

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 34/2015

(arising in CS 15/2015)

[2015] SCSC 48

PETER ROSELIE

Petitioner

versus

**THE SEYCHELLES CHAMBERS OF COMMERCE & INDUSTRY REPRESENTED BY
ITS CHAIRPERSON MARCO FRANCIS**

Respondent

Heard: 23rd and 24th day of February 2015

Counsel: Mr. Joel Camille for petitioner

Mr. Frank Elizabeth for respondent

Delivered: 25 February 2015

ORDER ON MOTION

Govinden J

[1] This is an interlocutory application filed by the Applicant under section 304 of the Seychelles Code of Civil Procedure (Cap 213) (hereinafter referred to as “SCCP”), of the

17th day of February 2015 for an interim injunction pending the commencement of the original action as per plaint filed on the same date which plaint is pendete lite.

[2] The plaintiff's plaint as afore-mentioned, is praying this Court for orders to:

- (i) Declare that the provisions in Rules 4.1.6 and Rule 4.2.10 of the Respondent are inconsistent with the other, cannot be reconciled and are therefore ambiguous as against each other;
- (ii) Declare the rightful interpretation to be afforded to the provisions contained in the said Rules and as regards to the membership's right to vote as set out in the same Rules.
- (iii) Grant an interim injunction, restraining the Defendant from conducting the annual general meeting on the 26th February 2015 or any (date) thereafter pending a final order of the same from this Honourable Court and in any event after the conclusion of this matter before the Court; and
- (iv) Declare that the holding of the election scheduled for the 26th February 2015, will amount to or is likely to amount to a breach of the Plaintiff's right to vote at the annual general meeting and accordingly a breach of Plaintiff's fundamental right to assemble and associate with other members of the defendant, pending the full determination of this matter before the Court.

[3] The application for an interim injunction filed on the above-mentioned date (supra) is supported by affidavit of the Applicant and supporting documents marked as A1 being the Certificate of Registration on change of name of the Respondent of the 15th day of June 2010, A2 being the Rules of the Association of the Respondent and A3, being the invitation and or notification to all of the Seychelles Chambers of Commerce and Industry (hereinafter referred to as "SSCI"), Councillors of the Council meeting of the 4th day of February 2015 and attached thereto a copy of the agenda for the SSCI Council meeting of the said mentioned date.

[4] As per the Application, the Applicant prayed the Court for the following orders:

- (i) Declare that the conduct of the Respondent in approving the new members list summarily and without consultation of the Council members is a breach of or is likely to be a breach of his right to participate in the election and the annual general meeting fairly, equitably and accordingly a breach of or a likely breach of his fundamental right to peacefully assemble and associate with other members of the Respondent;
- (ii) Declare that the Respondent in announcing the date of the election within short period of time is in breach of or is likely to be a breach of his right to participate in the election and the annual general meeting fairly, equitably and accordingly a breach of or a likely breach of his fundamental right to assemble peacefully and associate with other members of the Respondent;
- (iii) Declare that the Respondent in adopting the summary procedures and moreover in acting in a hasty manner in respect to all aspect of the election proceeds as outlined above, is acting in breach of or is likely to be a breach of his right to participate in the election and the annual general meeting fairly, equitably and accordingly a breach or a likely breach of his fundamental right to assemble and associate with other members of the Defendant;
- (iv) Declare that the provisions in Rule 4.1.6 and Rule 4.2.10 are inconsistent with each other, cannot be reconciled and are therefore ambiguous as against each other;
- (v) That the Court be pleased to declare the rightful interpretation to be afforded to the provisions contained in the said Rules and as regards to the membership's right to vote as set out in the Rules, particularly as regards the provisions in Rule 4.1.6 and Rule 4.2.10;
- (vi) That the Court be pleased to grant an Order of injunction, restraining the Defendant from conducting the annual general meeting on the 26th February 2015

or any thereafter, pending a final order of the same from this Honourable Court and in any event after the conclusion of this matter before the Court; and

(vii) Declare that the holding of the election scheduled for the 26th February 2015, will amount to or is likely to amount to a breach of his right to vote at the annual general meeting and accordingly breach of plaintiff's fundamental right to assemble and associate with other members of the Defendant, pending the full determination of the matter before the Court.

[5] The Applicant deponed to the affidavit evidence in support of his application, the substance of which is reproduced hereunder for ease of reference.

[6] The Applicant is a Seychellois citizen residing and domiciled in Seychelles and that the Respondent is an association of members, registered with the Registrar of Associations and open to the business community of Seychelles.

[7] That the Rules of the association makes provisions for the election of the Chairman and Council members to the association to be made at a general meeting of the association to be held every year not later than 3 months after the end of its financial year.

[8] It is further averred that in pursuance to a meeting of the 4th February 2015, the Respondent had scheduled the annual general meeting and the election to be held on the 26th February 2015.

[9] It is further averred that in pursuance to the same meeting as above referred, the Respondent acted summarily and without proper consultation of the Council members, proceeded to approve new members to the membership lists to the association and announced the election to be held in the AGM on the 26th February 2015.

[10] It is further averred that as a result of the "alleged" (emphasis is mine) actions and omissions of the Respondent, the Respondent's act amount to or is likely to amount to a breach of Applicant's right as a member to participate fairly in the election process of the Respondent and to moreover same act of the Respondent amounts to or is likely to

amount to a breach of Applicant's fundamental right to peacefully assemble and associate with others enshrined in Article 23 of the Constitution of Seychelles; and

- [11] Further, that in so approving the new members summarily and without proper consultation with the Council members, the Respondent has prevented the Applicant or is likely to prevent him from nominating any new members within a reasonable period of time, prior to the election, scheduled for the 26th February 2015.
- [12] It is further averred by the Applicant that in so announcing the election and the AGM for the 26th February 2015 in a meeting held on the 4th February 2015, Respondent has prevented or is likely to prevent his greater participation in the AGM and in the election by depriving him the opportunity to mobilize and campaign for the election as a Council member or otherwise, in a fair and equitable manner and within a reasonable period of time.
- [13] It is further averred, that the Respondent, in approving some of the new members, has failed to appreciate that not all the members of the new approved lists could qualify as members of the association in terms of the qualification prescribed in the Rules, as Respondent has registered a foundation to the association, which does not qualify as per the Rules.
- [14] In so adopting the procedures outlined above, it is further averred by the Applicant, that the Respondent has failed or has demonstrated a lack in terms of its capacity to conduct and hold free and democratic election of the association, which election must be accorded its organization to a third independent party.
- [15] It is further averred that the Rules of the Association as regards to the conduct of the election is in itself ambiguous, particularly Rules 4.1.6 (f) the association which provides as follows:

“Only members who are up to date with membership fees for the year during which the Annual General Meeting is held, as at the end of the previous month, will be able to vote.”

[16] That in pursuance to Rule 4.2.10 of the association it is further provided that:

“No member shall have the right to vote unless at the time of the vote his/her subscriptions, including any arrears have been fully paid up by seven (7) clear days prior to the Annual General Meeting.”

[17] It is averred by the Applicant that there is ambiguity as to the provisions of Rules 4.1.6 and 4.2.10 as regards to which of the members are to be entitled to vote at the annual general meeting of the association, which ambiguity Respondent cannot set clear prior to the conduct of the election scheduled for the 26th February 2015.

[18] It is also further averred by the Applicant, that as a member of the Respondent’s association it is just, fair and reasonable and in the interest of public order and private order of the Respondent’s members, that the ambiguity as outlined regarding the cited Rules and the “alleged” summary conduct of the Respondent vis-a-vis the “new membership list” without proper consultation of the Council, be clarified at the earliest and in any event before the conduct of the Respondent’s annual general meeting on the 26th February 2015.

[19] On the other side, in line with the provisions of section 305 of the Seychelles Code of Civil Procedure [Cap 213], due notice was given to the Respondent of the Application and reply in the form of a plea in limine litis has been filed on Respondent’s behalf on the 23rd day of February 2015 and supported by copy of duly certified agenda of the Respondent’s Council meeting of the 4th February 2015, duly certified “excerpt of minutes of the said meeting of the 4th February 2015 more specifically in reference to the “Approval of new members” and “the SCCI annual general meeting 9hereinaftre referred to as the AGM”)” and attendance register for the said meeting marked as exhibit R1; and the Rules of the Constitution of the Respondent marked as exhibit R2.

[20] It is considered by this Court that the plea in limine litis is a competent defence raised by the Respondent at this stage of the proceedings. At this juncture, I note that the Defendant has chosen not to file a response in the form of an affidavit. His answer by way of a plea in limine litis to the application for interlocutory injunction is a right that he has chosen to

exercise as a Respondent in pursuance to Article 90 of the SCCP. However, I do bear in mind and note that the Respondent has done this at his own risk and peril. Respondent is in effect saying that given the facts as adduced by the Applicant and without him having any need to adduce any further evidence, the Applicant's case is frivolous and vexatious and show no reasonable cause of action. Therefore we are limited in this matter to the facts as adduced by the Applicant and the Respondent's plea in limine litis as supported by attachments afore-mentioned has to be considered based on these facts only.

[21] The plea in limine litis of the Respondent states as follows:

1. Firstly, that the plaint and application for the interim injunction do not show a reasonable cause of action against the Defendant and ought to be dismissed with costs;
2. Secondly, that the action before the Court is frivolous and vexatious and ought to be dismissed with costs; and
3. Thirdly, that the plaint and application for the interim injunction are wrongly suited and ought to be dismissed with costs.

[22] Both Learned Counsels Mr. J. Camille and Mr. F. Elizabeth filed written submissions in this case and I have to at this point commend both Learned Counsels for their well structured submissions in terms of form and contents.

[23] Now, I have meticulously and diligently analyzed the averments as outlined in the application as (reiterated in the plaint in the original suit pendente lite) as well as the written submissions filed by said Learned Counsel of the 24th day of February on Applicant's behalf and the plea in limine litis as filed in reply on the 23rd day of February 2015 and the written submissions of the said Learned Counsel of the 24th day of February 2015 and attachments thereof marked as stated exhibits afore-mentioned in support on behalf of the Respondent.

[24] I note in furtherance to my analysis, that the arguments of both Learned Counsels, have given rise to many issues based on facts as well as on points of law. Now, if this Court

attempts to determine all those issues raised by the parties in the pleadings and arguments at this stage of the proceeding, in this interlocutory application, certainly, such an attempt would in effect, dispose of the main case itself which is still pending before the Court. And that “would be tantamount to putting the cart before the horse”. This I should not do in the thin disguise of determining the interim injunction sought by the Applicant. I should thus identify and determine only those issues, which are relevant to and necessary for the adjudication of the instant application for the interim injunction.

[25] To appreciate the issues in a proper perspective, it is important that I should first, briefly as possible rehearse the background facts of the case as transpired in the application and affidavit in support. At this juncture, I wish to state that the application and affidavit of the Applicant contains a duplication of averments as to the grounds on which the application is based and the declarations and or orders sought in the application which albeit leads to good reading is uncalled for all intents and purposes and should thus in the future be minimised to the salient issues and prayers specific to the case in a more summarised manner and hence render the task of both the Court and all the parties involved easier.

[26] Now, the facts of this case show that the SCCI Council meeting was conducted on the 4th day of February 2015 at the SCCI Board Room at 1:30 p.m., which the Applicant attended. That at the meeting all members present including the Applicant participated in the voting process to approve new applications for new membership as per exhibit R1 and at the same time the AGM was approved by simple majority as per Article 3.3.4 of the Respondent’s Constitution exhibits A2 and R2 respectively to be held on the 26th day of February 2015 and thus giving notice to all members at least 21 days prior to the holding of an annual general meeting, in line with the provisions of Article 4.1.2 as read with Article 4.1.1 of the constitution of the Respondent. On the 17th day of February 2015, thirteen (13) days after the said Council meeting, the Applicant filed before this Court a plaint and an application for an interim injunction contesting the decision of the SCCI Council meeting and the Constitutional provisions of the Respondent’s Rules on the basis on “ambiguity” and “inconsistency” between two articles of the Constitution of the Respondent more particularly Articles 4.1.6 and 4.2.10 thereof.

[27] It follows, therefore based on the above-stated salient facts of the case for the purpose of this application, that the applicant's grievance is threefold and can be summarised as follows:

- (i) Firstly, that the decision of the SCCI Council meeting to hold the AGM on the 26th day of February 2015 was made by the Respondent "summarily, in haste and without proper consideration of the Councillors at the meeting of the 4th day of February 2015" and as a result "allegedly" breaching of or likelihood of a breach of his right to participate in the election and the AGM fairly, equitably and accordingly a breach of or a likely breach of his right to peacefully assemble and associate with other members of the Respondent;
- (ii) Secondly, that the conduct of the Respondent in the said Council meeting in approving the new members list "summarily and without consultation of the Council members" (of which a foundation has been registered to vote, vide paragraph 8 of the affidavit of the Applicant), is in breach of or is likely to be a breach of his right to participate in the election and the annual general meeting fairly, equitably and accordingly a breach of or a likely breach of his fundamental right to peacefully assemble and associate with other members of the Respondent; and
- (iii) Thirdly, that there is an ambiguity and inconsistency between the provisions in Articles 4.1.6 and 4.2.10 of the Constitution of the Respondent which Articles cannot be reconciled hence an interpretation of the Court is sought.

[28] I will now proceed to examine the merits of the present application in line with the grievances of the Applicant as outlined at paragraph 27. Before the Court can consider whether or not to grant an injunction in this matter, there are certain principles of law which must be looked at.

[29] Firstly, the Court must be satisfied prima facie that the claim is bona fide, not frivolous and vexatious, in other words, that there is a serious question to be tried **vide: American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 at P 510**. In that light, unless the

materials available to the Court at the hearing of the application for an interlocutory injunction disclose that the applicant has a real prospect of succeeding in their claim at the trial, the Court should not go on to consider whether the balance of convenience lies in favour of granting or refusing the interim relief that is sought. And, in considering the balance of convenience, the governing principle is whether the applicant would be adequately compensated by an award of damages, which the Respondent would be in a financial position to pay, and if so, the interim injunction should not be granted. Where there is doubt as to the adequacy of the remedies in damages available to a party, the court would lean to such measures as are calculated to preserve the status quo.

[30] Having said that, the injunction is fundamentally an equitable remedy, “and so the one, who seeks such remedy should come before the court with clean hands” (emphasis is mine). The possibility of irreparable loss, hardship and injury if any, the applicant may suffer during the inevitable interval between the commencement of the action and the judgment in the main case, should also be taken into consideration as an important factor in the determination of injunctions.

[31] Now, bearing in mind the above principles, I look at the instant case as a whole, on the documents presently on record, before the Court. I carefully perused and considered them in the light of the submissions made by both Learned Counsels and indeed the remedy sought by the applicant in his plaint which is non-monetary and only in the form of declarations and it is peculiar to note at this juncture “without prejudging the issues in the plaint proper “that no averment as to “faute” has been averred in the plaint” in the original suit pendent lite.

[32] I will now directly address the grievances of the applicant as above-referred in the light of the above said principles.

[33] I shall treat all the three grievances as set out above at paragraph [27] thereof, together, for the purpose of this Order. The first grievance being that: “the decision of the SCCI Council meeting to hold the AGM on the 26th day of February 2015 was made by the Respondent “summarily , in haste and without proper consideration of the Councillors at the meeting of the 4th day of February 2015” and as a result “allegedly” breaching of or

likelihood of a breach of his right to participate in the election and the AGM fairly, equitably and accordingly a breach of or a likely breach of his right to peacefully assemble and associate with other members of the Respondent”; the second grievance being that: “the conduct of the Respondent in the said Council meeting in approving the new members list “summarily and without consultation of the Council members”, (of which a foundation has been registered to vote, vide: paragraph 8 of the affidavit of the Applicant), is in breach of or is likely to be a breach of his right to participate in the election and the annual general meeting fairly, equitably and accordingly a breach of or a likely breach of his fundamental right to peacefully assemble and associate with other members of the Respondent; and the third grievance being that: “there is an ambiguity and inconsistency between the provisions in Articles 4.1.6 and 4.2.10 of the Constitution of the Association which Articles cannot be reconciled hence an interpretation of the Court is sought.

[34] In considering the above grievances, it is paramount to revert directly to the law that governs the granting of injunction in section 304 of the SCCP which provides that:

“It shall be lawful for any plaintiff, after the commencement of his action and before or after judgment, to apply to court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said court upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.”

[35] As rightly argued by the Respondent in its reply to the application, the key words of section 304 are “to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury....” for these are the only instances in which the Court can grant an injunction in law.

[36] Now, the question which begs to be asked in respect of the three afore-stated grievances of the applicant, is whether the application made on the basis of the cited grievances are

misconceived in law and is there a repetition or continuance of any wrongful act which would justify the granting of the order of interim injunction in terms of section 304.

[37] It is clear on that note based on evidence on record in this case namely exhibit R1 that the setting up of the date for the holding of the AGM and the new members list of the Respondent's association was made in pursuance of a properly constituted SCCI Council meeting of which the Applicant attended and did not raise as per the transcript of the minutes of meeting exhibit R1, any objection to the decision to hold the AGM on the 26th day of February 2015 at all and neither was the new membership list contested by the Applicant. The more so, the Court further notes with particular interest that the alleged list of new members which is averred to include members who ought not to have been listed being in violation of the Respondent's Constitution under the second grievance has not been substantiated at all by the Applicant and thus defeating the very dictum governing same and similar applications in that "he who avers must prove". It is also abundantly clear as per the evidence on record thus far, that Article 4.1.1 of the Constitution of the Respondent provides that: "An Annual General Meeting of the Chamber shall be held every year not later than three months after the end of its final year" and that at its article 4.1.2 it is further provided that: "the Secretary General shall give at least twenty one (21) days notice for the holding of an Annual General meeting". In that light, is the grievance of the Applicant justified in all the circumstances of this case when it avers that the decision of the Respondent is to be faulted on the ground that the Applicant is being prevented or is likely to be prevented from greater participation in the AGM and in the election by being deprived the opportunity to mobilize and campaign for the election as a council member or otherwise, in a fair and equitable manner and within a reasonable period of time? In the light of Articles 4.1.1. and 4.1.2. such grievance and or allegation is untenable and the decision of the SCCI cannot be faulted or impugned as it complies squarely within its constitutional provisions thus leading to the action of the Applicant being frivolous and vexatious on that basis.

[38] In any event, if the applicant did have any grievance, the Rules of the Constitution of the Respondent allows the Applicant an avenue to adequately address his grievance and this

as per the provisions of Article 4.2.1 of the SCCI Constitution which deals with proceedings at the Annual General Meeting which provides as follows:

- (i) “Article 4.2.1 provides that: The Annual General Meeting shall consider all the matters set out in the Agenda”, namely:-
- (ii) “Article 4.2.1. (f): Any motion presented by a member in accordance with Rule dealing with such motions.”

[39] Now, without doubt, the Applicant does have sufficient remedy by virtue of the very provisions of the Respondent’s Constitution itself in that he could present a motion 15 days preceding the date of the AGM expressing his concern about the alleged “summary conduct of the Respondent in setting up the date for the AGM and or the list of new memberships as averred and in that light same would apply for the alleged “ambiguity”, “inconsistency” of the third grievance afore-cited at paragraph [27] thereof and his motion would have been considered at the AGM and an amendment could be voted upon by the members of the SCCI. In that light, there was really no need and or urgency for the instant action, for Article 4.2.2. provides clearly and without ambiguity that “any motion by any member to be discussed at any AGM shall be presented in writing, proposed and seconded by another member of the Chamber to reach the office of the Secretary General at least fifteen days preceding the date of the AGM. In that light, it is thus clear and without doubt that the Respondent does have an alternative remedy by virtue of the Constitution of the Respondent itself which in the Court’s opinion is the best forum to address such grievances.

[40] In the same light, this Court further reads the provisions of Section 304 of the SCCP together with the provisions of Section 92 of the SCCP which provides that: “the Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleading to be frivolous and vexatious, the Court may order the action to be stayed or dismissed or may give judgement, on such terms as may be just.”

- [41] It is trite that a motion for striking out of pleadings under Section 92 of the SCCP is to be decided “solely on the pleadings and where the non-existence of a reasonable cause of action is beyond doubt ex-facie the pleadings, the pleadings ought to be struck out”, **vide: Gerome v Attorney general [1970] SLR 57, Albest v Stravens (No. 1) [1976] SLR 158 and Ocean gate v Monchouguy [1984] SLR 111.**
- [42] Now, in the light of the above principles as analysed in direct reference to the evidence on record in this case more particularly the cited Rules of the Respondent’s Constitution as exhibited in A2 and R1 and the contents of R2 the latter being the minutes of Council meeting of the 4th day of February 2015, it is found in the opinion of this Court that based on the pleadings and the affidavit and other documents filed thus far, that there is no serious question to be tried in this application and on this score I am loath to grant this interim relief sought by the Applicant in this action.
- [43] In the light of the above conclusion at paragraph [42] thereof, the next question to be considered is whether the Applicant would be adequately compensated by an award of damages for loss (if any) sustained as a result of the Respondent’s “alleged” continuing to do what was sought to be enjoined between the time of the present application and the time of the trial and whether the Respondent would be in a financial position to pay such damages. Again, a careful perusal of the plaint, it is revealed that no claim for monetary damages and or compensation is being prayed for either for loss and or moral damages. The prayer is specific to the same orders and declarations as sought in this application and to be more precise a replica of the prayers in terms of its nature and contents. Hence, in that light I have come to the conclusion that albeit my order vis-a-vis the legality of this application, that the applicant would be adequately compensated by an award of damages “though not claimed in the original action”. Hence it follows, that the Applicant in this case in any event has failed to show how the holding of the AGM can cause irreparable damage to him the more so that any decision taken in an AGM is always reviewable through future General Meetings as per the Respondent’s constitution. The balance of convenience in this case clearly as illustrated favours the Respondent rather than the applicant especially in that the Respondent has as per notice to its members for the holding of the AGM as fixed for tomorrow afternoon, the 26th day of February 2015,

and as it remains uncontested, that the Respondent has already procured an auditorium, published the date of the AGM and invited its members to attend the AGM at great expenses, cost and effort. The Respondent thus would suffer irreparable loss and damage, which cannot in the court's opinion be remedied by damages if the date of the AGM were to be aborted now at the eleventh hour. The more so, it is considered that the applicant is still a member of the Respondent's association with full fledged rights as a member with the right to vote at the AGM hence cannot hold back the AGM on frivolous and vexatious grounds as argued and illustrated in my analysis.

[44] As to the third plea in limine litis as raised by the Respondent, that the application for the interim injunction is wrongly suited and ought to be dismissed with costs, the Court notes foremost that as per the cited provision of the Respondent's Constitution namely Article 6.1.1. which provides that "the Chamber shall act, and sue and be sued, under its corporate name, represented by its Secretary General, and at its Article 6.1.2 to the effect that: "service of process on the Secretary General in respect of any notices, actions, pleadings and proceedings either judicial or extra judicial shall be good and valid service on the Chamber as evidenced by exhibits R2, the Court finds that the both the application and Plea has rightly joined the Respondent "The Seychelles Chambers of Commerce & Industry" as Respondent albeit citing the Chairperson as its representative other than the Secretary General as per the cited Articles. The latter being a mere irregularity which may be cured by amendment and in any event, Learned Counsel for the Respondent appeared before the Court on behalf of the Respondent and very ably defended the Respondent's arguments in favour of its filed plea in limine litis hence no prejudice having been caused to the Respondent.

[45] As to whether the plaintiff does not show a reasonable cause of action as pleaded by the Respondent in its reply, I would prefer not to find an answer to this question at this stage of the proceedings which is specific to the application before me. If I do otherwise, I would certainly be judged for prejudicing the plaintiff claim in the main case, Indeed, I keep an open mind.

[46] Having said all, for the reasons stated hereinbefore, I decline to grant the interim injunction sought by the applicant in this matter. The application is therefore dismissed with costs.

Signed, dated and delivered at Ile du Port on 25th day of February 2015

Govinden J
Judge of the Supreme Court