

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2019] SCSC ...  
MA 181/2019  
Arising in CA9/2017

In the matter between

**GILBERT CHARLES ELIZA**  
*(rep. by Mrs Alexia Amesbury)*

**Appellant**

and

**PATRICK BONNE**  
*(rep. by Mr Elvis Chetty)*

**1<sup>st</sup> Respondent**

**SILVANA BISOGNI**  
*(rep. by Mr Elvis Chetty)*

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Eliza v Bonne & Bisogni* (MA181/2019) (CA9/2017) [2019] SCSC

5 September 2019.

**Before:** Govinden J

**Summary:**

**Heard:** 5 September 2019

**Delivered:** 5 September 2019

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**RULING**

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**GOVINDEN J**

- [1] On the 14<sup>th</sup> of March 2019 this Court gave judgment in favour of the Appellant in this case. The Appellant had appealed to this Court against a judgment delivered by the Learned Magistrates' in which she had awarded the sum of SR56,062/- together with interest in favour of the Respondents in a delictual responsibility action.
- [2] The Respondents wishing to appeal against the judgment of this Court to the Court of Appeal has filed a notice of motion dated the 28<sup>th</sup> of May 2019. The motion which is supported by the Affidavit of the 2<sup>nd</sup> Respondent is asking for a stay of the judgment pending the hearing before the Court of Appeal and disposal of the Respondent's Appeal.
- [3] The principal thrust of the Application of the Respondents is that the Appellant in the case before this Court does not own any movable or immovable properties, does not conduct business nor is he in employment in Seychelles and as a result if the damage of Seychelles SR56,062.00 is paid to the Appellant, there is no possibility of getting it back if they succeed in Appeal to the Court of Appeal.
- [4] It is also the case of the Respondents that there is substantial question of law that needs the intervention and adjudication of the Court of Appeal in this case and that this relates to the issue of whether this Court was right in its finding that there was a judicial admission in the matter before the Learned Magistrates'.
- [5] Mr Eliza resist this Application in his Affidavit in reply to the motion for stay. He takes up the objection that there is no substantial proof provided in the Application of the 2<sup>nd</sup> Respondent that he is unemployed, has no business interest and does not own property in Seychelles.
- [6] It is his contention that the Court cannot rely upon unsupported averments in that regards. It is further contented that though the 2<sup>nd</sup> Respondent makes averments on behalf of the 1<sup>st</sup> Respondent in her Affidavit there is no express provisions in the said Affidavit that the former had had the permission of the latter for her to do so.
- [7] I have thoroughly scrutinized the Application of both sides and the case of both sides in the Application.

- [8] Having do so I find that decision whether to grant or not to grant a stay of execution is entirely within the Court's discretion in the exercise of its equitable jurisdiction under Section 6 of the Court's Act.
- [9] In considering whether to grant or not to grant a stay the Court must balance the interest of the parties by minimising the risk of possible abused by an Appellant to delay the Respondent from receiving the fruits of the judgment. Where an unsuccessful defendant seeks a stay pending in an Appeal, it is a legitimate ground for granting the Application if the defendant is able to satisfy the Court that without a stay they would be ruined and their Appeal has some prospect of success. (*Re-International Investment Trading v/s Piazzola CS178 of 1998*).
- [10] Having considered the facts and circumstances surrounding the entirety of this case in the light of the applicable law I will stay the execution of this judgment of this Court pending the hearing and disposal of the matter before the Court Appeal as I found that there's a substantial point of law to be argued before that Court.
- [11] I make this Order subject to the Respondents filing their Notice of Appeal before the Court of Appeal within 14 days hereof.
- [12] Signed, dated and delivered at Ile du Port 5 September 2019

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Govinden J