

SUPREME COURT OF SEYCHELLES

Reportable

MA 95/2025

(Arising in CC 06/2025)

In the matter between

BEACH SOCCER WORLD CUP 2025 (SEYCHELLES) LTD

(rep. by Joel Camille)

Applicant

and

PRAS ISLAND SECURITY (PTY) LTD

(rep. by Nissa Thompson)

Respondent

Neutral Citation: *Beach Soccer World Cup 2025 (Seychelles) Limited v.s Pras Island Security (Pty) Ltd* (MA 95/2025)

Before: Judge Burian

Summary: Motion to set-aside or vary an order for provisional seizure of moneys belonging to the Applicant in bank accounts.

Heard: 8th May 2025

Delivered: 9th May 2025

ORDER

I hereby vary the provisional seizure order dated 30th April 2025 and make a revised order attaching provisionally and holding in suspense a sum of Seychelles Rupees Five Hundred and Fifty-One Thousand Four Hundred and Eighty- Five (SR 551,485/-) only due to or belonging to the Applicant which are in the hands of or due to, or belonging to the Respondent held with the Seychelles Merchantile Banking Corporation Limited (t/a Nouvobanq) in bank accounts:

- SCR account number: 01002078137013
- SCR account number: 01002078137024
- USD account number: 32002078137030

Such sum shall not be withdrawn, transferred or otherwise disposed of until further notice of this court.

In respect of the USD account number: 32002078137030, the court will consider its release from seizure, subject to the Applicant providing proof to this court of the current balance in the above-named accounts.

In pursuant to this order I direct the Registrar of the Supreme Court to issue a revised warrant for the provisional attachment of the sum as directed above.

RULING

JUDGE BURIAN

Background facts:

- [1] By plaint CS 06 of 2025 dated the 23rd April 2025, the Plaintiff is claiming the sum of Seychelles Rupees Two Million Six hundred and Thirty-Five Thousand Four Hundred and Eighty-five (SR 2,635,485/-) together with costs and an order for specific performance from the Defendant, for loss and damage, which they allegedly suffered as a result of the Defendant's breach of contract. The suit is pending before this Court for determination.
- [2] The Plaintiff alongside the principle suit filed an ex-parte application for provisional seizure and upon careful perusal of the petition and the plaint I was satisfied, that a *bona fide claim* existed and as such made an order attaching provisionally any money and all moneys but not exceeding the sum of Seychelles Rupees Two Million Six hundred and Thirty-Five Thousand Four Hundred and Eighty-five (SR 2,635,485/-) due to or belonging to the Defendant which are in the hands of or due to, or belonging to the Defendant held with the Seychelles Mercantile Banking Corporation Limited (t/a Nouvobanq) of Victoria, Mahe, Seychelles in the bank accounts:
- SCR account number: 01002078137013
 - SCR account number: 01002078137024
 - USD account number: 32002078137030

- [3] A notice of motion supported by affidavit has now been filed by Defendant (hereinafter referred to as 'the Applicant') to set aside the order of this Court dated 30th April 2025 directing, inter alia, for the provisional attachments of the Applicant's bank accounts.
- [4] I feel that it is pertinent to mention at this stage that this dispute revolves around an event of global importance and the Court gave the parties time to attempt resolution of the dispute before proceeding to the hearing of the motion. It is unfortunate to note however that they were unable to reach a compromise.
- [5] Counsel for the Plaintiff (hereinafter 'the Respondent') has chosen to rely on the affidavit in support of her original motion for provisional attachment and both counsels on record were given the opportunity to address the Court by way of both the presentation of oral submissions and a lengthy examination under oath of Mr Malcom Fock-Tave, Director of the Applicant.

Submissions of the Applicant:

- [6] It is submitted by the Applicant that the Court may set aside the order on 'good cause' being shown to the Court's satisfaction and that in this instance there has been a misstatement of facts by the Respondent, specifically that 'there is a high-risk that the monies in the Applicant's accounts will dissipate by the end of the Beach Soccer tournament being held from the 1st May 2025-11th May 2025.
- [7] Mr Malcom Fock-Tave testified to the fact that there is no basis for these averments because although the Applicant is a body-corporate duly incorporated in the Seychelles for the purpose of organising and running the Beach Soccer World Cup 2025, it will still have obligations and liabilities after the 11th May 2025 and will not immediately seize operations. It was further stated that the majority shares are held by the Seychelles Football Federation which I note is a long established entity. The Company's certificate of incorporation, its Memorandum and Articles of Association along with its Particulars of Directors were attached to the affidavit in support of the motion (R1 & R3).
- [8] Mr Fock-Tave maintained that the Applicant has every intention of honouring any judgment rendered by this Court pertaining to any alleged dispute between the parties and

that it had been prepared in good faith to entertain any genuine invoices in respect of expenses incurred by the Respondent as a result of the alleged termination of the agreement but that unfortunately settlement had not been possible.

[9] Although he had no bank statements to tender to the Court, Mr Fock-Tave indicated that the seized bank accounts had approximately Seychelles Rupees 2.77 million and USD \$1000/- in the accounts and that access to these funds were needed urgently in order to pay suppliers who had already rendered a service to the tournament such as catering, IT infrastructure, lighting and sound and cleaning services but to name a few. He testified as to some of the invoices already outstanding as a result of the seizure, copies of which have been exhibited as *R4*. It was averred that the continued total freezing of the accounts is crippling the Applicant and is highly likely to have an adverse impact on the continuity of the games as suppliers have already threatened withdrawal of their services if payment is not soon forthcoming and this would have a catastrophic impact on the event. The Court was urged to consider the national and public interest that the successful completion of the event will bring when considering the motion to set-aside or vary the order.

[10] Counsel for the Applicant lastly has stated on record, that his client is prepared to compromise and proposes a variation of the order for provisional seizure to the sum of SR 551,485/- which sum would cover the heads of loss and damages as stipulated in paragraph 16 (iii, iv, v, vi and ix) which variation would at the very least allow the Applicant to continue operations.

Submissions of the Respondent:

[11] The heart of the Respondent's objections to the motion to set-aside or vary the order dated on the 30th April 2025 rest on the fact that the tournament is scheduled to come to a conclusion on the 11th May 2025 and as such it believes that it is of the essence that it recovers and/or secures any portion of the amounts due as a result of the alleged breach of contract.

[12] There is a genuine concern that if the monies in the bank accounts of the Applicant do not remain seized, there is high risk that all funds contained therein will dissipate by the end

of the Beach Soccer World Cup Seychelles 2025 and would result in the Respondent being unable to recover the sum of money claimed in the Plaint filed on the 23rd April 2025.

- [13] Counsel for the Respondent had the opportunity to cross-examine Mr Fock-Tave during which he maintained that the Applicant will in good faith comply with any judgment rendered by the Court and that this is supported by the fact the company had been prepared to settle the dispute out of court. He defended the truth of his testimony and denied that he was being vague or dishonest in his responses. He stated that the event is generating income which will continue to go into the account and that there are liabilities that remain to be settled even after the end of the tournament.
- [14] Counsel raised a point of law, challenging the authority of Mr Fock-Tave to swear an affidavit on behalf of the Applicant. It was argued that there is no evidence that he has the express authority to represent the Company and reference was made to the case of ***Pro Diving (Seychelles) (Pty) Ltd v JJ Spirit Foundation (MA 33/2023 (Arising in CS 87 of 2022)) [2023] SCSC 726 (25 September 2023)***.
- [15] It was reiterated by Counsel for the Respondent that all that is required under section 281 of the Seychelles Code of Civil Procedure is that there is a *bona fide claim* after which the court shall direct a warrant to be issued to one of the ushers to seize provisionally such property or shall make an order prohibiting the third person in whose hands such money or other movable property is from paying such money or delivering such property to any other person pending the further order of the court.
- [16] It was further argued that the fact that the Applicant alleges that it will still be in operation after the event is immaterial because once all suppliers are paid, there is a strong belief and high risk that there will be no funds remaining in the accounts to settle other debts. Additionally, Counsel contends that the allegation of public interest and national embarrassment are misplaced and that the Respondent has attempted to handle this dispute discretely without going to the press despite they too having suffered losses. That if the Applicant was indeed acting in good faith that it would have come to court ready to disclose the bank statements of the three accounts held in its name in order to demonstrate to this court that there is indeed funds available to settle the claim.

Point of law:

- [17] The Court has been asked to rule on whether Mr Fock-Tave was duly authorised to swear the affidavit on behalf of the company. I have examined his affidavit, in which it is stated that he is a director of the Applicant and is giving evidence in his capacity as a director. I am satisfied that all relevant documents to establish Mr Fock-Tave's position in the company have been provided.
- [18] Section 34 of the Companies Ordinance 1972 gives directors of a Company power to do all acts on its behalf which are necessary for or incidental to the promotion and carrying on of its business.
- [19] Subsection (2) and (3) go on to state as follows:
- (2) Each director of a proprietary company and each managing director of any other company shall have power to do the acts mentioned in subsection (1) without the concurrence of any other director.*
- (3) Without prejudice to the generality of the foregoing, the directors of a company, each director of a proprietary company and each managing director of any other company shall, subject to any contrary provisions of the memorandum or articles, have power to do the acts specified in the Third Schedule to this Ordinance on behalf of the company (Emphasis mine).*
- [20] The third schedule covers the implied powers of directors to bring or defend proceedings in any court in the name or on behalf of the company, to intervene in the company's name or on its behalf in any proceedings brought by other persons. I am satisfied that Mr Fock-Tave does not need any further express permission authorising him to swear the affidavit on behalf of the Applicant and his capacity is not in issue.
- [21] I am further of the view that the Respondent's reliance on the cases of ***Pro Diving (Seychelles) (Pty) Ltd v JJ Spirit Foundation (MA 33/2023) (Arising in CS 87 of 2022)*** [2023] SCSC 726 (25 September 2023) and ***Elmasry and Anor Vis Hua Sun, SCA 28 of 2019, (2020), SCA 2*** are misplaced because the circumstances in MA 33/2023 and SCA 20

of 2019 can be differentiated from the case in hand. In both *Pro diving* (Supra) and *Elmasry* (Supra) the deponents had failed to state their capacity, nor had they exhibited a Power of Attorney for the Court to know otherwise in which capacity they were appearing. In the present case, the capacity in which Mr Fock-Tave was acting is clearly stated and he does not require any further proof of authority. As such, I find that the affidavit before this court is not defective.

- [22] In any event, Mr Fock-Tave has been subjected to a lengthy examination by counsels for both sides and as such any issues as to his capacity and knowledge in respect of the motion before this court has been canvassed and substantiated.

Powers of the court to maintain, vary or set-aside an interim order for provisional attachment:

- [23] Through case precedent it has been established that the courts possess wide discretion in varying orders of provisional seizure and has an inherent power to set aside on good cause being shown as demonstrated in the cases of *Barker v Beau Vallon Properties (1975) SLR 115* and *Eastern European Engineering v Vijay Construction (2013) SLR 25*.
- [24] Counsel for the Respondent has rightly submitted that in determining an application for provisional seizure, the Court must only be satisfied that the main suit discloses bona fide claim.
- [25] In the case of *Eastern European Engineering* (Supra), the Honourable Chief Justice considered as to whether it was right for the court to attach assets to cover all the alleged damages claimed by the Petitioner when it may never be awarded by the Court and was subject to proof of liability, loss and damages including quantum.
- [26] Chief Justice Egonda-Ntende went on to state as follows:

"The order for provisional attachment ought to be invoked only in cases where its raison d'etre is at stake and not otherwise. The defendant should be acting in such a manner that puts at risk the plaintiff's ability to recover the fruits of his judgment. For instance if he is disposing of his assets with a view to avoiding satisfying any judgment that may be passed

against him or he plans to relocate himself or his assets outside this jurisdiction again with the object of not satisfying a possible judgment being passed against him.”

- [27] I have also considered the case of *Village Management v Geers SCA 3/1995* in which the Court of Appeal criticized the approach of granting security before hearing of the full claim, on the basis that such damages would not at that stage have been determined to be due.
- [28] Considering the guidance provided in the above-named cases, I am of the opinion that this court apart from being satisfied that there is ‘*a bona fida*’ claim must also consider whether the Applicant is acting in such a manner to as to put the Respondent at risk of not obtaining ‘*the fruits of a judgment*’. Having considered the affidavit evidence and heard the testimony of Mr Fock-Tave, I am not satisfied that there is a real danger that the Applicant will avoid complying with a judgment if obtained against it and I am of the view that with the majority shareholder of the Company being the Seychelles Football Federation, it ensures that there is little to no chance of the company relocating or takes measures to evade its liabilities.
- [29] That being said, it cannot however be ignored that the Applicant was incorporated in the year 2023 with its central objective being to carry on the business of organising the Beach Soccer World Cup 2025 and that Mr Fock-Tave has conceded to the fact that the company will have no purpose once the tournament has reached its conclusion. Therefore, the argument that the Applicant may seize operations and close its bank accounts is a legitimate concern and possibility.
- [30] Bearing all the factors as mentioned above, the court is left to balance the potential risks to the Respondent against the harm that the current order is causing and may continue to cause to the Applicant. As rightly pointed out by Counsel for the Applicant, the Beach Soccer World Cup 2025 is a global event which has placed the Seychelles under the spotlight, and it is therefore in the national interest that the tournament proceeds without any complications, which could result in not only a national but international embarrassment.
- [31] In the instant case, the order of provisional seizure was applied to three (3) bank accounts held by the Applicant. The effect of the order was to freeze the Applicant’s financial operations and has placed it under severe pressure as it is now unable to pay suppliers who have rendered a service during the tournament period. I am of the view that the impact is

unsatisfactory and imbalanced as it is causing and will continue to cause disruptions to the Applicant's business operations who at this stage has not yet been found liable to the Respondent.

- [32] I am further of the opinion, that a complete freeze of the accounts of the Applicant, may even result in it being further unable to satisfy its liabilities if any to the Respondent and it would be in a better financial position to settle a judgment that may be obtained against it if it is allowed to continue operation.

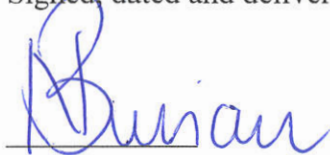
Conclusion and orders:

- [33] In the circumstances, I am satisfied that there is good cause in this instance to vary the order of provisional seizure dated 30th April 2025 to cure the imbalances that have a resulted from a total seizure of the bank accounts of the Applicant.
- [34] The Court needs to not only ensure that the Respondent is able to secure the fruits of a potential judgment in its favour, but it must also be satisfied that the order does not result in disproportionately harsh consequences to the Applicant.
- [35] I therefore apply my inherent powers and will limit the scope of the seizure to the sum equivalent to the loss as particularized in paragraph 16 (iii, iv, v, vi and ix) which are not in contention so as to allow the Applicant access to some of the funds held in its bank accounts in order for the company to operate and pay other debts.
- [36] In view of all these factors I hereby vary the provisional seizure order dated 30th April 2025 and make a revised order attaching provisionally and holding in suspense a sum of Seychelles Rupees Five Hundred and Fifty-One Thousand Four Hundred and Eighty- Five (SR 551,485/-) only due to or belonging to the Applicant which are in the hands of or due to, or belonging to the Respondent held with the Seychelles Merchantile Banking Corporation Limited (t/a Nouvobanq) in bank accounts as stipulated in paragraph 2 above.
- [37] Such sum shall not be withdrawn, transferred or otherwise disposed of until further notice of this court.

[38] In respect of the USD account number: 32002078137030, the court will consider its release from seizure, subject to the Applicant providing proof to this court of the current balance in the above-named accounts.

[39] In pursuant to this order I direct the Registrar of the Supreme Court to issue a revised warrant for the provisional attachment of the sum as directed above.

Signed, dated and delivered at Ile du Port on 9th May 2025



Judge Burian

