

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 261/2017

(arising in CS 59/2016)

[2017] SCSC 1043

Seychelles Commercial Bank

Applicant

vs

Felix Amelie

Respondent

Heard: 11 October 2017

Counsel: Mr. John Renaud for Applicant
Mr. Basil Hoareau for Respondent

Delivered: 6 November 2017

ORDER ON APPLICATION

M. TWOMEY, CJ

[1] The Applicant has applied for a stay of execution of a judgement delivered by this Court on 22 May 2017 in which it was ordered to pay the Respondent the sum of SR 50,000 moral damages together with costs of the suit, to rectify the negative credit information passed on to the Central Bank about the Respondent; and in which the Registrar General was ordered to discharge the charges on Parcel J682 in favour of the Applicant.

- [2] In its application supported by affidavit filed on 8 September 2017, the Managing Director of the Applicant depones that that the Applicant has appealed the decision of the Court, that the grounds of appeal are attached to the application, that the Applicant has an overwhelming chance of success in the appeal, that unless the stay was granted the Bank would suffer from great injustice, inconvenience and financial prejudice and that it would be fair and equitable to grant the stay.
- [3] The notice of appeal dated 3 July 2017 was filed on 5 July 2017.
- [4] From the outset I note therefore that the appeal is hopelessly out of time since Rule 18 (1) of the Seychelles Court of Appeal Rules provides:
- “Every appeal shall be brought by notice in writing (hereinafter called “the notice of appeal”) which shall be lodged with the Registrar of the Supreme Court within thirty days after the date of the decision appealed against” (emphasis mine) .*
- [5] There is no averment that an application for leave to appeal out of time has been brought and has been successful in this case. In the circumstances, the application for a stay of execution premised on a potentially non-existent appeal is fatal to this application on its own.
- [6] In any event although I consider this an academic exercise, I proceed to consider the other points raised by the Applicant, namely the chance of success of the appeal and the hardship the Appellant would suffer if the stay was not granted.
- [7] It is settled authority in Seychelles that the court will not without good reason delay a successful plaintiff from enforcing a judgement but will balance the interest of the parties and minimise the risk of possible abuse by an appellant to delay the respondent from realising the fruits of a judgement (*Chang-Tave v Chang-Tave* (2003) SLR 74, *Avalon v Berlouis* (2003) SLR 59, *International Investment Trading v Piazzola* (2005) SLR 57, *Faye v Lefevre* (2012) SLR 44).

[8] Although the Applicant has deponed through its Managing Director that it has overwhelming chances of success in its appeal and this court cannot conclusively rule on the appeal it has nevertheless to consider whether the appeal has some prospect of success. In *Reddy and Ors v Ramkalawan* (MA 187/2016) [2016] SCSC 535, although a stay of execution was granted given the substantial award in the case and the possibility that it could not be paid back, I nevertheless stated:

“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.”

[9] These remarks are equally applicable to this case. Further, as a stay is an equitable remedy, the court has equitable jurisdiction in this respect. In balancing the interests of the parties, I am of the view that more harm will be visited on the Respondent especially in terms of the negative financial impact on his business rather than on the Applicant, a commercial entity.

[10] For all these reason, I refuse to order a stay of execution of the judgement delivered on 22 May 2017 and dismiss the application with costs.

Signed, dated and delivered at Ile du Port on 6 November 2017.

M. TWOMEY
Chief Justice