

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ...
MA 181/2020
(arising in DC 38/2017)

In the matter between

GEMMA CLAUDETTE MONDON
(rep. by Ms. E. Wong)

APPLICANT

and

ALAIN JEAN MONDON
(rep. by Mr. J. Camille)

RESPONDENT

Neutral Citation: *Mondon v Mondon (MA 181/2020) [2021] SCSC 296*

Summary: Summons to show cause – civil imprisonment – whether by way of Motion and Application or Petition – Plea *in limine litis* - Section 251 of Seychelles Code of Civil Procedure Act.

Before: Dodin J

Heard: 10 May 2021

Delivered: 9 June 2021

RULING

Dodin J

[1] The Applicant and the Respondent were divorced by judgment of the Court dated 10 April 2017. As part of the divorce settlement included in the judgment the Respondent had to pay the Applicant a sum of SCR 250,000 in cash and build a three bedroom dwelling house of at least 140 square metres with all necessary amenities for the Applicant and the children of the marriage. The said house was to be built within a period of one year after the signing of the agreement forming part of the judgment. It appears that to date that part of the agreement not been realised.

[2] The Applicant now moves this Court by way of an Application under section 251 of the Seychelles Code of Civil Procedure for the Respondent to show cause why the

Respondent should not be imprisoned for failing to discharge his obligations under the judgment.

[3] The Respondent raised a plea *in limine litis* stating that the application is bad in law and must be dismissed in as far as it is an application made under section 251 of the Seychelles Code of Civil Procedure Code. The Court can only be moved by way of a petition with affidavit and not by application as in its current form.

[4] Learned counsel for the Respondent submitted that the application cannot succeed in its present form and must accordingly be dismissed. Where the law prescribed for the manner into which an application is to be made strict adherence to the same procedure must be maintained by the Court. In that regards Section 251 of the Code of Civil Procedure states that;

*‘A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court **by petition, supported by affidavit of the facts**, for the arrests and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar ...’*

[5] Learned counsel submitted that section 251 clearly establishes the manner and form by which the application is to be made. It follows that the application cannot be made other than by way of petition and supported affidavit. The present application before the Court is by way of motion. It cannot succeed as it is clearly afoul to Section 251. On that basis the Respondent will move to dismiss the application.

[6] Learned counsel for the Applicant submitted that the Applicant accepts that section 251 requires a “petition supported by an affidavit of the facts.” However, the Applicant relies on the finding of *Domah JA in Gill & Ors v Film Ansalt [2013] SLR 137* where his lordship stated:

“We adopt the reasoning that procedure is the hand-maid of justice and should not be made to become the mistress even if many hand-maids would aspire to become mistresses”

[7] Learned counsel submitted that in filing the motion the applicant has also filed an affidavit in support of the facts as shown in her motion. The only difference is that the Applicant has not done a separate motion. Hence, she humbly submits that to hold that she ought to have filed a petition and to dismiss the present motion on that ground would be akin to making procedure, the handmaiden, the mistress.

[8] Learned counsel submitted that the lack of filing a petition ought not to be a bar to the Applicant's desire to attain justice in the case, especially as the only actual difference between the requirements of section 251 and what the Applicant has done is the lack of a petition. Learned counsel submitted that the most important part, being the affidavit, which is evidence that the Court requires, has been fulfilled. Accordingly, the Applicant moved the Court to dismiss the plea *in limine litis*.

[9] Section 251 of the Seychelles Code of Civil Procedure states:

“251. A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default or satisfaction or the judgment or order.”

[10] There is no ambiguity as to how the Court is to be moved when invoking section 251 of the Seychelles Code of Civil Procedure Act. That is by way of petition supported by affidavit of facts. It can indeed be argued that there is little or no difference in the demand and outcome since the request of the Applicant is clearly set out in the affidavit. The court has also, when it deemed expeditious to do so, allowed parties to proceed with matters not filed in accordance with procedural requirements. Indeed that was the case in *Gill & Ors v Film Ansalt [2013] SLR 137* [supra]. Basically, his Lordship Domah J.A. held the view that the Court should not be a slave to procedures as procedures, “*handmaids*” are meant to be of assistance and not necessarily for strict and unwavering compliance.

[11] I respectfully differ to the extent that I am of the view that some procedures are designed to assist the parties and the Court (*hand-maids*). These procedures leave the Court with the discretion on how the party can initiate and conduct proceedings. However some procedures are strictly necessary and should be adhered to, (*mistresses*) and the legislators have found it necessary to set such procedures down in law.

[12] Hence whilst it is not agreeable for “*hand-maids*” who aspire to be “*mistresses*” to be always accorded such ambition, it is also not acceptable to reduce “*mistresses*” to the position of “*hand-maids*” and thus create uncertainty in what should otherwise be an organised state of affairs.

[13] However, all is not lost in that the Applicant’s right to file the proper petition grounded under section 251 of the Seychelles Code of Civil Procedure Act cannot be extinguished by the dismissal of this Application as long as the judgment debtor remains in default of the judgment.

[14] This Application is dismissed with cost to the Respondent.

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

G. Dodin

Judge