

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC771

MA 43/2019

(Arising in CA NO. 25/2017)

In the matter between:

SEIBEI SERVICES LTD
(rep. by Ms. S. Aglae)

Applicant

and

ALWINE LALANDE
(rep. by Mrs. A. Amesbury)

Respondent

Neutral Citation: *Seibei Services Ltd and Lalande Alwine* MA 243/2019) [2019] SCSC771)

Before: ANDRE J

Summary: Ruling– Stay of execution pending Appeal – Section 203 of the Seychelles Code of Civil Procedure (Cap 213)

Heard: 10th July 2019

Delivered: 13th September 2019

ORDER

The Motion for stay of execution is dismissed.

RULING

ANDRE J

Introduction

- [1] This Ruling arises out of a Notice of motion of Seibei Services Ltd filed on the 7th February 2019 and supported by affidavit thereof of the said date (*“the Applicant”*).
- [2] The Notice of motion seeks for a stay of execution of the Judgment delivered in Case Number CA 25 of 2017 and delivered on the 26th July 2018 (*“the impugned Judgment”*).

- [3] Alwine Lalande (*“the Respondent”*) vehemently objects to the application as per Reply filed on the 15th May 2019.

Applicant’s grounds for stay of execution

- [4] In a gist, the grounds for the stay of execution as averred by the Applicant are namely, that there is a substantial question of law and identity to be adjudicated upon at the hearing of the appeal; that if the stay application is not granted irreparable harm would be caused to the Applicant and if successful on appeal, it would be rendered a nugatory. It is further averred that the Applicant does not exist and the indicated representative does not represent the Applicant.

Respondent’s objections to stay of execution

- [5] On his part, the Respondent submits in gist that, the Applicant had appealed out of time and failed to apply for leave to appeal out of time hence the impugned Judgment and that the intended appeal is frivolous and vexatious or has been filed not with the bona fide intention of seeking to reverse the impugned judgment but for some ulterior motive such as to buy time or harass the Respondent and irreparable prejudice against the Applicant if stay is not to be granted is vehemently denied.

Legal analysis and findings

- [6] I will now move on to address the legal standards applicable in this case in the light of the highlighted salient facts.
- [7] Section 230 of the Seychelles Code of Civil Procedure (*“the Code”*) 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.
- [8] The Authorities in this Jurisdiction has confirmed that it is entirely in the discretion of the Court to grant a stay (See: *Pool v William* (1996) SLR 206), *Chang-Tave v Chang-Tave* (2003) SLR 74), (*Avalon v Berlouis* (2003) SLR 57) and (*Faye v Lefevre* (2012) SLR 44).

- [9] The consideration 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)**).
- [10] Albeit the Court when hearing the stay of execution application does not examine the merits of intended appeals 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.
- [11] The current Application mentioned an Appeal before the Court of Appeal but neither the Notice of 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.
- [12] I have taken the time to scrutinize anew the impugned Judgment delivered by this very Court and I find that the apparent alleged grounds of appeal as averred in the affidavit attached to the Application are unfounded in both law and facts on records.
- [13] Further, in exercising this Court's discretion and weighing such considerations 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 of the fruit of his Judgment long awaited since the year 2017 inter alia payment of outstanding Judgment debt of the sum of Seychelles Rupees One Hundred and Sixteen Thousand Five Hundred (*S.R. 116,500/-*).
- [14] In the circumstances, the Application for stay of execution is dismissed with costs.

Signed, dated and delivered at Ile du Port Victoria on the 13th day of September 2019.


ANDRE J

