

SUPREME COURT OF SEYCHELLES

Reportable

MA 305/2024

(Arising from CS87/2024)

In the matter between:

CUTTING EDGE CONSULTANCY

(rep. by Mr. France Bonte)

Applicant

and

SEYCHELLES CREDIT UNION

(rep. by Ms. Manuella Parmentier)

Respondent

Neutral Citation: *Cutting Edge v Seychelles Credit Union* (MA305/2024) (Arising from CS87/2024) (30th May 2025).

Before: Madeleine J

Summary: Application for leave to amend plaint – Defects in Affidavit -

Heard: Written Submissions

Delivered: 30th May 2025

ORDER

RULING ON MOTION

A.Madeleine, J

Introduction

1. This ruling arises from the application of the Plaintiff in the main suit (now “Applicant”) for leave to amend the original plaint filed on 27th September 2024.
2. The Defendant (now “Respondent”) in the main suit objects to the notice of motion and supporting affidavit and has raised multiple points of law.

The Applicant's Affidavit

3. The Applicant's Affidavit in support of the motion shows as follows –

"AFFIDAVIT

I Mrs Ingrid Tirant of Anse Boileau, Mahe, Seychelles, hereby make oath and say as follows;

1. That I am the Owner/Founder of Cutting-Edge Consultancy, the Plaintiff in the said suit.
2. That the Complaint has been filed in the Supreme Court in September 2024.
3. That the Plaintiff now wishes to amend the complaint according to the attached Complaint and as follows:

A. Original Text in Point 1 of the Complaint:

"The Plaintiff, Cutting-Edge Consultancy, a sole trader registered under the business registration B2314612, herein represented by its Owner/Founder, Mrs. Ingrid Tirant, and the Defendant, Seychelles Credit Union (SCU), herein represented by its Chief Operating Officer, Miss Rudy Rose, a financial co-operative of Huteau Lane, Victoria, Mahe, for breach of contract, breach of duty of care, and violation of legal and ethical standards."

Replacement Text in the Amended Complaint:

"The Plaintiff, Cutting-Edge Consultancy, a sole trader registered under the business registration number B2314612, herein represented by its Owner/Founder, Mrs. Ingrid Tirant of Anse Boileau, Mahe, and the Defendant, Seychelles Credit Union (SCU), herein represented by its Chief Operating Officer, Miss Rudy Rose, a financial co-operative *of the Cooperative House*, Huteau Lane, Victoria, Mahe, for breach of contract, breach of duty of care, and violation of legal and ethical standards."

B. 2. Original Text in Point 4 of the Complaint:

“In 2021, in breach of the above-mentioned agreement, the Defendant unilaterally and unlawfully cancelled the loan and discharged the charge above mentioned.”

Replacement Text in the Amended Plaintiff:

“On April 08, 2021, in breach of the above-mentioned agreement, the Defendant unilaterally and lawfully cancelled the loan and discharged the charge above mentioned on February 25, 2022 (see Discharge of Charge, Certificate of Official search dated November 15, 2024, in Annexure F and the Letter of loan Cancellation dated April 08, 2021).”

C. Original Text in Point 3 of the Plaintiff:

“The Plaintiff incurred expenses totalling US\$63,147.57 (SCR884, 066.00) in the form of supply bill invoices excluding salary payments.

Replacement Text in the Amended Plaintiff:

“The Plaintiff incurred expenses totalling US\$63,147.57 (SCR884, 066.00) in the form of supply bill invoices excluding salary payments (see attached Annexure B). All expenses incurred featured in the Business Plan which the Defendant relied on when approving the loan.”

D. Original Text in the Plaintiff Regarding Particulars of loss and Damages:

“Total Loss and Damages

SCR4,206,577.90”

Replacement Text in the Amended Plaintiff Regarding Particulars of Claim:

“Total Claim

SCR4,206,577.90”

E. Removal of Clause 5 in the original Plaintiff.

F. Additional Clauses in Amended Plaintiff:

The amended plaintiff added the following paragraph:

“The Agreements with Temenos were unsigned as a pre-requisite was US Dollar bank account. As the Defendant cannot provide US Dollar bank accounts, the Plaintiff had to apply for a US Dollar bank account with another bank, in this case ABSA. Once the US Dollar account was obtained, the signed Agreements were obtained (see Agreements in Annexure G). The Plaintiff also submitted a signed copy memorandum of understanding (MOU) between the Guy Morel Institute (TGMI) and Cutting-Edge Consultancy and a quotation submitted to the Seychelles Bankers association which was subsequently approved (see MOU in Annexure G)

G. 6. Documents relied upon

In the amended Plaintiff, additional documents have been listed as follows:

-“Discharged of charge documents, certificate of official search dated November 15, 2024, and letter of loan cancellation issued by the defendant attached as annexure F”

-“Agreements between the Temenos and Cutting Edge Consultancy, Memorandum of understanding between the Guy Morel Institute and Cutting Edge Consultancy, and quotation submitted to the Seychelles Bankers Association attached as annexure G.”

4. The amendment sought will not prejudice the defendant in any way but rather that the Plaintiff will be severally prejudiced should the amendment sought not be granted.

5. Pray thus honourable Court to allow to allow the amendment sought in the interest of justice.”

(Underlining my own)

4. A proposed amended plaint is exhibited in the Affidavit of the Applicant reflecting the above amendments.

The Respondent's Affidavit

5. The Respondent's Affidavit in objection to the motion show as follows –

"AFFIDAVIT IN REPLY TO NOTICE OF MOTION MA 305/25"

I, Christianne Moise, employed as the Loans Manager of the Seychelles Credit Union, of Huteau Lane, Victoria, Mahe, Seychelles, state as follows:

1. I am the deponent above named, and the securities and Recovery Manager of the Seychelles Credit Union, the Defendant in these proceedings. I make this affidavit in opposition to the Plaintiff's Notice of Motion for leave to amend the plaint in the matter: Cutting Edge Consultancy v Seychelles Credit Union, CS87/2024.
2. The facts and matters herein are from my own knowledge and belief unless stated otherwise. When any statement regarding a point of law is made, it is made on the advice of my legal representative which I believe to be true and correct.
3. On 4th December 2024, the Plaintiff filed a Notice of Motion seeking leave to amend their plaint in this matter.
4. I am informed by my legal representative and verily believe that, the Notice of Motion filed by the Plaintiff fails to meet the necessary procedural requirements under the Seychelles Civil Procedure Code and the English Supreme Courts Rules 1965 (Order 41).
5. The affidavit in support of the Plaintiff's motion is deficient, in that:
 - i. *The title of the affidavit is simply stated as "Affidavit" without the necessary Identification of the court, case number, and specific purpose of the affidavit. Under Order 41 rule 1 of the English Supreme Court Rules 1965, the affidavit should clearly specify that it is being filed in support of an application to amend the plaint and should include the necessary case details;*

ii. *The deponent has failed to describe her occupation as per Order 41 rule 1.4;*

iii. *The jurat fails to include the full address of the place where the affidavit was sworn, sufficient for identification, and irregularities in the form of the jurat cannot be waived by the parties as per Order 41 rule 1.6;*

iv. *The deponent fails to swear the affidavit to his belief and/or knowledge."*

(Emphasis added)

6. The parties filed their respective written submissions, and I give due consideration to their submissions in my analysis below.

Law and Analysis

Defects in the form and contents of the Affidavit in support of motion

7. By Affidavit in reply to the present application and written submissions, the Respondent argues that the Applicant's Affidavit in support is inconsistent with the English Supreme Court Rules 1965 (Order 41) applicable in Seychelles by operation of Section 17 of the Courts Act, Section 12 of the Evidence Act and the case of *Kimkoon & Co Ltd v R (1969) SCAR 60*. It is also argued that the inconsistencies with the Supreme Court Rules cannot be waived such that the Applicant's Affidavit in support of the motion is defective and the said defects are fatal.
8. The Applicant's only submissions in support of its motion are that "*The Seychelles Civil Procedure Code deals with this situation adequately and without ambiguity so the English Supreme Court Rules are not applicable in the circumstances.*" The Applicant's submission is minimal and seems to address only the issue of whether leave should be granted to amend the plaint as proposed.

9. The Respondent's submissions on the application of the English Supreme Court Rules (Order 41) in respect of the form and other defects in Affidavits is correct and consistent with the Court of Appeal's pronouncements in *Lablache De Charmoy v Lablache De Charmoy*¹ and in *Elmasry & Anor v Hua Sun*².
10. In *Lablache de Charmoy* (supra) Robinson JA considered Order 41 Rules Supreme Court (R.S.C) (1965) in relation to objections taken on the form of affidavits in the following paragraphs 24 to 30 reproduced below –

“24. The Court considers the form of the affidavit. Counsel for the respondent relied on the defect in the jurat. He stated that the jurat must follow immediately on from the text and not be put on a separate page. He submitted that the affidavit is also defective because it does not state the full address of the applicant and her occupation. He added that the affidavit sworn in this matter should have been entitled in this matter.

24. The Court has considered the submissions of both Counsel. Counsel for the applicant did not offer any acceptable submission in reply.

*25. Counsel for the respondent submitted that the written law of Seychelles is silent on the issues raised. He submitted that the Court of Appeal in *Morin v Pool* (2012) SLR 109 referred with approval to the White Book (Supreme Court Practice 1991 Order 41 rule 8) in relation to an objection raised at the appeal concerning the affidavit. In the present matter Counsel referred the Court to Order 41 (R.S.C. 1965) which deals with the form of affidavits, in support of his submission. The Court reproduces Order 41, Rule 1, so far as relevant —*

"Form of affidavit (O. 41, r. 1).

¹ (SCA 8 of 2019) [2019] SCCA 35 (16 September 2019)

² (SCA 28 of 2019) [2020] SCCA 2 (23 June 2020)

1.—(1) *Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.*

[...].

3. *Every affidavit must be expressed in the first person and must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.*

[...].

5. *Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.*

[...].

7. *Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn. "*

27. *The Court considers the submissions of Counsel to be well founded. Irregularities in the form of the jurat cannot be waived by the parties. In Pilkington v. Himsworth, 1 Y. & C. Ex. 612), the court held that: "[j]urat and affidavits are considered as open to objection, when contrary to practice, at any stage of the cause. That is an universal principle in all Courts; depending not upon any objection which the parties in a particular cause may waive, but upon the general rule that the document itself shall not be brought forward at all, if in any respect objectionable with reference to the rule of the Court".*

28. *Also an affidavit giving no address of the applicant was rejected: see Hyde v Hyde, 59 L.T. 523.*

29. *For the reasons stated above, the Court accepts the submissions of Counsel for the respondent that the affidavit is bad in law and, consequently, refuses to admit the defective affidavit as evidence.*

The decision

30. The Court dismisses the notice of motion filed by the applicant. The Court makes no order as to costs."

11. In *Elmasry* (supra) Fernando PCA also considered the application of Order 41 R.S.C (1965) and held that –

*"[This offends] Order 41, rule 1 (4) of the White Book (R.S.C. 1965) [which] can be made use of in the Seychelles in accordance with Section 17 of the Courts Act referred to at paragraph 4 above and section 12 of the Evidence Act referred to at paragraph 5 above; since Seychelles laws on the format of an affidavit is silent. However, it is noted that in view of the decision in **Kimkoon & Co Ltd V R (1969) SCAR 60** we can only follow the procedure, rules, and practice of the High Court of Justice in England prior to Seychelles gaining independence in 1976."*

12. Furthermore, Fernando PCA also considered that the failure to entitle the supporting affidavit in the cause or matter contrary to Order 41, rule 1(1) R.S.C. (1965) is not always fatal –

"According to Order 41, rule 1(1) of the White Book (R.S.C. 1965): "...every affidavit sworn in a cause or matter must be entitled in that cause or matter." Counsel for the Respondent argued that the affidavit filed in the case is in breach of this Order as there is no title to the affidavit and does not state in respect of which cause or matter it has been sworn or filed. At the commencement of the affidavit, the word 'Affidavit' and what is referred to at paragraph 4 above is stated. Counsel for the Applicants argued that the Notice of Motion pertaining to the Application for Stay of Execution was entitled, and the Notice of Motion did state "The grounds upon which this application is based are contained in the affidavit attached herein." Paragraphs 2, and 3 of the affidavit makes it clear that the affidavit has been filed as the applicants in the Miscellaneous

Application for a Stay of Execution made to this Court arising out of Civil side No 13/2014, that an appeal had been filed against the judgment in Civil side No 13/2014 which was against the Applicants. I am of the view that although it would have been preferable if the affidavit itself was entitled but in view of the statement in the Notice of Motion referred to earlier and the averments in paragraphs 2 and 3 there is no breach of Order 41, rule 1(1) of the White Book."
(Emphasis added)

13. I have scrutinised the Applicant's affidavit in support of the notice of motion and I accept the Respondent's submissions that there are defects in the form and content of the affidavit.
14. The first objection that I consider is under Order 41 rule 1(1) R.S.C (1965) to the effect that the Applicant's affidavit in support of the motion is not entitled in the cause or matter. While the notice of motion is entitled in the main suit, the supporting affidavit is simply entitled "Affidavit". I also consider the wording of the notice of motion below –

"Motion

*TAKE NOTICE that this Honourable Court will be moved on the day of
In the year 2024 at o'clock on an application for leave to the Plaintiff as the
attached.*

An affidavit in support hereof is attached."

(Emphasis added)

15. Ex facie the motion, the purpose for which the motion has been filed is not clear. '[A]n application for leave to the plaintiff' is not a procedure known to this court. The motion only indicates that an affidavit in support is attached. Paragraph 2 of the supporting affidavit vaguely states that –

"That a plaintiff has been filed in the Supreme Court in September 2024."

(Emphasis added)

16. I am of the view that the circumstances herein are distinguished from that of *Elmasry* (supra) where the statements in the notice of motion clearly stated that the grounds upon which the application were based, were contained in an attached affidavit. The affidavit then stated that the miscellaneous application for stay had been filed in an appeal from a judgment given in favour of the Respondent. It is this nexus which led to the determination that although not entitled in the cause or matter, the affidavit did not offend Order 41 rule 1(1) R.S.C (1965).

17. In my view, the incomplete and vague statements in the current motion and affidavit respectively are in breach of Order 41 rule 1(1) R.S.C (1965).

18. The second objection is made under Order 41 rule 1(4) R.S.C (1965), namely that the deponent has failed to state her occupation. Order 41 rule 1(4) R.S.C (1965) states that –

“3. Every affidavit must be expressed in the first person and must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.”

19. The Affidavit states as follows –

“I, Mrs Ingrid Tirant of Anse Boileau, Mahe, Seychelles, hereby make oath and say as follows:

1. That I am the owner/Founder of Cutting-Edge, the Plaintiff in the said suit.”

20. Further, under paragraph 3, item A both the original text and proposed amended paragraph 1 of the plaint states that –

“The Plaintiff, cutting-Edge Consultancy, a sole trader registered under business registration number B2314612 herein represented by its Owner/ Founder, Mrs Ingrid Tirant”

21. Considering the above, I am of the view that the affidavit is not in breach of Order 41 rule 1(4) R.S.C (1965). The deponent's description is clear. She is the owner/founder of Cutting-Edge Consultancy and from paragraph 1, Item A it is clear that she is a sole trader.

22. The third objection is made under Order 41 rule 1(6) R.S.C (1965) namely that the jurat fails to include the full address of the place where the affidavit was sworn, sufficient for identification and that irregularities in the jurat cannot be waived by the parties.

23. Order 41 rule 1(6) R.S.C (1965) states that –

“Jurat – The jurat of every affidavit should contain the full address of the place where the affidavit was sworn, sufficient for identification. Affidavit should never end on one page with the jurat following over leaf. The jurat should follow immediately after the end of the test. The signature of the commissioner for oaths should be written immediately below the words “Before me”.

(Emphasis added)

24. The jurat of the Applicant's affidavit state that it is sworn before, and signed by, the Senior Assistant Registrar, at the “Registry Supreme Court” followed by the seal of the Seychelles Supreme Court. In my view the address of the place where the affidavit was sworn is merely lacking in description but is sufficient for identification. There is only one Supreme Court in Seychelles. Although objectionable, and rightly objected to by the Respondent, the lack of particulars of the address in circumstances where the place may be sufficiently identified does not render the affidavit fundamentally defective. It is preferable that the full address of the Supreme Court should have been stated.

25. The fourth objection is that the Applicant did not swear the affidavit to her belief and/or knowledge. Section 170 of the Seychelles Code of Civil Procedure 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.”

(Emphasis added)

26. The provision of section 170 of the Seychelles Code of Civil Procedure compares largely to Order 41, rule 5 R.S.C (1965) which states that –

“5. – (1) Subject to order 14, rule 2(2) and 4(2), paragraphs 2 of this rule and to any order made under order 38 rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.”

(Emphasis added)

27. Affidavits based on the belief or information of the deponent are also permissible subject to disclosing the source of the information and the grounds of belief and states clearly what part is based on knowledge or on information and belief: [*vide: Union Estate Management (Pty) Ltd v. Herbert Mittermayer*³].

28. The Applicant’s affidavit in support of the motion does not contain any statement to the effect that the Applicant is making the affidavit of his own knowledge or as to his belief and information. In my view, the affidavit offends section 170 of the Seychelles Code of Civil Procedure.

29. The last objection is that the Applicant has failed to give sufficient justification for seeking the amendment and merely stated that she “*wishes to amend the plaint*”. The Applicant minimally submits that the subject matter of the application is governed by the Seychelles Code of Civil Procedure Code and that the amendment will not prejudice the Respondent. In these circumstances I can only accept the Respondent’s submissions that the Affidavit simply proposes the desired amendments, and neither gives justification for the proposed amendments nor make the necessary averments to support the proposed amendments.

³ (1979) SLR 140

Conclusion

30. Although not all the defects discussed above render the Applicant's Affidavit fundamentally defective, I am of the view that the failure to state whether the affidavit is being made of the knowledge or information and belief of the Applicant and the failure to make necessary averments in support of the application are fatal. I also consider the wording of the motion to be inaccurate. Though the nature of the demand can be gathered from the affidavit, it is not the duty of the court to correct typos and mistakes in pleadings.

Order

31. I therefore dismiss the motion.

32. I make no order as to costs.

Signed, dated and delivered at Ile du Port on



Madeleine

