

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 951
MA264/2019
Arising from 101/2018

ANNA GONTHIER
(rep by Brian Julie)

Applicant

and

PHILIPPE MOREL
(rep. by Alexandra Madeleine)

Accused

Neutral Citation: *Anna Gonthier v Philippe Morel* MA264 of 2019 delivered on 06th November 2019

Before: **Vidot J**
Summary: Stay of Execution
Heard: 30 October 2019
Delivered: 06 November 2019

ORDER

VIDOT J

- [1] The Applicant has filed an application for stay of execution of a judgment delivered by this Court on the 17th June 2019. Attached to the Application is an affidavit sworn by the Applicant where she swears to the fact she has filed an appeal on the 25th June 2019 and that there are substantial question of law to be adjudicated upon at the hearing of the appeal. She also swears that she has an overwhelming chance of success at the appeal and that it is in the interest of justice that a stay of execution of the judgment is granted.

- [2] On the date set for hearing the Application, Counsel for the Applicant said that he was not prepared to hear the case as he had not been served with a copy of the Affidavit in reply. However, record of proceedings reveals that when the Court was seeking clarifications as to whether that Affidavit in Reply has been filed and a date could be set for hearing of this Application, the Applicant's Attorney confirmed that he has seen the affidavit. So, I found his response sufficient cause to set a trial date. Now, Counsel for the Applicant is saying that he never said that and that the records were wrong. I believe that that was because Counsel was not prepared for the hearing and finding excuse to get an adjournment. Counsel was allowed some time to consider the Affidavit in Reply and the court was adjourned for a short while. When court resumed Counsel refused to address Court reiterating the same complaint. I find this unacceptable. I could have there ~~and~~ then dismiss the Application but decided to invite Counsel for the Respondent to address Court.
- [3] The Respondent through his Affidavit in Reply objected to the Application.
- [4] As to the first ground of objection, Counsel for the Respondent noted that attached to the Application is merely a Notice of Appeal. There is no Memorandum of Appeal as required by the Court of Appeal Rules and Counsel informed Court that she had verified with the Court of Appeal, only that Notice of Appeal was filed. In effect in the absence of such important document the Court cannot give consideration to averments made in the Affidavit attached to the application that the appeal has an overwhelming chance of success nor that there are substantial questions of law to be adjudicated upon at the appeal. It is a requirement that the Memorandum of Appeal is attached to the application for the Court to appreciate the grounds being relied upon in the application.
- [5] Counsel for the Respondent cited the case **Mary Geers v Noel De Lafontaine SCSC 903, MA200/2018 (arising in CS78/20115)**, wherein referring to **Alexander v Cambridge Credit Corp Ltd [1985] 2 NSWLR 685**, **Choppy v NSJ SC23/2011** and **Chow v Bossy SC 53/2011**, wherein it was held that the considerations to be applied on an application for stay are that;

- “(a) the onus is upon the applicant to demonstrate a proper basis for a stay which is fair to all the 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 the balance of convenience and competing rights of the 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 favour of a stay;*
- (e) the court will not generally speculate upon the appellant’s prospect of success, but may make 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 gain time,*
- (f)*

[6] The Applicant having decided not to avail ^{herself} ~~himself~~ to make any submission on the Application and not having filed the necessary Memorandum as required by the Court of Appeal Rules, makes it difficult to assess the above considerations in regards of her case. I consider that the Applicant has not discharged the onus to establish that there is proper basis for supporting this Application. I cannot either consider the balance of convenience and competing rights of the parties.

[7] Further, I am not aware of the alleged substantial questions of law that have to be adjudicated upon at the hearing of the appeal and nor am I aware of the overwhelming chances that the appeal will succeed in the absence of a Memorandum Of Appeal. However, I am aware that the Applicant in her defence at the hearing of the case proper admitted to owing the Respondent the sum of money which judgment of court awarded to the latter. I find that the Applicant is just maliciously trying to prevent the Respondent to enjoy the fruits of his judgment. This Court will not condone this.

[8] Therefore, I am left with no alternative but to deny the Application.

[9] I make no order as to cost

Signed, dated and delivered at Ile du Port 1 March 2019

Vidot J