

D ESPARON

INTRODUCTION

- [1] This is an Ex- parte Application seeking an order from this Court for a provisional seizure of certain vehicles and construction equipment pursuant to section 280 of the Seychelles code of Civil Procedure.

THE PLEADINGS

- [2] The Application by way of Notice of Motion is supported by the Affidavit of Mangat Radhakrishnan being the Director of Tordrade Limited who avers in his Affidavit that the said company supplies building and construction materials to Vijay Construction Seychelles (Pty) limited in Seychelles on credit.
- [3] The deponent avers in his Affidavit that their Company reasonably understands that Vijay Construction Seychelles (Pty) Limited is in financial difficulties and that as of 1st November 2022 the dues and liabilities of Vijay Construction Seychelles (Pty) limited payable to Tordrade Limited remains in the sum of US\$ 2,714,784,39 (United States Dollar Two Million Seven Hundred Fourteen, Seven Hundred Eighty Four Thousand and Thirty nine cents only) and that the said Company has failed to settle the outstanding sum despite repeated request and reminders.
- [4] The deponent further avers in paragraph 14 of his Affidavit that 'pending the service of the Complaint, summons and a due judgment in our favour, it would take substantial time due to the legal process involved and if in the meanwhile we are not secured of the debts payable by VCS (Pty) Ltd , there is every likelihood that the assets of VCS (Pty) Ltd would be disposed of to our disadvantage and any judgment in our favour on the main claim and the judgment debt would become nugatory if there is no means, resources available with VCS (Pty) Ltd so as to pay judgment debt which is substantially high and remains outstanding.'
- [5] The deponent has averred in his Affidavit that the moveable assets, mainly construction plants and vehicles as per the list thereof to be seized by provisional seizure in that VCS

(Pty) Ltd would not be able to dispose them off to their disadvantage while the operations of those assets would continue without any prejudice to the activities of the VCS (Pty) Ltd.

[6] The following list of vehicles and construction equipment which is in the list attached to the Application of which the court has admitted and marked as exhibit T1 are as follows;

1. Mitsubishi Fuso Truck- FV515 with registration number S11705,
2. Mitsubishi Fuso Truck- FV515 with registration number S11826,
3. Mitsubishi Fuso Truck- FV515 with registration number S11807,
4. Mitsubishi Fuso Truck- FV515 with registration number S11569,
5. Ford ranger single cab Pickup with registration number S36697,
6. Ford ranger single cab Pickup with registration number S36689,
7. Ford ranger single cab Pickup with registration number S36830,
8. Ford ranger single cab Pickup with registration number S36833,
9. Lexus UX300e car with registration number S6680,
10. Lexus UX300e car with registration number S6186,
11. Lexus UX300e car with registration number S9322,
12. Lexus UX300e car with registration number S9149,
13. Audi car-ETRON 55 with registration number S1815,
14. Ford Ranger single cab Pickup with registration number S37052,
15. Ford Ranger single cab Pickup with registration number S37053,
16. Ashol Leyland Tipper Truck with registration number S32579,
17. Self loading concrete mixers CARMIX 2.5TT with registration number C-1,
18. Self loading concrete mixers CARMIX 3500TC with registration number C-2,
19. Vibro hammer machine spares with registration number PTC+CAT,
20. Thwaites Dumper Model : MACH 665 with registration number D1,
21. Thwaites Dumper Model : MACH 665 with registration number D2,
22. Thwaites Dumper Model : MACH 665 with registration number D3,
23. Thwaites Dumper Model : MACH 665 with registration number D4,
24. Thwaites Dumper Model : MACH 665 with registration number D5,
25. Thwaites Dumper Model : MACH 665 with registration number D6,

26. TATA HITACHI EX 70 Escavator with registration number EX1,
27. TATA HITACHI EX 370 Escavator with registration number EX2,
28. TATA HITACHI EX 370 Escavator with registration number EX3,
29. TATA HITACHI EX 20 Escavator with registration number EX4,
30. TATA HITACHI EX 20 Escavator with registration number EX5,

THE LAW

- [7] Section 280 of the Seychelles Code of Civil Procedure provides that “At any time a suit has been commenced, the Plaintiff may apply to the Court to seize provisionally any moveable property in the possession of the Defendant in the suit or to attach provisionally any money or moveable property due to or belonging to the Defendant in the suit, which is in the hands of any third person.
- [8] The application shall be by petition supported by an Affidavit of the facts and shall be signed by the Plaintiff or his Attorney if any shall state the title and number of the suit.”
- [9] Section 281 of the Seychelles Code of Civil Procedure provides that if the Court is satisfied that the Plaintiff has a *bona fide* claim, the Court shall direct a warrant to be issued to one of the ushers to seize provisionally such property, or shall make an order prohibiting the third person in whose hands such money or other property is from paying such money or delivering such property to any other person pending the further order of the Court. The order shall be served on the third party by an usher of the court. The Court, before any such warrant or order is issued, may require the Applicant to find such security as the Court may think fit.

DETERMINATION

- [10] This Court notes that there is a plaint filed in the Supreme Court in CS 139/2022 claiming the said sum of US2,714,784.39(United States Dollars Two million Seven Hundred Fourteen Seven Hundred Eight Four and thirty-nine cents only).
- [11] This Court also takes note that section 280 of the Seychelles Code of Civil Procedure provides that the Application shall be by way of Petition supported by an Affidavit. In the

present matter the Applicant has filed an Application by way of notice of motion supported by an Affidavit and not by way of Petition.

- [12] In the case of Mary Quilindo and ors V/S Monchery and ors (2012) SCCA 29 2009 Where the Court relied on the Privy Council decision in the case of Toomany and Anor v Veerasamy (2012) UKPC 13, where the Court held the Following;

That such technicalities raised to shut out litigants from the Court system constitute a blot of the administration of Justice.’

- [13] In Mary Kilindo (supra) Twomey JA held that ‘where no prejudice was suffered by the proceedings being initiated by petition and not by plaint such technical objections should not affect the fair administration of Justice.’

- [14] This Court hence shall follow the legal principles as laid down in the case of Mary Kilindo (supra) since this Court is of the view that there is no prejudiced suffered to the Respondent by the proceedings being initiated by way of an Application by way of Notice of Motion instead of by way of Petition as prescribed by law. Therefore this Court will condone the Applicant’s deficiencies in the present matter in not following the procedure by filing such an Application in the present manner.

- [15] I have meticulously considered the Application, Affidavit in support and submissions of counsel for the Applicant, ex-facie the Affidavit, I am satisfied that the Applicant has a *bona fide* claim and further I am also satisfied that since the Respondent Vijay Construction Seychelles (Pty) Ltd is in possession of the said vehicles and construction equipment as particularised in paragraph 6 of this ruling, there is a risk that the assets of Vijay Construction Seychelles (Pty) Ltd would be disposed of to the prejudice of the Applicant Tortrade Limited, the Plaintiff in the main case and that any judgment that they main obtain in their favour as regards to their main case would become nugatory since the alleged debt in lite is substantially high and remains outstanding in view that the said company is in financial difficulties.

- [16] As a result of the above, this Court makes the following orders;

- i) That a warrant to be issued to a process server immediately to provisionally seize the said vehicle and construction equipment as particularised in paragraph 6 of this ruling.
- ii) That Vijay Construction Seychelles (Pty) Limited, the Respondent keeps possession of the provisionally seized vehicles and construction equipment as particularised in paragraph 6 of this ruling until further order of the Court.
- iii) That pending possession of the said vehicles and construction equipment Vijay Construction Seychelles (Pty) Limited, the Respondent shall not disposed or transfer to any person the vehicles and construction equipment as particularised in paragraph 6 of this ruling until further order of this Court.
- iv) I accordingly order the Registrar of the Supreme Court to serve a copy of this order on the Respondent Vijay Construction Seychelles (Pty) Limited represented by its Director Kaushal Patel of Providence, Mahe, Seychelles.

Signed, dated and delivered at Ile du Port on 29th December 2022.

Esparon J