

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC .69

MA 339/21

Arising in

CA 33/2021

In the matter between:

EAST EURO AFRICAN STAR TRANSPORT

SERVICES LTD

(rep. by Joel Camille)

Petitioner

and

VINCENT BELIZE

(rep. by Ryan Laporte)

Respondent

Neutral Citation: East Euro African Star Transport Services Ltd v Belize (MA 339 of 2021 Arising in CA 33/2021) [2023] SCSC69..... (1st February 2023).

Before: Pillay J

Summary: Application for stay of execution pending appeal

Heard: By way of submissions

Delivered: 1st February 2023

ORDER

The Motion for stay of execution is denied.

RULING

PILLAY J:

- [1] The Petitioner seeks an order staying the execution of the judgment delivered in the Employment Tribunal in the case of Vincent Belize v/s East Euro African Star Transport Services Ltd [ET 30/2021] pending the hearing and disposal of the Petitioner's appeal.

- [2] The Motion was filed on 28th December 2021 supported by an affidavit sworn by Carol Nalletamby who deponed that she was the Respondent in the matter before the Employment Tribunal. She stated that she was out of the jurisdiction at the time assisting her son with medical issues and her representative failed to appear. She further stated that if the judgment is executed before the disposal of the appeal, the Company will suffer substantial loss and prejudice which could not be adequately be compensated in damages and would also render the appeal nugatory.
- [3] She added that the award is substantial and suggests that if the appeal is successful she would have difficulty retrieving the same from the Respondent.
- [4] In his affidavit in reply the Respondent opposed the Motion.
- [5] The Learned counsel for the Applicant submitted that the Applicant seeks a stay of execution for the following reasons:
- *she was outside the jurisdiction when the case was heard by the Employment Tribunal and her legal representative failed to appear in court on many occasions, despite applying to the Tribunal to set aside the ex-parte judgment, the application was refused.*
 - *should a stay not be granted the Appellant would suffer substantial loss and prejudice that could not adequately be compensated by damages.*
 - *the appeal would be rendered nugatory if a stay is not granted.*
 - *The award of the Tribunal having been substantial, the Applicant would have difficulty in retrieving it, if the appeal succeeds.*
- [6] It was her submission that the Applicant has made a prima facie case for this court to exercise its discretion on the basis that “the record shows that the matter was mentioned only once prior to hearing date, that the hearing proceeded ex-parte the very hearing date set and the CEO of the Applicant who had been outside the jurisdiction was represented at the mention date by Paul Isaac whose capacity to represent the Applicant was questioned and refused by the Tribunal on the Judgment date.”

- [7] She further submitted that the application discloses serious questions of law to be determined at the hearing of the appeal: “whether the Tribunal’s decision to refuse to set aside the ex-parte judgment and order an inter partes hearing was correct in law having regard to the justice of the case and the informality of the Tribunal set in settlement of employment disputes” on the basis of the case of *Paolo Ghiani v Cote d’Or Lodge (Vacanze Seychelles Limited) CA 18/2016 [2016] SCSC 90*.
- [8] Learned counsel for the Applicant relied on section 230 of the Seychelles Code of Civil Procedure as well as the cases of *Laserinisima v Boldrini [1999] SLR SC No. 274 of 1998*; *Vijay Construction (Pty) Ltd v Eastern European Engineering Limited [2020] SCSC476*; *Choppy v NSJ Construction [2011] SLR 251* and *Ramkalawan v Electoral Commission and Ors MA 164 of 2016 (Arising from CP 01 of 2016)* in support of the motion.
- [9] In support of the Respondent’s objections Learned counsel filed submissions accepting the law and case law outlined by the Applicant as being the law and prerequisites for the Court to grant a stay of execution.
- [10] On the merits Learned counsel submitted that the hearing date was scheduled for 7th September 2021 at 9am in the presence of both parties. On the said date the Applicant failed to appear or communicate the reasons for her absence to the Tribunal hence the Tribunal proceeded in her absence. He further submitted that Mr. Riaze did not produce any documents to support the assertion that she was sick nor did he produce documents to show that he was empowered to represent the Applicant.
- [11] Learned counsel submitted that the Tribunal acted fairly and judiciously, complying with its mandate under the rules. He added that the informality of the proceedings does not entitle a party to treat the Tribunal contemptuously.
- [12] He further submitted that the Applicant did not provide the Tribunal with proof that she “needed” to attend to her child overseas in addition to the fact that the documents she produced showed that the child is in fact 24 years old and was not seen by a Doctor but by one Mr. Khairi Ali, a Pedicure/Podologue.

- [13] Indeed, as submitted by Learned counsel for the Applicant, the applicable law in relation to an application for a motion for a stay of execution is section 230 of the Seychelles Code of Civil Procedure which provides that:

“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 proceeding shall be invalidated except so far as the appellate court may direct.”

- [14] There is extensive jurisprudence on the issue. In the case of *Elmasry and Ano v Hua Sun (SCA 28/2019) [2020] SCCA 2 (23 June 2020)* the Court of Appeal laid down “guidelines for a decision on a stay of execution of a money judgment taking into consideration the provisions of Section 230 of the Seychelles Code of Civil Procedure and Rule 20(1) of the Seychelles Court of Appeal Rules referred to at paragraph 3 above:

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 into court

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 from the Employment Tribunal is a money judgment in that it orders the Applicant to pay the Respondent certain sums as compensation on termination of employment.
- [16] The Applicant's position is that there is a serious question of law to be decided. In her submissions it is framed as a question as to whether the Tribunal's refusal to set aside the ex-parte hearing was correct in law.
- [17] The Applicant relies on the remarks of Her Ladyship Twomey JA in the case of ***Paolo Ghiani v Cote D'Or Lodge (Vacanze Seychelles Limited) CA 18/2016 [2016] SCSC90*** placing emphasis on her Learned Twomey JA's comments that "[The Tribunal's] rules and procedure should therefore be more relaxed than that of the formal settings of the court."
- [18] However it is noted that the comments did not stop there. Her Ladyship Twomey JA went on to state that "I am not in this respect advocating for a free for all situation where anything goes. Procedures should be adhered to as far as possible but viewed through the prism of an informal forum the rules of natural justice would dictate reasoned and genuine excuses for absences should be considered by the Tribunal."
- [19] The relaxed rules do not exist in a vacuum in my opinion. The parties remain under a duty to be respectful of those relaxed rules and still provide "reasoned" and "genuine excuses" for their absences before the Tribunal. Simply failing to appear on a date set by the Tribunal does not give a party carte blanche to then claim that the Tribunal did not act fairly and judiciously by not excuse their absence.
- [20] It is noted that the Applicant has not provided this Court with any documentation supporting her absence on the hearing date. Admittedly the current motion is to be decided ex facie the affidavit in support but even that provides scant pickings. All she says is she

was out of the jurisdiction assisting her son with medical issues. However in order for this Court to assess the feasibility of the Motion it needs more information as to the reasons for the absence of the Applicant on the date of the hearing.

- [21] In any event the Applicant has not satisfied this Court that she will be ruined, or her appeal otherwise be stifled if forced to pay the Respondent immediately instead of after the appeal.
- [22] Furthermore I fail to see how it is that if the Applicant is successful in its appeal damages would not be sufficient compensation or that there is no reasonable probability that the Respondent will be able to repay the amount paid to him. Generally mere financial loss is not enough to satisfy the test of irreparable damage. Ordinarily harm to reputation, health, career prospects, loss of goodwill may constitute irreparable loss.
- [23] On the basis of the above I am not satisfied that the Applicant has shown that the Motion should be granted.
- [24] In the circumstances the Motion for stay of execution is denied.

Signed, dated and delivered at Ile du Port on

1/2/25


Pillay J