

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC ...790
MA 42/2019
(Arising in CS 48/2017)

EDMOND RICHARDSON
(rep. by *Elvis Chetty*)

Petitioner

Versus

ROBERT LABICHE
(rep. by *Nichol Gabriel*)

Respondent

Neutral Citation: *Richardson v Labiche* (MA 42/2019) [2019] SCSC ...790 (18 July 2019).
Before: Dodin Judge
Summary: Stay of execution of judgment pending Appeal
Heard: 10 June 2019
Delivered: 18 July 2019

ORDER

The petition is dismissed with costs.

RULING

DODIN J.

[1] In a judgment delivered by the Supreme Court dated 26th September, 2018 in case number CS47/2017, the Respondent was awarded damages in the sum of Seychelles Rupees 375,350 which the Applicant was ordered to pay. To date the Applicant has not made the payment. In MA 307 of 2017 filed on the 20th December 2018 the Respondent applied to the Court to issue summons to show cause why he should not be committed to civil imprisonment for failing to pay the judgment debt upon the Petitioner. On the 6th February

2019, the Petitioner filed this petition praying for a stay of execution of the judgment pending appeal to the Court of Appeal.

- [2] Learned counsel for the Petitioner submitted that the Petitioner is not satisfied with the judgment of the Supreme Court and has lodged a notice of appeal to the Court of Appeal against the judgment. Learned counsel submitted that if the execution of the judgment is maintained before the disposal of the appeal the Petitioner will suffer substantial loss and prejudice. Learned counsel submitted that he is of the opinion that the Petitioner has a chance of success before the Court of Appeal and that the Petitioner will suffer hardship if the judgment debt had already been paid and there is no reassurance that the sum will be repaid by the Respondent by then. Learned counsel further submitted that if the judgment debt is paid prior to the appeal, then the appeal will be nugatory.
- [3] Learned counsel for the Respondent objected to the petition for stay of execution maintaining that until now the Respondent has not been served with any notice of appeal and that only after the Respondent has filed for summons to show cause that the Petitioner has petitioned the Court for stay of execution of the judgment. Learned counsel submitted that that the Petitioner has not showed why he has a chance of success on appeal whilst the Respondent has to date not benefited at all from his judgment award.
- [4] The Seychelles Code of Civil Procedure contains the provisions for recovery of judgment debt where the judgment debtor has failed to pay the amount awarded in the judgment. Section 251 of the Code particularly provides that:

"A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default or satisfaction of the judgment or order."

- [5] The Respondent has already initiated the procedures under section 251 in MA 307 of 2017 filed on the 20th December 2018. The Petitioner has so far not advanced any reason for not

satisfying the judgment. However the Petitioner is now moving the Court for stay of execution pending appeal. It is worth noting at this stage that section 230 of the Seychelles Code of Civil Procedure states:

“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”.

- [6] The leading cases in respect of application for stay of execution of judgment are *Pool v William Civil Side 244/1993* (judgment delivered on 11 October 1996) whereby the Court determined that in considering whether to grant a stay of execution the Court must take into consideration the following:
- a. Whether an appellant would suffer loss which could not be compensated in damages;
 - b. Where special circumstances of the case so require;
 - c. If there is proof of substantial loss that may otherwise result;
 - d. If there is substantial question of law to be adjudicated upon at the hearing of the appeal; or
 - e. If the appeal would otherwise be rendered nugatory.
- [7] In *Chang-Tave v Chang-Tave [2003]SLR 74* (Civil Side 153/2002 judgment delivered on 6 March 2003), the Court stated inter-alia that a stay of execution will only be granted if:
- a. Without a stay the appellant would be ruined; and
 - b. The appeal has some prospect of success.
- [8] In *Avalon v Berlouis [2003 SCSC 20]* (Civil Side 150/2001, judgment delivered on 8th September 2003), the Court stated that the Court will exercise its discretion to grant a stay of execution sparingly. It will not without good reason delay a successful plaintiff from enforcing the judgment obtained although as a Court of Equity it will not deny an unsuccessful defendant the possible benefit from the appeal process. Equally, the Court

must consider the balance of convenience, hardship and loss the parties may suffer. The judgment debtor/appellant must show that the likely injury suffered by them is greater than any suffering by the Respondent if the stay is not granted.

[9] In the current case, the Petitioner/judgment debtor has advanced two grounds in support of the application for stay; (1) that if execution is made before appeal, the appeal will be rendered nugatory; and (2) that there is no guarantee that the Respondent/judgment creditor would have the means to reimburse the Petitioner/judgment creditor in the event of the appeal being successful. Whilst the Petitioner maintains that the case is going on appeal, only a notice of appeal has been produced and no evidence or document in support to show the chances of success of the appeal has been adduced.

[10] Secondly, if the Petitioner's only other worry is that the Respondent may not be able to reimburse him the money in the event that his appeal is successful, he could have offered to deposit the sum into Court pending appeal. Instead the Petitioner seems to want to have all the benefits without any guarantee or consideration that the Respondent will ever have the benefit of his judgment.

[11] Considering all the circumstances of the case, I am led to the conclusion that the judgment debtor's petition for stay of execution is not genuine and is only an attempt to delay or deny the judgment creditor the benefits of his judgment. With this finding, I therefore cannot exercise my powers of equity in favour of the Petitioner who does not appear to come with clean hands.

[12] Consequently this petition is dismissed with cost to the Respondent.

Signed, dated and delivered at Ile du Port on 18 July 2019.

