

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 11/2016

(arising in CC 19/2015)

[2016] SCSC 425

APOLLO BUSINESS SOLUTIONS (PROPRIETARY) LIMITED
Applicant

versus

MARIA KUZMINOVA
First Respondent

ABC INTERNATIONAL SERVICES (SEYCHELLES) LIMITED
Second Respondent

Heard: written submissions
Counsel: Mr. Divino Sabino for applicant
Mr. Basil Hoareau and Mr. Frank Ally for first respondent
Mr. John Renaud for second respondent
Delivered: 8 June 2016

ORDER ON MOTION

Robinson J

[1] *Issue:*

[2] The question is whether this court may, in the exercise of its discretion, under section 12 (2) (a) and (b) of the Courts Act, grant leave to Apollo Business Solutions (Proprietary)

Limited (herein "Apollo") to appeal from Civil Side: MA163/2015 arising in CC19/2015. CC19/2015 is hereinafter referred to as the "Head Suit".

[3] ***Background:***

[4] Apollo is Second Defendant in the Head Suit.

[5] Maria Kuzminova is Plaintiff in the Head Suit.

[6] ABC International Services (Seychelles) Limited (herein "ABC") is First Defendant in the Head Suit.

[7] This matter concerns Apollo and Maria Kuzminova.

[8] Apollo being dissatisfied with the Ruling of this court, in Civil Side: MA163/2015 arising in the Head Suit, has applied for leave to appeal to the Seychelles Court of Appeal under section 12 (2) (a) and (b) of the Courts Act.

[9] The matter is commenced by way of Notice of Motion supported by an affidavit sworn by Natalia Mishicheva of 103 Sham Peng Tong Building, Victoria, Mahe, Seychelles, the Director of Compliance of Apollo. The affidavit sets forth the basis for the relief requested.

[10] Maria Kuzminova has opposed the application for leave to appeal to the Seychelles Court of Appeal. She has sworn to an affidavit in reply.

[11] ***Case for Apollo:***

[12] Natalia Mishicheva has averred the following, in the affidavit, in support of the application for leave to appeal to the Seychelles Court of Appeal —

"5. That Applicant had applied to the court in MA No. 163 of 2015 for security for costs against the Respondent.

6. That on the 6th November 2015, the learned Judge Robinson dismissed the Applicant's application for security for costs. That the Applicant's attorney only received a copy of the ruling on the 10th December 2015.

7. Being dissatisfied with the Court's ruling, the Applicant wishes to appeal. The case proper has been set on the 27th January 2016 for a ruling on a disclosure application of the 1st Respondent and the hearing of an injunction application of the 1st Respondent.
8. I am advised and I verily believe that the learned Judge erred in both the law and on the facts in her ruling. An indicative draft of the grounds of appeal is herewith attached as Exhibit NM1.
9. I am therefore advised and verily believe that the intended Appeal discloses important issues relating to our law concerning the security for costs upon which further argument and a decision of the Court of Appeal would be in the public advantage and interest.
10. I accordingly pray this Honourable Court to grant the reliefs sought in the Applicant's motion."

[13] ***Case for Maria Kuzminova:***

[14] Maria Kuzminova informed by learned counsel, Mr. Basil Hoareau and Mr. Frank Ally, verily believes that (i) the application of Apollo is baseless and without merits whatsoever, and (ii) the "*indicative draft grounds of appeal*" does not disclose important issues relating to the written laws of Seychelles concerning security for costs upon which further argument and a decision of the Seychelles Court of Appeal would be in the public advantage and interest.

[15] ***Discussion:***

[16] This court has considered the evidence for Apollo and Maria kuzminova, and the written submissions of counsel for Apollo.

[17] Section 12 of the Courts Act provides for appeal in civil matters. Section 12 of the Courts Act reads as follows —

"Appeals in civil matters

12 —(1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have

jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.

- (2) (a) In civil matters no appeal shall lie as of right —
 - (i) from any interlocutory judgment or order of the Supreme Court; or
 - (ii) from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.
 - (b) In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.
 - (c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.
- (3) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the Supreme Court of Seychelles and of the Court of Appeal in England.
 - (4) In this section the expression "civil matters" includes all non-criminal matters."

[18] The cases show that two conditions must be satisfied before this court may exercise its discretionary powers to grant leave to appeal to the Seychelles Court of Appeal under section 12 (2) (a) and (b) of the Courts Act. This court must be satisfied, "*(a) that the interlocutory judgment disposes so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision; and (b) that there are grounds for treating the case as an exceptional one and granting leave to bring it under review*": see **Islands Development Company Limited v. EME Management Services Limited SCA 31/09** delivered on 11 December, 2009, [EME Management Services Limited v. Islands

Development Company Limited CS. No. 90/09] and Cable & Wireless Seychelles Limited and Innocente Alpha Ventigadoo Gangadoo SCA MA: 2 of 2013 delivered on 30 August, 2013, [Innocente Alpha Ventigadoo Gangadoo v. Cable & Wireless Seychelles Limited CS No. 175 of 2011].

[19] With reference to condition (a) above, this court is of the opinion that this matter does not dispose so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision: see the **Islands Development Company Limited** case. It is noted that the affidavit of Apollo does not contain any such averment. Apollo will be entitled as of right to question the decision in the interlocutory judgment if and when it exercises its right to appeal from the final judgment or order.

[20] I now consider condition (b) above. It is not clear to this court what the contentions of Apollo are. Apollo has made broad statements in paragraph 9, of the Affidavit, without substantiating them. Apollo has not clarified in its affidavit the, *"important issues relating to our law concerning the security for costs upon which further argument and a decision of the Court of Appeal would be in the public advantage and interest"*. Further, I agree that the *"indicative draft grounds of appeal"* does not disclose important issues relating to the written laws of Seychelles concerning security for costs upon which further argument and a decision of the Seychelles Court of Appeal would be in the public advantage and interest. In the **Islands Development Company Limited** case the Seychelles Court of Appeal was of the opinion that for a case to be treated as an exceptional one, in order to grant leave to appeal —


"[...] one must be able to show that the interlocutory judgment or order is manifestly wrong and irreparable loss would be caused to him or her if the case proper were to proceed without the interlocutory judgment or order being corrected. It would not be in the 'public advantage and interest' to unnecessarily delay trials before the Supreme Court, otherwise."


See also the **Cable & Wireless Seychelles Limited** case on point. In light of the above, this court is not satisfied that there are grounds for treating this matter as an exceptional one and granting leave to bring it under review.

[21] **DECISION**

[22] This court will not exercise its discretion under section 12 (2) (a) and (b) of the Courts Act to grant leave to Apollo to appeal to the Seychelles Court of Appeal against the Ruling of this court delivered on 6 November, 2015.

Signed, dated and delivered at Ile du Port on 8 June 2016


F Robinson
Judge of the Supreme Court



The seal is circular with the text 'FRANCOIS ROBINSON' at the top, 'SUPREME COURT' in the middle, 'SEYCHELLES' at the bottom, and 'JUDGE' at the very bottom. There are two stars on either side of the word 'SEYCHELLES'. In the center of the seal is a coat of arms featuring a lion and a unicorn.