

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 1024...
MA 319/2019 arising from
Ex Parte 134/2017

In the matter between:

MIRENDA ESPARON
(rep. by Alexandra Madeleine)

Plaintiff

and

ALEXIS MONTHY
(rep. by Serge Rouillon)

Defendant

Neutral Citation: *Esparon v Monthy* (MA319/2019 arising from EXP134/2017[2019] SCSC 1024 (20th November 2019))

Before: Pillay J

Summary: Motion for stay of execution pending appeal

Heard: By way of submissions

Delivered: 20th November 2019

ORDER

The motion for stay of execution is granted

RULING

PILLAY J

[1] The Applicant in the case by way of a motion dated 14th October 2019 moves this Court for an order to stay the execution of the Order delivered by this Court in XP134/2017 Alexis Monthy v Mirenda Esparon on 4th September 2019.

- [2] By the said order this Court had refused the objection to licitation proceedings and the application to order division in kind in lieu of licitation. This Court had further declined the application to order a stay of proceedings on the basis that the sale of the property would cause the Petitioner (Applicant in the present proceedings) hardship.
- [3] The motion is supported by an affidavit as well as notice and memorandum of appeal dated 11th October 2019.
- [4] By way of affidavit in response dated 22nd October 2019 the Respondent (Monthy) objects to the motion being granted on the basis that the appeal has no merit and is frivolous and vexatious and raises no serious questions of legal procedure, facts and law.
- [5] Counsel for the Respondent submitted further that the present Application seeks to achieve the same result as before with the objections to licitation using another route of stay and appeal.
- [6] Counsel relied on the cases of **MacDonald Pool v Despilly William CS No. 244 of 1993 (11 October 1996)**, **Falcon Enterprise v Essack & Ors (2001) SLR 137** and **Casino des Iles v Compagnie Seychellois (Pty) Ltd SCA 2/1994** as to the guiding principles to be relied on in order to determine whether or not to stay execution.
- [7] Counsel for the Respondent further objected to any records of proceedings being used in conjunction with the affidavit in support of the motion on the basis that the affidavit refers to the record of proceedings and the final ruling of the judge whereas no proceedings have been attached to the motion.
- [8] Counsel further submitted, in summary, that the “Applicant has not pleaded or averred or adduced any evidence in support of the ground that if a stay of execution is not granted, the appeal, if successful would be rendered nugatory”. Counsel submitted that there are no ground for the Court to grant a stay of execution of the order pending the determination of the appeal since the Applicant’s affidavit fails to disclose all the material averments necessary for the Court to make a proper determination of the motion filed by the Applicant.

[9] In the case of **Pool v William (1996) SLR 206** the considerations for granting a stay of execution was explained as

(1) Whether an appellant would suffer loss which could not be compensated in damages;

(2) Where special circumstances of the case so require;

(3) If there is proof of substantial loss that may otherwise result;

(4) If there is a substantial question of law to be adjudicated upon at the hearing of the appeal; or

(5) If the appeal would otherwise be rendered nugatory.

[10] Of relevance is also the case of **Avalon v Berlouis (2003) SLR59** wherein the Court explained that “all relevant facts, competing interests and circumstances of the case” will be taken into account and a decision made whether, “in the interests of justice” a stay of execution should be granted or refused.

[11] In as much as the Applicant has not filed submissions, this Court cannot close its eyes to the decision which resulted in the current motion being filed and all the circumstances surrounding same. In terms of documentation necessary to support the motion is the affidavit in support of the motion as well as notice and memorandum of appeal to show that in fact there is an appeal filed, all of which are on file. It is the view of this Court that the proceedings of or records of the case which led to the impugned decision are not necessary for the Court in consideration of a motion for stay of execution pending appeal.

[12] In the instant case one could say that the Applicant would not suffer any monetary loss in view of the fact that she would get a half share of the proceeds of the sale in the event that the motion for stay is refused and the sale proceeds.

[13] However, the Applicant’s fundamental claim is that she would suffer irreparable loss in that she would lose her home if the sale was to proceed. In those circumstances if the sale was to go through before the appeal is heard that would render the appeal nugatory.

[14] On that basis this Court grants the motion for a stay of execution pending the appeal of the Applicant. It is so ordered.

Signed, dated and delivered at Ile du Port on **20th November 2019**

Pillay J