

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC

MA68/2020

Arising in MC 18/2019

In the matter between

GIANNI BORDINO

(rep. by Frank Elizabeth)

Applicant

and

THE GOVERNMENT OF SEYCHELLES

(rep. by Steven Powles)

Respondent

Neutral Citation: *Bordino v Government of Seychelles* (MA 68/2020) [2020] SCSC **413** (10 July 2020).

Before: Twomey CJ

Summary: Application for a stay of execution of a section 4 interlocutory Order under the

Proceeds of Crime (Civil Confiscation) Act

Heard: 24 June 2020

Delivered: 10 July 2020

ORDER

The application for a stay of execution of the court's Order of 27 March 2020 is dismissed with costs.

RULING

TWOMEY CJ

1. This is an application for a stay of execution of this Court's Order made pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act (hereinafter POCA) on 27 March 2020 in which the Applicant and any other person were prohibited from disposing or otherwise dealing with property, namely Parcel V1732 at Eden Island, of which Superintendent Hein Prinsloo was appointed as Receiver.

2. The Applicant has supported this application with his own affidavit in which he avers that he has filed an appeal against the Court's Order, that the appeal has some prospect of success and that it is just and necessary that the "Seychelles Court of Appeal" (sic) stay execution pending the final determination of [the] appeal."
3. He has also averred that there are substantial questions of law and facts to be adjudicated at the hearing of the appeal as disclosed in his notice of appeal and that if the stay is refused, any judgment given by the Court of Appeal in his favour will be rendered nugatory.
4. In a response affidavit, the Respondent has averred that the Applicant has to date not complied with the Court's Order in that the Applicant still occupies the villa on Parcel V17532 and has refused, failed and/or neglected to hand over the same to the Receiver duly appointed by the Court and instead has now applied to stay the execution of the Order.
5. The Respondent has further averred, inter alia, that the Court has discretion to stay the execution of its Order but that mere inconvenience and annoyance are not enough to persuade a Court to take away from a successful party the benefit of its decree.
6. With respect to the Applicant's averment that there are substantial questions of fact to be adjudicated, the Respondent states that the grounds of appeal as disclosed do not reveal any persuasive or significant facts or law which need to be decided on appeal or that the appeal carries a good chance of success.
7. Further, the Respondent avers, the Applicant has not established that the execution of the Order would cause such loss to him personally that could not be compensated in damages in the event that his appeal is successful.
8. Lastly, the Respondent avers that a section 4 Interlocutory Order as per the POCA is valid for 12 months and the Applicant may at any stage while the order is in operation cause it to be discharged or varied by satisfying the court that the property in question does not constitute directly or indirectly benefit from criminal conduct or was acquired or

constitutes benefit from criminal conduct and that only a section 5 disposal order after the 12 months assuming there is no pending appeal would bring finality to the matter. .

9. In final written submissions the Applicant has relied on the principal cases in this area of law to outline the main principles of law to be considered when granting or denying a stay of execution. Many of these same cases are also relied on by the Respondent in their closing submissions. Each side concludes that granting the stay or denying the stay will cause more prejudice to their clients.

10. A stay of execution is a discretionary and equitable measure and it cannot be overemphasised that he who comes to equity must do equity. From the affidavit evidence, it is clear to me that the Applicants have not come to this court with clean hands. The affidavit evidence before this Court shows that the Applicants are currently in contempt of the Court Order. Proceedings may yet issue on this matter.

11. It is also trite that a stay of execution is granted only where the following principles are followed:

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 in this respect 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).*

12. The Applicant's affidavit falls far short of satisfying the Court of the principles enunciated above. It has not shown what loss it might suffer, what substantive issue is to be decided by the Court of Appeal and how it might not be compensated in damages.

13. In respect of section 4 POCA interlocutory orders yet another element precludes the granting of a stay of execution. When such orders are ultimately made, any interest a person might have in the property that has been forfeited is preserved and remains in the hands of the Receiver and will remain so until the conclusion of the case even if the appeal were to proceed beyond the twelve months' validity of the interlocutory order. The person having such an interest can at any time apply to set the Order aside on certain conditions being satisfied.

14. Given the above facts, circumstances and law and the fact that any interest the Applicant might have in the property forfeited is reserved, I do not see how the application meets the principles on which a stay of execution can be granted. The application is accordingly dismissed with costs.

Signed, dated and delivered at Ile du Port on 10 July 2020.

M. Twomey
Chief Justice