

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA187/2016**

**[2016] SCSC 535**

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**Lizanne Reddy & Ors**

**versus**

**Wavel John Charles Ramkalawan**

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Heard:

Counsel: Mr Bernard Georges for Applicant

Mr Elvis Chetty for Respondent

Delivered: 27<sup>th</sup> July 2016

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**JUDGMENT**

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**M. TWOMEY, CJ**

**[1]** The Petitioner (sic), Wavel Ramkalawan (hereinafter referred to as the Applicant), in a case wrongly titled as *Reddy and anor v Ramkalawan* applied on 23<sup>rd</sup> June 2016 for a stay of execution of a decision delivered by the Supreme Court on 27<sup>th</sup> January 2016, that is, five months after delivery of the decision in CS 97 of 2013 ( Emphasis mine).

- [2] The order in the decision given on 27<sup>th</sup> January was to the effect that the Applicant pay the Respondents, his siblings, SR 462,421.75 each as their share of their mother's estate on or before the 26<sup>th</sup> July 2016.
- [3] He has grounded this application on an affidavit in which he avers that he has lodged an appeal to the said decision, that he is informed that he has a good chance of success in the appeal and that if he were to pay his siblings now and succeed in his appeal, they would not be able to pay him back.
- [4] The application is not opposed but Mr. Chetty, Counsel for the Respondents has asked for some form of security.
- [5] Insofar as the law relating to a stay of execution of a judgment is concerned, it is settled authority in Seychelles that the court will not without good reason delay a successful plaintiff from enforcing a judgement but will on the other hand not deny an unsuccessful defendant the possible benefit from the appeal process (*Chang-Tave v Chang-Tave* (2003) SLR 74).
- [6] It is also settled authority that before granting such a stay the court has to be satisfied that the Applicant for the stay has valid or substantial grounds of appeal.
- [7] The Applicant in this case has appealed on two grounds, - the first in which it is alleged that the Court misinterpreted article 918 of the Civil Code. He sets out an incomplete quotation of the provisions of article 918, namely by omitting the words 'or absolutely' thus conveying the erroneous indication that the operation of the presumption in favour of a disinherited heir does not apply when property is retained absolutely but only in cases of retention of a usufruct interest or a life annuity. The second ground of appeal concerns an appreciation of evidence by the court.
- [8] Although it is unnecessary to examine the merits or likely chances of success of the appeal, the court has nevertheless to assess whether the Appellant has valid or substantial grounds of appeal (*Avalon v Berlouis* (2003) SLR 59).
- [9] I am not persuaded that these are substantial grounds of appeal or that the appellant has any prospect of success in this appeal. I am also unable to accept that this stay of

execution filed at the last hour and with procedural irregularities is entirely of good faith and not a means to deny the defendants the benefit of the judgement.

**[10]** I am prepared however to consider the final averment of the affidavit of the Applicant insofar as the likelihood of the Respondents not paying him back the amounts due if they were to be paid before the appeal process is completed.

**[11]** In the circumstances and out of an abundance of caution, I order the Applicant, Wavel Ramkalawan to pay the monies owed to the Respondents in the Court Registry on or before Friday 29<sup>th</sup> July 2016. The monies will be subsequently disbursed to the successful party after the appeal process is completed.

**[12]** Costs shall abide the event.

Signed, dated and delivered at Ile du Port on

**M. TWOMEY**  
Chief Justice