

SUPREME COURT OF SEYCHELLES

Reportable

[2024]

MA55/2025 & MA102/2025

(Arising in CS88/2024)

In the matter between:

THE ATTORNEY GENERAL

(rep. by Alexander Afif)

Applicant

And

**KRISHNA MART & COMPANY
PROPRIETARY LIMITED**

(unrepresented)

Defendant

Neutral Citation: *AG v Krishna Mart & Company Proprietary Limited* (MA 55/2025 & MA 102/2025) [2025] (13 June 2025).

Before: Carolus J

Summary: Service on Director of Company on behalf of Company – Section 55(1)(d) of the Interpretation and General Provisions Act. Leave to Appeal – section 12 of the Courts Act.

Delivered: 13 June 2025

ORDER

Carolus J

- [1] The Attorney General (applicant in MA55/2025 & MA102/2025) has filed a plaint on behalf of the Government of Seychelles in CS88/2024 against the company Krishna Mart & Company Proprietary Limited (respondent in MA55/2025 & MA102/2025) for recovery of unpaid taxes. The address of the defendant company as stated in the caption of the plaint is its registered address namely Castor Road, Mahe, Seychelles. Service of summons to appear to answer to the plaint on 23rd October 2024 was unsuccessful at that address. The return of summons stated that “*The foregoing summons has not been served for the reason that Krishna Mart is found closed and there is no registered office at Castor Road*”.

[2] Following the unsuccessful service of the plaint with summons, the applicant/defendant filed MA288/2024 – a motion for leave to serve the respondent/defendant by way of substituted service pursuant to section 42 of the Seychelles Code of Civil Procedure. This motion was dismissed by this Court on 25th February 2025. In dismissing the motion the Court stated:

[9] Substituted service is provided for under sections 42 (under which the present application is made) and 43 of the SCCP which read as follows:

42. If the defendant cannot be found and there is no agent empowered to accept service on his behalf, nor any other person on whom service can be made, or if the defendant is keeping out of the way for the purpose of avoiding service, it shall be sufficient service to affix the summons on the outer door of the house or place of business of such defendant and a copy thereof in some conspicuous part of the Court House.

43. When service has been made in the manner mentioned in section 42 and the defendant does not appear on the day stated in the summons, the court may either, after making such inquiry as appears, to be necessary, declare the summons to be served and proceed in the absence of the defendant, or give such further order as to service as to the court may deem fit.

[10] At first glance, it would seem that service may be effected on the respondent/defendant company by way of substituted service by affixing the summons on the outer door of its last known place of business in terms of section 42 as its registered office cannot be found at Castor Road (as per the return of summons), none of its surviving directors can be found and there is no agent empowered to accept service on the company's behalf. However, it must be borne in mind that the purpose of such service is to give notice to the respondent/defendant company of the proceedings against it in CS88/2024. If summons are affixed at its last place of business in Seychelles, it is highly unlikely that this will serve the purpose of giving notice to the company of the proceedings against it, given that one of its surviving directors has left the country since 2009 and the whereabouts of the other director is unknown.

[11] Furthermore, the court requested proof of ownership of the property at which substituted service is sought to be effected. The applicant has provided a Certificate of Official Search in respect of Title V3146 dated 19th November 2024 which shows that one Rajarajacholan Pillay of Bel Ombre, Mahe, is the

proprietor of such property. It is clear that the property is not in the ownership the respondent/defendant company or any of its directors.

[12] It does not appear therefore that substituted service at the premises at English River is the appropriate means of service which would give notice to the respondent/defendant company of the proceedings against it.

[3] On 19th March 2025, the applicant filed a motion in MA55/2025, for “*an order granting LEAVE to appeal against an interlocutory order of Learned Judge E. Carolus dated 25th February 2025 given in MA288/2024*”. The motion is supported by an affidavit sworn by Varsha Singh, Commissioner General of the Seychelles Revenue Commission, to which relevant documents are exhibited. In his affidavit it is averred, *inter alia*, that:

5. *[...] the learned judge erred in making her order of 25th February 2025 in MA288/2024, and failed to properly consider the provisions of law relating to the service of process on companies, and therefore a Notice of Appeal has been filed by the Attorney General in respect of the same error. A copy of the Notice of Appeal is now shown to me, produced and exhibited herewith as VS3.*
6. *[...] the order substantially disposes of all the matters in issue in the plaint and in that if service is not effected at the last known Registered address of the Respondent company, being Castor Road, the Applicant would not be able to obtain relief against the Respondent in the main case CS88/2024.*
7. *[...] there are grounds for treating this case as an exceptional one and to bring it under review for the grounds stated in the notice of appeal (exhibit VS3), particularly given the quantum of damages pleaded in the Plaint CS88/2024.*

[4] The Grounds of Appeal as set out in the aforementioned Notice of Appeal exhibited as VS3, are as follows:

1. *The learned judge erred in law by misapplying the provisions of Section 42 of the Seychelles Code of Civil Procedure (‘SCCP’) where the learned Judge considered it necessary to factor in the likeliness that affixing the summons to the last place of business of the Respondent would give sufficient notice to the Respondent Company which is not a requirement under the said Section 42 of SCCP;*
2. *The learned judge erred in law by misapplying the provisions of Section 42 of the SCCP where, the Learned Judge considered the fact that the land title V3146, (the last known business address of the Respondent) was not in the name of the Respondent or a director of the Respondent as a reason to dismiss the aforesaid*

application for substituted service, given that it is not a requirement under Section 42 of the SCCP that an address to effect substituted service be situated on property registered in the name of the Respondent or any director thereof.

[5] In terms of the Notice of Appeal, the applicant prays that the Court of Appeal:

- i) sets aside the order of the learned Judge delivered on 25th February 2025 in MA 288/2024; and*
- ii) makes an order allowing substituted service of the plaint and the summons to be effected on the Respondent by affixing the summons to an outer door at the Respondents last known business address at English River, Mahe, Seychelles and a conspicuous place in the Court House in line with the provisions of Section 42 of SCCP.*

[6] On 13th May 2025, the applicant filed another motion in MA102/2025 seeking an order for substituted service out of jurisdiction upon a director of the respondent/defendant company in accordance with section 52 of the Seychelles Code of Civil Procedure. The matter came for the first time before this Court on 14th May 2025, on which date counsel representing the Attorney General moved for proceedings in MA55/2025 (leave to appeal) to be stayed pending this court's determination of MA102/2025 (substituted service out of jurisdiction).

[7] In the affidavit in support of the motion for substituted service out of jurisdiction (MA102/2025), Varsha Singh avers in relevant part:

4. That I am advised by counsel and verily believe the same to be true, that due to the fact that:

- a) The Defendant company maintains no office at its registered address of Castor Road, Mahe, Seychelles, the Court's process server was unable to serve summons at the address; and*
- b) An application for substituted service, at the Defendant's last known business address at English River, Mahe, Seychelles (arising in MA 288/2024) was dismissed by this Court;*

it is necessary to apply to this Honourable Court for substituted service of the plaint and summons upon the Defendant outside the jurisdiction in terms of Section 52 of the Seychelles Code of Civil Procedure, by serving upon a director of the Defendant Company who is residing outside the jurisdiction.

5. *That a director of the Defendant by the name of Ranisolojana Pillay has now been located in the country of Malaysia, where she is also a permanent resident.*
6. *That in the particulars of directors of the Defendant company, the director in question was named as 'Rani Sulochana Pillay', but there is good reason to believe that Ranisolojana Pillay is the same person listed in the particulars of directors based on the act of birth of Ranisolojana Pillay ...*
7. *That through investigation with the aid of the Ministry of Foreign Affairs and the Ministry of Employment, Immigration and Civil Status, it has been found that:*
 - a) *Ranisolojana Pillay is a Seychellois national, holding Seychelles passport number NP006269 ...*
 - b) *Ranisolojana Pillay is the holder of a Malaysian Permanent Residency Permit, showing that she is residing at an address in Malaysia at **No. 39, Lintang Lembah Permai 6, Permai Garden, 11200 Tanjong Bungah, Pulau Pinang** ...*
8. *That the Plaintiff has good cause to make the application for substituted service outside the jurisdiction given the quantum of damages pleaded in CS88/2024 and the fact that no other proper representative of the Defendant can be found in Seychelles, nor can service be effected at the registered address of the Defendant.*
9. *That I am advised by counsel and verily believe the same to be true that there is no other way to give sufficient notice to the Defendant company except by way of this Court granting an order for leave to serve the summons and plaint in CS88/2024 by way of substituted outside the jurisdiction upon Ranisolojana Pillay in her capacity as director of the Defendant.*

[8] On the basis of the above, Varsha Sigh therefore prays for “*leave for substituted service on the Defendant by allowing the summons and Plaint to be served out of the jurisdiction on the director of the Defendant, Ranisolojana Pillay at her respective place at **No. 39, Lintang Lembah Permai 6, Permai Garden, 11200 Tanjong Bungah, Pulau Pinang, Malaysia** and that service be made by courier with acknowledged delivery*”.

[9] From a reading of the legal provisions applicable to service on companies, it does not appear that personal service can be effected on a director of a company on behalf of that company.

[10] Section 55(1)(d) of the IGPA reads:

55. (1) A document or notice required or permitted to be served on, or given to, a person under for the purposes of an Act, may be served or given –

(d) in the case of a body corporate, by leaving it at or sending it by post to the registered or principal office of the body corporate;

[11] Section 100 of the Companies Act Cap 40 reads as follows:

100. Registered office

- (1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office situate in Seychelles to which all communications and notices may be addressed.*
- (2) Notice of the situation of the registered office and of any change therein shall be given within fourteen days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.*
- (3) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.*
- (4) The service on a company of a document at the address shown as its registered office in the most recent notice given by it to the Registrar under this section shall be effective, even though that address is not its registered office, or the address of its registered office has been changed.*
- (5) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.*

[12] In *Government of Seychelles & A.G v Poole & Ors* (SCA 2 of 2016) [2016] SCCA 30 (9 December 2016), an appeal against a decision of the Constitutional Court, the Court of Appeal addressed the issue of service on companies. In that case the company in question was Reems Limited (referred to in the Court of Appeal's judgment as the 4th Respondent).

In the proceedings at first instance before the Constitutional Court, its director Gilbert Rassool was served but did not put up appearance and the court proceeded ex-parte against the company which was not represented at the hearing.

- [13] The 4th Respondent appealed on the ground inter alia that:

The Constitutional Court erred in law in hearing the Petition in the absence of [the 4th Respondent] and in holding that [the 4th Respondent] had been served with summons since [the 4th Respondent] had not been served with summons as required by law.

- [14] Counsel for the 4th Respondent Mr. Hoareau, submitted that service on a director of a company cannot be deemed effective service under the law of Seychelles. He referred to the appellation (heading) of the case in which the description of the 4th Respondent was as follows: “*Reem Limited, a company incorporated in Seychelles represented by Gilbert Rassool, a director of the company*”, and submitted that this indicates that it is the 1st Respondent (the petitioner before the Constitutional Court who was referred to in the Court of Appeal’s judgment as the 1st Respondent) who has effectively chosen who the 4th Respondent should be represented by for the purpose of the court case. Relying on section 34 of the Companies Act and rule 2 of the Third Schedule of the Companies Act which in his submission are qualified by section 34(3) of the Companies Act, he expressed the view this was not permitted by the Companies Acts. These sections provide in relevant part:

34. (1) The directors of the company shall have power to do all acts on its behalf which are necessary for or incidental to the promotion and carrying on of its business as stated in its memorandum [...]

Third Schedule, Rule 2: Implied Powers of Directors... To bring or defend in any 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 [...]

34. (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... have power to do the acts specified in the Third Schedule...” (Emphasis ours)

- [15] Mr. Hoareau submitted that in the case of a non-proprietary company it is the managing director who can act on behalf of the company. Notwithstanding that, he also argued that the proper place of service for a company is at its registered address. He argued that the 4th Respondent, Reem Limited, was not a proprietary company and it was not proper to serve Mr. Rassool.
- [16] Twomey JA found that “[N]either the Companies Act nor the Seychelles Code of Civil Procedure specifically provide for service on companies” but that section 55(1) (d) of the Interpretation and General Provisions Act was applicable in that case. The Court of Appeal unanimously found that the 4th respondent was not served, and allowed it to adduce evidence by filing affidavits in reply to the petition and submissions made by the 1st Respondent in the Constitutional Court.
- [17] In view of section 55(1)(d) of the IGPA and section 100 of the Companies Act, and on the authority of *Government of Seychelles & A.G v Poole & Ors*, I find that service cannot be properly effected on a director of the respondent/defendant company in the present case. MA102/2025 therefore stands dismissed.
- [18] I move on to the applicant’s motion for leave to appeal an interlocutory ruling in MA288/2024. Leave to appeal from decisions of the Supreme Court to the Court of Appeal in civil matters is provided for under section 12 of the Courts Act as follows:

12. (1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.

(2)(a) In civil matters no appeal shall lie as of right -

- (i) from any interlocutory judgment or order of the Supreme Court; or*
- (ii) from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.*

(b) In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.

(c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.

(3) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the Supreme Court of Seychelles and of the Court of Appeal in England.

(4) In this section the expression "civil matters" includes all non-criminal matters.

[19] In *Gangadoo v Cable and Wireless Seychelles Ltd* (2013) (SLR 317) the Court of Appeal considered cases of the Mauritius Court of Civil Appeal as well as other cases dealing with applications for leave to appeal, and stated:

[15] In the case St Ange v Choppy MCA 18/1970, the Mauritius Court of Civil Appeal considered how its discretionary powers should be exercised in the case of an application for leave to appeal from an interlocutory judgment. It was of the view that before leave to appeal is granted the court must be satisfied:

- a. That the interlocutory judgment disposes so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision; and*
- b. That there are grounds for treating the case as an exceptional one and granting leave to bring it under review.*

[20] It is my view that there are grounds for treating MA288/2024 as an exceptional one and granting leave to bring the decision made in that case under review. Firstly, as pointed out by Varsha Singh in his affidavit, the inability of the process servers to serve the plaintiff with summons at the registered office of the respondent/defendant company and the dismissal of the motion for substituted service in MA288/2024 leaves the plaintiff with no means of serving the respondent/defendant company and of obtaining relief against the company, thereby effectively disposing of the suit. Secondly the law does not appear to provide for the manner of effecting service in circumstances such as the present one and the Court of Appeal's guidance on the issue would be useful.

[21] In the circumstances I grant the motion for leave to appeal against this Court's decision in MA288/2024 dismissing the applicant's motion for leave to serve the respondent/defendant Company by way of substituted service.

Signed, dated and delivered at Ile du Port on 13th June 2025.



Carolus J