

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

CC04/2025

In the matter between:

PETER TANKOV

(Represented by Mr. Frank Elizabeth)

Plaintiff

AND

EDEN ISLAND VILLAGE MANAGEMENT ASSOCIATION

(Represented by Ms. Manuella Parmantier)

Defendant

Neutral Citation: *Peter Tankov vs Village Management Association* CC04/2025 [2025] 9th September 2025

Before: Burian, J

Summary: Plea in Limine Litis-arbitration clause- jurisdiction of Supreme Court

Heard: 20th June 2025

Delivered: 9th September 2025

ORDER

The plea in limine litis fails and the case to proceed on merits.

RULING

N.BURIAN,J

Background facts:

- [1] The Plaintiff is the registered owner and proprietor of a residential property situated on parcel V 18413, at Eden Island ('the property') and he is herein represented by Mr. Bruno Comoglio by virtue of a Power of Attorney dated 3rd April 2025. The Defendant is the Eden Island Village Management Association ('VMA') constituted under the Registration of Associations Act, responsible for the maintenance and management of common areas, including, but not limited to, mooring areas, waterways and berths within the Eden Island development. The Plaintiff avers that his property abuts the coastal break water of Eden Island, a key element of the developments original

engineering and that the said walls serves as a protective structure for shoreline properties. It is the Plaintiff's case that under the VMA October 2014 Constitution ('Constitution'), the Defendant is contractually and legally obligated to maintain all common areas, including but not limited to the mooring areas, waterways and breakwaters, which includes the sea walls surrounding Eden Island. The Plaintiff avers that in breach of its legal obligation under the said Constitution, the Defendant has failed, refused or neglected to maintain, repair and upkeep the breakwater (rock armouring) in front of the Plaintiff's property, asserting such responsibility lies with the individual property owners. The Plaintiff avers that the property is exposed to increasing erosion and land loss and structural risk and as such claims loss and damage to the total value of SR 1,508,010/- with interest and costs. The claim covers the costs of repairing the breakwater/ rock armouring, survey costs, costs of travel and moral damages.

- [2] The Defendant has filed a point of law, alleging that the dispute in this matter is governed by clause 30-arbitration of the Constitution (Amended December 2014) which mandates that all disputes arising under or related to the Constitution must be resolved through arbitration. It is argued that the Court is bound by the contractual agreement between the parties to arbitrate disputes as set out in the Constitution. It is submitted that the Plaintiff's failure to initiate arbitration as stipulated in the Constitution constitutes a procedural error and therefore the Court should dismiss this claim.
- [3] Counsels were given the opportunity to address the Court by way of oral submissions which I have considered in detail and summarized below.
- [4] Ms. Parmantier submits that as per clause 30 of the Constitution, the Court does not have jurisdiction to hear this matter and that the dispute should be referred to arbitration as outlined in the Constitution. It is further submitted that the Supreme Court is not the appropriate forum to resolve disputes related to the interpretation of the Constitution, particularly where the Constitution provides a clear mechanism for resolving such matters through arbitration.
- [5] In reply, Mr. Elizabeth concedes that clause 30 provides for arbitration in the event of any dispute arising between the association and its members in or arising out of the

Constitution however he submits that this clause does not preclude the parties from obtaining interim relief on an urgent basis from the court of competent jurisdiction. It is thus submitted that aside from the principle suit, the Plaintiff seeks redress through an urgent application for injunctive relief (MA 78/2025) and as such it is argued that the Court has competent jurisdiction in the circumstances.

Law and Analysis:

- [6] The Supreme Court is empowered to decline jurisdiction at the request of either party to a commercial transaction pursuant to Article 113 of the Commercial Code.

Article 113 reads as follows:

“1. The Court seized of a dispute which is the subject of an arbitration agreement shall, at the request of either party, declare that it has no jurisdiction, unless, insofar as the dispute is concerned, the agreement is not valid or has terminated.

2. An application to the Court for preservation or interim measures shall not be incompatible with an arbitration agreement and shall not imply a renunciation of such agreement.

- [7] It was held in *Beitsma v Dingjam*¹, that,

“the party who asks the court for an order to stay proceedings must file an Affidavit so as to satisfy the Court not only that he is, but also that he was at the commencement of the proceedings ready and willing to do everything for the proper conduct of the arbitration....”.

- [8] The Court of appeal in the case of *Emerald Cove Ltd v Intour S.R.L*² observed that:

“a Seychelles Court should not decline jurisdiction and so shut its doors to a litigant unless it is sure that the agreement to arbitrate is valid and subsisting. This he must do by evidence that satisfies the court to that effect.”

- [9] In the case of *Wartsila NSD Finland OY and United Concrete Products Civil*³, the Court of Appeal was to consider whether the procedures for declining jurisdiction were redundant as a result of Article 113 (1) of the Commercial Code. The court upheld the

¹ No. 1 (1974) SLR P 292

² (Civil Appeal No. 9 of 2000))

³ Appeal No. 16 of 2003

decision in *Emerald Cove* on the basis that the Code does not change the procedure to be found in *Beitsma* and in the more recent cases of *Bajrang Builders (Pty) Ltd v Harini & Company (Pty) Ltd*⁴, *Benoiton Construction Company (Pty) Ltd v Consolidated Power Projects Group Africa Limited*⁵ and *Mahe Design and Build (Pty) Ltd v Leonardus Hoevers*⁶ these well-established procedures were again followed.

[10] Considering the extensive jurisprudence on the matter of jurisdiction, I am satisfied that the procedure when making a request to the court that it declines its jurisdiction and refer a case to arbitration is clear and unambiguous. Apart from a consideration as to the validity of the arbitration agreement, the Court must be satisfied that the party making the request that the matter be referred to arbitration is ready and willing to partake in the arbitration process.

[11] I have considered the relevant clauses of the Constitution, specifically clause 30 which stipulates as follows:

30. **ARBITRATION**

30.1 *Subject to any specific provisions to the contrary in this CONSTITUTION, in the event of any nature whatsoever arising between the ASSOCIATION and/or the MEMBERS and/or the DEVELOPER, or any one of them, on any matter provided for in, or arising out of this CONSTITUTION, that dispute shall be referred to and be determined in accordance with this 30.*

30.2 *The provisions of this 30 shall, however, not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction."*

[12] Now although the Defendant has not led any evidence specific to the fact that the arbitration agreement between the parties is one which is 'valid and subsisting' it does

⁴ [2017] SCSC 470

⁵ CS 64/2021

⁶ CS 13/2022

not appear that the Plaintiff is contesting the validity of the agreement. Therefore, I can conclude that the validity of the arbitration clause is a non-issue and that the only issue to be determined by this Court is whether the Defendant has satisfied the Court that it is ready and willing to do everything for the conduct of the arbitration in order for me to grant a stay the proceedings or dismiss these proceedings.

[13] Defence Counsel has raised the issue of a lack of jurisdiction in her defence and has chosen not filed a motion to request that proceedings be stayed or that the matter in dispute be referred to arbitration. Now although it was held in the cases of *Benoiton Construction* (supra) and *Mahe Design* (supra) that a motion and supporting affidavit was not procedurally necessary to raise this jurisdictional issue, it would appear that an affidavit would be required in order to prove the readiness and willingness of the Defendant at the commencement of the proceedings to do everything to submit to arbitration. In the matter at hand there has been no affidavit filed at all and as such no evidence to support this requirement.

[14] It is my view that in order for this Court to decline jurisdiction, it is insufficient to simply point to a valid arbitration agreement and move for the Court to decline jurisdiction on this basis alone. I am not satisfied that the Defendant has done anything to established that it is willing and ready to submit to arbitration at the commencement of these proceedings or at all and accordingly based on the above reasons the plea fails.

[15] The case will in the circumstances proceed on merit.

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



N. Burian, J

