

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 134
MA 194/2021 arising in
CS19/14

In the matter between:

Cyril Payet
rep by K Domingue

Applicant

vs

Joan Nicette
rep by R Rajasundaram

Respondent

Neutral Citation: *Cyril Payet vs Joan Nicette* MA 194/21 arising out of CS19/14 [2022] SCSC 134
(21ST February 2022).
Before: Govinden C J
Summary: Stay of Execution.
Heard: Written Submissions.
Delivered: 21st February 2022

ORDER

[1] The court order a stay of execution of the judgment of the Supreme Court dated 28th June 2020 entered against the Applicant pending the appeal before the Seychelles Court of Appeal.

Ruling

GÓVINDEN CJ

- [2] The Applicant in a motion before this Court moved for a stay of execution of an Judgment of the Supreme Court dated the 28th of June 2021 in which inter alia the Applicant was ordered to demolish a boundary wall; part of his house consisting of a patio and a disused septic tank which had encroached on the Respondent's properties bearing title V1184 and V 2297.
- [3] In his supporting affidavit the Applicant has claimed that he has filed an appeal to the Seychelles Court of Appeal in which he has asked this court to set aside the said the said Judgment or in the alternative to set aside the order of demolition by substituting it instead with an order to pay compensation, if encroachment is proven. He avers further that his appeal has great likelihood of success; that there are substantial questions of law and facts involved in the appeal and that if the appeal were to be successful, such judgment would be rendered nugatory unless the stay was ordered. The Notice of Appeal and Memorandum of Appeal of the applicant is annexed to the application.
- [4] The Respondent has filed an affidavit in reply to the stay of execution application in which she contest the application for stay. In it he avers that the Judgment appealed against is sound both on the facts and the law and therefore that the appeal has no merits; that the appeal in only based on facts and there exist no substantial of law involved; that the execution of the decision of this court pending the appeal will not create any great injustice or inconvenience and that the timing of the lodging of the appeal shows that it is vexatious and made in bad faith.
15. The powers of the Court in these circumstances are contained in Section 200 of the Seychelles Civil Code Procedure. These powers are entirely discretionary. As regards the applicable law for applications for stay of execution, it was held in the case of *International Investment Trading SRL (IIT) v Piazzolla & Ors (2005) SLR 57* that the power of the Court to grant or deny a stay is a discretionary one. In the same case the Court stated as follows:

There does not seem to be any specific and explicit provision of any statute which directly and expressly grant this Court power to stay execution of judgment pending appeal. It is only by inference from section 230 of the Seychelles Code of Civil Procedure, that this Court may draw such power."

16. Section 230 of the Seychelles Code of Civil Procedure ("SCCP") provides as follows:

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] There is a wealth of authorities in Seychelles mostly relying on the English case of *Wilson v Church (No. 2)* 1875 ChD 454 on the issue of nugatoriness.
- [6] In *Choppy v NSJ Construction* (2011) SCR 215 and *Chow v Bossy* SC 53/2011, the Australian case of *Alexander vs Cambridge Ltd* (1985) 2 NSWCR 685 was cited for the proposition that in applications for stays of execution :-
- a. The onus is upon the applicant to demonstrate a proper basis for a stay which will be fair to all the parties.
 - b. The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.
 - c. The court has a discretion involving the weighing of considerations such as balance of convenience and competing rights of the parties.
 - d. Where there is a risk that the appeal will prove abortive if the appellant succeeds and a stay is not granted, courts will normally exercise their discretion in favour of granting a stay.
 - e. The court will not generally speculate upon the appellant's prospect of success, but may make some preliminary assessment about whether the appellant has an arguable case, in order to exclude an appeal lodged without any real prospect of success simply to gain time.

f. As a condition of a stay the court may require payment of the whole or part of the judgment sum or the provision of security.

[7] The court has thoroughly considered the content of the application and the reply thereto. It had also given due consideration to the written submissions of both parties in the light of the applicable legal principles in such kind of applications. Having done so I find that the Seychelles Court of Appeal has the power to dismiss the decision of this court in its entirety and without passing judgment on my own Judgment, I find the balance of convenience weighs in favour of the applicant as great injustice and inconvenience may be caused to him if the encroachments are demolished pending a decision on appeal favourable to him. To that extent no amount of compensation in monetary terms would be able to remove any harm and inconveniences that this would have caused not only to him, but also the other party in this case.

[8] I therefore order a stay of execution of the judgment of the Supreme Court dated 28th June 2020 entered against the Applicant pending the appeal before the Seychelles Court of Appeal.

[9] I make no order as to costs.

Signed, dated and delivered at Ile du Port on 21st February 2022



Govinden CJ