

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA173 of 2016

(arising in CS 4 of 1999)

[2016] SCSC 473

DEVELOPMENT BANK OF SEYCHELLES

Petitioner

versus

PAUL MOREL

Respondent

Heard: 6th July 2016

Counsel: Mr Frank Ally for petitioner

Respondent in person

Delivered: 6th July 2016

ORDER

M. TWOMEY, CJ

[1] This is a Petition by the Judgment Creditor, the Development Bank of Seychelles against Paul Morel, a judgment debtor in which the former prays this Court to call upon the Judgment Debtor to show cause why he should not be committed to civil imprisonment for failing to comply with the judgment of the Court.

- [2] The Petitioner has submitted that he makes the application under section 251 of the Seychelles Code of Civil Procedure.
- [3] Sections 241 -254 of The Seychelles Code of Civil Procedure specify the procedural rules for the enforcement of judgment by such summons. These sections provide in relevant part:
- [4] 241. If the judgment is for the delivery of any specific movable property, the Registrar shall, on receipt of the application, issue a warrant to an usher of the court to seize such property, if practicable, and to deliver it to the person to whom it has been ordered to be delivered by the judgment of the court.
- [5] If the party who has been ordered by the judgment of the court to deliver any such movable property to any person intentionally refuses or neglects to comply with the judgment or order of the court, he may be committed to civil imprisonment for a period not exceeding six months, on the application of the judgment creditor.
- ...
- [6] 243. Before any person is committed to civil imprisonment under section 241 or 242 such person shall be summoned to show cause why he should not be committed, and if he fail to appear or to show cause to the satisfaction of the court, the court may make such order as to committal as it considers just...
- [7] 251. A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default or satisfaction of the judgment or order.
- [8] I note that that the substantive law of Seychelles in relation to civil imprisonment is provided by the Constitution and the Imprisonment for Debt Act.

- [9] Article 18 (15) of the Constitution of Seychelles provides that “A person shall not be imprisoned merely on the ground of the inability to fulfill a contractual obligation.”
- [10] I also note that section 2 of the Imprisonment for Debt Act (hereinafter the Act) provides that “Imprisonment for debt in civil and commercial matters for debt and against foreigners is abolished in Seychelles, except in abolished, the cases hereinafter provided for.”
- [11] Those cases are set out in section 5 of the Act which provides in relevant part that it is lawful for the Supreme Court to decree that its judgments is enforceable by imprisonment:
- [12] “(i) when a contract is annulled, as having been obtained by fraud or violence, or as having been made for the purpose of defrauding third parties;
- [13] (ii) when damages have been given by the court as amends for a prejudice caused by a fraudulent act, or by an act of bad faith;
- [14] (iii) when lessees of property do not produce at the expiration of their lease the cattle leased to them under a contract of mutual profit, or the farming or agricultural implements, or the chattels which have been entrusted to them, unless they prove to the satisfaction of the court that such cattle, implements or chattels have perished or are deficient by no fraud of theirs;
- [15] (iv) when damages have been obtained on account of any fraudulent possession of property”.
- [16] Section 6 of the Act also provides for civil imprisonment for embezzlement.
- [17] Rules of procedure are subject to the substantive law. Hence the Seychelles Code of Civil Procedure creates no right of action but rather provides for the procedure when such actions are permitted by the law.
- [18] The present matter involves a judgment debt of SR2, 081,186.00 with interest accruing at the rate of 12% per annum. The debt has arisen out of an unpaid loan by the Judgment

Debtor from the Judgment Creditor. It is not therefore a matter falling within the parameters of the Act and the court's jurisdiction to commit for civil imprisonment is therefore excluded.

[19] Much as I have sympathy for the judgment creditor in this case I have no alternative but to dismiss this petition. The Judgment Creditor is at liberty to enforce the judgment debt by alternative and legal means.

Signed, dated and delivered at Ile du Port on

M.TWOMEY
CHIEF JUSTICE