

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 1144
MA 209/2021
(Arising in 17/2021)

In the matter between

ASSEMBLIES OF GOD OF SEYCHELLES
(rep. by Guy Ferley)

Petitioner

And

THE ATTORNEY GENERAL
(rep. by Georges Thatchett)

Respondent

Neutral Citation: *Assemblies of God of Seychelles v The Attorney General* (MA209/2021)
(Arising in 17/2021) [2022] SCSC (28 September 2018).

Before: Vidot J

Summary: Interim injunction: Petitioner Court with Clean hands

Heard: Counsels filed submissions

Delivered: 14 October 2022

ORDER

Application is denied and Petitioner order to pay cost to the Respondent

RULING

VIDOT J

Background

- [1] The Petitioner is Christian faith-based association allegedly registered on the 25th April 1991 seeks an interim injunction against the Respondent. Such application is for an Order against the Seychelles Town and Country Planning Authority (hereafter “the Authority”) “to refrain from interfering with the Petitioner’s peaceful worshipping on its property namely PR849”. The Petitioner prays for such interim order pending the

determination of the substantive case, namely MC17/2021, which is an application for judicial review.

- [2] Through an affidavit sworn by Pascal Payet on behalf of the Petitioner, it avers that the congregation is being deprived and its worshippers prevented from entering its property situate at Baie St. Anne, Praslin. This is because of alleged complaints that the worshipping activities of the congregation cause noise pollution to those staying within the surrounding areas. Pascal Payet states that the Petitioner has been holding its religious services since 2006, and not once has any complaints been made with respect to the noise level. He argues that its worshipping activities are reasonable and does not amount to a nuisance, as it does not exceed the measure of noise level ordinarily permitted in such residential neighbourhood. It maintains that the Authority has no authority to interfere with the worshipping activities as by law, they are informed that it is not illegal to practice religious worshipping and services in Seychelles. Mr. Payet avers the Authority's decision is unjustified based on the fact that other churches are permitted to practice their religious activities in residential areas.
- [3] The Respondent totally disagrees with the Petitioner. They filed Objections to the Application which is supported with an affidavit by Angela Servina, Chief Executive of the Authority. She states that the Authority has refused an application by the Petitioner to construct a church on the Petitioner's land parcel PR849 but despite that the Petitioner continues to conduct "*illegal activities*" resulting in complaints because of noise pollution. The Authority has conducted scientific measurements of sound levels emitted from religious activities of the Petitioner's congregation. The environment issued enforcement notices (Exhibit AS2) on the Petitioner and the latter has disregarded them. Furthermore, it is averred that since the noise pollution continued, the Authority believed that it was entitled to interfere to prevent such nuisance. The Authority denies the Petitioner's averment that it had allowed other churches to operate in residential areas but rather it is the Petitioner who continues in defiance of statutory provisions relating to development and use of building on a land parcel that is situated in a residential area performing its worshipping activities. Thus, the Respondent states that the Petitioner is not before Court

with clean hands as it continues to cause noise pollution conducting religious ceremonies in defiance of letters and notices demanding cessation of the same.

- [4] The Respondent objects to the application on a preliminary point in that the Petitioner is not entitled to an interim injunction in that the application for Judicial review is barred by prescription and consequently no injunction can be granted. The Respondent also claims that the injunction should be denied as the Petitioner is illegally conducting religious ceremony on the “*impugned property*” consequent to the refusal of planning application to develop the property and that the Petitioner continues to cause noise pollution despite letters and notices from statutory bodies to cease the same. Finally, the Respondent states that the Petitioner seeks this injunction only to be able to continue its illegal activities on the property.

The application for judicial review barred by prescription.

- [5] Applications for Judicial review is governed by the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (“the Rules”). Rules 4 and 6(1) states thus;

“4. A petition under rule 2 shall be made promptly and in any event within 3 months of the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made.”

“6(1) The Supreme Court shall not grant the petitioner leave to proceed unless the court is satisfied that the petitioner has a sufficient interest in the matter of the petition and that the petition is being made in good faith.”

- [6] The Petitioner does not deny that the Application for Judicial review was filed late. Such Application was filed on 03rd March 2021. The Petitioner submits that on the same date, it filed an application on seeking leave of the Court to file the Application outside the prescriptive time period in terms with Rule 4. The impugned letter is dated 24th July 2019. This is over 7 months after the letter was issued and the Application should have been filed by 24th October 2019. I have perused all files involving the Petitioner and the Respondent

in the custody of this Court and found no such application. However, the Respondent's submission suggests that there was. Nonetheless, I did find on file an Affidavit, captioned as "Amended Affidavit". So, this Ruling is delivered on the premise that there was no such application for leave out of time. I have serious doubt as to whether a person can file an amended affidavit as by nature the person swearing the affidavit swears that the averments contained therein are true and correct. An amended affidavit connotes that certain averments made could have been untrue. I take it that any additional affidavit should be termed a "further affidavit".

- [7] In that "*Amended Affidavit*" the Petitioner claims that the reasons for the delay were that;
- "(a) *the Petitioner had previously filed a petition before the Constitutional Court on 10th April 2019, in case CP07/2019, which was there referred to the Supreme Court by the Constitutional Court; and*
 - (b) *the Petitioner acted in good faith when it filed the petition before the Constitutional Court as the said court has constitutional powers to hear matters judicial matters relating to judicial review.*

- [8] I note that even the Constitutional Court petition in CP07/2019 was filed out of time and therefore prescribed. Rules of procedure have be observed and litigants should be sanctioned for failure to follow them. In **Viral Dhanjee v James Alix Michel SCSC CP03/2014** it was held that "*Petitioners might be hurt when petitions or applications are dismissed due to legal technicality. But in the long run, rule of law will be hurt, if we allow procedural irregularities to be continued.* In **Ratnam v Cumarasamy [1964] 3 ALL ER 933** it was held that ... *rules of court must prima facie , be obeyed, and in order to justify a court extending the time which some step in procedure require to be taken , there must be some material on which the court can exercise its discretion.*"

The Law on Interlocutory Injunction

- [9] Section 304 of the Seychelles Code Procedure ("SCCP") provides thus;

It shall be lawful for any plaintiff, after the commencement of his action and before or after judgment, to apply to court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said court upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.”

- [10] An interlocutory injunction is a discretionary remedy. It falls within the equitable jurisdiction of the court pursuant to section 6 of the Courts Act. Matters of injunction in Seychelles are guided entirely by precedents of the Courts of England. That power to grant an injunction has been inherited from the jurisdiction of the High Court of England. **D’Offay v The Attorney General [1975] SLR 118**, reinforces that in matters of injunction although the application is made pursuant to section 304 of the SCCP, it should be guided by precedents of the courts of England.
- [11] The fact that it is discretionary, in theory, the party seeking an injunction must comply with usual basic equitable requirement, for example coming with clean hands. Section 304 should be read with section 305 of the SCCP. Section 305 of the SCCP provides for procedure for interim injunction in the ordinary case, see **Bonte v Innovative Publication [1993] SLR 138**. I consider this case to be an ordinary case. It is an inter partes case. In such a case, the Petitioner does not need to make an application in secrecy.
- [12] It was held in **American Cyanamid Company v Ethicon Ltd. [1975] AC 396** that in dealing with interlocutory injunction the court shall be guided by three considerations. They are;
- i. Whether there is a serious question to be tried;
 - ii. Adequacy of damages for either side; and
 - iii. On the balance of convenience an interim injunction should be granted.

These considerations were applied in **Techno International v George SSC 147/2002, 31st July 2002** and **Laporte & Anor v Lablache [1956 – 1962] SLR No. 41**.

[13] Therefore, the Court's approach should be that there is going to be a trial on the merits at a later stage. The Court should be satisfied that prima facie there is a serious question to be tried. It has to consider the actions and conduct of both parties before exercising its discretion. The Court needs to also assess if the parties can be adequately compensated for any damage suffered or may suffer should the injunction be denied. The Court should ensure that any further loss or damage, especially if this will be irreparable, is contained. The test to be adopted when addressing itself to and evaluating the balance of convenience the Court shall consider;

(a) Whether more harm will be done by granting or refusing the action;

(b) Whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused; and

(c) Whether the breach of the Petitioner's rights would outweigh the rights of the others.

Findings

[14] From the letters that are exhibited with the Application and to the Objections it is clear that the Petitioner has been defiant of the mandate exercised by the Authority. The latter has not granted nor approved the Petitioner's request for a church to be erected in the area and for the Petitioner to hold religious service thereat. Despite such approval not having been given the Petitioner hold services at its premises. This is not about denying the Petitioner's right of association guarantee under Article 23(1) of the Constitution. After all such right is subject to a derogation as per Article 23(2). So, it is clear that the Petitioner is not before this Court with clean hands. One cannot decide to ignore the Planning Authority's decision and at the same time prays that the Court determines that its continued illegal activities are lawful. This is an affront to the law and the Court. The Court cannot condone such display of defiance which clearly shows that the Petitioner is not coming before Court with clean hands.

[15] The Petitioner has not averred that it would suffer any loss should the injunction be denied. I find that in such circumstances any damage caused the Petitioner can be adequately compensated. Still, I cannot assess any damage that would be caused to the Petitioner. Normally, it is the party seeking injunction that has to give a cross-undertaking, that it undertakes to court that it will make good to the other side any loss arising from the grant of the injunction if ultimately it transpires that if case is badly founded and the injunction should not have been granted. This case is badly founded. The Petitioner is in fact seeking Court's approval to legitimise its breach of a lawful Order.

[16] I also find that there is greater risk of injustice that the people living in the vicinity PR849 will suffer if injunction is granted. The noise pollution will continue and people residing in that vicinity will continue to be disturbed. The followers of the Assemblies of God church can still practice their faith within their home or other public areas.

Conclusion

[17] The Application for injunction is denied and the Petitioner should desist from holding mass on Parcel PR849 unless and until they are granted permission appropriate authority to do so

[18] The Petitioner shall pay cost to the Respondent

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


Vidot J
