

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**  
[2021] SCSC  
MA 81/2021  
(Arising in CA 11/2020)

In the matter between:

**SAVOY DEVELOPMENT LIMITED**  
*(rep. by Serge Rouillon)*

**Applicant**

and

**SHARIFA SALUM**  
*(rep. by Vanessa Gill)*

**Respondent**

---

**Neutral Citation:** *Savoy Development Limited v Salum* (MA81/2021) [2021] SCSC  
(09<sup>th</sup> July 2021)

**Before:** Burhan J

**Summary:** Application for a stay of execution. To allow application in the absence of material questions of law is to encourage delays and prevent respondent from reaping the fruits of the judgment. Money claim is recoverable in a claim of damages. Applicant does not run the risk of a decision in its favour on appeal being rendered nugatory.

**Heard:** 02<sup>nd</sup> July 2021

**Delivered:** 09<sup>th</sup> July 2021

---

**ORDER**

Application for stay of execution pending appeal dismissed with costs.

---

**RULING**

---

**BURHAN J**

[1] This is an application for a stay of execution pending appeal of a final judgment of this Court dated 16<sup>th</sup> April 2021 where the Supreme Court dismissed the appeal emanating from the ruling of the Employment Tribunal which held inter-alia that the dismissal of the

Respondent (Applicant (Tribunal) /Appellant (Appeal)) was unlawful and awarded compensation to the Respondent in lieu of reinstatement.

[2] The main grounds on which the stay of execution pending appeal is sought follows:

- a) There are high chances of success in the appeal as there is a substantive question of law to be decided.
- b) That if the judgment is executed before the disposal of the appeal, the Applicant will suffer substantial and irreparable loss and prejudice which could not adequately be compensated by damages and would also render the appeal nugatory.
- c) That the award is substantial and the Applicant if successful in appeal would have difficulty retrieving it from the Respondent.
- d) That the Applicant is financially capable of satisfying the judgment in the event the judgment is maintained.

[3] The case of *Pool v Williams [1996] SLR 192* set out five grounds which may be considered in granting a stay of execution of a judgment pending appeal. The *Pool* principles for granting of stay of execution pending appeal are:

1. Where the appellant would suffer loss which could not be compensated in damages.
2. Where special circumstances of the case so require.
3. Where there is proof of substantial loss that may otherwise result.
4. Where there is a substantial question of law to be adjudicated upon the hearing of the appeal.
5. Where if the stay is not granted the appeal if successful, would be rendered nugatory.

[4] Section 230 of the Seychelles Code of Civil Procedure (SCCP) provides 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.”

- [5] In the case of *Dynamics (Pty) Ltd & Anor v Daniel Vadivello & Anor* [2021] SCSC139 Vidot J held “the grant of a stay of execution is a discretionary and equitable remedy”. In the case of *Leicester Circuits Ltd V Coates Brothers plc* [2002] EWCA Civ 474 Potter L.J stated “The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal.”
- [6] I will now proceed to analyse the grounds relied on by learned Counsel for the Applicant in respect of the application to stay proceedings pending appeal.
- [7] In respect of grounds set out in paragraph [2] herein, it would be improper for this court to at this stage consider the merits of the appeal but a cursory glance of the schedule attached to the affidavit giving the indicative grounds of appeal, convinces this court that the appeal is not based on any material question of law but mainly based on facts already gone into in great detail by this court and decided by this court, in appeal. The degree of investigation required following an offence as highlighted in the additional submissions dated 9<sup>th</sup> June 2021 filed by the Applicant or the continuing trend of the Employment Tribunal where an offence has been established, to rule that there has been an unfair dismissal are questions more relevant to facts and not law and should be decided on a case by case basis. Re agitating the same grounds over and over again in different cases does not create material questions in law. Further the high post held by the Respondent or the sensitive nature of her job does not create questions of law that warrant the requested stay being given.
- [8] It is also to be borne in mind that this is not the first appeal but the second appeal being filed by the Respondent against the ruling of the Employment Tribunal based on a very vague point of law set out in the “indicative grounds” in the stay application affidavit dated 16<sup>th</sup> April 2021. Usually appeals especially emanating from one Appellate Court to

a higher Appellate Court are based stringently on questions of law which in the view of this Court are absent in this case. To allow this application in the absence of material questions of law, is to encourage delays and to prevent the Respondent from reaping the fruits of the judgment given in her favour. It is to be borne in mind that the Respondent in this application has been waiting for justice since the 28<sup>th</sup> August 2018, the date of her unlawful termination.

[9] The next ground relied on for the stay of execution is that the Applicant will suffer substantial loss and prejudice which could not be adequately be compensated in damages and would render the appeal nugatory. Firstly the claim is one of money which is always recoverable in a claim of damages. The Applicant is a reputed company running a hotel business. It is clear that the Applicant is quite capable and has the resources of filing a claim in damages against the Respondent who was a former employee of theirs, to recover any payment made or loss incurred by them if they were to win the appeal. Therefore this court is of the view that the substantial loss and prejudice can be compensated by way of damages.

[10] The present matter concerns payment of money. It has not been shown that the Respondent is impecunious and will not be able to return the money if the Court of Appeal were to reverse the Supreme Court decision. In fact the evidence at the Tribunal inquiry indicated that the Respondent since the termination is gainfully employed. In these circumstances I do not find that the Applicant runs the risk of a decision in its favour on appeal being rendered nugatory. *Pool v Williams* (supra) and the English case of *Atkins v G.W. Ry (1886) 2 T.LR 400* in which the Court held that:

"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."

[11] I further see no special circumstance in this case to order a stay of execution pending appeal. For all the aforementioned reasons, I am inclined to reject and dismiss the application for stay of execution pending appeal with costs.

[12] As the application for stay of execution has been rejected, the necessity to consider the issue of a bank guarantee does not arise.

Signed, dated and delivered at Ile du Port on 09<sup>th</sup> July 2021.

---

M Burhan J