

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 212
MA 144/2019
(Arising in CS 56/2017)

ALEX MONTHY

(rep. by Frank Elizabeth)

Applicant

Versus

ANISSA PAYET

(rep. by Anthony Derjacques)

Respondent

Neutral Citation: *Monthy v Payet* (MA 144/2019) [2020] SCSC 212 (27 March 2020).

Before: Dodin Judge

Summary: Stay of execution of judgment pending Appeal. The balance of convenience does not lie with the Applicant. However, in view of the Respondent averring in her affidavit that conditions can be imposed rather than have the money delivered to her pending appeal but not having canvassed her objections further by not making any submission in addition to her affidavit, the application for stay of execution is granted with conditions as per Orders below.

Heard: 20 February 2020

Delivered: 27 March 2020

ORDERS

The Application is granted with conditions:

- (1) The Applicant shall not dispose or in any way alienate by way of sale, lease, gift, pledge, charge or in any way encumber any property he owns until the completion of the appeal.
- (2) The Registrar of Lands shall enter a restriction against any immoveable property or any share or interest in any immoveable property registered in favour of the Applicant until the determination of the appeal.
- (3) The Seychelles Licensing Authority shall not transfer or allow the Applicant to transfer any vehicle, plant, vessel, business license registered in his name or jointly owned with others.
- (4) The Registrar of Lands and the authorised officer of the Seychelles Licensing Authority shall forward to this Court a report in respect of compliance with the above orders within 14 days.

RULING

DODIN J.

- [1] In a judgment delivered by the Supreme Court dated 20th March, 2019 in case number CS56/2017, the Respondent was awarded damages against the Applicant in the sum of Seychelles Rupees 907,000. The Applicant feeling dissatisfied with the judgment, appealed to the Court of Appeal with the appeal documents dated 8th April 2019. The Applicant has not paid the damages to date and the appeal also has not been heard until now. On the 5th June 2019, the Applicant filed this Application praying for a stay of execution of the judgment pending appeal to the Court of Appeal.
- [2] In his Affidavit, the Applicant stated that he is of the opinion that he has some prospect of success before the Court of Appeal and that it is just and necessary that execution be stayed pending appeal. He stated further submitted that if the judgment debt is paid prior to the appeal, then the appeal will be rendered nugatory. He averred that an order to stay the execution is an equitable remedy which the Court has discretion to grant as per the provision of section 6 of the Courts Act.
- [3] In her Affidavit in reply, the Respondent objected to the application for stay of execution maintaining that the appeal has no merits and the Applicant's chances on appeal are nil. She avers that the Applicant has properties and vehicles which he might dispose of whilst still not pay the damages. She avers that the Applicant will not suffer any hardship or prejudice should he pay the judgment debt pending appeal. She submitted that at the very least the judgment debt should be deposited into Court or with her attorney or be placed in an escrow account pending appeal.
- [4] Both parties requested to file further written submissions. Learned counsel for the Applicant filed extensive submission in support of the application for stay of execution whilst despite having been granted a couple of adjournments (29 November and 6 December 2019) there has been no submission forthcoming from the Respondent to date. On 20th February 2020 the learned counsel for the Applicant presented his final submission. The matter was then set for ruling with direction to

learned counsel standing for counsel for the Respondent that the Court will proceed with the ruling even in the event that the submission of the Respondent is not forthcoming. Unfortunately no submission from the Respondent has reached the Court to date.

[5] Learned counsel for the Applicant submitted at great length on the law, procedures and with reference to the judgment of the Court in CS56/2017 and the grounds of appeal as to why this Court should grant a stay of execution pending appeal which shall not be reproduced in his ruling. Suffice to state that the law in respect of whether or not to grant a stay of execution pending appeal is more or less settled in this jurisdiction.

[6] The Seychelles Code of Civil Procedure contains the provisions for recovery of judgment debt where the judgment debtor has failed to pay the amount awarded in the judgment. Section 251 of the Code particularly provides that:

"A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default of satisfaction of the judgment or order."

The Respondent has not to date file for execution of the judgment and in her affidavit seems to be not averse to having the judgment debt deposited into Court or with her attorney or be placed in an escrow account pending appeal.

[7] Section 230 of the Seychelles Code of Civil Procedure states that:

"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".

[8] The leading cases in respect of application for stay of execution of judgment are Pool v William Civil Side 244/1993 (judgment delivered on 11 October 1996) whereby the Court determined that in considering whether to grant a stay of execution the Court must take into consideration the following:

- i. Whether an appellant would suffer loss which could not be compensated in damages;
- ii. Where special circumstances of the case so require;
- iii. If there is proof of substantial loss that may otherwise result;
- iv. If there is substantial question of law to be adjudicated upon at the hearing of the appeal; or
- v. If the appeal would otherwise be rendered nugatory.

[9] In the case of Chang-Tave v Chang-Tave [2003]SLR 74 (Civil Side 153/2002 judgment delivered on 6 March 2003), the Court stated inter-alia that a stay of execution will only be granted if:

- i. Without a stay the appellant would be ruined; and
- ii. The appeal has some prospect of success.

[10] In the case of Avalon v Berlouis [2003 SCSC 20] (Civil Side 150/2001, judgment delivered on 8th September 2003), the Court stated that the Court will exercise its discretion to grant a stay of execution sparingly. It will not without good reason delay a successful plaintiff from enforcing the judgment obtained although as a Court of Equity it will not deny an unsuccessful defendant the possible benefit from the appeal process. The Court must also equally consider the balance of convenience, hardship and loss the parties may suffer. The judgment debtor/appellant must show that the likely injury suffered by them is greater than any likely to be suffered by the Respondent if the stay is not granted.

[11] In the current case, the Applicant has advanced the following grounds in support of the application for stay of execution;

- i. that if execution is made before appeal, the appeal will be rendered nugatory;

- ii. that there is no guarantee that the Respondent/judgment creditor would have the means to reimburse the Applicant/judgment creditor in the event of the appeal being successful and the Applicant will have to chase the Respondent to recover the money paid.
- iii. The amount of money is substantial and the Applicant does not have the remote possibility of paying it.
- iv. That if the Applicant has to pay the damages now he would be ruined.
- v. On the chances of a successful appeal, that the appeal has some prospect of success.

[12] I find it presumptuous of the Applicant to argue at point ii above that he will have to chase the Respondent to be reimbursed the judgment debt should he be successful on appeal when he, the Applicant has himself made no effort whatsoever to pay the judgment debt and has even incredibly averred at point iii that he does not have the remote possibility of paying the judgment debt. One who comes to equity must come with clean hands. This cavalier attitude and contemptuous regard to a judgment of the Court can never be tolerated and says volumes about the true intention of the Applicant.

[13] Secondly, the Applicant's success on appeal will not render his appeal nugatory since the Applicant has made no averments nor brought evidence that would lend some credence to the possibility that the Respondent is penniless or a spendthrift or has liabilities which would consume all the damages immediately and that she would have no possibility of raising the funds at all to refund the Applicant.

[14] I also find that whilst the sum of Seychelles Rupees 907,000 is substantial, the Applicant has not shown how he would be ruined and suffer irreparable loss should there be no stay of execution pending appeal. After all, there is no guarantee that the appeal will be successful to any degree. It is further noted that in the affidavit of the Respondent which has not been contradicted by the Applicant, it is averred that the Applicant has properties and vehicles under his ownership.

[15] Considering all the above the balance of convenience does not lie with the Applicant. However in view of the Respondent not being particularly forceful in wanting the money in her possession pending appeal but not having canvassed her objections further by not making any submission in addition to her affidavit, I shall grant a stay of execution to the Applicant with the following conditions:


1. The Applicant shall not dispose or in any way alienate by way of sale, lease, gift, pledge, charge or in any way encumber any property he owns until the completion of the appeal.
2. The Registrar of Lands is hereby ordered to enter a restriction against any immoveable property or any share or interest in any immoveable property registered in favour of the Applicant until the determination of the appeal.
3. The Seychelles Licensing Authority is here ordered not to transfer or allow the Applicant to transfer any vehicle, plant, business license registered in his name or jointly owned with others.


[16] I further order that the Registrar of Lands and the authorised officer of the Seychelles Licensing Authority forward to this Court a report in respect of compliance with the above orders within 14 days.

[17] Consequently this Application for stay of execution pending appeal is granted subject to the above 3 conditions.

[18] I make no order for costs.

Signed, dated and delivered at Ile du Port on 27 March 2020.


Dodin J

The seal of the Seychelles Supreme Court is circular. It features a central emblem with a tree and a star, surrounded by the text "SEAL OF THE SEYCHELLES SUPREME COURT" and a small star at the bottom.