

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2024]

MA181/2024

Arising in CS54/2024

In the matter between:

EXECUJET AVIATION (PROPRIETARY) LIMITED
(rep. by Mr. Divino Sabino)

Applicant

and

EURO AVIATION LIMITED
(rep. by Mr. Hoareau)

1st Respondent

SEYCHELLES REVENUE COMMISSIONER
(rep. by Mr. Galinoma)

2nd Respondent

Neutral Citation: Execujet Aviation Pty Ltd vs Euro Aviation Ltd & Anor (MA181/2024)
[2024] 14 February 2025

Summary: Application for Leave to Appeal -

Before: Carolus J

Delivered: 14 February 2025

ORDER

The application for leave to appeal against the Ruling delivered on 5th July, 2024 is dismissed.

RULING

Carolus J

Background

[1] The applicant has filed a Notice of Motion dated 19th July, 2024 seeking leave to appeal against the ruling of this court delivered on 5th July, 2024. The ruling sought to be appealed against dismissed the applicant's application for an interlocutory injunction preventing the

2nd Respondent from effecting a Value Added Tax (“VAT”) refund to the 1st respondent. This court, in that case, found that the affidavit in support of the application was defective and that the application failed to meet the test required for the grant of an injunction, as the balance of convenience did not favour the applicant and any potential loss could be adequately remedied by an award of damages.

[2] The present application for leave to appeal is supported by an affidavit sworn by Grant Naude on 19th July, 2024. He avers that it is the applicant’s case that the funds in question belong to or ought to be refunded to the applicant and not the 1st respondent. He avers that the 1st respondent was licensed to provide Fixed Based Operation (“FBO”) services to private aircraft that land at the Seychelles International Airport; that the 1st respondent and the applicant entered into a Management Agreement pursuant to which the 1st respondent managed and operated the FBO business, including taking responsibility for all expenses such as VAT payments to the SRC; that in return the applicant paid the 1st respondent periodic fees in terms of the Management Agreement; and that in terms of the Management Agreement the applicant is not indebted to the 1st respondent. He further avers that the refusal by this court to grant the injunction will leave the applicant with the sole option of pursuing the 1st respondent in a litigious claim to recover the funds, at an immense cost, and would leave it with the potential of a hollow judgment if it is successful in the principal action (plaint) instead of being able to access the funds.

[3] The draft grounds of appeal have been exhibited to the affidavit in support of the application. Grant Naude avers that this court erred by taking issue with the jurat while the affidavit was bound and the deponent and notary had initialled every page of the affidavit, including the last page which was signed by the deponent, in line with the jurat standard/rule, the purpose of which is to prevent alterations to/tampering with the affidavit. In these circumstances it is averred that this court failed to appreciate that the affidavit could not have been tampered with. He also avers that this court erred in failing to give the applicant an opportunity to be heard on the issue of the jurat. The applicant further faults the finding of this court on the balance of convenience favouring the 1st respondent and the adequacy of damages.

[4] The 1st respondent filed an Affidavit in Reply sworn by Abdul Jalil Mohamad on 25th October, 2024. He avers that all taxes, including the VAT paid in respect of the fixed base operation business were paid for, on behalf of and in the name of the 1st Respondent who was the taxpayer in terms of the relevant law and the holder of the Taxpayer Identification Number in respect of the fixed base operation business. The 1st respondent was therefore legally entitled to request the 2nd Respondent to pay the VAT refund to it. In addition, he avers that the affidavit of Grant Naude in support of the application is defective and fails to disclose and exhibit all the necessary documents, and further does not disclose any facts and grounds justifying the granting of the order being sought.

[5] The applicant filed its written submissions dated 12th November, 2024 in respect of its application for leave to appeal. Counsel cited *Ailee Development Corporation Ltd (2008) SLR 87* and submitted that the pronouncement of Lord Wolf in *Smith v Cosworth* (cited in Ailee Development) is consistent with section 12(2)(b) of the Courts Act thus affirming it as the guiding principle for granting leave to appeal. He submitted that the draft grounds of appeal neither raise fanciful prospects of success nor unrealistic arguments and urged the court to grant its application for leave to appeal as there is a realistic prospect of success and the appeal raises issues of law that require to be clarified.

[6] The 1st respondents filed their written submissions in respect of the application for leave to appeal late. It was not considered for the purposes of this ruling. The 2nd respondent chose not to file written submissions.

Analysis

[7] 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.*

[8] The procedural bar to appeal as of right against an interlocutory judgment or order of the Supreme Court is in accordance with Article 120(2) of the Constitution (Vide *Gangadoo v Cable and Wireless Seychelles Ltd* (2013) SLR 317). Article 120(2) provides as follows:

“Except as this Constitution or an Act otherwise provides, there shall be a right of appeal to the Court of Appeal from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court.”

[9] In *Gangadoo* (supra) 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.

[16] This view was followed by the Mauritius Court of Civil Appeal in the case of *Pillay v Pillay* (1970) SLR 79. In the case of *Pillay* the Mauritius Court of Civil Appeal held:

“The interlocutory judgment in this case does not put an end to the litigation between the parties, or at all events does not dispose so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision. Moreover the applicant will be entitled as of right to question the decision in the interlocutory judgment if and when he exercises his right to appeal from the final judgment. An appeal at this stage would entail unnecessary delay and expense ...”

[17] The cases of *Beitsma v Dinjan* (1974) SLR 302, *Collet v Albert* (1955) MR 107 also reported in (1953) SLR 263, *Mungur v Mungur* (1965) MR 21, *Coomootoosamy v Noorani* (1916) MR 95 have all adopted the same line of thinking as in *St Ange v Choppy* and *Pillay v Pillay*.

[18] In *Bentwich*, Privy Council, (3rd ed) at page 213, it has been stated: “The suitor need not appeal from every interlocutory order which does not purport to dispose of the case and by which he may feel aggrieved ... - the appeal from the final decision enables the Court to correct any interlocutory order which it may deem erroneous” and that “the delay occasioned by taking an additional appeal adds to the

procrastination which is the bane of Indian litigation.” This may become true of our litigation unless this Court is cautious in granting special leave. To treat a case as exceptional which would necessitate special leave of this Court to bring the interlocutory judgment or order of the Supreme Court under review, the applicant must be able to show that the interlocutory judgment or order is manifestly wrong and irreparable loss would be caused to him or her if the case proper were to proceed without the interlocutory judgment or order being corrected. It would not be in the ‘public advantage and interest’ to unnecessarily delay trials before the Supreme Court, otherwise.

[10] In the present case, the ruling dismissing the application seeking interlocutory injunction orders, and for which leave is being sought to appeal against, does not dispose so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision. The litigation between the parties remains ongoing. Allowing an appeal at this interlocutory stage would only serve to cause unnecessary expense to the parties, and would be contrary to the principles of judicial efficiency and the need to avoid piecemeal litigation.

[11] In determining whether there are sufficient grounds to treat the present matter as exceptional in order to grant leave to appeal, this Court is guided by the Court of Appeal decision in *EME Management Services Limited v Islands Development Company Limited* (2008-2009) SCAR 183 [11 December 2009]. The Court of Appeal clarified that leave to appeal should not be granted merely on the grounds that the applicant believes the ruling was erroneous. It stated as follows:

*“A challenge which goes to the merits of the ruling of the 20 July namely, **that the trial Judge failed to properly consider and weigh all evidence and facts placed before him and failed to correctly apply the law, is not a ground for treating this case as an exceptional one and granting leave to bring it under review.** Certainly there are likely to be interlocutory orders made in the course of a trial which are erroneous. If leave to appeal is to be granted against each such order, the procedural bar in s 12 of the Courts Act, which is in accordance with section 120(2)*

of the Constitution, would be rendered meaningless. The appeal from a final decision would enable this Court to correct any interlocutory order which it may deem erroneous.

[12] Further, in *Gangadoo* (supra), the Court at para [13] stated:

“... “special leave” should therefore be granted only where there are exceptional reasons for doing so, or in view of reasons which may not have been in the knowledge of the applicant at the time leave to appeal was sought from the Supreme Court or for reasons that supervened after the refusal to grant leave by the Supreme Court. The reasons before the Court should be such that the non-granting of “special leave” by this Court is likely to offend the principle of fair hearing enunciated in the Constitution. In this regard it is to be noted that an appeal against an interlocutory judgment or order has a tendency to delay the main action and contravene the rights of a person to a fair hearing within a reasonable time as stipulated by art 19(7) of the Constitution.”

[13] I have considered the arguments of the parties, the applicable law and authorities and find that the applicant has failed to demonstrate any exceptional circumstances warranting the granting of leave to appeal against the interlocutory ruling. The applicant has also failed to show that the interlocutory ruling is so manifestly wrong that allowing the main case to proceed without correcting it would result in irreparable loss.

Decision

[14] In view of the foregoing, this court declines to exercise its discretion to grant leave to appeal against its ruling delivered on 5th July, 2024 and dismisses the application.

Signed, dated and delivered at Ile du Port on 14th February 2025



E. Carolus J