

## COURT OF APPEAL OF SEYCHELLES

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### **Reportable**

[2023] SCCA 26

SCA MA 11/2023 (Arising in SCA 3/2023)

In the matter between

**SPECIAL OPERATIONS SECURITY**

*(rep. by Mr Bryan Julie)*

Applicant

and

**WILLIAM CADEAU**

*(unrepresented)*

**DOMINIQUE GERRY**

*(rep. by Mr Serge Rouillon)*

Respondents

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**Neutral Citation:** *Special Operations Security v Cadeau and Another* (SCA MA11/2023) [2023] SCCA 26 (Arising in SCA 3/2023) 4 July 2023

**Before:** Robinson JA

**Summary:** Application to the discretion of a single Justice of Appeal under the Seychelles Court of Appeal Rules, 2005, as amended — Application for stay of execution — Appeal to the Court of Appeal has challenged the ruling of the learned Judge dismissing the appeals from the Employment Tribunal — Rule 16 of The Seychelles Court of Appeal Rules, 2005, as amended, applies, "[w]henver an application may be made to the Court or to the Supreme Court, it should normally be made in the first instance to the Supreme Court" — Application should have been made in the first instance to the Supreme Court. Application is dismissed with costs.

**Heard:** 27 June 2023

**Delivered:** 4 July 2023

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### **ORDER**

The application for stay of execution is dismissed with costs.

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### **RULING**

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## **F. Robinson JA**

1. A single Justice of Appeal designated by the President of the Court of Appeal may exercise any power vested in the Court of Appeal, save for an application for special leave to appeal to it, under rule 5 of The Seychelles Court of Appeal Rules, 2005, as amended. This is an application to my discretion under The Seychelles Court of Appeal Rules, 2005, as amended, and the First and Second Respondents have opposed it.
2. A notice of motion was filed on 14 February 2023, SCA-MA-11-2023, arising in SCA-03-2023, seeking a stay of execution of two applications, CV-MA-0194-2022 and CV-MA-0210-2022, filed before the Supreme Court for stay of execution of two judgments delivered by the Employment Tribunal – the notice of motion was styled in that particular way. The notice of motion and these applications for stay concerned the First and Second Respondents. The learned Judge refused to grant a stay of execution of the judgments delivered by the Employment Tribunal.
3. The First and Second Respondents claimed before the Employment Tribunal in E.T-32-2021 and E.T-21-2021, respectively, that the Applicant had unlawfully terminated their employment. The Employment Tribunal, consisting of two members, ruled that the Applicant had breached section 53 (1) of the Employment Act. Section 53 (1) of the Employment Act prohibits disciplinary action against a worker for a disciplinary offence without conducting an investigation or giving the worker the opportunity to explain the worker's act or omission, except in cases where the offence is self-evident. The Employment Tribunal awarded damages to the First and Second Respondents.
4. The Applicant filed an appeal with the Supreme Court in CV-CA-0012-2022, challenging the judgments delivered by the Employment Tribunal. The grounds of appeal claimed *inter alia* that the Applicant was not served with a summons to file his defence and was not present in the jurisdiction when the cases were heard. Additionally, the Applicant claimed that the Employment Tribunal was illegally constituted when it heard the cases, rendering any proceedings during the hearing null.

5. During the appeal on 1 February 2023 before the Supreme Court, the Applicant's Counsel requested an adjournment of the proceedings, claiming that the Applicant had not been served with the appeal proceedings. The Appellate Judge ordered for the pleas in *limine litis* to be heard. Counsel for the Applicant was granted ten minutes to review the Court file in preparation for the hearing of the pleas in *limine litis*. He informed the learned Judge that he could not proceed with the hearing.
6. The Appellate Judge dismissed the appeal for want of prosecution in a ruling delivered on 1 February 2023. As per the ruling, the Applicant was not prepared to present his arguments on the following pleas in *limine litis*, *"the appeal of the Appellant is prescribed by law pursuant to Section 6 (2) of the Civil Appeal rules which is 14 days from the date of the decision appealed against. Secondly, that the Appellant has not sought leave from the Supreme Court for an extension of time, nor sought leave of the court to file an appeal out of time pursuant to Section 5 of the Appeal rules. Thirdly, since the application is being made pursuant to ET21/21 and ET32/21 on the same application, this is procedurally wrong as the cases were at all material times distinct and separate."*
7. Section 230 of the Seychelles Code of Civil Procedure as well as rules 20 (1) and 16 of The Seychelles Court of Appeal Rules, 2005, as amended, apply to an application for stay of execution pending appeal.
8. Rule 20 (1) of The Seychelles Court of Appeal Rules, 2005, as amended, stipulates —

*"[a]n appeal shall not operate as a stay of execution or of proceedings under the decision appealed from:*

*Provided that the Supreme Court or the Court may, on application supported by affidavits, and served on the Respondent, stay execution on any judgment, order [...] pending appeal on such terms [...] as the Supreme Court or the Court may deem reasonable."*
9. Rule 16 of The Seychelles Court of Appeal Rules, 2005, as amended, stipulates, *"[w]henever an application may be made to the Court or to the Supreme Court, it should normally be made in the first instance to the Supreme Court"*.

10. The Applicant averred the following in the affidavit in support of the application for stay of execution —

"2. *I hereby invoke the jurisdiction of the Supreme Court for a stay of execution pending the outcome of the appeal.*

3. *I pray the Honourable Court to consider the following circumstances in granting the stay of execution.*

i) *I would suffer loss which would not be compensated in damages.*

ii) *In a case heard during my temporary absence from the country damages totalling Seychelles Rupees 142,027.10 and 69,450.80 respectively were awarded to the Respondents.*

iii) *That without a stay of execution, the Applicant would be ruined.*

iv) *The Appellant cannot settle such "debt" which has been miscalculated and inflated.*

v) *There are substantial matters in law to be adjudicated upon at the hearing of the appeal namely:*

a) *That I was not served with summons to file my defence nor was I in the jurisdiction when the case was heard.*

b) *That judgment was given against Special Operations Security and not the Appellant.*

c) *That the Employment Tribunal failed to notify the Appellant of the date of the Ex-parte hearing.*

d) *That the damages awarded in both cases are manifestly excessive.*

e) *Both judgments are manifestly wrong and irreparable loss would be caused if a stay of execution is not granted.*

f) *That it is just and necessary and in the interest of justice for the stay of execution to be granted.*

- g) *That both matters were heard by only 2 members of the Employment Tribunal contrary to Schedule 6 para 6(1) of the Employment Act 1995.*
- h) *That I have not been treated with justice and fairness.*
- i) *That my right to a fair hearing has been violated.*
- j) *All the above averments are true to the best of my knowledge, information and belief [...]."* [verbatim]

11. The following grounds of appeal have been raised in the notice of appeal, exhibited with the evidence by affidavit in support of the notice of motion —

- "1. *The Supreme Court neglected and refused to hear the Plea in limine litis filed by the Respondents and subsequently proceeded to dismiss the appeal.*
- 2. *The learned Judge dismissed the appeal without a hearing when the Appellant requested a copy of the proceedings from the Employment Tribunal.*
- 3. *The learned Judge erred in law when he refused to grant an adjournment for the appellant to have sight of the proceedings before replying to the Plea in Limine.*
- 4. *The learned Judge erred in law when he disregarded the fact that the Employment Tribunal has heard the case in the absence of the Appellant who was out of the country and who was not issued with notice for the hearing and notification for the ex-parte hearing.*
- 5. *The Supreme Court erred in law when it failed to take into consideration the fact that the Employment Tribunal breached Section (6) (20 of Schedule 6 of the Employment Act, which stipulates that "in a proceeding before the Employment Tribunal, there shall always be a representative from the Employers organisation and the trade union sitting as a member provided where parties to a dispute agree that the Chairperson or the vice-chairperson may sit with only one member."*
- 6. *The Tribunal proceeded with the hearing despite being aware of the reason for the Appellant's absence.*
- 7. *The Tribunal erred in law when it failed to make the Appellant a party to the proceedings.*
- 8. *It is averred that judgment was issued against a "business name" trading as Special Operation.*

9. *The Tribunal erred in law it violated the Appellant's right to a fair hearing.*
10. *The said order is defective in that one member of the Tribunal signed it."*  
[verbatim]
12. The Applicant and the First and Second Respondents have submitted written arguments for consideration.
13. The Applicant submitted in his written submissions that he was appealing against the ruling of the learned Judge to dismiss his appeal from the judgments of the Employment Tribunal and refusal to grant a stay of execution of the judgments of the Employment Tribunal.
14. From my understanding, the Applicant is seeking a stay of execution of the ruling of the learned Judge dismissing his appeals. I note that his grounds of appeal also raised the same issues as those previously raised in his appeal against the judgments of the Employment Tribunal. It is unclear why the Applicant is seeking to stay the execution of CV-MA-0194-2022 and CV-MA-0210-2022, which is unheard of. It is possible that the mention of CV-MA-0194-2022 and CV-MA-0210-2022 in his notice of motion could be an error.
15. Despite the evident confusion, during the hearing of the application, I pointed out to Counsel for the Applicant that according to rule 16 of The Seychelles Court of Appeal Rules, 2005, as amended, an application should have been made to the Supreme Court initially since *ex facie* the grounds of appeal, the appeal is against the ruling of the learned Judge. Counsel for the Applicant was allowed to respond but did not address this issue in subsequent submissions.
16. The First and Second Respondents have raised objections regarding the form and substance of the affidavit. However, I do not need to address their objections at this stage.
17. Based on the consideration above, I conclude that the Applicant should have filed an application for stay with the Supreme Court initially, in accordance with rule 16 of the Seychelles Court of Appeal Rules 2005, as amended.
18. Hence, the application is dismissed with costs.

Signed, dated and delivered at Ile du Port on 4 July 2023

A handwritten signature in black ink, appearing to read 'Robinson', written in a cursive style.

Robinson Justice of Appeal