

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 280

MA 06/2020 (arising out of CS
06/2016)

In the matter between:

FLOSSY CONFAIT

BARNEY CONFAIT

(rep. by E Chetty)

Applicants

and

AGNETTE RITA PORT-LOUIS

Respondents

JACQUELIN PORT-LOUIS

(rep. by K Louise)

Neutral Citation: *Confait & Anor v Port-Louis & Anor* [2020] SCSC 280, MA 06/2020 (arising out of CS 06/2020)

Before: Govinden J

Summary: Application to stay execution of judgment pending appeal refused; ancillary equitable order to release the seized vehicle of the 1st Applicant made.

Heard: 27 February 2020

Delivered: 15 May 2020

ORDER

Application to stay execution of judgment pending appeal refused. Ancillary equitable order to release the seized vehicle of the 1st Applicant made. Registrar of the Supreme Court ordered to release the taxi vehicle bearing registration number S2349 into the personal custody of Mrs. Flossy Confait, subject to the conditions set out in the Judgment.

JUDGMENT

GOVINDEN J

- [1] This is an Application pursuant to section 230 of the Seychelles Code of Civil Procedure for a stay of execution of judgment pending appeal. The 1st Applicant, the late husband of the 2nd Applicant, passed away before the hearing of this Application, leaving the 2nd Applicant as the sole Applicant in this matter. The Supreme Court's power under section 230 are discretionary, and must be exercised equitably and judicially, bearing in mind the facts of the case. This principle has been confirmed and elaborated in cases such as *Lablache de Charmoy v Lablache de Charmoy* SCA 9/19 and *Pool v William*, CS 244/93.
- [2] I have thoroughly considered the applicable law in light of the facts of this case. I am not satisfied that the Applicant has put a sufficiently strong case forward to convince me that this case should be stayed pending appeal. The Affidavit of the Applicant is at best cryptic and consists of a regurgitation of the applicable legal principles under section 230. The Applicant has not factually laid out the factual basis so as to show her chances of success on appeal; potential sufferings or losses or prejudices; and how fair and equitable it would be to grant the application as compared to not granting it.
- [3] I am, however, particularly concerned about a potential injustice that may be created as a result of the seizure of the taxi of the Applicant. She is a widow and a pensioner. Her trade as a taxi driver appears to have been her sole means of income, besides her social security benefit. The said taxi has been seized by the Process Server of this Court following an application for enforcement by the Respondents and Judgment Creditors. It is the Respondents' case before me that the Applicant was not using the taxi as a tool of trade at the time that it was seized. However, upon hearing her evidence and in the light of the evidence taken as a whole, she has convinced me otherwise. I am of the view that the vehicle was not being used given the trauma and grief that the Applicant was going through following the passing of her husband. Justice and equity calls for this vehicle to be released, albeit provisionally to the Applicant, who now appears destitute.
- [4] I accordingly, order the Registrar of this Court to release the taxi vehicle bearing registration number S2349 into the personal custody of Mrs. Flossy Confait who can thereafter use it as a licensed taxi driver. The Applicant should not transfer the ownership of vehicle S2349 to any person except with an order of this Court. This order is subject to

the Applicant producing a copy to the Registrar of a valid taxi licence for the said vehicle and proof that the vehicle has been comprehensively insured within 30 days of this Ruling.

[5] In the event that the vehicle is released into the custody of the Applicant, the Judgment Creditors and Respondents would be at liberty to effect a fresh seizure of the vehicle if the Applicant as not lodge a Notice of Appeal against the Judgment of this Court delivered on the 15th of October 2018, within 30 days of this Ruling.

[6] The Registrar is directed to serve the Chief Executive Officer of the Seychelles Licensing Authority a copy of this Ruling

Signed, dated and delivered on this 15th day of May 2020 at Ile du Port, Mahe.

R J Govinden

Judge of the Supreme Court