

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 54/2016
(arising in CA 3/2016)**

[2016] SCSC

**DIRECTOR SOCIAL SERVICES
HEREIN REPRESENTED BY THE ATTORNEY GENERAL**
Appellant

versus

ANNABELLE VALENTIN OF PORT GLAUD
1st Respondent

KISNAN LOUISE OF PERSEVERANCE
2nd Respondent

Heard: 4th day of March 2016
Counsel: Mr. K. Karunakaran for Appellant
Mr. M.Vidot for the Respondents

Delivered: 8th day of March 2016

RULING ON MOTION FOR STAY OF EXECUTION

Govinden J

- [1] This is an Application for Stay of Execution of the Ruling of the Family Tribunal in Case No. 1/2016 (hereinafter referred to as the Tribunal's Ruling"), pending the determination of an Appeal filed by the Applicant (hereinafter referred to as the "DSS"), before the Supreme Court in CA 3 of 2016 (hereinafter referred to as the "Appeal") of which Appeal has been fixed for filing of written submissions (in view of its urgency), on the 11th day of March 2016.
- [2] The Respondents are resisting the current Application for stay.
- [3] This Application originates from the Ruling wherein the DSS under section 80 (1) of the Children Act, 1982 (hereinafter referred to as the "Act") prayed the Family Tribunal, to exercise its statutory jurisdiction under section 78 (1) (b) of the Act, as amended by Act 14 of 1998, to make a compulsory measure of care Order in favour of one Shani Louise, a minor, for the DSS to take her in their care in a place of safety.
- [4] In support of its Application, the DSS has attached thereto an affidavit of the 29th day of February 2016 of one Michelle Marguerite, Senior Legal officer with the Ministry of Social Affairs, Community Development and Sports also being the legal officer in charge of this matter on behalf of the DSS and she **clearly avers in no uncertain terms that the averments in the affidavit are based on the information and evidence collected by the Department of social affairs of which statements are true and correct to the best of her knowledge, belief and information.** (Emphasis mine).
- [5] Now, in support of the Application, the DSS through the above-named, states, that on the 7th day of November 2014, the first Respondent Annabelle Valentin filed a report to the police alleging that her minor daughters Rebecca and Shani Louise had been sexually assaulted by

the Second Respondent, their father, Kisnan Louise, and also by their brother Jean-Luc Louise.

- [6] That as a result of evidence collected pursuant to the above-mentioned report, the **second Respondent and Jean Luc Louise were charged with the offence of committing an act of indecency towards a child, in Criminal No. 79 of 2015 before the Supreme Court, which matter is currently ongoing.**(Emphasis mine).
- [7] That on the 29th December 2014, the DSS filed an application before the Family Tribunal for an order of compulsory measures of care in favour of Rebecca Louise pursuant to section 78 (1) of the Act. **That the first Respondent consented to the application. On the 31st December 2014, the Family Tribunal made an Order for the compulsory measures of care thereby placing Rebecca Louise under the care and supervision of the DSS.**(Emphasis mine).
- [8] That in July 2015, there was a growing concern in the Social Services Department about the safety of Rebecca Louise who was at the time available for access by the first Respondent. **An application was made by the DSS to the Family Tribunal to prohibit the first Respondent from having access to Rebecca Louise. The basis of this application was that the Social services suspected that the first Respondent had turned hostile towards the Social Services, Furthermore, the first Respondent was using her access to Rebecca to influence her to convince her not to give evidence in the forthcoming trial against her father, the second Respondent. Pursuant to above-mentioned application, the Family Tribunal granted the Order of the 1st day of July 2015, prohibiting the first Respondent from having access to the minor Rebecca Louise.**(Emphasis mine).

- [9] That based **on concerns similar to those set out above, in that Shani Louise was also being influenced to not give evidence or commit perjury and in an unsafe environment, on the 6th day of July 2015, the DSS further filed an application before the Family Tribunal for an order of compulsory measures of care in favour of the second minor, Shani Louise, pursuant to section 78 (1) of the Act. This application was opposed by both Respondents who also filed a counter application for the Family Tribunal to vary the Order made on the 31st day of December 2014, placing Rebecca Louise under the care and supervision of the DSS.** (Emphasis mine).
- [10] That on the 3rd day of February 2016, the Family Tribunal gave the Ruling dismissing the application made by the DSS on the 6th day of July 2015 for an order of compulsory measures of care in favour of Shani Louise, and further that the Order of the 31st day of December 2014 be varied, in that the minor Rebecca Louise be returned to the care and supervision of the first Respondent.
- [11] **That the Ruling also required the First Respondent to undergo a programme of counselling and parenting in preparation for her to receive the children by the end of February, which she has so far failed to do.**(Emphasis mine).
- [12] **That the Respondents may seek to enforce part of the Ruling relating to the transfer of the said children from the custody of the DSS to the first Respondent, while not having complied with the recommendations of the Family Tribunal, since it is now the end of February”.** (Emphasis mine).
- [13] That the DSS has filed an appeal before the Supreme Court dated the 29th day of February 2016, against the Ruling and hence, it is humbly

prayed that the Ruling be stayed pending the determination of the Appeal **for the DSS believes that there is a great likelihood that the minors Rebecca and Shani Louise may be subjected to unnecessary suffering and further the DSS has reasonable suspicions to believe that if the Ruling of the Family Tribunal is not stayed, there is a great likelihood that both minors may be interfered with as witnesses in the criminal charge against the second Respondent and his son as named, thus obstructing the course of justice.**(Emphasis mine).

[14] Finally, **it is averred on behalf of the DSS, that the appeal has a great chance of success and it is in the interest of justice for the Ruling be stayed.** (Emphasis mine).

[15] The First Respondent submitted on her part in the form of a counter affidavit dated the 4th day of February 2016 resisting the application 'in toto' for stay and avers in essence as follows:

[16] That she is the mother of the relevant children and the second Respondent their father and Joshua Louise their brother of 21 years old.

[17] In November, 2014, **the 2nd Respondent and herself were experiencing serious matrimonial problems and she was very depressed and that was affecting her physically and mentally, it was also having an adverse effect on the family that finally the best solution was according to her for her to vacate the family home and she decided that it would be in relevant children's best interest that they come with her rather than leaving them with their father and brother as they needed a more secure, clam and loving environment.**(Emphasis mine).

- [18] She has ceased all man-woman relationship with the second Respondent for sometimes since 2014 and is not cohabiting with him **save that they communicate on matters pertaining to the children whom he helps to maintain.**(Emphasis mine).
- [19] **She has been informed and overheard in the Family Tribunal that criminal charges have been filed against the second Respondent and Jean- Luc Louise her son afore-mentioned,** and the latter with whom she does not enjoy a good relationship with and which relationship is rather tense and there is hardly any communication between them. **Furthermore, that she has never discussed the pending criminal charges with the second Respondent and or her son.**(Emphasis mine).
- [20] **She is aware that at the time when her daughter Rebecca Louise was residing with one Farida Joseph, she was very concerned and approached the Social Services** and as far as she is aware an application was made to the Family Tribunal to remove her therefrom and she was asked by the social Services to sign a consent form that would allow the return of her child to her. That at the time she had just ended her common law relationship with the second Respondent and moved out of the family home. **That she was very distressed and under severe physical and emotional pressure and received negligible assistance from Social Services.** That she struggled on her own and secured permanent accommodation where herself and her children were happy and flourished until the 24th June 2015 when Rebecca was removed by Social Services and placed at St. Elizabeth's convent.(Emphasis mine).
- [21] That there is no manipulation by the second Respondent of the Children when in her care and the allegations of the DSS are fabrication and unfounded and unsupported by evidence.

- [22] **She confirms at paragraph 12 of her affidavit confirms that when it was brought to the attention of the Family Tribunal that she was allowing the second Respondent supervised access to the children, the DSS raised to objection.** That she is informed that the Tribunal encouraged the DSS to organize supervised access. Hence, she claims that what she did was merely promoting request recommended by the Tribunal and that the Tribunal will be going against its own recommendation should it decide to hold with the DSS unsubstantiated averments and would make a mockery of justice.(Emphasis mine).
- [23] **She further confirms at paragraph 16 of her affidavit inter alia, that she has allowed the second Respondent access to Shani Louise.**(Emphasis mine).
- [24] **She further confirms at paragraph 18 of her affidavit inter alia that in line with the recommendation of the Family Tribunal, she met with Mrs Bernadette Payet on at least two occasions and on the 29th February 2016 when Rebecca was to be returned to her she contacted her to query if she should pick her up to her or that Social services would deliver her to the first Respondent** and she was reassured that Rebecca would be brought to her but it did not happen. (Emphasis is mine).
- [25] In a gist, the whole basis of the Affidavit of the representative of DSS is being denied and considered as unsubstantiated by the first Respondent and not in the best interest of the children hence the stay is vehemently objected to as above-illustrated.
- [26] Now, at this stage of the proceedings to consider a stay application, it would be *“putting the cart before the horse”* so to speak if the Court was to venture to analyse the grounds of appeal as per the

memorandum of Appeal and or give a prelude of the outcome of the appeal and or analyse evidence before the Family Tribunal, for this is the subject matter of an appeal which is pending before this same Court and hence suffice to say at this stage that the relevant considerations in such an application for stay of proceedings as stated in the above-cited cases and the case of **(Becker v/s Earl's Court (1911) 56)** is that **“the question whether or not to grant a stay is entirely in the discretion of the Court.”**

[27] Locally, the relevant considerations in an application for a stay of execution of judgement have been often rehearsed in our local case laws of inter alia, vide: **(Macdonald Pool v/s Despilly William CS. No. 244 of 1993), (La Serenissima Limited v Francesco Boldrini & Ors. (Cs. No. 471 of 1999)), (Falcons Enterprise v/s David Essack &Ors. C.S. No. 139 of 2000))**.

[28] Further being guided by the guidelines in the above-cited local Authorities, I hold that it is incumbent on the Applicant to disclose in its Affidavit the grounds relied upon in support of the Application for stay of execution and objections of the Respondents in the same light. The said requirement finds emphasis in the case of **(Akins v. G.W. Ry (1886) 2 T. LR 400)**, where the Court held thus: **“As a general rule the only ground for stay of execution is an affidavit showing that if the damages and costs were paid there is no reasonable possibility of getting them back in the appeal succeeds.”** Albeit the facts being different in this matter, the principle remains the same.

[29] The Courts in England, have also accepted that **“the court will not grant a stay unless there are good reasons for doing so”**.

[30] Further, the Sri Lankan case of (**Sokkalah Ram Sait v/s Kumaravel Nadar and Others (13 C.L. W 52)**), it was also stated vis-a-vis stay of proceedings that **“the usual course is to stay proceedings ... only when the proceedings would cause irreparable injury to the appellant and that mere inconveniences and annoyance is not enough to induce the Court to take away from the successful party the benefit of its decree.”**

[31] It is thus abundantly clear that in Seychelles and in other cited jurisdictions, **‘irreparable loss and where special circumstances of the case so require should be paramount considerations to be taken into account by the Court in such applications for stay as the let alone chances of success on appeal or otherwise.’**

[32] Now, having set out the position of the law in regards to such applications, I will directly address the issues as raised by the DSS in terms of the objections of the first Respondent in line with the final findings and analysis of the Family Tribunal which is found more particularly at paragraphs 19 to 26 of the Ruling of which contents of the following paragraphs are reproduced verbatim below for the purpose of this Ruling and I quote:-

“[19] We take judicial notice, that, both, the 2nd Respondent Kisnan Louise, and his son, Jean-Luc Louise, have both been charged before the Supreme Court with sexual offences allegedly committed against Rebecca Louise.

[20] ...in respect of the latter, although Shani is a female, and the alleged sexual assault has been allegedly caused against her sister Rebecca, we see no risk to her health and well-being given that the alleged perpetrators of the

offences no longer live within the same household with Shani.

[21] *.... to succeed in obtaining a care order or a supervision order, one has to establish the ground by proving two elements. **The first is the presence of risk of a significant harm to the child. The second is the attribution of this harm or risk to parental upbringing, or to loss of parental control. We keep in mind that the underlying principle in both, our domestic law found in the Children Act 1982, as amended, and the principle in the English Children Act, 1989. The principle in both pieces of legislation is to safe guard the best interest of the child.***

[26] ***The family should be given another opportunity to make a fresh start. We therefore recommended that Ms Annabelle Valentin improve her relationship with the office of the director of Social Services to enable her to undergo a programme of counselling and parenting sessions that would be specifically designed to meet her needs so as enable her to receive back in her care her daughter Rebecca Louise by the latest end of February 2016.”***

(Emphasis mine).

[33] I wish to point out at this stage, that the Family Tribunal does not mention at paragraphs [19] and [20] thereof of its Ruling (supra), the alleged indecent assault on the child Shani, this Court for the purpose of this Ruling takes judicial notice as admitted by both Learned Counsels before Court that the Criminal charge is as against both children.

[34] Now, firstly, the Applicant through the averments as cited at paragraphs 5 to 14 of this Ruling (supra), illustrates through clear and concise information and evidence collected by the Department of Social Services through a mandated legal officer, with respect to alleged sexual assaults against the children which culminated in a charge in Criminal Side No. 79 of 2015 and of which judicial notice is taken as earlier noted and which charges are against the second Respondent as one of the accused as well as his son and brother of the children. This averment has not been denied by the first Respondent albeit attempts to try and pretend that she is unaware of its inception and core elements. It should be noted at this stage, that it raises great concern for the purpose of this Application, that the first Respondent has not even addressed this issue with the second Respondent albeit admittedly allowing him access to Shani Louise and on speaking terms with him.

[35] Secondly, it is also abundantly clear that the Family Tribunal through an Order of the 29th day of December 2014 made an Order for the compulsory measure of care of the child Rebecca Louise under the care and control of the DSS of which contents have not been denied by the Respondent.

[36] Thirdly, it is also not denied that through an application of the DSS of July 2015 for denial of access of the child Rebecca to the first Respondent due to growing concern of safety of Rebecca at the time of supervised access in that the first Respondent was allowing the second Respondent access to the child Rebecca hence culminating in the prohibited access to the first Respondent.

[37] The first Respondent neither denies the application of the DSS of the 6th day of July 2015 for an order of compulsory measure of care and control of Shani Louise on the basis of being influenced to not give

evidence or commit perjury and in an unsafe environment but rather again admits allowing Shani access to the second Respondent on the premise of what was said to her by her lawyer that Tribunal encouraged same when no specific Order of the Tribunal in support.

[38] Further, the DSS specifies as one of the main ground for the stay application, that the first Respondent has not observed the recommendation of the Family Tribunal so as to give effect to the Ruling and this is again not denied by the first Respondent through averments of her affidavit as above stated in agist in that she simply accepts to have talked to a social worker on Bernadette twice, seeking as to the date of the return and picking up of her child Shani.

[39] Now, having carefully noted the averments in the affidavit of both the DSS's representative as named based on the very strong information and evidence in their possession as clearly rehearsed in the affidavit and to the strong likelihood of interference to the child Rebecca and Shani Louise, especially noting the criminal charge pending as against the second Respondent and the brother of the children, it is invariably clear (without prejudice and or prejudging of the main issues on appeal more particularly the Ruling), that there is a continued danger that the children would be faced with if they remain in the custody of the first and second Respondent especially in that the first Respondent does not deny having given access to him upon her lawyer's advice.

[40] In the best interest of the children which is of course the paramount and special consideration being taken into account by this Court in this application, (let alone the chances of success on appeal or otherwise), this Court finds based on the constant denial of the first Respondent of the several material facts as transpired on the records of proceedings before the Family Tribunal and also admission of flouting the very Ruling of the Tribunal of 3rd day of February 2016, that should the stay

not be granted it shall impact severely on the physical, mental and emotional well-being of the children hence grave danger to the children as victims of the alleged sexual assaults in the pending criminal matter and hence injustice to the Appellant which has as a mandate to safeguard the well-being of the children and also grave danger to the outcome of the pending criminal trial.

[41] Additionally, weighing the balance of prejudice and the special circumstances of this case and the real likelihood of the danger to the children pending the final determination of the criminal charge and also the continued lack of cooperation of the first Respondent towards the DSS as recommended by the Family Tribunal in its Ruling which in effect is a *'precondition'* to the implementation of the Ruling per se, I find in that regard that the stay of execution of the Ruling of the Family Tribunal should be granted in view of the specific circumstances of this case and interests of the children and to avoid irreparable prejudice being caused to their well-being and safety.

[42] Hence, it follows, in the interests of justice and for reasons as enunciated above, this Application succeeds and the Court hereby rules that the Family Tribunal's Ruling of the 3rd day of February 2016 of No. 1 of 2015, is hereby stayed, pending the final determination of the appeal against it in CA 3 of 2016 before the Supreme Court.

[40] All the above said, the present Application is hereby allowed accordingly.

Signed, dated and delivered at Ile du Port on 8th day of March 2016.

**Govinden-J
Judge of the Supreme Court**