

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC

MA 204/2021

(Arising in MC 52/2021)

In the matter between:

RICHARD MIKE LAGRENADE

(rep. by Clifford Andre)

Applicant

and

THE GOVERNMENT OF SEYCHELLES

(rep. by Nissa Thompson)

Respondent

Neutral Citation: *Lagrenade v Gov of Sey* (MA204/2021) [2021] SCSC 845 (07th December 2021).

Before: Burhan J

Summary: Application for stay of execution pending appeal. Application dismissed.

Heard: 2nd September 2021

Delivered: 07th December 2021

ORDER

Application for stay of execution pending appeal dismissed.

RULING

BURHAN J

- [1] This is an application for a stay of execution pending appeal of on Interlocutory Order of this Court dated 05th August 2021 in respect of an application made under Section 4 and 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended. The Supreme Court in the said Order prohibited Mr. Richard Lagrenade (the Applicant in this matter) from dispensing of or otherwise dealing with or diminishing the value of whole or any part of the specified property namely one burgundy coloured Toyota C-HR bearing registration number S34094. The Court further issued a Receivership Order appointing Mr. Terence Roseline as Receiver of the said property.
- [2] The Applicant in this application appealed from the aforementioned Orders and in this application moves for a stay of further proceedings pending appeal.
- [3] The main grounds on which the stay of execution pending appeal is sought follows:
- a) That the applicant has appealed from the said decision dated 5th August 2021 which was to dispose of his vehicle C-HR S34094
 - b) That there is no prejudice to the Respondent should the Court grant the stay
 - c) That his appeal is primarily on the fact that he was not permitted to file a defence to the application even though he had made an application to do so.
- [4] The case of *Pool v Williams [1996] SLR 192* sets out five grounds which may be considered in granting a stay of execution of a judgment pending appeal. The *Pool* principles for granting of stay of execution pending appeal are:
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.

[5] Section 230 of the Seychelles Code of Civil Procedure (SCCP) provides that-

"An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court or the appellate court so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be invalidated except so far as the appellate court may direct."

[6] In the case of *Dynamics (Pty) Ltd & Anor v Daniel Vadivello & Anor* [2021] SCSC139 Vidot J held "the grant of a stay of execution is a discretionary and equitable remedy". In the case of *Leicester Circuits Ltd V Coates Brothers plc* [2002] EWCA Civ 474 Potter L.J stated "The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal."

[7] I will now proceed to analyse the grounds relied on by learned Counsel for the Applicant in respect of the application to stay proceedings pending appeal.

[8] At the outset the Interlocutory Order of the Court given on the 5th of August 2021 was a an Order prohibiting the Respondent Mr. Richard Lagrenade from dispensing of or otherwise dealing with or diminishing the value of whole or any part of the specified property namely Toyota C-HR bearing registration number S34094. It was NOT a Disposal Order as envisaged under Section 5 of the POCA ordering the disposal of the vehicle as referred to by the Applicant in paragraph 2 of his affidavit in his application for stay of execution.

[9] The reasons for refusing to grant time to file the defence are very clearly stated in paragraphs [3] and [4] of the Order of Court dated 5th August in MA 188/2021 (filed by Mr. Lagrenade) and not in the main application MC 52/2021 and are set down in verbatim below.

"The Applicant in this Application Mr. Richard Lagrenade accepts the fact in his affidavit that he received the summons on the 5th of July 2021. He accepts the fact he did not come on the due date the case was called i.e. the 7th of July 2021. His excuse is that he could not

find a lawyer in the two days given. I am of the view this is not an excuse that could and should be accepted. If he was unable to find a lawyer, he should have been present in Court in person and moved for time to retain a counsel as he accepts the fact that the summons was served on him. His excuse is therefore unacceptable.

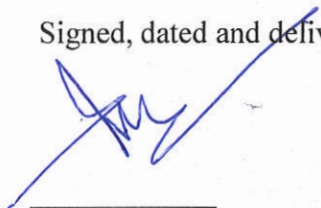
Further, his Counsel on being retained by him (admittedly as per para 3 of his affidavit, on the 6th of July 2021) which was a day prior to the case being called in open Court, still had time to appear in open Court on the 7th of July 2021 and move for time. Learned Counsel could also have according to para 5 (a) of the Applicant's own affidavit, had time till the 13th of July 2021, to file his notice of appearance and explain his issues to Court and move that the matter be re fixed for him to file his objections. Learned Counsel Mr. Andre did neither but has waited till the very last minute 5th of August 2021, taking advantage of the fact that the final Order in this application was postponed from yesterday to today, to file this application today, the day of the Order. I find this belated and unacceptable."

- [10] The main ground Court should consider in an application for the stay of execution is whether the Applicant will suffer substantial loss and prejudice which could not be adequately be compensated in damages and would render the appeal nugatory. It has not been shown that the Respondent is impecunious and will not be able to return the vehicle if the Court of Appeal were to reverse the Supreme Court decision. In these circumstances, I do not find that the Applicant runs the risk of a decision in its favour on appeal being rendered nugatory. *Pool v Williams* (supra) and the English case of *Atkins v G.W. Ry* (1886) 2 T.L.R 400 in which the Court held that:

"As a general rule the only ground for a stay of execution is an affidavit showing that if the damages and costs were paid there is no reasonable possibility of getting them back if the appeal succeeded."

- [11] Therefore the applicant has failed to satisfy the Court that he would suffer would suffer loss which could not be compensated in damages. Further I see no special circumstances of the case to issue a stay pending appeal as the Order given thus far is a Prohibition Order and not a Disposal Order.
- [12] It would be improper for this Court to at this stage to consider the merits of the appeal but a cursory glance at the attached affidavit giving the indicative grounds of appeal, convinces this Court that the appeal is not based on any material question of law but mainly based on facts already gone into in great detail by this Court and decided by this Court as set out in the Order contained in MA 188/2021 referred to in paragraph 9 herein.
- [13] I further see no special circumstance in this case to order a stay of execution pending appeal. For all the aforementioned reasons, I am inclined to reject and dismiss the application for stay of execution pending appeal.

Signed, dated and delivered at Ile du Port on 07th December 2021.



M Burhan J