SUPREME COURT OF SEYCHELLES

Reportable
CM 06/2024

In the matter between

SEYCHELLES INTERNATIONAL MERCANTILE BANKING CORPORATION LIMITED **Plaintiff**
(rep. by Ms Laboudallon standing in for Mr Kieran Shah)

And

JOHNY & PHYLLIPA BASTIENNE **Defendants**
(rep. by Mr Davino Sabino)

Neutral Citation:	*SIMBC v Bastienne* (CM 06/2024) 23rd June 2025
Before:	N. Burian, J
Summary:	*Postponement of Sale – Commandment - Immovable Property (Judicial Sales) Act – section 36 of the Immovable Property (Judicial Sales) Act*
Heard:	23rd June 2025
Delivered:	23rd June 2025

ORDER

Application is dismissed

RULING

N. BURIAN, J

Introduction and background facts:

[1] This Ruling arises from an application for a postponement of the sale of immovable property, namely, land title V 19440 situated at Pascal Village, Beau Vallon, Mahe, Seychelles.

[2] The application is brought by the Execution Debtors ('Defendants'') pursuant to section 36 of the Immovable Property (Judicial Sales) Act. Counsel has argued that there are

grounds of necessity and expediency which warrant the postponement of the sale and have raised two points for consideration. Firstly, that the Defendant has not working for some time and as such found himself in financial difficulties being unable to pay his debts. He has since gained employment and according to instructions received, the Defendant is able and willing to commence monthly repayments to the bank in the sum of a minimum of SR 20,000/- per month. It was further stated that if the court is mindful to postpone the sale today, that the Defendant would be prepared to make a lump sum payment to the bank in satisfaction of the debt.

[3] The second consideration is that the Defendant is of the view that a postponement of the sale would allow more buyer to come forward, especially now with the partial lifting of the moratorium on the purchase of land by foreign nationals.

[4] The Plaintiff objects to the grant of postponement on the basis that no strong grounds of necessity or expediency have been established by the Respondents'. According to the Execution Creditor, the Defendant has had ample time to raise objections to the sale but has chosen the day of sale itself to raise concerns. Counsel confirmed that according to information received, the Defendant is in employment but has not made any payment in satisfaction of the debt. The bank is of the view that the Defendant is a risk factor because it has been difficult for the bank to communicate with him since his reallocation overseas. As such the bank is not satisfied or confident that the Defendant will honour any undertaking to repay the debt.

Law and Analysis:

[5] Section 36 of the IPJSA provides for the postponement of sale –

> "36. *Postponement of Sale*
>
> *Nevertheless, <u>the sale may be postponed either sine die, or to a specified day, at the instance of</u> the execution creditor or of any one of the inscribed or judgment creditors, or <u>the execution debtor; but only upon strong grounds of</u>*

<u>necessity or expediency to be established to the satisfaction of a Judge. The decision of the Judge postponing the sale shall be final and without appeal</u>."

(Emphasis added)

[6] Section 36 of the Immovable Property (Judicial Sales) Act thus empowers the Court to postpone the sale "upon strong grounds of necessity or expediency". This Section came up for interpretation in the case of *Lorenzo Appiani v Mary Geers* (unreported) Civil side 35 of 95) where it was held that the mere application for further time to pay was considered to be inadequate for purposes of postponing the sale under section 36 of the Act.

[7] It is my view that strong grounds of necessity or expediency" generally refers to a situation where actions are justified due to a compelling need or a pressing urgency that outweighs other considerations. In essence, "strong grounds of necessity or expediency" suggests that a compelling reason, either based on an urgent need to avoid harm or the practical advantages of a course of action, justifies a deviation from standard rules or norms.

[8] I have considered the motion for postponement made before me today at this final hour, the reasons given by counsel for the Defendant and the objections raised by counsel for the Plaintiff.

Conclusion:

[8] In the instance case, I must agree with counsel for the Execution Creditor that the Defendant has had ample time to object to the sale and file a proper motion for postponement but has waited until the day of sale to do so. Further, despite counsel stating that his clients are prepared to commence repayments, I note that they have taken no steps to do so. Nothing was stopping them from commencing repayments and I of the view that if they were serious and genuine about their undertaking to clear the debt then they would have mitigated their loss and would have been paying the debt and actively communicating with the bank. Instead, the bank has had no to little communication with the Defendants and the Defendant has not provided them with his residential address in Switzerland nor his new employment details.

[9] Further, I note that there are potential buyers who have appeared today to bid for the property. The sale has been advertised for the past 6 weeks and as such this has given ample time to both locals and foreign bidders to come forward.

Order:

[10] In the circumstances, I not satisfied that strong grounds of necessity or expediency have been shown to warrant or justify a postponement of the sale in this instance and as such the motion to postpone the sale is dismissed.

Signed, dated, and delivered at Ile du Port on 23rd June 2025.

N. Burian, J

Judge of the Supreme Court