

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC  
CA22/2022  
(Appeal from CS271/2017 –  
MA380/2022 & MA469/2019)

In the matter between:

**SHERYL NICETTE**  
*(Represented by Ms. Vanessa Gill)*

**Appellant**

And

**DERECK MARIMBA**  
*(Represented by Mrs. Alexia Amesbury)*

**Respondent**

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**Neutral Citation:** *Nicette vs Marimba* (CA22/2022) [2023] SCSC (30<sup>th</sup> May 2023)  
**Before:** Adeline, j  
**Summary:** Appeal against interlocutory decision/Proceedings to determine custody of a minor is continuing.  
**Heard:** (By way of submission)  
**Delivered:** 30<sup>th</sup> May 2023

**FINAL ORDER**

Appeal dismissed

**JUDGMENT**

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**Adeline J**

[1] This appeal, commenced by way of a Notice of Appeal pursuant to Rule 6(1) read with Rule 27(1) of the Appeal Rules, filed in Court on the 3<sup>rd</sup> October 2022, emanates from the determination of the Family Tribunal made on the 14<sup>th</sup> September 2022 in MA380/2022 arising out of CS271/2017. The Appellant, one Sheryl, Nicette of Mont Buxton, Mahe,

Seychelles is aggrieved by the order of the Family Tribunal made on the 14<sup>th</sup> September 2022 hereunder replicated;

*“TRIBUNAL ORDER*

- 1. Continuation of hearing of application for psychological assessment of the minor is set for 21<sup>st</sup> September 2022 at 8.30 am to noon*
- 2. MA380/2022 and MA469/2019 to be consolidated*
- 3. Fresh summon on Ms. Arrisol c/o Social Services Division to appear before Family Tribunal to give evidence and produce Social Services Report*
- 4. The access order is maintained*
- 5. A copy of this order to be placed in MA 380/2022.”*

[2] As I read the pleadings, the submissions and the record of the proceedings relevant to this appeal, I paused and asked myself whether this appeal stems from a final decision of the Family Tribunal or an interlocutory judgment. I did so having regard to Section 78 B of the Children Act as amended, Cap 28, and Sections 43(1) and (2) of the courts Act, Cap 52. The former reads;

*“78 B Appeal from Tribunal.*

*(1) Except as otherwise provided in this Act, a person aggrieved by a decision of the Tribunal may appeal to the Supreme Court against the decision”.*

[3] Section 43(1) of the Courts Act reads;

*“Any person aggrieved by a final decision of the Court in any civil cause or matter to which he is a party may appeal to the Supreme Court”*

[4] Section 43(2) of the Courts Act reads;

*“There shall be no appeal from any interlocutory judgment of the Court except where, in the circumstances of a particular case, the interlocutory judgment has the effect of*

*disposing of the claim, or one of the claims in the suit, in which event the Supreme Court may give leave to appeal on such terms as to security, costs and otherwise as may be just”.*

[5] It is worth mentioning, that under Section 78 B of the Children Act as amended, that on an appeal from the Family Tribunal, “the Supreme Court may make such order as the Supreme Court thinks fit and the order shall not be subject to appeal to the Court of Appeal”.

[6] In the first paragraph of the Memorandum of Appeal, the Appellant makes the following statement;

*“The Appellant above- named is appealing against the determination of the chairperson, Ms. B Confait and her members, given at the Family Tribunal in case No 271/17 arising out of MA No 380/22 in the Family Tribunal order made on the 14<sup>th</sup> September 2022”.*

[7] Clearly, therefore, this appeal is against the Family Tribunal order dated 14<sup>th</sup> September 2022 replicated at paragraph [1] above of this judgment. It follows, that first and foremost there is a need to establish whether the order of the 14<sup>th</sup> September 2022 is a final order or an interlocutory order. In Paolo Ghiani versus Cote d’or Lodge (Vacanze Seychelles Limited), an appeal from the judgment of Employment Tribunal (47/2014) Civil Side CA18/2016, Twomey, Cj (as she then was) had this to say;

*“The test that should be engaged by an appellate Court to determine the finality of a judgment is whether the decision in question constitutes an end to the judicial labour in the cause, and nothing further remains to be done by the Court to effectuate a termination of the cause between the parties”.*

[8] It is clear, from the reading of the pleadings on record, and indeed, from the Family Tribunal order dated 14<sup>th</sup> September 2022, that the motion by the Applicant (now the Respondent to this appeal) is for an order of the Tribunal to require a psychological assessment of a minor who is the subject matter of an application for custody that is continuing or ongoing, and that is an interlocutory application pending the final

determination of the custody application in respect of the said minor. It is also clear that the Tribunal order dated 14<sup>th</sup> September 2022 is an interlocutory order.

[9] That, being the case, by virtue of Section 43(2) of the Courts Act, Cap 52, this appeal is deemed to be incompetent and improperly filed. The general rule under Section 43(2) of the Courts Act, is that, no appeal from any interlocutory judgment or order is allowed, except when the requirements under Section 43(2) are met and the Court grants leave. The facts of this case do not call for the exception to the general rule to be applied.

[10] For this reason, therefore, this appeal is dismissed without the need to consider the merits.

Signed, dated and delivered at Ile du Port on the 26<sup>th</sup> May 2023.

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Adeline J