

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 920
MA 103/2021
(Arising in CC 06/2018)

In the matter between:

MARTHE PETROVAR-DIDON
(rep. by Mr. Joel Camille)

Applicant

and

CHANDER PARKASH
(rep. by Ms. Alexandra Madeleine)

Respondent

Neutral Citation: *Petrovar-Didon v Parkash* (MA 103/2021) [2021] SCSC 920.

07 December 2021

Before: Dodin J

Summary:

Heard: Written submission

Delivered: 16 December 2021

RULING

DODIN J.

- [1] The Applicant has applied for an order of the Court to appeal out of time against a judgment of the Supreme Court in case CC6/2018 whereby the court gave judgment against her in the sum of SCR 225,538.80. The judgment was delivered on the 27th March 2020. This application was filed on the 12th May 2021.
- [2] In her affidavit in support of the application, the Appellant gave as reason for the delay that the judgment was given in her absence, during the time of public health restrictions due to the covid-19 pandemic. She was also not advised of the judgment by her then attorney and she only came to know of the judgment on the 29th March 2021.

[3] The Respondent objects to the Application maintaining that the Application is bad in law, unreliable, fails to disclose good reasons for the Court to exercise its discretion to grant leave to appeal out of time and that the application is frivolous, vexatious and constitute an abuse of the Court's process intending purely to deny the Respondent the fruits of his judgment.

[4] Learned counsel for the Respondent raised the following initial objection as appoint of law:

1. The Supreme Court became functus officio on 27th March 2020 when it delivered the final judgment in CC06/2018.

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2. In terms of section 12(1) of the Courts Act read with rules 11(1) and 18(1) of the Seychelles Court of Appeal Rules, the proper forum to seek leave to appeal out of time from the final judgment or order of the Supreme Court rests with the appellate court. Further, the question of leave to appeal out of time is not one which must first be made to the Supreme Court and only in the event of refusal should it be made to the Seychelles Court of Appeal.

3. The Judgment being appealed from is clearly a final judgment and therefore not interlocutory and its monetary value clearly exceeds SCR10,000/-; Thus prior leave of the Supreme Court (as would have been required in the case of an interlocutory order/judgment and a judgment whose monetary value is less than Sr. 10,000/- in terms of section 12(2) of the Courts Act) is not required here.

4. The Applicant should have made the application directly to Seychelles Court of Appeal for its determination on the question. On This Application should be dismissed on the basis of not having been file before the proper forum.
- [5] Learned counsel for the Applicant in reply submitted that Rule 16 of the Seychelles Court of Appeal Rules 2005 makes it clear that;
- “Whenever an application may be made to the Court or to the Supreme Court, it should normally be made in the first instance to the Supreme Court.”*
- The Respondent’s argument is misconceived and cannot succeed, on the basis of the provision contains in Rule 16 above.
- [6] It is correct that certain applications can be made to the Supreme Court before proceeding to the Court of Appeal. These would be where leave is required to take the matter to the Court of Appeal. Such requirement for leave would be where the Supreme Court is not yet functus officio; that is to mean interlocutory matters where the final judgment still rests with the Supreme Court as per section 12 of the Court’s Act.
- [7] Section 12 provides as follows:
- 12. (1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.*
- (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 an appeal.*

(c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.

(3) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the Supreme Court of Seychelles and of the Court of Appeal in England.

(4) In this section the expression “civil matters” includes all non-criminal matters.

Section 12(2) gives the Supreme Court jurisdiction to grant leave to appeal to the Court of Appeal in interlocutory judgments or orders or for sums not exceeding SCR 10,000/-. If Rule 16 of the Court of Appeal Rules is to be given any meaning or application, it must be read in conjunction with section 12 of the Court’s Act.

- [8] When the provisions of section 12 of the Court’s Act is vectored in, it becomes obvious that where the Supreme Court has delivered final judgment and that judgment is to be appealed against, Rule 16 of the Court of Appeal rules would not be applicable. The applicable rules would be Rule 18 and Rule 26. Rule 18(1) states:

18. (1) Every appeal shall be brought by notice in writing (hereinafter called “the notice of appeal”) which shall be lodged with the Registrar of the Supreme Court within thirty days after the date of the decision appealed against.

Rule 26 states:

26. The times fixed within these Rules may, on good cause shown, be extended by the President or a Judge designated by the President or may be extended by the Court.

- [9] It is clear therefore that the Supreme Court has no jurisdiction to entertain an application to extend the time given for appeal before the Court of Appeal against a final judgment of the Supreme Court.

[10] This Application is misconceived and has been brought before the wrong forum. This Court finds it not necessary or appropriate to address the merits.¹ This Application is dismissed.

[11] I award costs to the Respondent.

Signed, dated and delivered at Ile du Port on 16 December 2021.



Dodin J

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1. Robinson J.A in *Marie-Therese Boniface v Maxime Marie SCA MA 01/2019* addressed extensively the grounds to be considered on application for appeal out of time.