

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 53/2018**

**(arising in CS 14/2018)**

**[2018] SCSC 217**

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**MARIELLE BONNE  
JERINA BONNE**

Applicant

versus

**THE VOLLEYBALL FEDERATION  
REPRESENTED BY RONALD WONG**

Respondent

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Heard:

Counsel: Mrs. Alexia Amesbury for applicant

Mr. Joel Camille for respondent

Delivered: 2<sup>nd</sup> March 2018

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**RULING ON MOTION**

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L. Pillay, J

[1] The ruling follows a motion by counsel for the Applicants for an order that the execution of the five year ban imposed on the Applicants be stayed.

[2] The affidavit in support of the motion reads as follows:

1. That we are the Deponents above-named and the Applicants herein.
2. That we have filed a Petition before the Supreme Court for Judicial Review of the Respondent's decision to ban us from volleyball and all volleyball related activities.
3. That in 2017, prior to the incident that gave rise to the five year ban we were selected to play in an international volleyball match that is due to take place on 3<sup>rd</sup> March 2018 and that if the five year ban is not stayed pending the determination of the case we will lose this opportunity to represent Seychelles.
4. That as professional volleyball players on the Senior Woman National Team we will be significantly impoverished if the ban is not stayed thus allowing us to continue to play volleyball and to augment our earnings.

[3] The Respondent having been served with the motion appeared and resisted the motion. Mr. Camille for the Respondent argued that the Affidavit is lacking in view of the fact that there is no supporting documents attached. He also argued that the Applicants has not established that the balance of convenience lies in their favour.

[4] In fact Mr. Camille is right. There are no documents attached. I note that the motion of course has to come out of a main case and indeed there is a file for an application for Judicial Review. However the Applicant should have attached copy of the Petition to this motion.

[5] Furthermore the Applicant avers that should they not be allowed to play they will be impoverished because they will not be able to augment their earnings. There is no supporting document indicating how and in what sum the Applicants earnings are augmented by them playing on the "Senior Woman National Team".

[6] The law with regards to applications for injunctions is very clear. In order for a Court to exercise its discretionary powers under section 5 of the Courts Act, the Applicants must show that there is a serious question to be tried and that damages are not an adequate remedy (see **Pest Control v Fill Civ 175/1991, 6<sup>th</sup> January 1992**).

[7] In the case of **Techno International v George SSC 147/2002, 31 July 2002**, the Court went further and decided that in addition to the two above considerations it also had to consider the “balance of convenience” which in **Dhanjee v Electoral Commissioner SCA 20/2011, 27 May 2011** was explained as follows:

- (i) whether more harm will be done by granting or refusing the injunction;
- (ii) whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused; and
- (c) whether the breach of the appellant’s rights would outweigh the rights of other in society.

[8] In truth I cannot see what prejudice will be caused to the Respondents if the injunction is granted, however the fact remains that it is for the Applicant to satisfy the Court that more harm will be caused to them by the Court’s refusal to grant the motion, which they have not done.

[9] The ban may be harsh and unfair, which in any case is not for the Court to consider at this point in time, but it doesn’t necessarily follow that it will cause irreparable harm. The irreparable harm that it will cause must be averred and substantiated.

[10] I do not follow counsel’s argument that the Applicants will be caused irreparable harm because the game was scheduled last year and was meant to be played last year and so should not be subject to the ban.

[11] I can understand that the Applicants would be caused harm by being prohibited from playing a game that could earn them substantial amounts of money or that could be a gate-way for them to be drafted into other professional teams or international teams and further their careers or for that matter a game that is a once in a lifetime opportunity, but that has not been raised nor supported.

[12] The discretion is to be exercised judicially (see **Colling v Labrosse SSC206/2000, 13<sup>th</sup> June 2001**) and not out of mercy. There needs to be clear reasons for granting or refusing to exercise the discretion based on the application and arguments before the Court.

**[13]** In the instant case I find that the Applicants have failed to put before the Court sufficient reasons to satisfy the Court that the discretion should be exercised in their favour.

**[14]** On the basis of the above the application is dismissed. The file is sent back to registry for process in the main case.

Signed, dated and delivered at Ile du Port on 1 March 2018

L. Pillay, J  
Judge of the Supreme Court