IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 298
MA 7/2021, MA 10/2021, MA15/2021
(Appeal from 132/2020)

HILL VIEW RESORTS (SEYCHELLES) LIMITED **APPLICANT**
(rep. by Olivier Chang-Leng)

and

INTENDANCE RETREAT LIMITED **RESPONDENT.**
(rep. by Alexandra Madeleine)

Neutral citation	*Hill View Resorts (Seychelles) Limited v Intendance Retreat Resort* MA 07/2021, MA 10/2021 and MA 15/2021 arising from MA 132/2020 [2021] SCSC 298..... Delivered on 07th June 2021.
Summary	Special leave to appeal, Stay of Execution, Contempt; proper attestation of affidavit and matters that a deponent may aver in an affidavit.; sections 121, 122, 125 and 170 of the Seychelles Code of Civil Procedure
Before:	Vidot J
Heard:	Counsels filed submissions
Delivered:	09 June 2021

RULING

VIDOT J

[1] On 28th December 2020, Intendance Retreat Limited (the Respondent in MA07/2021 and MA10/2021 and Applicant in MA15/2021) (hereafter "IRL") filed a Plaint against Hill View Resorts (Seychelles) Limited (the Applicant in MA07/2021 and MA10/2021 and Respondent MA15/2021) (hereafter "HVRSL"). The Plaint seeks a judgment from Court to inter alia enforce a Service Agreement made between the parties dated 12th October 2012. HVRSL has disconnected water and internet services to IRL premises and was

threatening to disconnect electricity. To that end IRL applied for an injunction to ensure that the HVRSL continues to provide utilities to IRL premises as per the agreement. On the 31st December 2020, this Court made an Order granting the injunction ("the Order") against the HVRSL. Aggrieved by the Order HVRSL filed an Application in case MA 07 of 2021 seeking leave of the Court to appeal against that Order in terms with section 12(2)(b) of the Courts Act. HVRSL also filed case MA10 of 2021 praying for a stay of execution of the Order, pursuant to section 230 of the Seychelles Code of Civil Procedure ("the SCCP"). Since HVRSL has not complied with the Order, IRL filed case MA 15 of 2021 praying that the directors of HVRSL show cause why they should not be held in contempt of the Order.

[2] Though different in nature, all the applications stem from the Order and the parties are relying on the same facts in regards to all of them. Therefore, I have decided to consolidate all three applications. The Order arose out of case CS 132/2020 which involves both parties.

Leave to Appeal

[3] HVRSL prays to Court to exercise its discretion to grant special leave to appeal against the Order of injunction. On the grounds that are listed in the draft notice of appeal which has been attached to the Application. The Order was granted ex-parte. IRL is resisting this Application.

[4] I wish at this stage to state at this stage that courts should be cautious not to allow an application for special leave to appeal as a means to delay hearing of the main suit. Such delay and expenses would be prejudicial to the interests of the Plaintiff. In fact, in **Pillay v Pillay (No.2) [1970] SLR 79**, Sauzier J refused to exercise his discretion to grant leave to appeal to the Court of Civil Appeal for Mauritius against a Ruling of the Supreme Court rejecting a plea in limine litis stated that;

"[a]n appeal at this stage would entail unnecessary delay and expense and would be most prejudicial to the interests of the Plaintiff. Granting leave to appeal to the Defendant at this stage would in practice amount to a denial of justice of the Plaintiff. As

this case does not come within paragraph (a) and (b) above, I will not exercise my discretion to grant the application which is dismissed with cost."

Nonetheless, I shall be giving this application the full consideration that it deserves.

[5] Section 12(2) of the Courts Act provides as follows

"(2) (a) In civil matters no appeal shall lie as of right-

(i) from any interlocutory judgment or order of the Supreme Court; or

(ii) from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.

(b) in any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of that appeal.

[6] I should note at this stage that an appeal of an interlocutory matter does not exist as of right but it is discretionary. It was held in **Island Development Limited v EME Management Services Limited SCA 31/2009** that *"In the opinion of this Court "Special leave" should therefore be granted only where there are exceptional reasons for doing so, or in view of reasons which may not have been in the knowledge of the applicant at the time leave to appeal was sought from the Supreme Court or for reasons that supervened after the refusal to grant leave by the Supreme Court."* This suggests that leave to appeal should only be granted in exceptional cases.

[7] Counsel for HVRSL acknowledged that there is no comprehensive definition of what is to be considered an interlocutory order or judgment. He adds that practice dictates that it is an order given in intermediate stage of proceedings, providing a temporary provisional decision on the matter in the suit. This Court unequivocally endorses that definition. Counsel for HVRSL also refers to Rule 25(1) of the Court of Appeal Rules which

provides that *"an interlocutory matter means any matter relevant to a pending appeal the decision of which will not involve the decision of the appeal."* The Oder given on the 31st December 2020 by this Court in respond to an application for injunction is indeed such an interlocutory matter. Both Counsels then explained the various considerations before an application is denied or allowed for such application. They both quoted a plethora of case law as authority in support of their positions. All these cases assist tremendously to decide whether or not to allow the Application.

[8] However, before any attempt to decide on that issue, I have to address an issue that has been raised by IRL. This is to do with the affidavit of Mr. Cyril Karim Latroche, a Director of HVRSL company and attached to the Notice of Motion. That affidavit is sworn before Aiman Fatima who seems to attest the affidavit as a lawyer of the United Arab Emirates.

[9] Counsel for IRL submitted that the affidavit is defective. This is because the affidavit has not been sworn by a person authorised to administer affidavits and /or on the face of the affidavit, there is insufficient proof that the person before whom the affidavit was made was/or is authorised to administer affidavits in the United Arab Emirates. Counsel argues that the fact that affidavit is defective translates into the application not being supported by affidavit. It is trite that all applications are made by motion must be supported by affidavit as required by sections 121 and 122 of the SCCP. Learned Counsel for IRL therefore argues that in the absence of a corrupt affidavit, the application ought to be dismissed as it failed to comply and satisfy sections 121 and 122 of the SCCP.

[10] Section 121 of the SCCP reads that *"Either party to a suit may, in the course of such suit, apply by way of motion to make an incidental demand"* whilst section 122 of the same Code provides that *"the motion shall be accompanied by an affidavit of facts in support thereof and shall be served upon the adverse party."*

[11] Section 171 of the SCCP provides as to who may witness the swearing of an affidavit and read thus;

"Affidavits may be sworn in Seychelles-

(a) Before a judge, a Magistrate, s Justice of Peace, a Notary or the Registrar; and

(b) In any cause or matter, in addition to those mentioned in paragraph before any person specially appointed for purpose by the Court.

The importance of having an affidavit attested by someone with capacity as provided for by section 171 of the SCCP has to be emphasised especially when application is made via Motions the Court relies on the affidavits of parties as sworn evidence to make a reasoned decision. An affidavit is in fact a statement of evidence and therefore subject to the law of admissibility of evidence. This is confirmed by Twomey CJ in **Elmastry & Anor v Hua Sun MA 195/2019 (arising in CC13/2014)[2020]SCSC35(09 January 2020)** wherein she stated that *"affidavits are sworn evidence and evidential rules for their admission cannot be waived."*

[12] The affidavit of Karim Latroche is attested by Aiman Fatima as Notary and Commissioner of Oaths but Aiman Fatima is identified as a lawyer of the United Arab Emirates. The stamp of office of Aiman Fatima is not affixed. Furthermore, only a copy of that affidavit and not an original is produced. In order that section 171 of the SCCP is given its full effect, an affidavit sworn outside the Seychelles must also be attested by a person authorised to administer oaths in the country in which the affidavit is made in order that it is rendered admissible in evidence in court proceedings. In order for that affidavit to have effect, it must be apostilled; that is provided that the country where it is made is a contracting state of the Hague Convention. The United Arab Emirates is a non-contracting state of the Hague Convention. Counsel for IRL submitted that in such circumstance, the affidavit must disclose sufficient proof that the person before whom the affidavit was made was either a Judge, a Magistrate, a Justice of Peace, a Notary or the Registrar or a person appointed for that purpose. The Court has not been provided with such proof. In this case we do not have any information as to whether Aiman Fatima is a Notary or Commissioner of Oath or whether a just a lawyer. We cannot even confirm that her signature is genuine. There is no notary nor Aiman Fatima's seal on the affidavit.

[13] The affidavit fails the requirements of section 121 of the SCCP. I find that the affidavit of Karim Laroche is defective and inadmissible. That being the case the Notice of Motion is

incompetent as it is not supported by affidavit. Therefore, the Motion for Special Leave to appeal against interlocutory order of injunction pronounced by this Court on 31st December 2020, is hereby dismissed.

Stay of Execution

[14] Alice Gill who swears an affidavit as Manager Human Resources explains that due to extensive renovations work being carried out at the resort, it is becoming increasingly difficult to comply with the order particularly as far as provision of electricity to IRL property is concerned. Despite the Order they have not restored water to IRL's property. She avers that it is practically impossible to restore the water supply. This she attributes to the fact that;

(i) HVRSL's resort uses a reverse osmosis desalination water plant ("the RO plant") which in turn supplies to the villas of the resort including that of IRL;

(ii) As part of the renovation, several systems within the resort, including the electrical and water systems are undergoing complete overhaul and upgrade. As a result, all villas have been stripped out, water pipes have been removed and administrative water tank is empty due to the RO plant being shut down;

(iii) The main panel of control for the RO plant is situated under the main building and has been disconnected to allow for the renovation and will entail demolishment of several structures within the resort, including the main building;

(iv) Presently, there is no water supply to any of the villas or the main building, save for limited water being used by the contractor for the renovation; and

(v) In order for HVRSL to reconnect the water supply to IRL's villa, it would have to install approximately 3 kilometres of water pipes and reconnect a sea water pump, which itself would mean reconnecting electricity to the said water pump, solely for IRL' s use. This is not within the scope of work of HVRSL's present contractor meaning that HVRSL will have to find another contractor for this single purpose.

I have further below made certain determination in respect of Alice Gill's affidavit but for the time being, I have listed some of her averments regarding HVRSL inability to reconnect water supply to IRL's villa. This is essentially as to whether or not the affidavit satisfies section 170 of the SCCP.

[15] They also claim that continued connection of electricity to IRL's villa as per the Order is causing constraints and delays to the HVRSL's contractor. They aver that the continued provision of electricity is a safety hazard.

[16] HVRSL avers that they have good chances of success on appeal. They have attached to the Application for leave to appeal a copy of the Notice and Memorandum of Appeal. They claim that there are substantial question of law to be determined on appeal and that the loss that HVRSL will suffer should the Order continue, cannot be compensated in damages.

[17] IRL objects to the Application. Mr. Klaus Kuehn, a director of the IRL swears an Affidavit in reply to the Application. He denies averments made by Alice Gill in her affidavit and emphasized the in making the Order this Court was merely to maintain the Service Agreement between the parties. To that end IRL has made several attempts to enforce the Order.

[18] HVRSL claims that at all times the Bayan Tree Resort was supplied with water both from the desalination plant and from Public Utilities Corporation ("PUC") and further claim that the resort is still being serviced by PUC. IRL further states that temporary toilets have been installed on site by HVRSL and some very close to IRL's villa and they are being serviced with running water. They aver that it was in fact IRL that paid for connections for water and electricity from PUC distributions on the former Bayan Tree premises. Furthermore, in letters dated 28th May 2020 and 28th December 2020, the Government had requested that HVRSL ensures the continued supply of basic services including electricity and water to the residence of IRL.

[19] IRL also disputes HVRSL's claim that the appeal has a good chance of success and that there are special or unique circumstances that would warrant to the grant of stay of

execution. IRL further avers that there are no substantial questions of law to be determined for the application to be allowed. IRL states that should the application be granted, they will suffer more hardship, inconvenience and losses are likely to result. IRL claims that HVRSL is yet to receive planning permission to carry out the reconstruction and refurbishment works. However, they have not supported that with any documents. Thus, I cannot rely of that claim.

[20] The grant of a stay of execution is a discretionary and equitable remedy. There isn't any specific statutory provision which gives power to a court to grant a stay of execution as a legal remedy to protect the interest of an appellant, or as in this case the party of whose favour an injunction has been granted, or judgment debtor pending an appeal as held in **Avalon (Pty) Ltd & Others v Berlouis [2003] SLR 59** and **Chang-Tave v Chang-Tave [2003] SLR 74**. Therefore, a stay of execution is not automatic. In any case an application for a stay of execution should not be utilized as a means to prevent a judgment creditor from enjoying the fruits of his judgment. In the present case, is it to prevent IRL from enjoying the enforcement of the injunction granted in their favour? It is a remedy that should be exercised sparingly and judiciously when an applicant satisfies one or more of the considerations or grounds laid down in the paragraph below.

[10] The law in regards to applications for stay are clearly laid down by the Court through case law. The case of **Pool v Williams [1990] SLR 192** is one such case. The same grounds laid down in the latter case were followed in **Laserinisima v Boldrini [1999] SLR CS No. 274 of 1998**. These grounds are;

i. The Applicant could suffer loss, which could not be compensated in damages;

ii. Where special circumstances of the case so require;

iii. There are proof of substantial loss that may otherwise result;

iv. There is a substantial question of law to be adjudicated upon at the hearing of the appeal; and

v. Where, if the stay is not granted the appeal if successful, would be rendered nugatory.

These considerations or principles were adopted in the case of **Vijay Construction (Proprietary) Limited v Easter European Engineering Limited [2020] SCSC 476**. They were also followed in **Choppy v [illegible]SJ Construction [2011] SLR 251** and **Ramkalawan v Electoral Commission & Ors [illegible]A 164 of 2016 (Arising from CP01 of 2016)** (on an application for stay of execution) wherein the Constitutional Court stated that *"The provision is however not instructive as to when such an order should be granted. The authorities in this jurisdiction have confirmed that it is entirely in the discretion of the Court to grant a stay."*

[21] The decision whether or not to grant a stay of execution necessarily includes weighing the interest of the parties to establish whether an appeal has a chance of success, the balance of convenience, hardship and irreparable damage that may be suffered by the applicant and the concern that unless a stay is ordered, the appeal will be rendered nugatory; see **Alexander v Cambridge Credit Corp. Ltd [1985] 2 NSWLR 685**.

[22] The above is very much aligned with what was held in **Avalon (Pty) Ltd. v Berlouis [2003] SLR 59** that *"... the principles governing a stay of execution and the exercise of the Court's power to grant a stay in respect cannot be restricted to or pigeonholed within the five grounds as canvassed by the authorities cited supra. 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 such a stay is necessary for the ends of justice in the given set of facts and circumstances*

[23] Section 230 of the SCCPC states 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."

Rule 20(1) of the Seychelles Court of Appeal Rules provides

"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 the non-performance of any 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."

[24] Therefore, the fact that HVRSL has filed an appeal is not sufficient reason to grant the stay. It is undeniable that HVRSL has a right of Appeal. However, a right of appeal on interlocutory order is subject to the court granting special leave to appeal. However, leave is not granted as of right; it is discretionary. As stated above an appeal will not act as a stay of execution. This is in agreement with section 230 of SCCP and Rule 20(1) of the Court of Appeal Rules.

[25] However, as was stated in **Chang-Tave v Chang-Tave** [supra] *"... under the English principle, even if the appellant had some prospects of success in the appeal, for that reason alone no stay will be granted unless the appellant satisfies that he will be ruined without a stay of execution."*

[26] This application is distinguishable from most of the cases quoted above. That is because these cases concern final judgments. This one concerns an interlocutory order. I am of the opinion that the Court should exercise more restraint when exercising this discretion in such cases. Nonetheless, a stay may be granted if an appeal will be rendered nugatory by execution of the order or judgment appealed from. In **Mary Geers v Noel de Lafontaine MA 200/2018,** the Court stated;

"Section 230 makes it clear that this Court has limited powers in respect of stays, any way much power than an appellate court. Jurisprudence constant on this issue is to the effect that the judge's inherent discretion is exercised based generally on whether it is

just and convenient to make such an order, to prevent undue prejudice to the party. The decision is reached by striking a judiciously and equitable balance between the principle that the successful party in the litigation should be allowed to reap the fruits of his litigation and not obtain a hollow victory, and the countervailing principle that should the successful party in litigation be ultimately successful in his appeal, he ought not to be deprived of the fruits of his litigation due to the result of his appeal being rendered nugatory or the appellant would suffer loss which could be compensated."

[27] As I have stated above an appeal does not operate as a stay. However, the Order made by this Court on 31st December 2021 has continued to be flouted by HVRSL. This is the reason why IRL has filed an application for contempt There has not been, in my view any effort to resolve the issue apart from pursuing it through these proceedings in Court. HVRSL remains in flagrant breach of the Order, thus in contempt of the Court application. By granting the Order of Injunction this Court only sought to maintain the Service Agreement between the parties until final determination by this Court as to whether the agreement remains valid upon the renovation and reconstruction of the Resort.

[28] HVRSL has annexed to his application for leave a draft copy of the Notice and Memorandum of Appeal. In that document he submits that there are substantial question of law to be adjudicated upon at the hearing of an appeal. Counsel for HVRSL submits that the trial Judge erred in law when he allowed the application to be heard ex-parte. He added furthermore the Judge erred on the facts as there was no necessity for secrecy as HVRSL had informed IRL since March 2020 the service agreement was to be terminated.

[29] The head suit is to determine whether HVRSL could unilaterally cancel the Service Agreement and disregard the sanction letter issued by the Ministry of Land Use and Housing on 09th July 2010. The enforcement of such Service Agreement is supported by letter from the afore-mention Ministry dated 28th May 2020. HVRSL did not respond to the letter. On 25th November 2020, IRL received a letter from HVRSL's attorney informing them that the Service Agreement will be terminated. On 7th December 2020, water and internet services were disconnected to IRL's villa. Despite further

communications between the parties, HVRSL maintained its position and threatened that electricity was to be disconnected on the 01st January 2021. Thus IRL had to make an urgent application for an injunction to enforce terms of the Service Agreement pending the hearing of the main suit.

[30] An application for an Order of Injunction may be made ex-parte in special circumstances where there should be secrecy or otherwise if a respondent is to be notified or has knowledge of such an application that respondent may decide to take steps to frustrate the demands made in the application. In other cases normally an application for injunction is made inter-partes. However, an application may be heard ex-parte where it is urgent and where it will be in the interest of justice to do so.

[31] When the application came before Court on the 30th December 2020, HVRSL had already disconnected water and internet services which is an alleged breach of the Service Agreement and the Court accepted averment that HVRSL was moving to disconnect electricity on 01st January 2021, which would have rendered nearly impossible for IRL to occupy the villa. Already with the disconnection of water, the IRL was having to fetch water from other sources. In fact HVRSL admits that it is considering cutting the supply of electricity to IRL's villa.

[32] I have given the utmost consideration to the Application and had the opportunity to read the proposed memorandum of appeal and I cannot agree with Counsel for the HVRSL that there is a substantial question of law to be adjudicated at the trial. The ex-parte injunction was granted in view of the urgency of the application and to have delayed the hearing of the application would have resulted in the HVRSL disconnecting electricity to the IRL's villa. There is nothing unlawful in making an order of injunction ex-parte.

[33] In **Island Development Company Limited v EME Management Services Limited** (supra) it was held that the case must be treated as an *"exceptional one"* in order to grant leave to appeal-

"[..] one must be able to show that the interlocutory judgment or order is manifestly wrong and irreparable loss could be caused to him or her if the case proper were to

proceed without the interlocutory judgment or order being corrected . It would be in the 'public and interest' to unnecessarily delay trials before the Supreme Court, otherwise." (see Cable and Wireless Seychelles Limited Ventigadoo Gangadoo SCA MA 2 of 2013

[34] In **Chang-Tave v Chang Tave [2003] SLR 74** the Supreme Court held that *"under the English principle, even if the appellant had some prospects of success in his appeal, for that reason alone no stay will be granted unless the appellant satisfies that he will be ruined without a stay of execution.* In **Atkins v Great Western Railway Co. [1886] 2 TLR 400** the Court held; *"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 succeeds."*

[35] I have ruled that this Court does not consider that there is substantial question of law to be adjudicated at the appeal. Furthermore, the Order did not make any monetary awards to IRL against the Appellant. Nonetheless, in the affidavit of Alice Gill attached to the Application suggests that HVRSL will have to incur expenses to reconnect water to IRL's villa. They will be required to install approximately 3 kilometres of water pipes. She further avers that the continuing connection of electricity is causing constraints and delays to the contractor who is carrying out reconstruction work at the HVRSL resort.

[36] IRL has attacked the affidavit of Alice Gill. They argue that it does not comply with section 170 of the Seychelles Code of Civil Procedure. Which provides that *"Affidavits shall be confined to such facts or matters as the witness is able of his own knowledge to prove, except on interlocutory applications, on which statement as to belief, with the grounds thereof may be admitted."* In the statement she did not made statement as to belief Alice Gill, it is averred is the manager of Human Resources (paragraph 2 of the affidavit). IRL argues therefore that she cannot have personal knowledge of averments made in paragraph 8 and 9 of the affidavit . In the affidavit she does not state that she has been informed of such facts. These paragraphs aver that the continued connection of electricity will cause safety hazards and costly delays to the contractors. It also refers to HVRSL not having manpower to monitor and maintain supply of water and electricity. Even if the court would stretch the fact that as Human Resource Manager she would be

aware of the latter part of that averment, the former cannot be a matter of which she has personal knowledge.

[37] In paragraph 9 she attaches exhibits of the current renovation state of the resort. Again in a position she might not have personal knowledge of the facts averred but at the same time it is possible that she would have seen the state of reconstruction and able to confirm that the pictures show the exact state of construction.

[38] However, I find that some the averments made in paragraph 7 could not have been within the personal knowledge of the Human Resource Manager. They are technical matters that could only have been averred by a person well versed with construction. IRL requests that Court completely disregards the affidavit of Alice Gill. On the face of it, Court should, as it is not in conformity with section 170 of the SCCP. However, Court is willing to consider the averments it considers to have been within her personal knowledge.

[39] HVRSL has not satisfied Court that cost will be irrecoverable if the application for stay is not granted. In any case, the affidavit of Klaus Kuehn on behalf of IRL aver that there is already water connection to some temporary toilets very close to its villa and therefore would not require 3 kilometres of pipe as averred by HVRSL. I feel that this is actually the state of affairs at the resort. They have to provide toilet facilities to their workers and no construction can be undertaken without the availability of water. Therefore HVRSL cannot aver that they will be ruined if the stay is granted. I find that it will be unfair to IRL not to have water furnished to its villa and would not in effect be as costly as HVRSL wants the Court to believe.

[40] As to connection of electricity, the villa has continued to be provided with the same. HVRSL has not provided this Court with any professional proof that its continued connection will cause hazard. The letter from PUC addressed to the Seychelles Investment Board dated 06th May 2020, in my opinion does not make it a requirement that electricity is disconnected to the villa to allow construction to go ahead. The resort must still have electricity connection that is required for the works being carried out. That

is not causing a hazard. I am of the view that arrangement can be made to allow the continuing supply of electricity.

[41] The disconnection of such services as per the Service Agreement will cause severe hardship and prejudice to IRL. They will be unable to have use of their villa. The Public Utilities Corporation has also stated that it is physically impossible at the moment to provide the villa with electricity, thus the reason why its provision of electricity was being done through the Bayan Tree Resort. In view of these findings, HVRSL has also not shown to this Court that if a stay is not granted, the appeal if successful, would be rendered nugatory

[42] Therefore, the application for Stay of Execution is denied.

Contempt of Court

[43] IRL filed a Motion for the Directors of HVRSL to show cause why it should not be held in contempt or the Order of 31st December 2020 in that it has failed to comply with the Order. The Order makes order that the HVRSL does not disconnect utilities supplied to the IRL's villa and therefore restore water supply to the villa. This is as per Service Agreement. HVRSL does not dispute that it has remained in violation of the Order but cite physical and practical impossibility for so doing. Therefore, IRL's villa is not being supplied with water and internet. Meanwhile, IRL through Counsel have been sending emails dated 05th January 2021, 19th January 2021 and 23rd January 2021, to Counsel for the HVRSL reminding them of the Order and requesting that water is reconnected to the IRL's villa. IRL further states that there has since the Order been several interruptions to electricity supply.

[44] There are no statutory provisions for contempt of Court in the laws of Seychelles. Our Courts instead looks at the English Common Law for guidance. Section 4 of the Courts Act with regard to jurisdiction and powers of the Supreme Court provides that;

"The Supreme Court shall be a superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the

powers, authorities and jurisdiction possessed and exercised by the High Court of England"

In **Ramkalawan & Anor v Nibourette & Anor [2018] SCSC 618**, Twomey CJ, noted that as a court of record, the Supreme Court has no inherent power to punish for contempt of Court. It was also stated that in general terms, there exist civil contempt, which is the disobedience of judgments or court orders, contempt which consists of impeding or interfering with the administration of justice.

[45] In **Ramkalawan v Nibourette** (supra), Twomey CJ went on to add that;

It is settled law that this provision has imported into the laws of Seychelles, the common law of England. In this respect the laws of Seychelles recognise and maintain the common law concept of contempt of court. As a court of record, it has inherent power to punish contempt, whether criminal or civil as it has been said: " A court without contempt power is not a court." (Lawrence N Gray, Criminal and Civil Contempt: Some sense of a Hodgepodge, 72 ST. JOHN'S L. REV. 337, 342 (1998) and the power of contempt "is inherent in courts, and automatically exists by its nature" Ronald Colfarb, The History of Contempt Power, 1 WASH U.L.Q. 1, 2 (1961)"

[46] Twomey CJ went on to state that *"Indeea, the term contempt of court is a misnomer (see Attorney General v BBC (1981) AC 303, 362) and poorly explains the purpose of such proceedings . In Morris v Crown Office, [1970] 1ALL ER 1079 at 1078, [1970] 2 QB 114 at 129, Salomon J explains the objects of contempt proceedings thus:*

"the sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."

[47] She went to state that *"in Mancienne v Government of Seychelles (2004-2005) SCAR 161, the Court of Appleal citing Lord Ackner in Attorney General v Times Newspaper Ltd and anor. [1991] 2 ALL ER 398 (HL) and Bowen LJ in Re Johnson (1888) 20 QBD 68 explained that the term was "inaccurate and misleading, suggesting some sort contexts*

that exists to protect the dignity of the judge. It also cited Bowen LJ in Johnson v Grant [1923] SC 798, 790 who stated that:

"The phrase "Contempt of Court does not in the least describe the true nature of the class of offence with which we are concerned.... The offence consists in interfering with the administration of the law; impeding and preventing the course of justice..... it is not the dignity of the Court which is offended .... A petty and misleading view of the issues involved .... It is the fundamental supremacy of the law which is challenged."

[48] We are here concerned with civil contempt as opposed to criminal contempt. Civil contempt consists of disobedience to judgments and court order whilst criminal contempt involves in conduct impeding or interfering with the administration of justice or creating a risk of such impediment or interference.

[49] Karunakaran J made a distinction between civil and criminal contempt in **Linyon Demokratik Selselwa v Gappy & Ors (MA 266/2016) arising in MC 86/2016 and MC87/2016[2016] SCSC 615** (24 August 2016) said thus;

"The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised including the nature of the relief and the purpose for which the sentence is imposed.

The purpose of civil contempt is to compel the defendant to do thing (sic) required by the order of the Court for the benefit of the complainant. The primary purpose of criminal contempt are (sic) to preserve the Court's authority, and to punish for disobedience of its orders. If it is for civil contempt the punishment is remedial or compensatory and for the benefit of the complainant but if it is for criminal contempt the sentence is punitive to vindicate the authority of the Court ...."

[50] In answer to the application to the Motion to show cause why the Directors of HVRSL should not be held in contempt of the Order delivered by this Court, HVRSL seems to be relying on the affidavit by Alice Gili dated 22nd January 2021. However, it does not

appear that HVRSL filed an affidavit in reply to this application as is required by section 125 of the SCCP. Since all three applications were amalgamated into one, I shall nonetheless, acting with an abundance of caution, be willing to consider the aforesaid affidavit to understand HVRSL's objection to this application but I will emphasise the need for an affidavit in reply when one objects to any application. The affidavit for stay of execution technically cannot support objections for the application for contempt of court . Most of the averments contained therein are technical and could not have been within the personal knowledge of Alice Gill.

[51] As I have stated before, I do not believe that it is impracticable or impossible for HVRS to continue supplying IRL's villa with electricity and water. As stated above I do believe that the resort still has connection of such utilities. I believe that it will not be costly for HVRSL to continue supplying IRL with water since there is still water connection to the resort for construction and sanitary facilities. Electricity is equally still available to part of the resort. PUC never mentioned that provision of electricity has to be completely cut off.

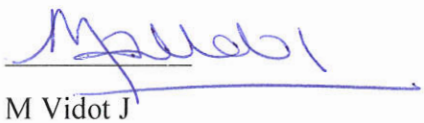
[52] The Court must ensure that its judgments or orders are followed. That is necessary in the administration of justice. The fundamental supremacy of the law needs to be followed. HVRSL is in breach or the Order.

[53] Therefore, I find that the Directors of HVRSL are in contempt of Court for non-compliance with the Oder of injunction. HVRSL is therefore given 14 days of this Ruling to restore water to IRL's villa, failing which they will suffer a fine of SR25,00.00

Conclusion

[54] In conclusion, I wish to thank and commend both Counsels for their well researched submissions. It is refreshing to find younger members of the BAR producing research of such level and articulating their submissions so clearly and it helps instil confidence that the future of the BAR looks promising and has Counsels who are able and competent.

Signed, dated and delivered at Ile du Port on 07 June 2021



M Vidot J