

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 314/2017
(arising in CS 33/2016)**

[2018] SCSC 212

IN THE MATTER OF:

CECILE BONIFACE

Applicant

Versus

GONZALVES MALVINA

Respondent

Heard: 8th day of February 2018

Counsel: Mr. A. Juliette for Applicant
Ms. A. Benoiton for the Respondent

Delivered: 2nd day of March 2018

RULING ON MOTION FOR STAY OF EXECUTION

Govinden S. J

[1] This Ruling arises out of an Application of the 10th November 2017 filed by Cecile Boniface (“Applicant”), for Stay of Execution of the decision of this Court by way of Judgment of the 10th November 2017 (“Judgment”).

- [2] The Respondent is resisting the Application by way of Affidavit in Reply of the 18th January 2018.
- [3] A brief factual and procedural background to this matter is, that, the Applicant in support of her Application relies on her attached Affidavit of the 10th November 2017, which is to the effect that she has filed an Appeal against the Judgment which Appeal involves inter alia “a matrimonial home” from which she has been ordered to vacate forthwith.
- [4] As a result it is averred that she finds herself in a complete impossible situation for her to find any alternative accommodation if the Judgment to vacate is to be enforced immediately.
- [5] It is further averred by the Applicant that she has a good chance of success on Appeal and aver that she will be greatly prejudiced if the Judgment is to be enforced against her immediately without having been afforded the opportunity to exhaust all legal avenues opened to her, more particularly the right of appeal to the Seychelles Court of Appeal.
- [6] It is thus averred that it is very urgent, just and necessary that any execution of the Judgment be stayed pending the hearing and full determination of her Appeal as afore-referred. A notice of Appeal and grounds thereto are attached to the Application of which note has been taken of for the purpose of this Ruling.
- [7] The Respondent on his part, contest the Application and testified on his own behalf and also called one witness namely one Georgette Jacques in objections.
- [8] The Respondent in a gist, objected to the Application, in denying that the dwelling house in question is the matrimonial home as alleged in the Notice of Appeal and maintained his original position that the house was built by him prior to the marriage with the Respondent.
- [9] Respondent further testified that he as a result of the Respondent’s staying in his house he had to move in his partner’s parents’ house which is a familial home shared by six people and uncomfortable and crowded and he feels that he is entitled to live in his own house and continue to enjoy same as he built it with his own funds.

- [10] Respondent testified further, that, the Applicant has been ordered to leave the house and he has been asking her for years to leave hence the Judgment cannot be a total surprise to her as averred in her affidavit.
- [11] The Respondent thus prays that the Applicant's Application not be allowed for he has overstayed at her current partner's parents' residence and he wishes to continue his future in his own home and that the Applicant will not suffer great prejudice if her Application is not allowed as the Applicant does not have a good chance of succeeding in her Appeal.
- [12] In the alternative, it was testified and averred in the said Affidavit that if the Judgment is different before the Court of Appeal, the Applicant is only ever to be entitled to a share in the house and not the house in its entirety for her sole benefit.
- [13] The Respondent's witness Georgette Jacques, testified in support of the Respondent's testimony and Affidavit in that he had overstayed at her parents' residence and was causing hardship to the health and daily lives of the latter who were elderly persons and hence should move out.
- [14] Now, moving on the legal standards applicable in this matter, I have seriously considered the contents of the Affidavit evidence of the Applicant and that of the Respondent as well as of the evidence of Respondent in support of his said Affidavit and that of witness Georgette Jacques (supra).
- [15] It is to be noted at this juncture, that at this stage of these proceedings, it would be premature for this Court to venture to analyse the grounds of Appeal as per the Memorandum of Appeal as filed and or give a prelude of the outcome of the Appeal and or analyse evidence which would be taken into account should that Appeal be granted (*and matter referred back for re-hearing*) before this Court.
- [16] At this stage thus, the relevant considerations to be taken into account for the purpose of proceedings have been clearly stated in the case of **(Becker v/s Earl's Court (1911) 56)** is that, ***"the question whether or not to grant a stay is entirely in the discretion of the Court."*** and which relevant consideration has been amply considered in our local case laws of inter alia, vide: **(Macdonald Pool v/s Despilly William CS. No. 244 of 1993),**

**(La Serenissima Limited v Francesco Boldrini & Ors. (Cs. No. 471 of 1999)),
(Falcons Enterprise v/s David Essack & Ors. C.S. No. 139 of 2000)).**

- [17] Thus, bearing in mind the well settled guidelines in the above-cited Authorities on the subject matter, I hold that it is incumbent on the Applicant to disclose in her Affidavit the grounds relied upon in support of the application for stay of execution and objections of the Respondents in the same light. The said requirement finds emphasis in the case of **(Akins v. G.W. Ry (1886) 2 T. LR 400)**, where the Court held thus: ***“As a general rule the only ground for stay of execution is an affidavit showing that if the damages and costs were paid there is no reasonable possibility of getting them back in the appeal succeeds.”*** Albeit the facts being different in this matter, the principle remains the same.
- [18] Our Courts have also accepted that, ***“the court will not grant a stay unless there are good reasons for doing so”*** and as stated in the matter of the Sri Lankan case of **(Sokkhalal Ram Sait v/s Kumaravel Nadar and Others (13 C.L. W 52))**, , ***“the usual course is to stay proceedings ... only when the proceedings would cause irreparable injury to the appellant and that mere inconveniences and annoyance is not enough to induce the Court to take away from the successful party the benefit of its decree.”***
- [19] It is thus trite that, ***‘irreparable loss and where special circumstances of the case so require should be paramount considerations to be taken into account by the Court in such applications for stay let alone chances of success on appeal or otherwise.’***
- [20] After having carefully noted the averments in the Affidavits and evidence afore-cited of both the Applicant and Respondent and their witness, with special emphasis on the principles as laid down in the Authorities as cited, I am not convinced by the arguments of the Respondent that he will suffer greater prejudice than the Applicant noting the “special circumstances” of this case and the strong likelihood of the Appeal being rendered a nugatory should this application be refused noting more particularly (without prejudice and or prejudging the main issues on appeal against the Judgement of this very Court) and (let alone the chances of success on appeal or otherwise).

[21] I find as a direct consequence after weighing the balance of prejudice and the special circumstances of this case with respect to the Applicant's standpoint, that the stay of execution of the Judgement should be granted in the interest of justice and to avoid irreparable prejudice being caused to the Applicant at this stage of the proceedings.

[22] Hence, it follows, in the interests of justice and for reasons as enunciated above, that this Application succeeds and the Court hereby rules that the Judgment of the 9th November 2017 in (*Cs 33 of 2016 2017/SCSC 1055*), is hereby stayed, pending the final determination of the Appeal against it in *SCA 41 of 2017* before the Court of Appeal. It follows that the status quo prior to the Judgement of the dwelling house in issue remains unchanged.

[23] All the above said, the present Application is hereby allowed accordingly.

Signed, dated and delivered at Ile du Port on 2nd day of March 2018.

Govinden S-J
Judge of the Supreme Court