

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC

MA 143/2021

(Arising out of CS 110/2018)

In the matter between:

DOREEN ELLEN BOUCHEREAU
(represented by Mr. Divino Sabino)

Plaintiff/ Respondent

Vs

MARGARET ZOE
MARGARETE MALBROOK
(represented by Mr. Rajasundaram)

1st Defendant

2nd Defendant/ 1st Petitioner

HANSEL ZOE
(represented by Mr. Rajasundaram)

3rd Defendant/2nd Petitioner

SHEENA SOLIN
SHARON POOL

4th Defendant

5th Defendant

Neutral Citation: *Bouchereau vs Zoe & ors* (MA 143/2021) [2022] SCSC

(4th July 2022)

Before: B Adeline J

Summary: Stay of execution of Judgment

Heard: 15th June 2022 (written submissions)

Delivered: 4th July 2022

FINAL ORDER

Application for a stay of execution of Judgment is dismissed for the reasons that the supporting affidavit to the application is in adequate, in that, it doesn't contain the necessary averments as to the facts needed to satisfy the principles developed by case law for the grant of a stay of execution.

RULING ON MOTION

B Adeline, J

- [1] This is an application, made by way of notice of motion supported by an affidavit, by which application, one Margaret, Malbrook and Hazel, Zoe the 2nd and 3rd Defendants in the main case, CS 110/2018, (“the Applicants”) apply to this Honourable Court for an Order to stay execution of a Judgment against them in favour of one Doreen, Ellen, Bouchereau delivered on the 19th October 2020 by the then Chief Justice Twomey.
- [2] The Applicants / Appellants have since lodged an appeal against the said Judgment of the Supreme Court before the Court of Appeal by filing a Notice of Appeal on 8 grounds which point towards the contention, interalia, that the Court a quo ignored crucial evidence, including expert evidence, erred in law as to the effect of non-registration of the status of the right of way, erred in law to make her decisions on uncorroborated evidence and erred in law and facts when awarding compensation.
- [3] To begin, the fact that in their joint affidavit the Applicants/ Apellants use both, the term “stay of proceedings” and “ stay of execution”, it is necessary, from the start, to bring about clarity over the terms used to avoid confusion, given that the two denote different things. A stay of execution defers the enforcement or execution of a Judgment against a litigant or a party, who has lost the case, that is, the Judgment debtor as in the instant case. A stay of proceedings is the stoppage of an entire case or a specific proceeding within a case. This type of stay is issued to postpone a case until a party to the case complies with a Court order, or procedure.
- [4] Clearly, therefore, the relief being sought by the Applicants/Appellants in the instant case, is for a stay of execution. That is to say, to defer enforcement of the Judgment against them, having lost their case and is appealing against the Judgment. In essence,

they seek for a Court order to temporarily suspend the execution of the Court's Judgment in CS 110/2018 dated 19th October 2020.

[5] In their joint affidavit in support of the motion, the Applicants, interalia, make the following averments, which for the purpose of this Ruling this Court finds them to be most relevant.

“3. That the Judgment dated 19th October 2020 made in CS 110/2018 against both of us awarding the total sum of SCR 65,000.00 (sixty five thousand only) is erroneous accordigng to the grounds of appeal, and we are advised that we have a very strong grounds that our Civil Appeal would succeed in our favour.

4. that the 1st deponent is a pensioner and is relatively an aged person. The second deponent is a self employed person both residents at Pascal Village, Mahe.

5. that we jointly and severally wish to render this affidavit in support of our motion to stay the execution of the Judgment dated 19th October 2020 made in CS 110/2018.

6. that the Judgment and award against us is based on trespass claim and the sums awarded are damages payable to the Respondent while the Respondent is likely to enforce/execute the Judgment against us.

7. that we do not have sufficient liquidity to pay the sums awarded against us except the residential portion of land and house thereon.

8. that we will be put to serious prejudice and severe hardship if the Judgment dated 19th October 2020 is allowed to be executed, and if the execution proceeding is not ordered to be stayed until the decision of the main appeal before the Seychelles Court of Appeal.

9. that the sums awarded in favour of the Respondent is only damages payable to her as compensation but not of any other immediate entitlement such as money claim and or other interest. This, the Respondent will not be prejudicial if this Honourable Court orders to stay the execution proceedings of the Judgment dated 19th October 2020.”

[6] In answer, the Respondent did file an affidavit in reply to the application for a stay of execution of the Judgment of the 19th October 2020, in which, interalia, she makes the following averments;

“3. That Judgment in the main suit was awarded in my favour against the 2nd and 3rd Defendants. The 2nd and 3rd Defendants were jointly liable to pay me a sum of SCR 55,000 for trespass and obstruction, and the 3rd Defendant was additionally ordered to pay SCR 10,000 to me for threatening violence.

4. That the matter was taxed and the total cost awarded in my favour was SCR 15,292

5. That to date, the 2nd and 3rd Defendants have not made any payments to me in respect of the Judgment made against them

6. That the 2nd and 3rd Defendants have tendered a joint affidavit in support of their motion for a stay of execution dated 21st June 2021.

7. In paragraph 7 of their joint affidavit, they claim that they do not have liquidity to pay for the Judgment but do not back that claim with any supporting evidence such as bank statements etc.

8. Again, in paragraph 8 of their joint affidavit they claim that if they satisfy the Judgment shall put them into hardship. That there is a contradiction in paragraph 8 in that by implication, they are actually stating that they can satisfy the Judgment impliedly contradicting paragraph 7.

9. In fact, the 2nd and 3rd Defendants when they gave evidence before the Court stated, that they have a business. They gave evidence to the fact, that they have a cleaning agency business and are often contacted by the District Administration of Beau Vallon to carry out cleaning works such as cutting grass and cleaning debris thereafter. The 2nd Defendant is in fact the registered business owner of the business which is called M and R Small Agency [registration DB1].”

[7] In addition to the above, the 2nd and 3rd Defendants gave evidence in the main suit that they own a vehicle, a white Kia Pick-Up with licence plate number S26632. I see this Pick-Up parked at their residence at Pascal Village virtually everyday. I also observe that this Pick-Up is driven by the 3rd Defendant.

11. That they have a business and that they can maintain a pick-up does not suggest that they are in any liquidity problems or that they will be put to a hardship to satisfy the Judgment of the Court.

12. *The Defendants have also hired their own Lawyer and are not on Legal Aid, meaning, that they have finances to fund litigation.*

13. *That the Judgment is an award of damages, and that if it is satisfied and then the Defendants appeal is subsequently successful, funds paid to the me may be recouped by the Defendants that there is therefore no irreversible effect to the satisfying of the Judgment.*

APPLICATION OF THE RELEVANT LAW

[8] To put in context the relevant law which ought to be applied to determine whether this application should succeed or not, it must be reminded, at the outset, that it was said in ***International Investment Trading SRL IIT) v Piazzola & ors [2005] SLR 57***, that the Court has a discretionary power to grant or deny a stay of execution pending appeal, when it held that, whether to grant or deny a stay, is entirely within the Court's discretion in exercise of its equitable jurisdiction under Section 6 of the Courts Act. The Court in *International Investment Trading SRL (IIT) supra*, went further as to say that;

“there does not seem to be any specific and explicit provision of any statute which directly and expressly grant this Court power to stay execution of Judgment pending appeal. It is only by inference from Section 230 of the Seychelles Code of Civil Procedure, that this Court may draw such power.”

[9] Section 230 of the Seychelles Code of Civil Procedure (“SCCP”) is couched in the following terms;

“An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the Court, or the Appellate Court so orders and subject to such terms as it may impose. No intermediate act or proceedings shall be invalidated except so far as the Appellate Court may direct.”

[10] Similar statutory provision can be found in Rule 20 of the Seychelles Court of Appeal Rules, 2005, that reads as follows;

“20 (1) An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, provided that the Supreme Court or the Court may on application supported by affidavit and served on the Respondent, stay execution or any Judgment, Order, Conviction, or Sentence pending appeal on such terms, including such security for the payment of any money or the due performance or non-performance or any act or the suffering of any punishment ordered by or in such Judgment, Order, conviction, or Sentence, as the Supreme Court or the Court may deem reasonable.

(2) No intermediate act or proceeding shall be invalidated except in so far as the Supreme Court or the Court may direct.”

[11] In essence, therefore, in the absence of any statutory provisions empowering the Court to stay execution of a Judgment, the Court’s power to do so derives from its equitable jurisdiction which is conferred upon it by virtue of Section 6 of the Courts Act. That is why, therefore, it is a discretionary power. This is well illustrated by the case of ***Avalon (Pty) Ltd & ors v Berlouis [2003] SLR 59*** in which case, commenting on Section 230 of the SCCP the Court had this to say;

“ from the above Section of law, although one may logically presume the Courts in Seychelles to have the power to stay execution of Judgments, there is no specific statutory provision in our laws which expressly empowers the Court to grant a stay as a legal remedy to protect the interest of an appellant/ judgment debtor pending appeal”.

[12] In that case, the Court refused to grant a stay of execution as a legal remedy, maintaining, that it had no statutory power to do so, but then added, that it can resort to its equitable power to grant the stay of execution as an equitable remedy. It stated the following;

“ this can be done only, if justice required in a particular case, when no sufficient legal remedy is provided by any statute for the judgment debtor/appellant to obtain this protection of a stay pending appeal”.

[13] The idea, that this can be done if justice requires in a particular case, is in line with the position taken by McColl JA in the Australian Court of Appeal case in *Vosebe Pty Ltd*

trading as Batemans Bay Window and Glass v Bakarges [2008] NSWCA, when he stated the following;

“the principle concerning an application for stay of execution are wellknown, the overriding principle being to determine what the interest of justice requires”

- [11] To establish, whether in a given case, justice requires the Court to exercise its equitable jurisdiction and make the order to stay execution of a judgment, the Courts in our jurisdiction, have enunciated some guiding principles to be taken into account when considering whether or not to grant a stay of execution. The case of **Mac Donald Pool vs Despilly William [1996] SLR 192**, is one of those cases in point, where five principles were enunciated. Interestingly, in the case of Avalon Supra, the Court went on as to say that;

“the question as to the granting of a stay is to be determined not on the basis of whether the case satisfies any or none of the given grounds or of the chances of success in the appeal but primarily on the basis whether ganting of such stay is necessary for the ends of justice in the given sets of facts, and circumstances. (added emphasis is mine).

- [12] A thorough reading of the submission of learned Counsel for the Applicants / Appellants indicates,that although learned Counsel acknowledged in his written submission that “ in our jurisdiction the issue of granting a stay of execution the jurisprudence and law have well developed so as to decide each case on its merits”, he fails to discuss the jurisprudence, and situate the circumstances of the Applicants / Appellants’ case vis à vis the principles laid down in Mac Donald Pool Supra. For example, one of these principles is the prospect of success. He fails to convince this Court, that the Applicants / Appellants have some prospect of success on appeal. The only thing he says, is that his client has an “arguable case” without saying why. He also fails to convince this Court that the balance of convenience and hardship are on the side of the Applicants / Appellants, and that the appeal would, without a stay, be rendered nugatory.

[13] Yet, in *Trad v Harbour Radio Pty Ltd* (2010) NSW CA Tobias, JA, said the following which is instructive, respecting the relevant principles applicable to a stay of execution application;

“although Courts approaching applications for a stay will not generally speculate about the Appellant’s prospect of success, given that the agreement concerning the substance of the appeal is typically and necessarily attenuated, this does not prevent them considering the specific terms of a stay that will be appropriate fairly to adjust the interest of the parties, from making some preliminary assessment about whether the Appellant has an arguable case. This consideration is protective of the position of a Judgment Creditor where it may be plain that an appeal, which does not require leave, has been lodged without any real prospect of success and simply in the hope of gaining a respite against immediate execution of the Judgment”.

[14] On the other hand, learned Counsel for the Respondent relies on the case of *Elmasry and Anor v Sun* [Civil Appeal MA37/2019] [2020] SCCA (30 June 2020), stating, that Fernando, PCA, did outline the key principles governing the grant of a stay of execution, and added, that in paragraph 16 of the *Elmasry* case, PCA “ states, that when it comes to the ground that a party has an arguable case, it is not enough, in a stay of execution application, to just say so. Learned Counsel for the Respondent goes on as to quote Fernando, PCA, as having said, *“that the most important element that needs to be satisfied in seeking a stay is to aver, prima facie ,that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal. Merely stating, that the Applicants have an arguable case and the appeal filed has some prospect of success, is not sufficient. The Affidavit filed in this case does not state why the Applicants/Appellants believe that they have an arguable case or has some prospect of success”.*

[15] Learned Counsel for the Respondents submitted, that although the Applicants / Appellants have averred that they have been advised that they have strong grounds for their appeal, and that their appeal would succeed, they don’t explain why, and as such, they don’t meet the set criteria quoted in the preceding paragraph of this ruling. It is the

submission of learned Counsel for the Respondent, that the “Court should not entertain the Applicants/ Appellants argument that they have an arguable case on appeal with the prospect success” for the very reason stated by Fernando PCA at paragraph 16 of the ***Elmasry and Anor*** case.

[16] It is worth noted, that in the case of ***Elmasry and Anor, Supra***, the Court spelt out the circumstances that would warrant a stay of execution, which are;

- (i) *Where there is a substantial question of law to be adjudicated upon at the hearing of the appeal.*
- (ii) *Where special circumstances so require*
- (iii) *Where there is proof of substantial loss that may otherwise result*
- (iv) *Where if the stay is not granted the appeal if successful would be rendered nugatory.*
- (v) *If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment.*
- (vi) *If a stay is refused, and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being unable to recover the subject matter of the execution (“in a money judgment that has been paid to the Respondent”).*

[17] It is also submitted by learned Counsel for the Respondent, that at paragraph 25 of the judgment in ***Elmastry and Anor v Sun, Supra***, Feraanado PCA, provides guidance where the stay of execution is against a money award. That is, where a Court has been satisfied, that there is a substantial question of law to be adjudicated upon at the hearing of the appeal, and that the appeal has a good prospect of success, then the stay should be granted. It is the submission of Counsel for the Respondent, that the Applicants / Appellants have failed to satisfy this first limb of the criteria, and that if the Court is to find otherwise, then the Court must proceed to consider, whether the Applicants / Appellants will be ruined or the Appeal will be stifled if they are forced to pay the Respondent immediately. Learned Counsel for the Respondent contends, that the

supporting affidavit to the motion contains no averment suggesting, that this would be the case, and that the averments in the affidavit are merely statements, without evidence substantiating the facts alleged. Learned Counsel for the Respondent urged the Court to consider the fact that the Respondent has stated in her affidavit in reply, that should the appeal be successful, she would repay the money to the Applicants / Appellants.

[18] Having discussed the jurisprudence in this area of law in the preceding paragraphs, I am of the opinion, that the principles spelt out in the case of *Elmasry & Anor, Supra*, provide a very useful guide as to the principles to be employed to determine whether or not to grant a stay of execution in the instant case. This, of course, must be considered in the light of what the Court said in the case of *Elmasry & Anor, Supra*, at paragraph 16 of the Judgment, correctly referred to by Counsel for the Respondent in his written submission. The required standard, is that *prima facie*:

- (i) *the Court has to be satisfied, based on the grounds of appeal, that there are substantial questions of law and facts to be adjudicated upon, and*
- (ii) *That the Applicants have an arguable case and the appeal filed, at least, has some prospect of success. It is only then, that other matters such as for example, prejudice to the parties and the balance of convenience will be called for consideration.*

[19] In the case of *Choppy v. NSJ Construction* [2011] SLR 2015, the Court stated, that when considering a stay of execution of a judgment, it is not the role of the Court to speculate over the Applicant / Appellant prospect of success on Appeal. But rather, to make an objective preliminary assessment as to whether the Applicant has an arguable case. The Court indicated, that this is necessary to exclude appeals which are filed simply to buy time, with no real prospect of success. That having been said, means, that the supporting affidavit to the motion for stay, should contain averments that address those issues, including, the grounds which the Applicants / Appellants pursue their appeal.

[20] I have carefully read the averments in the supporting joint affidavit to the motion for the application to stay the judgment of the Court in CS110/ 2018 dated 19th October 2020. I am of no illusion, that the supporting joint affidavit falls short of the case law requirements, and the standard set out in the *Elmasry case*, in that, nothing is averred that suggests, that the Applicants / Appellants have an arguable case, that there are substantial questions of law and facts that the appeal will have to adjudicate upon, and as to their prospect of success. All that the Applicants / Appellants seek to do, is to aver as to thier inability to pay the judgment debt, and to say that they will “be put to serious prejudice and hardship” if the judgment is allowed to be executed, which in my considered opinion , is secondary to those three considerations.

[21] I am also guided by the judgment in the *Elmasry case*, particularly paragraph 16, that for the Court to *prima facie* be satisfied that there are substantial question of law and facts to be determined, the Applicants / Appellants have an arguable case and some prospect of success, there is the need for the notice of appeal filed to contain the questions of law and facts which the Judge erred, and which would have to be adjudicated upon on appeal. This, as the Court stated, need not be an elaborated discussion of the law and facts, as was said in *Karunasekera v. Rev. Chandananza* [2004] 2 Sri LR, when the Court stated the following;

“The Court is not expected to go into the intricacies of the question of law to be decided in the appeal. It is sufficient if the Court is satisfied, that it prima facie appears that there is a substantial question of law to be decided in the appeal”.

[22] In their notice of appeal, the Applicants / Appellants appealed against the judgment in CS110/2018 dated 19th October 2020 on 8 grounds, notably;

“Ground No 1: The learned Judge in the Court below fails to appreciate the pleadings and the evidence of the Appellants that there was no necessity at all to access through the land (V7259) of the Respondent while the Appellants portion

of land (V6298) at all material times served with the motorable access road to reach their (Appellant's) property.

Ground No 2: The learned Judge ignored the findings as to the crucial evidence of the Government Land Surveyor as to the encroachment in that his evidence of no encroachment has totally been rejected.

Ground No 3: The learned Judge erred in her discussion that non-registration of the status of the right of way on the registration of title as against the registration in the survey plan would be adverse to the rights of the Appellants.

Ground No 4: The decision of the learned Chief Justice (then) equating the 2nd Respondent's payment of a fine in a Criminal case to the suit so as to decide that he committed the trespass.

Ground No 5: The learned Chief Justice (then) failed to appreciate the admission of the Respondent that her level of land is much higher on ground and that of the Appellants are on a lower level below the Respondent's property, as being relevant to the issue of the trespass and ignored the crucial value attached to this admission.

Ground No 6: The only rational besides the other rationals, the learned justice arrived at the decision of the trespass was mere photographs (for both matters of grass cutting and existence of barrier) and in the absence of proper weight attached to the photographs, the decision is erroneous.

Ground No 7: The learned Judge failed to appreciate that there is no single independent witness to corroborate the Respondent's testimony, both in terms of liability and quantum, but rushed with her decision and judgment against the Appellant without having any merits, and.

Ground No 8: The learned Judge erred in her findings on the quantum of award in the sum of SR 65, 000 (SR 55, 000.00 and SR 10, 000) without any rational and logic however opined that the damages are payable on compensatory basis and not on punitive method while the award against the 2nd Appellant is purely punitive and is a kind of double award against him.”

- [23] As per paragraph [34] of the Judgment, the then the Chief Justice remarked, “that there is no counterclaim by the defendants either for damages or for a right of way to access the Plaintiff’s land.” She then goes on as to say that “*the only issues to be resolved by this Court are whether the Defendants have trespassed onto the plaintiff’s land and interfered with the peaceful enjoyment of her property, namely, cut vegetation thereon, threatened the Plaintiff, erect a barrier preventing her from accessing her home during a period of seven months, caused injury to her knees, caused Noxious smoke from fires to escape into the Plaintiff’s home, and if so, what damages, if any, are due and further, whether a permanent injunction should be issued restraining the Defendants from further acts of trespass and obstruction to the Plaintiff’s home*”.
- [24] In her Judgment, the then Chief Justice found, that the 2nd and 3rd defendants committed acts of trespass on the Plaintiff’s land, that they admitted to it, claiming that they had always used a pathway through the land until the plaintiff had prohibited them from doing so. They have also admitted to erecting the barriers, with others, to obstruct and prevent the plaintiff and her family from driving to their home but stated, that they were permitted to do so by the owner of the land on which the barriers were erected.
- [25] When I consider the Court’s findings and ground of appeal no1, I am satisfied, that ground of appeal no 1 does not disclose the questions of law and facts which the then Chief Justice erred and which need to be adjudicated upon. Equally Ground no 2 does not disclose the questions of law and facts to be adjudicated upon either. In fact, at no point did the land surveyor (a private surveyor rather than a government surveyor) testified, about encroachment which has never been an issue for a determination in this case as per the pleadings and the findings of the then Learned Chief Justice.

- [26] Neither does ground no 3 disclose the questions of law and facts erred by the then Chief Justice that has to be adjudicated upon on appeal. In fact, ground no 3 is a misconstruction of what the then Chief Justice said. In summarising the evidence of Mr. Michel Leong, she said, that Mr. Leong had stated, that in the subdivision of the parent parcel V4953, a right of way had been reserved on the cadastral plans to serve the three subdivided properties, V7258, V7259 and V7260, but had not been registered.
- [27] Ground no 4 does not disclose the questions of law and facts which need to be adjudicated upon on appeal. No where in the judgment has the then Chief Justice equated the 2nd Respondent's payment of a fine in a criminal case, to decide whether or not, there had been trespass. This was a piece of evidence, amongst others, which the then Chief Justice considered in determining whether the 2nd and 3rd Defendants/Appellants had trespassed on the Plaintiff's land and were therefore liable in trespass.
- [28] Ground no 5 too does not disclose the questions of law and facts which need to be adjudicated upon on appeal. In fact, this ground raises something which had nothing to do with the issues which had to be determined by the Court. One of the issues which had to be determined, was whether the Defendants/ Applicants/ Appellants had trespassed onto the Plaintiff's land.
- [29] Ground no 6 does not disclose the questions of law and facts which the Court would have to adjudicate upon on appeal either. It suggests, that the then Chief Justice erroneously made the finding that the 2nd and 3rd Defendants / Appellants had trespassed onto the Plaintiff's / Respondent's land by merely looking at some photographs. The then Chief Justice found, that there was "ample evidence of the 2nd and 3rd Defendants trespassing onto the Plaintiff's / Respondent's land, which she said, was not even denied by the Defendants. It appears from the Judgment, that the photographs were more useful for the purpose of proving the defendant's illegal acts of erecting a barrier preventing the Plaintiff from accessing her home.

[30] Ground no 7 does not disclose the questions of law and facts to be adjudicated upon on appeal. It simply suggests, that the then Chief Justice found the 2nd and 3rd Defendants / 1st and 2nd Appellants liable, merely on the evidence of the Plaintiff / Respondent without any independent witness to corroborate her evidence. As much as it is possible for a court to find a Defendant liable for a fault on the plaintiff's sole evidence, there were other evidence which the then Chief Justice relied on. The evidence of Norbert Bouchereau, to some extent, corroborated the Plaintiff's / Respondent's evidence. I find for example, that there was no error committed by the then Chief Justice, in finding, that the 2nd and 3rd Applicants / Appellants were liable for fault. In fact, the then Chief Justice found, "ample evidence of fault on the part of the 2nd and 3rd Defendants / Appellants besides the evidence of the Plaintiff / Respondent herself".

[31] Ground no 8, does not disclose the questions of law and facts to be adjudicated upon on appeal. The suggestion that the then Chief Justice decided on quantum without any rational and logic, and that the award against the 2nd and 3rd Defendants / Appellants is purely punitive, is unfounded. In fact, at paragraph [27] of the judgment, the then Chief Justice made the following point;

"with regard to the damages claim by the plaintiff, they have submitted, that damages in delict are compensatory not punitive (Payet v Pierre CS213/2005) [2007] SCSC 8 (26 September 2007) that damages must be assessed even when it is arbitrary (Fancette vs. Attorney General SCA 15/2011 [2012] SCCA 16 (31 August 2012) and that awards set by precedent must be reassessed when there in a fall value.

[32] I am reminded, that in the case of Lablache de Charmoy v Lablache De Charmoy SCA MA 08/2019 (17th September 2019) Robinson J, said the following:

"The Court agrees with Counsel for the Respondent that it is not enough for Counsel to produce or exhibit grounds of appeal. The affidavit should plainly develop the substantial questions of law to be adjudicated upon by the Appellate Court".

- [33] I therefore find, that the affidavit in support of the application is inadequate, in that, the substantial questions of law to be adjudicated upon by the Appellate Court are not revealed and presented through the averments made. As such, I am unable to establish, on the face of the supporting affidavit to the application, whether or not there are substantial questions of law which the Appellate Court would have to adjudicate upon.
- [34] In the supporting affidavit for a stay of execution of the judgment, the Applicants / Appellants aver, that they will “ be put to serious prejudice and severe hardship if the judgment dated 19th October 2020, is allowed to be executed, and if execution proceedings is not ordered to be stayed”. They fail, however, to elaborate further and to aver why they say so.
- [35] In the final analysis, clearly, the principles developed by case law which have to be established for an application for a stay of execution to be successful, have not been followed and applied. As a consequence, therefore, I have been unable to ascertain the substantial questions of law to be adjudicatd upon on appeal, that the Applicants / Appellants will sufer hardship or prejudice if a stay is not granted, or that the appeal will be rendered nugatory if a stay is not granted.
- [36] Therefore, in exercise of this Court’s discretion, after weighing all the relevant considerations, including the balance of convenience as well as the parties competing rights, I find no merits in the application, and therefore, I accordingly dismiss the application for a stay of execution of the judgment in CS110/2018 dated 19th October 2020.

Signed, dated and delivered at Ile du Port 4th July 2022.

B Adeline, J