

SUPREMECOURT OF SEYCHELLES

Reportable

[2020] SCSC 406

MA 34/2020 arising in MC 08/2017

In the matter between

DANIEL LEPERE
(rep. by Serge Rouillon)

Applicant

and

PATRICK LEPERE
(rep. by Guy Ferley)

Respondent

Neutral Citation: *Lepere v Lepere* (MA 34/2020 arising in MC 08/2017 [2020] SCSC 406 8 July 2020).

Before: Twomey CJ

Summary: Stay of execution- when granted

Heard: 25 March 2020

Delivered: 8 July 2020

ORDER

The stay of execution is dismissed with costs.

TWOMEY CJ

[1] The Applicant and Respondent are brothers and co-owners of Parcel C109 which was subject to a partition order by the court delivered on 16 January 2020.

[2] It was ordered that the said land be subdivided as per the plan of the survey and Mapping Services as proposed by the Applicant and accepted by the Respondent. As to the house

on the land it was further ordered that the Petitioner would pay the Respondent the sum of SR 262,060 as his share therein.

[3] The applicant has by the present application applied for a stay of execution of the said order on the grounds that he has appealed the order as the final partition was erroneous and unequal and that if executed would cause him to suffer substantial loss and hardship.

[4] He avers in his supporting affidavit that the land comprised of 1143 square meters to which he was entitled to two thirds and his brother one third and that the partition as ordered allocates him 130 square meters less than his share.

[5] In an affidavit in answer the Respondent has averred that the partition was made as per the proposal of the Applicant himself and that the monetary award was made after an appraisal by a quantity surveyor. In the circumstances and in view of the fact that no substantial point of law to be argued has been made out, he further avers, there is very little chance the appeal will succeed.

[6] With regard to the Applicant's averment that he would suffer substantial loss, damage and hardship, as this is not particularised and as it has not been shown that the Respondent is impecunious, there is no evidence that the appellate judgment if in favour of the Applicant would be nugatory. The Respondent avers that on the contrary, it is he would suffer injustice as he would be denied the fruits of the judgment, that is his rightful share of his mother's estate.

[7] With respect to the application, section 230 of the Seychelles Code of Civil Procedure provides 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] It is settled jurisprudence in Seychelles that the principles regarding circumstances in which a stay should be granted by the court are the following:

1. *Where the appellant would suffer loss which could not be compensated in damages.*
2. *Where special circumstances of the case so require.*
3. *Where there is proof of substantial loss that may otherwise result.*
4. *Where there is a substantial question of law to be adjudicated upon the hearing of the appeal.*
5. *Where if the stay is not granted the appeal if successful, would be rendered nugatory (See *Elmasry & Anor v Hua Sun* (MA 195/2019 (Arising in CC13/2014)) [2019] SCSC 962 (08 November 2019), *Lablache de Charmoy v Lablache de Charmoy* SCA 9/2019 [2019] SCCA 35 (17 September 2019), *Pool v William* (CS 244/1993) [1996] SCSC 1 (11 October 1996), *Falcon Enterprise v Essack and Ors* (citation unknown) and *Casino des Iles v Compagnie Seychelloise* SCA 2/1994.*

[9] Ultimately, a stay of execution is a discretionary remedy. The general rule is to decline a stay, unless solid grounds are shown. A stay is therefore an exception rather than the rule. Moreover, in applications for stays, the Applicant must make full, frank and clear statements of the irremediable harm to her/him if no stay is granted. This is primarily to ensure that a successful party is not denied the fruits of a judgment.

[10] In this regard, as suggested in *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ. 1915, when considering stays of execution, two questions must be asked by the court:

1. *If a stay is granted, and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment?*
2. *If a stay is refused, and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being unable to recover the subject matter of execution (in a money judgment that has been paid to the respondent)?*

[11] The present matter concerns a partition which was proposed by the Applicant himself. No other partition is possible given the circumstances on the ground and planning

requirements. There is also a payment of money. It has not been shown that the Respondent is impecunious and will not be able to return the money if the Court of Appeal were to reverse the Supreme Court decision. In the circumstances I do not find that the Applicant runs the risk of a decision in its favour on appeal being rendered nugatory.

[12] On another point, having examined the grounds of appeal, and while I am reluctant to consider the appeal at this stage, even a cursory examination of the decision against the grounds of appeal does not reveal any substantial facts or law to be decided on appeal.

[13] In the circumstances, the application for the stay of execution is therefore dismissed with costs

Signed, dated and delivered at Ile du Port on 8 July 2020

Twomey CJ