

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC ...311...

MA 119/2021

Arising in CS 48/2021

In the ex-parte matter between:

Marpol Security Pty Ltd
Herein represented by its Managing Director
Ms Hilary Dubignon
(rep. by Daniel Cesar)

Petitioner

and

Seychelles Heritage Foundation
(rep. by Evelyn Almeida)

1st Respondent

Government of Seychelles
Procurement Oversight Unit
Herein represented by its Director
Annie Dugasse
(rep. by Mrs Morel)

2nd Respondent

Neutral Citation: *Marpol v Seychelles Heritage Foundation and Anor* (MA 119 of 2021 arising in CS 48/2021) [2021] SCSC ...311... (9th June 2021).

Before: Pillay J
Summary: Interim Injunction
Heard: 31st May 2021
Delivered: 9th June 2021

ORDER

Application refused.

RULING

PILLAY J

- [1] The Petitioner by way of a motion filed on 25th May 2021 with supporting affidavit seeks an interim injunction as a matter of extreme urgency as the first Respondent is about to proceed with the tender process denying the Petitioner an opportunity to participate which is at the root of the action.
- [2] The Respondents objected and sought time to answer. However noting the application as filed this Court found no necessity to adjourn the matter to give the Respondents time to answer in view of the averments on file or lack thereof and declined to grant the application with reasons to follow.
- [3] These below are the reasons for refusing the application.
- [4] The Petitioner, through its Managing Director avers as follows:
- (1) That I have filed a case in the Supreme Court against the 1st Defendant to claim fair participation in the Tender Process under the watch of the 2nd Defendant.*
- (2) That the 1st Defendant would be in no manner or position to restore the position should the process be continued and am barred from participating.*
- (3) That the 1st Defendant has no defence to this claim and if no precautionary measure such as an interim injunction is granted, the 1st Defendant will proceed thus denying me the opportunity to participate in the tender process.*
- (4) Therefore I pray this Honourable Court for an Interim Injunction against the above mentioned 1st Defendant until the final determination of my case.*
- (5) That the matter be heard as one of extreme urgency as the 1st Defendant is in the process to deny me my legitimate and lawful right to participate in the tender process without any lawful wrong doing which is at the root of my action.*
- [5] Upon seeking clarifications from counsel for the Petitioner as to the date the new tender process is to start, counsel referred to paragraph 3 and paragraph 6 of the Plaint in the main case where the Plaintiff claims that by letter dated 14th May 2020 the first Defendant had sent out letters to security agencies seeking tenders. Based on the pleadings in the main

case it would appear that the Petitioner did not receive one of those letters and in any case there is no exhibit attached to the affidavit in support of the motion.

[6] The law with regards to applications for injunctions is very clear. In order for a Court to exercise its discretionary powers under section 6 of the Courts Act, the Applicant must show that there is a serious question to be tried and that damages are not an adequate remedy (see **Pest Control v Fill Civ 175/1991, 6th January 1992**).

[7] In the case of **Techno International v George SSC 147/2002, 31 July 2002**, the Court went further and decided that in addition to the two above considerations it also had to consider the “balance the convenience” which in **Dhanjee v Electoral Commissioner SCA 20/2011, 27 May 2011** was explained as follows:

- (i) whether more harm will be done by granting or refusing the injunction;
- (ii) whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused; and
- (c) whether the breach of the appellant’s rights would outweigh the rights of other in society.

[8] The Court in **Techo International** further stated that it must look at the actions and conduct of both parties and the effect an order would make before exercising its discretion.

[9] Noting the above it is in my view that in the given circumstances of this case it would cause more harm to grant the injunction than to refuse it since the alleged contract between the parties comes to an end today (31st May 2021). The first Respondent would be left without security whereas if the injunction is refused the nature of the proceedings are such that damages could amply compensate the Petitioner for any losses.

[10] On the basis of the above the motion is dismissed.

Signed, dated and delivered at Ile du Port on ... 9th June 2021

Ary

Pillay J