

SUPREME COURT OF SEYCHELLES

Reportable
MA 194/2023
(Arising in MC 53/2022)

In the matter between:

SMART VEGA HOLDING LIMITED
(rep. by Audric Govinden)

Applicant

and

ROGER VER
(rep. by Frank Elizabeth)

Respondent

Neutral Citation: *Smart Vega Holding Ltd v R. Ver* (MA194/2023) (26 July 2024)

Before: Burhan J

Summary: Stay of proceedings in winding up petition

Heard: 3 July 2023

Delivered: 26 July 2024

ORDER

This Court proceeds to grant the application of the Applicant and stay the proceedings in the winding up petition CS 53 of 2022 until the conclusion and final determination of case CS 102/2022.

Therefore, as the stay of proceedings order has been given in respect of the main case CS 53/2022, all ancillary miscellaneous applications arising from the said case CS 53/2022 i.e. MA 219/2022, MA 239/2022 and MA 340/2023 also remain stayed until the final determination of suit CS 102/2022.

ORDER

BURHAN J

[1] The Applicant (Smart Vega Holding Limited) in this application, moves for a stay of the winding up petition in the main case CS 53/2022 on the following grounds:

- i. *the Applicant and the Respondent (Roger Ver) are in litigation in the suit to dispute the debt of which is the subject matter of the winding up petition.*
- ii. *the fact that both matters are being heard simultaneously is an abuse of process and contravenes the Applicant's right to a fair trial.*
- iii. *the fact that both matters are being adjudicated simultaneously is against the principle of natural justice and procedural justice.*
- iv. *that the court has inherent powers to stay its own proceedings pending the determination of a court order. That this principle falls within that spectrum and the Applicant should be given the opportunity to defend its case.*

[2] The background facts to this application are that on 22 August 2022, the Respondent filed a petition CS 53 of 2022 to wind up the Applicant company for failure to pay back his funds invested with the Applicant's company. On 21 September 2022, the Respondent filed MA 206/22 and MA 207/22, being applications for a hearing for provisional seizure and attachment in camera; and, seeking a provisional seizure and attachment respectively on the same facts. Both were withdrawn on 3rd July 2023. On 3 October 2022 the Respondent filed MA 219/2022 an application seeking an interim injunction against the Applicant to prevent the latter from disposing the cryptocurrency funds, which are the subject of all the above actions. Thereafter, a further application was filed by the Respondent in respect of the interim injunction, MA 340 of 2023, seeking leave to adduce further and additional evidence to support the application for an interim injunction. The Orders in respect of the MA 219/2022 (interim injunction application)

and MA 340/2023 (seeking leave to adduce further evidence) are pending before this Court.

- [3] In addition to the winding up petition CS 53/2022, the Respondent thereafter also filed a Complaint dated 16 September 2022 (CS 102/2022) against the Applicant for breach of contract claiming the sum of SCR1,000,000 in moral damages plus specific performance as follows: i) allowing the transfer of Respondent's funds by Applicant from his account with the Applicant; ii) interest on the aforementioned sum; iii) the whole with costs; and, iv) other orders as the Court may deem fit.
- [4] Resisting the petition filed, the Applicant Smart Vega Holding Limited filed its reply and subsequently two miscellaneous applications MA 239/2022 dated 17 October 2022, moving Court inter- alia that the *plea in limine litis* be heard and disposed first and this application MA 194/2023 seeking a stay of proceedings in the main case (the winding up application CS53/2022) until the final determination of the subsequent case filed by the Respondent CS 102/2022 a suit based on the breach of contract.
- [5] Giving due consideration to this application for stay before this Court, I observe that the said application is supported by an affidavit dated 23 March 2023, deposed to by Applicant's Director Lan Yue, arguing that essentially, the case is between the same parties and pertains to the same subject matter as the winding up petition, and the cause of action being for specific performance based on a breach of contract. In addition, that the fact in issue is the same as in the winding up petition; that there are points of law and fact to be adjudicated upon regarding the merits of the main case, including whether or not the Applicant was in breach of any contract to warrant specific performance and possible fruits of a counter-claim. On the basis of the above, the Applicant reasons that the Respondent is abusing the process of the Court by entering several cases against the Applicant to examine the same substratum of fact which gives rise to the subject of litigation.
- [6] The Applicant further relied on the following authorities in support of his application: *Litanne Bristol v Louis Davidson Flore* – MA 66/2022 – MC 54/2020; *Mein v Chetty* (No

1) (1975) SLR 184; Faiz Ali Mubarak v The Republic CM 120/22 [2020] SC SC 970 (2022); Ebert v Venvil, Ebert v Birch ([2000] Ch 484 at 490).

- [7] On the 10th May 2023, the Respondent's power of attorney holder Ms. Ina Laporte filed a response firstly raising a plea in *limine litis* in that the application is bad in law and is liable to be dismissed since the affidavit which the Applicant relies upon in support of the application emanates from Singapore, which is a Hague Apostille Convention member since September 16, 2021, and therefore that the document needs to be apostilled to render it admissible in law in the Seychelles Court.
- [8] Explaining his filing of the multiple actions, the Respondent states that on the 16th September 2022, he sought a provisional seizure and attachment, but was advised by his attorney that he needs to file a plaint, which he filed- but he insists that this does not obviate the need to obtain a winding up order, nor has the Applicant raised a bona fide objection thereto.
- [9] The Respondent argues that he believes that the cause of action in the two cases are completely different from each other, and is advised by his attorney that the cause of action in all the cases are different, although the central theme throughout all the cases filed remains the Applicant's unlawful detention of the Respondent's funds. Further that the actions do not constitute an abuse of court process. Respondent believes that the Applicant's motion to stay the proceedings is just another artifice to delay returning the funds and seeks to extend itself even further free credit at the Respondent's expense.
- [10] Giving due consideration to the submissions of both parties when one considers the preliminary objection in respect of the affidavit filed by the Applicant, the procedure for admission of a document sworn in a foreign country is set out in sections 28(1) and (2) of the Evidence Act (CAP 74). In the case of EME Management Services Ltd v Island Development Company Ltd (90 of 2009) [2010] SCSC 122 (14 March 2010), the Court explained the certificate referred to in section 28(2) as an apostille thus:

“This is a certificate that authenticates the signature of the public official who has signed the document in the home state. The apostille certificate confirms that the person who signed the document has the authority to do so and that the document should therefore be recognised as legal, without further evidence being led in another member state in this instant case Seychelles.”

- [11] The Applicant however countered the Respondent’s argument by pointing out that there is in fact an apostille certificate attached to the affidavit issued by Singapore’s Competent Authority, the Singapore Academy of Law dated 24 March 2023. On perusal of the said document, this Court is satisfied that it bears the requisite apostille certificate and therefore the Respondent’s objection bears no merit, and is dismissed.
- [12] The next question is whether the Court should stay the Petitioner’s case CS 53/2022 pending the finalisation of suit CS 102/2022 on the basis of abuse of court process. The Applicant in his submissions dated 3 July 2023 alleges abuse of court process on the part of the Respondent in instituting multiple actions against the Applicant on the same set of facts, and contends that it would be equitable for the Court to grant a stay on the winding up petition, thereby guaranteeing its rights to a fair trial by securing its right to defend the allegations of a disputed debt in contract law, which is between the same parties and in regard to the same debt. The Respondent argues that he believes that the Applicant is insolvent, and it follows that an application for winding up of the Applicant on the basis that it cannot pay its debts is logical, meritorious and justifiable under the IBC Act.
- [13] This Court will first decide whether the Respondent’s conduct amounted to an abuse of court process. Abuse of court process refers to the improper use of legal procedure for a malicious or perverse reason, and is a term generally applied to a proceeding which is wanting in *bona fide* and is frivolous, vexatious or oppressive, and always involves some element of bias, malice, some deliberateness, some desire to misuse or pervert the system of administration.¹ In the New Zealand case of *Adesoji v Futa* (2017) 9 NWLR (PT 1570) 208 at 221 paras C-D, 226 paras C-G, the court describes an abuse of court process as an

¹ The Effect Of Abuse Of Court Process On The Rule Of Law, Due Process And Judicial System, accessed online on 92/12/2023 at <https://threshold-attorneys.com/the-effect-of-abuse-of-court-process-on-the-rule-of-law-due-process-and-judicial-system/>

improper use of judicial process by a party in litigation. Abuse of court process has a negative effect on the administration of justice, and it can procure courts to make conflicting orders thereby undermining the due process of the court and the rule of law. This was highlighted in the case of PDP v. Sheriff (2017) 15 NWLR (PT. 1588) 219 at 265-266 paras D-G, the court held thus:

“...the basis of the rule on abuse of court process is the real possibility of two conflicting decisions in respect of one and the same subject matter. So, it is desirable that the issues common to both parties are heard and determined in only one court.” [Emphasis added]

[14] It is the considered view of this Court that filing multiple suits on the same claim by a Plaintiff against the same Defendant is one classic example of an abuse of court process. Courts have often frowned on actions brought on a pretext. In the case of Mohammed Amin Bros. Ltd. vs Dominion of India and Ors. AIR 1952 Cal 323, 54 CWN 514, Harries, C.J. quoted Buckley on Companies Acts, Edn. 11 at p. 356 which stated:

"A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed and under circumstances may be stigmatized as a scandalous abuse of the process of the Court."

[15] The reasons for bringing repetitive suits may include, among others, harassment, simply tactical advantage, to circumvent an adverse ruling in the first suit that does not amount to an adjudication on the merits [Beaver v. Borough of Johnsonburg, 375 F. Supp. 326, 328 (W.D. Pa. 1974)]. The Applicant's averment that the Respondent abused the process of the Court in instituting several actions on the same cause of action is substantiated in so far as multiple actions were initiated by the Respondent. The Respondent himself confirms the Applicant's argument as Ms. Laporte in her affidavit on behalf of the Respondent states *“the central theme throughout all the cases filed, remains the Applicant's unlawful detention of the Respondent's funds.”*

[16] In Seychelles the Court in Mein v Chetty (No 1) (1975) SLR 184 held that a Court has an inherent power to stay proceedings to stop any abuse of the processes of the Court. This was confirmed in Seychelles National Party v Aglae SCC 7/2006, 27 March 2007,

wherein the Court declared that there must be a legal basis for the Court to grant a stay of proceedings. By inherent power is meant that the Court is vested “*with the power to maintain its authority, to control and regulate its process and to prevent its process from being abused or obstructed*” [I.H Jacob, *The Fabric of English Civil Justice*, Stephens & Sons, 1987, 60]. In the England and Wales Court of Appeal case of *Ebert v Venvil, Ebert v Birch* ([2000] Ch 484 at 490), the Court held that the High Court had an inherent jurisdiction to prevent the initiation, without the leave of the court, of civil proceedings which were likely to constitute an abuse of process.

[17] In *Choppy v NSJ Construction* (2011) SLR 215, the Court held that the burden is on an applicant for a stay of proceedings to demonstrate a basis for a stay which will be fair to all parties. Further the Court in *Société d’Exploitation Hôtelière Touristique et Commercial de L’Ocean Indien Ltd. v the Companies Act, 1972* (1984) SLR 129 held that where there is a *bona fide* dispute as to a debt, the company will not have neglected to pay on a statutory demand, if the company contends that it is not liable to the creditor for the whole or the unpaid part of the claim, and can satisfy the court that it has a substantial and reasonable defence to plead. In such a situation a Court will refuse to make a winding up Order.

[18] The fact that the Respondent has and admits filing a suit seeking the recovery of his funds after the application to wind up was filed, indicates that he admits that there is a possibility of recovering the money back from Applicant in this case and an indirect admission therefore that the Applicant is not insolvent. Therefore, it is apparent to this Court that the Respondent instituted the winding-up petition to exert pressure on the Applicant to pay his claim, this would be the very antics courts have cautioned creditors against [*Oriental Airlines Ltd v Air Via Ltd* [1998] 12 NWLR (Pt 577) 271 at 181D]. The effect of which would undoubtedly constitute an abuse of the process of the Court, which he cannot carry on with impunity.

[19] The Court in *Litanne Bristol v Louis Davidson Flore – MA 66/2022 – MC 54/2020* addressed that very question thus:

“Courts have inherent jurisdiction and power to manage legal proceedings before them. Such management includes stay of proceedings before that Court upon the application by one of the parties or by the Court’s own motion. Such jurisdiction and power must nevertheless be exercised cautiously and where justice necessitates it. For example, a court may issue a stay of proceedings in a winding-up of a company where there is a real possibility of saving the company.”
[Emphasis added].

For all the aforementioned reasons, this Court is satisfied that there is a wrongful conduct of the Respondent that amounts to an abuse of court process. Therefore, this Court proceeds to grant the application of the Applicant and stay the proceedings in the winding up petition CS 53 of 2022 until the conclusion and final determination of case CS 102/2022.

[20] Therefore, as the stay of proceedings order has been given in respect of the main case CS 53/2022, all ancillary miscellaneous applications arising from the said case CS 53/2022 i.e. MA 219/2022, MA 239/2022 and MA 340/2023 also remain stayed until the final determination of suit CS 102/2022.

[21] For purposes of clarity a copy of this order to be filed in each of the aforementioned applications.

Signed, dated and delivered at Ile du Port on 26 July 2024

M Burhan J