

SUPREME COURT OF SEYCHELLES

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**Reportable**  
[2023] SCSC 488  
MA 171/2023  
(Arising in CA02/2023)

In the matter between:

**TONY LABLACHE**  
**PHILINA LABLACHE**  
*(rep. by Mr. Frank Elizabeth)*

**Applicants**

and

**JOSIANNE VITAL**  
*(rep. by Mr. Divino Sabino)*

**Respondent**

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**Neutral Citation:** *Lablache & Anor v. Vital* (MA171/2023 arising in CA02/2023) [2023] SCSC 488  
(23 June 2023)  
**Before:** A. Madeleine, J  
**Summary:** *Stay of Execution*  
**Heard:** Written submissions  
**Delivered:** 23 June 2023

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**ORDER**

Stay of execution is refused. Application is dismissed.

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**RULING**

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**MADELEINE, J**

*The Application*

[1] This is an application for a stay of execution of the decision of the Rent Board dated 10<sup>th</sup> February 2023 in case *RB14/2022 Josianne Vitale v Tony Lablache & Philina Lablache* (hereinafter referred to as “*RB14/2022*”).

[2] The application arises from *Civil Appeal 02/2023 Tony Lablache & Philina Lablache v Josianne Vital*, being the appeal filed by the Applicants herein from the Rent Board's decision in RB14/2022. The Rent Board's decision in RB14/2022 is reproduced below –

“

- (i) *The Respondents are to continue their occupation of the leased premises on the condition that they effect payment of rent on the first day of every month without default;*
- (ii) *The Respondents are further directed to settle arrears of rent in the sum of SR50,000/- and continuing to be owed no later than on 1<sup>st</sup> May 2023;*
- (iii) *If the Respondents default in their monthly payment of rent or fail to settle all the arrears of rent as continuing to be owed by the stipulated date, they shall vacate the leased premises on the deadline of 1<sup>st</sup> May 2023.”*

*The Applicants' Affidavits*

[3] The Application for stay of execution is supported by the respective Affidavits of the Applicants made on 25<sup>th</sup> March 2023. Their affidavits state that –

- (i) the Applicants have filed an appeal from the decision of the Rent Board on the grounds that the Rent Board erred in law:
  - a. when it dismissed the *plea in limine litis* of the Appellants that the lease agreement upon which the Respondent relied to bring her action for eviction of the Appellants was invalid in law;
  - b. when it failed to dismiss the application for eviction on the basis of invalidity of the lease agreement as the Respondent did not bring the action in her capacity as executrix of the estate of her late husband;
  - c. when it failed to appreciate that the Respondent had brought the action for eviction of the Appellants in her personal capacity and could not therefore rely on the lease agreement unlawfully signed by the Respondent to base her action for eviction;
- (ii) there are special circumstances in their case that should be considered by the court in determining the stay application;
- (iii) they will suffer irreparable harm as they will be evicted from their present abode which they occupy with their minor child;

- (iv) they will suffer more prejudice if stay is refused than the Respondent would if the stay is granted;
- (v) the balance of convenience lies in their favour justifying the grant of stay as they will suffer irreparable loss and damage which cannot be adequately compensated by damages in the event that they will be evicted from the property where they have made considerable investment in repairing and renovating the house which they are now in occupation with their minor child;
- (vi) the Respondent can be compensated by damages for any inconvenience that may be caused by the grant of the stay;
- (vii) if stay is refused the appeal will be rendered nugatory if the Respondent executes the judgment of the rent board;
- (viii) there is a real question of law and fact to be decided by the supreme court;
- (ix) it is just and necessary in the interest of justice that a stay is granted;
- (x) there are exceptional circumstances in this case that justify the stay of execution; and
- (xi) there is a real prospect of success in the appeal.

*The Respondent's Affidavit in reply*

- [4] The application is resisted on the following grounds set out in the Respondent's Affidavit in reply dated 15<sup>th</sup> May 2023 –
- (i) The Applicants refuse to comply with the Rent Board's Ruling and have not settled the rental arrears or covered the arrears;
  - (ii) The Respondent is a pensioner, and her sources of income are her pension and the rental income which she has not been paid since December 2021;
  - (iii) The Appellants have well paid jobs, the 1<sup>st</sup> Appellant is a draughtsman for Eden Island Village Management Association and the 2<sup>nd</sup> Appellant is Senior Planning Officer at the Planning Authority and it is difficult to comprehend how the Rent Board Ruling will cause the Appellants any hardship;

- (iv) The Appellants agreed to rent the apartment for SCR5000/- per month and are not paying when this would assist the Appellant tremendously given the cost of living;
- (v) The Appellants are not in financial hardship as they frequently go on holidays. Twice a year they stay Le Duc de Praslin for their birthdays and every December they go to Dubai for a week or two;
- (vi) The balance of convenience is not in favour of granting a stay as eviction will only occur if they don't pay the rent and arrears;
- (vii) Appellants cannot claim hardship for eviction as they are the cause of triggering the eviction order by not paying rent;
- (viii) Appellants have little or no chance of success on appeal as the plea in limine litis raised is not within the jurisdiction of the rent board and analysis of the rent board was sound and correct on pertinent legal issues;
- (ix) There are no attachments with the Affidavit in support of the Appellants and the Ruling of the rent Board is not attached.

[5] The parties agreed to proceed with the hearing of the application by way of written submissions. Respective written submissions have been filed and considered by the court, although they are not reproduced in full herein.

#### *The Applicants' Submissions*

- [6] The Applicants referred the court to several authorities on stay of execution of judgments and to section 230 of the Seychelles Code of Civil Procedure. The cases mentioned in Applicants' submissions are: *Charmoy v Charmoy SCA MA 08/2019 [2019] (17 September 2019)*, *Atkins v Great Western Railway Co. (1886) 2. T.L.R 400*, *Avalon v Berlouis (2003) SLR 59*, *Chang Tave v Chang Tave (2003) SLR 74*, *Lizanne Reddy v Wavel John Charles Ramkalawan CS 535 of 2016 in MA187/2016*, *Becker v Earl's Court (1911) 56*, *Ahsraf Elmasry & Ors v Margarte Hua Sun SCA MA 37/2019 arising in SCA 28/2019*, *Karunasekera v REV Chandananda (2004) 2 Sri L.R.*, *Mack v. Shanmugam Sri Lanka Law Reports – Vol III -89 at 98*, *Vaughan v Dawson [2008] NSCWA 169*, *Laurence v Gunner [2015]* and *National Stadium Project (Granada) Corporation v. NH International Caribbean Limited Civil Appeal No. 48 of 2011, 28 July 2017*.
- [7] The Applicants' submission reiterates all the circumstances in which courts in earlier cases have expressed to be judicious to grant a stay of execution. According to the Applicants

the court should exercise its discretion to order a stay of execution pending the appeal as “*their appeal raises points of law only and if their application for stay of execution is not granted, the appeal would be rendered nugatory*”. Further, more prejudice would be caused to the applicants if stay is not granted, their appeal is meritorious and has good chances of success, their appeal is not frivolous and vexatious as there are substantial issues of law and facts to be adjudicated upon.

- [8] The Applicants’ also argued, in their written submissions, that they do not have alternative accommodation. However, this was not deponed in their affidavits and has been disregarded by the court. Submissions are not evidence.

#### *The Respondents’ Submissions*

- [9] The Respondent relied on the case of *Elmasry & Or v Hua Sun SCCA 2 (30 June 2020)* to submit that the court should dismiss the application outright for not attaching documentary proof of the averments made in the Affidavit. Further, there are no statements in the Applicants’ affidavits that there are substantial questions of law and facts to be adjudicated at the hearing of the appeal. According to the Respondent these omissions are fatal.
- [10] The Respondent also submitted that the application should be dismissed because the Applicants have failed to show that they are likely to suffer substantial loss if stay is not granted. Since eviction is only triggered by non-payment of rental arrears and rent due, the Applicants are not only the cause of, but they also have the remedy for, the potential hardship of eviction. Therefore, the Applicants cannot claim that they will suffer irreparable harm if the Rent Board’s decision is executed. The Applicants have well paid jobs and go on holidays both in Seychelles and in Dubai yearly. In contrast, the Respondent is a pensioner and is being denied an additional source of income since December 2021.

#### *Law and Analysis*

- [11] Section 230 of the Seychelles Code of Civil Procedure (“SCCP”) stipulates that –

*“An appeal does 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”*

- [12] Thus, as a rule a judgment creditor should be able to execute a judgment given in his or her favour. It is only exceptional cases that the court or the appellate court may stay the

execution of a judgment pending the determination of the appeal and on such terms imposed.

[13] The circumstances in which courts in earlier cases have exercised their discretion to grant a stay of execution have been summarized by the Court of Appeal per Fernando PCA in *Elmasry* (Supra) as follows –

*“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 execution (in a money judgment that has been paid to the respondent)?”*

[14] In the same case, Fernando PCA proceeded to give guidelines for decisions on stay of execution of money judgments having regard to the provisions of Section 230 of the SCCP and Rule 20(1) of the Seychelles Court of Appeal Rules (hereinafter referred to as the “*Elmasry* guidelines”). The guidelines are reproduced below -

*“C has obtained a money judgment against D who appeals and applies for a stay of execution. C objects. The Court must ask the following questions:*

***Q1** Has D satisfied me that there is a substantial question of law to be adjudicated upon at the hearing of the appeal and that his appeal has a good prospect of success?*

*If yes, proceed to Q2. - If no, a stay should not be granted.*

*Q2 Has D satisfied me that he will be ruined, or his appeal otherwise be stifled if forced to pay C immediately instead of after the (unsuccessful) appeal? –*

*If yes, a stay can be granted subject to considering the answers to Q4. - If no, a stay should not be granted unless a positive answer is given to Q3.*

*Q3 Has D satisfied me that there is no reasonable probability that C will be able to repay the monies paid to C by D? –*

*If yes, a stay should be granted, subject to considering the answers to Q4. - If no, a stay should not be granted.*

*Q4 What are the risks that C will be unable to enforce the judgment if the stay is granted and D's appeal fails? Depending on the extent of that risk and other relevant circumstances can there be a compromise solution: payment of all or part of the relevant sum to await determination of the appeal; a stay only of part of the judgment sum; provision of security for part of C's payment to D? A compromise solution should be a last resort, the basic rule being that a money judgment must be complied with, so that a claimant is entitled to recover the money straightaway and not to suffer further losses or lost opportunities in the period till the appeal is heard."*

- [15] The judgment sought to be stayed by the present application is a 'money judgment' to which the *Elmasry* guidelines are applicable. The Applicants were ordered to settle rental arrears in the sum of SCR50, 000/- by 1<sup>st</sup> May 2023, failing which they would be evicted from the leased premises. The Rent Board also ordered the Applicants to pay the monthly rent due on the first day of each month.
- [16] In applying the *Elmasry* guidelines, the first question that I must ask myself is *whether the Applicants have satisfied me that they have 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?*
- [17] Although the Affidavits enumerate three grounds upon which the Rent Board's decision is challenged and refer to an attached Memorandum of Appeal in their respective paragraphs 7 and 15, documents have not been produced in either affidavit. My determination of whether there are serious questions of law to be adjudicated upon at the hearing of the appeal is therefore limited to what the Applicants have stated to be their grounds of appeal. Further, the Ruling of the Rent Board has not been produced in either affidavit.



[18] On the strength of the supporting affidavits alone, the court cannot satisfy itself that an appeal has indeed been filed and the grounds enumerated under paragraph 7 of the said affidavits are indeed the grounds of the appeal filed. The court cannot even satisfy itself that these grounds relate to the Ruling of the Rent Board as it has also not been produced.

[19] In *Elmasry* (supra), Fernando PCA also considered the law relating to affidavit evidence in the light of affidavits in support of stay applications and stated as follows -

“7. The law pertaining to affidavit evidence is to be found in **sections 168-171 of the Seychelles Code of Civil Procedure.**

**Section 168** states: “*The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit...*” (emphasis by me). To prove one must demonstrate the truth or existence of (something) by evidence or argument. A mere statement does not suffice.

**Section 170** states: “*Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds thereof, may be admitted.*”

.....  
9. .... In the case of *D.L. de Charmory v. P.L. de Charmory, SCA MA 08/2019 (17 September 2019)* this court stated: “In *Re Hinchliff, A person of Unsound Mind, Deceased, [1895] 1 Ch 117*, the Court of Appeal held that any document to be used in combination with an affidavit must be exhibited. In the same light any document to be used in combination with an affidavit in support of an application to stay execution must be exhibited to and filed with it. Counsel for the applicant should be mindful that the affidavit stands in lieu of the testimony of the applicant.” *Re Hinchliff* has been quoted with approval in the cases of *Trevor Zialor v The Republic SCA MA 2017 (unreported 17 October 2017)* and *Marie-Therese Boniface v Maxime Marie SCA MA 01/2019 (unreported 28 May 2017).*”

[20] Considering the above authorities, I am inclined to hold that the court cannot satisfy itself that the appeal raises substantial questions of law or has a good prospect of success. This is because documents to be used in combination with the supporting affidavits and that ought to satisfy the court of the substantial questions of law have not been produced. The mere statement of the grounds of appeal and the averment that there is a good chance of success of those grounds on appeal are insufficient for the court to exercise its discretion to grant a stay of execution in the present application.



- [21] Nonetheless, I have gone a step further and taken judicial notice of the Ruling of the Rent Board in RB14/2022 and the Memorandum of Appeal on the court file for appeal CA2/2023.
- [22] I note that at this stage, I am restricted to taking a cursory look at the grounds of appeal filed and asking myself whether I am satisfied that there are substantial questions of law raised. I accept that by looking at the Memorandum of Appeal alone, the grounds of appeal do raise questions of law. The grounds of appeal state that the Rent Board erred on the law in dismissing the pleas in limine and in not dismissing the application because the rental agreement is invalid, and the Respondent could not have validly brought the rent board case in her personal capacity. I am also satisfied that the grounds of appeal relate to the Ruling of the Rent Board in RB14/2022. However, I will not pronounce myself on the prospect of success of those grounds of appeal as to do so will lead to my effective determination of the appeal on the merits beforehand. Suffice to state that the basis of the Applicants' belief of good chances of success have not been stated in their affidavits. It begs clarity as to whether the 'good chances of success' were stated as a matter of course or stated upon legal advice on the grounds of appeal.
- [23] The above stated, I answer the first question of the *Elmasry* guidelines in the affirmative and I proceed to question 2. Namely: *whether the Applicants have satisfied me that they will be ruined, or their appeal otherwise stifled if forced to pay the Respondent immediately instead of after the (unsuccessful) appeal?*
- [24] The Applicant's Affidavit state in identical terms that if stay is not granted, the Applicants will suffer irreparable harm which cannot be adequately compensated by damages as they will be evicted from their place of abode which they occupy with their minor child. They also state that they have made considerable investments in renovating and repairing the said premises.
- [25] In response, the Respondent clarified that the Applicants agreed to rent the premises for SCR5000/- monthly and benefited from a rent discount for the renovation works carried out on the premises. This has not been contradicted by the Applicants.
- [26] In my view, the Applicants have not shown how they would be ruined if stay is not granted. They have not stated in their affidavits that they have no means of paying the rental arrears as ordered and/or of obtaining alternative accommodation if stay is refused. It is undisputed that both Applicants are in employment. According to the Respondent, the first Applicant is a draughtsman employed by the Eden Island Village Management Association, and the 2<sup>nd</sup> Applicant is a Senior Planning Officer. The Applicant's actual employment has not

been contradicted. Likewise, the Respondent's statement that the Applicants go on holidays every year.

[27] The Applicants' investments in repairing and renovating the premises have not been substantiated in their affidavits. Further, they do not state that they will not be able to recover the said investments if stay is refused and their appeal is successful. The Respondent's statement that the Applicants benefited from rent deduction for the renovation works is also uncontradicted.

[28] The Applicants also failed to show, in their affidavits, how their appeal will be stifled by the payment of rental arrears immediately instead of after the determination of the appeal.

[29] I therefore answer the second question of the *Elmasry* guidelines in the negative and proceed to the third question. *Have the Applicants satisfied me that there is no reasonable possibility that the Respondent will be able to repay the monies paid to her by the Applicants?*

[30] The supporting affidavits of the Applicants are silent on the Respondent's ability to repay the SCR50, 000/- if their appeal is successful. Their affidavits merely state that the Applicants will suffer more prejudice if stay is refused than the Respondent would if the stay is granted and that the Respondent can be compensated by damages for any inconvenience that may be caused by the grant of stay. On this basis, the balance of convenience lies in their favour for the grant of a stay.

[31] I note from the supporting affidavit of the Respondent that she is the sole owner of the land on which the rented apartment stands, and that her sources of income are her pension and the rental which the Applicant have defaulted payment. In my view, Respondent's ownership of the land show that she is not without means and that it should not be that difficult to recover the sums paid if the appeal is successful.

[32] In applying the *Elmasry* guidelines, if the answer to the third question is in the negative, then a stay should not be granted.

### *Conclusion*

[33] I therefore refuse stay.

[34] Application is dismissed.

Signed dated and delivered at Ile du Port on 23<sup>rd</sup> June 2023.

*Alexandra*  
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A. Madeleine, J

