

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC1086
MA 214/2022
Arising in MC 65/2022

In the matter between:

LE RENDEZVOUS CAFETARIA
(rep. by Joel Camille)

Petitioner

and

MOISETTE CLYAH
(unrep)

Respondent

Neutral Citation: *Le Rendezvous Cafeteria v Clyah* (MA 214/2022 Arising in MC 65/2022)
[2022] SCSC1086..... (.....7..... December 2022).

Before: Pillay J
Summary: Stay of execution
Heard:
Delivered: 7th December 2022

ORDER

The application for stay of execution is denied.

RULING

PILLAY J:

- [1] The Petitioner seeks an order staying the execution of the Court judgment dated 27th May 2022.
- [2] The Petitioner's Motion is supported by an affidavit sworn by Wilson Nancy.

[3] The sum of his affidavit is that the matter was heard before the Employment Tribunal and judgment given on 27th May 2022 where the Applicant was ordered to pay the Respondent the sum of SCR23, 829 on the basis that the termination of the Respondent's employment was unlawful; that he has appealed the decision to the Supreme Court which appeal, he is advised, involves an important point of law that needs to be heard before the Court.

[4] Jurisprudence has established that the Court derives its discretionary powers to grant or deny a stay by inference from section 230 of the Seychelles Code of Civil Procedure (*see: International Investment Trading SRL (IIT) v Piazzolla & Ors (2005) SLR 57*) which provides that:

“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] In ***Pierre v Better Life Foundation (MA 265 of 2018) [2018] SCSC 1093 (27 November 2018)*** Towmey CJ noted that “the general rule to be observed is that a stay should be declined, unless solid grounds are shown. A stay of execution is therefore an exception rather than the rule (see *Smith, Hogg & Co Ltd v. The Black Sea and Baltic General Insurance Co Ltd 162 LTR 11*).” She proceeded to note that “the application does not state the chances of success of a potential appeal against the said order, nor is the memorandum of the proposed appeal attached to the application”. On that basis along with the fact that the Applicant had applied in her personal name instead of in her capacity as Registrar of Associations the application was dismissed.

[6] In ***Lablache de Charmoy v Lablache de Charmoy SCA MA08/2019 (17 September 2019)*** Robinson JA in considering whether the appeal had a good chance of success stated thus:

“...it is not enough for Counsel to reproduce or exhibit grounds of appeal. The affidavit should plainly develop the substantial questions of law to be adjudicated upon by the appellate court.”

[7] In **Elmasry and Ano v Hua Sun** (SCA 28/2019) [2020] SCCA 2 (23 June 2020) Fernando PCA reinforced this position stating thus:

The sine qua non or the most important element that needs to be satisfied in seeking a Stay is to aver in the application and satisfy the Court prima facie that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal. Merely stating that the applicants have an arguable case and the appeal filed has some prospect of success, is not sufficient...

He added that

“Issues such as prejudice to parties and the balance of convenience come in for consideration only where the Court hearing a Stay of Execution application is prima facie satisfied that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal, that the applicant has an arguable case and the appeal filed has some prospect of success. This necessitates that the Notice of Appeal filed should in stating the grounds of appeal, at its bare minimum disclose the questions of law and facts upon which the Trial Judge erred and thus has to be adjudicated upon at the hearing of the appeal.”

[8] In the present matter there is no appeal before the Supreme Court but a motion for stay of execution and a motion for leave to be granted for the appeal to be filed out of time. In neither motion is the proposed memorandum of appeal.

[9] Even without the proposed grounds of appeal there is no attempt at substantiating his averment that there is an important point of law to be determined.

[10] For these reasons the application for stay of execution is denied.

Signed, dated and delivered at Ile du Port on 9th December 2022



Pillay J