

SUPREME COURT OF SEYCHELLES

Reportable

MA28/2024

Arising in CS134 of 2007

In the matter between:

PHARA SOPHIA BOTHE

1st Petitioner

(rep by Mr Frank Elizabeth)

SAMENTA JULY RENE NODDYN

2nd Petitioner

(rep by Mr Frank Elizabeth)

SURHA SANDY LARUE (BORN NODDYN)

3rd Petitioner

(rep by Mr Frank Elizabeth)

AND

ROBERT MARC NODDYN

1st Respondent

(rep by Ms Alexandra Benoiton)

PATRICK NODDYN

2nd Respondent

(rep by Ms Alexandra Benoiton)

Neutral Citation: Phara Sophia Bothe & Ors Vs Robert Noddyn & Or (MA28/2024)

(14 October 2025)

Before: D. Esparon, J

Summary: To issue a summons against the Respondents to show cause why they should not be committed to civil imprisonment for failure to pay the Judgment debt.

Heard: By way of written submissions

Delivered: 14th October 2025

ORDER

Application by way of Petition seeking an order from this Court to issue a summons against the Respondents to show cause why they should not be committed to civil imprisonment for failure to pay the Judgment debt – Plea In Limine Litis- The Court Ordered that the said plea In Limine Litis shall be taken together with the merits of the Application.

RULING

D. Esparon, J

Introduction

1. This is an Application by way of Petition seeking an order from this Court to issue a summons against the Respondents to show cause why they should not be committed to civil imprisonment for failure to pay the Judgment debt.

The pleadings

2. The Application is supported by the Affidavit of Mrs Phara Bothe who avers in her Affidavit the following;

‘5) I aver that by reason of a judgment of the Supreme Court in Civil side No. 134/2007, the Respondents agreed to pay us the sum of SCR 600,000.00.

- 6) I aver that despite admitting that they owe us the sum of SCR 600,000.00 the Respondents have failed, refused and neglected to pay us any sum at all to date.

7) I aver that the Respondents have the means to pay the Judgment debt but are refusing to pay despite several request to do so'.

3. The Respondents raised a plea In Limine Litis namely that the Petitioner's claim, filed on the 8th February 2024, in respect to execution of a Judgment dated 4th October 2012 has been brought outside of the ten year time limit prescribed by law and should be dismissed by this Honourable Court. In view of the Plea In limine Litis raised by the Respondent, this Court shall first deal with the plea In Limine Litis before proceeding if any on the merits of the case.

Submissions of Counsels

4. Counsel for the Respondent submitted to the Court that the Judgement by consent in CS 134 /2007 was entered into on the 4th October 2012 and that the current petition was filed on the 8th February 2024. Counsel for the Respondent relied on the law namely **Article 2219 of the Civil Code of Seychelles** as well as **Article 2271 of the Civil Code** and on case law namely the case of **Desaubin V Magnan (Arising in CS 01/2011 (2025) SCSC 41 (17th February 2025))** and submitted to the Court that in respect to the execution of a Judgment dated the 4th October 2012, the deadline to execute the Judgment is 10 years.
5. Counsel for the Respondents further submitted that having filed the petition on the 8th February 2014, that the petition was filed 11 years, 4 months and 4 days after the Judgment date, being one year, 4 months and 4 days outside of the prescription period prescribed by law and should be dismissed.
6. Counsel for the Respondent relied on section 239(b) of the Seychelles Code of Civil Procedure and submitted that the date of the judgment and the order are not specified in all 3 Affidavits of the petitioner contrary to what is stated in the above provision and

furthermore the said application lacks copies of the taxed Bill of cost as provided for in the above provision of the law.

7. On the other hand, counsel for the Petitioner submitted to the Court that the judgment debtors contention is premature and cannot be properly determined at this juncture as the alleged Judgement has not even been produced in evidence nor admitted as exhibit and therefore does not form part of the proceedings since it has not been properly produced as exhibit in accordance with the general rules of civil procedure and the rules of evidence. Counsel further submitted that the Court cannot take judicial notice of the said Judgment and the Court cannot consider it since it is not part of the proceedings. Counsel for the petitioner relied on the case of **Tarin Vidot V Vincent Savy in support CA 13/2018** in support of his submissions.

The Law

8. Article 2219 of the Civil Code reads as follows;

‘1. Prescription involves loss of rights through a failure to act within the limits established by law.

2. It is a means whereby, after a certain lapse of time, rights may be acquired or lost, subject to the conditions established by law’.

9. Article 2271 of the Civil Code reads as follow;

‘1) All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.

- 2) Provided that in the case of a judgment debt, the period of prescription shall be ten years’.

Analysis and determination

10. The issue to be determined as regards to the plea In Limine Litis raised by the Respondent is whether the Application for summons to show cause which was filed by way of Petition is prescribed by law. Counsel for the Petition has submitted that such a Plea In Limine Litis cannot be heard at this stage of the proceedings since the Respondent has not produced the said Judgment she is relying upon as exhibit. In the case of **Taryn Vidot V Vincent Savy CA 13 /2018 R.Govinden**, J as he was then stated the following at Paragraph 16 of the Judgment the following;

‘ I also find that the ruling of the Rent Board that this matter has been previously dealt with by a higher Court and therefore the Application may not be pursued further by the same parties is misguided. There was again no proof adduced before the rent Board of several previous decisions of the rent board; the Supreme Court and the Constitutional Court allegedly between the same parties, these decisions were only referred to in the submission of the Respondent. They were not produced as proof of previous decision of Courts through the accepted means of proof before the rent Board. In fact the case laws were only handed over to this Court during the course of this Appeal. These decisions were accepted as Authorities and not as evidence that could form part the basis of the Plea of Res Judicata. To consider these evidence at this stage would consist of consideration of fresh evidence on Appeal. For this to take place there is a procedure to be followed. This was not done in this case. As such I find that the Plea In Limine base on the plea in res judicata was decided ultra Petita’.

11. For the purpose of the above, this Court also refers to **Order 41 rule 11(1) of the Supreme Court Judicature, England procedure** ‘ the Rules The Supreme Court 1965 which states as follows;

‘Any document to be u used in conjunction with affidavit must be exhibited, and not annexed to the Affidavit’.

12. **Section 243 of the Seychelles Code of Civil Procedure** states the following;

‘Before any person is committed to civil imprisonment under section 241 or 242 such person shall be summoned to show cause why he should not be committed, and if he fail to appear or to show cause to the satisfaction of the court, the court may make such order as to committal as it considers just. Witnesses may be heard in support of the application and on behalf of the person summoned’.

13. I take note in the present matter that the point of law was raised as a point of law and furthermore was also raised on the merits of the Application on the reply on the merits in the form of an Affidavit by the Respondent. In following the case of **Taryn Vidot V Vincent Savy CA 13 /2018**, I shall distinguish it with the present matter in view that in the case of Taryn Vidot (Supra) the issue had arisen at the stage of Appeal whereby the Appellant was attempting to produce fresh evidence on Appeal after exhausting all bites of the cherry as regards of the production of evidence before the Rent Board and further had not sought leave of the Court to produce fresh evidence.
14. In the present matter, I take note of order 41 rule 11(1) of the Supreme Court Judicature, England procedure ‘ the Rules The Supreme Court 1965 and the fact that the Respondent has raised the same point of law on the merits of the Application in its Affidavit in Reply, in view of section 243 of the Seychelles Code of Civil Procedure which allows witnesses to be heard in support of the Application and on behalf of the person summoned, I am of the view that in the circumstances such a defect is curable. As a result, I shall not dismiss the plea In Limine Litis of the Respondent and hence rule that the said plea In Limine Litis shall be taken or heard together with the merits of the Application.
15. Hence, the Application shall now be fixed to be heard on the merits.

Signed, dated and delivered at Ile du Port on the 14th October 2025.



D. Esparon J.

