

SUPREME COURT OF SEYCHELLES

Reportable
[2025]
MC 02/2025

In the matter between:

SEYCHELLES TRADING COMPANY

Applicant

VICTORIA, MAHE

(Present/represented by Mr. Brian Julie)

and

DAVIN BALTHILDE

Respondent

Marie Jeanne Estate Praslin

(Absent/unrepresented)

Neutral Citation: *STC v/s Balthilde* (MC 02/2025) 08th April 2025

Before: Adeline J

Summary: Application for an extension of time to file Notice of Appeal out of time – Rules 5 and 6(1) of the Appeal Rules under the Courts Act, Cap 52 – judgment to appeal against already been executed – Judgment debt paid.

Heard: Submissions

Delivered: 8th April 2025

ORDER

Adeline J

- [1] By Notice of Motion filed in court on the 3rd January 2025, learned counsel for the Applicant, Mr. Brian Julie, applies for leave of this court pursuant to Rule 5 of the Appeal Rules under the Courts Act, Cap 52, for an extension of time to file Notice of Appeal to commence appeal proceedings against one Davin Bathilde of Marie Jeanne Estate, Praslin in respect of a judgment delivered on the 30th August 2024 by the employment Tribunal, by which judgment the Applicant feels aggrieved.
- [2] The application is supported by an affidavit sworn by one Dean Rose, acting Chief Executive Officer who claims that he is authorised to swear the said affidavit.

- [3] On the day the application was mentioned in court for the first time on the 26th February 2025 to ascertain whether or not the Respondent, Mr. Davin Balthilde, had been served with summons for him to put appearance in court to answer the application, it transpired from the Court's record, by way of copy of receipt number 1912 dated 6th February 2025, that the sum of one hundred and fifty four thousand and three hundred and forty five and eighty cents (SCR 154, 345.80) has been paid by the Applicant to the Respondent settling the claim in ET/24/24 following execution of the judgment of the employment Tribunal.
- [4] Although learned counsel for the Applicant does not dispute that payment has been made by the Applicant, learned counsel contends, that due process has to continue and that the Respondent ought to be served with summons to appear in court to answer the application.
- [5] There is no rules known to this court, indeed learned counsel could not cite any rules in support of his insistence, that due process has to continue after the judgment has been executed and the judgment debt paid.
- [6] This scenario, reminds me of the Kenyan case of Jaribou Holdings Ltd versus Kenya Commercial Bank Ltd, Civil App Nai No. 314 of 2007 (UR. 215/07) (in HCCC No 950 of 2002). In this case, in a suit commenced by plaintiff for delivering of possession of land known as LR. No 209/378/10, Warsame j had made the following order;
- "I direct the defendant to give vacant possession of the suit premises within the next 15 days failure of which the plaintiff shall be entitled to an order of eviction. The plaintiff is also entitled to payment of all rents due and owing, plus costs of this suit."*
- [7] Aggrieved by the order, the defendant, Jaribu Holdings Ltd, appealed to the court of Appeal against this order and simultaneously applied for an order of stay of execution of the judgment.
- [8] At the hearing of the application for a stay, learned counsel for the Applicant conceded that the Applicant was no longer in possession of the premises of land known as LR. No. 209/378/10 but urged the court to grant the order of stay anyway, contending, that the respondent obtained possession irregularly. In his submission, learned counsel stated, that

the Applicant was not seeking possession but an order of stay, and that the Applicant would seek possession elsewhere after obtaining the order of stay.

[9] Inter alia, the court had this to say;

“The practice of the courts in this jurisdiction is that a party moves the court for whatever orders it wishes that court to make in its favour except where the law expressly empowers the court to act suo motu..... The application before us is for an order of stay of execution of a specific decree. As the applicant concedes through its counsel on record that the decree sought to be stayed has in fact been executed, regularly or otherwise, we see nothing to stay. If we were to proceed as suggested by Mr. King’ ara certainly confusion and chaos might result. We are obliged to properly exercise our judicial discretion in this matter”

[10] With emphasis on proper exercise of judicial discretion, the court cited the case of Sharp v Makefield [1891] AC 173 at P 179, lord halbury L.C having said the following;

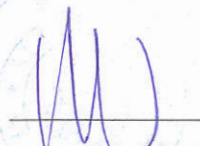
“.....according to rules of reason and justice not according to private opinion (Rookes case 48 L.J. MC 38) according to law not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself (Wilson v Rastall Law Rep. 6. Q. B 97)”

[11] The court in this case went on as to say that, “ it will not be within reason for us to grant an order of stay of a decree which we know and the applicant itself concedes has been executed. The general policy of the law is that courts should not act in futility”.

[12] Clearly, therefore, in the instant case, there is no rule that allows continuation of due process proceedings after the Applicant has upon execution of the judgment by the Respondent, paid the judgment debt. Furthermore, the case of Jaribu Holdings (supra) discussed above instructs us, that the court should not act in futility.

[13] Therefore, for the reasons stated in the preceding paragraphs of this ruling, the applicant’s application dated 6th December 2024 for an order for an extension of time to file Notice of Appeal out of time is dismissed. I make no order as to costs.

Signed, dated and delivered at Ile du Port 08th April 2025.



B. ADELINÉ