

**SUPREME COURT OF SEYCHELLES**

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**Not Reportable**  
[2019] SCSC 98  
MA 310/2018  
(Arising in CC30/2012)

In the matter between:

**VIJAY CONSTRUCTION (PROPRIETARY) LIMITED**                      **Applicant**  
*(rep. by Bernard Georges)*

and

**EASTERN EUROPEAN ENGINEERING LIMITED**                      **Respondent**  
*(rep. by Elvis Chetty)*

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**Neutral Citation:** *Vijay Construction (Pty) Ltd v Eastern European Engineering Ltd*  
(MA310/2018) [2019] SCSC ..... (11 February 2019).

**Before:** E. Carolus J

**Summary:** Application for stay of execution of judgment

**Heard:** 14 January 2019

**Delivered:** 11 February 2019

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**ORDER**

The Application for Stay of Execution is dismissed.

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**RULING**

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**CAROLUS J**

**Background**

[1] This Ruling arises from an Application for the stay of execution of a judgment of Robinson J, delivered on 10<sup>th</sup> October 2018 in CC30 of 2012 (“the main case”) awarding the Plaintiff Eastern European Engineering Limited (“EEEL”) (Respondent in these proceedings) the sum of \$112,899.00 with interest and costs, pending appeal of the said judgment. The

Defendant in the main case is Vijay Construction (Proprietary) Limited (“Vijay”), the Applicant in these proceedings.

- [2] The dispute in the main case concerns an agreement between the parties for the handing over of a batching plant and a block machine by EEEL to Vijay in consideration of the sum of \$112,899.00. EEEL claimed that Vijay had failed to pay to it the purchase price of the batching plant and block machine which were still in the possession of Vijay. Vijay on the other hand, admits that the batching plant is in its possession but claims that the block machine was never delivered to it and remains in the possession of EEEL.
- [3] The Court having found that the evidence established that the Defendant abandoned the block machine on the site of the Savoy, and being satisfied that delivery of the block machine was done in terms of Article 1063 Of the Civil Code of Seychelles Act, entered judgment in favour of the Plaintiff.
- [4] The Applicant has filed an Appeal in the Court of Appeal against part of the Judgment “as finds that that the delivery of the plant was effected by the Plaintiff to the Defendant” and seeks the reduction of the sum awarded to the Respondent by USD 56449.50 being the cost of the undelivered part of the plant.
- [5] The Application for stay of execution is supported by an Affidavit sworn by Kaushalkumar Patel who avers that he is a Director of the company and consequently empowered to swear the Affidavit on behalf of the company.
- [6] The Respondent opposed the Application but did not file any Reply thereto.

#### **The Applicant’s Case**

- [7] In his Affidavit Kaushalkumar Patel depones as follows -
- [8] He avers that the Applicant has filed an appeal against the judgment of Robinson J and produced a copy of the notice of appeal lodged on 23 November 2018. He avers that he is informed and believes that the Applicant has good grounds of succeeding in its appeal especially since the learned trial judge ignored uncontroverted evidence that the Defendant

had prevented the delivery of a part of the equipment, the subject of the suit to the Defendant.

- [9] He also avers that he is advised that EEEL has taken steps to enforce the judgment and is concerned that it does so before the Court of Appeal has had the chance of hearing the appeal filed. He avers that if this occurs, the appeal will be rendered otiose in that EEEL is a shell company with offshore company shareholders and non-resident directors, that the company has no assets whatsoever other than the furniture in its office at premier building and that he believes that it will be unable to refund any sum paid to it by the Applicant in satisfaction of the judgment.
- [10] He avers that Vijay on the other hand is able and willing to put up security to the Court's satisfaction to ensure that if its appeal fails, EEEL will be able to recover its judgment debt, interests and costs.
- [11] He further avers that he believes that no injustice will be caused to EEEL by the grant of a stay of execution of the judgment insofar as EEEL is the judgment debtor to Vijay in a judgment of the Supreme Court dated 29<sup>th</sup> May 2017 in CC17 of 2016 in a much larger sum namely Euros 1,0008,188.00.
- [12] Mr. Patel avers that he believes that this is a good case for the exercise by the Court of its discretion to hear this matter as one of urgency and grant a stay of execution of the judgment debt pending disposal of the appeal herein.
- [13] Counsel for the Applicant submitted that this Court has made very clear in previous cases that where there is a reasonable chance of success of an appeal, the Court will incline towards granting a stay of execution, which is one of the fundamental tennets of granting a stay. He submitted that the grant of a stay is not obtainable as of right but that the Court has a discretion in the matter and in exercising its discretion will consider the merits of the appeal. A vexatious appeal has no chance of chance of obtaining a stay of execution as this will only be delaying the inevitable. He further stated that the Court, in the exercise of its discretion, must bear in mind the balance that must be struck between the judgment creditor being kept away from its money and the judgment debtor being able to have the judgment

overturned on appeal. He submitted that in this particular case the appeal is meritorious as shown by the grounds of appeal, and that the appeal is not a vexatious one.

- [14] Counsel submitted that there are other sufficient grounds as to why this is a proper case for the granting of a stay of execution, one such ground being cited in Mr. Patel's Affidavit, namely that in another matter between the Applicant and the Respondent, the ensuing judgment which is also being appealed against, and in which EEEL owes a much larger sum to Vijay, a stay of execution has been granted to EEEL. He stated that what is sauce for the goose should equally be sauce for the gander and that it would be a difficult proposition to accept that one party can be granted a stay of execution in a judgment obtained ex parte while the other party is denied the same relief in cases which are broadly similar.
- [15] Counsel further submitted that as one of the conditions for the grant of a stay, the Applicant is prepared to put up security in the form of the batching plant, part of the subject matter of this whole case, to EEEL in exactly the same position as it was delivered to Vijay, which EEEL can hold as security pending the appeal being heard. He submitted that the Applicant wishes to minimise any harm which will occur to EEEL until the appeal is heard, hence the offer of the batching plant as security.

#### **The Respondent's case**

- [16] Counsel for the Respondent referred to section 230 of the Seychelles Code of Civil Procedure ("SCCP") which provides that an appeal does not act as a stay of execution and invited the Court to consider the case of **Roger Mancienne v Government of Seychelles (10 of 2004) [2005] SCCA 1 (16 February 2005)** when considering the arguments put before it.
- [17] He submitted that contrary to what was stated by Counsel for the Applicant, he was instructed that the Applicant had not filed an appeal against Robinson J's judgment but had only filed an application for leave to appeal out of time. He invited the court to consider whether such an application acts as an appeal and whether there is any guarantee that any appeal would be allowed to be filed, and submitted that the Court must be satisfied as to these two matters, because in the event that the application for leave to appeal is not granted

EEEL would have been deprived of the chance to execute the judgment in a timely manner. He therefore urged the Court to make sure that there is indeed an appeal filed within the parameters of the Rules of the Court of Appeal.

- [18] He submitted that there is a difference between the other matter in which a stay of execution was granted on the application of EEEL, and the present matter. He stated that in the other matter a sum in excess of a million Euros was awarded, and argued that a sum of such a magnitude would most likely affect and prejudice one party. He submitted that on the other hand the sum involved in the present matter is ten times smaller and the refusal of a stay of execution would not harm or prejudice Vijay in any way, which would be able to continue about its business and at the same time proceed to the Court of Appeal and apply for leave to appeal out of time.
- [19] Counsel further invited the Court to consider that in normal circumstances, the judgment would have been executed by now. He stated that Judgment was delivered on 10<sup>th</sup> October, 2018, and that EEEL gave sufficient time to Vijay to file its appeal and application for stay of execution before commencing execution proceedings. He stated however that Vijay only commenced appeal proceedings after EEEL had commenced execution proceedings. On that basis he submitted that in fact it will be EEEL that will be prejudiced as they have lost time in executing the judgment that in terms of Robinson J's judgment is owed to them.
- [20] Counsel further submitted that on appeal Vijay is less likely to succeed, and that failure to allow execution by granting a stay of execution will cause irreparable harm to the business of EEEL.
- [21] In response Counsel for the Applicant vehemently denied that he had only filed an application for leave to appeal out of time. He stated that he had filed the appeal within time and never at any time filed any application for leave to appeal out of time.
- [22] In respect of the point made by Counsel for the Respondent that Vijay only commenced appeal proceedings after execution proceedings had been commenced by the Respondent, after they had been afforded sufficient time to do so, Counsel for the Applicant drew the Court's attention to an Affidavit sworn by Mr. Zaslouov for the Respondent in MA305 of

2018 (Application to validate an attachment order made by the Registrar of the Supreme Court dated 10<sup>th</sup> October 2018) in which Mr. Zaslouov avers that on 10<sup>th</sup> October, 2018, the very date that the judgment was delivered, an application was made by EEEL for an attachment order attaching all Vijay's funds in the bank, without costs even having been taxed. Counsel therefore poses the question as to what time was afforded to the Applicant before attachment proceedings were commenced and an attachment order made which the Respondent is now asking to be validated. He submitted that the argument that they were given time and sat on their rights is devoid of merit.

### **The Law**

[23] The Court derives its power to stay execution of a Judgment from Rule 230 of the Code of Civil Procedure.

[24] In the case of International Investment Trading SRL (IIT) v Piazzolla & Ors the Court stated as follows:

“There does not seem to be any specific and explicit provision of any statute which directly and expressly grant this Court power to stay execution of judgment pending appeal. It is only by inference from section 230 of the Seychelles Code of Civil Procedure, that this Court may draw such power.”

[25] Section 230 provides as follows:

“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.”

[26] The Seychelles Court of Appeal Rules, 2005, contain a similar provision in its Rule 20 which provides as follows:

“20. (1) An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from:

Provided that the Supreme Court or the Court may on application supported by affidavits, and served on the respondent, stay execution on any judgment, order, conviction, or sentence pending appeal on such terms, including such security for the payment of any money or the due performance or non-performance or any act or the suffering of any punishment ordered by or in such judgment, order, conviction, or sentence, as the Supreme Court or the Court may deem reasonable.

(2) No intermediate act or proceeding shall be invalidated except in so far as the Supreme Court or the Court may direct.”

- [27] In addition, the Courts have established principles that a Court may have regard to in considering whether or not to grant a stay of execution.
- [28] As it was held in the case of International Investment Trading SRL (IIT) v Piazolla & Ors, whether to grant or deny a stay is entirely within the Court’s discretion.
- [29] The case of Choppy v NSJ Construction (2011) SLR 215 sets out principles which a Court may have regard to in considering whether or not to grant a stay of execution. These are as follows:
- a) The onus is upon the applicant to demonstrate a proper basis for a stay which will be fair to all Parties.
  - b) The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.
  - c) The Court has a discretion involving the weighing of considerations such as balance of convenience and the competing rights of Parties.
  - d) Where there is a risk that the appeal will prove abortive if the appellant succeeds and a stay is not granted Courts will normally exercise their discretion in favor of granting a stay.

- e) The Court will not speculate on the appellant's prospect of success but may make some preliminary assessment about whether the Appellant has an arguable case in order to exclude an appeal lodged without any real prospect of success simply to grant time.
- f) As a condition of a stay the court may require payment of the whole or part of the judgment sum or the provision of security.

### **Analysis**

[30] Before proceeding to consider the merits of the application I wish to address two matters. Firstly that no affidavit in Reply to the Application has been filed by the Respondent and secondly the contention of Counsel for the Respondent that no appeal has been filed by the Applicant who he states has filed only an application for leave to appeal out of time.

#### *Failure to file Affidavit in reply*

[31] Such an Affidavit, if it had been filed, would contain evidence of the representative of the Respondent company of facts which are personally known to him and which could be relied upon by the Court in support of the Respondent's case. In the absence of such evidence Counsel for the Applicant, although he may address the Court on the Application generally and on matters of law, cannot do so on factual matters. The Court must therefore, in the circumstances, disregard all such factual matters submitted to by Counsel for the Respondent which should have been properly put before the Court by way of Affidavit evidence of the Respondent's representative.

[32] On this issue, I note further that Mr. Chetty for the Applicant stated that he had not been served in this matter but that he was willing to argue the case and that he was so instructed. I note that Notice of the Application was filed on 27<sup>th</sup> December, 2018 and served on Mr. Basil Hoareau from the same Chambers as Mr. Chetty on 28<sup>th</sup> December, 2018. Although the Notice stated that the matter would come before the court on 31<sup>st</sup> December 2018, the records show that it was called before the Court for the first time on 14<sup>th</sup> January, 2019, before Pillay, J. Both parties were represented, the Applicant by Mr. Georges and the Respondent by Mrs. Aglae who stated that she was standing in for Mr. Chetty. She stated that she was unable to argue the matter for Mr. Chetty who was on medical leave and requested for a date to make his response. There being no objections from Mr. Georges,



the matter was adjourned to the 25<sup>th</sup> January, 2019, and at the request of both Counsels again adjourned to 28<sup>th</sup> January, 2019, when it was heard by myself. In the circumstances I am of the view that Mr. Chetty had sufficient notice of the Application and therefore sufficient time to file an Affidavit in Reply.

*No Appeal has been filed*

[33] Mr Chetty for the Respondent submitted that only an application for leave to appeal out of time has been filed, and that there is no guarantee that an appeal will be allowed to be filed by Vijay. This is denied by Mr. Georges. The Respondent has not produced any evidence of such allegations. It would have been easy enough to obtain a copy of such an application had it been filed and produce it to this Court in support of his argument, which was not done. I note in that respect that Counsel for the Respondent stated “I urge the court to make sure that there is indeed an appeal filed within the parameters of the Rules of the Court of Appeal.” It is not up to this Court to find evidence to support the case of the Parties. It is the duty of the Parties themselves to do that. I have nonetheless taken the trouble to ascertain from the Court of Appeal whether an application for leave to appeal out of time had been filed against the Judgment with which we are concerned and was informed by the Registrar that an Appeal was filed on 23 November 2018, within time. Further, I note that in support of its averment that it has filed an appeal the Applicant has filed with the present application, a Notice of Appeal dated 20<sup>th</sup> December, 2018. I condemn very severely this attempt by the Respondent to mislead the Court which has put his Counsel in a very embarrassing position. Counsel would also do well to verify information which he is instructed by his clients to relate to the Court where this is possible.

[34] I will now proceed to consider the grounds on which the stay of execution is sought.

*Good grounds of succeeding on appeal*

[35] Mr. Patel avers in his Affidavit that the Applicant has good grounds of succeeding in its appeal since the learned trial judge ignored uncontroverted evidence that the Defendant had prevented the delivery of a part of the equipment, the subject of the suit to the Defendant.

- [36] It was held in Choppy v NSJ Construction (2011 SLR 215 that “The Court will generally not speculate on the prospects of success on Appeal but may make some preliminary assessment of whether the applicant has an arguable case in order to exclude appeals lodged without real prospect of success simply to gain time.”
- [37] This Court must therefore determine whether the grounds of Appeal of the Applicant/Appellant disclose an arguable case.
- [38] On appeal the Applicant is only contesting part of the judgment finding that delivery of the plant was effected by the Plaintiff to the Defendant, on the ground that “The Learned Trial Judge erred in her finding that delivery of part of the batching plant had been effected to the Appellant when it is clear from the uncontroverted evidence of the witnesses Patel and Jean that part of the plant was never delivered and the Appellant was physically prevented from taking possession of it.” The relief sought on appeal is the reduction of the sum awarded to the Respondent by USD 56449.50 being the cost of the undelivered part of the plant.
- [39] The Applicant is not contesting that he owes the Respondent for that part of the plant for which he has taken delivery and which is in his possession namely the batching plant but contesting that part of the judgment which finds that he took delivery of the block machine which he claims is in the possession of the Respondent, on the basis of what he claims is the uncontroverted evidence of the witnesses Patel and Jean.
- [40] Mr Patel testified on behalf of Vijay. The relevant part of his testimony as reported in the Judgment is as follows: “... He was aware of the ACT OF HANDOVER ... The Defendant left the site when the contract was terminated and took away only the batching plant. The block machine was left in a container on the site of the Savoy. The security guard on the site of the Savoy did not allow the Defendant to remove the block machine. He was not aware of the whereabouts of the block machine.” In cross examination Mr. Patel stated that the batching plant is in the possession of the Defendant. The block machine is still on the site of the Savoy. The Defendant was not allowed to remove the block machine. In re-examination he stated that the Defendant upon signature of the ACT OF HANDOVER did

not take away the equipment. He reiterated that at some point after the termination of the contract the Defendant was not allowed on site.

[41] Mr. Marcus Jean a police officer attached to the CID testified that he went on the site of the Savoy on a date that he could not recall and that he was shown a machine which was in a container. He could not remember what kind of a machine it was and exactly which equipment the Plaintiff suggested was stolen. He stated that he did not proceed with the matter because he felt that it was a civil case.

[42] The Court after considering all the evidence before it, found that the Defendant was the owner of the batching plant and the block machine, the sale having been completed on 30 April, 2012. The Court further stated the following: "This Court observes that the Defendant had removed the batching plant from the site of the Savoy. Mr. Patel stated that the defendant left the site when the contract was terminated and took away only the batching plant. Having considered the evidence of the witnesses for the defendant, this Court is satisfied that the Defendant was and is not concerned with the removal of the block machine from the site of the Savoy. The evidence establishes that the Defendant abandoned the block machine on the site of the Savoy. This Court is satisfied that delivery of the block machine was done in terms of Article 1603 of the Civil Code of Seychelles Act"

[43] Having examined the grounds of appeal, in light of the testimony of the witnesses, and other evidence in the main case, I find that the Applicant has an arguable case.

[44] That is not to say that this Court is bound to grant a stay of execution on the finding alone that the Applicant has an arguable case. In exercising its discretion whether or not to grant a stay of execution, the Court also has to weigh all relevant considerations on the particular facts and in the particular circumstances of the case before it. Whether the Applicant has an arguable case is but one such matter to be taken into consideration.

*Failure to grant a stay of execution may render appeal otiose*

[45] Mr. Patel avers in his Affidavit that EEEL having taken steps to enforce the judgment, if such enforcement occurs before the Court of Appeal has had the chance of hearing the appeal filed, the appeal will be rendered otiose. He avers that this is because EEEL is a

shell company with offshore company shareholders and non-resident directors, that the company has no assets whatsoever other than the furniture in its office at premier building and that it will be unable to refund any sum paid to it by the Applicant in satisfaction of the judgment.

[46] I take note that there is no evidence whatsoever in support of Vijay's averments that EEEL will be unable to refund any sum paid to it by the Applicant in satisfaction of the judgment.

[47] In *Choppy v NSJ Construction*, in dismissing an appeal for stay of execution, Egonda Ntende, then Chief Justice stated the following: "... a further consideration I need to take into account is whether if the appellant paid the respondent the due amounts now the respondent would be able to pay back if the appeal was successful. The onus for proving to court that the respondent would be unable to pay the decretal amount is on the appellant." The Learned Chief Justice went on to quote Ker LCJ in *Ciarnan Convery v Irish News Limited* [2007] NICA 40 as follows "the ability of the plaintiff to repay damages in the event of a successful appeal is relevant to the question whether a stay should be granted but if the defendant maintains that the plaintiff will not be able to repay he must support the claim with evidence."

[48] In the present case Vijay has only asserted that if the stay is not granted and judgement is executed, EEEL will not be able to pay back the judgement sum if Vijay succeeds on appeal but has not substantiated such assertions with any evidence. I therefore cannot find that EEEL will be unable to refund any sum paid to it by the Applicant in satisfaction of the judgment.

#### *Security*

[49] Mr. Patel has averred that EEEL will not be unable to refund any sum paid to it by Vijay if a stay is not granted and Vijay is ultimately successful on appeal. He avers that on the other hand, Vijay is able and willing to put up security to the satisfaction of the Court to ensure that if its appeal fails, EEEL will be able to recover its judgment debt, interests and costs. Counsel has stated that such security will be in the form of the batching plant which together with the block making machine is the subject matter of the claim pursuant to which the judgment was made.

- [50] I note that the appeal is only in respect of part of the judgement finding that delivery of the block-making machine was made to Vijay and that the relief being sought is for reducing the judgment sum of \$112,899.00 by \$56,449.50 being the cost of the block making machine. There is no dispute regarding the Court's award in respect of the batching plant.
- [51] Robinson J, accepted that the consideration for the equipment was \$54,504.00 and \$58,395.00 - total \$112,899.00 as stated in the ACT OF HANDOVER, according to which the sum \$54,504.00 is the consideration for the batching machine and the sum of \$58,395.00 is for the block machine. Vijay is proposing to provide security of a value that is about half of the judgment sum. If he is unsuccessful on appeal and is ultimately unable to satisfy the judgment, EEEL will only be able to recover that sum and not the entirety of the judgment debt and interests and cost.
- [52] I consider that security in such an amount bearing in mind the total amount of the Judgment debt to be insufficient. Moreover the equipment was handed over on 5<sup>th</sup> January, 2012, the date of the ACT OF HANDOVER. We are now in February 2019 and I doubt that the value of the batching plant would be the same as when it was handed over. Applicant has not provided any information as to its current value apart from Counsel stating that it is in exactly the same position as it was delivered to Vijay.

*Whether grant of a stay will cause prejudice to the Respondent*

- [53] Mr. Patel avers that no injustice will be caused to EEEL by the grant of a stay of execution of the judgment because EEEL is the judgment debtor to Vijay in a judgment of the Supreme Court dated 29<sup>th</sup> May 2017 in CC17 of 2016 in a much larger sum namely Euros 1,0008,188.00.
- [54] Counsel for the Applicant also submitted that the judgment in CC17 of 2016 is also being appealed against and that a stay of execution having been granted in that matter, "it would be a difficult proposition to accept that one party be denied the same relief in cases which are broadly similar".
- [55] In respect of the judgment in CC17 OF 2016 the Applicant has produced the final page of court proceedings in a matter which contains the Order of the Court as follows:

“ORDER

Having heard the witness representative of the Plaintiff in this matter and being satisfied that the case is fully made out I give Judgment in favour of the Plaintiff and order that the rent from 1<sup>st</sup> September 2012 until 30 April 2016 that is an amount of Euro 785,400/-, interest on overdue rent as per item 2 that is the interest amount of Euro 172,788/-, along with the 3<sup>rd</sup> item which is compensation for forceful acquisition that is to say the amount of Euros 50,000 be paid to the plaintiff forthwith. The Court also orders therefore that the total sum of Euros 1,008,188/- be paid to the plaintiff along with rent accruing until the return of the buildings to the plaintiff with interests and costs.”

- [56] From the document produced, this Court has no idea who the Plaintiff and the Defendant are and which matter these proceedings relate to.
- [57] I note further that the Order or Ruling granting the stay of execution has not been filed in support of this application and remind Counsel that it is not the Court’s duty to look for evidence in support of their cases but rather that of Counsel to put all such evidence before the Court.
- [58] Further, in my view, it is irrelevant for the purposes of this application that EEEL, the judgment creditor to Vijay in the present case, owes money to Vijay by virtue of a judgment in another case. Each case has to be considered on its own. More importantly, this Court cannot rely on a judgment debt awarded in a matter on appeal the outcome of which is unknown to anyone.
- [59] Neither can this Court rely on the assertion of Counsel that a stay of execution has been granted in that other matter pending appeal, which Counsel for EEEL states is broadly similar to the present one. This Court has no knowledge of that other matter other than the little that can be gleaned from the Order reproduced above, or of any similarities to the present one. Neither has this Court any knowledge as to the reasons for the granting of such stay.
- [60] Counsel for the Respondent has stated that there is a difference between the two cases in that the judgment debt in CC17 of 2016 involves a sum of Euros 1,0008,188.00 whereas

the judgment debt in the present matter is for a sum of \$112,899.00 and that the bigger the judgement debt the more likelihood there is of prejudice being caused to the party seeking a stay of execution by a refusal to grant such stay, hence the reason why the stay of execution was granted. While I agree that the amount of the judgment debt would be a relevant factor in deciding whether or not to grant a stay of execution, this is only one matter which must be considered together with other relevant matters according to the particular facts of each case.

- [61] For the above reasons, I find that the Applicant has failed to show that no prejudice will be caused to EEEL by granting the stay because of the judgment debt of 1,0008,188.00 it owes to Vijay in CC17 of 2016.
- [62] Counsel for EEEL submitted that prejudice will be caused to EEEL by the granting of a stay of execution because Vijay's tardiness in commencing appeal proceedings has caused EEEL to lose time in executing the judgment. He further submitted that failure to allow execution will cause irreparable harm to the business of EEEL especially as Vijay is unlikely to succeed on appeal.
- [63] Counsel for the Respondent denied that the Applicant was given time and sat on its rights because on the same date that judgment was delivered, EEEL made an application for an attachment order attaching all Vijay's funds in the bank, without even waiting for costs to be taxed.
- [64] I note that Vijay filed its appeal before the Court of Appeal on 23<sup>rd</sup> November, 2018, which was within the time frame allowed by law to do so. I find therefore that there is no merit in the contention that Vijay commenced appeal proceedings tardily.
- [65] I also observe that Counsel for EEEL submitted that the granting of a stay will cause further delay in executing the judgment which will in turn cause irreparable harm and prejudice to EEEL. The harm and prejudice which could be caused to EEEL is not a matter that can be submitted to by Counsel but which should have been properly canvassed in an Affidavit sworn by a representative of EEEL who has personal knowledge of such matters. I do not

find therefore that the Respondent has shown that the grant of a stay will cause any prejudice to EEEL.

[66] Having said that, I am also mindful that there is no evidence to show that any prejudice will be caused to the applicant by refusing to grant a stay of execution which was not pleaded in any event.

[67] As to Mr. Georges complaint that attachment proceedings were undertaken the very day of the judgment, the records do not show that any attachment Order was made.

### **Decision**

[68] Having taken into account the facts and circumstances of this case, and after balancing the competing rights and interest of the parties, I do not find that there are sufficient grounds for granting a stay of execution of the Ruling of Robinson J, dated 10<sup>th</sup> October, 2018.

[69] I refuse the Application which stands dismissed.

Signed, dated and delivered at Ile du Port on 11<sup>th</sup> February 2019



E. Carolus J