

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 210/2017

(arising in CS 246/2006)

[2017] SCSC 1050

PETER LESPERANCE

Applicant

versus

BENNY BASTIENNE

Respondent

Heard: 11 October 2017

Counsel: Mr. Frank Elizabeth for applicant

Ms. Karen Domingue for respondent

Delivered: 7 November 2017

ORDER ON MOTION

M. Twomey, CJ

[1] The Applicant in a motion before this Court moved for a stay of execution of an Order of the Supreme Court in which inter alia the Applicant was ordered to pay moral damages in the sum of SR50,000 and that all the land, namely LD 188 and the unsurveyed portion of land remaining after the subdivisions resulting in Parcels LD 1783, LD 1784 and LD 1785 (now LD1868 and LD 1869) including the land on which the Second Defendant's house stands, be registered as the property of the Estate of Joachim Roger Lesperance.

- [2] In his supporting affidavit the Applicant has claimed that he has filed an appeal from the decision with some prospect of success, that there are substantial questions of law and facts involved and that if the appeal were to be successful, such judgment would be rendered nugatory unless the stay was ordered.
- [3] The Respondent stated at the hearing of the application for the stay of execution that he would be objecting to the application and would file submissions on the same. By 11 October 2017 such submissions were not on file and to date none have been filed. I therefore have to proceed in the absence of the objections to rule on the application before me as supported by the affidavit.
- [4] The powers of the Court in these circumstances are contained in Section 200 of the Seychelles Civil Code Procedure. These powers are entirely discretionary.
- [5] There is a wealth of authorities in Seychelles mostly relying on the English case of *Wilson v Church (No. 2)* 1875 ChD 454 on the issue of nugatoriness.
- [6] In *Choppy v NSJ Construction* (2011) SCR 215 and *Chow v Bossy* SC 53/2011, the Australian case of *Alexander vs Cambridge Ltd* (1985) 2 NSWCR 685 was cited for the proposition that in applications for stays of execution :-
- a. The onus is upon the applicant to demonstrate a proper basis for a stay which will be fair to all the parties.
 - b. The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.
 - c. The court has a discretion involving the weighing of considerations such as balance of convenience and competing rights of the parties.
 - d. Where there is a risk that the appeal will prove abortive if the appellant succeeds and a stay is not granted, courts will normally exercise their discretion in favour of granting a stay.

- e. The court will not generally speculate upon the appellant's prospect of success, but may make some preliminary assessment about whether the appellant has an arguable case, in order to exclude an appeal lodged without any real prospect of success simply to gain time.
- f. As a condition of a stay the court may require payment of the whole or part of the judgment sum or the provision of security.

[7] This Court is persuaded by this approach and finds that in the present case a proper basis for a stay has been established by the Petitioner in that it would be fair to all parties that a stay be granted given the points of law raised in the case and also that a small delay in the payment of the moral damage will not cause undue hardship to the Defendants.

[8] I therefore order a stay of execution of the judgment of the Supreme Court dated 5th June 2017 against the Applicant pending the appeal before the Seychelles Court of Appeal.

[9] I further invite the Court of Appeal to set an early date for this appeal given that it arises from a case instituted in 2006.

[10] I also order that no further action is taken by any parties to this case in relation to the land at La Digue subject to this dispute, namely Parcel LD 1869 or its subdivisions, LD 188, LD 1704, LD 1705.

[11] Costs will abide the event.

Signed, dated and delivered at Ile du Port on 7 November 2017

M. Twomey, CJ
Chief Justice