IN THE SEYCHELLES COURT OF APPEAL

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

Civil Appeal SCA 56/2011 and 08/2013

(Appeal from Supreme Court Decision 28/2015)

Mukhtar Ablyazov — Appellant

Versus

1. Jeremy Outen
2. John Milson
3. David Standish

Respondents

Heard: 19 August 2015

Counsel: Mr. Frank Ally and Mr. Basil Hoareau for the Appellant

Mr. Kieran Shah for the Respondents

Delivered: 28 August 2015

JUDGMENT

S. Domah (J.A)

[1] We are in presence of two appeals which are consolidated from two decisions of the then Ag. Chief Justice who acceded to an application made by the respondents to recognise a Receiving Order made by the English Courts thereby enabling the respondents to give effect to the orders made thereby to extend their powers of receivership to cover the assets found in the jurisdiction of Seychelles.

[2] In the first appeal (SCA 56/2011), the appellant is seeking the quashing of the Ex parte Order made on 13 October 2011 by the Ag Chief Justice in this jurisdiction whereby the powers of the respondents given in the English Court were extended to this jurisdiction. His orders followed an ex parte application made before him by the respondents seeking

the recognition of a Receiving Order made by the High Court of Justice of England and Wales, Queen's Bench Division, Commercial Court dated 6th August 2010 through to 23rd January 2013, all comprising 12 in number of various dates.

[3] The purpose of the Order was, inter alia, to authorize and permit the Receivers to take all steps within the jurisdiction of Seychelles to recover and preserve the assets which fell under their mandate and which were found in the jurisdiction of Seychelles. This power included the location of those assets through enquiries, requests for information and documents which may lie in the possession or control of any person, bank or company within our jurisdiction.

[4] The grounds for such an application were fully set out in the affidavit evidence which accompanied the application. In short, they had been appointed to receive a substantial number of assets owned, or reportedly presently owned, by Mr Ablyazov but as ill-gotten gains. His co-operation in the matter was left very much to be desired somuch so that he had ended up fleeing the English jurisdiction, was sentenced for contempt of court and found himself in custody of the French courts pending extradition proceedings.

[5] On 13 October 2011, the Ag Chief Justice, Karunakaran, granted the recognition order to authorize and permit the receivers to extend their receivership to the jurisdiction of Seychelles insofar as the assets of Mr Mukhtar Ablyazov, the appellant, could be found here.

[6] In the second appeal (SCA 08/2013), the appellant is seeking the quashing of the orders made in this jurisdiction on 14 February 2013 whereby 11 companies are listed as falling under the mandate of the receivers: Avalle Consulting Ltd, Avgur Group Ltd, Direct Logistic Solutions Ltd, Fexon International Ltd, Impulse Capital Corp, Jadason Enterprise Ltd, Lucky Kingdom Investments, Powermatic Data Ltd, Tedcom Finance Ltd, Varna Limited and Lafe Technology Ltd.

[7] The grounds of appeal in SCA 56/2011 are:

1. *The learned trial judge erred in law in recognising and/or declaring enforceable in the Seychelles the order of the High Court of the Justice of*

England and Wales, Queen's Bench Division, Commercial Court dated 6th August 2010 (as extended on 26th January 2011, 8th April 2011, 27th May 2011 and 9th June 2011) made in the proceedings between JSC BTA Bank and Mukhtar ABLYAZOV and Others (Claim No. 2009, Folio 1099) (the "English Receiving Order") since the English Receiving Order was not final and conclusive.

2. *Alternatively to grounds (1) above, the learned trial judge erred in law in recognizing and/or declaring enforceable in Seychelles the English Receiving Order since the English Receiving Order could only be rendered enforceable and executory in Seychelles if the Supreme Court had ordered the registration of the English Receivership Order and the said Order was in accordance with the Supreme Court Order registered in terms of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 85.*
3. *Alternatively to grounds (1) and (2) above, the learned trial judge erred in law in recognizing and/or declaring enforceable in Seychelles the English Receiving Order since the Respondents have wrongly commenced proceedings by Notice of Application instead of by way of a Plaint.*
4. *Alternatively to grounds (1) and (2) above, the learned Judge erred in law in hearing and determining the application solely on Affidavit evidence.*
5. *Alternatively to grounds (1) and (2) above, the learned Judge erred in law in hearing and determining the application, in the absence of and without notice to, the Appellant and in breach of the right to fair hearing of the Appellant and contrary to the principles of natural justice.*

[8] The grounds of appeal in SCA 08/2008 are:

1. *The learned trial judge erred in law in recognising and/or declaring enforceable in the Seychelles the order of the High Court of the Justice of England and Wales, Queen's Bench Division, Commercial Court dated 6th August 2010 (as amended on 10th November 2010, 26th January 2011, 8th April 2011, 27th May 2011, 8th March 2012 and 24th April 2012, 22nd May 2012, 9th August 2012, 23rd August 2012, 25th (sic) August 2012 and 25th January 2013) ("the English Receiving Order") made in the proceedings between JSC BTA Bank and Mukhtar ABLYAZOV and Other*

(Claim No. 2009, Folio 1099) (the "English Receiving Order") since the English Receiving Order was not a judgment of our Foreign Judgements (Reciprocal Enforcement) Act, Cap 85.

2. *Alternatively, the learned Trial Judge erred in law in recognising and/or declaring enforceable in the Seychelles the English Receivership Order, since the English Receivership Order was not final and conclusive (under) the Foreign Judgements (Reciprocal Enforcement) Act, Cap 85.*

3. *Alternative to ground (1) and (2) above, the learned Trial Judge erred in law in recognising and/or declaring enforceable the English Receivership Order in Seychelles since the English Receivership Order could only be rendered enforceable and executor in Seychelles (if it could be so rendered), if the Supreme Court had ordered the registration of the English Receivership Order in Seychelles and the said Order was in accordance with the Supreme Court Order registered in terms of the Foreign Judgements (Reciprocal Enforcement) Act, Cap 85.*

4. *Alternative to grounds (1), (2) and (3) above, the learned Trial Judge erred in law in recognising and/or declaring enforceable in Seychelles the English Receivership Order since the Respondents have wrongly commenced proceedings by Notice of Application instead of by way of a Plaint.*

5. *Alternative to ground (1), (2) and (3) above, the learned Trial Judge erred in law in hearing and determining the application solely on Affidavit evidence.*

6. *Alternative to grounds (1), (2) and (3) above, the learned Trial Judge erred in law in hearing and determining the application, in the absence of and without notice to, the Appellant and in breach of the right to fair hearing of the Appellant and contrary to the principles of natural justice.*

THE FACTS

[9] Mr Mukhtar Ablyazov is a national of Kazakhstan and was at the material time resident in England, having obtained asylum status in England. He had been the Chairperson of JSC BTA Bank ("the Bank") in Kazakhstan and complaints were made against him that he has misappropriated vast sums of money during the time he was in the chair. The

sums involved billions of dollars. The JSC BTA Bank sought a receiving order against him to recover the assets at the Commercial Court, Queen's Bench Division of the High Court of Justice of England and Wales. At the end of an adversarial hearing which lasted 4½ days, Teare J. issued the Receiving Order, following which the Respondents were appointed as joint receivers. The Receivers are based in London. The tainted proceeds of the appellant reportedly lie in hundreds of companies, trusts and nominee holdings around the world, including the jurisdiction of Seychelles.

[10] The Respondents have sought and already obtained recognitions for the tracing of the assets of Mr Ablyazov in many of the jurisdictions from the number of countries involved in the large network of the businesses of Appellant: Austria, Belize, the British Virgin Islands, Cyprus, Dominica, Germany, Jersey, Lithuania, Luxembourg, the Netherlands, St Vincent and the Grenadines, Switzerland, Ukraine and Hong Kong. Seychelles is not the first.

[11] It is also worthy of note that as it came to light that further entities were involved in the international and transnational network of Mr Ablyazov, the respondents progressively went to Teare J. to seek an extension of their mandate to cover the assets of the appellant as a matter of professional prudence.

[12] Mr Ablyazov had been offered the opportunity to make an application for setting aside the orders of Ag Chief Justice Karunakaran. But he did not. He preferred to appeal to this Court against the orders on the grounds as have been stated above. There were four orders made but the appeal is only with respect to the first and the fourth.

[13] We consider it more appropriate to answer the first point raised in Ground 1 of the 2nd Appeal against the decision handed down on 14 February 2013: namely, the applicability or otherwise of CAP 85. The answer to that question will have a bearing on how the rest will be disposed of, more particularly, the issue of the need for registration and that of the impugned non finality or inconclusiveness of the orders made by Teare J.

GROUND 1 of SCA 8 of 2013

THE SCOPE AND THE LIMITS OF CAP 85

[14] It is the argument of Mr Basil Hoareau under Ground 1 of SCA 8/ 2013 that the process in this case is inherently flawed by the omission of the respondents to register the foreign judgment before proceeding with it.

Need for registration of foreign judgement

[15] As per section 4(1) of Cap 85, an applicant to a foreign judgment should proceed by way of up-front registration. It is, in fact, the registration which becomes the substance of the matter and the contest takes place at this stage as may be evident by reading the sections hereunder reproduced.

[16] The relevant part of section 4(1) reads:

> "*4. (1) A person, being a judgment creditor .... may apply to the Supreme Court to have the judgment registered in the Supreme Court, and on such application the court shall, subject to proof of the prescribed matters and to other provisions of this Act, order the judgment to be registered provided that ....*"

[17] Section 4(2) also gives the status of a registered judgment in terms of the its legal effect. In other words, the registering court shall have the same control over the execution of a registered judgment as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.

[18] The respondents have answered this argument and submitted that their action is not an action under Cap 85 (Foreign Judgment Reciprocal Enforcement) Act ("Cap 85"). Cap 85 in their analysis deals with the execution of money judgment and this was not a money judgment.

[19] We have examined Cap 85 in its own right and in the history of the legislation by tracing it from the original Cap 99 of 18th February 1922. On the face of it the definition section would seem to be in favour of the submission of the appellant. "Judgment" means a

judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party," so that it covers civil proceedings not limited to monetary orders.

[20] However, when we look at the application sections we find that the Act makes a distinction among three categories of foreign judgments.

a. foreign judgements which are money judgments which are enforceable on registration under the Act and become executory after the process;
b. foreign judgements which are not monetary which can become enforceable only on the President's order which must be published in the Gazette (we are not aware of any nor have we been shown of any by the appellant.
c. foreign judgments which are recognised *per se* by the courts presumably not for execution as such but for further action on them.

[21] It is to be noted that the power of the Supreme Court to recognise foreign judgements is left untouched by CAP 89. At section 11(1) we read as follows:

> *"(3) Nothing in this section shall be taken to prevent any court in Seychelles recognising any judgment as conclusive of any matter of law or fact decided therein if that judgement would have been so recognised before the passing of this Act."*

[22] The English Receiving Order, it is admitted by the Appellant, is not and could not be treated as a judgment under which involved "*payment of a sum of money in respect of compensation or damages to an injured party* through either a civil or a criminal proceedings. Ground 1 of SCA 8/2013 fails.

[23] The jurisdiction of the Courts in Seychelles has not been curtailed but saved by CAP 89 to recognise foreign judgments.

Ground 1 of SCA 8/2013, accordingly, fails.

Ground 1 of SCA 56/2011 and Ground 2 of SCA 8/2013

Registration

[24] Since we have decided that CAP 85 is not applicable, the question of registration under CAP 85 does not arise.

Ground 2 of SCA 56/2011 and Ground 3 of SCA 8/2013

Foreign Judgment to be Final and Conclusive

[25] Mr Basil Hoareau also submitted that, as per section 3(2)(a) of CAP 85, there is a formal requirement that the judgment should be final and conclusive in the first place.

[26] From the moment we have decided that CAP 85 is not applicable to this case, the controversy that the judgement is or is not final and conclusive is purely academic. For the same reason as for registration, we consider that there is no substance in Ground 2 of SCA 56/2011 and Ground 3 of SCA 8/2013 as well.

[27] However, to the extent that this term may be applicable to the Receiving Order made, we would wish to state that final and conclusive may only be interpreted with respect to the judicial proceedings which led to the order and not to the order itself. In this case the Teare J., after hearing the application for four and a half days came to the decision that an order should be made to appoint a receiver. There was an appeal against that order which was upheld. The order for appointment therefore was final and conclusive. If there have been amendments to the orders, these amendment do not impair anything from the finality and the conclusiveness of the judgment delivered on 26 November 2010. .

Ground 3 of SCA 56/2011 and Ground 4 of SCA 8/ 2013

[28] It has been submitted before us under Ground 3 of SCA 56/2011 and Ground 4 of SCA 8/2013 that the matter should have commenced by way of a Plaint With Summons

(PWS). The Appellant relied on the decision of **Privatbanken Aktieselskab v Bantele [1978] S.L.R. 226** where Sauzier J. commented that *"In Mauritius the procedure is to apply to the Supreme Court by motion to render the foreign judgment executor. In England, the foreign judgment is sued upon in an ordinary action. The last procedure is the correct one to be followed in Seychelles ..."*

[29] It would appear that the procedure in Mauritius is different from what it was at the time of the judgment. But we are concerned with this jurisdiction. On this point, it is important not to give to the comment of Sauzier J. A wider import than the plain meaning. "Sued upon in an ordinary action" can hardly mean "sued upon by means of a plaint." The ordinary action referred to by Sauzier J. , is in clear contrast, contextually, to an executory action as in the case of Mauritius. Ordinary actions start in Seychelles, as in England, by several methods: by plaints, by motions, by applications and by petitions and, lately, in England by claim forms. This is the meaning which should be attached to the words of Sauzier J.

[30] This issue was addressed in the case of **Dhanjee v Dhanjee (Civil Appeal no. 13/2000)** which favourably decided that Sauzier J. could not have restricted it necessarily to a plaint.

[31] In fact in the case of receivers, actions start by applications and not by plaints: see White Book, Practice Directions, Insolvency Proceedings, Section 3E: 50 et seq.

[32] The procedure obtaining in Seychelles is as it used to be before in England: i.e. initiated by way of plaints, petitions or motions. The nature of the action will determine whether the action should be by plaint, petition or motion. That is the choice of the initiator and the nature of the action. Whether in the English procedure for Receivership or the Seychelles law of Receivership, it starts by way of petition. They have also submitted that the application should have proceeded by way of execution in terms of section 227 of the Civil Procedure Code read with former Article 2123 of the Civil Code (incorporated by reference in the said section 2270.

[33] Accordingly, we consider that there is no substance in the argument that the respondents should have started their action for recognition by way of a plaint with summons. There is no merit in the grounds under consideration and they are dismissed.

[34] We adopt the reasoning that procedure is the hand-maid of justice and should not be made to become the mistress even if many hand-maids would aspire to become mistresses: see **Gill v Film Ansalt 2003 SLR 137; Mary Quilindo and Ors v Sandra Moncherry and Anor SCA 29 of 2009; Toomany and Anor v Veerasamy [2012 UKPC 13.**

[35] In the **Toomany and Anor v Veerasamy,** the Law Lords of the Judicial Committee such technicalities raised to shut out litigants from the court system constitute a blot on the administration of justice. This has been made part of the law of Seychelles as per the decision of Twomey JA, now Chief Justice.

Ground 4 of SCA 56/2011 and Ground 5 of SCA 8 of 2013

[36] Was anything amiss that this recognition order was made on affidavit evidence? The appellant submits before us that the action was wrongly based on affidavit evidence. Learned counsel has not substantiated his proposition.

[37] Our answer is that it is the principle of courses for horses which should apply. From the moment the respondents chose to initiate their action through an application, it followed that the hearing would be, by and large, by affidavit evidence and not by oral testimony. It is a case ill-suited for *viva voce* testimony, considering the nature of the action, the remedy prayed for, the practice of the courts, the type of the party involved and the related matters of proceedings and pleadings. He who pays the piper calls the tune. He who initiates action has the carriage of of proceedings.

[38] Affidavit evidence is a convenient way of dealing with cases where the determination of the central issue in the case does not depend upon *viva voce* testimony of witnesses where the demeanour in the course of the depositions becomes relevant to identify truth from falsehood. Where such *viva voce* evidence is not required and documentary evidence will largely suffice, affidavit evidence is as good evidence as oral deposition.

Where certain facts in the affidavit evidence are contested, the other party may always move to call the affidavit deponent in the witness box to subject him to cross examination. The probative weight in such evidence is as good as best evidence. That way the weakness indicated in the case of **Margaret Herbert v Martha Hossel [1984] SLR 127** as regards affidavit evidence is catered for. The good sense in conducting such cases by affidavit evidence fully comes to light in the explanations set out in Halsbury, 4th Edition, at paragraph 819-821.

Ground 5 of SCA 56/2011 and Ground 6 of SCA 8 of 2013

[39] The decision is being challenged on the ground that the appellant has not had a fair trial and the decision has been given in breach of natural justice.

[40] This assumes that the respondent is in trial and he has been convicted without a hearing. We are concerned here with a matter of looking for the place in Seychelles where the appellant on reasonable suspicion, following complaints made, has hoarded ill-gotten gains in a network of entities worldwide. There was justification in the application, as with other applications of such a nature, to be made *ex parte* subject to the judge examining the justification of same. In this case, it goes without saying that had the orders been made *inter partes*, the risks would have run high for the assets to vanish in thin air by the time the respondent made an appearance. It is still open to the respondent to co-operate and to make disclosures to assist the Receivers in their task. He is not on trial here. Fairness demands that he makes fair and frank disclosures. The appellant had been offered the liberty to apply for the discharge of the order/s. He did not do so. He chose to appeal not having exhausted his available remedies at the lower court. Much more than a breach of fairness to the appellant, it smacks of an abuse of process by the appellant.

[41] Grounds 5 of SCA 56/11 and Ground 6 of SCA 8/13 are dismissed as frivolous and vexatious.

[42] None of the grounds of appeal having shown substance, the appeal must fail. However, it is befitting that we set out the law of recognition of foreign receiving orders.

THE LAW AS REGARDS RECOGNITION OF RECEIVING ORDERS

[43] From the decisions of various jurisdictions, it would appear that actions of receivers and their recognition in countries other than where they were originally appointed fall under a different category of cases with transnational ramifications and concerns for the legal system of all the national courts. Various reasons have been put forward as the rationale behind giving effect to the decisions of courts such as the comity of nations, the principles of conflicts of laws, the rule of *competence-competence* etc. Whichever may be the rationale, the fact remains that recognition of receiving orders has emerged as a genus of its own in mutual judicial assistance, whether or not there has been a formal law for such deference. In **Halsbury, 4th Edition, at paragraph 855,** we read as follows:

> *"A receiver may be appointed of property situated in a foreign country. Although the court is unable to enforce delivery of possession it may direct an inquiry as to the best means of obtaining possession, and make any necessary order on a defendant within its jurisdiction:* **Cockburn v Raphael (1825) 2 Sim & St 453**. *It is usual to authorise the receiver to appoint an agent to act in the foreign country:* **- v Lindley (1808) 15 Ves 91; Cockburn v Raphael (1825) 2 Sim & St 453**. *The Court will recognise a person in the position of a receiver appointed by a foreign court:* **Lepage v San Paulo Copper Estates Ltd (1917) 33 TLR 457** *either by recognising his title to the assets located in England or setting up an auxiliary receivership in England, but only if the court is satisfied that there is sufficient connection between the defendant and the jurisdiction in which the foreign receiver was appointed*: **Schemmer v Property Resources Ltd [1975] Ch 273, [1974] 3 All ER 451.**

[44] With respect to assuming competence, courts of unlimited jurisdictions have invoked their inherent jurisdiction functions to assume competence to recognise orders made by foreign courts to the extent that the assets may be traced in their own jurisdictions, irrespective of whether there exist a formal law between democratic nations to co-operate and collaborate in judicial matters within the limits of their territorial jurisdictions presumably as a modern application of *lex mercatoria*. But we shall not enter into this debate. A distinction is made between making a foreign judgment executory and

recognising a foreign judgment. A national court seems to take into account that a receiving order is not an enforcement exercise but a protection exercise under the principle of good order under the rule of law. Protection of assets no matter which jurisdictions the assets exist in is of a universal concern. Courts have therefore invoked their inherent jurisdictions to do so.

[45] **Privatbanken Aktieselkab v. Bantele 1978 SLR 226** had to do with execution of judgments but the principles behind recognition and exequatur are not far different. The relevant part reads:

> *"foreign judgments can only be enforced in Seychelles if declared executor by the Supreme Court of Seychelles, without prejudice to the contrary provisions contained in any enactment or treaty."* (see p. 232).

[46] We are happy to confirm as good law the decision given by Sauzier J. in the case as regards execution and hold that they may also be used for recognition in matters of receiverships. The conditions are:

1. the foreign judgment must be capable of recognition execution in the country where it was delivered;
2. The foreign court must have had jurisdiction to deal with the matter submitted to it;
3. The foreign court must have applied the correct law ("la loi competence") to the case in accordance with the rules of Seychelles private international law;
4. The rights of the defence must have been respected;
5. The foreign judgment must not be contrary to any fundamental rules of public policy;
6. There must be absence of fraud.

[47] With respect to the procedure, courts have been realistic. In the case of **Dhanjee v Dhanjee , Civil Appeal no. 13 of 2000,** this Court held that substance should prevail over form. It commented as follows:

> *"it was not contended that the form of the application filed by the respondent prevented the appellant from raising the appropriate defences*

nor was it suggested that the failure to file a plaint caused any prejudice whatever to the appellant in the presentation of his case before the Supreme Court."

[48] It bears repetition that recognising a receivership is an asset protection exercise and not an asset enforcement exercise. It relates to the power of the competent court in one country to exercise authority to co-operate with the competent court in another jurisdictions, within the limits permissible under the rule of law under both jurisdictions and subject to the internal laws of each state for the purpose of ensuring that no jurisdiction becomes either a safe haven or a safe conduit for ill gotten gains.

[49] As far as English Courts are concerned, in **Schemmer v. Property Resources Ltd [1975] 1 Chancery 273** at p. 287 E-F, there started a discussion on whether the jurisdiction of recognition is grounded on the principle of comity of nations but did not venture a final word on it. It none the less held that:

"an English Court will either recognise directly the title of a foreign receiver to assets located here, or, by its own order, will set up an auxiliary receivership in England. To do either of those things the court must previously, in my judgement, be satisfied of a sufficient connection between the defendant and the jurisdiction in which the foreign receiver was appointed to justify recognition of the foreign court's order, on English conflict principles, as having effect outside such jurisdiction."

[50] Other courts have followed suit. Thus, in **Kilderkin Inves. V. Player 1984 CILR 63,** the Grand Court in Cayman islands recognised the appointment of a receiver and manager appointed by the Supreme Court of Ontario in Cayman Islands. The Grand Court granted the order on an ex parte application for the Canadian appointed receiver manager to identify and locate all the defendant's assets within the jurisdiction. It held that the legal position in the matter was the same in Canada as it was in England and, by derivation, the Cayman Islands. The Grand Court had jurisdiction (derived from that exercised by the High Court in England) to recognize in the Cayman Islands the appellant as receiver appointed by a foreign Court if it were satisfied that there was a sufficient connection between the receiver and the jurisdiction in which the appellant was

appointed to justify recognition of the foreign court's order. It went on to state that, in the absence of local rules dealing specifically with the procedure for the recognition of a foreign-appointed receiver manager, it was proper to follow the procedure laid down for the appointment of a receiver within the jurisdiction and, under the terms of the Grand Court Law, ss 13(1) and 20, the English Supreme Court Act 1981, s. 37(1) and the Rules of the Supreme Court, O. 30 r. 1 therefore applied. Under these provisions, it was open to a defendant, or other applicant with a sufficient interest in the matter, to apply ex parte for the appointment of a receiver and an interlocutory application could properly be made of the relief claimed was incidental to or arose out of the relief claimed by a plaintiff.

[51] It further took the view that the procedure adopted was justified by the urgency of the application. So was the *ex parte* application. And any strict non compliance with the rules was minor with no incidence on substance.

[52] Further, in **Millenium Financial Limited and Thomas MC Namara and Anor, HCAP 2008/012,** the Court of Appeal of Saint Christopher and Nevis, with a similar issue of the power of the courts of that jurisdiction to recognise the order of appointment of a receiver appointed in a foreign court: i.e. the United States adopted the English position: namely, the test of sufficiency of connection: whether the defendant involved in the action has a sufficient connection with the jurisdiction in which the receiver was appointed. It added that, in the absence of a statutory basis, the inherent jurisdiction of the court provides the requisite authority for the recognition of a foreign appointed receiver. But where a statute makes provision for any matter, the statute will prevail and inherent jurisdiction may not be invoked.

[53] In Seychelles, the procedure for the recognition of foreign judgments need to be looked not so much in the context of common law but in the context of our written Constitution. What is our jurisdiction to adopt the English position in recognising foreign receivership orders, the type that was made in **Schemmer v. Property Resources Ltd [supra]**?

[54] Article 125 of the Constitution provides:

"There shall be a Supreme Court which shall, in addition to the jurisdiction

and powers conferred by this Constitution, have –

(a) original jurisdiction in matters relating to the application, contravention, enforcement or interpretation of this Constitution;

(b) original jurisdiction in civil and criminal matters;

(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority ….; and

(d) such other original, appellate and other jurisdiction as may be conferred on it by or under an Act."

[55] From then on, we proceed to examine the provision of the Courts Act which vests various jurisdictions upon the Supreme Court of Seychelles. With regard to its general jurisdiction, section 4 provides:

> *"4.The Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England."*

[56] As regards civil jurisdiction, section 5 reads:

> *"5.The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England."*

[57] And as regards equity jurisdiction, section 6 provides:

"6. The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles."

[58] But there is more. After vesting admiralty jurisdiction in section 7 and jurisdiction in disciplinary matters over the legal profession in section 8, it specifically vests all the powers and privileges of the High Court of Justice in England as regards the criminal, appellate jurisdiction in section 9 and 10 to the Supreme Court of Seychelles.

[59] Finally, the *coup de maitre* provision is found in section 11 as regards the extent of jurisdiction of the Supreme Court. It vests extra-territorial powers also.

"11. The jurisdiction of the Supreme Court in all its functions shall extend throughout Seychelles:

Provided that this section shall not be construed as diminishing any jurisdiction of the Supreme Court relating to persons being, or to matters arising, outside Seychelles."

[60] This matter of the receivership, albeit issued in another country, concerns Seychelles by virtue of their registration in Seychelles and facts which show they may hold tainted assets. Our jurisdiction is seriously concerned – whether under the name of comity of nations, conflict of laws, competence-competence, parity or any other name – to recognise it in Seychelles, all the more so when the Supreme Court of Seychelles has the same powers as the High Court of England and Wales.

[61] For the reasons amply set out above, we dismiss the appeal with costs.

S. Domah (J.A)

I concur:. **…….** A.Fernando (J.A)

I concur:. **…….** J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 28 August 2015