IN THE SUPREME COURT OF SEYCHELLES

José Charles
of Baie Lazare, Mahé **Petitioner**

Vs

Marguerite Paquerette Charles
of Baie Lazare, Mahé **Respondent**

Divorce Side No: 39 of 2002

Mr. F. Bonte for the petitioner
Mr. J. Renaud for the respondent

D. Karunakaran, J

RULING

The parties in this matter were once married. On 27th March 2003, the Court dissolved their marriage. Following the dissolution, the petitioner by a notice of motion dated 15th July 2003, applied to the Court for a matrimonial property adjustment order. Having heard the parties on the issues relating to their matrimonial assets the Court on the 1st of December 2004 made a property adjustment order - hereinafter called the "adjustment order" – whereby the Court determined inter alia, the respective share-entitlements of the parties to the matrimonial assets.

Following the said determination, the parties attempted to effect a division of their respective shares in the matrimonial assets in terms of the "adjustment order" made by the Court. However, they could not reach an amicable division of the assets within a reasonable period. Having waited for about six months the petitioner, by way of a motion dated 19th May 2005, applied to the Court for an order directing respondent to pay the petitioner for his shares within a period of 14 days, so that he could transfer all his interest in those assets in favour of the respondent, and the respondent could become sole owner of the joint assets and thus, the matter could be settled in terms of the "adjustment order". On the other hand, if the respondent fails to make such payment within the said period, then the petitioner should be allowed to pay the respondent for her shares in the sum of Rs609, 465/- and settle

the matter. The respondent resisted that motion and requested the Court to grant inter alia, a period of not less then six months for her to raise funds and pay the petitioner for the transfer of his shares. Following that motion, nearly one year after making the original "adjustment order" the Court on 13th October 2005 made another order for payment, by consent of parties. This "consent order" extended the period for payment in favour of the respondent, to the effect that the respondent should pay and buy out the shares of the petitioner within three months from the date of the "consent order", failing which the petitioner, upon the expiry of the said three months' period, would be entitled to buy out the respondent's share by making payment to the respondent accordingly.

Despite the delay of the first three-month-period stipulated in the "consent order" for payment, the respondent again defaulted as she could not raise funds to buy out the petitioner's shares. Hence, she again, by a notice of motion dated 3rd February 2006, applied to the Court for an order extending the said "first three-month-period" by another three months - hereinafter called the second three-month-period – for reasons (i) that her negotiations with the Bank to raise funds was in progress and (ii) the respondent had admittedly, transferred some of her shares in part performance of her obligations under the settlement package as per the said consent order. The respondent, after five days of making her application for the second extension of time, filed another motion dated 8th February 2006 seeking a stay of execution of the original "adjustment order" first-above mentioned on the ground that arrangements were being made to settle the matter and that the application for extension of time that is, for the second three-month-period was pending in Court. The petitioner resisted both motions of the respondent namely, the one seeking the second extension of time and the other seeking a stay of execution.

The Court heard both sides on the said two motions. In its ruling dated the 3rd May 2006 the Court presided by B. Renaud, J. granted a further extension of the second three-month- period, as requested by the respondent for payment effectively changing the terms contained in the "consent-order" made by the Court on 13th October 2005. Despite the expiry of the second three-month-period, the respondent again defaulted to make payment to the petitioner and thus failed to comply with the Court's ruling of the 3rd May 2006. Hence, the petitioner by an application dated 8th May 2006 applied to the Court seeking an order for execution of the "adjustment order".

Again, the respondent came before this Court with another notice of motion dated 20th July 2006 seeking a stay of execution of the Court's ruling of the 3rd May 2006. The stay was sought on the ground that she had filed an appeal against the said ruling of 3rd May 2006, to the Court of Appeal and she stood good chances of success in her appeal. Hence, she sought a stay of execution pending the

final determination of the said appeal. The Court presided by Justice B. Renaud, heard both sides on that motion. Having given a careful consideration to the issues and the entire circumstances of the case, the Court in its ruling dated 18th October 2006 declined to grant a stay of execution and dismissed the motion.

Having been aggrieved by the Court's ruling dated 18th October 2006 the respondent again, by a notice of motion dated 3rd November 2006 has now come before this Court for an order of stay in respect of the said two orders made by the Court namely, the one dated 3rd May 2006 and the other dated 18th October 2006. For avoidance of confusion, I would like to make it clear that the present ruling delivered herein relates only to the motion dated 3rd November 2006. Be that as it may. The affidavit filed by the respondent in support of this motion states that since she has filed an appeal to the Seychelles Court of Appeal against the ruling given by the court dated 3rd May 2006 and she stands good chances of success in the appeal, justice demands that the execution of judgment should be stayed in this matter pending the final determination of the said appeal.

On the other side, the petitioner resists this motion contending in essence that the respondent, ever since the "adjustment order" was made in December 2004, has been applying delay tactics to defeat the petitioner from realising the fruits of the adjustment order. According to the petitioner, the respondent has been given enough time, more than two years - until now - to raise funds to pay the petitioner for his shares. But, she repeatedly defaulted and made no payment. She has been wasting the time of the Court and abusing the process for the past two years by repeatedly flouting the orders of the Court. Hence, the petitioner urged the Court to refuse the stay and allow execution of the order accordingly.

I meticulously perused the entire record of proceedings in this matter. Firstly, on the face of the record it is evident that the Court pronounced the original "property adjustment order" on the 1st of December 2004. However, since then, in the past more than two years, the respondent has been repeatedly asking for extension of time stating that she would raise funds, pay for the shares, buy out the petitioner and settle the matter. It appears ex facie the record that the Court has acceded to her requests all the time and extended the periods granting reasonable opportunity and time to perform her part of the obligation consequent upon the adjustment order. In fact, the respondent agreed to pay the sum to the petitioner within three months from the 13th of October 2005 as per the terms agreed upon by the parties, which were endorsed by the Court in the Consent Order. In my considered view, the grace period of about two years following the "property adjustment order", which the respondent has obviously benefited by procrastinating the litigation is more than necessary and reasonable in the given

circumstances of the case. The Court has also been very lenient with the respondent by acceding to all her requests in the past for the extension of time for payment. Despite, such leniency the respondent has not yet complied with any of the orders that the Court has so far made with a view to encourage the parties to reach an amicable settlement of their shares. As I see it, the respondent is obviously abusing the process of the Court in this matter. Although the petitioner has not used the term "abuse of process" in his affidavit, when one reads paragraph 6 of the petitioner's affidavit dated 21st November, 2006, the allegation of abuse is evident as it is couched in the following terms:
"The motion filed by the applicant is just waste of the Court's time and a delaying tactics"

In my judgment, the motion of the respondent dated 3rd November 2006 is only intended to cause a further delay and defeat the execution of the lawful order made by the Court for settlement of the matrimonial properties. In the process, the respondent not only delays the execution of an order duly made by the Court but also frustrates the general administration of justice. The intentional delay in this particular case obviously, gives rise to prejudice and unfairness to the petitioner. Also it adversely affects the justice deliver system resulting backlog of cases in Court as the precious time of the Court is wasted on tackling such delay tactics. Indeed, a people- centred- judiciary would always adopt measures that are just and necessary to prevent such delays in the justice deliver system. As I see it, whether in a civil or criminal proceeding, mere delay which give rise prejudice and unfairness might by itself amount to an abuse of process vide R vs. Bow Street Stipendiary Magistrate, Exp DPP (QBD) High Court p319 Cr. L, Review 1990. Justice E. F. Georges, who was then a judge of the Supreme Court of Seychelles, once suggested wisely to all judicial officers in the country *per* his judgment in ***Mr & Mrs James Bastienne Vs Simon Fred and Anne Fred Civil Appeal No. 25 of 1989*** thus:

> *"Judges and magistrates should not hesitate where circumstances, so dictate, to adopt measures that is just and expedient to prevent delays in and frustration of the due administration of justice"*

One of such measures the Court should adopt in the instant case and which is just and expedient in the circumstances of this particular case, is the dismissal of the motion not only with costs but also with exemplary costs that would serve as a deterrent to other potential procrastinators and delay-tacticians of this nature.

Having said that, I note the Court (presided by B. Renaud, J) has already in its ruling dated 18th October 2006 declined to grant the stay of execution in this matter. Hence, I find this Court is also *functus officio* and this Court cannot and should not reopen the same issue for determination.

Even if one assumes for a moment that this is the first time the respondent is applying to this Court for a stay of execution, still on the merits I find ex facie the records that she does not stand good chances of success in the appeal. For, in my opinion the question involved in the appeal is one which ought not to be the subject matter of an appeal. There is no serious questions of any law involved. The Supreme Court in the normal circumstances therefore would not have granted leave to appeal unless she obtains special leave from the Court of Appeal. It is relevant here to note that section 12(2) of the Court Act reads thus:

12(2)(a) In civil matters no appeal shall lie as of right -

(i) from any interlocutory judgment or order of the Supreme Court; or

(ii) from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.

(b) In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.

(c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.

In any event, I do not find anything on record to show that the respondent has obtained the necessary leave to appeal either from the Supreme Court or fromthe Court of appeal in this regard. Be that as it may, the respondent had admittedly, transferred some of her shares in part performance of her obligations under the settlement package in pursuance of the consent order made on 13th October 2005. In fact, this consent order is the one that forms the substratum of the order of 3rd May 2006, which the respondent is now appealing against. In my considered view the respondent is now estopped by her conduct since she has partly complied with . Now she cannot go back and indirectly challenge the said "consent order.

In the final analysis, I find no merits in the motion dated 3rd November 2006, and decline to grant an order of stay of execution in respect of the said two orders made by the Court namely, the one dated 3rd May 2006 and the other dated 18th October 2006. The motion is therefore dismissed with costs. In addition, I order the respondent to pay the petitioner an exemplary cost of Rs1,000/- over and above the normal costs taxed by the Registrar in this matter.

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D. Karunakaran

Judge

Dated this 12th day of April 2007