

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ...
Arising in MC 11/2021

In the matter between:

SEYCHELLES PENSION FUND
(rep. by Olivier Chang-Leng)

Applicant

and

CECILE MARIANNE
(rep. by Frank Elizabeth)

Respondent

Neutral Citation: *Seychelles Pension Fund v Marianne* (MC 11/2021) [2021] SCSC 557 (1 September 2021)

Before: Pillay J

Summary: Section 7 of the Imprisonment of Debt Act – Manner of filing applications under section 251 of the Seychelles Code of Civil Procedure

Heard: By way of submission

Delivered: 1st September 2021

ORDER

Section 251 of the Seychelles Code of Civil Procedure provides for an application to be made by way of Petition. In the circumstances the process having been commenced by way of Application instead of by way of Petition it is therefore contrary to the above mentioned provision, defective and cannot be maintained in law

JUDGMENT

PILLAY J

[1] The Judgment Creditor by way of an Application filed on 23rd February 2021 prays the Court to call upon the Respondent to show cause why she should not be committed to

prison for failing to comply with the Judgment dated 14th December 2018 before the Rent Board in RB No. 44/18.

- [2] The Respondent filed a plea in limine on the basis that that the Court has no power in law to grant the order sought by the Applicant against the Respondent.
- [3] The parties agreed to file submission and the matter was scheduled for ruling.
- [4] Counsel for the Respondent submitted that the Application is bad in law in that it should have been filed by way of a Petition in accordance with section 251 of the Seychelles Code of Civil Procedure and not by way of Application as it was filed.
- [5] Counsel referencing the case of Ex Parte Margitta Bonte CS111/97 went on a long and winding discourse about filing of matters ex parte. I am at a loss to understand how or where this is relevant to the current proceedings.
- [6] Counsel submitted that B. Renaud J. was wrong in his analysis and conclusion in the case of **Delcy v Camille (CS 55/2001) [2005] SCSC 69 (26 October 2005)**. He contended that there is no necessity in law for the Legislature to import provisions of one act to another. He submitted that Renaud J. did not rely on any authority for his proposition of law but rather expressed his opinion. He urged the Court to depart from the said judgment on the basis that judgments of the Supreme Court is not binding on the Supreme Court.
- [7] Counsel for the Applicant accepted that section 251 speaks of ‘a petition’ but submitted that this is not reason to dismiss the matter since the Respondent has not been prejudiced in any manner, the Respondent is well aware of the claims against her and counsel for the Respondent did not raise the issue in his response.
- [8] It was his submission that counsel cannot raise novel grounds in his submissions but should have raised the said grounds in his response.
- [9] On the issue of the decision of Renaud J in **Delcy** it was the submission of counsel that in delivering the decision in **Delcy**, Renaud J was not expressing his opinion but delivering a ruling as a Judge of the court. He submitted that the said interpretation became the law as is the manner with jurisprudence.

[10] Section 251 of the Seychelles Code of Civil Procedure provides 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 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.

[11] Counsel for the Respondent contends that this court has no power in law to grant the order sought. The basis for his argument is section 7 of the Imprisonment for Debt Act which provides that:

*Imprisonment for debt shall not be decreed in suits between husbands and wives, ascendants and descendants, and brothers and sisters.
It shall not be decreed against minors, against women, or against men who have commended their 70th year.*

[12] In the case of **Delcy v Camille (55 of 2001) [2004] SCSC 21 (18 July 2004)** Renaud J “conclude[d] that Section 7 of the Imprisonment for Debt cannot be imported and be read as part of Section 254 of the Seychelles Code of Civil Procedure. Hence it [was his] finding that a woman judgment debtor may be committed to civil imprisonment in a process when execution of judgment is activated by a judgment creditor under Sections 251 to 254 of the Seychelles Civil Procedure Code.

[13] Counsel for the Respondent invited this court to depart from the findings of Renaud J on the basis that decisions by Judges of the Supreme Court are not binding on other Judges of the Supreme Court. He referred this court to the case of **Michel v Michel (MA 399/2019) [2020] SCSC 303 (9 June 2020) (09 June 2020)**. In the said case this court found that the argument raised by counsel that it was “obliged to obey the set-up precedents established by prior decisions” could not stand. In the current case counsel is now attempting to use the said finding to convince the court that it should not follow the decision in **Delcy** above on the basis that it is not binding. To my mind it was made clear in Michel that decisions of the Supreme Court though not binding are of “high persuasive authority”; meaning that they are not to be departed from unless there are good reasons.

The question therefore is has counsel shown “good reasons” why this court should not follow **Delcy**?

- [14] The answer has to be in the negative. In arguing that Renaud J simply expressed his opinion counsel proceeds to express his own opinion that “there is no necessity for the court or Legislature, for that matter, to import the provisions of Section 7 of IDA in the SCCP for it to have application. The respondent submits that the court is at liberty to interpret section 251 to 254 of the SCCP in conjunction with Section 7 of IDA and to apply the same to the present case”. Whereas Renaud J gave a reasoned decision as a Judge of the Supreme Court, as rightly stated by counsel for the Applicant, counsel for the Respondent expresses his views without any support for those views. Unless and until there are good reasons shown for this Court to depart from the decision in **Delcy** it remains the rule whether we agree with it or not.
- [15] With that said counsel has not shown this court any good reasons why it should depart from the decision of Renaud J in **Delcy**.
- [16] In terms of the manner in which the application should be filed, section 251 provides for a petition with attached affidavit. According to the case of **Choppy v Choppy [1959] SLR 161** *Section 2 of the Matrimonial Causes Act which lays down that a matrimonial cause shall be commenced by petition is mandatory and failure to follow this procedure means that the court has no jurisdiction to try the matter*. This principle has been followed in the case of **ex p Medine (CS 266/2004) [2007] SCSC 4 (27 March 2007)**.
- [17] In **Quilindo v Moncherry (unreported) SCA 29/2009** the Court of Appeal distinguished the case of **Choppy** on the basis that the process for matrimonial proceedings is clearly laid out in law whereas in affiliation proceedings the process is not as clear cut. Relying on Lord Browne’s “encourage[ment to] the courts of Mauritius to be less technical and more flexible in their approach to jurisdictional issues and objections...” in the case of **Toumany and anor v Veerasamy [2012] UKPC13**, the Court took the view that “in affiliation proceedings, until and unless procedures and forms of pleadings are clearly indicated, an applicant cannot be denied the right of hearing for want of proper pleadings”.

[18] In the current matter the procedure for an application under section 251 is clearly laid out. In the circumstances the process having been commenced by way of Application instead of by way of Petition it is therefore contrary to the above mentioned provision, defective and cannot be maintained in law.

[19] Accordingly the plea in limine succeeds and the Application is dismissed.

Signed, dated and delivered at Ile du Port on ...

Pillay J