

SUPREME COURT OF SEYCHELLES

Reportable

[201...] SCSC ...933
MA 233 of 2021
Arising in CS 79/2021

In the matter between:

ALWYN TALMA
(rep. by Frank Elizabeth

Applicant

and

THONY ADELINE
(rep. by Kieran Shah)

Respondent

Neutral Citation: *Talma v Adeline (MA 233/2021 arising in CS 79/2018) [2021] SCSC*
(31st December 2021).

Before: Pillay J
Summary: Stay of Execution
Heard: Affidavit on file
Delivered: 31st December 2021

ORDER

The motion for stay of execution is hereby dismissed.

RULING

PILLAY J

- [1] The Applicant on 14th September 2021 filed notice of motion for an urgent hearing of an application for a stay of execution of a judgment of this Court delivered on 10th June 2021 pending the Civil Appeal number 19 of 2021.

- [2] The grounds for the application for stay is that it unreasonable for the Applicant to settle the judgment sum of SCR645, 000.00 in three months the Respondent will be unjustly enriched at his expense.
- [3] The Applicant further averred that his business has been so greatly affected by the pandemic that he can only pay SCR 5, 000 per calendar month.
- [4] In reply the Respondent noted that the application for stay of execution was filed on 14th September 2021 over the 3 month time limit given for the Applicant to pay the adjudicated sum.
- [5] The Respondent further averred that there is no justifiable ground to apply for a stay of execution as the Applicant is just persisting with his decision to pay SCR 5, 000 per month towards the purchase price notwithstanding that the property has been registered in his name. The Respondent averred that the Applicant's affidavit is based on suppositions and unsupported by evidence.
- [6] Though the parties agreed to file submissions none were forthcoming.
- [7] I can do no better than rehearse the findings of the Courts on the guiding principles on an application for stay of execution.
- [8] In the same case the Court stated as follows **International Investment Trading SRL (IIT) v Piazzola & Ors (2005) SLR 57**

There does not seem to be any specific and explicit provision of any statute which directly and expressly grant this Court power to stay execution of judgment pending appeal. It is only by inference from section 230 of the Seychelles Code of Civil Procedure, that this Court may draw such power."

- [9] Section 230 of the Seychelles Code of Civil Procedure 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."

[10] In the more recent case of Elmasry and Ano v Hua Sun (SCA 28/2019) [2020] SCCA 2 (23 June 2020) the Court of Appeal clearly laid out the criteria in order for an Applicant to succeed on an application for stay of execution;

The sine qua non or the most important element that needs to be satisfied in seeking a Stay is to aver in the application and satisfy the Court prima facie that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal. Merely stating that the applicants have an arguable case and the appeal filed has some prospect of success, is not sufficient. The affidavit filed in this case does not state why the Applicants believe that they have an arguable case or has some prospect of success.

[11] The Court of Appeal went further and on the request of Counsel at the hearing, “set out guidelines for a decision on a stay of execution of a money judgment taking into consideration the provisions of Section 230 of the Seychelles Code of Civil Procedure and Rule 20(1) of the Seychelles Court of Appeal Rules referred to at paragraph 3 above:

C has obtained a money judgment against D who appeals and applies for a stay of execution. C objects. The Court must ask the following questions:

Q1 Has D satisfied me that there is a substantial question of law to be adjudicated upon at the hearing of the appeal and that his appeal has a good prospect of success?-

If yes, proceed to Q2. - If no, a stay should not be granted.

Q2 Has D satisfied me that he will be ruined, or his appeal otherwise be stifled if forced to pay C immediately instead of after the (unsuccessful) appeal? –

If yes, a stay can be granted subject to considering the answers to Q4. - If no, a stay should not be granted unless a positive answer is given to Q3.

Q3 Has D satisfied me that there is no reasonable probability that C will be able to repay the monies paid to C by D? –

If yes, a stay should be granted, subject to considering the answers to Q4. - If no, a stay should not be granted.

Q4 What are the risks that C will be unable to enforce the judgment if the stay is granted and D’s appeal fails? Depending on the extent of that risk and other

relevant circumstances can there be a compromise solution: payment of all or part of the relevant sum into court to await determination of the appeal; a stay only of part of the judgment sum; provision of security for part of C's payment to D? A compromise solution should be a last resort, the basic rule being that a money judgment must be complied with, so that a claimant is entitled to recover the money straightaway and not to suffer further losses or lost opportunities in the period till the appeal is heard.

[12] Just on a glance at the present application, it clear that the answer to the first question is in the negative. The Applicant other than averring its grounds of appeal and attempting to explain the special circumstances the Court should consider in granting the stay of execution, the Applicant has not satisfied this Court that he has an arguable case or of its chances of success on appeal. In fact the Notice of Appeal attached shows no evidence of having been registered.

[13] It is noted that indeed the application was filed on 14th September 2021. Though it was taxed on 11th August 2021 payment and registration was effected only on 14th September 2021. The judgment having been delivered on 10th June 2021 the Applicant had until 9th September 2021 to pay the sum adjudicated sum. According to the case of **International Investment Trading SRL (IIT)** above, “*in considering whether to grant or refuse a stay, the court must balance the interests of the parties by minimizing the risk of possible abuse by an appellant to delay the respondent from realizing the fruits of the judgment.*” In my view the late application for a stay is merely a tactic to delay the Respondent from enjoying the fruits of his judgment.

[14] To my mind paragraph 19 of the Applicant's Affidavit speaks volume:

I aver that should the Court not grant a Stay of Execution of the Judgment above-stated in paragraph 3, I aver that I will suffer irreparable harm. I say this, for reasons that the Respondent is likely to sell the Parcel PR957 to another buyer; that Parcel PR957 is unique, and it is highly unlikely that I will be able to buy another parcel bearing similar characteristics for the same sale price. I further aver that it is highly unlikely that I will be able to enter the same contract with another seller.

- [15] I reiterate what I said in the judgment, the Applicant manipulated the Respondent into selling the land to him on the conditions he did. His actions are reprehensible and yet again he is still trying to get out of paying the Respondent for the land.
- [16] With regards to the Applicant suffering irreparable harm if the motion is not granted, I find that whatever harm that the Applicant may suffer if at all can be compensated by way of damages if at all.
- [17] Therefore I decline to order a stay of execution. The motion is hereby dismissed.

Signed, dated and delivered at Ile du Port on ... *31st December 2021*

