

IN THE SEYCHELLES COURT OF SEYCHELLES

Reportable

[2021] SCCA 45 (13 August 2021)
SCA MA 16/2021
(Arising in SCA 10/2021)

In the matter between

SAVOY DEVELOPMENT LIMITED

(rep. by Serge Rouillon)

Applicant

and

SHARIFA SALUM

(rep. by Vanessa Gill)

Respondent

Neutral citation: *Savoy Development Limited v Salum* (SCA MA 16/2021) (Arising in SCA 10/2021) [2021] SCCA 45 (13 August 2021).

Before: Twomey JA

Summary: stay of execution- when granted-defective affidavit - jurat overleaf

Heard: 27 July 2021 and 3 August 2021 (written submissions)

Delivered: 13 August 2021

RULING

TWOMEY JA

[1] This is an application for a stay of execution of a decision delivered on 16 April 2021 by learned Burhan J in which he affirmed the decision of the Employment Tribunal in which the Applicant was ordered to pay the Respondent compensation for unjustified dismissal.

[2] The Applicant has filed a notice of appeal before this court on 6 grounds which crystallise into the following contentions: the court *a quo* erred in not finding that the Employment Tribunal was biased and erred in law and on the facts when awarding compensation.

[3] In the Affidavit supporting the application for a stay of execution, Mr. Sujith Surendran, of Beau Vallon, made the following averments:

“(1)[I] am the Deponent above-named and I swear this Affidavit as the representative of Savoy Development Limited.

...

(5) The judgments of the Tribunal and the court below has followed a trend of looking at such case as a simple employer/employee issue when the case involves serious matters involving;

- (i) serious breach of trust issues by senior employees in a trusted fiduciary position;*
- (ii) economic offence committed by employees in high positions and the effect on state efficiency, productivity and trust, maintaining good order, profitability and good work relations generally;*
- (iii) the degree of investigation required or acceptable in the circumstances of the case;*
- (iv) the concept that an employer would not normally carry out an action against an employee which would affect his business without just cause.*

(6) That if the judgment is executed before the disposal of the appeal, the Applicant will suffer substantial irreparable loss and prejudice which could not adequately be compensated in damages and would also render the appeal nugatory since the award is substantial because of the high salary the Respondent was contracted on with the Applicant.

(7) That the Supreme Court to which a similar application was made for a stay declined the stay of execution, I am informed by the Company lawyers unfairly and without taking account, inter alia, of any of the substantial points of law arising mentioned herein in paragraph 6 above hence this application to this court.

(8) That the award is substantial and the Applicant if successful would have difficulty retrieving it from the Respondent.

(9) That the Applicant is financially capable of satisfying the judgment in the event the judgment is maintained.

[4] In answer to this Affidavit the Respondent has filed an answer dated 2 August 2021 in which she avers *inter alia* that the Applicant’s Affidavit is defective and therefore fatal to the Applicant’s case.

[5] I therefore need to deal with this threshold issue before ruling on the application for stay proper.

[6] The contentions of the Respondent regarding defects in the Affidavit are the following (as summarised by this Court):

(1) The representative capacity of the deponent of the Affidavit to the Applicant is unclear – the power of attorney of the applicant company is not attached.

(2) The Affidavit does not refer to which cause or matter it is sworn or filed – only averring that it was the Respondent in ET/185/17 and that it appealed the matter before the Supreme Court which matter was dismissed and the Employment Tribunal decision affirmed.

(3) That the Applicant has not satisfied this Court that it has appealed the decision of the Supreme Court nor attached its Memorandum of Appeal

(4) That the Applicant had filed a similar application for stay of execution in the Supreme Court with similar mistakes which remain uncorrected.

[7] With regard to these submissions, I am of the view that the Affidavit and its attachments (A – 4) bear enough reference to the Employment Tribunal case and the appeal before the Supreme Court to sufficiently identify the application for stay as being in relation to these matters. There is also attached a notice of appeal with 6 grounds of appeal set out dated 19 April 2021 marked A3 which I have referred to in Paragraph 2 of this Ruling.

[8] In its ruling refusing to grant a stay of execution in the court *a quo*, Burhan J stated that he could not see any real question of law to be settled on appeal or special circumstance in this case to order a stay. I therefore am not able to glean what procedural mistake the Respondent is referring to as being repeated in the present application before this Court.

[9] In support of this application, learned counsel for the Applicant, Mr. Rouillon has filed documents entitled “Written Submissions on Stay Application” dated 5 August 2021, followed by “Amended Written Submissions on Stay Application” dated 6 August 2021, the latter being an answer to the Respondent’s answer to the Application for Stay.

[10] With regard to the representative relationship of the deponent to the Applicant, and the requisite power of attorney, the Respondent raises a valid point. In *Elmasry and Anor v*

Hua Sun (SCA 28/2019) [2020] SCCA 2 (23 June 2020), Fernando PCA reiterates points made previously in this regard that:

“The Power of Attorney has not been attached to the Affidavit. I am of the view that the Power of Attorney had necessarily to be attached as this Court is unable to know otherwise in which capacity the Applicants are before the Court. A mere statement that the Applicants are represented by...does not suffice.... In the case of D.L. de Charmoy V P.L. de Charmoy, 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 had 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) ...”

- [11] In an attempt to overcome this hurdle Mr. Rouillon, Counsel for the Applicant has on the 6 August 2021 without leave of this Court filed the Amended Written Submissions on Stay Application to which I referred to in my ruling above and attached thereto a “letter” from Yuri Khlebnikov, the purported director of Savoy Development Limited. The signature of Mr. Khlebnikov is not an original – that is clear to the Court. In any case it is not an authorisation that is official in any way either by registration or verified by any Notary or Court Officer. It also does not bear an official stamp of the applicant company. It is of no value and is unacceptable in a court of law.
- [12] This letter in any case begs the question of why Mr. Klebnikov himself had not signed the supporting affidavit to the application before this court bearing in mind that he is the director of the applicant company, with full knowledge of the facts that occurred before Mr. Surendran was even appointed.
- [13] The Court of Appeal in *Lablache de Charmoy* (supra) held that irregular affidavits cannot be waived by the parties. Affidavits are sworn evidence and evidential rules for their admission cannot be waived by the Court either.

[14] The defect in the Affidavit is fatal. In the circumstances, as the Application is improperly supported, and it is dismissed with costs.

Signed, dated and delivered at Ile du Port on 13 August 2021



Dr. M Twomey JA

