is resident outside the jurisdiction of the Supreme Court as a material factor in weighing whether or not to grant the order for security for costs. I have considered the evidence of Applicant on this point and found it to be scant and brief.

[15] Further, this Court cannot rely on paragraph 7 of the affidavit of Natalia Mishicheva. Natalia Mishicheva has not stated the grounds for her belief that, "*Applicant has a*

strong and legitimate defence to the claim in the main suit". This Court also notes that there is no allegation that the claim of Respondent is vexatious.

[16] In light of the above, this Court will not order Respondent to furnish security for costs.

[17] Because of the likelihood of an appeal, this Court proceeds to determine the *quantum* of the security for costs. Although the amount of security for costs awarded by a trial court is always at the discretion of the trial court, the amount is in practice based on an estimate of party and party costs up to the end of the proceedings: see the pronouncement of the Court of Appeal in *Village Management Ltd v Albert Geers & anors CA/3/95*. The rough estimates of costs are found in paragraph 10 and 11 of the affidavit of Natalia Mishicheva. It is noted that Applicant has not established any of those estimates of costs. It follows that this Court cannot consider any of the heads of claim.

[18] **DECISION**

[19] This Court dismisses the application.

[20] I make no order as to costs.

Signed, dated and delivered at Ile du Port on 6 November 2015

F Robinson
Judge of the Supreme Court