

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA78/2025

(Arising out of CC04/2025)

In the matter between:

PETER TANKOV

(Represented by Mr. Frank Elizabeth)

Applicant

AND

EDEN ISLAND VILLAGE MANAGEMENT ASSOCIATION

(Represented by Ms. Manuella Parmantier)

Respondent

Neutral Citation: *Tankov vs Village Management Association* MA78/2025 (arising out of CC04/2025) [2025] 9th September 2025

Before: Burian, J

Summary: Application for interlocutory injunction by way of notice of motion.

Heard: 20th June 2025

Delivered: 9th September 2025

ORDER

The Applicant has failed to convince this Court that interim relief in the form of a mandatory injunction should be granted and I therefore dismiss the said application and make no order as to costs.

RULING

N. BURIAN, J

BACKGROUND FACTS

[1] This Ruling arises out an application for a mandatory Interim Injunction (MA 78/2025) which application arises from Commercial Suit CC 04/2025.

- [2] The Plaintiff is the registered owner of parcel V 18413, a residential property situated at Eden Island and the Defendant is the association 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 its property abuts the coastal break water of Eden Island which was a key element of the developments original engineering. The Plaintiff further avers that the said walls serve as a protective structure for shoreline properties. It is the Plaintiff's case that under the VMA Constitution (14th October 2014) (hereinafter 'the 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 seawall surrounding Eden Island. The Plaintiff alleges that in breach of its legal obligation under the said Constitution, the Defendant has failed, refused or neglected to maintain, repair and upkeep the break water in front of the Plaintiff's property asserting such responsibility lies with the individual property owner. The Plaintiff argues that as a result of the Defendants refusal to repair the rock armouring, its property is exposed to increasing erosion and land loss and structural risk and claims loss and damage to the total value of SR 1,508,010/- with interest and costs.
- [3] The Plaintiff (hereinafter 'the Applicant') has filed an urgent notice of motion seeking mandatory injunctive relief ordering the Defendant (hereinafter 'the Respondent') to forthwith undertake all necessary repairs, remedial works and structural reinforcements to the section of the break water (rock armouring) abutting the Applicant's property.
- [4] The Notice of Motion is supported by an affidavit sworn by Mr. Bruno Comoglio dated 9th April 2025. The affidavit rehearses the facts and matters contained in the plaint, and in addition avers the following:

"that a structural engineering firm, namely R.D.M Consultancy has prepared an Engineering assessment report dated the 28th of March 2025 which shows that the area abutting the applicant's property is severely affected and confirms increasing erosion and detachment of protective infrastructure, posing a serious and imminent risk to the applicant's property. The report goes on to state as follows:

- i) the structural integrity of the breakwater is deteriorating;*
- ii) that sand erosion is exacerbating the damage;*

- iii) *The reclaimed land is becoming unstable;*
- iv) *There is a higher risk of the collapse of the land will be prominent and will lead to structural failures of the buildings on the plaintiff's property and make it unsuitable for occupancy."*

[5] In answer to the motion, the Respondent argues that they have been advised by Counsel that the Supreme Court has no jurisdiction to hear this case because of the arbitration clause contained in the Constitution. The Respondent strenuously objects to the imposition of a mandatory injunction pending the final disposal of the suit alleging that the request for injunctive relief is pre-mature and that the Applicant is requesting mandatory action before the main issues in dispute have been heard and determined by this Court which relief would prejudice the Respondent requiring them to undertake repairs without the Court making a determination on the issue of liability. It is further argued that the balance of convenience is not in favour of the granting of the injunction and that damages would be a more appropriate remedy should the principal suit succeed on merit.

SUBMISSIONS

Procedural challenges to the affidavit in reply

- [6] At the hearing of the notice of motion, Counsel for the Applicant informed the Court that there were points of law that he also sought leave to address alongside his motion.
- [7] It is argued that the affidavit in reply of Mr. Daniel Colyn contains issues of both fact and law which is contrary to section 170 of the Seychelles Code of Civil Procedure ('SCCP'), which states that affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds thereof, may be admitted. Therefore, Counsel for the Applicant submits that the affidavit is defective and incompetent. Reference has been made to various cases including that of *Leonard Gill v Christopher Gill and others*¹, *Savoy Development Limited v Salum*², *Execujet Aviation (Pty) Limited v Euro Aviation Limited and another*³ in

¹ MA 162/2002 (Arising in 48/2022)

² MA16/201 (Arising on SCA 10/202)

³ MA 135/2024 (Arising out of CS 54/2024)

which cases it was reaffirmed that an affidavit is a sworn statement that sets forth the facts that support the motion and that irregular affidavits cannot be waived by the parties nor the court. Mr. Daniel Colyn, is not an expert and as such it is submitted that he cannot testify to issues of law and as such any averments in the affidavit containing law should be deemed inadmissible.

- [8] Mr. Elizabeth has also challenged the competence of Mr. Daniel Colyn, as the Chairman of the Respondent, to swear the affidavit because the board resolution purportedly given him the authority was only signed by three out of five board members.
- [9] Counsel for the Applicant conceded that clause 30 of the Constitution covers disputes which arise, and which shall be referred to arbitration for determination. It is however, submitted that there is an exception as contained in clause 31 whereby parties may come to court to seek urgent interim relief.

Motion for mandatory injunctive relief

- [10] Counsel for the Applicant drew the Courts attention to the constitution and focused on the Respondents legal obligations, its mandate and the definition and interpretation issues in respect of the common areas, moorings and breakwater which all will need to be determined by this Court.
- [11] Mr. Elizabeth has submitted that in the instance of a mandatory injunction, the legal standard of proof is different than that to be considered upon a request for prohibitive injunctive relief. The test would therefore not be one of ‘*a serious question to be tried*’ as established in the case of *American Cyanamid Co. v. Ethicon Ltd*⁴ but rather one of ‘*a high degree of assurance*’ as established in the case of *Shepherd Homes Ltd v Sandham*⁵ which laid out a higher standard of proof.
- [12] Counsel also made reference to the case of *Ex-Parte Liquidity Technologies Ltd*⁶ which considered the Indian case of *Dorab Cawasji Warden v Coomi Sorab Warden and others*⁷

⁴ [1975] A.C. 396

⁵ [1970] 3 All ER

⁶ MA195/2022 (Arising in CS 96/2022)

⁷ 1990 AIR 867

and in which case it was reaffirmed that upon requests for mandatory injunctive relief the following factors should exist:

- i) That the plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction;
- ii) That it is necessary to prevent irreparable or serious injury, which normally cannot be compensated in terms of money; and
- iii) That the balance of convenience is in favour of the ones seeking such relief.

[13] Mr. Elizabeth submitted that his client will suffer irreparable damage if the mandatory injunction is not granted. He made reference to both the engineers and surveyors reports and the quotations for the repairs (annexures A4, A5 A10 and A11). I note that Counsel for the Petitioner did not file a supplementary affidavit in respect of this application despite there also being a discrepancy in annexure A4 in respect of the parcel number. It is advisable that Counsel rectifies this discrepancy before the hearing of the suit proper. The report exhibited as annexure A10 concludes that:

“the break water structural integrity will deteriorate due to global sea level rise and sand erosion will exacerbate further, resulting in an unstable reclamation of the land. In addition, there is a higher risk that collapse of the land will be prominent and will lead to structural failures of the buildings on the property and make it unsuitable for occupancy. To prevent further erosion, the property’s boundary needs immediate remedial works. If this is not done promptly, the structural integrity of the reclaimed land will collapse making the land unsuitable.”

[14] Counsel thus argues that this report is evidence as to the urgency of the application and substantiates the argument that there will be irreparable damages to his client’s property if the situation is not rectified as soon as possible. Reference was also made to the last page of the surveyor’s report in which it has been determined that the rock armouring is outside the boundaries of parcel V 18413 and as such Counsel argues that the rock armouring should be considered part of the common area which is to be maintained by the Respondent.

[15] Lastly, Mr. Elizabeth has argued that the Respondent had initially accept responsibility for maintaining the rock armouring as born out in the numerous correspondences and newsletter issued to homeowners, but had now decided to attempt to shift the burden of the repair onto the homeowners.

Reply to motion for mandatory injunctive relief

[16] In her submission in answer to the motion, learned counsel for the Respondent refuted the proposition, that her Affidavit in reply was defective and worthy of dismissal. Ms. Parmantier submits that the affidavit in reply makes it clear which facts are within the knowledge and belief of her client and which facts Mr. Daniel Colyn has been duly advised upon by his attorney. Instead, she counter argues that it is the Applicant's affidavit which is vague, lacks specificity and does not establish the authority of Mr. Bruno Comogolio to swear the affidavit on behalf of the Applicant.

[17] Counsel referred to Article 113 of the Commercial Code to support her argument that this Court has no jurisdiction to hear the dispute because the parties are bound by an arbitration clause. That the Applicant should have first initiated the arbitration procedure then filed for interim relief or alternatively filed for injunctive relief independent of a principal suit.

[18] Lastly, Ms. Parmantier examined the case on its merits, and it was argued that the legal definition of 'common area' was very specific. It included moorings and water ways however not the breakwater/rock armouring and it is argued that the Applicant is attempting to stretch the definition to hold the Defendant responsible for maintaining such infrastructures around the island. It is further argued that paragraphs 10-11 of the affidavit in reply considers the definition of 'breakwater' and 'waterway' which it avers would not include the 'rock armouring'. Ms. Parmantier argues that the balance of convenience weighs in favour of her client because the claim if successful can be satisfied with a compensation order to cover any damages sustained.

[19] In reply to the submissions made by Counsel for the Respondent, Mr. Elizabeth emphasised the urgency of the repairs and explained that the purpose of the breakwater (rock armouring) was to protect the whole island and as such other homeowners would be

affected if the Respondent was not ordered to take action to remedy the armouring as soon as possible. He further stated that a delay in the completion of this case would run the risk of any compensation order being obsolete if the breakwater (rock armouring) collapses pending the final determination of this dispute.

LAW AND ANALYSIS

Points of law

[20] The Applicant filed a *plea in limine litis* on the 19th June 2025 in which he has raised the following points:

1. *The affidavit in reply to the application for a mandatory interlocutory injunction sworn by Daniel Colyn on the 19th May 2025 is defective and is liable to be dismissed as it contained both matters of law and facts contrary to section 170 of the Seychelles Code of Civil Procedure.*
2. *The points of law raised in the body of the affidavit ought to have been raised as a plea in limine litis in a separate application with a prayer for dismissal of the applicant's application.*

[21] The Respondent has included its points of law in the affidavit in reply raising issues as to the jurisdiction of the Supreme Court to determine this case because of the arbitration clause contained in the Constitution.

[22] The issue of whether a point of law should be raised in an affidavit in reply or by way of separate pleadings was canvassed in the case of *Euro Aviation Limited v/s Albert & SCAA*⁸. This case also involved an application for an injunction pursuant to section 304 of the SCCP and Counsel for the Respondent had raised points of law in his affidavit in reply. It was observed by the Carolus J that the Courts sometimes permit points of law to be raised otherwise than by way of affidavit in proceedings commenced other than by way of plaint, but it was her view that this could only be done where no factual matters arose and that where points of law give rise to factual matters, they ought properly to be canvassed in an affidavit.

⁸ MA83/2024 (*arising in CS 39/2024*)

[23] Carolus J further remarked at paragraph 52 that:

“As can be seen from section 168 affidavits usually contain evidence of factual matters. They do not usually contain legal matters. However, section 125 provides for the filing of affidavits in reply in incidental demands, “if the adverse party contests the incidental demand” without making a distinction whether the adverse party is doing so on the basis of factual matters or points of law. In the absence of any provision in the SCCP providing for the procedure to be followed to raise a point of law in incidental applications made by way of Notice of Motion supported by an affidavit, it is my view that section 125 should apply, taking into account that section 170 permits ‘on interlocutory applications statements as to [the deponents] belief, with the ground thereof’.”

[24] This Court therefore finds that the manner in which the Respondent has raised its objections in the affidavit in reply to be valid and I hereby dismiss the 1st point of law raised by Counsel for the Applicant.

[25] The second point of law challenged Mr. Daniel Colyn’s authority to swear the affidavit because the board resolution purportedly giving him the authority was only signed by three out of five board members. I have considered the Constitution, specifically clause 20.7.5 to 20.7.7 which state in summary that the quorum necessary for holding any meeting of the Board is three members and further that any decision of the board signed by the majority of voting rights shall be valid. Taking these clauses into consideration, I am satisfied that the board resolution authorising Mr. Daniel Colyn to represent the Respondent in certain legal proceedings is valid and gives him the required authority.

[26] The objection regarding this Court’s jurisdiction has already been dealt with in my ruling on the *plea in limine litis* raised in CC 04/2025 in which it was determined that the Court was not satisfied that the Defendant has established that it was and is willing and ready to submit to arbitration at the commencement of the proceedings or at all and therefore the plea was dismissed and it was decided that the case would proceed on merit.

Interim mandatory injunction

[27] The present application is made under section 304 and 305 of the SCCP. Section 304 makes provision for applications for writs of injunction and provides as follows:

“It shall be lawful for any plaintiff, after the commencement of his action and before or after judgment, to apply to court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said court upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.”

- [28] Local authorities⁹ have established that the power to grant an interlocutory injunction is a discretionary remedy and is inherited from the jurisdiction of the High Court of England pursuant to sections 5 and 6 of the Courts Act, which invests in the Supreme Court “all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England” and its equitable jurisdiction.

Serious question to be tried v/s High degree of assurance

- [29] In *American Cyanamid (supra)*, Lord Diplock laid down guidelines on how the courts discretion to grant interim injunctions should be exercised in the usual type of cases. These guidelines, which have been consistently applied within our jurisdiction, are as follows:

- i) Whether there is a serious question to be tried in the principle suit;*
- ii) Whether an award of damages would be an adequate remedy;*
- iii) Whether the balance of convenience lies in favour of granting the order; and*
- iv) Whether there are any special factors that need to be considered.*

- [30] These guidelines were summarised in the case of *Exeter Trust Com v Indian Ocean Tuna Limited*¹⁰ in which case Karunakaran J, confirmed that the court must be satisfied prima facie that the claim is bona fide, not frivolous or vexatious and in other words, that there is a serious question to be tried.

- [31] Although the guidelines laid out in *American Cyanamid* are well-established, there are occasions where judges may adopt slightly different approaches when deciding whether it is just and convenient to grant an injunction. Therefore, the guidelines, though of a great

⁹ Seychelles National Commodity (1983) SLR 133 and reaffirmed in the case of D’Offay v the Attorney General (1975) SLR 118 and Air Seychelles v Seychelles Civil Aviation Authority (2008) SLR 93)

¹⁰ (253 of 2009) [2010] SCSC 89 (6 May 2010)

authority, must not be read as if they were statutory provisions and in practise they are applied with some degree of flexibility.

[32] Lord Diplock himself acknowledged that the *American Cyanamid guidelines* are not applicable to all cases¹¹. There are certain well-established categories of cases in which the usual guidelines do not apply. This includes situations where the relief sought in the plaint is mandatory in nature and, if granted, would effectively result in the final determination of the entire claim. In cases such as these, it has been determined that ‘special circumstances’ must exist in order to persuade the court to grant the interim relief though it amounts to granting the final relief itself¹².

[33] The usual difference is that, in these cases, the courts will investigate the merits of the cause of action. In *N. W. L. Ltd. v. Woods*¹³, Lord Diplock observed at page 1306 that the *American Cyanamid* case was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial. In these scenarios two questions arose:

- i. Firstly, on the assumption that the injunction is refused and considering the likely length of time it would take to get to a trial and the probable factual situation at that time, is there any realistic possibility that the claimant will wish to proceed to trial? Assertions by claimants that they will, in any event, proceed to a trial to recover damages may be disregarded if a trial would be a meaningless gesture.
- ii. Secondly, on the assumption that the injunction is granted, is there any realistic prospect of the defendant insisting on going to trial to vindicate his defence and having the injunction discharged? When neither party has a real interest in going to trial, the interim application will finally determine the action.

¹¹ Page 16

¹² Ex-parte Liquidity Technologies Ltd MA 195/2022 and case of Hammad Ahmed v Abdul Majeed & Ors Civil Appeal No 3382-3382 of 9 July, 2019

¹³ 1979, 1 W. L. R. 1294

- [34] Lord Diplock continued in *NWL Ltd v. Woods (Supra)*, to remark that the degree of likelihood that the claimant would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from him deciding the application one way rather than the other and the degree to which the claimant must establish the merits of the case vary with the circumstances.
- [35] In the Supreme Court case of *Solomon v P & I Club*¹⁴, Egonda-Ntende CJ, determined that when the relief sought on an application would equate to judgment in the head suit in the sense that the applicants would get by the application, what they seek to get through the main suit, there would be no incentive on the part of the applicants in continuing with the main suit if they can obtain final relief on an interlocutory injunction and as such the application in this instance was dismissed.
- [36] The level of scrutiny applied to the merits will vary depending on the specific circumstances of the case and the degree to which the plaintiff must establish the merits of the case vary with the circumstances. Therefore, instead of applying the *American Cyanamid guidelines*, the court has to apply the broad principles of doing its best to avoid injustice. It would be wrong to run the risk of causing an injustice to a defendant who is being denied the right to trial where the defence put forward has been substantiated by affidavits and a number of exhibits. Accordingly, an injunction would only be granted if the plaintiff's case is overwhelming on its merits.
- [37] It was also the opinion of Lord Hoffman in the case of *National Commercial Bank Jamaica Ltd v Olint Corporation Ltd*¹⁵ that there is no real underlying difference in the principles between interim applications for prohibitory and mandatory injunctions but that it is often more likely that there will be irremediable prejudice to the defendant if the injunction is mandatory in nature. If the injunction is likely to cause remedial damage to the defendant, the court should be reluctant to grant the injunction unless it is satisfied that the chances that it will turn out to have been wrongly granted are low.

¹⁴ CS 17 of 2010

¹⁵ [2009] UKPC 16

- [38] As rightly pointed out by counsel for the Applicant, it is therefore the ‘high degree of assurance test’ that is used in cases of interim mandatory injunctions as established in the case of *Shepard Homes case (Supra)* which is of a higher standard than that which is applied in cases seeking prohibitive relief. The courts therefore when considering mandatory injunctions, must amongst other things, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted.
- [39] In *Halsbury’s Laws (3rd Edition)* at page 369, paragraph 774 it is noted that courts exercise greater caution when asked to grant mandatory injunctions. The general principle is that, in the absence of ‘special circumstances’ such relief will not be granted. If however, the case is clear on the evidence and can be decided at once, whereby the act done is one easily remedied, or if the defendant, after express notice, has committed a clear violation of an express contract, or where the defendant, on receipt of notice that an injunction is about to be applied for, hurries on the work in respect of which the complaint is made, so that, when he receives the notice of the interim injunction, it is completed, a mandatory injunction will be granted on an interlocutory application.
- [40] However in the *Shepard Homes case (supra)* the court held that the statement concerning ‘a clear violation of the express contract’ in Halsbury’s Laws above, was framed too broadly. While it is beyond doubt that a mandatory injunction may be granted in cases that are unusually sharp or clear, such relief is by no means granted as matter of course. Instead, the court emphasised that the circumstances of each individual case must be carefully examined.
- [41] This court also supports the principle of the importance of taking the course, carrying the least risk of injustice as emphasised in the case of *Nikitenko v Leboeuf Lamb Greene and Macrae*¹⁶ and I have given further consideration to the English High Court case of *Alexander Kuznetsov v. War Group Ltd*¹⁷ in which it made clear:

¹⁶ (1999) The Times, 26 January 1999

¹⁷ [2024] EWHC 311 (KB)

- i) When interim relief would effectively dispose of the proceedings, a “high degree of assurance” of likely success is required—even before trial.
- ii) The court must be “compelled by the evidence” to be confident not merely that there is a serious case but that the applicant’s claim is very likely to succeed.

[42] The Seychelles courts have not been called on frequently to consider motions for mandatory injunctive relief and as such I have also given due consideration to the jurisprudence in England. In the case of *Chambers v British Olympic Association*¹⁸ an Olympic sprinter Dwain Chambers sought a mandatory injunction to compel the British Olympic Association to allow him to compete despite a previous doping ban. The court refused the interim injunction on the basis that although there was a serious issue to be tried, the relief sought would effectively determine the dispute. The court applied the “high degree of assurance” test and found that Chambers’ case did not meet the standard.

[43] Further, in the case of *Films Rover International Ltd v Cannon Film Sales Ltd*¹⁹, a distributor sought a mandatory injunction to restrain the release of a film in breach of agreement. In this case, although the court recognized the strength of the claimant’s case, the relief sought would have a final effect and as such the judge emphasized the importance of doing what is least likely to cause irreparable prejudice.

[44] The final case considered is that of *Warren v Mendy*²⁰ in which the court declined to grant the injunction. The practical effect of the injunction would be to force the boxer to work for the claimant, or remain idle and lose his income. This meant that it would effectively order specific performance of the management contract by the back door. As the court cannot order specific performance of a contract for personal service, it could not order an injunction which would have the same effect.

[45] The authorities discussed in paragraphs [37] to [44] confirm the established principle that mandatory or dispositive interim orders require a stronger prima facie case than the general “good arguable case” standard. Accordingly, unlike the approach in *American Cyanamid*,

¹⁸ [2008] EWHC 2028 (QB)

¹⁹ [1987] 1 WLR 670

²⁰ Court of Appeal [1989] 1 WLR 853

which guides applications for prohibitory injunctions, the present application, being mandatory in nature, requires me to assess the merits more closely to determine whether the Applicant's case meets the "high degree of assurance" threshold.

- [46] The case of *Dorab Cawasji Warden v Coomi Sorab Warden & ors*²¹ also supports the higher standard than a simple prima face case that it normally required. The court went further to state that even when merits appear strong, there are further factors that should be considered, being whether granting of the relief was necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money and whether the balance of convenience was in favour of the one seeking such relief.

Sufficiency of damages

- [47] In *American Cyanamid (supra)*, Lord Diplock emphasized that when considering an application for an interim injunction, the court must assess whether an award of damages would be an adequate remedy. The consistent position taken by the courts is that when damages in the measure recoverable would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appears to be. If on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of him succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his case, would he be adequately compensated under the plaintiffs undertaking as to damages for the loss he would have sustained between the time of the application and the time of the trial. The Court's task, therefore, is to weigh which party would suffer greater harm that could not be adequately remedied by damages.

Balance of convenience

- [48] It is settled opinion that when considering a motion for interim injunctive relief, the court should take whichever course appears likely to cause the least irremediable prejudice. The

²¹ 1990 (2) SCC 117

grant of an interlocutory injunction is a remedy that is meant to be both temporary and discretionary. Though it is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations it must be satisfied that the Applicant has met the 'high degree of assurance test'.

- [49] There is always a risk that the court may make the 'wrong' decisions, in the sense of granting an injunction to a party who fails to establish his right at the trial and as such the irreparable hardship that may result from granting a mandatory injunction seeking relief that would essentially dispose of the majority of the claim in the principal suit must be weighed up carefully against the potential loss and harm to the Applicant if the injunction is not granted.

CONCLUSION

- [50] Being essentially an equitable relief, the grant or refusal of an interlocutory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances of the case.
- [51] The Applicant in its motion is asking for "*the Respondent to be ordered by way of an urgent interim mandatory injunction to forthwith undertake all necessary repairs, remedial works and structural reinforcements to the section of the breakwater (rock armoring) abutting the Applicant's property.*" I have considered the material and arguments presented in this case and in my view, granting the interim order as sought would effectively dispose of the substantial part of the claim and, in essence, amount to granting the final relief itself. I am further of the opinion that such a mandatory injunction can only be granted where there are "compelling" or "special" circumstances justifying it.
- [52] For this Court to be persuaded to grant the relief sought, I must to be satisfied that not only has the Applicant met the 'high degree of assurance test' but must also consider whether the balance of convenience and irreparable injury weigh in the Applicant's favour. While

I accept that there is a serious question to be tried, an important issue remains as to the proper interpretation of certain definitions in the Constitution and the extent of the Respondent's obligations, if any, to maintain the breakwater (rock armoring) around the Eden Island. At this stage, I am not convinced that there has been a clear breach of any such obligations as neither 'breakwater' nor 'rock armoring' are specifically included in the definition of a 'common area' and I agree with Counsel for the Respondent that the question as to what constitutes a 'common area' must be determined by this Court after hearing expert evidence and applying its own legal analysis to the relevant constitutional provisions. In this instance, although there is an expert report suggesting that the break water (rock armoring) lies outside the boundary of parcel V 18413, the Respondent is entitled to challenge these assertions. Such matters can only be properly resolved at the full hearing of the suit. Accordingly, I am unable to find, at this interlocutory stage that the Applicant has satisfied the 'high degree of assurance' test required in cases of this nature.

[53] I am also of the view that, while the Applicant may face some loss or damage if a mandatory injunction is refused at this stage, the potential consequences for the Respondent would be far more severe. Requiring them to repair the breakwater before the Court has considered all the evidence could expose them to a flood of claims from homeowners, even though the issue of liability has not yet been conclusively determined.

[54] The Applicant quantified with clarity the cost of repairs to the break water (rock armoring) I am therefore satisfied that any loss or damage that may be sustained by the Applicant can be adequately compensated by an award of damages. Moreover, I am not persuaded that the risk posed to the breakwater is either immediate or of such magnitude as to occasion undue hardship to the Applicant. I am also satisfied that the principal suit can be heard and determined within a reasonable timeframe, thereby mitigating any potential risk. In light of these considerations, and having regards to the potential consequences of granting the relief sought at this interlocutory stage, as discussed in paragraph [53] above, I am not convinced that the balance of convenience tilts in the Applicant's favour.

[55] I find the observations made by Lord Cairns LC in the case of *Doherty v Allman*²² to be not only relevant but determinative of the present issue. His reasoning is particularly instructive and he stated as follows:

“ Although it might not be possible to state in any comprehensive way the ground on which the court would refuse to grant a mandatory injunction , in such cases at the trial, they at least included the triviality of the damage to the plaintiff and the existence of a disproportion between the detriment that the injunction would inflict on the defendant and the benefit that it would confer on the plaintiff; the basic concept was that of producing a fair result, and that involved the exercise of judicial discretion.

[56] These remarks, in my view, capture precisely the principles that govern the present application. Applied to the facts before me and giving due consideration to the aforementioned factors, I am of the view that the relief sought would go beyond preserving the status quo and would in effect determine the substantive rights of the parties at an interlocutory stage which is an outcome that the Court must be cautious to avoid. As such the Applicant has failed to convince this Court that interim relief in the form of a mandatory injunction should be granted and I therefore dismiss the said application and make no order as to costs.

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

N. Burian, J

²² (1878)3 App Cas at 720