SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC …
EXP 10/2023

In the matter of

EXPARTE MERON AMARE **APPLICANT**
(rep. by Mr Olivier Chang Leng)

Neutral Citation: *Exparte Meron Amare* (XP10/2023) [2023] SCSC 27th April 2023
Before: A. Madeleine, J
Summary: **Application for Registration of Foreign Judgment – Service**
Heard: 23 March 2023
Delivered: 27 April 2023

ORDER

The Applicant shall cause a copy of the application in EXP10/2023 to be served on Mr. *Ato Teodros Ashenafi Tesemma* in the Federal Democratic Republic of Ethiopia.

RULING

A. MADELEINE, J

Background

[1] This Ruling arises out of an application for registration of a Judgment of the Federal Instance Court of the Federal Democratic Republic of Ethiopia delivered on 22nd November 2022 dissolving the marriage of the Applicant and her ex-husband - *Ato Teodros Ashenafi Tesemma* - by approving an agreement for their divorce and settlement of matrimonial property between them (hereinafter the "Ethiopian Judgment").

[2] The application for registration of the Ethiopian Judgment is made *ex-parte* and is supported by the affidavit of the Applicant - Meron Amare. When this matter was called for the first time on 8th March 2023, court advised that a copy of the application is served on the Applicant's ex-husband *Ato Teodros Ashenafi Tesemma* who is outside the jurisdiction. The matter was adjourned for the purpose of ascertaining the address of *Ato Teodros Ashenafi Tesemma* for service of the application on him. However, at the subsequent sitting on 15th March 2023, Counsel for the Applicant moved for a short hearing to address the court on the legal basis for the application as service would not (in his view) be necessary. On 23rd March 2023, Counsel submitted to the court on the law and the non-requirement of service on *Ato Teodros Ashenafi Tesemma.*

[3] Thus, this Ruling on the issue of whether a copy of the application should be served on *Ato Teodros Ashefani Tesemma*, who was a co-applicant in the divorce proceedings in the Federal Instance Court of the Democratic Republic of Ethiopia ("Ethiopian Court").

[4] Ex-facie the application for registration of the Ethiopian Judgment, both the Applicant and her ex-husband are non-Seychellois. The Applicant resides in Seychelles and her ex-husband resides in Ethiopia. By the agreement for the settlement of matrimonial property approved by Ethiopian Court, they have agreed, inter alia, for the transfer of an immovable property situated in Seychelles to the Applicant. Namely, condominium Unit A3 comprised in title number V19628, Pangia Beach.

Agreement for the Settlement of Matrimonial Property

[5] The relevant parts of the translated agreement produced in the affidavit in support of the application are reproduced below –

*"**ARTICLE 6: APPORTIONMENT OF PROPERTY***

6.1. The contracting parties have agreed to apportion the properties they have acquired in their marriage as follows.

6.2 We the contracting parties have agreed that the following listed properties we have acquired during our marriage shall be that of W/ro Meron Amare and all the other properties that are not listed in this Agreement shall fully remain the properties of Ato Teodros Ashenafi.

6.3 The properties that are agreed to be the properties of W/ro Meron Amare are the following: -

…..

6.3.2 The condominium unit that is registered in the name of Home Island Properties Ltd, which is owned by Ato Teodros Ashenafi, as a shareholder and as the beneficiary of the trustee, and is located in Seychelles, Pangia Beach, Mahi, and the condominium unit No. V19628 (unit A3) shall be transferred in the name of W/ro Meron Amare by fulfilling all the legal requirements. Ato Teodros Ashenafi affirms that there are no debt or liability that is required from this house and he has agreed to process the transfer of the house to the name of W/ro Meron Amare or her company or her trust as of the date the court approves this Agreement. Ato Teodros Ashenafi has agreed to finalise the transfer of this condominium to the name of W/ro Meron Amare or her Company or her trust with immediate effect from the date of the approval of the Agreement by the court. All costs and expenses required to transfer this condominium house's ownership to W/ro Meron Amare or her Company or her trust shall be fully borne by Ato Teodros Ashenafi."

(emphasis added)

Ethiopian Judgment

[6] The relevant parts of the translated version of the Ethiopian Judgment produced in the affidavit in support of the application are reproduced below –

"Emblem

The Federal Democratic Republic of Ethiopia

Federal First Instance Court

Date: November 22/2022

Ref. No. 306362

The Federal Democratic Republic of Ethiopia

Lideta Assigned 1st Family Bench

Judge: Endale Werku

Applicant: 1st Mr Tewodros Ashenafi Tesemma

2nd Mrs Meron Amare T/ Himanot

Respondent: None

The file is examined & passed the following judgment as such was adjourned for examination.

Judgment

This is therefore, with their allegation, they requested the court to passing resolution for dissolving such marriage with divorce and for approving the divorce agreement….

……

"The Right and Left parties have appeared before the court and declared that the agreement for divorce and output of divorce have been made with their free will and consent. (emphasis added)

Accordingly, the Court has examined 11 pages of the agreement for divorce and output of divorce & approved them based on Article 80(2), Proclamation No.213/92 of the Federal Family Code as revised, since submittal of which is found neither nor contradictory to the law & morale.

Order

1. It is hereby instructed to affix seal of the court with the agreement for divorce and output of divorce & issue along with the judgment to the Applicants.

2. The file is closed and returned to the archive.

……."

Submission of Counsel for the Applicant

[7] Counsel for the Applicant submitted that the application is made pursuant to the court's inherent jurisdiction to recognize foreign judgments and relied on the cases of *Mukhtar Ablyasov v. Jeremy Outen & Ors*[1] and *DF Project Properties (Proprietary) Ltd v Fregate*

[1](SCA 56/2011 and 08/2013) [2015] SCCA 23 (28 August 2015), hereinafter "*Ablyasov*"

Island Private Limited[2] in support of his submission. On the question of service, Counsel submitted that it was not necessary in the present application as *"the settlement has already occurred, the parties have already come to an agreement, there is no dispute or litigation which is currently ongoing, outstanding between the parties and I will submit that there is no reason for the ex-husband to be served because it is not being asked for the supreme court to make a decision as to the settlement of the matrimonial property. It is only the request that the judgement is recognized and only reason why this is being sought as it state in the application is so that the Applicant can register the transfer of the property because of the issue of sanction."* Counsel further submitted that the court has the power to recognize the Ethiopian Judgment without the need to serve the ex-husband as he (the ex-husband) would not be able to contest the judgment since he has already agreed to it and cannot reverse what is now a judgment of the court. According to counsel, it would be unnecessary to prolong the procedure as there is no controversy in registering the Judgment, the ex-husband's rights would not be affected negatively and he will not be prejudiced by the recognition.

Law and Analysis

[8] Prior to addressing the issue of service live before this court, I state that I agree with both Judgments of the Court of Appeal as relied upon by counsel for the Applicant. However, as will be shown below, I do not agree with the interpretation given to these two judgments by Counsel to dispense with the need for service in the present application. The case of *Ablyasov*, in my view, is concerned with a different and narrow category of foreign orders/judgments than the Ethiopian Judgment delivered in terms of the matrimonial property settlement agreement.

[9] *Ablyasov* involved two consolidated appeals from ex-parte orders of the Supreme Court which recognized two Receiving orders made by the English Courts and thereby extended the powers of the receivers over the assets of the Appellant to be found in

[2] [2021] SCCA 28 (20 July 2021) (SCA 56/2018 and SCA63/2018, hereinafter "*DF Project*"

Seychelles. The Appellant was served with the ex-parte order and was given the opportunity to make an application to set aside the order but he chose to appeal instead. On appeal, it was argued, inter alia, that the ex-parte recognition of the English receiving orders was flawed by reason that the said orders had not been registered prior to recognition.

[10] In considering the jurisdiction of the Supreme Court to recognize and enforce foreign orders/judgments, the Court of Appeal held as follows -

> *" **[15]** As per section 4(1) of Cap 85, an applicant to a foreign judgment should proceed by way of up-front registration. It is, in fact, the registration which becomes the substance of the matter and the contest takes place at this stage as may be evident by reading the sections hereunder reproduced.*
>
> ***[16]** The relevant part of section 4(1) reads:*
>
> *"4. (1) A person, being a judgment creditor .... may apply to the Supreme Court to have the judgment registered in the Supreme Court, and on such application the court shall, subject to proof of the prescribed matters and to other provisions of this Act, order the judgment to be registered provided that ...."*
>
> ***[17]** Section 4(2) also gives the status of a registered judgment in terms of the its legal effect. In other words, the registering court shall have the same control over the execution of a registered judgment as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.*
>
> ***[18]** The respondents have answered this argument and submitted that their action is not an action under Cap 85 (Foreign Judgment Reciprocal Enforcement) Act ("Cap 85"). Cap 85 in their analysis deals with the execution of money judgment and this was not a money judgment.*

[19] *We have examined Cap 85 in its own right and in the history of the legislation by tracing it from the original Cap 99 of 18th February 1922. On the face of it the definition section would seem to be in favour of the submission of the appellant. "Judgment" means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party," so that it covers civil proceedings not limited to monetary orders.*

[20] *However, when we look at the application sections we find that the Act makes a distinction among three categories of foreign judgments.*

a. *foreign judgements which are money judgments which are enforceable on registration under the Act and become executory after the process;*
b. *foreign judgements which are not monetary which can become enforceable only on the President's order which must be published in the Gazette (we are not aware of any nor have we been shown of any by the appellant.*
c. *foreign judgments which are recognized per se by the courts presumably not for execution as such but for further action on them.*

[21] *It is to be noted that the power of the Supreme Court to recognise foreign judgements is left untouched by CAP 89. At section 11(1) we read as follows:*

"(3) Nothing in this section shall be taken to prevent any court in Seychelles recognising any judgment as conclusive of any matter of law or fact decided therein if that judgement would have been so recognised before the passing of this Act."

[22] *The English Receiving Order, it is admitted by the Appellant, is not and could not be treated as a judgment under which involved "payment of a sum of money in respect of compensation or damages to an injured party through either a civil or a criminal proceedings. Ground 1 of SCA 8/2013 fails.*

[23] *The jurisdiction of the Courts in Seychelles has not been curtailed but saved by CAP 89 to recognise foreign judgments.*

(emphasis added)

[11] It can be gaged from Counsel's submission and reference to *Ablyasov* that this Court should treat the Ethiopian Judgment as a foreign judgment falling under the third category identified in *Ablyasov* (that is a foreign judgment which should be recognized per se by the courts presumably not for execution as such but for further action on them, and as such service on *Ato Teodros Ahenafi Tesemma* would not be required. I respectfully disagree with this suggestion. Service is not automatically dispensed with for the third category foreign of judgments. It depends of the nature of the application as is explained in *Ablyasov*.

[12] In *Ablyasov*, the Court of Appeal found that –

"There was justification in the application, as with other applications of such a nature, to be made ex parte *subject to the judge examining the justification of same. In this case, it goes without saying that had the orders been made* inter partes, *the risks would have run high for the assets to vanish in thin air by the time the respondent made an appearance. It is still open to the respondent to co-operate and to make disclosures to assist the Receivers in their task. He is not on trial here. Fairness demands that he makes fair and frank disclosures. The appellant had been offered the liberty to apply for the discharge of the order/s. He did not do so. He chose to appeal not having exhausted his available remedies at the lower court. Much more than a breach of fairness to the appellant, it smacks of an abuse of process by the appellant."*[3]

[13] It further considered *["Whichever may be the rationale, the fact remains] that recognition of receiving orders has emerged as a genus of its own in mutual judicial*

[3] At paragraph 40, *Ablyasov*

assistance, whether or not there has been a formal law for such deference."[4], and held that –

"With respect to assuming competence, courts of unlimited jurisdictions have invoked their inherent jurisdiction functions to assume competence to recognise orders made by foreign courts to the extent that the assets may be traced in their own jurisdictions, irrespective of whether there exist a formal law between democratic nations to co-operate and collaborate in judicial matters within the limits of their territorial jurisdictions presumably as a modern application of lex mercatoria."[5]

[14] I find that the nature of the present application is distinct from that of the applications made in *Ablyasov*. While the present application concerns the consensual transfer of immovable property found in Seychelles pursuant to a matrimonial settlement agreement approved by the Ethiopian Court, the applications in *Ablyasov* were concerned with the extension of receivership over alleged "*ill-gotten*" assets to be found in Seychelles pursuant to orders of the British Court. Ex- facie, there are no justification for making the present application ex-parte or to dispense with service of the application on the Applicant's ex-husband. There are no similar risks of dissipation of the matrimonial property to be transferred to the Applicant pursuant to the Ethiopian Judgment as it existed in the *Ablyasov* case. In fact, the proceedings in Ethiopia were consensual. The Applicant and her ex-husband were co-applicants for divorce and appeared before the Ethiopian court for endorsement of the settlement agreement by their free will according to the translated judgment.

[15] In *DF Project* the Seychelles (as relied upon by Applicant) the Court of appeal also considered the jurisdiction of the Supreme Court to recognize and enforce foreign judgments. The following paragraphs per Twomey JA summarizes the position -

"[1] In the case of Ablyazov v Outen & Ors, this court stated:

[4] At paragraph 43, *Ablyasov*
[5] At paragraph 44, *Ablyasov*

"With respect to assuming competence, courts of unlimited jurisdictions have invoked their inherent jurisdiction functions to assume competence to recognise orders made by foreign courts to the extent that the assets may be traced in their own jurisdictions, irrespective of whether there exist a formal law between democratic nations to co-operate and collaborate in judicial matters within the limits of their territorial jurisdictions presumably as a modern application of lex mercatoria."

[2] The above statement recognises the fact that in general, the recognition, enforcement and execution of foreign judgments ***although governed by domestic law are subject to the principles of comity, conflicts of laws and reciprocity.*** *In Seychelles, the provisions of section 11 of the Courts Act recognises the extraterritorial jurisdiction of the Supreme Court, namely:*

"The jurisdiction of the Supreme Court in all its functions shall extend throughout Seychelles:
Provided that this section shall not be construed as diminishing any jurisdiction of the Supreme Court relating to persons being, or to matters arising, outside Seychelles."(emphasis added)

[3] In addition, a foreign judgment can be registered and executed under the Foreign Judgments (Reciprocal Enforcement) Act (FJREA) if there is reciprocity between Seychelles and the foreign jurisdiction; the Reciprocal Enforcement of British Judgments Act (REBJA) if the foreign judgment is a British judgment; and under section 227 of the Seychelles Code of Civil Procedure (SCCP) for judgments from a country with whom Seychelles has no treaty or formal agreement."

…..

[29] Our laws are not silent on the matter of enforcement of foreign judgments. When FJREA and REBJA have no application as in this case, it is section 227 of the SCCP that applies. Section 227 as interpreted in Privatbanken; Green v Green; Baldini & Ano v State Assurance Company of Seychelles (SACOS); is to the effect that foreign

judgments can only be enforced in Seychelles if they are declared executory by the Supreme Court of Seychelles unless an act or a treaty provides otherwise. The conditions for a foreign judgment to be declared executory are also specified by Privatbanken."

(emphasis added)

[16] However, DF Project does not address the issue of service of application for registration of foreign judgments/orders or the dispensation thereof.

[17] In *Dhanjee v. Dhanjee*[6] a consent judgment of the High Court of Justice, Leeds, UK in respect of custody of a minor was declared executory in Seychelles in *inter-partes* proceedings. The application to declare the said consent judgment executory in Seychelles was made following a breach of the custody order by the Respondent. In my view, if the Respondent could be given the opportunity to respond to the application in such circumstances, then the present application to register a foreign judgment by consent involving a person's interest in immovable property found in Seychelles should also be served.

Conclusion

[18] In the present application, the Applicant's ex-husband was a co-applicant in the divorce proceedings in Ethiopia and personally appeared before the Ethiopian Court to confirm that he entered into the matrimonial property settlement agreement voluntarily. I agree with Counsel that since he (Applicant's ex-husband) entered into the agreement, he would not be prejudiced by its recognition in Seychelles and that at any rate he would have to sign the transfer document. For the same reasons and the reasons given above, I

[6] (2000) SLR 91 hereafter "*Dhanj*ee"

find that service of a copy of the application on the ex-husband will not affect the current proceedings to register and enforce their agreement as approved in the Ethiopian Judgment in Seychelles.

Order

[19] Therefore, I make the following order:

[20] The Applicant shall cause a copy of the application in EXP10/2023 to be served on *Ato Tewodros /Ashenafi Tesemma* in Federal Democratic Republic of Ethiopia.

Signed, dated and delivered at Ile Du Port, Mahe on the 27th day of April, 2023.

A. Madeleine
Judge