

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 50
MA 191/2019
(Arising in CS29/2010)

:

NSJ CONSTRUCTION (PTY) LTD
(rep. by Frank Elizabeth)

1st Applicant

GREGOIRE PAYET
(rep by Frank Elizabeth)

2nd Applicant

and

F.B CHOPPY (PTY) LTD
(rep. by Elvis Chetty)

Respondent

Neutral Citation: *NSJ Construction (Pty) v Anor.v FB Choppy (Pty) Ltd.* MA191/2019 [2020] SCSC 50 (20th January 2020)

Before: Vidot J
Summary: Application for Stay of Execution
Heard: 20th November 2019
Delivered: 20th January 2020

RULING

VIDOT J

[1] The 1st and 2nd Applicants have filed a Notice of Motion supported with affidavit seeking a Stay of Execution of a judgment of this Court delivered on 08th April 2019 which ordered the Applicants to pay the Respondent the sum of SR682,595.06. the Applicants have filed an Appeal against the said judgment on the 09th April 2019. The application is grounded on the following reasons;

- i. That the appeal has some prospect of success and therefore it is just and fair that a stay be granted until the determination of the appeal;
- ii. There are substantial questions of law and facts to be adjudicated upon at the appeal;
- iii. That if the Applicants succeed at the Appeal, the judgment of the Court of Appeal will be rendered nugatory.

[2] The Applicants also aver that the Motion is in good faith and that the balance of convenience is tipped in their favour.

[3] The application is being resisted by the Respondents. In affidavit sworn in his personal capacity and as Director of the Respondent he claims that;

- i. The appeal has no chance of success;
- ii. There are no questions of facts and law to be adjudicated upon as this Court has thoroughly exploited these issues;
- iii. If the Respondent was not allowed to execute the said judgment now it will not render the a judgment of the Court of Appeal nugatory in the unlikely event that the appeal is allowed;
- iv. The application is vexatious and have no merits; and
- v. The balance of convenience is well in their favour.

[4] [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”

That section makes it clear that 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 be just and reasonable to grant such a stay. Therefore, whether or not to grant a stay is a discretionary which should be exercised with restraint, see **Macdonald Pool v Despilly William CS 244 of 1993**. In **Emile Adonis & Antoine Adonis v Daniel Port Louis [2008] SCSC 250 CS MA 239 of 2017**, it was stated that the grant of application for stay of execution of a judgment is a matter of discretion for the Court.

[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] In 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] In regards the chances of success of appeal it would be difficult for a Judge to look at the case and conclude that that his own judgment on the law and facts there are serious issues to be adjudicated upon. In fact in **Faye v Lefevre [2012] SLR 44**, the following was observed “*obviously it is not for this Court to determine whether the appeal of the appellant will succeed before the Seychelles Court of Appeal. However, for the purpose of considering this application this court has to obviously peruse the grounds of appeal to consider whether it is not frivolous and vexatious and whether it has not been be filed by the Applicants only to delay the Respondent from enjoying the fruits of his labour.*

[8] I have indeed considered the Petitioner’s Memorandum of Appeal and still stand by the judgment delivered by this Court in that case but the grounds of appeal are not necessarily frivolous and vexatious. I have considered the competing rights of the parties and the offer by the Respondent to pay the sum into Court until final determination of the case.

[9] Therefore, I allow the stay subject to the Respondent paying the judgment sum into court within a week from today. The sum shall be held by the Court until final determination of the appeal by the Court of Appeal.

Signed, dated and delivered at Ile du Port on 17th January 2020

M. Vidot J