

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA221/2017  
(Arising in CS 109/2015)

[2017] SCSC 1106

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Simon Alcindor & ors

Plaintiff

versus

Maria Amina Morel & ors

Defendants

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Counsel: Mr Elizabeth for the Plaintiffs  
Mr Bonte for the 1<sup>st</sup> Defendant  
Mr Sabino for the 2<sup>nd</sup> Defendant

Delivered: 20 November 2017

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**RULING**

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**M. TWOMEY, CJ**

1. The Applicant has applied for a stay of execution of a judgment of this Court dated 17 May 2017 pending an appeal before the Court of Appeal
2. It has submitted that it has an overwhelming chance of success in its appeal and that if the stay is not granted its appeal if successful would be rendered nugatory.
3. Section 230 of the Seychelles Code of Civil Procedure applies in these circumstances and provides that an appeal shall not operate as a stay of execution unless the Court so orders and subject to such terms as it may impose.

4. The authorities in this jurisdiction have confirmed that it is entirely in the discretion of the Court to grant a stay (*Pool v William* (1996) SLR 206, *Chang-Tave v Chang-Tave* (203) SLR 74, *Avalon v Berlouis* (2003) SLR 59, *International Investment Trading v Piazzola* (2005) SLR 57 and *Faye v Lefevre* (2012) SLR 44).
5. The considerations for granting a stay of execution include the weighing of the interests of the parties to establish whether the appeal has some chance of success, the balance of convenience, hardship and irreparable damage that may be suffered by the appellant and the concern that unless a stay was ordered the appeal would be rendered nugatory (See *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685, *Choppy (Pty) Ltd v NJS Construction (Pty) Ltd* (2011) SLR 215).
6. Although it is trite that the court hearing the stay of execution does not examine the merits of the appeal or likely chances of its success, it has to examine if the appeal has some prospect of success or if there is a substantial question of law to be adjudicated. The present application mentions an appeal before the Court of Appeal but neither the notice of the appeal nor the grounds thereof are appended hereto and this Court has had no opportunity to examine the same to make considerations as it ought to in such applications.
7. I have nevertheless read the judgment and have apprised myself of the fact that this decision was based mainly on the appreciation of the trial judge of the demeanor of the witnesses. It is a well-established principle of law that the trial court has the right to accept or reject the evidence of a witness. This principle emanates from long standing practice that it is the trial court which is most suited to study and assess the demeanour of the witnesses before it. Hence, an appellate court will not easily depart from such an appreciation unless for good cause. I am not of the view that an appeal has not much chance of success.
8. Further, in exercising this court's discretion and weighing the considerations such as the balance of convenience and the competing rights of the parties I am of the view that it would be unfair to deny the Respondent the fruit of their judgment, which is namely to

prevent the registration of transfers of property already executed, especially given the fact that this judgment was delivered six years after the action was filed.

9. In the circumstances the application for the stay of execution is denied with costs.

Signed, dated and delivered at Ile du Port on 20 November 2017.



**M. TWOMEY**  
Chief Justice



**Dr. Mathilda Twomey**  
Chief Justice  
Supreme Court of Seychelles

