

SUPREME COURT OF SEYCHELLES

Reportable

2021 SCSC ...
MA 330/2019
Arising from CS 131/2019

In the matter between:

**UNIVERSITY OF SEYCHELLES AMERICAN
INSTITUTE OF MEDICINE INCORPORATION
LIMITED.**

(rep. by Guy Ferley)

Petitioner

and

THE ATTORNEY GENERAL

(rep. by Ananth Subramaniam)

Respondent

Neutral Citation: *University of Seychelles American Institute of Medicine Incorporation Limited v Attorney General (MA330/2019) 2021 SCSC 541 (18 August 2021).*

Before: Dodin J.

Summary: Interim injunction – lease agreement - cancellation

Heard: 11 November 2020

Delivered: 18 August 2021.

ORDER

The Petition has not satisfied the criteria required to grant an interim injunction. The Petition is dismissed. Costs to follow the event.

RULING

DODIN J.

[1] The Petitioner in this case is the Plaintiff in Case CS131/2019 and the Respondent herein is the Defendant representing the government of Seychelles. The brief facts of the case are that the Defendant now Respondent, agreed to sponsor a Charter for the Petitioner/Plaintiff to operate a private medical university of medicine in Seychelles and

for that purpose the Defendant/Respondent leased to the Petitioner/Plaintiff land parcel V5150 for 75 years to develop as a university campus in January 2000. The Petitioner/Plaintiff had paid rent amounting to US\$ 47,339 by November, 2010 when negotiations started between the parties for the surrender of the lease and the return of all sums paid. It appears that negotiations then faltered and the Respondent took steps to terminate the lease agreement. The Petitioner feeling dissatisfied with the proposed termination offer, filed a plaint claiming loss and damage in case CS131/2019.

[2] The Petitioner subsequently amended its Plaint to increase the damages claimed from SCR 10,000,000.00 to SCR 24,090,000.00 but did not pay the difference in Court fees until June 2021. Hence the delay in delivering this ruling.

[3] In this Petition MA 330/2019, the Petitioner moved the Court for the following orders pending the completion of hearing of case CS131/2019:

- a) *An interlocutory injunction being an order of inhibition be issued compelling the Respondent, in interim, to refrain from transferring, assigning, leasing or sub-leasing land parcel V5150, situated at Plaisance, Mahe, Seychelles, until further order of the Court;*
- b) *An order of interim injunction be made to compel the Respondent not to take possession or develop, in any manner the said land parcel; and*
- c) *An order of interim injunction be made to compel the Registrar of Lands not to register any transfer or any interest therein, with respect to the said land parcel.*

[4] The Petitioner relies on the affidavit of Mrs. Fauzia S Alkhairy, representing the University of Seychelles American Institute of Medicine Incorporation Limited, who is a Director. The affidavit contains the following relevant averments:

1. ...
2. *That I am advised and verily believe that the said land has been cleared by an unknown person or third party.*

3. *That I aver if an order is not granted, I will suffer undue hardship and suffer great loss and damages. Should the land be developed by the Respondent or a third party, the Court Order sought may be futile and academic.*
4. *Should the said land parcel be transferred or assigned to a third party or developed, I will not be in a position to be appropriately compensated. Further, any third party would be seriously prejudiced by an order of the Court.*
5. *I aver that it is in the best interests of justice for an order restricting any transfer or dealings in respect to land parcel V5150 to be made effective. [Sic]*

[5] The Respondent raised objections to the Petition. Firstly, the Respondent contends that this Petition is not maintainable in law due to the reason that the affidavit in support filed is invalid and not in compliance with Section 171 of CPC and Section 28 of the Evidence Act. It is a well settled position that if a document executed in a foreign country it has to be complied with Section 28 of the Evidence Act. In the case of *Elmasry vs Hussan in CS 13/13*, [citation incorrect; should read *Elmasry & Anor v Hua Sun (MA 195/2019 (Arising in CC13/2014) [2019] SCSC 962 (08 November 2019)*], the Hon. Chief Justice stated “affidavits are sworn evidence and evidential rules cannot be waived. The supporting affidavit filed in this case was sworn in USA before the Notary but failed to comply with important provision of Section 28 of the Evidence Act.

[6] Secondly the Respondent contends that no prima facie case has been made against the Respondent. Learned counsel submitted that it is well settled principle that in order to grant an interim injunction three conditions have to be met as held in the case of *Julienne vs Woodcock in CS 30 of 2016* are;

- 1) Whether there is serious question to be tried.
- 2) Inadequacy of damages to either side and
- 3) The balance of convenience.

[7] With regard to the 1st condition the Court must determine that the claim is bonafide, not frivolous and vexatious in other words the Petitioner has to establish there is a prima facie case or serious question to be tried. In this case, the main case has been filed against

the termination of lease by the Respondent. If the attached documents are perused it would clearly show that there is no prima facie case against the Defendant. The lease was granted to the Petitioner for the sole and special purpose to start and run a medical university and campus. That the said development should be effected within 18 months from the date of the lease. The Petitioner failed to meet that condition. The lease was terminated in the year 2010. In view of the termination of said agreement the purpose for which the lease was granted no longer exists.

[8] Learned counsel submitted further that by judgment of this Hon. Court in CS 97/2011 – “the termination was confirmed and the Respondent (GOS) was ordered to pay compensation and they did also. Therefore, the purpose of the granted lease to the Petitioner is no more exists. Hence, there is no prima facie against the Respondent.

[9] Learned counsel submitted further that Section 6 (3) of State Land and River Act, states all grants and lease shall be conditional on the land being or continue to be applied to the purpose for which the lease has been made. At present, USAIM ceased its operation in Seychelles, the purpose for which the lease was granted no longer exist. Now, the Petitioner wants to use this land for a commercial purpose and that is not the condition of the lease that was granted by the Respondent. Therefore, there is no prima facie case or serious issue to be tried and for this reason this petition is not maintainable and should be dismissed.

[10] Learned counsel concluded that no irreparable loss or suffering would be caused to the Petitioner. On the other hand, the injunction will cause serious hardship and loss to the Respondent since the Respondent has already initiated some developmental activities for the community purpose in that area.

[11] Learned counsel moved for the petition to be dismissed.

[12] Section 171 of Seychelles Code of Civil Procedure concerns affidavits sworn to in Seychelles whilst section 28 of the Evidence Act is concerned with documents sworn to in foreign jurisdictions. Learned counsel failed to give any explanation how section 171 of the Seychelles Code of Civil Procedure can be read with section 28 of the Evidence

Act. Secondly the case of *Elmasry & Anor v Hua Sun* indeed contains a passage in respect to affidavits to the extent that rules of evidence cannot be waived, even by agreement. However it never addressed section 28 of the Evidence Act as learned counsel seemed to be implying. It is sufficed to state at this juncture that this line of objection by the Respondent has not been properly thought out, developed and not well grounded.

[13] The second objection of the Respondent is based on Section 6 of the State Land and River Reserves Act which provides:

6 (1) No portion of any State land shall be disposed of by free grant or at any other than its full value as hereinafter provided for, except in the case of land required for religious, charitable, or educational purposes or for purposes or for purposes of public utility.

(2) The President may, where the purposes for which the land is required are bona fide religious, charitable, or educational, or of public utility, grant a concession or a lease of such land on payment of a nominal price or rent.

(3) All such grants or leases shall be conditional on the land being or continuing to be applied to the purposes for which the grants or leases have been made.

[14] Learned counsel submitted that in view of the above section, the Petitioner does not have a case against the Respondent, in fact not even a prima facie case. Again, learned counsel is misguided on the issues that determine whether an injunction should be granted or not. It is not whether the Plaintiff (Petitioner) has established a prima facie case against the Defendant (Respondent), but whether the plaint discloses a serious question to be tried. Whether the Plaintiff would be successful or not is a matter to be determined in the case proper and not at this interlocutory stage.

[15] The decision as to whether to grant an interim injunction as petitioned by the Petitioners must be determined on the principles rightly referred to by learned counsel for the Respondent in the case of *Julienne vs Woodcock in CS 30 of 2016* which are;

- i. Whether there is serious question to be tried.
- ii. Inadequacy of damages to either side; and
- iii. The balance of convenience.

[16] Lord Diplock in *American Cyanamid Co v Ethicon Ltd [1975] AC 396* made a concise but clear appreciation of the above application:

“The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from him having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies.”

[17] In this case, having gone through the Plaintiff, I am satisfied that the Plaintiff, now Petitioner, has raised a serious issue in respect of the cancellation of the lease agreement which was for 77 years. Whether the Defendant, now Respondent had good and legally valid reason to prematurely cancel the lease is a matter to be determined in the main case.

[18] The second question, the adequacy of damages has in fact been answered by the Petitioner in its amended Plaintiff. The Petitioner claims in the Plaintiff the sum of SCR 24,090,000 as compensation for the remaining 62 years of the leasehold. The Petitioner has further claimed in the Plaintiff that the Respondent has been willing to refund the Petitioner the full sum of US\$ 47,339.05 for the return of the land. It is therefore obvious that neither the Petitioner nor the Respondent has even contemplated that the Respondent (Defendant) is or would be so bankrupt that it would not be able to compensate the Petitioner in the event that damages is awarded to the Petitioner.

[19] Secondly, since it is admitted by both sides that the land in question has not been developed by the Petitioner, the Petitioner has nothing of irreplaceable value to lose from the land other than the land itself. Therefore damages would be adequate remedy for the Petitioner.

[20] On the other hand, the Petitioner has not developed the land for the purpose or during the delay it was given in the lease agreement. Secondly the Petitioner is no longer operating

in Seychelles and all personnel appeared to have moved overseas. Hence not having the lease of the land does not cause undue and irreparable hardship to the Petitioner.

[21] Having considered all the above, I am satisfied that the balance of convenience is in favour of the Respondent. I also find that a greater injustice is likely to be caused if the interim injunction is granted than if it is not granted.

[22] Consequently, this Petition has not satisfied the criteria required to grant the interim injunctions prayed for and listed in paragraph [2] a, b and c above. The Petition is therefore dismissed.

[23] Cost shall follow the event.

Signed, dated and delivered at Ile du Port, Mahe, on 18th August 2021.

Dodin J