

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2022] SCSC ...  
MA 100/2022 and MA 153/2022  
(Arising in MC05/2022 & ET14/2021)

In the matter between:

**HAVA YAKUB**

*(rep. by Alexandra Madeleine)*

**Applicant**

and

**RED CROSS SOCIETY OF SEYCHELLES**

*(rep. by Alexandra Madeleine)*

**Respondent**

**And**

**EX-PARTE RED CROSS SOCIETY  
OF SEYCHELLES**

*(rep. by Alexandra Benoiton)*

**Applicant**

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**Neutral Citation:** *Yakub v Red Cross Society of Seychelles* (MA 100/2022 & MA 153/2022)  
2022 SCSC ... (14 December 2022).

**Before:** Dodin J

**Summary:** Amendment of Application – release of seized movable

**Heard:** 25 November, 1 December 2022

**Delivered:** 14 December 2022

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**ORDER**

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**RULING**

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**DODIN J.**

[1] This ruling is in respect of an application to amend an Application MA100/2022 to grant leave to sell a jeep Dong Feng registration number S33423 seized since 14<sup>th</sup> December,

2021 at the instance of the judgment debtor pursuant to a judgment award in case ET14/2021 and in respect of an Application by the judgment creditor in MA 153/2022 to cancel the seizure of the jeep and for the release of the same.

- [2] By application dated and filed on the 9<sup>th</sup> May, 2022, MA 100/2022, the judgment creditor applied to the Court for permission for the sale of a jeep that had been seized on the 4<sup>th</sup> December, 2021. The Respondent objected to the application stating in its affidavit in reply amongst other averments, that that the Court has not granted an extension of time for the seizure and sale and that the Respondent has application still pending before the Employment Tribunal and the Supreme Court.
- [3] By an ex-parte application dated and filed on the 1<sup>st</sup> July, 2022, the Respondent, (Applicant in the ex-parte application), applied to the Court for the release of the jeep stating as the reasons that the Respondent (Applicant in the ex-parte application) has filed application for the setting aside of the ex-parte hearing before the Employment Tribunal which was still pending and that since the judgment creditor has not sold the jeep within 1 month of the seizure and the Supreme Court has not granted an extension of time for the sale to take place.
- [4] Both learned counsel addressed the Court extensively on the issues of amendment to the application and the application for release from seizure.
- [5] Learned counsel for the judgment creditor submitted that section 146 of the Seychelles Code of Civil Procedure allows for amendments to be made to pleadings at any stage of the proceedings up to the date of judgment as may be necessary for the purposes of determining the real question in controversy between the parties provided that a plaint shall not be amended so as to convert a suit of one character into a suit of a different character. Learned counsel referred the Court to the case of *Petit Car Hire vs Mandelson* 1977 Seychelles Law Report 68. Learned counsel submitted that the amendment is made in good faith and it will not cause injustice to the other party and that the amendment would not alter the cause or nature of the suit into a cause of action of a different character. Hence the power of the Court to allow amendments to pleadings and

applications before the Court is uncontested within the circumstances in which the amendment is being sought.

[6] Learned counsel further submitted that section 256 of the Seychelles Code of Civil Procedure which provides for moveable property seized in execution to be sold within 1 month from the date of the seizure. If the judgment creditor at whose instance the movable property was seized, neglects to cause such property to be sold or to obtain an order of the Court extending the period within which the sale is to take place the judgment debtor may apply to the Court by motion made ex-parte to release the property from seizure. The application for sale out of time would have the same end result of allowing the sale to proceed outside the time limit which is to basically to extend the time limit for the sale. Hence there is no fatal flaw in the original application which cannot be cured by the amendment applied for. The omission to add extension of time in the application would cause no prejudice to the Respondent.

[7] On the application for release of the vehicle learned counsel for the judgment creditor submitted that the jeep was seized on the 14th of December 2021 and sale should have taken place between the 14th December 2021 and the 14th of January 2021. That did not take place because 2 applications had been filed and were pending before the Supreme Court and the Employment Tribunal. These were:

- i. The application to set aside the ex-parte judgment before the Employment Tribunal and;
- ii. The application for stay of execution of the ex-parte judgment/hearing pending a determination of the set aside application before the Employment Tribunal.

By reason of the pending applications before this Court and also before the Employment Tribunal, the ushers who are responsible for the sale did not sell the movable property but there was no negligence on the part of the respondent, Hava Yakub. The sale did not take place because the Red Cross Society had filed applications that were pending before this Court and before the Employment

Tribunal. So on that ground alone, this application before the Court should fail because there has not been any negligence on the part of the judgment creditor.

[8] Learned counsel for the Respondent (Applicant in the ex-parte application) and judgment debtor submitted that the proposed amendment that is currently before Court is to include matters in paragraph 6, 7 and 8 of the application. The application prior made no mention whatsoever of extending any time limits. It was an application purely asking for a sale. There was no Section under which the application was made specified in the document. In the reply that was filed by the judgment debtor, it stated that the prayer is not a prayer asking this Court for leave to extend any time limits. It is purely a prayer for sale. There is a difference between asking the Court to sell a vehicle and asking the Court to allow a time limit that has lapsed for sale out of time.

[9] Learned counsel conceded that the judgment debtor did come before this Court and applied to prevent the sale of this vehicle which this Court denied. The judgment debtor even asked this Court to give a temporary relief by way of an interim order to stay which the Court denied it as well. Learned counsel submitted that initially, there was no objection to the amendment as it was perceived as a typographical error but subsequently the question of time arose because prior to the amendment there was no extension requested. It was only after the reply had been filed that an extension was to be inserted.

[10] Learned counsel submitted that it is correct that under Section 146 pleadings can be amended at any time but the amendments of pleadings must only be done with justification. It is only once the Court has justification that it can exercise its discretion to allow it and there is no reason other than typographical error as to why this amendment ought to be allowed. Learned counsel further submitted that it is not for the Court to make the case for a party as much as this Court has institutional knowledge of this case. Therefore, by granting extension of time limits to be inserted into the application it would convert it from an application that had no real basis to one seated in this specific section of the law.

[11] In respect of the application for release of the vehicle, learned counsel submitted that section 256 of the Seychelles Code of Civil Procedure states that the property shall be

held by the Usher. Immovable property seized in execution shall be sold by the Usher within 1 month from the date of seizure unless the Court directs otherwise. If the Judgment Creditor at whose instance the immovable property was seized may get to cause such property to be sold within the period of 1 month aforesaid or to be obtain an order of the Court extending the period within which such sale is to take place. The person whose property has been seized may apply to the Court by motion made ex-parte to release the property from seizure. Hence if after the month the movable property has still not been sold and there is no order of the Court that has extended the period, the judgment debtor may apply to the Court ex-parte to release such property. Learned counsel submitted that as of the time of filing and even to date, the movable property is still in the possession of the Usher of the Supreme Court. It has still yet to be sold. At no point did the Supreme Court give any stay of execution, preventing the sale. In pursuant to the Section 256, the applicant has filed its motion ex-parte requesting release of the property.

[12] Learned counsel further submitted that learned counsel for the judgment creditor has stated that one of the reasons for the non-sale was because applications has been filed in court. The court can take judicial notice of the fact that this court refused every single application for stay or for interim stay. At the time of filing the ex-parte motion there was no order from the Supreme Court extending the period for the sale. Learned counsel submitted that in respect of whether or not the respondent is saying that there was no neglect on the part of the respondent to cause the sale, this section (256) is clear and straightforward in that the only requirement in that the sale need not have taken place. There is no stay and there is no order extending the period. Hence the jeep should be released as prayed.

[13] Section 256 of the Seychelles Code of Civil Procedure states as follows:

*“Movable property seized in execution shall be sold by the usher within one month from the date of the seizure, unless the court directs otherwise. If the judgment creditor at whose instance the movable property was seized neglect to cause such property to be sold within the*

*period of one month aforesaid or to obtain an order of the court extending the period within which such sale is to take place, the person whose property has been seized may apply to the court by motion made ex-parte to release such property from seizure.”*

The live issues here are firstly that the property, a jeep mark Dong Feng registration number S33423 seized on the 14<sup>th</sup> December, 2021, had not been sold as of the date of the application for release made by the judgment debtor dated 1<sup>st</sup> July, 2022. Secondly, at the time the Application for release was made, there was already before Court an application for sale out of time made by the judgment debtor dated 9<sup>th</sup> May, 2022. It is this application for sale out of time that is the subject of amendments being contested by the judgment debtor.

[14] Section 146 of the Seychelles Code of Civil Procedure in respect of amendment of pleadings provides:

*“The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that a plaint shall not be amended so as to convert a suit of one character into a suit of another and substantially different character.”*

Two things that are clear in section 146 is that all pleadings may be amended at any time before judgment with leave of the Court “as necessary for the purpose of determining the real question of controversy between the parties” but the proviso provides that “a plaint shall not be amended so as to convert a suit of one character into a suit of another and substantially different character.” [Emphasis mine]. Since the proviso applies only to a plaint, the argument as to whether the addition of the demand for extension of time in the

application would contravene the proviso of section 246 by converting an application for sale into an application for extension of time is ill-founded.

[15] Secondly, I subscribe to the submission of learned counsel or the judgment creditor that the application for sale out of time would by implication require this Court to determine whether the time for sale should be extended so as to allow the sale out of time. I therefore find that the amendments would not cause any prejudice to the judgment debtor. The application could leave no doubt and indeed created no doubt as to what the judgment debtor intended to happen to the immovable property in question.

[16] Now what is the controversy between the parties? The issue is that the jeep Dong Feng which was seized at the demand of the judgment creditor on the 14<sup>th</sup> of December, 2021 has not been sold within a month as provided for by section 256 of the Seychelles Code of Civil Procedure. Having made the above determination, I find that the amendments can be made and leave is so granted for the amendments to be made before the Court makes a determination on the application.

[17] Considering that the application for extension of the time period for sale was made on the 9<sup>th</sup> May, 2022 and the application for release was made on the 1<sup>st</sup> July, 2022, it is just and logical that the each application is dealt with in accordance with their filing precedence.

[18] Consequently the application for release of the moveable property is placed in abeyance pending the determination of the application for the sale out of time as amended.

Signed, dated and delivered at Ile du Port on 14 December, 2022.

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Dodin J.