

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC ...

MA 94 /21 Arising out of DV 37/21

In the matter:

Duraikannu Karunakaran
(*rep. by Mr F Elizabeth*)

Applicant

And

Kalaichevi Karunakaran
(*rep by Mr D Sabino*)

Respondent

In the matter of: Petition for Divorce

BETWEEN:

Duraikannu Karunakaran
(*rep. by Mr F Elizabeth*)

Petitioner

And

Kalaichevi Karunakaran
(*rep. by Mr D Sabino*)

Respondent

Neutral Citation: *D Karunakaran vs K Karunakaran* (MA 94/21 Arising in DV 37/21 (16 July 2021) [2021] SCSC

Before: Govinden CJ

Summary: Section 6 of the Court's Act inapplicable in the presence of statutory provisions for Judicial Review under Article 125 (1) (c) of The Constitution; application premature and an abuse of process.

Heard: 30th of June 2021

Delivered: 16th of July 2021

ORDER

Application dismissed

RULING

GOVINDEN CJ

BACKGROUND

- [1] The Applicant filed a divorce petition against Respondent on the 26th of April 2021. The latter has objected to the petition and the matter is being heard before this court. The event relating to this application predates the petition. The admitted facts shows that the Respondent before this court had on the 16th of April 2021 filed an application for a protection order under the provisions of the Family Violence (Protection of Victims) Act 2000, herein after also referred to as “*the Act*”. That application, which is being resisted, seeks certain Orders from the tribunal including restraining the Respondent to that application from conducting any acts of violence towards the Applicant.
- [2] Besides resisting the application, the Respondent before the tribunal had filed this application before the Supreme Court in which he invokes Section 6 of the Courts Act and apply for a stay of the proceedings before the tribunal until the final determination of the divorce petition or until further Order of this court. The Respondent, in response, has raised two preliminary objections to this application. Firstly, that in law, a protection order sought for is of an urgent nature and hence the application for stay must fail and secondly, that the said order will not traverse or affect the divorce petition.

SUBMISSIONS OF COUNSELS

- [3] Besides expanding on his preliminary objections, learned counsel for the Respondent in his written submissions has also invited this court to consider the applicability of Section 6 of the Courts Act to the facts of this case. On the other hand, the Learned counsel for the Applicant in an attempt to seek a dismissal of the objections raised argues that the equitable jurisdiction of this court cannot be ousted by any quasi-judicial discretion conferred on a tribunal. He further submitted that the presumption of urgency in Section 3(14) of the Act is rebutted by the facts of this case which shows that there is no necessity for urgency.

THE LAW

- [4] The laws applicable to this matter are found in the following provisions of the Constitution and the Act;

Article 125 of the Constitution;

Establishment and jurisdiction of Supreme Court

125. (1) *There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have -.....*

(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction; and

Other courts

137. Acts may -

(a) provide for the establishment of courts or tribunals which are subordinate to the Court of Appeal and Supreme Court, in this article referred to as “subordinate courts and tribunals”;

(b) provide for the appointment to and removal from office of members of the subordinate courts and tribunals;

(c) define or provide for the definition of the jurisdiction and powers of the subordinate courts and tribunals;

(d) define or provide for the definition of the relationship among the subordinate courts or tribunals and the relationship between the subordinate courts or tribunals and the Supreme Court and the Court of Appeal;

(e) provide for the making of rules in respect of the subordinate courts and tribunals.

Section 6 of the Courts Act, which is as follows;

Equitable powers

6. *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.*

Section 3 of the Family violence (Protection of Victims)Act;

Application for protection order

3. (1) *The Tribunal may, on an application, grant a protection order...*

.....

(14) An application for a protection order shall be deemed to be a matter of urgent nature and shall be dealt with accordingly.

ANALYSIS AND DETERMINATION

[5] The Applicant before this court has invoked the inherent equitable jurisdiction in order to justify the basis of his application. Section 5 and 6 vest in this court powers that were formally conferred on the High Court of England in law and equity.

[6] There has been settled case law of the Supreme Court regarding the applicability of those two Sections of the Courts Act. Most of them has asserted the dissenting judgment of Sauzier J in *Hallock v D’offay* (1983-1987) 3 SCAR (Vol1) 295, such as the cases of *Monnaie v Waye-Hive* (CS 19/2012) [2016] SCSC 57 (03 February 2016); *Louis v Marie* (CS 10/2014) [2018] SCSC 289 (22 March 2018)²⁶. In these cases after having established that there were no legal remedies applicable to the facts of the cases, the court had gone on to make orders in order to bring justice to the case and settle the material

issues between the parties. This has been done through the application of Section 6 of the Courts Act and the issuance equitable remedies.

[7] In this case, therefore, I need to make a determination as to whether the inherent equitable jurisdiction of the Supreme Court is properly seized by the Applicant before the matter can go further, given that this jurisdiction is applicable only in default or absence of statutory remedies. The Applicant has chosen to approach the court by way of Section 6 of the Courts Act. He should accordingly be able to justify his action by demonstrating that there was an absence of statutory remedies, hence his recourse to use the equitable jurisdiction of the Supreme Court.

[8] I have carefully read the provisions of the Act and I have found that there is no express right of appeal from an order of the Family Tribunal made under Section 3 of the Act. However, this to my mind should not be able to defeat a party to such a proceedings from a right of recourse or review against such a decision as Article 125 (1) (c) of the Constitution would give him or her this right. This court is constitutionally enjoined with the powers to supervise subordinate courts and tribunals by this constitutional provision. In the absence of an express right of appeal the Applicant's right under the Constitution is one of Judicial Review. The procedure to review the decision of subordinate tribunals is set out in the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995. Therefore, I am of the view that there are statutory remedies that were available to the applicant to review the decision of the Family Tribunal in law and coming to this Court under Section 6 of the Courts Act was erroneous.

[9] Furthermore, even if the Supreme Court was to have been properly seized in terms of the Rules and Article 125(1) (c) of the Constitution by way of Judicial Review, it appears that there is no determinations made by the Tribunal that would permit this court to exercise its supervisory jurisdiction on the adjudication of the tribunal. The hearing of the case is still pending, there are no decision for review and there appears to be no decisions to be stayed. The only decision is that of the Respondent in this case to file such an application and this decision is not subject to a judicial review by this court. Accordingly,

I am of the view that at any rate, the application before this court, even if it was to be in the proper form, is too premature.

[10] Lastly and in any event, the ultimate question that begs to be answered in this application is whether the court can stay the proceedings of another court, albeit of lower jurisdiction, without there being a principal matter brought before it for determination from that forum. Before this court there is no Judicial Review action or any other action against the tribunal's decision that would have allowed the applicant to apply for an interim or ancillary order to stay proceedings before the court or tribunal below in the interest of justice. In this case the application for stay of proceedings have been instituted without this court being asked to make any determination on any matter arising in those proceedings. The divorce proceedings between the parties are before this court and not the tribunal. To stay the proceedings of the Tribunal in order to allow the divorce proceedings before this court to come to its ultimate ends would be senseless as the two proceedings are not hinged or related to one another as they carry with them two clearly independent legal objectives. The tribunal makes a finding of fact and based on that decides whether to issue a protection order. The Supreme Court on the other hand, will make a determination on whether the Petitioner has proven his petition and if so makes an order decreeing the divorce. The ultimate decision of the Supreme Court therefore will have no bearing on the tribunal's decision and vice versa. Accordingly, because of this I find that the interlocutory relief which is being sought in this application also amounts to an abuse of process of the court.

FINAL DETERMINATION.

[11] Having established that there is a legal remedy, which has been improperly exercised, I therefore cannot proceed to make an order inequity in this matter and I therefore dismiss this application.

Signed, dated and delivered at Ile du Port on 16th July 2021

Govinden CJ