

**IN THE COURT OF APPEAL OF SEYCHELLES**

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**Reportable**

[2021] SCCA 52  
CR SCA MA 03/2021  
(Arising in CR SCA 14/2021)

**Mahalingam Kanapathi**  
*(rep. by Mr. Clifford Andre)*

**Applicant**

and

**The Republic**  
*(rep. by Mr. Joshua Revera)*

**Respondent**

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**Neutral Citation:** *Kanapathi v R* (CR SCA MA 03/2021) [2021] SCCA 52 (Arising in CR SCA 14/2021)

**Before:** Dingake JA

**Summary:**

**Heard:** 17 August 2021

**Delivered:** 17 August 2021

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**ORDER**

The application is dismissed in its entirety.

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**RULING**

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**DR. O. DINGAKE, JA**

1. This is an urgent application for the stay of execution of the Supreme Court Judgment dated 4<sup>th</sup> August, 2021, as against the Applicant and in respect of the Ruling of Govinden CJ dated the 13<sup>th</sup> of August, 2021.
  
2. The background to this matter is that the Applicant was charged with committing the offences of fishing without a Fishing Vessel license, contrary to Section 11(1) as read with Section 58 and Section 69 of the Fisheries Act, 2014 (Act 20 of 2014) and punishable under Section 58(a) of the said Act.

3. He pleaded guilty to the charge and was fined SCR 2,500,000, and in default of paying the fine, within 14 days, he was sentenced to undergo 2 years' imprisonment.
4. The application is supported by the Affidavit of the Applicant in which he avers that:
  - (i) he has appealed against the above decision to the Seychelles Court of Appeal;
  - (ii) that if stay is granted no prejudice would be occasioned to the Republic;
  - (iii) that he has been informed that in the past such fines were not imposed and this has been taken as customary law and that he is a first offender;
  - (iv) that he has pleaded guilty at the first opportunity.
5. On the 13<sup>th</sup> of August 2021, the application of stay was heard in the Supreme Court, before Govinden CJ, and refused.
6. I have considered the supporting Affidavit and the supporting documentation, the grounds of appeal filed of record, and the sentence of the Court with great care.
7. It is trite learning that an appeal does not automatically stay execution of judgment (see Rule 20 of the Seychelles Court of Appeal Rules, 2005).
8. In an application of this nature, the Applicant stands or falls on the papers that are before the Court – the supporting Affidavit being a critical evidentiary piece which must be crafted with skill and care as to the requisite test.

9. The supporting affidavit must make out a case for urgency and the relief sought. Where this court is moved on urgency the supporting affidavit must set out in explicit terms the circumstances that render the matter urgent and why a substantial relief cannot be obtained in the ordinary course.
10. I have read the Ruling of my brother Fernando (President) in the case of *Ashraf Elmasry v Margaret Hua Sun*, Civil Appeal SCA MA 37/2019, (arising in SCA 28/2019) and the exposition of the law as set out therein.
11. The law in this jurisdiction is clear. Generally, the Court would grant stay of execution of judgment pending appeal where:
  - (a) The Appellant would suffer loss which would not be compensated in damages.
  - (b) Where special circumstances of the case require.
  - (c) There is proof of substantial loss that may otherwise result.
  - (d) There was or there is a substantial question of law to be adjudicated upon at the hearing of the appeal.
  - (e) Where the appeal would otherwise be rendered nugatory.

(*Macdonald Pool v Despilly William*, Civil Side No. 244 of 1993).
12. It is trite learning that the factual basis that would meet the above requirements of the law must be set out explicitly and clearly in the supporting Affidavit, it being remembered at all times that mere assertions or conclusions are not evidence.
13. In my judgment, having regard to the supporting Affidavit, and other documents filed in support thereof, the Applicant has failed to satisfy the Court on any of the requisite elements articulated above.

14. The view I take is that a stay of execution is a discretionary remedy and unless solid grounds are shown that tend to meet the requirements set out earlier, the general rule is to decline a stay.
15. In the result, the Applicant on the papers, has failed to make out a case for the relief sought.
16. In the premises the application is dismissed in its entirety.

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Dr. O. Dingake, JA

Signed, dated and delivered at Ile du Port on 17 April 2021.