IN THE SEYCHELLES COURT OF APPEAL

DAMBERT ADRIENNE APPELLANT

versus

SHELLY BEACH PROPERTIES LTD RESPONDENT

Civil Appeal No: 10 of 1999

[Before: Ayoola, P., Pillay & Matadeen, JJ.A]

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Mrs. N. Tirant for the Appellant
Mr. F. Bonte for the Respondent

JUDGMENT OF THE COURT

(Delivered by Ayoola, P.)

Section 22(1) of the Control of Rent and Tenancy Agreement Act ("the Act") provides that:-

> "Any person aggrieved by any decision or order of the Board may appeal to the Supreme court on a question of law or of fact or of mixed law and fact, and the Supreme Court may affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Board with directions of the Court thereon, and may make any orders as to costs and all such orders shall be final and conclusive on all parties" (the underlining is ours).

Upon an application by the respondent, Shelly Beach Properties (Pty) Ltd, to the Rent Board for the ejectment of the appellant Dambert Adrienne, the Rent Board ordered the appellant to vacate a dwelling house situate on a parcel of land (Title No: H2334). The appellant appealed from the

order of ejectment to the Supreme Court which dismissed the appeal, thereby affirming the decision of the Rent Board.

On the appellant's further appeal to this Court, the preliminary point has been taken and argued, whether, having regard to Section 22(1) of the Act, the appellant has a right of appeal from the decision of the Supreme Court.

Mr. Bonte, learned Counsel for the respondent argued that this Court cannot entertain the appeal because the Act expressly excludes a right of appeal, and that such exclusion has been permitted by Article 120(2) of the Constitution wherein the right of appeal to the Court of Appeal from a decision of the Supreme Court is made subject to other provisions of the Constitution or an Act not otherwise providing. Similar provisions in Section 12(1) of the Courts Act were referred to. Counsel went on to submit that the orders made by the Supreme Court in its appellate jurisdiction under the Act are not confined only to costs but extend to, inter alia, "orders affirming, reversing, amending or altering the decisions appealed against.

Mrs. Tirant-Gherardi, learned Counsel for the appellant, argued, first, that the appellant having been granted a stay of execution by the Supreme Court, the appeal must be deemed to be properly before this Court and the respondent should have raised the preliminary point by motion in this Court; secondly, that by the wording of Section 22(1) of the Act, what was made "final and conclusive on all parties" were orders as to costs only; and, thirdly, that should we find that the appellant has no right of appeal, we should, nevertheless, hold that this Court has the power to declare the decision of the Rent Board, and, consequently, that of the Supreme Court, to be a nullity, so as to exclude the operation of the "final and conclusive clause" of Section 22(1) of the Act.

That the "final and conclusive" clause bars any right of appeal is now a well-established principle of law, in our opinion. The effect of such clause has been succinctly put in Halsbury's Laws of England (4th Ed) Vol. 1 paragraph 22 thus:-

> "A provision that an act or order shall be 'final' bars any right of appeal but does not exclude the supervisory jurisdiction of the courts."

Also in Basu, Administrative Law (3rd Ed. 1993) p.442, the learned author said:-

> "Evidently, such provisions preclude an appeal against the decision, for a right of appeal can be created only by an express statutory provision."

In **Leperre v Coopoosamy 1975 SLR 156,** Sauzier, J at p.161 said:

> "It is now settled that when a statute stipulates that the decision of a statutory tribunal is final and conclusive, that only means 'without appeal'."

Article 120(2) of the Constitution provides that:-

> "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."

Section 12(1) of the Courts Act in the same vein made the jurisdiction of this Court to hear and determine appeals from the Supreme Court subject to "as otherwise provided in this Act or in any other law." There cannot be any doubt, in our view, therefore, that the effect of Section 22(1) of the Act is to preclude further appeal to the Court of Appeal from a decision of the Supreme Court, given in its appellate jurisdiction, upon an appeal from a decision of the Rent Board. The restriction on the right of further appeal is, as rightly submitted by Mr. Bonte, permitted by the provisions of the Constitution and the Courts Act referred to.

The two main questions that have to be addressed, arising from Mrs. Tirant-Gherardi's submissions, are: first, whether the respondent is precluded from raising the preliminary point, in view of the fact that the Supreme Court had granted a stay of execution, notwithstanding that the respondent had contended that the appellant has no right of appeal; and, secondly, whether, as a matter of construction of Section 22(1) of the Act, the exclusion of right of appeal related only to orders as to costs.

As to the first question, the Supreme Court, rightly, refrained from pronouncing on the issue of the jurisdiction of this Court to entertain the appeal. Juddoo, J in granting a stay of execution, rightly was of the view that: "Whether the applicant has a right of appeal to the Court of Appeal notwithstanding Section 22 of the Control of Rent and Tenancy Agreement Act will remain to be determined before the appropriate forum." The argument that the preliminary point cannot now be raised is therefore misconceived.

As to the second question, it is difficult to see how the finality clause can be read as excluding a right of appeal from orders of costs only. It is evident that, as rightly pointed out by Mr. Bonte, when the Supreme Court comes to a decision to "affirm, reverse, amend or alter, the decision

appealed from or remit the matter to the Board with directions of the Court thereon", its decision would be embodied in an order. The words "all such orders" in Section 22(1) of the Act relate to all such orders conveying the decision, as well as to orders as to costs. The conclusion must follow that the operation of the "finality" clause is not limited only to orders as to costs.

Learned Counsel for the appellant raised an alternative point that this Court should hold that the decision of the Rent Board is a nullity. The appellant could in the first place have invoked the supervisory jurisdiction of the Supreme Court, but he did not. If he had, the decision of the Supreme Court would have been appealable to this Court, that decision not being made pursuant to powers conferred by the Act. Where, as in this case, the jurisdiction of the Supreme Court that was invoked was its appellate jurisdiction under the Act, in the absence of a right of appeal from the decision of the Supreme Court, this Court has no jurisdiction to review that decision. In any case, this Court does not exercise and is not vested with original powers to exercise supervisory jurisdiction over the Supreme Court or over any body or authority. The alternative argument must be rejected.

Since we hold that the appellant has no right of appeal, the appeal must be struck out. We order accordingly.

E. O. AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 17 day of December 1999.