

**SUPREME COURT OF SEYCHELLES**

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**Reportable/Not**  
**Reportable /Redact**  
[2021] SCSC 176  
MA 195/2020  
(Arising in CS 62/2016)

In the matter between:

<b>RADOMIR PRUS</b>	<b>1<sup>st</sup> Applicant</b>
<b>SANDRA PRUS</b>	<b>2<sup>nd</sup> Applicant</b>
<b>EXELSIOR DREAMS</b>	<b>3<sup>rd</sup> Applicant</b>
<b>FREE SUM LIMITED</b> <i>(rep. by Guy Ferley)</i>	<b>4<sup>th</sup> Applicant</b>

and

<b>THE GOVERNMENT OF SEYCHELLES</b> <i>(rep. by Nissa Thompson)</i>	<b>Respondent</b>
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**Neutral Citation:** *Prus & Ors v Government of Seychelles* (MA 195/2020 (arising in CS 62/2016)) [2021] SCSC 176 (23 April 2121).

**Before:** E. Carolus J

**Summary:** Application for stay of execution – Section 230 Seychelles Code of Civil Procedure – Requirements for stay of execution to be granted not fulfilled.

**Delivered:** 23 April 2021

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**ORDER**

The Application for Stay of Execution Dismissed with Costs

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**RULING**

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**CAROLUS J**

## **Background**

- [1] This Ruling arises out of an application for the stay of execution of a Ruling of the then Chief Justice M. Twomey delivered on 14<sup>th</sup> September 2020 in MA356/2019 arising in MC62/2016, in terms of which she ordered the disposal of “the four bedroom ‘Maison 72’ situate on Eden Island” and “the 28.8 meter long motor yacht “Dream Angel” moored at Eden Island Marina” (“the specified property”), pursuant to section 5 of the Proceeds of Crime (Civil Confiscation) Act (“POCA”), 2008.
- [2] The circumstances giving rise to the Order of the then Chief Justice are as follows:
- [3] On 15<sup>th</sup> November 2017 in MC62/2016, the then Chief Justice made an Order prohibiting the disposal of, dealing with or diminishing the value of the specified property (“the Interlocutory Order”) and appointed Mr. Jan Celliers Deputy Director of the Financial Intelligence Unit (“FIU”) to be the Receiver of the said property (“the Receivership Order”), pursuant to sections 4 and 8 of the POCA. The FIU was the Applicant in that matter and Applicants in the present application were the Respondents.
- [4] On 8<sup>th</sup> July 2018, in MA279/2018, the then Chief Justice dismissed an application to have the Interlocutory and Receivership Orders of the 15<sup>th</sup> November 2017 discharged, on the ground that there were irregularities with the documentary evidence produced by the Applicants (also Applicants in the present application) in support of their application, and that they had failed to show that the specified property had not been obtained from criminal conduct.
- [5] The Ruling of 14<sup>th</sup> September 2020 in which the Disposal Order was made and in respect of which the Applicants are now seeking a stay of execution, was made on application by the Government (Respondent in these proceedings) against the Applicants in the present application.
- [6] The Applicants have now appealed against the said Ruling and are seeking a stay of execution.

## **Application for stay of execution pending appeal**

[7] The present application is made by way of Notice of Motion supported by an affidavit sworn by the 1<sup>st</sup> Applicant Radomir Prus in which he has also exhibited a Notice of Appeal containing the grounds of the appeal. The grounds for this application as set out in the affidavit are reproduced below:

2. *I do believe that I and the Appellants have a chance of success in the appeal.  
[...]*
4. *I am informed by my legal advisors and legal representatives that the grounds raised are solid, sound, prove the real chances of success and may be found acceptable and cogent by the Seychelles Court of Appeal.*
5. *The balance of convenience in granting or refusing to grant the Stay of Execution lies with the appellants.*
6. *I would, as would the appellants, suffer hardship, should our properties be transferred or alienated pending or during the appeal process. We would lose our holiday home and yacht to third parties.*
7. *We would further loose (sic) all our investments for our future retirement.*
8. *Any third parties purchasing our properties would not return them to us.*
9. *Any future compensation would be inadequate and would be a subject of litigation and assessment for years. The properties have not been valued by the Courts, yet.*
10. *Our rights have already been breached for two years and shall continue, No financial, eventual payment, can compensate for our loss.*
11. *The justice of this case ... dictates maintaining the status quo, preserving the properties and allowing for a stay of execution pending appeal.*

[8] The Respondent opposes the application for stay and has filed an affidavit in reply sworn by Superintendent Hein Prinsloo (“Supt Prinsloo”) of the Financial Crime Investigation Unit of the Seychelles Police who avers that he has been responsible for all investigation related to this matter. In his affidavit Supt. Prinsloo invites the court to dismiss the application for stay with costs, for reasons stated therein which are summarised below.

[9] He avers that that the Applicant has averred in his affidavit that the appeal has some prospect of success and it is therefore just to grant a stay of execution pending determination of such appeal. However he is of the view that the grounds of appeal do not reveal any persuasive or significant facts of law which need to be

decided on appeal. He depones that the grounds of appeal do not in any way explain or justify how or why the Ruling of 14<sup>th</sup> September 2020 is wrong. Further that the grounds of appeal only amount to a superficial list of grievances with a detailed and reasoned judgment, and a statement that the Applicants disagree and are disgruntled with the outcome of the case. According to him the grounds of appeal lack details and do not in any way disclose any real prospect of success.

[10] He avers that the reasons for a stay of execution stated in the application and the supporting affidavit are vague, inconsequential so as to be meaningless and not of any real help in assisting the court in deciding whether to grant a stay of execution or not.

[11] He avers that usually execution is stayed pending an appeal only when such execution would cause irreparable injury to the appellant and that the 1st Applicant has not established in his affidavit that irreparable injury or injustice would be caused to the Applicants if the stay is not granted. Further that in terms of section 5 of the POCA “injustice” does not include hardship to the Applicants or any other person claiming under him. He also avers that mere inconvenience, annoyance and time wasting tactics are not enough to induce the court to take away from a successful party the benefit of its decree.

[12] Supt. Prisloo also avers that the Applicants have had the opportunity to have the Interlocutory and Receivership Orders of the 15<sup>th</sup> November 2017 discharged but that their application for the same was dismissed on 8<sup>th</sup> July 2019. He states that had the specified property been obtained from legitimate sources, the Applicants would have been successful in their application for the discharge of the said Orders. Further that the Applicant may, at any stage while the order is in operation, cause it to be discharged by satisfying the court that the specified property does not constitute directly or indirectly benefit from criminal conduct, or was acquired with or in connection with property that constitutes benefit from criminal conduct.

[13] Finally it is averred that the Applicant has failed to satisfy the requirements laid down in precedents for the granting of a stay of execution and that the reasons

given by the Applicant in support of his application are not sufficient to justify granting such stay.

[14] Counsels for both parties have filed written submissions which will be referred to as relevant in respect of the matters discussed below.

## **Analysis**

### *Applicable law*

[15] As regards the applicable law for applications for stay of execution, it was held in the case of ***International Investment Trading SRL (IIT) v Piazzolla & Ors (2005) SLR 57*** that the power of the Court to grant or deny a stay is a discretionary one. In the same case the Court stated as follows:

*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.”*

[16] Section 230 of the Seychelles Code of Civil Procedure (“SCCP”) provides as follows:

*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.*

[17] The Seychelles Court of Appeal Rules, 2005, contain a similar provision in its Rule 20 which provides as follows:

20. *(1) An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from:*

*Provided that the Supreme Court or the Court may on application supported by affidavits, and served on the Respondent, stay execution on any judgment, order, conviction, or sentence pending appeal on such terms, including such security for the payment of any money or the due performance or non-performance or any act or the*

*suffering of any punishment ordered by or in such judgment, order, conviction, or sentence, as the Supreme Court or the Court may deem reasonable.*

*(2) No intermediate act or proceeding shall be invalidated except in so far as the Supreme Court or the Court may direct.*

[18] It has been submitted by counsel for the Applicant, relying on the case of ***Avalon (Pty) Ltd & Ors v Berlouis (2003) SLR 59***, that a stay of execution of a judgment is an equitable remedy and that the Supreme Court derives its jurisdiction to order a stay of execution from section 6 of the Courts Act which confers such equitable jurisdiction upon it. In that case the Court stated in regards to section 130 SCCP -

*From the above section of law, although one may logically presume the Courts in Seychelles to have the power to stay execution of judgments, there is no specific statutory provision in our laws, which expressly empowers the Courts to grant a stay as a legal remedy to protect the interest of an appellant/ judgment debtor pending appeal.*

[19] The Court in that case expressed the view that it could not grant a stay of execution as a legal remedy pending appeal as no such power had been conferred on it by any statute but went on to state –

*However, the lack of such statutory power ... cannot prevent the Court from exercising its equitable powers conferred by section 6 of the Courts Act in order to grant a stay of execution as an equitable remedy. This can be done only, if justice so requires in a particular case, when no sufficient legal remedy is provided by any statute for the judgment-debtor/ appellant to obtain this protection of a stay pending appeal.*

[20] Section 6 of the Courts Act provides:

*The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.*

[21] The Courts have in addition established principles that a Court may have regard to in considering whether or not to grant a stay of execution.

[22] In his submissions Counsel for the Applicant has cited the cases of **MacDonald Pool v Despilly William (1996) SLR 192** and **Laserinisima v Boldrini (1999) CS 274/1998** in that regard, and listed five such principles as set out in these two cases. Counsel submits however that in *Avalon v Berlouis* (supra) the court held that:

*... the principles governing the stay of execution and the exercise of the Court's power to grant a stay in this respect cannot be restricted to or pigeonholed within the five grounds as canvassed by the learned counsel for the Respondent quoting [MacDonald Pool v Despilly William and Laserinisima v Boldrini]. In the circumstances, the question as to the granting of a stay is to be determined not on the basis whether the case satisfies any or none of the five grounds or of the chances of success in the appeal but primarily on the basis whether granting of such a stay is necessary for the ends of justice in the given set of facts and circumstances.*

[23] Having said that however, counsel for the appellant goes on to submit on reasons as to why a stay of execution should be granted, on the basis of three of the principles enunciated in the aforementioned cases. These are namely where the appeal has some prospect of success; where the balance of convenience and hardship are on the side of the appellant; and where the appeal would, without a stay, be rendered nugatory. In addition he submits that the court has the power to grant a stay of execution subject to the condition that the Applicants shall not dispose of the said properties.

[24] On her part counsel for the Respondent relies on the more recent Court of Appeal case of **Elmasry & Anor v Sun (Civil Appeal MA37/2019) [2020] SCCA (30 June 2020)**, in which, following earlier Seychelles authorities, the following was held to be the circumstances a court would consider in granting a stay of execution:

- i. Where there is a substantial question of law to be adjudicated upon at the hearing of the appeal,
- ii. Where special circumstances so require,
- iii. Where there is proof of substantial loss that may otherwise result,
- iv. Where if the stay is not granted the appeal if successful, would be rendered nugatory,
- v. If a stay is granted, and the appeal fails, what are the risks that the Respondent will be unable to enforce the judgment,
- vi. If a stay is refused, and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being unable to recover the subject matter of execution (in a money judgment that has been paid to the Respondent)?

[25] I note that the reasons put forth by counsel for the appellant as to why a stay of execution ought to be granted, falls within the aforementioned circumstances identified in the *Elmasry* case (supra).

[26] Counsel for the Respondent has also drawn the court's attention to the case of ***Chang Tave & Ors v Government of Seychelles (MC 370/2019) [2020] SCSC 111 (12 February 2020)*** which concerned an application for stay of execution of an order made pursuant to section 4 of the POCA. In my view however this case is of limited assistance to the court in the present case which concerns a section 5 Disposal Order which operates to deprive the Respondent of his rights in or to the property to which the order relates and transfers such property to the Republic or other person specified in the order. Further a Disposal Order is only subject to appeal before the Court of Appeal. On the other hand a section 4 Interlocutory Order may be discharged if the Respondent or other interested person shows that the property does not constitute or is not acquired with property that constitutes benefit from criminal conduct or the order causes injustice to any person. Moreover unlike a Disposal Order, an Interlocutory Order only has the effect of preventing the disposal, dealing with or diminishing the value of the property and does not deprive the Respondent of his rights in or to the property. In the case that a receiver is appointed in respect of property subject to an Interlocutory Order, unless the court directs the Receiver to dispose of or otherwise deal with the property, the effect of a Receivership Order is only for the receiver to take



possession of such property. In the *Chang Tave* case the property was in the hands of a receiver but the court stated that nonetheless the Applicants could at any time apply to set aside the order. It found that on the facts, circumstances and law, the principles on which a stay of execution is granted were not met.

[27] Nevertheless I agree with the Court in the *Chang Tave* case (supra) that the principles identified in the *Elmasry* case (supra) should be followed in deciding whether or not to grant a stay of execution.

[28] Accordingly this Court will now proceed to consider individually the grounds on which the stay of execution is sought, in light of those principles.

[29] The Court in the *Elmasry* case (supra) at paragraph 16 of its judgment stated that the Court hearing an application for a stay of execution must *prima facie* be satisfied that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal, that the Applicant has an arguable case and the appeal filed has some prospect of success, before considering matters such as prejudice to parties and the balance of convenience. This is therefore the starting point for the court.

*Is a substantial question of law to be adjudicated upon at the hearing of the appeal with good prospects of success?*

[30] It was held in *Choppy v NSJ Construction (2011) SLR 215*, that in deciding whether to grant a stay, “[t]he Court will generally not speculate on the prospects of success on Appeal but may make some preliminary assessment of whether the Applicant has an arguable case in order to exclude appeals lodged without real prospect of success simply to gain time.”

[31] In the *Elmasry* case (supra), the Court stated at paragraph 16 of its judgment that:

16. *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.* Emphasis added.

[32] In the same case, the Court, at paragraph 6 of its judgment stated: “According to the Application for Stay of Execution the grounds upon which the application is based are contained in the affidavit to the Application ... In my view the affidavit should develop the substantial issues raised in the application for stay and the grounds of appeal set out in the Notice of Appeal. Emphasis added.

[33] At paragraphs 2 and 4 of his affidavit in support of the application for stay of execution the 1<sup>st</sup> Applicant avers that he believes that the Applicants “*have a chance of success in the appeal*” and that the grounds of appeal raised in the Notice of Appeal “*are solid, sound, prove the real chances of success and may be found acceptable and cogent by the Seychelles Court of Appeal*”. It is clear therefore that the 1<sup>st</sup> Applicant’s affidavit falls short of the requirements set out in the *Elmasry* case. It does not “*state why the Applicants believe that they have an arguable case or has some prospect of success*” or “*develop the substantial issues raised in the application for stay and the grounds of appeal set out in the Notice of Appeal*”.

[34] The Court, at paragraph 16 of its judgment in the *Elmasry* case (supra) stated that for the Court to be prima facie be satisfied that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal, that the Applicant has an arguable case and the appeal has some prospect of success, this “*necessitates that the Notice of Appeal filed should in stating the grounds of appeal, at its bare minimum disclose the questions of law and facts upon which the Trial Judge erred and thus has to be adjudicated upon at the hearing of the appeal*”. The Court went on to explain that “[T]his does not mean that there needs to be an elaborate discussion of the law or facts”. In that respect it referred to the Sri Lankan case of *Karunasekera v Rev. Chandananda (2004) 2 Sri L.R* in which it was stated: “*The court is not expected to go into the intricacies of the question of*

*law to be decided in the appeal: it is sufficient if the court is satisfied that it prima facie appears that there is a substantial question of law to be decided in the appeal.”*

[35] The grounds of appeal as set out in paragraph 2 of the Notice of Appeal are as follows: Firstly that the trial judge erred in law and violated the Appellant’s constitutional rights in failing to hold that a conviction must be proven by Government, that the standard of proof should be between probable and beyond a reasonable doubt, and that the burden of proof rests with the Respondent; Secondly that the trial judge erred in law in failing to hold that the allegations and suspicions of the Respondent did not meet the required standard of proof to deprive the appellants of their right in property; Thirdly that the trial judge erred in law in failing to hold that nonetheless and on the facts, the appellants had proven their defence and the property were not proceeds from criminal or illegal acts; Fourthly that the trial judge erred in law in failing to properly and adequately assess the facts and evidence and thereby the findings in the judgment were flawed in law; And finally that the trial judge erred in law in failing to hold that the Respondents had failed to discharge their legal and evidential burdens of proof.

[36] The question that arises is whether the above grounds of appeal satisfy the requirement of adequately disclosing questions of law and facts which have to be adjudicated upon at the hearing of the appeal. Determination of this question requires a consideration of the grounds of appeal in the light of the Ruling sought to be stayed.

[37] The first ground of appeal is that the trial judge erred in law and violated the Appellant’s constitutional rights in failing to hold that a conviction must be proven by Government, that the standard of proof should be between probable and beyond a reasonable doubt, and that the burden of proof rests with the Respondent. This ground suggests that for a Disposal Order to be made in relation to specified property, there should be a conviction for criminal conduct in order to prove that the property constitutes or is acquired with proceeds of such criminal conduct. It

also deals with the applicable standard of proof and on whom the burden of proof rests.

[38] In her Ruling the then Chief Justice after considering the previous definition of “criminal conduct” and the new definition introduced by the amendment to the POCA by the 2017 Amendment Act, explained that -

(56) *The thrust of modern day proceeds of crime legislation is to target the unexplained wealth of the criminal and not the criminal himself. The POCA regime in Seychelles adopts much of the model proposed in the United Nations Convention against Corruption, in which legislation provides for non-conviction based confiscation/ forfeiture proceedings that do not require a predicate offence to be established. This is what distinguishes proceeds of crime proceedings from criminal proceedings. As was explained in both **Hackl v Financial Intelligence Unit (FIU) & Anor (SCA 10 of 2011) [2012] SCCA 17 (31 August 2012)**; and **FIU v Mares (2011) SLR 405**, proceedings under POCA are civil in nature although the Act deals with the proceeds of criminal conduct. As was also clearly explained in Hackl, the objective of POCA is not to indict, prosecute and convict criminals for money laundering but rather to forfeit the proceeds of their crime. It is the AMLA which deals with criminal offences associated with money laundering.*

(57) *This approach is explained by the Constitutional Court of South Africa (Nkabinde J) in **Prophet v National Director of Public Prosecutions [2006] (2) SACR 525 (CC)***

*“Civil forfeiture provides a unique remedy used as a measure to combat organized crime. It rests on the legal fiction that the property and not the owner has contravened the law. It does not require a conviction or even a criminal charge against the owner.”*

[39] Having stated that “[t]he regime of civil forfeiture adopted in POCA remains in place in this jurisdiction, despite changes to POCA in 2017” she held that in the circumstances the Respondent’s objection to the Disposal Order on the basis that there must be a conviction in order for property derived from criminal conduct to be forfeited and disposed of by the state, was not valid.

[40] I take note that nowhere does the 1<sup>st</sup> Applicant explain or give reasons why the trial judge erred in holding as she did and how this breached the Applicants' Constitutional rights, which would have given an indication as to the arguability of this ground of appeal. Such explanation should have been made in his affidavit in support of the application for stay. This Court is unable to say, on the face of the affidavit in support of the application for stay and the grounds of appeal as set out in the Notice of appeal, whether this ground is indeed arguable. This Court is not satisfied that, as per the *Elmasry* judgment, "*it prima facie appears that there is a substantial question of law to be decided in the appeal*" in relation to the first ground of appeal, and therefore cannot make a finding to that effect,

[41] The second ground of appeal challenges the Ruling on the basis that the required standard of proof was not met in that the trial judge relied on "*allegations and suspicions*" to make the Disposal Order. The third ground of appeal relates to the second in that the appellants claim that the trial judge erred in not finding that the appellants had proven their defence and that therefore the property was not proceeds from criminal or illegal acts.

[42] After setting out the relevant law pertaining to the matters as to which a court must be satisfied for it to issue a Disposal Order, the trial judge explained at paragraph 68 of its Ruling that:

(68) ... *A house and a yacht were bought. It is the reasonable belief of the Government of Seychelles that the funds used to purchase the two properties are from proceeds of crime. An order to confiscate the property is granted on this statutory evidence. All the Respondents have to do is show their legitimate source of their funds to acquire the property seized.*

[43] She then proceeded to examine the evidence presented by 1<sup>st</sup> Respondent to show that the specified property was acquired from legitimate funds and concluded as follows at paragraphs 74 and 75 of its Ruling:

(74) *Many questions remain unanswered but of utmost importance is the fact that the Court is not satisfied that the Respondents have*

*been able to show the legitimate source of their funds to acquire the specified property in this application. The different explanations by the Respondents at different times during these proceedings indicate their lack of credibility and I have no hesitation in disregarding their evidence.*

*(75) I am satisfied on the pleadings and the evidence before me, namely the affidavits of Assistant Commissioner Jan Celliers and Superintendent Hein Prinsloo and the exhibits appended to their affidavits that a disposal order in favour of the Applicant should issue in respect of the specified property.*

[44] In light of the above, I find that the Applicants have not sufficiently explained the “*allegations and suspicions*” they are claiming the trial judge relied upon in making the Disposal Order. Neither have they explained how the trial judge erred in not finding that the appellants had proven that the specified property were not acquired with property constituting proceeds of crime. On the material before me, I cannot make a determination as to the arguability of the second and third grounds of appeal.

[45] The fourth ground of appeal is to the effect that the findings of the trial judge were flawed in law as she failed to properly and adequately assess the facts and evidence. There is nothing before this Court, whether in the affidavit of the 1<sup>st</sup> Applicant or elsewhere, to show in what way the trial judge’s assessment of the facts and evidence was faulty. I find this ground to be vague and one which the Court is unable on the face of the material before it, to make an assessment of its arguability. The same applies to the fifth ground of appeal that the trial judge erred in law in failing to hold that the Respondents had failed to discharge their legal and evidential burdens of proof.

[46] In *Lablache de Charmoy v Lablache de Charmoy SCA MA08/2019 (17 September 2019)* Robinson JA stated “*The Court agrees with Counsel for the Respondent that it is not enough for Counsel to reproduce or exhibit grounds of appeal. The affidavit should plainly develop the substantial questions of law to be adjudicated upon by the appellate court.*”

[47] In light of the scanty averments in the affidavit and the fact that “*the substantial questions of law to be adjudicated upon by the appellate court*” were not elaborated upon and developed therein, and further to the above findings of this Court, I cannot, on the basis of the material before me make a finding that there are substantial questions of law to be adjudicated upon.

*Will the appellants suffer substantial loss if a stay is not granted?*

[48] In his affidavit in support of the application for stay the 1<sup>st</sup> Appellant avers that the balance of convenience lies in granting a stay. He contends that should the specified property be transferred or alienated pending the appeal process, the appellants will suffer hardship. They would lose their holiday home and yacht to third parties who would not return them to the appellants in the event that they are successful on appeal. They would further lose all their investments for their future retirement. The 1<sup>st</sup> appellant also avers that any future compensation would be inadequate and would be a subject of litigation and assessment for years. He points out that the properties have not been valued by the Courts, yet. He depones that the appellants’ rights have been breached for two years and shall continue to be breached and that no eventual financial payment can compensate for their loss.

[49] Suffice it say that this Court does not consider that losing a holiday home and a yacht a hardship. Further in the case of *Macdonald Pool* (supra) the court quoted with approval the Sri Lankan case of *Sokkhalal Ram Sait v Kumaravel Nadar and Others* 13 CLW 52, in which Keuneman J stated:

*It has been stated that in England that the usual course is to stay proceedings pending an appeal only when the proceedings would cause irreparable injury to the appellant: mere inconvenience and annoyance is not enough to induce the Court to take away from the successful party the benefit of the decree - Walford v Walford LR 1867-83- Ch. App. Cas 812 ...”*

[50] I agree with Supt Prinsloo's averment in his affidavit that the Applicants have not established that irreparable injury would be caused to them if the stay is not granted.

[51] Further, I find the 1<sup>st</sup> Respondent's claim that the Applicants would lose all their investments for their future retirement unjustified, as should they be successful on appeal and the property already disposed of, the Court can order adequate compensation for the property and any loss they may have suffered. On that basis I also find no merit in the 1<sup>st</sup> Applicant's claim that any future compensation would be inadequate, and that no eventual financial payment can compensate for their loss. Further, I also find his averment that any future compensation would be a subject of litigation and assessment for years speculative and unsupported by any evidence. For those same reasons I find that if a stay is not granted the appeal will not be rendered nugatory.

### **Decision**

[52] I do not find that any of the principles necessary for a stay of execution to be granted have been met. I do not find on the face of the material before me, that there are any substantial questions of law to be adjudicated upon on appeal, that the Applicants will suffer substantial loss, or that the appeal will be rendered nugatory, if a stay is not granted.

[53] On that basis, I dismiss the application for stay of execution of the Ruling dated 14<sup>th</sup> September 2020 in MA356/2019 arising in MC62/2016 with costs.



Signed, dated and delivered at Ile du Port on 23 April 2020

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E. Carolus J