

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable / Redact

[2020] SCSC ...SS2.

M.A 61/20 arising out of

CS 15/2018

In the matter between:

Barbara Mathilda Karen Poirer

1st Applicant

and

Sylvia Elizabeth Peira Poirer

2nd Applicant

v/s

The Seychelles Pension Fund

1st Respondent

And

Marie Ange Way-Hive

2nd Respondent

c/o Seychelles Pension Fund

Caravelle House, Victoria, Mahe

Neutral Citation: *Barbara Poirer and anor vs The Seychelles Pension Fund and anor* (CS 15/2018) [2020] SCSC

Before: R. Govinden

Summary: Stay of Execution refused.

Heard: 4th August 2020

Delivered: 7th August 2020

ORDER

Application for Stay of Execution is refused

RULING

R. GOVINDEN J

The Applicants has filed an application for stay of execution of a judgment delivered by this Court on the 31st of January 2020. Attached to the Application is an affidavit sworn by the 1st Applicant wherein she swears to the fact she has filed an appeal to the Court of Appeal and a

petition before the Constitutional Court against the said judgment and that there are substantial questions of law to be adjudicated upon at the hearing of the appeal. She also swears that she has an overwhelming and substantial chance of success in the appeal and before the Constitutional court and that irreparable harm and damages will be caused to the Applicants if the stay is not granted as it will render any consequent judgments nugatory.

The Applicants have attached a number of supporting documents to their applications, including their intending grounds of appeal and the Constitutional Petition. In these documents strong criticism has been levelled against the judgment of this court. There are allegations of bias; misdirections both on the law and facts and even an averment that this application for stay should not be heard by this court given that the Applicant would not be granted their right to fair hearing.

The Learned counsel for the Applicants has chosen to support his client's application by a written submission, whilst counsel for the Respondents have made oral submissions. In his written submissions counsel have referred the court to a long list of authorities in respect of stay of executions. Such as the case of *MacDonald Pool v Despilly Williams CS no 244 of 1993* ; *Falcon Enterprise v Essack and ors (2001) SLR 137*; *Casino des Iles v Compagnie Seychellois (Pty) Ltd SCA 2/94*; *Changtave v Changtave (2003) SLR 74*. In his response the Learned counsel for the Respondents did not contest the law and rather endorsed the applicable principles affirmed in those authorities. However, according to him, based on the facts of this case, the claim is purely financial, which according to him means that even if the stay is not granted, any loss to the Applicants can be justly and adequately compensated in damages. Moreover, he further submitted that there are no special circumstances which would warrant a stay, given that the proposed grounds of appeal present no special features and has little chance of success.

I have considered the submissions of both counsels in the light of the established principles and the facts giving rise to this application. According to the case of *Mc Donald Pool* (supra), an authority that has been confirmed and reinstated by many later authorities, the following are circumstances in which a stay should be granted;

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.*

The Learned Chief Justice in the case of *Elmasry and Anor v Hua Sun (MA 195/19)(Arising in CC13/ 14)*, applying the English case of *Hammond Suddard Solicitors v Agricherm International Holdings LTD [2001] EWCA, CIV 1915*, whilst applying those same principles, went on to hold that when considering stays of execution it is also useful to ask the following two questions;

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)?*

The Learned Chief Justice in the same case then went on to hold that, “*The present matter concerns 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. Having further examined the grounds of appeal and having found on a cursory appreciation that the grounds of appeal did not reveal any earth shattering or important appeal on the law or facts.*” She then went on to refuse to grant the application.

Similarly, in this case, I find that the matter concerns purely payment of money, the Applicants had pray for payments of all moneys allegedly due to them and wrongly paid to a third party by the 1st Respondent from the date of the entitlement; expenses incurred in processing the claims of the Applicants, including travel expenses and financial loss, distress and moral damages against the Respondents jointly and severally. It has also not been pleaded or shown by the Applicants that the Respondents will not be able to pay the sums prayed for in the plaint in the event that the Constitutional Court and or the Court of Appeal were to overturn the judgment of this court and that the Applicants would suffer loss which could not be compensated by damages. Further, this court takes notice of the fact that the 1st Respondent is a solvent statutory authority, being the repository of the country’s national pensions, and is presently solvent and can hence meet any payments ordered by the courts.

I have also scrutinized the proposed grounds of appeal, having done so this court do not find any substantial questions of law or fact to be adjudicated upon at the hearing of the appeal or before the Constitutional Court.

Accordingly, in my final determination, I dismiss the application for stay of execution of the judgment.

Signed, dated and delivered on the 7th of August 2020 at the Palais des Justice, Ile du Port, Victoria, Mahe.



R Govinden
Judge of the Supreme Court

