

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 1011
MA299/2021

In the exparte of matter of:

MARIBEL NORAH
(Unrepresented)

PETITIONER

Neutral Citation: Ex- Parte Maribel Norah (MA299/2021) [2022] SCSC 1011
(18th November 2021).

Before: Judge Esparon

Summary: Application seeking leave of the Court to apply for Judicial Review

Heard: 18th October 2022

Delivered: 18th November 2022

ORDER

Application for leave to Apply for Judicial Review in accordance with Rule 2 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995. Order for leave is granted for the Petitioner to apply for Judicial Review and to proceed to the merits of the case.

RULING

ESPARON J

Introduction

- [1] This is an Application asking for leave of the Court to apply for Judicial Review against the decision of the Immigration Authorities to issue a prohibited immigrant notice against the Petitioner.

Pleadings

- [2] The Application is supported by the Affidavit of Maribel Hernandez Norah who avers in her Affidavit that she is a Cuban national and that she came in Seychelles in 2018 under a GOP and worked at the Chic Chic Hairdresser until she resigned on 1st February 2020 after her marriage with Elvis Norah in January 2020.
- [3] She further averred in her Affidavit that in March 2020 she applied for dependent permit and on the 3rd March she was informed by an immigration officer namely Staelle Vangdasamy, that my relationship with my husband is not a serious one and that it should be noted that Miss Vangdasamy, is the ex-girlfriend of her husband and has therefore every reason to make her life difficult.
- [4] She further avers at paragraph 7 of her Affidavit that in November 2020 she was forced to sign a prohibited Immigrant notice in the absence of an interpreter and that in December 2020, she Appealed against the PI order to the Minister of Internal Affairs and that she has received no reply to date.

The Law

- [5] The Case of Airtel (Seychelles) LTD V/S Review Panel of National Tender Board and Anor SCA 70/2018 laid down the test for which the Court would grant leave to an Applicant in an application for leave to apply for Judicial Review. In this case the Court of Appeal referred to Rule 6 of the Rules of Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Bodies) Rules 1995 which provides that ‘The Supreme Court shall not grant the Petitioner leave to proceed unless it is satisfied that the Petitioner has sufficient interest in the subject matter of the Petition and that the Petition is being made in good faith’.
- [6] The Court held in the above mentioned case that once an Applicant shows that he has sufficient interest, the Application passes the 1st test. The second test is that the Application should be made in good faith. The Applicant should show by the materials he attached thereto that the case he makes on the material produced is a genuine case as opposed to a frivolous one. The purpose of seeking leave is not to deny litigants access to the Courts

(something that should not be done lightly) but to weed out vexatious and wholly unmeritorious litigation by busy bodies, what the Romans called meddlesome interlopers.

- [7] Their Lordships in the above matter went further and said ‘It is settled law that cases that are hopeless and bound to fail, or totally devoid of merit must not be allowed to proceed further. To do so would be to squander judicial time wisely. This Court opines that in any case where an Application for leave is sought the Court must be careful that it does not unduly impede or frustrate the right to access the Court and have the real dispute determined by being too quick to deny a litigant the right to be heard on the merits, unless in situations where the Application is plainly useless and waste of the Courts time. Put it differently, it seems to us that in all situations where leave is an issue the best approach is to adopt a liberal and generous approach that facilitates a matter proceeding on the merits than the contrary.’

Determination

- [8] As regards to the first test for the Court to grant leave namely whether the Petitioner has sufficient interest in the matter as provided for under Rule 6 of the Rules of Supreme Court (Supervisory Jurisdiction over Subordinate Courts , Tribunals and Adjudicating Bodies) Rules 1995, this Court has no hesitation but to hold that the Petitioner has sufficient interest in the matter since the Petitioner/ Applicant has been issued with a Prohibited Immigrant Notice and has Appealed against the said decision of the Immigration Authorities.
- [9] Since the Petitioner has passed the 1st test now, this Court has to consider as to whether the Petitioner has passed the second test as provided for under the said Rule 6 namely as to whether the Petition is being made in good faith. To put it in a nutshell, the Court has to satisfy itself that the Petitioner has established that it has an arguable case such as it should be allowed to proceed to the merit stage.
- [10] Hence this Court will apply the principles as laid down in the Case of Airtel (Seychelles) LTD V Review Panel of the National Tender board and Anor SCA 70/ 2018 where the Court followed the decision in the case R V/S Inland Revenue Commissioners ex-parte

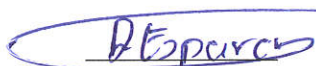
National Federation of the Self-Employed and small Businesses LTD (1982) AC617 where the Court held that ‘If on a quick perusal of the material then available, the Court (that is the Judge who first considers the Application for leave) thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting the applicant the relief claimed, it ought to in the exercise of a discretion, to give him leave to apply for the relief.’

- [11] On a quick perusal of the materials available before this Court i.e the Affidavit attached in support of the Petition and the documents attached therein, such as the averments made in the Affidavit in support of the Application namely at paragraph 5 of her Affidavit where she avers in her Affidavit that in March 2020 she applied for a dependent permit and on the 3rd March she was informed by an immigration officer namely Staelle Vangdasamy, that my relationship with my husband is not a serious one and that it should be noted that Ms Vangdasamy, is the ex-girlfriend of her husband and has therefore every reason to make her life difficult which implies certain allegation of biasness on the part of the Immigration Authorities. Furthermore at paragraph 7 of her Affidavit, the Petitioner avers that she has appealed to the Minister.
- [12] This Court also notes that the Petitioner has received a reply as to her Appeal by letter dated the 2nd November 2021 signed by an officer of Immigration for the Principal Secretary of Immigration whereby it seems that no reason has been given for her Appeal not being successful.
- [13] As a result of the materials available before the Court as referred to in paragraphs 5 and 7 of her Affidavit as well as the content of the letter of reply to her Appeal by an officer of Immigration for the Principal Secretary of Immigration, this Court finds that on the materials placed before it by the Petitioner, that it discloses what might on further consideration turn out to be an arguable case in favour of granting the Petitioner the relief claimed. This Court would hence exercise its discretion in granting leave to the Applicant to apply for Judicial Review in order to proceed on the merits.

Hence this Court makes the following orders;

- i) I hereby grant leave to the Petitioner to Apply for Judicial Review and hence to proceed on the merits.
- ii) I order that the Immigration Authorities forward to this Court all records of the proceedings concerning the Petitioner in respect to the above matter and hence the entire file both concerning the decision to issue a prohibited immigrant notice on the Petitioner and that of concerning the Appeal to the Minister.
- iii) I hereby order the Registrar of the Supreme Court to serve a copy of this order on the following persons;
 - a) The Officer in Charge of the Immigration Authorities and also on the Minister of Internal Affairs, Immigration and Civil Status Department.

Signed, dated and delivered at Ile du Port the 18th November 2022.



Esparon J

