

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 777
MA 159/2021
(Arising in CS 112/2015)

In the matter between:

PATRICK PUTZ
(rep. by Mr. Joel Camille)

Applicant

and

SABRINA DE SOUZA-JAHNEL

Respondents

AND

JOHN AUBREY DE SOUZA

Neutral Citation: *Putz Patrick and De Souza John & Jahnel De Souza Sabrina* (MA 159/2021)

Before: [2021] SCSC 777 (22 November 2021)
ANDRE J

Summary: Ruling – Stay of execution pending Appeal – Section 203 of the Seychelles Code of Civil Procedure (Cap 213)

Heard: 27 October 2021

Delivered: 22 November 2021

ORDER

The Motion for stay of execution is granted.

RULING

ANDRE J

Introduction

- [1] This Ruling arises out of a Notice of Motion filed by Patrick Putz on 13 July 2021 and is supported by an affidavit signed by Irine Fonseca thereof of on the said date (“*the Applicant*”).
- [2] The Notice of motion seeks for a stay of execution of the Judgment delivered in Case of Number CS 12 of 2015, delivered on 26 November 2019 (“*the impugned Judgment*”).
- [3] Sabrina De Souza-Jahnel and John Aubrey De Souza (“*the Respondents*”) vehemently object to this application as per the response affidavit filed on 28 July 2021.

Applicant’s grounds for stay of execution

- [4] In summary, the grounds for the stay of execution as averred by the Applicant are namely that:
- (1) *the impugned Judgment is subject to an appeal to the Seychelles Court of Appeal as per notice of appeal attached to the application (**Exhibit A2 - of which this court takes notice**), (Emphasis is mine), and that to date no date has been set for the hearing of the appeal;*
 - (2) *the Applicant verily believes that the appeal has some prospect of success for reasons stated in the grounds of appeal contained in the notice of appeal, which according to the Applicant are legal grounds relating to the impugned Judgment;*
 - (3) *should the court not grant a stay of the execution of the impugned Judgment, the Applicant will be ruined as the Applicant has invested considerably in the acquisition of the property from the late Flory De Souza and that the Applicant had been willing to compensate the Respondents in such a manner as to restore a more equitable balance between the contracting party in the suit;*
 - (4) *in the interest of justice, the applicant be allowed to be heard on appeal and the applicant’s right to the property be finally declared.*

[5] It is to be noted that written submissions were also filed in support of the application to the above-effect by the applicant of 17 August 2021 (*which the court has duly scrutinized for this ruling*). (Emphasis is mine).

Respondent's objections to staying of execution

[6] On their part, the Respondents filed an affidavit in response to the on 28 July 2021 and aver in objection to the application that:

- (1) *the first respondent is the co-owner and the sole fiduciary of the land title V 17060 and the house thereon at Serret road, Saint Louis, Mahe, alongside the Second Respondent John Aubrey De Souza;*
- (2) *the affidavit in support of the motion shows no proof that the document has been authorized by the said Putz or if it is within the knowledge and there is no averment that the deponent has any idea or personal knowledge of the matters discussed therein and the jurat on the final page is insufficient to legalize the affidavit as per the rulings of the court;*
- (3) *the application for a stay of the Supreme Court Judgment was just made as an afterthought after two years, is defective and cannot be entertained by this Court for the reasons that the application does not satisfy the criteria for a stay as set out in the many cases of the higher courts of Seychelles namely Pool v Williams c.s. no. 244 of 1993 and ors are cited as support;*
- (4) *the affidavit fails to disclose all averments necessary for the court to make a proper determination on the motion and therefore, according to the Respondents, there are no grounds for the Court to grant a stay of execution for the order pending the determination of the alleged appeal;*
- (5) *in terms of hardship since covid-19 in April 2021, the first respondent was laid off by masons travel and she is presently without means to support herself and pay her rented living accommodation and urgently requires her home to live in, since her present landlord has given her notice to quit six months ago because she wants to get a higher rent from another tenant; and*
- (6) *if there is no stay and she is allowed to live in her house, the house will always be there even if Putz wins his appeal to the Court of Appeal, which she is advised is hardly likely, and there would be nothing nugatory in maintaining the status quo.*

Legal analysis and findings

- [7] I will now move on to address the legal standards applicable in this case in light of the highlighted salient facts.
- [8] Section 230 of the Seychelles Code of Civil Procedure (*“the Code”*) applies in these circumstances and provides that an appeal shall not operate as a stay of execution unless the Court so orders and subject to such terms as it may impose.
- [9] The Authorities in this Jurisdiction has confirmed that *it is entirely in the discretion of the Court to grant a stay* (Emphasis is mine) (See: **Pool v William (1996) SLR 206**), **Chang-Tave v Chang-Tave (2003) SLR 74**), (**Avalon v Berlouis (2003) SLR 57**) and (**Faye v Lefevre (2012) SLR 44**).
- [10] The consideration for granting a stay of execution includes the weighing of the interests of the parties to establish whether the appeal has some chance of success, the balance of convenience, hardship, and irreparable damage that may be suffered by the appellant, and the concern that unless a stay was ordered the appeal would be rendered nugatory (See: **Alexander v Cambridge Credit Corp Ltd (1985) 2 NSWLR 685**), (**Choppy (Pty) Ltd v NJS Construction (Pty) Ltd (2011) SLR 215**).
- [11] The Court when hearing the stay of execution application does not examine the merits of intended appeals or likely chances of its success, it has to examine if the appeal has some prospect of success or if there is a substantial question of law to be adjudicated.
- [12] The current application refers to an appeal before the Court of Appeal and copy of the notice of appeal indicating the grounds of appeal is clearly set out, and this court has had the opportunity to peruse through it and to examine the considerations it ought to make for the purpose of such application. I note that the affidavit of the Applicant is duly supported by a power of attorney duly apostilled on 14 June 2021, and this is contrary to averments by the Respondents in their response affidavit.
- [13] I have taken the time to scrutinize anew the impugned Judgment delivered by this Court and find that the grounds of appeal in the notice of appeal and explanations given in the written submissions, and the affidavit in support of the application are not frivolous and

or vexatious and nor is there abuse of court process. Accordingly, I find that there are substantial legal grounds to be adjudicated upon by the Court of Appeal on both the law and facts on record.

[14] I note further that this Court has not considered the unrelated averments by both parties to this application.

[15] Further, in exercising this Court's discretion and weighing such considerations as the balance of convenience and the competing rights of the parties, I am of the view that it would be unfair to deny the Applicant a stay of execution pending his appeal before the Court of Appeal, which right is constitutionally guarded due to personal reasons as set out by the Respondent.

[16] In the circumstances, the Application for stay of execution is granted.

[17] Both parties shall bear their own costs.

Signed, dated and delivered at Ile du Port Victoria on the 22 November 2021.

ANDRE J