

SUPREME COURT OF SEYCHELLES

Reportable

MA215/2024

Arising out of CS60/2017

In the matter between:

Monthy Transit Self- Catering Apartments (Pty) Ltd

Judgment Creditor

(rep by Mr Wilby Lucas)

And

Hospitality Management Services (Pty) Ltd

Judgment Debtor

(rep by Mr frank Elizabeth)

Neutral Citation: Monthy Transit Self- Catering Apartments (Pty) Ltd V Hospitality Management Services (Pty Ltd) (MA215/2024) (7 August 2025)

Before: D. Esparon, J

Summary: Application for summons to show cause- Plea in Limine Litis

Heard: By way of written Submissions

Delivered: 7 August 2025

ORDER

Application for summons to show cause- Plea In Limine Litis- Both Plea In Limine Litis is Dismissed.

RULING-

D. Esparon, J

Introduction

1. This is an Application for summons to show cause whereby the Applicant is praying to this Court for an order calling upon the Judgment Debtor to show cause why he failed to comply with the order of the Court.
2. The Judgment Debtor raised the following Plea In Limine Litis namely;
 - 1) The application is legally flawed and should be dismissed with cost because section 251 of the Seychelles Code of Civil Procedure mandates that an Application for summons to show cause must be made by petition with an attached affidavit, not by an Application.
 - 2) The application is legally flawed and should be dismissed with cost because the order sought by the Judgment- creditor, requiring the judgment-debtor to show cause why it should not be committed to civil imprisonment for failing to pay debt, cannot be granted. The Court does not have the authority to commit a company to civil imprisonment.

Submissions of counsels

3. As for the 1st Plea In Lime Litis Counsel for the Judgment Debtor relied on section 251 of the Seychelles Code of Civil procedure and submitted that such an Application must be made by way of Petition with an Affidavit of facts and not by way of an Application and as such it renders the Application defective.
4. As for the 2nd Plea In Limine Litis, Counsel relied on the following sections of the law and submissions namely;

Section 251 SCCP, which states that the debtor must “show cause why he should not be Committed to Civil imprisonment.” The use of ‘he’ clearly refers to natural persons, not corporate entities.

. Section 252 of SCCP, which states that the Judgment Debtor shall be examined on oath regarding his means. A company cannot take an oath.

. Section 253 SCCP, which allows imprisonment for individuals who hide assets, favour other creditors, or refuse to pay despite having means. These actions apply to persons not companies.

5. Counsel for the Judgment Debtor also relied on section 2, section 3 of the IDA and Article 18(5) of the Constitution that civil imprisonment is not an available remedy for enforcing a judgment debt against a company.
6. Counsel for the Judgment Debtor relied on the cases of **Chow V Bossy (2016)**, **Delcy V Camille (2005)** and **Kilindo V Morel (2005)**.
7. Counsel for the Judgment creditor on the other hand relied on section 251 of the Seychelles Code of Civil Procedure and submitted that the prayers and Application bears a connotation of contempt of Court in terms of the Judgment Debtor’s failure to comply with an order of the Court since there is no mention that the Judgment creditor is seeking for an order of imprisonment of the Judgment Debtor.
8. Further according to counsel for the Judgment creditor, the Application before the Court is not seeking for an order of civil imprisonment but for the representative of the company to show cause why the company has failed to satisfy the judgment debt and hence that the Court should dismiss the Pleas In Limine Litis raised by the Judgment Debtor.

Analysis and determination

9. The First Plea In Limine Litis is that the application is legally flawed and should be dismissed with cost because section 251 of the Seychelles Code of Civil Procedure mandates that an Application for summons to show cause must be made by petition with an attached affidavit, not by an Application. In considering the first plea In Limine Litis this Court hereby reproduce section 251 of the Seychelles Code of Civil Procedure which reads as follows;

‘A Judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the Court by petition, supported by an Affidavit of the facts, for arrest and imprisonment of his Judgment Debtor and the Judge shall thereupon order a summons to be issued by the Registrar, calling upon the Judgment Debtor to appear in Court and show cause why he should not be committed to civil imprisonment in default of satisfaction of judgment or Order’.

10. It is clear that section 251 of the Seychelles Code of Civil Procedure requires that such an Application be made by way of petition supported by an Affidavit. In the present matter the Judgment creditor has not filed a petition but has filed it by way of an Application of which attached to it is an Affidavit in support.

11. This Court notes that the opening words of the said provision of the law uses the word ‘may’ rather than the word ‘shall’ which this Court is of the view that the word ‘may’ connotes that filing the Application by way of petition is directory only rather than mandatory and hence by filing such an Application by way of an Application is not fatal to the Application.

12. However, in the case of **Mary Quilindo and Ors V/S Monchery and ors (2012) SCCA 29 of 2009**, where the Court relied on the Privy Council decision in the case of **Toomany and Anor v Veerasamy (2012) UKPC 13**, where the Court held the following:

‘That such technicalities raised to shut out litigants from the Court system constitute a blot of the administration of Justice’.

13. In *Mary Kilindo (supra)*, Twomey JA held that ‘where no prejudice was suffered by the proceedings being initiated by petition and not by plaint such technical objections should not affect the fair administration of Justice’.

14. Similarly, in the present matter, I find that there is no prejudice suffered by the Applicant by such proceedings being brought by way of an Application instead of by way of petition. Hence this Court in the present matter shall follow the guiding principles as laid down in *Mary Kilindo (supra)* as a result of which I accordingly dismiss the 1st Plea In Limine Litis.

15. The 2nd Plea In Limine Litis is that the application is legally flawed and should be dismissed with cost because the order sought by the Judgment creditor, requiring the judgment debtor to show cause why it should not be committed to civil imprisonment for failing to pay debt, cannot be granted. The Court does not have the authority to commit a company to civil imprisonment. This Court concurs with the submissions of counsel that a company being not a natural legal person but being a legal entity cannot be committed to civil imprisonment.

16. In essence this Court is of the view that although the above is the case, this Court has to view the present Application in the light of the prayers sought. In the present Application, the judgment creditor has prayed for the following orders;

- (i) to call the Judgment Debtor to show cause why he failed to comply with the order of the Court.
- (ii) for any other Order that this Honourable Court shall deem fit.

17. Section 5 of the Courts Act provides that ‘ the supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be bought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the high Court of Justice in England.’

18. Odgers’ principles of pleading and practice in civil actions in the High Court of Justice, twenty- second edition states the following at page 364;

‘The Court has a general power to punish contempt by committing the offender to prison (43. It also has the power to fine him-see order 52 r.9)’.

19. Order 52 r 1 of the Supreme Court of Judicature, England Procedure 'the Rules of the Supreme Court 1965 states the following;

'1. (1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal'.

20. Order 52 r 9 of the Supreme Court of Judicature, England Procedure 'the Rules of the Supreme Court 1965 states the following;

'9. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring person guilty of contempt of court, or person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal'.

21. In View of section 5 of the Courts Act read with order 52 r 1 cited above, it is clear that this Court has a general power to punish for contempt for disobedience of a Judgment or order of the Court. Having carefully considered the submissions of counsel for the Applicant and counsel for the Respondent and additionally having considered the 2 prayers prayed for in the Application of the Applicant, this court agrees with the submissions of counsel for Applicant that the prayers sought by the Applicant bears a connotation of contempt of Court in terms of the Judgment Debtor failure to comply with an order of the Court.

22. Hence, although I agree with the submissions of Counsel for the Judgment debtor that the Judgment Debtor being a company cannot be committed to prison in admitting that the Court cannot commit a company to prison, in view of Order 52 r 9 of the Supreme Court of Judicature, England Procedure 'the Rules of the Supreme Court 1965 quoted above in Odgers' (Supra), since this court has the power to fine a natural person or company, I find that the said Application is not legally flawed. As a result, I accordingly dismiss the 2nd plea In Limine Litis.

Signed, dated and delivered at Ile du Port on the 7th August 2025.



D. Esparon J

