

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 1124

MA348/2019

Arising in CS115 of 2018

SUZANNE MATHIOT
(rep by *Manuella Parmentier*)

Applicant

and

JOHN FIGARO
(rep. by *Alexandra Madeleine*)

Respondent

Neutral Citation: *Suzanne Mathiot v John Figaro* MA348 of 2019 delivered on 11 December 2019

Before: **Vidot J**

Summary: Application for Stay of Execution

Heard: 24th November 2019

Delivered: 11th December 2019

RULING

VIDOT J

[1] The Applicant has filed an Application for stay of execution of a judgment delivered by this Court on 15th July 2019. She filed an appeal to the Court of Appeal against that judgment on 14th August 2019. The Notice of Motion is supported by Affidavit in which she avers the following;

- (i) The hearing and disposal of the appeal will not be heard before she is to vacate the property as per judgment;

- (ii) That she has resided in and maintained the house for 13 years and still reside therein with her child and that till now she has been unable to find alternative accommodation;
- (iii) There are substantial question of law to be adjudicated upon at the hearing of the appeal and that she has high chances of success; and
- (iv) That if the judgment is executed before the disposal of the appeal, she will suffer substantial loss and prejudice which could not be compensated in damages and would render the appeal nugatory

[2] The Respondent filed an Affidavit in reply wherein she objected to the Application. The Respondent alleges that the Applicant is trying to frustrate the execution of the judgment. He had tried to pay into the account of the Applicant the sum ordered by this Court and has been unsuccessful as the bank would not accept the payment. He further avers that as per advice from here Attorney, he states that the grounds of appeal do not raise substantial questions of law and therefore the Applicant does not have high chances of success on that Application. He noted that many of the grounds of appeal are matters of evidence and not of law and that the Applicant admitted that the housing loan was fully repaid by him and that he made contributions toward the household.

[3] The Respondent further avers that the appeal is frivolous and vexatious and purely intended to delay the execution of the judgment and deny him the right to enjoy the property. He states that he will suffer substantial loss and prejudice if the stay of execution is granted. He added that the refusal of the application will not render the appeal nugatory. However if granted, he will suffer greater hardship and therefore it will just and fair that the application is refused.

[4] Section 230 of the Code of Civil Procedure provides;

“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”

7

That section makes it clear this court has limited jurisdiction in respect of stays. Jurisprudence constante on the issue is to the effect that the judge's inherent jurisdiction is exercised based generally on whether it is just and convenient to make such an order, and to prevent undue prejudice to the parties. The Court has to consider whether it will just and reasonable to grant such a stay.

[5] The general rule is to decline a stay unless there are solid grounds on which the Applicant relies. Therefore, a stay of execution is the exception rather than the rule

[6] 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**, 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) *As a condition for stay the court may require payment of whole or part of the judgment sum or the provisions of security.*

- [7] I have considered the balance of convenience and competing rights of the parties and conclude that the Applicant has failed to satisfy the Court of any good reasons why an order for stay should be made. Even if the Plaintiff was to win on appeal which is doubtful, her share if any in the property will be reduced to a payment from the Respondent. This is because she admitted that it was the Respondent who paid for the house whilst he still contributed towards the household. The Respondent stands to lose more and the Petitioner has admitted that she is encountering financial hardship and that will make it more difficult for her to raise a loan and pay the Respondent if the Court of Appeal was to grant her the house. The Petitioner argued that she has resided in the house for 13 years and that she has no alternative accommodation. This I believe should not be a consideration especially since she admits that the Respondent solely paid for the house. The fact that the child of parties live with the Applicant is not sufficient reason to allow the application. That is because if the Appeal was to be decided in favour of the Respondent the child will still be in her custody unless the Family Tribunal was to allow the Respondent to have custody.
- [8] The Applicant has failed to show any substantial questions of law that will have to be adjudicated upon at the hearing of the appeal. I feel that the Applicant is merely buying time and denying the Respondent the possibility of enjoying the fruits of his judgment. I note that despite the appeal being filed on the 14th August 2019 this Application was only filed on 07th November 2019, after the Applicant was granted ample time to vacate from the house.
- [9] Therefore, I believe that this application is being brought just to vex and annoy the Respondent. If the appeal was to be decided in her favour she will be compensated by the Respondent paying her monetary compensation and would not render the appeal nugatory.
- [10] Hence, the application fails.

Signed, dated and delivered at Ile du Port 11 December 2019

A handwritten signature in dark ink, appearing to be 'Vidot J', written over a horizontal line.

Vidot J