

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 873
MA 22/2020
(Arising in DC 137/2020)

In the matter between:

ADRIAAN DE LANGE
(Rep. by Ms. Vanessa Gill)
and

Applicant

CATHERINE CILLIERS
(Rep. by Mrs. Alexia Amesbury)

Respondent

DC 137/2020

CATHERINE CILLIERS
(Rep. by Mrs. Alexia Amesbury)

Petitioner

And

ADRIAAN DE LANGE
(Rep. by Ms. Vanessa Gill)

Respondent

Neutral Citation: *De Lange v Cilliers* (MA 22/2020) [2020] SCSC 873

Before: 18 November 2020
B. Adeline, Master
Summary: Court order to prevent removal from jurisdiction
Heard: 11 November 2020
Delivered: 18 November 2020

FINAL ORDER

Notice of motion supported by affidavit of facts and evidence for a court order to prevent removal from the jurisdiction of Seychelles – The Supreme Court exercising its inherent jurisdiction as part of procedural law to decide whether or not the application should succeed – The Supreme Court as a court of equity exercising its equitable jurisdiction under Section 6 of the Courts Act to administer justice where no sufficient legal remedy is provided for by the law of Seychelles – Principles of natural justice invoked – Constitutional right to a fair hearing upheld. The application succeeds, and accordingly, this Court directs the Director of Immigration, also an Immigration Officer by virtue of Section 2 read with Section 3(1) of the Immigration Decree, not to remove Mr. Adriaan De Lange from the jurisdiction of Seychelles to enable him to participate in the proceedings pertaining to a petition for the annulment of the marriage between him and his wife, Catherine Cilliers, in order to render the proceedings fair, and to protect and uphold the parties fundamental constitutional right to a fair hearing

RULING ON MOTION

B. ADELINE, MASTER

- [1] By way of a petition dated 28th October 2020, one Catherine Cilliers of Au Cap, Mahe, Seychelles, the Petitioner, seeks for an order of this Court to annul the marriage between her and one Adriaan De Lange, the Respondent, in exercise of its powers under Section 12(g) of the Matrimonial Causes Act, on the ground that there was no valid consent given by the Petitioner to the purported marriage.
- [2] The Petition is contested because in his answer to the petition, the Respondent Adriaan, De Lange, denies that there was no valid consent for

their marriage because of duress. He contends, that there was a valid consent and that they were lawfully married on the 7th July 2020.

[3] The Applicant, previously the Respondent, now files this application by way of notice of motion supported by an affidavit of facts and evidence sworn by him, for an order of this Court directing the Immigration Officer not to remove him from the jurisdiction of Seychelles to enable him to defend the petition seeking to annul the marriage between him and the Petitioner.

[4] In the supporting affidavit attached to the motion, the Applicant avers, that his stay in the jurisdiction to enable him to attend to the Family Tribunal and the court cases involving him, is imperative for him to pursue or defend the cases, one of which is the petition filed by his wife, the Respondent, for the annulment of their marriage, which is the one before this Court, and which for the purposes of this ruling is relevant.

[5] In her oral answer to the application, learned Counsel for the Respondent (also for the Petitioner, in the main case) Mrs. Alexia Amesbury, objected to the granting of the motion and the making of the order directing the Immigration Officer not to remove the Application (also the Respondent in the main case) from the jurisdiction of Seychelles. Learned Counsel contended, that through the use of technology, the Respondent can be heard and defend the petition for annulment of his marriage to the Petitioner “virtually” without him having to be in the jurisdiction and appearing in person before the Court. A facility which Counsel submitted, are widely used, and has been used in other cases before the Supreme Court.

[6] In her reply, Learned Counsel for the Applicant, Ms. Vanessa Gill, submitted, that in order for the Applicant to be given a fair hearing, he must

be allowed to remain in the jurisdiction to instruct Counsel and to provide key evidence in relation to all his matters pending before the Supreme Court.

[7] Learned Counsel Submitted, that virtual hearings are available to parties who cannot make their personal and physical appearance before the Court, whereas, the Applicant who is currently in Seychelles, is available to appear in court, in person, to pursue, or defend the cases involving him.

[8] Learned Counsel for the Applicant, Ms. Vanessa Gill, cited the case of **Re: Republic v Ladouceur** and **Ladouceur v Republic** [2009] SLR 131, quoting Karunakaran J, in a ruling he gave, when he said, that;

“A trial in *absentia* is, indeed, an antithesis to the constitutional right, namely, right to a fair and public hearing which is a fundamental right guaranteed by Article 19(1) of the Constitution of Seychelles. The right to a fair trial or hearing explicitly includes the right to be tried in one’s presence. This is a key part of the right to defend oneself”

[9] Counsel for the Applicant, Ms. Vanessa Gill, also submitted, that Courts have in the past exercised its discretion and applied the rules of natural justice in exercise of its inherent jurisdiction, to prevent deportation of parties because of pending cases before the courts. Counsel cited the case of **Allan Nimmo vs Maureen Nimmo nee Marie MA 102/2019 arising out of DC 65/2018**, when Govinden J, made an order that the Applicant’s visitors permit be provisionally extended to 29th May 2019 in view of the fact that he had a pending divorce and ancillary case before the Supreme Court.

[10] It is worth noted, that the relief being sought by the Applicant is in no way one that is intended to circumvent the law dealing with prohibited

immigrants under Section 19(1) of the Immigration Decree, nor should it be construed as the court intervening with the powers conferred on Immigration Officers. Where a prohibited immigrant has been served with a notice under Section 20(1) of the Immigration Decree requiring him to leave the jurisdiction, representations have to be made to the Minister responsible for Immigration, and under Section 21(3) the decision of the Minister is final and cannot be challenged in court.d

- [11] The Courts notes, that on the facts and circumstances of the instant case as transpired in the affidavit evidence, the Applicant making this application is presently in the jurisdiction as opposed to being outside the jurisdiction. That is a very important fact to consider in determining this application. The Court also notes, that there is a balance of convenience to be made, and clearly, the balance swayed towards allowing the Applicant to remain in the jurisdiction to defend the case for annulment of the marriage between him and the Respondent (the Petitioner in the main case) for the reasons discussed below as regards to the merit of the application.
- [12] It would therefore, not be a just, fair and equitable decision, for the Court to deny someone who is already in the jurisdiction, an option available to him, which option he has elected as a matter of choice, for the purposes of exercising its constitutional right to a fair hearing, and that includes his right to be heard.
- [13] Therefore, the first issue to be addressed in determining this application, is whether or not this Court has any power or jurisdiction to grant the application, and to accordingly make the order being sought for. Section 4 of Part II of the Courts Act, Cap 52, spells out this court General Jurisdiction

and Powers. Under Section 6 of the Courts Act, the Supreme Court is also a court of equity empowered to exercise an equitable jurisdiction to administer justice where no sufficient legal remedy is provided for by the law of Seychelles. It therefore follows, that although not explicitly mentioned, this Court does have an inherent jurisdiction to decide certain matters as the instant one before it.

[14] Inherent jurisdiction facilitates the Court in exercising full judicial power in all matters concerning the general administration of justice, and is part of procedural law. It is argued, that it is a “default power” that operates where there is no express power. In the instant case, to invoke it, is to ensure convenience and fairness.

[15] Having decided that this Court does have an inherent jurisdiction to decide whether or not to grant the application, the next issue to be addressed is whether this application should succeed on its merit. This Court will address two main arrears, namely;

- i. The principle of Natural Justice, and
- ii. The right to a fair hearing under Chapter III Part 1 of the Constitution.

[16] The principle of natural justice is derived from the Roman word “*Jus-naturale*” and “*lex-naturale*”. Natural justice is a sense of what is wrong and what is right. It has several purposes. For example:

- i. To provide equal opportunity to be heard.
- ii. It introduces the concept of fairness to fulfil the gaps and loopholes of the law.

iii. To protect fundamental rights, and

iv. To avoid miscarriage of justice.

[17] In essence, the principle of natural justice should be free from bias, and parties should be given fair opportunity to be heard, and all the reasons, decisions taken by the Court should be informed by the Court to the respective parties.

[18] The latin words, “*Nemo Judex In Causa Sua*” translated as “no one should be a Judge in his own case is therefore very relevant. This rule is necessary to ensure that the Judge is impartial and decides the case on the basis of evidence. The latin words “*Audi Alteram Partem*” translated as no person can be condemned or punished by the Court without having a fair opportunity to be heard, is central to the right to a fair hearing.

[19] These principles date back several years ago. For example, according to the Bible, in the case of Eve and Adam when they ate the fruit of knowledge they were forbidden by God. Before giving the sentence, Eve was given a fair chance to defend herself, and the same process was followed in respect of Adam.

[20] The constitutional right to a fair hearing under Article 19(1) of Chapter III Part 1 of this country’s Constitution, encompasses *inter alia*, the right to present one’s case and evidence, and the right to examine and cross-examine. Should the Applicant be removed from the jurisdiction, he would be denied of these rights, and indeed, his Constitutional right to a fair hearing.

[21] In the final analysis, therefore, this application succeeds on the basis of the discussion and reasoning in the preceding paragraphs of this ruling. Accordingly, this Court directs the Director of Immigration also an Immigration Officer by virtue of Section 2 read with Section 3(1) of the Immigration Decree, not to remove Mr. Adriaan De Lange from the jurisdiction of Seychelles to enable him to participate in the proceedings pertaining to the petition for divorce filed against him by his wife, Catherine Cilliers in order to render the proceedings fair, and protect the parties' fundamental Constitutional Right to a fair hearing.

[22] A copy of this Ruling is to be served on the Director of Immigration appointed by virtue of Section 3(1) of the Immigration Decree.

Signed, dated and delivered at Ile du Port on 18 November 2020

B. Adeline

Master of the Supreme Court