

# SUPREME COURT OF SEYCHELLES

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## **Reportable**

[2022] SCSC

MA 303/2021

(Arising from MC 30/20212)

In the matter between:

**GE-GEOLOGY LIMITED**

*(rep. by Frank Elizabeth)*

**Applicant**

and

**THE GOVERNMENT OF SEYCHELLES**

*(rep. by Nissa Thompson)*

**Respondent**

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**Neutral Citation:** *Ge-Geology v Government of Seychelles* (MA 303/2021) [2022] SCSC  
(27<sup>th</sup> June 2022).

**Before:** Burhan J

**Summary:** Notice of Motion for an Interlocutory Order and an Order for the  
appointment of a Receiver

**Delivered:** 27<sup>th</sup> June 2022

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## **ORDER**

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I dismiss the application to grant leave to appeal from the Interlocutory Order dated 15<sup>th</sup> October 2021 with costs.

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## **RULING**

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## **BURHAN J**

- [1] The background facts of this application are that the Government of Seychelles filed an application MC 30 of 2021 dated 09<sup>th</sup> April 2021 seeking an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil confiscation) Act (POCA) prohibiting the Respondent Ge-Geology Ltd or such other person or any other person having notice of the making of this Order from disposing of or otherwise dealing with whole or any part of the property set out in the Table to the Notice of Motion, being the sum of USD7, 244,968.97 standing to credit in the account of Ge-Geology Limited, account bearing number 500000001638 at the Al-Salam Bank of Maison Esplanade, Victoria Mahe (SCR value 153,568,433.96). An application was also made to appoint Mr. Hein Prinsloo as receiver of the said specified property.
- [2] Learned Counsel Mr. Elizabeth who appeared for the Respondent Ge-Geology Ltd thereafter filed a plea in limine litis taking up four preliminary objections to the hearing of the application for an Interlocutory Order. The preliminary objections taken were:
- 1) The action is bad in law as it fails to comply with the Rules;
  - 2) The action amounts to an abuse of process in law;
  - 3) The application is defective as there is no affidavit in support of the motion before the court in law;
  - 4) There is no evidence to support the application and it should be dismissed forthwith.
- [3] On the 15<sup>th</sup> of October 2021 this court proceeded to dismiss the preliminary objections. The Court made further order that the Respondent files the reply to the Notice of Motion and affidavit filed by the Government of Seychelles seeking an Interlocutory Order pursuant to Section 4 of POCA as set out in the Notice of Motion dated 9<sup>th</sup> April 2021.
- [4] The Applicant has now filed this application MA 303 of 2021 for leave to appeal against the court's ruling of 15<sup>th</sup> October 2021. Section 12 (2) (a) (i) of the Courts Act states that in civil matters no appeal shall lie as of right from any interlocutory judgment or order of

the Supreme Court. Section 12 (2) (b) however states that the Supreme Court may in its discretion grant leave to appeal from any interlocutory judgment or order of the Supreme Court if in its opinion the question involved in the appeal is one which ought to be the subject matter of an appeal.

[5] Section 12 (2) (b) Courts Act reads as follows:-

*“In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.”*

[6] The grounds set out in the notice of appeal attached to the leave to appeal application read as follows:

#### Ground 1

The Presiding Judge erred when he declined to rule on the Appellant’s first preliminary objection on the basis that it was premature as it would require the court to go into the merits of the affidavit.

#### Ground 2

The Presiding Judge erred when he ruled that the actions of the Respondent in filing nine different legal processes against the Appellant since 2015 to date in respect of the same subject matter does not amount to an abuse of process.

#### Ground 3

The Presiding Judge erred when he ruled that it was premature to consider whether the affidavit of Prinsloo which supports the motion for an interlocutory order was defective and as such there was no application before the court at this stage of the proceeding.

#### Ground 4

The Presiding Judge erred when he ruled that despite the fact that the notice of motion is not in conformity with Form 1 of the schedule it does not cause any prejudice to the Appellant as it is only a technical defect.

## Ground 5

The Presiding Judge erred when he failed to dismiss the application on the basis of the defective affidavit supporting the motion for an interlocutory order against the Appellant's property since the jurat of the affidavit appears on a separate page by itself making the affidavit legally defective in law.

- [7] Learned Counsel for the Applicant Mr. Elizabeth moves the court that based on the grounds the court should exercise its discretion under Section 12 (2) (b) of the Courts Act to grant the application sought as the question involved in the appeal is one which ought to be the subject matter of appeal as if the ruling of the Court of Appeal is in favour of the Applicant, it would dispose of the whole case leaving no ancillary matters to be dealt with by the Supreme Court which would save time, resources, expenses and legal cost. Further, learned Counsel for the Applicant submits the case is an exceptional case as there are complex legal issues arising from the Order of the Supreme Court dated 15<sup>th</sup> October 2021. Learned Counsel for the Applicant further submits that it is necessary and in the interest of justice for leave to be granted to allow the Applicant permission to file its notice of appeal before the Seychelles Court of Appeal.
- [8] In the case of ***Gangadoo v Cable & Wireless Seychelles Ltd* (SCA MA:2 of 2013) [2013] SCCA 18 (30 August 2013)** the Court of Appeal reiterated the principles that the court would consider when deciding whether or not to grant an application for leave to appeal against an interlocutory order. The principle is two fold, namely:-
- i) The ruling disposes substantially of all matters in issue as to leave only ancillary matters for decision, and
  - ii) It is an exceptional case which should be brought under review on appeal.
- [9] In the case of ***St Ange v Choppy* MCA 18/1970** the Mauritius Court of Civil Appeal considered how its discretionary powers should be exercised in the case of an application for leave to appeal from an interlocutory judgment. It was of the view that before leave to appeal is granted the court must be satisfied:

- i) That the interlocutory judgment disposes so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision; and
- ii) That there are grounds for treating the case as an exceptional one and granting leave to bring it under review.

[10] In the case of **Pillay v Pillay SLR 1970 page 79** it was stated:

*“The interlocutory judgment in this case does not put an end to the litigation between the parties, at all events does not dispose so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision. Moreover the applicant will be entitled as of right to question the decision in the interlocutory judgment if and when he exercises his right to appeal from the final judgment. An appeal at this stage would entail unnecessary delay and expense and would be most prejudicial to the interest of the plaintiff.”*

(emphasis added)

[11] On considering the facts in this instant application, it cannot be said that the Interlocutory Order has disposed of all matters in issue. It has been decided in the said Order dated 15<sup>th</sup> October 2021 that it is too premature at this stage to consider certain objections raised in respect of the affidavit and documents attached and it would be best decided after the hearing of the application. Certain objections taken in respect of the jurat of the affidavit were dismissed. Therefore, the contention of learned Counsel for the Applicant that the matter could be swiftly disposed of if leave to appeal is granted bears no merit as it would only delay the hearing of these issues in the main application.

[12] It is the view of this court that to grant leave to appeal would result in unnecessary delay as yet the Supreme Court has not made a final decision in respect of the preliminary objections raised. It is to prevent such delays that leave to appeal process as set out Section 12 (2) (a) (i) of the Courts Act is not a mechanical process. It was held in **Cable & Wireless (Sey) Ltd v Minister of Finance and Communications & Ors (CS 377/1997) [1998] SCSC 1 (28 January 1998)** that there be a procedural bar to prevent frivolous and vexatious matters being canvassed in appeal, thus, causing prejudice and delay to those benefiting from the decision sought to be canvassed in appeal.

- [13] In the case of *EME Management Services Ltd v Island Development Co Ltd (2008-2009) SCAR 183* it was held that special leave should be granted only where there are exceptional reasons for doing so, or in view of reasons which may not have been in the knowledge of the applicant at the time, or for reasons that supervened after the refusal to grant leave by the Supreme Court. Therefore, special leave to appeal is more a decision to be taken by the Seychelles Court of Appeal and not the Supreme Court. It was also held in this case that it is not in the public interest to unnecessarily delay trials before the Supreme Court.
- [14] This court is of the view that more substantial issues remain to be urgently determined in this case and the granting of leave to appeal would only procrastinate and delay the hearing of this case.
- [15] Learned Counsel for the Respondent also brought it to the notice of this court in his submissions that the Applicant will be entitled “as of right” to question the decision in the Ruling of 15<sup>th</sup> October 2021 as and when he exercises his right of appeal from the final judgment in relation to the Section 4 POCA Order.
- [16] This court is also of the view that all the matters that the Applicant seeks now to raise on appeal can properly be raised as part of any subsequent appeal to the Section 4 Order should the final order be made against the Applicant. As stated earlier, many of the issues that the Applicant seeks to raise on appeal will be decided finally during the Section 4 hearing.
- [17] Learned counsel for the Applicant Mr. Powles in his submissions also referred to decision in *Clive Lawry Allisop v The FIU and the Attorney General [Civil Appeal SCA 39/2013]*, where the Court of Appeal (Domah JA, Twomey JA and Msoffe JA), warned counsel against practices “*bent upon dislocating the course of trial and prolonging the proceedings by every means*” (citing *Prakash Boolell v The State of Mauritius [2006] UKPC 46* (at para. 16).
- [18] Giving due consideration to all the aforementioned facts, this court is of the view that issues which the Applicant proposes to raise in the interlocutory appeal can properly be

raised as part of any appeal to the final Section 4 Order if made against the Applicant. It is the view of this court that allowing leave to appeal at this stage would unnecessarily prolong the final determination and outcome of this matter, resulting in further “delay and expense” that the Court of Appeal has warned against.

[19] I therefore dismiss the application to grant leave to appeal from the Interlocutory Order dated 15<sup>th</sup> October 2021 with costs.

Signed, dated and delivered at Ile du Port 27<sup>th</sup> June 2022

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M Burhan J