

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA265/2018

[2018] SCSC

Wendy Pierre	Applicant
versus	
Better Life Foundation	Respondent

Heard: 28 November 2018

Counsel: Mr. Kumar for Applicant
Mr Shah for the Respondent

Delivered: 28 November 2018

ORDER

M. TWOMEY, CJ

1. The Applicant applied to this Court on 28 November 2018 by notice of motion to be granted leave to file an appeal out of time against an order of this Court dated 23 May 2018.
2. By the same motion the applicant has applied for a stay of execution of the said order.
3. The applications are supported by an affidavit together with annexures of the Registrar General. The affidavit contains averments to the effect that on service of the said court order on her, she sought the advice of the Attorney General on 4 June 2018 as to whether

she should comply with the said order. The advice of the Attorney General was conveyed to her over three months later.

4. The present applications to the court were made over six months later, five months outside the leave time.
5. No explanation is given for the *laches* of the Applicant which is aggravated by the fact that the Applicant is a government department with all the resources to bring the application within the time provided by law.
6. The Respondent has opposed the applications on several grounds, stating that the delay in execution is highly prejudicial to the Association because of its continued lack of status hindering its functioning.
7. The Respondent has also stated that the Applicant had no authority to strike off the Respondent from the Register and in any case section 17 (1) of the Registration of Associations Act permits the court in such circumstances to make any order it thinks fit.
8. With regard to the application for a stay of execution, pursuant to section 225 of the Seychelles Code of Civil Procedure, such applications are necessary because an application for execution may be made immediately after the delivery of the judgment by a judgment creditor or forty eight hours after the judgment if the judgment debtor defaults in complying with the court order or fails to satisfy judgment.
9. In addition it must be noted that section 230 of the Seychelles Code of Civil Procedure provides:
“An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court or the appellate court so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be invalidated except so far as the appellate court may direct.”

10. Section 230 makes it clear that this court has limited powers in respect of stays. In *Geers v de Lafontaine* Civil Side: MA 200/18 (arising in CS 78/2015) the Court stated:

“Jurisprudence constante on this issue is to the effect that the judge’s inherent discretion is exercised based generally on whether it is just and convenient to make such an order, and to prevent undue prejudice to the parties. The decision is reached by striking a judicious and equitable balance between the principle that the successful party in the litigation should be able to be allowed to reap the fruits of his litigation and not obtain a hollow victory, and the countervailing principle that should the unsuccessful party in litigation be ultimately successful in his appeal, he ought not be deprived of the fruits of his litigation due to the result of his appeal being rendered nugatory or the appellant would suffer loss which could not be compensated in damages. The court is entitled to exercise the power upon such terms as it determines (see *Pool v William CS 224/1993*, *Chang v Tave v Chang Tave* (2003) SLR 74, *Faye v Lefevre* (2012) SLR 44).

11. The general rule to be observed is that a stay should be declined, unless solid grounds are shown. A stay of execution is therefore an exception rather than the rule (see *Smith, Hogg & Co Ltd v. The Black Sea and Baltic General Insurance Co Ltd* 162 LTR 11).
12. Moreover, in the present case, the application does not state the chances of success of a potential appeal against the said order, nor is the memorandum of the proposed appeal attached to the application.
13. I also note that the applicant is Mrs. Wendy Pierre in her personal capacity as opposed to in her representational capacity as the Registrar of Associations. That alone is enough to have the application dismissed.
14. For all the above reasons, the application for leave to appeal out of time is refused and the application for a stay of execution is dismissed. The Applicant is to comply immediately with the order of this Court to reinstate the respondent to the Register of Association.

15. With costs.

Signed, dated and delivered at Ile du Port on 28 November 2018.

M. TWOMEY
Chief Justice