IN THE SEYCHELLES COURT OF APPEAL

TERENCE TIEDERMAN **APPELLANT**

VERSUS

JENNY GILBERT **RESPONDENT**

Civil Appeal No. 28 of 2002

[**Before:** *Ayoola P, Silungwe & Matadeen JJA]*

Ms. D. Zatte for the Appellant
Mr. M. A. Vidot for the Respondent

JUDGMENT

(Delivered by Matadeen, JA)

This is an appeal against a judgment of the Supreme Court which allowed an appeal from a decision of the Family Tribunal and set aside the orders made by the Tribunal.

The respondent has taken a preliminary objection to the appeal on the ground that the appeal is incompetent.

Now, Section 78B(2) of the Children Act (the Act) provides that:-

> "The Supreme Court may, on an appeal, make such order as the Supreme Court thinks fit and the order shall not be subject to appeal to the Court of Appeal."

We agree with learned Counsel for the respondent that this Court cannot entertain the present appeal because the Act expressly excludes a

further right of appeal to this Curt and that such exclusion is permissible under Article 120(2) of the Constitution which 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."

It is to be noted that similar provisions are contained in Section 12(1) of the Courts Act.

We have also given anxious consideration to the argument of Counsel for the appellant that there is a distinction bètween "judgment" and "order" and that what was prohibited by Section 78B(2) was an appeal from the order of the Supreme Court and not from its judgment. It was argued that this appeal is from the judgment of the Supreme Court. In paragraph 42/1/5 of the Supreme Court Practice 1967, citing Lord Esher M. R. **Onslow v Commissioners of Inland Revenue (1890) 25 Q.B.D.** at p165 it was stated – "It is doubtful whether there is still a distinction between a 'judgment' and an 'order.'" It was also stated in that note that – "A judgment is a decision obtained in an action, and every other decision is an order." The use of the word "order" in Section 78B(2) was probably deliberate in order to show that a proceeding in the Family Tribunal that had been brought pursuant to Section 78 of the Act is not an "action." It is also clear that although most judgments involve the making of an order in relation to the rights and obligations of the parties not all "orders" need be preceded by a judgment.

In the context of Section 78B(2) of the Act and of this case, the appeal would involve the upholding or setting aside of the "order" made by the Supreme Court allowing the appeal before it and quashing the decision of the Family Tribunal. To argue that while an appeal from such order is prohibited, appeals from the reasoning and conclusions that led to that order are not is, to say the least, ridiculous.

In the circumstances, we take the view that the preliminary objection is well taken. We hold that the appellant has no right of appeal and order the appeal to be struck out.

Delivered at Victoria, Mahe, this 11th day of *April* 2003