

SUPREME COURT OF SEYCHELLES

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Reportable/Not Reportable/Redact

[2020] SCSC .679

MA31/2020

(Arising in CS07/2019)

In the matter between:

**FRANKY PETROUSSE**

*(rep. by Joel Camille)*

**Applicant**

and

**THE ATTORNEY GENERAL  
FOR THE COMMISSIONER GENERAL OF THE  
SEYCHELLES REVENUE COMMISSION**

*(rep. by Mr. Hemanth Kumar)*

**Respondent**

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**Neutral Citation:** *Petrousse v Commissioner General* (MA31/2020) [2020] SCSC 679 (22 September 2020).

**Before:** E. Carolus J

**Summary:** Application for leave to appeal

**Delivered:** 22 September 2020

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**ORDER**

The application for leave to appeal is dismissed with costs.

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**RULING**

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**CAROLUS J**

**Background**

- [1] This ruling arises out of an application for leave to appeal against a ruling of this Court dated 29<sup>th</sup> November 2019 dismissing 5 pleas in limine litis raised by the defendant in CS07/2019 (“ the principal suit”).
- [2] In the terms of the plaint in the principal suit, the Commissioner General of the Seychelles Revenue Commission (plaintiff) seeks to recover unpaid revenue in the sum of SCR

24,355,141.79 from Island Construction Company Limited represented by its Public Officer and Director Mr. Frankie Petrouse (defendant). The defendant filed a statement of defence in which it raised the following pleas in *limine litis* reserving its defence on the merits:

- (1) Mr. Frankie Petrouse is wrongly suited in the plaint and his name must be removed as public officer in that, since a Defendant's board resolution made on the 2 May 2014, he is no longer a public officer of the Defendant and has since that date delegate (sic) all his powers and duties as a public officer of the Defendant to a third party, namely Mr. Pierre Quatre of Grand Anse, Mahe, Seychelles.
- (2) It is further avers (sic) that since 2014, Mr. Petrouse has left jurisdiction of Seychelles and has not and is not participating in the management and administration of the Defendant ever since. Mr. Frankie Petrouse is accordingly wrongly suited in this plaint.
- (3) The cause of action averred in the amended plaint, dated 5 May 2019, is prescribed in law and accordingly must be dismissed.
- (4) The plaintiff is not properly represented before the Supreme Court.
- (5) The plaint has not been properly signed.

[3] After considering the oral submissions of counsel for the defendant and written submissions of the defendant, the Court finding no merit in any of the pleas in *limine litis* dismissed all five of them by a ruling dated 29<sup>th</sup> November 2019. It is this ruling which the applicant Mr. Frankie Petrouse now seeks leave to appeal against.

#### **Preliminary Point**

[4] Before dealing with the application, I wish to address some preliminary matters arising from the applicant's pleadings and supporting affidavit. I note that although Island Construction Company Limited is the defendant in the principal suit, and represented therein by Mr. Frankie Petrouse in his capacity as its Public Officer and Director, the applicant in Notice of Motion filed the present application for leave to appeal, is cited

simply as Mr. Frankie Petrouse. It is not stated, as it should have been, that in making the application, he is acting in his capacity as the Public Officer or Director of the defendant company.

[5] Further the affidavit in support of the Notice of Motion is sworn by Mr. Wilson Nancy, who avers that he is the duly appointed agent of the applicant in this matter. At paragraph 1 of the affidavit he states:

*1. I am the deponent above amend (sic). I state that I am duly authorized by Mr. Franky Petrouse to make and swear this affidavit in support of this motion before the Court. I state that since 2014, Mr. Petrouse has been resident and domiciled in the Republic of Kenya. There is now attached shown to me and marked as Exhibit A1, copy of written consent send by Mr. Franky Petrouse, authorizing me to make and sign this affidavit in support of the motion.*

[6] Exhibit A1 is not attached to the affidavit and there is nothing to show this Court that Mr. Wilson Nancy is the agent of Mr. Petrouse or authorised to swear the affidavit. Further any authorisation given to Mr. Nancy by Mr. Petrouse would have to have been given by him in his capacity as a representative of the defendant company for the purpose of swearing the affidavit on behalf of the company and not on behalf of Mr. Petrouse himself in his personal capacity. This would require a resolution of the company to that effect. The Court does not have anything before it that would allow it to satisfy itself that Mr. Nancy was authorised to swear the affidavit either by Mr. Petrouse in his capacity as a representative of the company or by the company itself. The Court is therefore not satisfied that Mr. Nancy was authorised to swear the affidavit in support of the Notice of Motion thereby rendering such affidavit defective. I therefore find that the application is unsupported by any evidence, and on that ground alone, the application for leave should be dismissed.

#### **Application for Leave to Appeal**

[7] The Court being mindful that the applicant may file a fresh application for leave to appeal if the present one is dismissed on the above-stated ground, proceeds to consider the merits of the application.

[8] Exhibited in the affidavit in support of the Notice of Motion is a Notice of Appeal seeking an order reversing the ruling dated 29<sup>th</sup> November 2019 in the principal suit. It is averred in the affidavit that the Notice of Appeal raises an issue of public interest importance as to the determination, inter alia, of the issue of resident status under the Revenue Administration Act, and that it is in the interest of justice that the Court grants leave to file the said Notice of Appeal so as to have a determination of the Appellate Court on the issue raised therein. The Grounds of Appeal as set out in the Notice of Appeal are as follows:

1. *The Learned Trial Judge erred in law and on the facts to have concluded that Mr. Franky Petrousse must be taken to be the Public Officer of the Company Island Construction Company Limited.*
2. *The Learned trial Judge erred in law and on the facts to hold that the special power of attorney dated 2<sup>nd</sup> May 2014 excludes the responsibilities of the agent Mr. Pierre Quatre to make payment of revenue to any revenue body under any revenue law including the Revenue Administration Act.*
3. *The Learned Trial Judge erred in law and on the facts to have concluded that the Appellant was a resident person for purposes of the Revenue Administration Act.*

[9] The respondent has filed a Reply to the Notice of Motion objecting to the granting of leave to appeal on grounds which may be summarised as follows, namely that the ruling which *leave is being sought to appeal against has been properly determined by this Court and "[H]ence the present application seeking leave from this court ... does not have any merits either on facts or the law involved in this suit"*. Further that an appeal has a tendency to delay the main action and contravene the rights of the plaintiff/ respondent to a fair hearing within a reasonable time as stipulated by article 19(7) of the Constitution. Finally that the applicant has not shown in his application, any good cause or justifiable legal reasons to challenge the ruling. The respondent relies on the case of *Gangadoo v Cable and Wireless Seychelles Ltd (2013) SLR 317* in support of his objections.

[10] While the respondent has chosen to rely on his Reply (see paragraph 9 above), the applicant filed written submissions, in which he quotes the applicable law namely section 12 of the Courts Act. The essence of his argument is contained in paragraphs 3 and 4 of his submissions the relevant parts of which are reproduced below:

3. ... the Court has a discretion whether to allow or refuse leave to appeal against such orders, as will include a ruling of the Court on a plea in limine ... In the case of *Ailee Development (No.3 2008) SLR 87*, it was held that a Court may grant leave to appeal on a number of reasons, even if it is not satisfied that the appeal is likely to succeed. In the case of *Morel v Registrar of the Supreme Court SCA 8/2000*, the Seychelles Court of Appeal in considering the issue of granting leave to appeal to the Court of Appeal stated that an application may be granted where the applicant shows that the intended appeal raises issues of public interest.
4. ... the Applicant/Intended Appellant has appealed against a ruling of the Court which raises an issue of clear public interest. Can the Applicant be treated as the officer of a company where the applicant has assigned/disposed of all his rights in a company? Can the Applicant who has migrated out of Seychelles since 2014, be treated as a resident person liable for tax purposes, under the Revenue Administration Act. In a dearth of Court pronouncement on these issues, it is submitted that the intended appeal is of merit and must be granted leave to pursue if only it will serve to determine these identified public interest issues.

### Analysis

[11] Section 12 of the Courts Act deals with civil appeals from the Supreme Court to the Court of Appeal and sets out the circumstances in which leave to appeal is required. It provides as follows:

12. (1) *Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.*

(2)(a) *In civil matters no appeal shall lie as of right-*

- (i) *from any interlocutory judgment or order of the Supreme Court; or*
- (ii) *from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.*

(b) *In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.*

(c) *Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.*

(3) *For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the Supreme Court of Seychelles and of the Court of Appeal in England.*

(4) *In this section the expression "civil matters" includes all non-criminal matters.*

[12] It is clear from the above provisions that leave of the Supreme Court is required for an appeal to be lodged against an interlocutory matter and that the court has a discretionary power to grant such leave if it considers that the question involved in the appeal is one which ought to be the subject matter of an appeal.

[13] In the case of *Pillay v. Pillay (No. 2) (1970) SLR 79*, Sauzier J, as he then was, refused to exercise his discretion to grant leave to appeal to the Court of Civil Appeal of Mauritius against a ruling by the Supreme Court rejecting a plea in limine litis. In considering how the Supreme Court's discretionary powers should be exercised in an application for leave to appeal from an interlocutory judgment of that Court, he held that -

*"Before leave to appeal is granted the Court must be satisfied –*

*(a) that the interlocutory judgment disposes so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision; and*

*(b) that there are grounds for treating the case as an exceptional one and granting leave to bring it under review".*

[14] This position has been consistently followed by our Courts. See *Beitsma v Dingjan (No. 2) (1974) SLR 302*, *EME Management Services Limited v Islands Development Company Limited (2008-2009) SCAR 183 [11 December 2009]* and *Cable & Wireless Seychelles Ltd v Innocente Alpha Ventigadoo Gangadoo SCA MA: 2 of 2013 [30 August, 2013]*.

[15] In the Pillay case, in refusing the application for leave to appeal, Sauzier J stated:

*The interlocutory judgment in this case does not put an end to the litigation between the parties, or at all events does not dispose so substantially of all matters in issue as to leave only subordinate or ancillary matters for decision. Moreover the applicant will be entitled as of right to question the decision in the interlocutory*

*judgment if and when he exercises his right to appeal from the final judgment. An appeal at this stage would entail unnecessary delay and expense ...*

[16] Similarly, in the present case, the interlocutory ruling dismissing the pleas in limine litis raised by the defendant, and for which leave is being sought to appeal against, does not dispose so substantially of the matters in issue in the principal suit as to leave only subordinate or ancillary matters for decision. It is further noted that the affidavit in support of the application does not contain any such averment. As stated in the Pillay case, the applicant/defendant will have an opportunity to question the decision in the interlocutory ruling if and when it exercises its right to appeal from the final judgment in the principal suit. This Court is also of the view that an appeal would result in considerable delay and cause prejudice to the plaintiff.

[17] On whether there are grounds for treating the present matter as an exceptional one and granting leave to appeal, this Court takes into account the statement of the Court of Appeal in the case of EME Management Services Limited v Islands Development Company Limited (2008-2009) SCAR 183 [11 December 2009], in which the Supreme Court had refused an application by the defendant in the principal suit for leave to appeal against an interlocutory Order made by it, and the defendant had applied to the Court of Appeal for special leave to appeal. The Court of Appeal stated at paragraph [17] of its judgment:

*A challenge which goes to the merits of the ruling of the 20 July namely, that the trial Judge failed to properly consider and weigh all evidence and facts placed before him and failed to correctly apply the law, is not a ground for treating this case as an exceptional one and granting leave to bring it under review. Certainly there are likely to be interlocutory orders made in the course of a trial which are erroneous. If leave to appeal is to be granted against each such order, the procedural bar in s12 of the Courts Act, which is in accordance with section 120(2) of the Constitution, would be rendered meaningless. The appeal from a final decision would enable this Court to correct any interlocutory order which it may deem erroneous.*

[18] In the present case the applicant has submitted that the appeal raises issues of public interest namely whether the applicant be treated as the officer of a company where the applicant has assigned/disposed of all his rights in a company, and whether the applicant who has migrated out of Seychelles since 2014 can be treated as a resident person liable for tax

under the Revenue Administration Act. The applicant argues that an appeal would serve to determine these public interest issues in the absence of any court pronouncements on these specific issues.

- [19] In the EME Management Services Limited case, the Court stated at paragraph 20 of the judgement:

*It is not the function of this Court to “clarify the law on a matter” each time an interlocutory order is made by the Supreme Court in the course of a trial. As this Court stated in Seychelles Hindu Kovil Sangam v Pillay (supra) –*

*If that were to be the guiding principle this court would be inundated with Special Leave to Appeal applications and appeals from interlocutory rulings of the Supreme Court which would cause unnecessary delays and add on to the existing backlog of cases before the Supreme Court.*

- [20] The Court went on to state at paragraph 21 of its judgement:

*In Bentwich Privy Council Practice (3<sup>rd</sup> ed) it has been stated: “... the delay occasioned by taking an additional appeal adds to the procrastination which is the bane of Indian litigation”. This may become true of our litigation unless this court is cautious in granting special leave. To treat a case as exceptional which would necessitate special leave of this court to bring the interlocutory judgment or order of the Supreme Court under review, one must be able to show that the interlocutory judgment or order is manifestly wrong and irreparable loss would be caused to him or her if the case proper were to proceed without the interlocutory judgment or order being corrected. It would not be “in the public advantage and interest” to unnecessarily delay trials before the Supreme Court, otherwise we agree with the view expressed in Bentwich at p 213 that –*

*The suitor need not appeal from every interlocutory order which does not purport to dispose of the case and by which he may feel aggrieved ... the appeal from the final decision enables the Court to correct any interlocutory order which it may deem erroneous.*

- [21] Having considered the arguments of the parties in light of the evidence before the Court, the applicable law and authorities hereinbefore referred to, this court is not satisfied that



the applicant/defendant has set forth any grounds for treating this matter as an exceptional one and for granting leave to bring it under review.

**Decision**

[22] For the reasons stated above, this Court declines to exercise its discretion to grant leave to appeal against its ruling of the 29<sup>th</sup> November 2019, and dismisses the application with costs.

Signed, dated and delivered at Ile du Port on 22 September 2020

Carolus.

E. Carolus J