

IN THE SEYCHELLES COURT OF APPEAL

[Coram: S. B. Domah (JA) , A. Fernando (J.A), J. Msoffe (J.A.)]

Civil Appeal SCA 11/2014

(Appeal from Supreme Court Decisions of MA29/2014 out of MA302/2013 Arising in
CS219/2010)

PAUL CHOW

LUCY CHOW

APPELLANTS

VERSUS

HEIRS JOSSLIN BOSSY

RESPONDENTS

Heard: 3 August 2016

Counsel: Mr. Frank Elizabeth for Appellants

Mr. Sammy Freminot for Respondents

Delivered: 12 August 2016

JUDGMENT

S. Domah (J.A)

- (1) This is an appeal from a Ruling of the learned judge of the Supreme Court who declined to refer an application made under Article 130 (6) (sic) to the Constitutional Court. The basis of the application was whether sections 251-253 of the Seychelles Code of Civil Procedure (“SCCP”) which provided for civil imprisonment for breach of a contractual obligation did not contravene Article 18(15) of the Constitution. This Article provides that a person shall not be imprisoned merely on the ground of the inability to fulfill a contractual obligation. The contractual obligation in this case was a judgment debt. Robinson J held that: (a) the application was frivolous and vexatious (underlining ours); (b) a judgment debt is not a “contractual obligation;” (c) Article 18(15) does not find its application in a case of a judgment debt.

- (2) Learned counsel for the appellants, Mr Frank Elizabeth, had submitted before her that the application following an order made in a civil judgment is a contractual obligation to which Article 18(15) applies. Learned Counsel for the respondents, Mr Sammy Freminot, was categorical and challenging: his application, based on an order made by the Court of Appeal which had remained unsatisfied, was not a contractual obligation. The latter view was endorsed by the learned Judge who, rather than referring the matter to be decided by the Constitutional Court, decided it herself. Learned counsel for the Appellants challenge her course of action as well as her decision.

- (3) The following are the grounds of appeal:
 1. *The learned judge erred when she failed to address the issue raised by the Appellants that the Court can only examine the Appellants on their means on the day fixed in the Summons when the Appellants first appear before the Court.*
 2. *The learned judge erred in law when she dismissed the Appellant’s application to immediately adjourn the proceedings and refer the matter to the Constitutional Court.*
 3. *The learned judge erred in law when she dismissed the Appellant’s application on the basis that the Application was frivolous and vexatious.*
 4. *The learned judge erred in law when she ruled that the matter has passed the stage of “contractual obligations” and has reached judgment*

