

SUPREME COURT OF SEYCHELLES

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 & Rhea Rene)

Applicant

Neutral Citation: *Yakub v Red Cross Society of Seychelles* (MA 100/2022 & MA 153/2022)
2022 SCSC ... (16 December 2022).

Before: Dodin J

Summary: Amendment of Application – release of seized movable

Heard: 25 November, 1 & 14 December 2022

Delivered: 16 December 2022

ORDER

- i. The time limit for the sale is extended retrospectively from the date of seizure until one month after the date of this ruling, that is one month from the 16th December, 2022.
- ii. The process servers/usher shall proceed with the sale in accordance with sections 257 and 225 of the Seychelles Code of Civil Procedure.
- iii. Should the vehicles not be sold by the 16th day of January, 2023, the vehicle shall be released to the judgment debtor by authority of this ruling and without any further application for release to Court.

RULING

DODIN J.

- [2] This is a ruling in respect of an application on Application MA100/2022 to grant leave to extend the time limit to sell a jeep Dong Feng registration number S33423 seized since 14th December, 2021 at the instance of the judgment creditor pursuant to a judgment award in case ET14/2021 and in respect of an Application by the judgment debtor in MA 153/2022 to cancel the seizure of the jeep and for the release of the same, which decision in the latter was held in abeyance pending the determination of the application to extend the time for the sale.
- [3] By application dated and filed on the 9th 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 4th 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.
- [4] By an ex-parte application dated and filed on the 1st 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.
- [5] Learned counsel for the judgment creditor moved the Court for amendments to the Application for sale out of time and in a ruling of this Court delivered on the 14th December, 2022, the Court ruled in favour of the judgment creditor allowing the amendments. In accordance with the amended Application, the Court now has to determine whether leave should be granted to extend the time limit for the sale of the jeep Dong Feng registration number S33423 seized since 14th December, 2021 at the instance of the judgment creditor pursuant to a judgment award in case ET14/2021 and in respect

of an Application by the judgment debtor in MA 153/2022 to cancel the seizure of the jeep and for the release of the same.

[6] Both learned counsel addressed the Court further on whether the Court should allow the extension of the time limit for the sale and the sale of the jeep out of time. Learned counsel also relied on their previous submissions in respect of the application of the judgment debtor for the release of the jeep in question.

[7] Learned counsel for the judgment creditor submitted that whilst the jeep was seized on the 14th December, 2021, sale did not take place in accordance with section 256 of the Seychelles Code of Civil Procedure because the judgment debtor had filed two applications in respect of the case. One before the Employment Tribunal to set aside the ex-parte judgment, which is still pending to date and one before this Court for a stay of execution to stop the sale which this Court refused by ruling delivered on the 6th April 2022. By then, the jeep could not have been sold because the 1 month limit as per section 156 of the Seychelles Code of Civil Procedure Code had already expired. Hence this application for extension of time and for sale out of time. There was no negligence on the part of the judgment creditor.

[8] Learned counsel for the judgment debtor concede that the judgment debtor applied for a stay of execution to prevent the sale of the 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. Learned counsel submitted that section 256 of the Seychelles Code of Civil Procedure states that the property shall be held by the Usher and such property seized in execution shall be sold by the Usher within 1 month from the date of seizure unless the Court directs otherwise.

[9] Learned counsel submitted that 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 which the judgment debtor has done. 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.

[10] Learned counsel further submitted that if the judgment creditor has been tardive or sat on his laurels as time passed, that is considered neglect on the part of the judgment creditor and no extension of time for the sale should be given and the property should be released.

[11] 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.

[12] 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.” [Emphasis mine].

[13] Having considered the submissions of both learned counsel and the affidavits in support, and also considering the sequence of events in respect of the various proceedings before the Court, I conclude that the delay in selling the jeep was the result of the magnanimity of the judgment creditor towards the judgment debtor in view that the decision on the

application for stay of execution had not been given. I find that the judgment debtor acted promptly to ask for sale out of time after the decision was given refusing the stay. As such it cannot be said that the judgment debtor neglected to sell or was negligent in any other way contrary to section 256 of the Seychelles Code of Civil Procedure.

[14] I also find that the judgment debtor has acted properly and in accordance with law to demand the release but the reason given in addition to the above, namely hardship to the judgment debtor is not sufficient reason to release the vehicle. That reason has been considered and rejected by this Court in its ruling on the stay of execution.

[15] Consequently, I grant the application of the judgment debtor to extend the time limit for the sale of the Dong Feng registration number S33423 seized since 14th December, 2021 at the instance of the judgment creditor pursuant to a judgment award in case ET14/2021 with the following conditions:

- i. The time limit for the sale is extended retrospectively from the date of seizure until one month after the date of this ruling, that is one month from the 16th December, 2022.
- ii. The process servers/usher shall proceed with the sale in accordance with sections 257 and 225 of the Seychelles Code of Civil Procedure.
- iii. Should the vehicles not be sold by the 16th day of January, 2023, the vehicle shall be released to the judgment debtor by authority of this ruling and without any further application for release to Court.

[16] I make no order for costs.

Signed, dated and delivered at Ile du Port on 16th December, 2022.

Dodin J.