

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 374/2014

(arising in CS 54/2014)

[2017] SCSC 299

JOELLY ETIENNE

Petitioner

versus

PUBLIC UTILITIES CORPORATION

Respondent

Heard:

Counsel: Ms. L. Pool for petitioner

Mr. Rajasundaram for respondent

Delivered: 30 March 2017

RULING ON MOTION

Renaud J

The Petition

[1] On 13th December, 2016 Learned Counsel for the Defendant entered a Notice of Motion under Section 6 of the Courts Act supported by affidavit deposed by the CEO of the

Defendant, moving the Court to order the re-opening of the case and to fix a date for continuation of hearing of the Defendant's side.

The Facts

- [2] The Plaintiff/Respondent instituted a suit against the Defendant/Petitioner in civil case CS 154 of 2014.
- [3] This suit was entered on 12th June, 2014 and first mentioned on 23rd July, 2014 and eventually fixed for hearing on 5th March, 2015. The suit was not heard because the Defendant's witnesses were not available. An adjournment was sought by the Defendant's Counsel and was granted. It was adjourned to 8th June, 2015 to be completely heard and thereafter for submissions to be made.
- [4] On 8th June, 2015 the witnesses of the Plaintiff, both being Doctors at Seychelles Hospital did not attend to testify. The suit was adjourned for continuation on 8th and 16th October, 2015. At that point Learned Counsel for the Plaintiff, Mr. W. Herminie, was not in a position to continue acting as Counsel so the Plaintiff was allowed further time to seek the service of another Counsel.
- [5] On 3rd February, 2016 Learned Counsel Ms. L. Pool appeared for the Plaintiff and the continuation of the hearing set for 30th June, 2016 when it could not be heard as the presence of the Doctor was required. A further adjournment was granted to 17th and 25th November, 2016. The Plaintiff closed its case on 17th November, 2016 and it was for the Defendant to adduce the evidence on behalf of the Defendant.
- [6] Learned Counsel for the Defendant sought an adjournment of the hearing on the ground that one of his witnesses, an employee of the Defendant, had gone to work on Praslin.
- [7] The Court was not pleased with that excuse because there was no indication of any emergency on Praslin that could not wait for the next day, and, secondly, the other witness could have attended Court and testify as she was not on Praslin. Learned Counsel for the Defendant assured Court that the suit will be proceeded with, unhindered

and without fail at the postponed hearing date and he will complete the Defendant's case without fail, on that day.

[8] The Court acceded to that request and adjourned the case for continuation on 25th November, 2016.

[9] Learned Counsel undertook to start the case for the Defendant on 25th November, 2016,

[10] One of the two witnesses is a Supervisor under whom the Plaintiff worked and the other one is a staff of the Personnel Department of the Defendant.

[11] On 25th November, 2016 Learned Counsel for the Defendant informed Court that his two short witnesses were not available to testify because there had been a theft in the Defendant's organization and those witnesses were helping the Police in their investigations. The theft had occurred two days prior. The witnesses were not remanded as they were suspects who were not under investigation.

[12] Learned Counsel for the Defendant sought a further adjournment to a later date, which the Court was not inclined to grant since the reasons for the absence of both witnesses were not deemed sufficient and cogent. Instead, the Court adjourned for 15 minutes to allow Defendant's Counsel the opportunity to contact the CEO of the Defendant so that the latter can intervene in order to get the witnesses to attend Court. To facilitate matters the Court indicated that one witness comes to testify while the other one assisted the Police, and that the Court was further prepared to grant sufficient time to allow the first witness to go back and for the second witness to come and testify. Further, the Court made it abundantly clear that the Court diary was such that if the case was to be adjourned it would not be heard before June, 2017.

[13] The fact that the Defendant considered it more important for the two witnesses to stay put and assist the Police and not to attend Court shows disrespect to the role of the Court.

[14] At this point the hearing could not proceed further as there were no witnesses to testify. The case was accordingly deemed closed and adjourned to receive submissions of Counsel on or before 18th January, 2017, after which judgment will be delivered.

[15] In the intervening period the Plaintiff has written to the Chief Justice expressing his disappointment for the delay in the case to be concluded.

The Law

[16] Section 6 of the Courts Act, Cap 52 provides that this Court is a Court of Equity and is invested with powers, authority, and jurisdiction to administer justice and do all acts for due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.

[17] Whether to grant or deny an application is entirely within the Court's discretion in the exercise of its equitable jurisdiction under Section 6. Section 6 ensures that an aggrieved person is provided with a remedy, when there is no sufficient remedy elsewhere provided by law.

[18] Those who come to equity should come with clean hands. There should not be any other legal remedy available to the applicant who seeks an equitable remedy. The Court balances the interests of the parties by minimizing the risk of possible abuse by an applicant to unnecessarily delay the judicial process. The Court also considers if there are other legal remedies available to an applicant to prevent any irreversible or irreparable injury which is substantial and which could not be adequately remedied or atoned for by damages. Equally the Court takes into account all relevant facts, competing interests and circumstances of the case and decides whether, in the interests of justice, to grant or refuse the application.

Decision

[19] I have given careful consideration to the depositions in the supporting affidavit, the facts of the case as set out above as well as the position of law on the issue. I note that the Defendant is praying this Court to exercise its discretion in favour of the Defendant and to grant its motion.

[20] In considering this prayer this Court has taken into consideration the facts of the case and has assessed whether the granting of this motion will meet the end of justice. This Court

has also considered whether there is no other sufficient legal remedy that is provided by the law of Seychelles. This Court bear in mind that any party who comes to equity should come with clean hands. In the instant matter, the facts show that the Applicant was afforded the opportunity on more than one occasions to adduce evidence in its defence but it somehow failed to do so. On the first occasion its witness did not come to Court because he considered his duty on Praslin to be more important than attending Court and the case had to be adjourned at the inconvenience of and delay in hearing the case of the Plaintiff. On another occasion the witnesses did not attend Court because they considered that assisting the Police in their investigation are more important than attending Court. This Court has to balance the interests of the parties and consider how to minimize the risk of possible abuse by the Applicant to unnecessarily delay the judicial process. The Court is minded to observe that there are other legal remedies available to an applicant to prevent any injury by ultimately appealing to the Court of Appeal. Taking into account all the relevant facts, the competing interests and circumstances of the case, this Court hereby rules that, in the interests of justice, it should not grant the application of the Petitioner/Defendant.

[21] The Petition is accordingly dismissed with costs.

Signed, dated and delivered at Ile du Port on 30 March 2017

B Renaud
Judge of the Supreme Court