

IN THE SUPREME COURT OF SEYCHELLES

MA. 339 of 2017

Arising in CS No. 130 of 2015

[2018] SCSC 414

MARY GEERS

Applicant

YVES MAUREL AND ANOTHER

Respondents

Heard: 2nd day of March 2018

Counsel: Mr. A. Derjacques for the Applicant
Mr. S. Rouillon for the Respondents

Delivered: 24th day of April 2018

RULING

S. ANDRE J

- [1] This is a Ruling arising out of a Motion of the 7th December 2017 for leave to appeal and stay of execution pending the intended appeal against the Interim Ruling of this Court dated the 20th November 2017 (“Interim Ruling”).
- [2] The proposed notice and grounds of appeal were provided to the Court of the 1st December 2017 (“Notice of Appeal”) and the Court notes its contents for the purpose of this Ruling.
- [3] Written submissions were filed by both Learned Counsels for and against the Motion of the 13th and 28th February 2018 and same have been duly considered by this Court.
- [4] For the purpose of this Ruling, I seriously considered the contents of the Affidavit evidence of the Applicant in this matter and I note further that there is no counter affidavits filed by the Respondents excepted written submissions of Learned Counsel as referred (supra).
- [5] I further note that at this stage of the proceedings, it would be premature for this Court to venture to analyze the “tentative grounds of appeal” or give a prelude of the outcome of the appeal as per

filed notice of appeal and scrutinized at length by both Learned Counsels in their written submissions and which I expect will be put forth before the Court of Appeal for and against the Interim Ruling of this Court.

- [6] With regards to application for leave to appeal as requested by the Applicant, it is trite to note that as enunciated in the case of (*Pillay v/s Pillay (No2) 1970 No. 17*), the principles to be considered by the court in same and similar cases, include that the “*interlocutory order sought would substantially dispose of the action, and there are grounds for treating the case as exceptional*. The latter condition was further reinforced in the case of (*Mazzorchi and another v/s Government of Seychelles (1996)*), where it was made evident that the discretion is wide and left with the adjudicating court.
- [7] Now, in this case as argued by the Applicant, the intended appeal as per the notice of appeal and grounds as filed if it succeeds will stop the civil action from moving further to hearing on the merits before this Court and which dates have already been fixed by this Court in June this year. An appeal Ruling it should be noted if rendered in favour of the Applicant will lead to dismissal of the Plaint before this Court.
- [8] Noting the legal grounds as raised in the notice of appeal and duly substantiated in the written submissions of Learned Counsel in the light of the Applicant’s sacrosanct right of appeal as enshrined in Article 120 of the Constitution, I find that on a balance of the rights of all the parties in this case and the circumstances giving rise to this intended notice of appeal that the leave to appeal should be granted to avoid irreparable prejudice being caused to the Applicant and which balance of inconvenience I consider weighs in favour of the Applicant noting the facts of this case for to wait for the hearing to be finalized as suggested by Learned Counsel for the Respondent in his submissions for the Applicant to appeal is untenable as a reasonable solution at this stage of the proceedings and noting the effect of success on appeal.
- [9] It follows thus that the leave to appeal is hereby granted as per proposed notice and memorandum of appeal as attached in support of the Application.
- [10] With regards to the stay of application, at this stage, thus, since the leave to appeal has been granted (*supra*), the relevant considerations to be taken into account for the purpose of the proceedings with respect to the stay application, 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.*” This consideration has been amply considered our local case laws of inter alia, Vide: (*Macdonald Pool v/s Despilly William (CS No.244 of 1993)*), (*La Serenisima Limited v/s Francesco Boldrini &Ors (CS No.471 of 1999)*), (*Falcons Enterprise v/s David Essack & Ors (CS No.139 of 2000)*).
- [11] 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.

[12] Our courts have also accepted that the court will not grant a stay unless there are good reasons for doing so and that 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.

[13] It is also 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 a success on appeal or otherwise.

[14] After carefully noting the averments in the Affidavit of the Applicant in this matter as afore-cited with special emphasis on the principles as laid down in the cited Authorities, I am convinced that she will suffer greater prejudice than the Respondent noting the special circumstances in noting the likelihood of the appeal being rendered a nugatory should this application be refused and this noting more particularly (without prejudice and prejudging the main issues as afore-mentioned on appeal against the Ruling of this very Court) and (let alone the chances of success on appeal or otherwise).

[15] I find thus as a direct consequence that after weighing the balance of prejudice and the special circumstances of this case as explained above with respect to the Applicant's standpoint, that the stay of the Interim Ruling should be granted in the interest of justice and to avoid irreparable prejudice being caused to the Applicant at this stage of the proceedings. Hence, it follows, in the interests of justice and for reasons as enunciated above, the stay application also succeeds.

[16] It follows thus, in line with the above observations and analysis that the Interim Ruling of this Court of the 20th November 2017 is hereby stayed pending the full and final determination of the appeal as intended by the Applicant. New dates shall be fixed with the consent of the parties.

[17] I so order.

Signed and dated and delivered at Ile du Port on the day of April 2018.

S. André
Judge of the Supreme Court